

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMMANUAL M. RODRIGUEZ,

APPELLANT

APPELLATE CASE NO. 2014-001956

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185
(864) 467-8282

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated September 8-10, 2014)	1
PRE-TRIAL MOTIONS	2
TESTIMONY	
JUSTIN ROGERS (IN CAMERA)	3
Direct Examination by Solicitor	3
Cross-Examination by Mr. Crangle	26
CHARLES KEVIN CLONINGER	38
Direct Examination by Solicitor	38
Cross-Examination by Mr. Crangle	42
MOTIONS CONTINUED	46
RULING ON MOTION	66
OPENING STATEMENT BY SOLICITOR	68
OPENING STATEMENT BY MR. CRANGLE	72
TESTIMONY	
JUSTIN ROGERS	74
Direct Examination by Solicitor	74
Cross-Examination by Mr. Crangle	107
Redirect Examination by Solicitor	112
BRAD DOWIS	113
Direct Examination by Solicitor	114
Cross-Examination by Mr. Crangle	123
CHARLES CLONINGER	127
Direct Examination by Solicitor	128
Cross-Examination by Mr. Crangle	131
ELIZABETH ADKINS	139
Direct Examination by Solicitor	140

CHRIS BROWN	148
Direct Examination by Solicitor.....	148
Cross-Examination by Mr. Crangle	152
JOHN GARRETT	153
Direct Examination by Solicitor.....	153
Cross-Examination by Mr. Crangle	159
Redirect Examination by Solicitor	163
EMMANUEL MARQUEZ RODRIGUEZ.....	165
Direct Examination by Mr. Crangle.....	165
Cross-Examination by Solicitor	174
Redirect Examination by Mr. Crangle	185
RENEWED MOTIONS	186
CLOSING STATEMENT BY MR. CRANGLE	188
CLOSING STATEMENT BY SOLICITOR.....	194
JURY CHARGE.....	201
VERDICT	202
POST TRIAL MOTIONS	203
SENTENCING	278
INDICTMENT	206
SENTENCING SHEET	208
MOTION TO SUPPRESS.....	209
CERTIFICATE OF COUNSEL.....	218

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT # 1 (RECORDING OF INCIDENT)

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF GREENVILLE) 2013 GS 23 07983

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 EMMANUAL M. RODRIGUEZ)

9 Defendant)

Greenville, South Carolina

10

September 8-10, 2014

11

12 B E F O R E :

13 HONORABLE BENJAMIN H. CULBERTSON, Judge, and a Jury

14

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

15

For the State:

RYAN HOLLOWAY, Esq.
Solicitor

16

17 For the Defendant:

JOHN CRANGLE, Esq.

18

19 Reporter Present:

MARGARET WOODS

20

Interpretors:

LIZ ZAPATA
JEANNETTE HOUCHENS

21

22

HARRIET P. BENNETT

23

Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S. C. 29485

24

25

1 the bailiff. Then we'll bring you back in at that time.

2 I hope you have a good lunch, and we will bring you
3 back in then.

4 (Jury excused for the lunch period)

5 THE COURT: Anything from the State before we re-
6 cess for lunch?

7 SOLICITOR: No, sir.

8 THE COURT: Anything from the Defense before we re-
9 cess?

10 MR. CRANGLE: No, sir.

11 THE COURT: All right, then, we'll be in recess un-
12 til two o'clock.

13 (Whereupon, the Court stood in recess until the
14 matter was continued at 2:00 P.M.)

15 THE COURT: Thank you very much. Please be seated.

16 All right, for the record we are here on 2013 GS 23
17 7983, the State of South Carolina versus Emmanuel Marquez
18 Rodriquez.

19 I understand we have some pre-trial matters, is
20 that correct?

21 SOLICITOR: Yes, sir.

22 THE COURT: All right, what do you want to take up
23 first?

24 SOLICITOR: Judge, I think the easiest thing to do,
25 since a lot of the questions or issues involve the search

1 as well as whether the statement was voluntary or not,
2 is to take these back to back.

3 So if we call the officers involved in the search
4 issue and then the issue of whether the statement was
5 voluntary or not, that would cover both issues.

6 THE COURT: All right, so we need to do the Jackson
7 v Denno and the motion to suppress. Is that correct?

8 SOLICITOR: Yes, sir.

9 THE COURT: Okay, what kind of statement -- is it a
10 written or oral statement?

11 SOLICITOR: Oral, evidently, as well as an oral
12 statement that was typed up.

13 THE COURT: So we're dealing with two separate statements
14 perhaps?

15 SOLICITOR: Yes, sir.

16 THE COURT: Is that your understanding?

17 MR. CRANGLE: Yes, Your Honor.

18 THE COURT: All right. Then if the State would call
19 the first witness.

20 SOLICITOR: State calls Trooper Justin Rogers.

21 JUSTIN ROGERS, being duly
22 sworn, testified as follows out of the presence of the
23 jury:

24 DIRECT EXAMINATION

25 BY SOLICITOR:

J. ROGERS IN CAMERA

1 THE COURT: Please take your seat and give the Court
2 Reporter your full name, first and last name.

3 WITNESS: First name is Justin, J U S T I N, and
4 last name is Rogers, R O G E R S.

5 THE COURT: All right, sir.

6 SOLICITOR: Thank you, Your Honor.

7 Q. Trooper Rogers, would you tell the Court how you
8 became involved in this case on April 17, 2013?

9 A. In this particular case, we received information
10 from the Drug Enforcement Agency that there was a poss-
11 ible load of heroin that would be coming northbound on
12 the La Cubana, a passenger bus line.

13 We were familiar with the La Cabana bus line and
14 that it made a regular stop at a location on White Horse
15 Road. It was a scheduled stop.

16 That was the information we received. We didn't
17 receive any specific information as far as the subject's
18 name, other than it would be a light-skinned possibly
19 black male.

20 It was undetermined, the amount of heroin, or the
21 subject's name.

22 Q. Okay, and who told you that there was this tip? Who
23 informed you about this tip?

24 A. That would have come from the D.E.A. in this case
25 who would have passed the information on to us.

J. ROGERS IN CAMERA

1 It would have come to our first line supervision who
2 in this case was Corporal Dowis. He would have passed
3 the information on to us.

4 Q. And when you received this information, what did
5 you do?

6 A. We set up -- like I said, we were familiar with La
7 Cubana, the bus line, the scheduled stops traveling
8 northbound and southbound. One north, one south.

9 Q. What highway is that?

10 A. That's the Interstate 95 through Greenville County.

11 Q. Okay.

12 A. We had checked out the possible stop-times. It was
13 actually a gas station slash McDonalds, a little popu-
14 lated pretty much throughout the day and throughout the
15 night.

16 So we got -- we went to the location I guess prob-
17 ably about fifteen minutes prior to the bus arriving
18 there.

19 Q. And once you got there, tell us what you did.

20 A. Once the bus arrived, myself and my Corporal, and
21 we also had another team member, Lance Corporal Harrison.
22 There were two unmarked vehicles, my vehicle and Cor-
23 poral Harrison's, and then Corporal Dowis had a semi-
24 unit for the K-nine.

25 We were parked in the parking lot, and after the

J. ROGERS IN CAMERA

1 bus entered in he stopped towards the front -- the front
2 porch -- as he came in and stopped, I went ahead and
3 approached the bus as the driver was exiting down the
4 stairway.

5 At that time, I identified myself, who at a later
6 time was identified as a Mr. Gonzales, the bus driver.

7 Q. Was he still exiting the stairwell or had he al-
8 ready stepped into the parking lot?

9 A. He had already put the bus in park, had actually
10 already exited the gate and was making his way down. He
11 was on the last step, if not already stepped off.

12 Q. So you had not stepped on the bus and confronted
13 him?

14 A. No, he was actually off the bus and almost off . .

15 Q. So you were . .

16 MR. CRANGLE: Objection, Your Honor. He's leading
17 the witness.

18 THE COURT: These are pre-trial matters, so I will
19 allow the testimony. Go ahead.

20 BY SOLICITOR:

21 Q. Okay.

22 A. No, sir, I didn't make any entry into the bus. Mr.
23 Gonzales was actually leaving the bus of his own free
24 will. At that time -- even at that time either myself
25 or my backup -- they weren't present because it's not to

J. ROGERS IN CAMERA

1 a point where there is any intimidation factor.

2 It was just standard myself to see if everything
3 was okay, to make sure everything was okay.

4 Q. Okay, and you -- based on the tip, your method of
5 investigation -- it is generally called what, in this
6 situation?

7 A. I mean, there have been -- there have been times
8 that we received phone calls that resulted in necessarily
9 vague or very vague, you know, a possible load of heroin
10 coming through, so -- and at that time, you know, from
11 the git-go it is always -- it is always consensual.

12 Even though we are operating off of a tip I still
13 don't have the right to make anyone talk to me. If they
14 tell me to hit the road, I hit the road.

15 Q. Were there any indications that this driver when he
16 arrived displayed to you that he didn't want to talk to
17 you?

18 A. He didn't. Mr. Gonzales was more than cooperative.
19 Once I introduced myself, I explained to him my -- I
20 think the first question I asked him was, did he have
21 any problems with his passengers as far as the trip, the
22 destination.

23 We have had some instances where passenger buses --
24 there are passengers who get unruly.

25 Q. But in this case what was his response?

J. ROGERS IN CAMERA

1 A. For the most part, everything was okay.

2 Q. Now, was Corporal Brad Dowis with you?

3 A. Yes, sir, he was.

4 Q. When you were talking to the driver, where was he
5 standing?

6 A. He was probably still down at his vehicle upon the
7 first approach, and then he made his way up to me there
8 at the front of the bus.

9 Q. And what was his role once he got upon the scene?

10 A. Well, he was acting supervisor of our team at that
11 time, but, more importantly, you know, he was a K-nine
12 -- he was a K-nine officer.

13 Q. When he approached you, was this K-nine with him?

14 A. Yes, the K-nine was in the vehicle. He was in Cor-
15 poral Dallas' car.

16 Q. As Corporal Dowis is walking toward you, was his
17 K-nine with him at that time?

18 A. No, he was still secured in his kennel in the ve-
19 hicle. That is something that we never -- we never are
20 going to approach any vehicle with a K-nine present.

21 Q. Mr. Gonzales -- what if any -- did he speak English?

22 A. He did. There were a few times that I asked him and
23 he said, yeah, I'm fine; I understand. His English was
24 a little bit broken but he fully understood what I was
25 saying to him, and I could understand what he was saying

J. ROGERS IN CAMERA

1 to me.

2 Q. When he said, I'm fine, what was he talking about?

3 A. At that time, I explained to Mr. Gonzales basically
4 in utilization of transportation upon Interstates it is
5 a common trend factor in the business of drug traffick-
6 ing that individuals would utilize passenger bus lines as
7 a means of transportation.

8 He understood that. I asked him how long he had
9 been in the business, and as far as my experience with
10 these drivers they are well aware of something out of
11 the norm, and he -- I think I asked him, there again, if
12 anybody had given him any problems, and it was -- I think
13 he knew as far as me asking him that, if there was any
14 possibility of any contraband being on the bus.

15 I asked him if he had a problem while I conducted
16 my business because it is our policy even in a consent-
17 ual encounter -- I still have to document with
18 what in this case would have been a warning ticket.

19 Q. Let me ask you this. Did you ask him for
20 consent to go on the bus?

21 A. No, I never ask for consent to go on a bus. I asked
22 if it would be a problem for Corporal Dowis to go around
23 the exterior of the bus.

24 Q. What was his response?

25 A. It was not a problem, not at all, to go ahead, and

J. ROGERS IN CAMERA

1 he actually turned away from me and went to open the
2 luggage compartment.

3 So I didn't ask him to do that. It was pretty much
4 of his own free will.

5 Q. Okay, and at any time did he say to stop, go away,
6 I need to leave, or anything like that?

7 A. No, he stayed with me. At that time Corporal Dowis
8 went back to his car and retrieved the K-nine. As I car-
9 ried on and conducted my business with the driver present
10 Corporal Dowis came back and presented Tigger to the ex-
11 terior.

12 He was positioned there at the front of the bus, so
13 he never left the bus as far as distance or anything.

14 Q. At the time you asked the driver for consent to run
15 the K-nine around the bus, how long had transpired from
16 when you first approached him?

17 A. Maybe five or six minutes. It wasn't an extended
18 amount of time by any means.

19 Q. Okay. When Corporal Dowis was running his K-nine
20 unit around the bus, what were you doing?

21 A. As Corporal Dowis deployed Tigger, I was still in
22 the process of finishing up my documentation
23 with the driver.

24 Q. Okay. Now, how many -- at this point, how many
25 passengers are on the bus?

J. ROGERS IN CAMERA

1 A. It was approximately twenty -- between twenty and
2 twenty-five passengers.

3 Q. During this time were any passengers trying to
4 leave the bus or get back on the bus?

5 A. No. No passengers were trying to exit. It was not
6 to the point where we instructed them to stay -- you
7 know, to stay seated or not get up or move about.

8 Q. Yes, sir. What kind of bus was this?

9 A. This was a 2013 model NCI passenger bus. The com-
10 pany name is Zambrono. They are based out of Florida.
11 Their normal routes come out of Miami through Atlanta,
12 on up into the Philadelphia area.

13 They are actually the Zambrono Bus Corporation.

14 Q. Okay. How was the cargo there stowed?

15 A. This right here is typical of most bus lines that
16 have multiple stops. It makes it easier for the driver
17 to arrange the luggage in comparison to their destina-
18 tions.

19 That way, when they get to these destinations they
20 don't have to dig through the luggage, because they give
21 you a baggage claim ticket. So at your destination you
22 have to present that.

23 I think with this here we had three stops, one in
24 North Carolina, one in Philadelphia and New York, if
25 I'm not mistaken, was the final destination.

J. ROGERS IN CAMERA

1 So that is how they were split up.

2 Q. Okay, and as the official case agent are you aware
3 of whether Tigger alerted?

4 A. Tigger alerted to the possible presence of an il-
5 legal odor coming from the stow-away compartment, yes.

6 Q. At that point, what did you consider this encounter
7 with the bus . .

8 A. Well, it is consensual up to that point, and in my
9 business from that point on it is between me and the
10 driver, and the driver is off the bus, but he is respon-
11 sible for the entire bus.

12 On the bus is passengers only but as far as once --
13 once the probable cause was established by the K-nine
14 alert, we explained to the driver what we were going to
15 have to do from that point on; that there was a K-nine
16 alert, and that the next step would be to have the pas-
17 sengers identify all the luggage.

18 You know, with that amount of luggage -- it's a
19 good bit. It's three stow-away compartments full.

20 So we actually had him go in and explain to the pas-
21 sengers in Spanish to not be alarmed; that, you know,
22 there was no need for safety concern or anything like
23 that; that we just wanted to have everybody come on out
24 of the bus and we would ask if they had luggage.

25 There again, even as we were having them exit, they

J. ROGERS IN CAMERA

1 still -- they had free range to do what they pleased.

2 Q. Okay. Now, were those doors on the bus opened, or
3 just on one side?

4 A. There were three -- on this bus, you only have one
5 at the tail end of the bus, and three compartments that
6 actually pull up. Those compartments would go all the
7 way from one side to the other as opened, the stow-away
8 compartments.

9 Q. So can the driver access the suitcases on both
10 sides of the bus or just one side?

11 A. They only come off the door side. As far as the
12 door on the right side of the bus.

13 Q. When he opened the cargo-bay doors, what side of
14 the bus was it on?

15 A. If you are standing looking at the bus head-on, it
16 would be the left side.

17 Q. Okay, and you said the driver told the passengers
18 in Spanish what was going on?

19 A. Uh hm.

20 THE COURT: Was that a yes?

21 A. I'm sorry. Yes. Sorry, Your Honor.

22 BY SOLICITOR:

23 Q. Was he also speaking in English to the passengers?

24 A. That I'm not sure of. There again, I never made --
25 I never made entry into the bus.

J. ROGERS IN CAMERA

1 Q. You never actually went inside the bus?

2 A. No, sir, I did not.

3 Q. What about Corporal Dowis?

4 A. Corporal Dowis -- the only time he made entry into
5 the bus was after the bus had been -- everybody had
6 exited and the K-nine, Tigger, was presented into the
7 interior to clear the bus there.

8 Q. Okay. Describe how you made contact with each pas-
9 senger?

10 A. As the passengers -- I had the driver stand there
11 with me as well, just if there was a language barrier --
12 we kind of divided -- I explained to him that our ulti-
13 mate was not to -- because these drivers are on a tight
14 schedule and the longer we keep them there the further
15 behind it puts them.

16 So we divided -- as we had passengers exit, we'd
17 have them claim their luggage in designated spots in the
18 parking lot.

19 In that way they wouldn't get mixed. In that way
20 Philadelphia could go back to their stack and New York
21 could go back to their stack, and North Carolina, and so
22 on.

23 The passengers came down and they were asked if
24 they had luggage. If they did, they were asked to pre-
25 sent the claim tickets.

J. ROGERS IN CAMERA

1 They would point their bag out and I would retrieve
2 the bag and let them watch me put it into the destina-
3 tion spot.

4 Q. You said there were about twenty passengers on the
5 bus?

6 A. Yes, sir.

7 Q. Who was the eighteenth person who came down the
8 stairwell?

9 A. That would have been Mr. Rodriguez.

10 Q. Okay. Describe to the Court what your initial con-
11 versation with him entailed?

12 A. Mr. Rodriguez upon exiting the bus -- and whether
13 it is a consensual encounter with an individual or whe-
14 ther it is -- whatever it may be, there is always a pat-
15 tern and that is what we look at, consistent patterns,
16 whether it is trafficking patterns or human behavioral
17 patterns.

18 As Mr. Rodriguez exited the bus, the first thing he
19 was asked was if he had stow-aways, and I think he said
20 yes. He presented a claim ticket, and he visibly went
21 over and retrieved his luggage. That was the first pas-
22 senger that did that.

23 As far as every other passenger prior to that, they
24 just went over and pointed their luggage out and we act-
25 ually retrieved it for them.

J. ROGERS IN CAMERA

1 He physically went over and retrieved his and he
2 placed it right in front of him.

3 As far as nervous behavior, he was displaying some
4 signs of nervous behavior. As far as visably, whether
5 he's pulling on the bottom of his jacket or scratching
6 his neck, biting his fingernails.

7 So I made small conversation with him, just based
8 on, you know, those observations not in comparison to
9 everybody else. He advised me he was going to Phila-
10 delphia to do some drag shows and meet up with some
11 friends. He was traveling from Atlanta, Georgia, and he
12 was really from Mexico but he now lived in the Atlanta
13 area.

14 When I asked him in reference to some of the shows,
15 something he was going to see, he didn't know any names.
16 He didn't know where his friends lived.

17 He didn't know exactly where in Philadelphia he
18 was going. He didn't know any names of the establish-
19 ments that he was going to be working in doing the drag
20 shows.

21 He only had one piece of luggage for a two week
22 trip. Essentially he had no idea where he was going.

23 You know, what we do is a process of elimination.
24 You know, if you are an innocent traveler, you are in a
25 travel mode.

J. ROGERS IN CAMERA

1 Q. At this point, had you read him his rights?

2 A. No. I mean, it was not an interrogation. It was
3 just conversation. At any time he can walk away from
4 me and so be it.

5 And the purpose of having all these passengers to
6 exit and identify their bags is that a lot of times you
7 will have passengers that -- if they have stowed away a
8 bag and you are close to it they shred a baggage ticket,
9 so for the process of elimination we want to make sure
10 everything is accounted for first.

11 Q. Let me ask you a couple of questions about your
12 conversation with the Defendant. As you were talking to
13 him, where was Corporal Dowis?

14 A. The way the parking lot was set up, the bus was
15 parked toward the right edge. Corporal Dowis was to
16 the edge. He wasn't right there present with me. He
17 was actually -- I think he was over toward the door area
18 where they were taking off the luggage and getting that
19 squared away.

20 Q. And as you were talking with the Defendant, where
21 were the passengers at?

22 A. They were pretty much right there behind us or over
23 to the side. At that point you're talking about a mat-
24 ter of a few minutes that this stuff was happening,
25 and throughout our conversation those were some of the

J. ROGERS IN CAMERA

1 things that I observed with Mr. Rodriguez.

2 Q. Was he handcuffed?

3 A. No, sir. No handcuffs.

4 Q. Did you keep him standing there talking to you for
5 an hour?

6 A. No, sir.

7 Q. Did the other troopers approach him?

8 A. No, sir. You know, we are not -- essentially it is
9 my encounter. Just as a traffic stop, it would be my
10 encounter. They're going to stay away from it.

11 Q. They are not going to interact with him?

12 A. No, they are not going to interact unless they have
13 to.

14 Q. Okay, and you talked to -- as you talked to him,
15 did you speak in Spanish or English?

16 A. English.

17 Q. Were there any signs that Mr. Rodriguez couldn't
18 speak English to you?

19 A. Throughout the entire conversation with Mr. Rodriguez
20 there was no signs that there was a language barrier. The
21 only specific time there was a language barrier was when
22 he was asked specifically about heroin.

23 I asked him a series of questions basically in re-
24 gards to his personal belongings. I asked him specifi-
25 cally if he was carrying anything unlawful, any weapons

J. ROGERS IN CAMERA

1 or any illegal narcotics.

2 Specifically on the narcotics, you know, as we were
3 asking these questions I am also watching his body lang-
4 uage because a lot of times it -- you will see -- we had
5 started talking about illegal narcotics and he looked
6 down and started fiddling with his jacket, you know.

7 Asking about marijuana, no; no cocaine; no metham-
8 phetamines.

9 Q. So he answered you . .

10 A. He was very straight-forward with those, but when
11 asked specifically about heroin, he deviated from the
12 normal or his base-line. He looked down and started to
13 fiddle with his jacket again, trying to pull his sleeve
14 down over his knuckles.

15 What do you mean? No comprendez -- so he shut
16 down on me at that point.

17 Q. Okay. Had you taken his bus ticket or his ID from
18 him?

19 A. No. Possibly I might have had his baggage claim
20 ticket, but I hadn't taken possession of anything.

21 Q. Did any of the other nineteen passengers fit the de-
22 scription that you had?

23 A. The description was very vague. You know, you're
24 talking about light-skinned black male. I mean, it is
25 a vague description.

J. ROGERS IN CAMERA

1 You know, I'm light-skinned. The emphasis is not on
2 that. It's that personal encounter, and the personal en-
3 counter with someone is when you are going to actually
4 interact and you pretty much get what you need to know.

5 Q. Now, talk about the suitcase. What kind of suitcase
6 was it?

7 A. The suitcase was black, just -- I don't know the
8 brand it was. It was black and grey nylon, a large tra-
9 vel suitcase.

10 Q. And as you talked to him, describe his appearance?

11 A. He was nervous, and that's something that we find.
12 When you first look -- call it the intimidation factor,
13 whether it is talking with somebody stopped on the side
14 of the road or whatever, it's common for someone to be
15 nervous. We understand that.

16 I'm nervous if I'm not in uniform and not working
17 I would be nervous. That's human. Where it becomes of
18 some concern is when that person is nervous when we
19 start the conversation and that increases. There was a
20 definite level of uncomfortable tension there as I was
21 asking him questions and he was giving his answers.

22 He clutched his luggage and he didn't want to let
23 go of it. The only time he let go of it was when he was
24 fiddling with his jacket. It stayed right there in the
25 front of him the entire time.

J. ROGERS IN CAMERA

1 If he stepped back, the luggage went with him. If he
2 took two steps back, it went with him.

3 Q. You said that he didn't want to let it go, did he
4 say that or . . .

5 A. That's my interpretation, as far as his body posture
6 that he displayed.

7 Q. Did you ask him for consent to search the luggage?

8 A. In that initial conversation with Mr. Rodriguez, I
9 asked Mr. Rodriguez if he would step out away from the
10 group or something of this nature. We asked him to move
11 away from the group.

12 My position was on the lower end of the bus, kind
13 of with my back up toward the end. He was positioned
14 with his back to the bus. My position was -- my back
15 was to my patrol car.

16 I was not positioning myself in any way as far as
17 to say, hey, you are not getting back on this bus. I
18 explained to him that there was a lot of things about
19 his story that didn't make sense. I asked him specifi-
20 cally if he had been in possession of this piece of lug-
21 gage the entire time.

22 At some point during that, I asked him to retrieve
23 his luggage which was just right there. We retrieved it
24 and I asked him specifically if he had been in possession
25 of it the entire time, and he said he had been.

J. ROGERS IN CAMERA

1 He said he had been in possession of it the entire
2 time; that it was a new bag he just had recently bought.
3 At some point during that, I asked Mr. Rodriguez to his
4 knowledge was there anything illegal in the luggage, and
5 he responded no.

6 I immediately asked for consent to search, and he
7 responded -- he said, sure, go ahead.

8 Q. Was there any hesitation on his part?

9 A. There was no hesitation whatsoever as far as my ask-
10 ing for consent to search his luggage.

11 Q. Okay, and when you asked for consent, was he holding
12 the suitcase?

13 A. Yes.

14 Q. It was in his possession?

15 A. Right.

16 Q. So he's holding the suitcase?

17 A. Right.

18 Q. And at that time did he give you consent?

19 A. He said, go ahead.

20 Q. Did he hand it to you or did he lay it on the ground?

21 A. No, he just kind of backed away from it, and when I
22 started to search it he just stood there right in front of
23 me.

24 Q. What was in the bag?

25 A. Inside the bag was two separate bags, inside of that

J. ROGERS IN CAMERA

1 bag. It wasn't like clothes inside were packed. They
2 were packed inside a plastic bag and then another bag.

3 Once I got those out, I could see the lining inside
4 the suitcase, and you could see fresh -- well, before I
5 physically opened the bag you could see a bulge on the
6 outside.

7 If you turned the bag around it actually had a pull-
8 out handle with wheels on it, and when I turned it around
9 and shined my flashlight on it you could see there was
10 a bulge, and I actually asked him, hey, do you see a bulge,
11 and he responded, yes.

12 So at that time I unzipped the lining and here was
13 a range of material. They had ripped the suitcase open
14 and fabricated inside the actual package or backing to the
15 bag.

16 So with a screw driver and knife I was able to re-
17 trieve a black package that was -- it was in a vacuum-
18 sealed package. You could see it through the crack.

19 So I asked Corporal Harrison if he would go ahead
20 and place Mr. Rodriguez under arrest, which he did.

21 Q. Did he place the Defendant under arrest?

22 A. He did.

23 Q. What was he advised about?

24 A. At that point no questions were asked. We weren't
25 going to ask him any questions at that point. Mr. Rodriguez

J. ROGERS IN CAMERA

1 was seated in my patrol vehicle in the front seat, and
2 myself and Lance Corporal Harrison continued to try to
3 dismantle the suitcase and retrieve the package.

4 Q. All right, and what, if any, oral statements did
5 the Defendant provide you as to what he was doing?

6 A. At that current time, there weren't any, but later
7 on Miranda had been advised there were a few statements
8 that Mr. Rodriguez made.

9 At the time Mr. Rodriguez basically stated he was
10 getting paid Two Thousand Dollars for taking the suitcase
11 to Philadelphia. He would drop the suitcase when he
12 gets to Philadelphia and made a phone call. He would re-
13 lay that suitcase on to somebody, and then potentially he
14 didn't know -- they might give him a package to bring
15 back southbound, but he was unsure of that.

16 He did say this was his third trip doing this, and
17 sometimes it was dope and sometimes it was currency; at
18 one time it was southbound but he didn't know how much
19 currency.

20 He had had a girlfriend or roommate or a best
21 friend that was killed in an encounter of basically
22 prostitution, and when all that happened he got deported
23 to Mexico.

24 This was -- he owed Ten Thousand Dollars which he
25 had paid for re-entry back into the U.S., and the whole

J. ROGERS IN CAMERA

1 reason for the financial aspect of him hauling the drugs
2 was to repay that debt. He did say it was just a mistake
3 -- and he repeated it was just a big mistake on his part;
4 that he had made a mistake.

5 Q. I hand you what's marked as State's Exhibit Number
6 1. Could you tell the Court what that is?

7 A. This is the in-car video of the encounter
8 with Mr. Rodríguez. This was in my car.

9 Q. And have you watched the video?

10 A. Yes, sir, I did.

11 Q. Is this a fair and accurate showing of what happened?

12 A. Yes, sir, it was, it is.

13 Q. And the things you've testified to, how much of it
14 can you hear on the video?

15 A. It is in and out. You know, the driver of the pas-
16 senger bus was right there and we had a conversation, and
17 it is not the best voice recording. So it is somewhat
18 -- in fact, the whole system -- you can hear it in and
19 out.

20 The conversation me and Mr. Rodriguez had is at a
21 very low level, and when I get to the point of asking
22 him, for instance, whether this is his bag, . .

23 Q. And did he seem to have any trouble understanding
24 English when you were speaking to him?

25 A. No.

J. ROGERS IN CAMERA

1 SOLICITOR: Your Honor, at this time I would publish
2 the DVD. It's very short.

3 THE COURT: Any objection?

4 MR. CRANGLE: No, Your Honor.

5 THE COURT: All right.

6 (Whereupon, in-car video was played for
7 the Court)

8 SOLICITOR: Thank you very much, Trooper Rogers.
9 Please answer any questions Mr. Crangle may have.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION

12 BY MR. CRANGLE:

13 Q. Let's talk a little bit about the tip that you re-
14 ceived. You mentioned a light-skinned black male. Is
15 that correct?

16 A. Yes.

17 Q. That's what you got, right?

18 A. Yes, sir.

19 Q. And did you receive any other information?

20 A. The only thing that was told to me was a light-
21 skinned possibly black male.

22 Q. That's it?

23 A. Yes, sir.

24 Q. Okay, and who or what is the source of that informa-
25 tion?

J. ROGERS IN CAMERA

- 1 A. That was told to the DEA.
- 2 Q. Okay, and how did the DEA get the information?
- 3 A. That I'm not aware of.
- 4 Q. You have no information where they got that informa-
- 5 tion?
- 6 A. They didn't tell me specifically, no.
- 7 Q. So when you were at the bus at the time, all you
- 8 knew was what they had told you? They had gotten a tip?
- 9 A. That there was possibly a load of marijuana coming
- 10 through our State. Yes.
- 11 Q. But you don't have any other information?
- 12 A. Me personally? No.
- 13 Q. You don't know anything else about the source of
- 14 it then?
- 15 A. Other than the DEA, no.
- 16 Q. Or where the DEA got the information?
- 17 A. No.
- 18 Q. Okay. All right, and this video is from your car
- 19 camera, correct?
- 20 A. That's correct.
- 21 Q. I'm going to start it over again.
- 22 A. Okay.
- 23 (Video being shown again)
- 24 BY MR. CRANGLE:
- 25 Q. Okay, there at the top where it says (inaudible)?

J. ROGERS IN CAMERA

- 1 I know it's a little hard to see.
- 2 A. Yes, sir.
- 3 Q. And there is a stamp -- what time stamp does it say?
- 4 A. It says zero ten.
- 5 Q. Okay, and then it has what?
- 6 A. The unit I'm assigned to.
- 7 Q. All right, and then this object right here, this is
- 8 the door on the bus. Correct?
- 9 A. Yes, sir.
- 10 Q. Okay, and this starts as soon as the bus pulls into
- 11 the station. Correct?
- 12 A. Yes, sir.
- 13 Q. All right. Now, at that time all you know is that
- 14 there has been a tip?
- 15 A. Yes, sir.
- 16 Q. A tip to the DEA?
- 17 A. Yes, sir.
- 18 Q. You can turn it off. You start talking to the driver?
- 19 A. Yes, sir.
- 20 Q. And the driver says -- you immediately approached him
- 21 as he's on his way down. Correct?
- 22 A. Yes, sir.
- 23 Q. Okay, and did you ask him for any of his identification
- 24 or his CEL or anything like that?
- 25 A. Not at that time. I identified myself and at some

J. ROGERS IN CAMERA

1 point he offered his driver's license.

2 Q. Okay, and on the video you are wearing a uniform?

3 A. Yes, sir.

4 Q. And then there are three or four other troopers or po-
5 lice officers?

6 A. Three and myself.

7 Q. And there's also the dog?

8 A. Yes, sir, in the K-nine unit.

9 Q. So the dog is in the K-nine unit?

10 A. Yes, sir. This is the front of my patrol car, and he
11 is going to be . . .

12 Q. Your patrol car was a marked patrol car?

13 A. No, sir. At this time I was in a silver Crown Vic, un-
14 marked.

15 Q. And the other car was also unmarked, correct?

16 A. Yes, sir. It was a black Crown Vic.

17 Q. Okay.

18 A. And there was a partially marked or a semi-marked
19 car.

20 Q. What does that mean?

21 A. Semi-marked is basically just with a light on top of
22 it.

23 Q. With blue stripes and with State Trooper on the front
24 . . .

25 A. Yes.

J. ROGERS IN CAMERA

1 Q. You all wouldn't have been there at the station that
2 night but for this tip, correct?

3 A. That's why we were there.

4 Q. So it wasn't just a random encounter with the bus?

5 A. No. The reason we were there was that there was a pos-
6 sible load of heroin coming in on the bus.

7 Q. Okay, and this was a scheduled stop for the bus?

8 A. Yes, sir.

9 Q. So people get on and off the bus there?

10 A. Uh hm. Yes, I think there were passengers getting off
11 at the Greenville stop.

12 Q. Okay, and the other officers or troopers, they were
13 all in uniform?

14 A. Yes, they were.

15 Q. So you've got two unmarked cars, a semi-marked car, and
16 three people in uniform and a dog. Correct?

17 A. Yes, sir.

18 Q. Okay. Now, the driver gets off the bus and his English
19 was very good. Correct?

20 A. Yes.

21 Q. And he said -- did you know Spanish?

22 A. A little.

23 Q. I want to turn here to a point on the video -- I want
24 to go to a certain point . .

25 (Video being restarted)

J. ROGERS IN CAMERA

- 1 BY MR. CRANGLE:
- 2 Q. All right, at this point it's twelve twelve. Correct?
- 3 A. Yes, sir.
- 4 Q. The only people off the bus were you and the driver?
- 5 A. Yes, sir.
- 6 (Video continuing)
- 7 Q. All right, and this is twelve . .
- 8 A. Twelve ten and two seconds.
- 9 Q. So it's twelve o'clock at night and ten minutes . .
- 10 A. Correct.
- 11 Q. Okay, and the door is closed now?
- 12 A. I can't see that -- yes. At some point it was closed.
- 13 Q. Okay, that's the door. Right?
- 14 A. That's the door.
- 15 Q. I want you to keep your eyes right there for me.
- 16 A. Okay.
- 17 Q. Okay, the door closes. Right?
- 18 A. Yes, sir.
- 19 Q. And people on the bus are stuck on the bus. Right?
- 20 A. They are still on the bus, yes.
- 21 Q. No one is going to get off. Right?
- 22 A. As far as I know. The bus driver was talking to me.
- 23 Q. So no one exited the bus while the driver is out there
- 24 talking to you?
- 25 A. The bus pulled up and he got out, yes.

J. ROGERS IN CAMERA

- 1 Q. And in order for them to exit the bus, anyone would
2 have to knock on the bus door until the driver or you opened
3 the door for them. Right?
- 4 A. Yes.
- 5 Q. And the driver was never told to shut the door?
- 6 A. He's the one who made the decision to shut the door.
- 7 Q. All right, but the door is shut?
- 8 A. Yes, the door is shut.
- 9 Q. All right. On that video, no one leaves the bus. Right?
- 10 A. No, nobody came and said, hey, I want to get off.
- 11 Q. And while you are talking to the bus driver you check
12 his paper work, his CEL?
- 13 A. The driver's, yes.
- 14 Q. Okay, and you do all this in English?
- 15 A. Yes.
- 16 Q. Did you speak any Spanish to him?
- 17 A. No.
- 18 Q. And after that the dog is running around?
- 19 A. Right.
- 20 Q. And the dog is running around for fifteen minutes or --
21 do you remember?
- 22 A. I -- I know he was out there but I didn't look at a
23 watch to see how long.
- 24 Q. All right. So at twelve twelve thirteen, and at this
25 point the dog is out there running around. Correct?

J. ROGERS IN CAMERA

- 1 A. At twelve after, yes, and the door is closed.
- 2 Q. Now we did not see any passengers exit the bus?
- 3 A. No, sir.
- 4 Q. And you and the driver are outside the bus?
- 5 A. Right. Yes, sir.
- 6 Q. Have you ever driven a bus before?
- 7 A. Yes, I have.
- 8 Q. Okay, and when you were talking to the bus driver, you
- 9 and he were outside the bus?
- 10 A. Right.
- 11 Q. The passengers are on the bus?
- 12 A. Correct.
- 13 Q. Then you talk to him and to the passengers it would
- 14 look like you are just talking to him about travel informa-
- 15 tion. Right?
- 16 A. Possibly.
- 17 Q. And this is before you have the driver go on the bus to
- 18 explain to the passengers what's going on. Right?
- 19 A. No. Again, he's coming off the bus and making contact
- 20 with me.
- 21 Q. So the passengers don't know what's going on?
- 22 A. They know they are at a stop.
- 23 Q. All right, and they know you are a law enforcement of-
- 24 ficer talking to their bus driver?
- 25 A. Yes, sir.

1 Q. And the door is shut to their bus?

2 A. Yes.

3 Q. The passenger doors and luggage bay are all shut?

4 A. They are.

5 Q. Okay. Then the driver gets back on the bus and he
6 speaks to them in Spanish. Correct?

7 A. I wasn't inside.

8 Q. And that was after the dog had been running around.
9 Correct?

10 A. Yes. I believe so.

11 Q. Okay. You don't know what he told the passengers?

12 A. No, I do not.

13 Q. You don't know if he said, hey, everything is cool, or
14 if he said, look, the police want to talk to you?

15 A. No.

16 Q. You don't have any idea what he said?

17 A. No.

18 Q. Okay. Did you ever go on the bus and say to the pas-
19 sengers, hey, you are free to go at any time you want to?

20 A. First, no, I never boarded the bus.

21 Q. Did any other officers get on the bus and inform them
22 of that?

23 A. I don't know what they were informed, but I think you
24 can see-- I think it was Corporal Dowis who did enter the
25 bus. I don't know if he spoke with the passengers or not.

J. ROGERS IN CAMERA

- 1 You can see them freely walking around.
- 2 Q... But you never got on the bus and told them they were
- 3 free to leave. Right?
- 4 A. Right. At that point I'm not going to step on that
- 5 bus..
- 6 Q. Okay. I notice the time stamp when these folks are
- 7 getting off -- I can go back, but do you recall it?
- 8 A. No.
- 9 Q. I would say right about here is when Mr. Rodriquez
- 10 comes off the bus?
- 11 A. He comes off the bus there.
- 12 Q. And that is twelve fifty?
- 13 A. Correct.
- 14 Q. Forty minutes after the bus had been stopped? Is
- 15 that correct?
- 16 A. . .
- 17 Q. That's twelve fifty. Correct?
- 18 A. Right.
- 19 Q. So forty minutes, correct?
- 20 A. Correct.
- 21 Q. Is Mr. Rodriquez a light-skinned black male?
- 22 A. No. I wouldn't say that.
- 23 Q. And he's Hispanic, not black. Correct?
- 24 A. Correct. After speaking with him, yes.
- 25 Q. Were there many light-skinned black males on the bus?

J. ROGERS IN CAMERA

1 A. Not to my recollection, no.

2 Q. And you don't have any information about the source of
3 this information, regarding how the DEA knew about this?

4 A. No, sir.

5 Q. At the time you stopped the bus, the only thing you
6 knew was that DEA had told you there might be light-skinned
7 black male carrying heroin on board?

8 A. The information we received before we engaged in the
9 encounter. We did not stop the bus. The driver came up and
10 stopped and opened the door. So it was not a traffic stop.

11 The information we received or that I received from my
12 supervisor was a potential or possible load of heroin was
13 on the bus by a light-skinned black male.

14 Q. So the information your supervisor provided you came
15 from the DEA?

16 A. Yes.

17 Q. And that is where the chain stops?

18 A. Right.

19 Q. Did you know the DEA had given your supervisor that
20 information, or were you just relying on your supervisor?

21 A. This was a call-out, so I guess -- it was a call-out
22 for us to . . .

23 Q. When you say call-out, did DEA call you out, or was it
24 your supervisor who called you out?

25 A. The DEA would have passed that information to our chain

J. ROGERS IN CAMERA

1 of command, and it was in turn passed down the line.

2 Q. So when you were at the station and the bus is there,
3 did you know the DEA had called you out?

4 A. Yes, the information given to me is going to say, the
5 DEA has gotten this information.

6 Q. So you knew the DEA was involved?

7 A. Right.

8 Q. I have no further questions.

9 THE COURT: Redirect?

10 SOLICITOR: None, Your Honor.

11 THE COURT: All right, you may step down.

12 (Witness excused from stand)

13 SOLICITOR: Call Charles Cloninger.

14 THE COURT: It's ten to four. Is this going to take
15 the rest of the day? Do we need to let the jury go until
16 tomorrow morning, or are we going to get into the trial?

17 SOLICITOR: I would think, Judge, I just have a very
18 few questions, but at the same time, there are motions that
19 will be argued.

20 THE COURT: I hate to have the jury sit back in the
21 jury room all afternoon and then bring them in at five when
22 they've been sitting back there -- are we going to need the
23 jury this afternoon?

24 MR. CRANGLE: I would say, Your Honor, though I don't
25 know how long this is going to take, that I would want to

1 argue the motion.

2 SOLICITOR: We could start fresh in the morning. I
3 don't think the trial will take very long.

4 THE COURT: All right. We'll move along. Call your
5 next witness.

6 SOLICITOR: Charles Cloninger.

7 CHARLES CLONINGER, being duly
8 sworn, testified as follows out of the presence of the jury:

9 CLERK: Please be seated.

10 THE COURT: Give the Court Reporter your name.

11 WITNESS: Yes, sir. Charles Kevin Cloninger, C H A R L
12 E S, and the last name is spelled C L O N I N G E R.

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Tell us where you work?

16 A. I'm employed by the Cartersville Police Department in
17 Cartersville, Georgia. I'm assigned to the drug enforcement
18 task force, a federal task force in Atlanta.

19 Q. Tell us how you became involved in this case?

20 A. We were investigating a series of cases in the Atlanta
21 area involving a Mexican drug trafficking organization that
22 was sending shipments into the Atlanta area, and the drugs
23 were being disbursed throughout the United States from there.

24 Q. Okay, and what led you to get involved . .

25 MR. CRANGLE: Your Honor, we'd like to ask the witness

C. CLONINGER IN CAMERA

1 to slow down a little bit for the interpreters.

2 THE COURT: Okay.

3 WITNESS: I'm sorry.

4 THE COURT: We've got an interpreter here so speak a
5 little slower.

6 WITNESS: Yes, sir. I apologize.

7 BY SOLICITOR:

8 Q. I was asking how you became involved in this case.

9 A. In this particular case, we had information that drugs
10 were possibly being transported on a LaCubana bus line that
11 came into the Atlanta area. Based on that information, we
12 established surveillance on that bus line and followed it
13 into the South Carolina area, after which this stop actually
14 occurred.

15 Q. Okay, and once the stop occurred, what did you actually
16 do?

17 A. Basically, we just remained in the area. Once the
18 drugs were discovered, we responded to the scene of the
19 stop and attempted to interview the suspect.

20 Q. And what happened with the interview?

21 A. Basically he was in custody when we got there. The
22 other agents -- Special Agent Anthony McCrory read him his
23 rights from the DEA card.

24 Q. What card is that?

25 A. Basically it's the Miranda Warnings. The DEA 13 is the

C. CLONINGER IN CAMERA

- 1 number of the card. It's in Spanish, and it was read to
2 him out of an abundance of caution in Spanish, his primary
3 language. He read from the Spanish side of the card.
- 4 Q. Okay, and at this time was the Defendant in handcuffs?
- 5 A. I believe he was.
- 6 Q. Where was he when you actually talked to him?
- 7 A. He was seated in a rear of a patrol car.
- 8 Q. Whose car was it?
- 9 A. Trooper Rogers.
- 10 Q. And what, if any, threats or promises did you make to
11 him to get him to speak to you?
- 12 A. None.
- 13 Q. Okay. Did he appear to be impaired by any drugs or
14 alcohol?
- 15 A. No.
- 16 Q. Okay. Did you speak to him in English initially?
- 17 A. Yes. Primarily in English.
- 18 Q. Okay, did you have an officer with you to translate?
- 19 A. Yes, and he did advise him of his rights in Spanish to
20 make sure that he understood. Because his English was
21 pretty good I spoke to him.
- 22 Q. Were his responses in English?
- 23 A. Yes.
- 24 Q. Okay, and what questions did you ask him?
- 25 A. Basically tried to find the origin of the drugs or

C. CLONINGER IN CAMERA

1 where he picked him up. We tried to identify the source of
2 supply for the drugs.

3 Q. And what was his response to that?

4 A. He basically admitted that he had picked the drugs up
5 at or in the Atlanta area, and he was working at the direc-
6 tion of a gentleman he referred to as Jhona. I think he
7 ultimately admitted that the subject's name was Jonathon
8 but he called him Jhona for short.

9 He had picked up the suitcase containing the heroin,
10 and he was being paid to drive those drugs to -- be a cour-
11 ier for those drugs on a bus line to the bus station in
12 Philadelphia.

13 Q. And as he was speaking to you, did you write down what
14 he was saying?

15 A. There is a report on it.

16 Q. Did you prepare a typed statement?

17 A. I did a recording or a summary of the statements he
18 made. Yes, sir.

19 Q. I hand you up what's been pre-marked as State's Exhibit
20 2. Can you identify this?

21 A. Yes, sir. This is a DEA statement, DEA incident re-
22 port that summarized the conversation of myself and Agent
23 McCrory with the Defendant.

24 Q. Okay, who signed it?

25 A. It is signed at the bottom by Anthony McCrory, Special

C. CLONINGER IN CAMERA

1 Agent Anthony McCrory and Keith Cromer, a supervisor at
2 the time.

3 Q. And what date was that signed?

4 A. It says April 22nd, but I guess the date of the inter-
5 view was April 16.

6 Q. And is there any indication of when the interview
7 transpired? How long it . .

8 A. . .

9 Q. On the report?

10 A. It says it started at approximately one fifteen, and
11 it says it ended at approximately one thirty A.M..

12 Q. All right.

13 A. So approximately fifteen minutes.

14 Q. What, if any, deals were made with the Defendant? Any
15 deals or promises?

16 A. No, sir.

17 Q. Okay. Thank you very much. Please answer any ques-
18 tions Mr. Crangle has for you.

19 THE COURT: Cross examine.

20 CROSS EXAMINATION

21 BY MR. CRANGLE:

22 Q. Is it Agent or Investigator?

23 A. Task Force Agent.

24 Q. All right. When you spoke to Mr. Rodriguez, did you
25 talk to him any about if you help us, we'll help you?

C. CLONINGER IN CAMERA

1 A. No promises were made. We did tell him we were inter-
2 ested in finding the people who were ultimately responsi-
3 ble for supplying the drugs, but we made no promises to
4 him.

5 Q. Did you tell him anything he said would help his case?

6 A. I don't remember telling him that, no, sir.

7 Q. What kind of things -- did you say anything along the
8 lines of we'll make your cooperation known to the District
9 Attorney's Office?

10 That they would consider that with any pending charges
11 that you have?

12 A. Nothing promissory of any kind or anything, but just
13 that we would make your cooperation known.

14 Q. And that's sort of standing language you use?

15 A. Yes.

16 Q. You are being honest that you would do that if he
17 cooperated?

18 A. Yes, absolutely. It's better to be honest than
19 get caught up in a lie. That's what we told him.

20 Q. Did you prepare any reports in this case?

21 A. I did not.

22 Q. Did the other member -- what was his name again?

23 A. Anthony McCrory.

24 Q. Did he prepare any report of this interview?

25 A. Not to my knowledge, not regarding the interview.

C. CLONINGER IN CAMERA

1 Q. Did he prepare a report on the people that were talked
2 about. This Jhona . .

3 A. Not that I know of.

4 Q. All right, nothing further.

5 THE COURT: Redirect?

6 SOLICITOR: No, Your Honor.

7 THE COURT: All right, you may step down.

8 (Witness excused from stand)

9 THE COURT: You may call your next witness.

10 SOLICITOR: That is all from the State, Your Honor,
11 on this issue.

12 MR. CRANGLE: May I have a minute to talk to my client
13 before we continue?

14 THE COURT: Okay, let's take about a five or ten min-
15 ute break to give you an opportunity to speak with your
16 client, and then we'll come back and hear the rest of the
17 motions.

18 MR. CRANGLE: Thank you, Judge.

19 THE COURT: Before we take a break, the jury has writ-
20 ten a note that Craig Hudak is the Foreperson, Number 86.
21 I will mark this as Court's Exhibit 1.

22 (Jury note marked Court's Exhibit 1)

23 SOLICITOR: Judge, I understand the Court's concern,
24 about keeping the jury back there.

25 THE COURT: Can I bring the jury in and cut them loose

1 for the day?

2 Anything from the State before we bring the jury in?

3 SOLICITOR: No, Your Honor.

4 THE COURT: Go ahead and bring them in.

5 (Jury returned to the Courtroom)

6 THE COURT: Ladies and gentlemen, welcome back.

7 I apologize for keeping you in the jury room for so
8 long, but we did have some pre-trial matters, scheduling
9 matters, getting witnesses lined up and things of that na-
10 ture that we had to address. I appreciate your patience.

11 Mr. Hudak, I understand you have been selected as Fore-
12 person, is that correct?

13 MR. HUDAK: Yes, sir.

14 THE COURT: All right, if you would always occupy the
15 seat that you now are in. The rest of you may sit in what-
16 ever seat you like or alternate seats during the trial,
17 whatever makes you feel more comfortable.

18 Having said that, we still have some more scheduling
19 matters and things we have to take care of, so the attorneys
20 have agreed that rather than keep you in the jury room for
21 the remainder of the day while -- as we're going to be
22 tied up with some other matters for the remainder of the
23 day -- so I'm going to go ahead and excuse you for the day.

24 I'm going to ask that you please be back in the jury
25 room downstairs tomorrow morning at nine fifteen, and we

1 will try to get started as soon after that as we can.

2 I caution you again, do not discuss the case even among
3 yourselves at this point in time. Don't conduct any inde-
4 pendent investigation in the case. Don't go looking through
5 the newspaper or try to find anything about the case.

6 I appreciate your patience, and I hope everybody has a
7 good evening. We will see you back at nine fifteen tomor-
8 row morning.

9 Thank you.

10 (Jury excused from Courtroom)

11 THE COURT: All right, let's take about a five or ten
12 minute break so you can speak with your client. Then we
13 will come back and take up the motions.

14 (The Court took a brief recess, after which the mat-
15 ter was continued)

16 THE COURT: All right, Mr. Crangle.

17 MR. CRANGLE: Thank you, Your Honor. We would move to
18 suppress the evidence of the seizure and search.

19 THE COURT: You're talking about the suppression of
20 the heroin found in the luggage?

21 MR. CRANGLE: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. CRANGLE: I would also be talking about another
24 motion, but that is this portion of the argument right now.

25 THE COURT: All right.

1 MR. CRANGLE: The basis of my motion is from the seminal
2 case of Austin, followed up by United States versus Drayton,
3 and the standard has been whether a reasonable passenger
4 would feel free to decline an officer's request to permit
5 the encounter.

6 The Court noted several factors, but one of the key
7 factors is whether the police informed the passengers they
8 were free to leave, and whether the passengers were informed
9 they could refuse the search, and whether the officers
10 blocked their exit from the bus.

11 That is under United States v. Drayton, 536 US 194.

12 THE COURT: U.S. v. Drayton says the officer has to
13 inform them . .

14 MR. CRANGLE: No, Your Honor. In that case, the . .

15 THE COURT: . . they could leave? Are free to leave?

16 MR. CRANGLE: No, sir. In that case, the Eleventh
17 Circuit Court of Appeals hasn't really focused in on that
18 language that Austin said was a per se rule, but said un-
19 less you inform passengers they are free to leave that the
20 passengers can -- that the search would then be invalid,
21 but the United States Supreme Court said, no, that per se
22 rule is not applicable in the totality of the circumstances;
23 that that factor is just one factors to consider, Your Honor.

24 THE COURT: All right.

25 MR. CRANGLE: But the State carries the burden of

1 establishing a consensual encounter. Now, as we know,
2 if there is a consensual encounter there is no protection.

3 Then we have the Terry Stop which is what I argue this
4 is. It is a temporary seizure, and then you would have a
5 full blown probable cause of arrest, Your Honor.

6 The reason that I am saying this is a seizure is that
7 you have twenty passengers on the bus. The bus pulls into
8 the station, and when it pulls into the station the driver
9 gets out and immediately begins speaking with a uniformed
10 highway patrol officer.

11 There are actually two cars that were partially marked.
12 The trooper comes up to the driver's door and immediately
13 begins discussing with the driver what's going on. At some
14 point, the officer asks the driver for his paperwork, and the
15 passengers on the bus can see the driver has had some sort
16 of issue.

17 That the officer wants to talk about a traffic stop or
18 a traffic ticket, Your Honor, and, furthermore, within two
19 minutes the door closes to the bus and no passengers act-
20 ually leave the bus.

21 To leave the bus, the passenger would actually have to
22 go up and mess with the handles or controls the bus had, as
23 the bus driver is in the back talking to the trooper.

24 At that point, a seizure has occurred, Your Honor. No
25 reasonable passenger would feel free to leave the bus.

1 It certainly would be impossible for a passenger to
2 leave the bus after the door closes, Your Honor.

3 Now, they also seized the luggage, and the only per-
4 son who has access is the driver. When the trooper is talk-
5 ing to the driver, he has seized the entire bus and the pas-
6 sengers on it.

7 There is no way that a reasonable person would feel
8 free to leave. They are all -- all twenty people on the
9 bus remain on the bus, and this is a scheduled stop where
10 people get off, go and get food, use the restroom, do what
11 they need to do, and particularly knowing that twenty people
12 -- that twenty different people -- none of them left the
13 bus. None of them felt free to leave,

14 If there were one or two people, maybe, but you have
15 a big group of people that all have different objectives,
16 with different things going on in their minds, and not a
17 single person leaves the bus.

18 This is a scheduled bus stop, Your Honor. At this
19 point, the bus has been seized, Your Honor, and once the
20 bus has been seized the State has to prove a reasonable
21 suspicion exists to stop the bus.

22 What they rely upon is this anonymous tip, Your Honor,
23 and there has been absolutely no testimony regarding the
24 reliability of the tip, how they got this information or
25 that there is any sort of reasonable suspicion.

1 All we heard from the highway patrol is, hey, we think
2 there might be a light-skinned black male on the bus, and
3 the trooper -- this is in quotes -- was a vague tip.

4 THE COURT: So you are saying that the highway patrol
5 has to track the tip all the way back to its origination;
6 that they can't just rely on the DEA agent's analysis that
7 we've got information that heroin was being transported?

8 You're saying that the highway patrol in this instance
9 cannot rely on the DEA or they have to find out where DEA
10 got the tip from?

11 MR. CRANGLE: What I'm saying is that the burden is on
12 the State to establish that information is reliable and cred-
13 ible as far as the tip. They have a burden to establish
14 that, Your Honor. It is the State's burden.

15 The State has . . .

16 THE COURT: I guess my question is whether a tip from
17 the Drug Enforcement Agency with nothing more is reliable.
18 Are you saying that that does not prove reliability because
19 -- I mean, I understand your argument, if this was a tip from
20 a confidential informant.

21 Then they would have to show reliability and that they
22 have used them in the past, and would have to show the
23 trustworthiness -- things of that nature.

24 But here we are talking about not a confidential in-
25 formant, but the DEA.

1 MR. CRANGLE: Your Honor, we point to the fact that
2 the burden rests upon the State to prove this is with a
3 reasonable suspicion, Your Honor. The DEA might have that
4 information, but I understand that is not enough to justify
5 a reasonable suspicion.

6 I mean, that would be saying the DEA could come in at
7 any time and call the highway patrol and say, hey, I'm DEA,
8 and that therefore it must be true; therefore, go ahead and
9 stop this bus; and, if they wanted to, they had the opportu-
10 nity to examine their own agent and ask, hey, where is the
11 source of this information coming from? Tell me more about
12 the source of this information.

13 I would point to a South Carolina Supreme Court case
14 of State versus Gamble, 405 SC 409, a South Carolina Supreme
15 Court case from 2013.

16 In that case, the officer arrested a defendant on a
17 separate charge and searched the vehicle. When the officer
18 came -- that is on the fourth page of my argument, Your
19 Honor, and the second paragraph.

20 In State versus Gamble what happened is the officer
21 came into Court and testified that he searched the vehicle
22 under the probable cause that the defendant was arrested
23 upon a separate warrant.

24 The officer said he was arrested on a separate warrant,
25 and I went and searched the vehicle because a valid arrest

1 had occurred, and the State said that the exceptions no
2 longer apply in that case but there was a valid arrest.

3 When it came to the South Carolina Supreme Court, the
4 Court said, no, you can't just say a valid arrest occurred
5 but what you have to show -- you have to prove or show more
6 than there was probably cause for the arrest.

7 In State versus Gamble they said the State had the
8 burden of proving that, and they had to prove it was reliable
9 or at least corroborate or show with more evidence.
10 They said the State has to prove that the tip is reliable
11 or at least corroborate the tip, more than just the DEA saying
12 it happened.

13 The DEA can't just wave a magic wand and say things.
14 They have to prove the information is reliable. They can't
15 just say I got the tip and this is what happened. It would
16 not be enough, Your Honor.

17 State versus Gamble makes it clear that if they are
18 going to rely upon information they have to bring it into
19 Court and show it. In Gamble they relied upon a probable
20 cause arrest which said there was a valid arrest warrant,
21 but they never produced any sort of evidence or witness
22 that would testify to it, to how the probable cause existed
23 for the warrant.

24 What was going on in this case was they took an anonymous
25 tip and arrested someone on that tip. Then they searched

1 the vehicle and found the drugs.

2 In that case they took an anonymous case and arrested
3 someone on that case. Then they searched the vehicle and
4 found drugs. That is nearly the analysis in this case,
5 Your Honor.

6 We had an anonymous DEA tip and nothing more. They
7 are relying solely upon that. They wouldn't have been
8 there but for the DEA tip, Your Honor, and the State has
9 the burden of proving or at least showing that there is
10 a reasonable suspicion that justified the DEA tip.

11 That's all we have before Your Honor, is this DEA
12 tip. There has been actually no showing that there was
13 a reasonable suspicion or how the DEA came into this in-
14 formation.

15 They came in and said we have been following this car-
16 tel for weeks and we've done A B and C. All he said
17 was they were looking at a drug ring and followed the bus.
18 There is no other mention of anything like a justifiable
19 suspicion to justify the stop, Your Honor.

20 So in summary our argument is this. The bus was
21 seized, the door is closed. No passengers are free to
22 leave the bus, and all twenty passengers remain on the bus
23 until the officers came on.

24 To justify a seizure under the Fourth Amendment, they
25 have to show a reasonable suspicion. The only reasonable

1 suspicion they have is the anonymous DEA tip. They have
2 the burden of proving that tip is reliable or not. That
3 does not reach what the cases say that the South Carolina
4 Supreme Court has relied upon or the United States Supreme
5 Court has relied upon.

6 There is no other information for the Court to con-
7 sider. There was no reasonable suspicion of a crime being
8 committed, Your Honor.

9 THE COURT: All right.

10 SOLICITOR: Your Honor, essentially taking the Defen-
11 dant's argument step by step -- first of all, what right
12 did the officers have to be in the parking lot? What right
13 did they have to approach the driver?

14 I think they had the same right as the average citi-
15 zen, and they had the right to initiate the encounter with
16 the driver's consent in the first place.

17 So whether there was a reasonable suspicion to stop
18 the bus, the officers could approach any citizen or driver
19 that they wanted.

20 Secondly, the very case that the Defense cites is actu-
21 ally a traffic stop case. This was not a traffic stop
22 case. This bus was already stopped. The officer had a
23 right to do what he did.

24 The law says there has to be a reasonable suspicion
25 to stop a vehicle, but the bus was already stopped. It was

1 a regular stop for this area.

2 So I guess the question the Court has to ask, you know,
3 is what right did the officers have to approach the driver
4 in the first place.

5 The law is well settled certainly in Porter versus
6 Watson, going on to Smith versus Greenville, 2002, where the
7 Courts are looking at the circumstances surrounding the
8 driver giving consent or at least not saying, go away, leave
9 me alone.

10 They're not just looking at the driver, but they are
11 looking at the passengers, looking at the Defendant, and
12 not one of them said, go away. Not one of them came to the
13 door and beat on the door to get someone to open that door.
14 In fact, . . .

15 THE COURT: No one got off the bus either.

16 SOLICITOR: They didn't. At that point they did not.
17 However, the door was reopened . . .

18 THE COURT: It was reopened and they began calling them
19 out one by one.

20 SOLICITOR: But not one of them said may I leave; I
21 want to go; I don't want to be a part of this.

22 THE COURT: Well, I mean, that's granted, and I know
23 it was said twenty passengers. I thought I heard on the in-
24 terview where he said thirty-nine passengers or something
25 of that nature.

1 They all sat there while the highway patrol talked to
2 the driver. They didn't move until they were called out
3 one by one and spoke with the highway patrol.

4 SOLICITOR: That's right, and . .

5 THE COURT: Not one of them left.

6 SOLICITOR: In Porter versus Watson the encounter oc-
7 curred on the bus, not outside the bus. In our case the en-
8 counter between each passenger and the driver occurred off
9 the bus.

10 THE COURT: They called them off one at a time.

11 SOLICITOR: Correct, but they are in an open place, in
12 a public place, and they did not walk away. I'm making a
13 distinction here that at the point the passengers are asked
14 to get off the bus, the Knine had already been at work and
15 there had been an alert on some of the luggage in the cargo
16 bay.

17 THE COURT: Where was that? I didn't see that. Was
18 that said here?

19 SOLICITOR: Yes, sir, it was.

20 THE COURT: Who testified to that?

21 SOLICITOR: Justin Rogers testified that by the time
22 he's asking that the passengers leave the bus and asked to
23 identify their luggage, the Knine had already sniffed out in
24 the area of the cargo bay.

25 THE COURT: So there was an indication that there were

1 drugs right then?

2 SOLICITOR: Right, and at this point the Court can go
3 back and look at traffic stop cases. Initially the driver
4 had a consensual encounter. Okay, that gets the officer
5 there, and then there was the other encounter several feet
6 away.

7 The driver made no indication of go away, and not only
8 that but the driver agrees and consents to the Knine coming
9 out there and walking around the bus. He opened the doors.
10 There is no absolute right in this contraband. That has
11 been clear in cases from Nolan versus Kaveles, 2005, U. S.
12 Supreme Court, and many since that case. There is nothing
13 there as far as the right of contraband. This is public
14 transport and there is no right to possess contraband on
15 that public transport.

16 The driver has the right to protect not only this Defen-
17 dant but also other passengers on the bus. He doesn't want
18 someone else falsely accused of possessing that baggage that
19 has that heroin in it.

20 So the easiest way to prevent that and protect the
21 interests of all involved, the bus company not wanting to
22 be a commercial artery for drugs and passengers not be
23 falsely accused should someone rip off the tag from the suit-
24 case -- he has the right to kick somebody off the bus, and
25 including passengers and their luggage.

1 He decided the best way to do this is to have each
2 person identifying their luggage. At this point, the Knine
3 has already sniffed out the area of the cargo bay.

4 Well, that gives the officer probable cause to search
5 the entire vehicle. That case law is pretty well settled,
6 going back to the Fourth Circuit case, United States versus
7 Jackson. The officers had probable cause to search the en-
8 tire vehicle, whether it was an SUV, a sedan or a bus,
9 and all its contents.

10 So once the Court looks at that consensual encounter
11 with the Defendant himself, by that point they already have
12 probable cause to search the entire bus, including their
13 luggage, at this point.

14 Going back, in summary, the very first step in this
15 process and what the Defense doesn't want the Court to
16 rely on is that there's a tip. Well, yes, there was, but
17 whether they had a right to proceed on this bus based on
18 the tip is irrelevant.

19 What is relevant at the very least, under our Consti-
20 tution they had a right to approach the driver and talk to
21 him and seek his consent to have the Knine run around the
22 bus.

23 Once the Knine alerted, that gave them probable cause
24 to search the bus, including all contents.

25 THE COURT: Thank you. Anything in reply?

1 MR. CRANGLE: Yes, sir, Your Honor.

2 Under the Solicitor's version of events, I agree a
3 little bit. He is right in that it's a consensual encounter
4 issue. If they walk up to the bus and ask the driver for
5 consent to search, this is a consensual encounter. The
6 Fourth Amendment has not been triggered.

7 Your Honor, what happened is that within the first two
8 minutes a seizure occurred. It is controlling and making
9 sure the passengers are not free to leave.

10 THE COURT: Did you come across any case law that
11 deals with public transportation? In other words, does it
12 make a difference whether the Defendant was traveling on
13 public transportation versus his private vehicle; riding
14 with a buddy in their car?

15 The fact that he chose to travel on public transporta-
16 tion, does that create any more rights or any less rights?

17 MR. CRANGLE: No, Your Honor. I would point to Bond
18 versus United States, 529 US 334. In that case, the Supreme
19 Court held that a passenger on public transportation has a
20 reasonable expectation of privacy in his carry-on luggage,
21 Your Honor.

22 And that is synonymous with this case, Your Honor.

23 THE COURT: What happened in that case?

24 MR. CRANGLE: Basically what the Government tried to
25 argue, Your Honor, with that case was that when a passenger
put his luggage up and it became a part of the general

1 luggage that that gave up his reasonable expectation of
2 privacy, and if there is no reasonable expectation of pri-
3 vacy then that Fourth Amendment cannot attach to it.

4 THE COURT: Well, I mean, what happened? Did they
5 search his luggage . . .

6 MR. CRANGLE: Well, they searched his luggage and
7 they said they don't require any kind of Fourth Amendment
8 scrutiny. He gave his luggage up to the public carrier, if
9 you will, or private carrier, and the Court said there is
10 no reasonable expectation of privacy, Your Honor.

11 I cite that case, Your Honor, not for the outcome but
12 for the fact that he does have an reasonable expectation
13 of privacy in his luggage, and there is therefore a Fourth
14 Amendment interest in his luggage, even if . . .

15 THE COURT: What was in that case? Was it contraband
16 or did they find something?

17 MR. CRANGLE: I can't recall, Your Honor. I apolo-
18 gize, but here is my line of thought, that the Fourth
19 Amendment has not been proven. They take the bus driver,
20 take him around to the side and start talking to him, in
21 uniform, and there is a highway patrol car that has the roof
22 --- the lights on top.

23 The door closes and no one can get off the bus without
24 the driver coming back around and letting them off the bus,
25 Your Honor.

1 No one leaves before they get off the bus and no one
2 leaves after the door opens again. The driver doesn't tell
3 them they are free to leave, although we don't know what
4 the driver told them since it was said in Spanish.

5 There's three officers, all in full uniform. One car
6 and one dog, Your Honor. Once that door closes everyone is
7 seized under the Fourth Amendment.

8 Terry is about unreasonable search and seizure, and
9 that is a seizure that implicates Fourth Amendment protec-
10 tion, Your Honor.

11 At that point when that door closed up after two min-
12 utes the bus has been seized and no one is free to leave.
13 How are you free to leave if the door is closed and you are
14 locked in the bus? Okay?

15 Then what happens it that after that illegal seizure
16 with no reasonable suspicion . .

17 THE COURT: You can say there is illegal seizure, but
18 the bus is stopped and closed at the consent of the bus
19 driver who has control of the bus.

20 That's my question or was my earlier question. Is
21 there anything that deals with the Defendant's rights when
22 he chooses to travel on a public transportation system?
23 Maybe he could have walked off the bus or maybe he could
24 have stayed on the bus. I don't know, but the fact that
25 the bus is stopped there and the door is shut is because the

1 bus driver, who had control of the bus, consented to that.
2 Correct?

3 MR. CRANGLE: I would say the bus driver has consented
4 as far as what's going on with him and the officer, but he
5 didn't have the ability to say everyone on my bus has been
6 now stopped for Fourth Amendment purposes. The bus driver
7 doesn't control -- not only doesn't control . .

8 THE COURT: He can't say you're not getting off my bus,
9 but he can say I'm talking to the officer and I'm shutting
10 the door, and nobody else can open the door because he has
11 control of the vehicle.

12 MR. CRANGLE: The point I'm making is that they are
13 seized. Once that door is closed and the officer is talking
14 to the bus driver, looking at the totality of the circum-
15 stances they have not been told they are free to leave.

16 He's got the door closed and no one feels free to leave,
17 and if no one feels free to leave there has got to be a
18 Fourth Amendment protection. They are required to provide
19 justification for that seizure, Your Honor, and that just
20 not being provided is the basis for my argument, Your Honor.

21 THE COURT: Okay, I understand your argument. I'll be
22 honest with you. I'm going to have to take it under advise-
23 ment. I have to read that Bond case and see what it says.

24 SOLICITOR: Your Honor, the fact of the matter is
25 that we all watched the video ad nauseum, and I apologize

1 for the length of the video -- the fact of the matter is
2 that this officer never instructed the driver to shut the
3 door. He went and shut the door. There is no testimony it
4 was ever locked, and not one passenger asked or attempted to
5 get off the bus.

6 No passenger banged on the door and said, let me off
7 this bus.

8 THE COURT: You also go to the detainee's perception
9 as to whether or not they could go, whether they were free
10 to leave, and the fact of the matter is you've got a bus here
11 with twenty or more passengers and not one of them exited
12 the bus even though it was a routine stop.

13 Not one of them came out of the bus until they were
14 directed to come off one at a time.

15 SOLICITOR: Well, it's night-time, one A.M., and
16 that is a factor you can consider as well as to why they
17 didn't try to exit the bus. They may have been asleep on
18 the bus. We don't know that.

19 Again, the Fourth Amendment looks at the government's
20 actions, not the driver, and in order to shut the door the
21 driver had to get inside the bus and push the gizmos in
22 there and the door was shut.

23 Certainly some of the passengers who are closer to the
24 bus stairwell may have heard some of the conversation. No
25 one from law enforcement forced the driver to do that. The

1 driver shut the door on his own after several minutes.

2 THE COURT: I understand that, and, like I said, I've
3 taken it under advisement to do some research on that.

4 Now, as to the Jackson v. Denno, I will hear your argu-
5 ment on the voluntariness of the statement.

6 MR. CRANGLE: Your Honor, I don't wish to be heard
7 on that. I would like to preserve my issues as far as the
8 appeal.

9 What I would say is that I regard this as -- it tends
10 to be a quid pro quo -- you help us; we'll tell the prosecu-
11 tor, and induced my client to make a voluntary statement.
12 It would not be the basis of our argument under Jackson ver-
13 sus Denno, Your Honor.

14 THE COURT: All right, sir.

15 SOLICITOR: Well, he said he was the carrier from
16 Atlanta to Philadelphia.

17 THE COURT: For a guy named Jhona. Was there any
18 other statements other than that?

19 MR. CRANGLE: Any responses would have been a result
20 of being induced as I said before . .

21 THE COURT: So there is no recorded interrogation?

22 I thought you were saying that there were two state-
23 ments.

24 MR. CRANGLE: I think what I was getting at was the re-
25 sponses to the trooper and then what he said to DEA.

1 THE COURT: Okay. All right, anything further from
2 the State before we break?

3 SOLICITOR: No, sir.

4 THE COURT: Anything from the Defense?

5 MR. CRANGLE: No, Your Honor.

6 THE COURT: All right, and I apologize to you, but I
7 will take the matter under advisement, and I will let you
8 know the first thing in the morning.

9 Let me put it this way. You need to prepare to go
10 forward as though I am going to rule the confession is con-
11 trary to your case, because I don't know. I'll have to go
12 and read some case law.

13 SOLICITOR: Thank you, Your Honor.

14 THE COURT: The jury is coming in at nine fifteen, and
15 to give them time to get in and get coffee or whatever, be-
16 fore I take the bench, I will take the bench at nine thirty
17 and hope that is okay with everyone.

18 SOLICITOR: Yes, Your Honor.

19 MR. CRANGLE: Yes, sir.

20 THE COURT: All right. We'll stand in recess until
21 nine thirty tomorrow morning. I appreciate it.

22 (Whereupon, the Court stood in recess until September
23 9, 2014)

24 THE COURT: Please be seated.

25 (Counsel for State and Defendant present, as well as

1 the Defendant. Interpreters Zapata, Houchens and Giersuerg
2 also were present.)

3 THE COURT: This is the State of South Carolina versus
4 Emmanuel Marquez Rodriguez, Indictment 2013 GS 23 7983.

5 Gentlemen, I read the cases cited and did a little bit
6 of research on my own.

7 On the Jackson v Denno matter, I find that the state-
8 ment made by the Defendant was voluntary, at least at this
9 stage. You can still argue voluntariness to the jury if
10 you choose to do so, but based upon the Jackson v. Denno
11 hearing conducted I find that it is a voluntary statement.

12 In that regard, the motion to suppress -- I am denying
13 the motion to suppress.

14 Number one, law enforcement did not stop the bus. They
15 were acting on a tip and went to a bus stop; the bus stopped
16 on its own at the site, and they approached it.

17 They questioned the bus driver, and the bus driver gave
18 consent to search of the luggage area. So I find that that
19 was valid.

20 I think there is a little bit of distinction with the
21 Bond versus U.S. case that the Defense has cited. In that
22 case, law enforcement actually boarded the bus and found the
23 defendant's luggage over the seat; found a hard brick and
24 then did the search, and they found -- they didn't find the
25 search itself was the illegal part but when they went into

1 the luggage, the feeling of the luggage; that that consti-
2 tuted a seizure in the search and that was illegal.

3 They drew a distinction with the Defendant's right to
4 privacy in that luggage, and they seemed to put a lot of im-
5 portance on the fact that the defendant had brought the
6 luggage on board with him and placed it in the compartment
7 above his seat.

8 The difference here is where the Defendant places the
9 luggage for storage under the storage compartment, commingled
10 with luggage of other passengers who were traveling along the
11 way.

12 So I find that distinguishes the Bond case, and the
13 bus driver shutting the door -- I don't see where there was
14 any coercion at all.

15 Granted that none of the passengers left the bus, but
16 there is no indication that they were held there
17 not against their will but to the extent that it constituted
18 a seizure or a detainment or anything of that nature.

19 Matter of fact, it appears that law enforcement did
20 more there when they actually boarded the bus and had it
21 stopped, were standing in front of the bus by the exit. The
22 Supreme Court held that that still did not constitute a
23 forced detention.

24 So from that I do find the motion to suppress by the
25 Defendant is denied.

1 of all the testimony and after the arguments of counsel and
2 the charge on the law by the Court, you will then be in a
3 position to determine what the true facts of this case are
4 and apply the facts to the law as given to you by the Court,
5 and thus render a true and just verdict.

6 All right, any challenges or additions to the charge
7 by the State?

8 SOLICITOR: Your Honor, the State has no exception to
9 the charge.

10 THE COURT: Any by the Defense?

11 MR. CRANGLE: No, Your Honor.

12 THE COURT: All right, thank you.

13 Ladies and gentlemen, at this time the attorneys will
14 make their opening statements. As I told you, these open-
15 ing statements are not evidence in this case, but simply
16 counsel's contentions are as to what the evidence in this
17 case are.

18 All right. Mr. Holloway.

19 SOLICITOR: Thank you, Your Honor.

20 In this case the Exhibits will show a true cat and
21 mouse team in the drug trade. The cat and mouse team are
22 the drug traffickers and those who work for them and the law
23 enforcement.

24 On April the 17th of last year this Defendant became
25 a part of that cat and mouse team.

1 He struck a deal with a drug dealer in Georgia, in
2 Atlanta, to transport two thousand three hundred and ninety-
3 five grams of heroin from Atlanta to the northeast.

4 He actually got on the bus with the heroin, with the
5 heroin in a suitcase. In a cat and mouse game, the dealer
6 for whom he was working would conceal the heroin in his
7 suitcase. The suitcase had a false backing inside, and
8 put clothing inside the suitcase as well.

9 Now, being the Defendant was a part of this cat and
10 mouse game, he actually in this case agreed to transport
11 the heroin and was paid Two Thousand Dollars.

12 There was a tip to law enforcement, and if you are with
13 law enforcement how do you pick up on this cat and mouse
14 game? How do you find the drugs that are being concealed?

15 The tip was to the DEA that someone would be transporting
16 on the La Cubana bus line an unknown quantity of heroin.
17 Okay, that was pretty vague, so they didn't know who was
18 transporting it.

19 So when the bus actually made a stop here in Greenville,
20 South Carolina, the troopers in the case actually went to
21 this location at the White Horse Road which is a restaurant
22 and gas station.

23 They get there and the first thing they do is approach
24 the driver of the bus and talk to him, engage in a casual
25 conversation, and they ask the driver, can we run our K9

1 unit around the bus. The driver said, sure, no problem.

2 The troopers then get the Knine and run it around the
3 bus. The driver has no part in it, but the dog gives an
4 alert inside this cargo bay.

5 One of the officers who will testify today was the
6 Knine handler, and he will testify to the alert and what it
7 truly means.

8 At this point, the driver then kind of organized things.
9 He asked the passengers to exit the vehicle, get off the
10 bus, and each one of the passengers go to their luggage and
11 identified their luggage at the time.

12 This Defendant then picked up his own suitcase and at
13 this point the officers began a conversation with him and
14 asked him questions. They asked him for consent to search
15 his suitcase, and he granted them consent to search his
16 suitcase.

17 Inside the suitcase is the heroin, and at trial you
18 may hear from another officer who is an expert on the
19 street value of narcotics, and he will testify that the
20 street value of this heroin -- the wholesale value was Two
21 Hundred Five Thousand Dollars. The street value was more
22 than Half a Million Dollars.

23 Now, the Defendant is charged with trafficking in her-
24 oin, and I want to define what trafficking means. Well,
25 trafficking can encompass many different types of behavior,

1 and the Judge will instruct you what that means.

2 It can mean actually making artificial-type drugs or
3 transporting the heroin, transporting drugs. over highways,
4 for example.

5 Essentially in this case what you're going to hear is
6 how this is a part of the drug trade. How did he interject
7 himself into the drug trade on Interstate 95 with, in this
8 case, heroin?

9 Everybody in this Courtroom has a role to play here,
10 from the prosecutor to the defense attorney to the Judge.
11 In the drug business, there are certain people who fill
12 certain roles. There are people who actually sell the
13 drugs, and there are also people that take the drugs from
14 point A to point B to point C.

15 You will hear the facts of the case regarding this De-
16 fendant as the trial transpires. The question becomes in
17 this case did know what he was doing. Absolutely, and
18 that's what you're going to hear in this trial. He knew
19 what he was doing; knew what he was carrying.

20 He was given instructions as to what he was supposed
21 to be doing for this dealer, and you will discover from the
22 evidence what that involved. The Defendant did know what
23 he was doing, and I won't go into the facts of how he be-
24 came involved in this trafficking.

25 I appreciate your time and your presence here in Court,

1 and we appreciate your patience during this trial.

2 Thank you very much.

3 THE COURT: Mr. Crangle.

4 MR. CRANGLE: Thank you, Your Honor. May it please the
5 Court?

6 Good morning. I'm John Crangle, and I represent Mr.
7 Emmanuel Rodriquez.

8 I just have a few points I want to make at this point
9 that I think will help to guide you during the trial.

10 First, Mr. Rodriquez has pled not guilty, and that
11 places upon Mr. Holloway the burden of proving beyond a
12 reasonable doubt that he is guilty. The Judge will discuss
13 that with you at the end of the trial.

14 The trial is basically going to have three parts, and
15 we are in the first part right now. Then we will have the
16 presentation of the evidence when the witnesses are called
17 by the State and will answer questions.

18 Then the Defense will put up witnesses and they will
19 answer questions asked of them. That's the second part,
20 and then the third part is closing arguments.

21 Now, you will hear from the State first, and what I would
22 like you to do is have an open mind. Witnesses will testify
23 for the State who were eye-witnesses. They could testify
24 for an hour and a half before I even get a chance to ask a
25 single question.

1 Why I need you to keep an open mind is that you have
2 to listen and consider my questions and answers of witnesses
3 before you begin to form an opinion. The natural inclina-
4 tion is to begin forming an opinion when it is all going on,
5 and I ask you not to do that.

6 You have got to wait for everything to take place be-
7 fore you begin forming your opinion as to what happened. I
8 ask you to consider all the evidence and keep an open mind
9 until you are told to begin your deliberations.

10 A few additional points I would like to make. You
11 have been told that Mr. Rodriguez was working for the drug
12 cartel, and he even told you the street value of the drugs
13 that were found, Half a Million Dollars -- a street value
14 of Half a Million Dollars.

15 Also that my client was handed Two Thousand Dollars to
16 get on that bus. Well, Two Thousand Dollars on Half a
17 Million is less than half of one percent, pennies, and the
18 question is if I give you a Hundred Bucks and I say, hold
19 onto this Hundred Bucks and all you get is half a penny,
20 would you take me up on this?

21 You're going to hear about that, ladies and gentlemen.
22 You are going to hear about how they force people into doing
23 such things, and I'm asking that you keep an open mind. To
24 wait until you hear the entire story before you begin to
25 arrive at your verdict.

1 I appreciate your service. I'm sorry we kept you
2 here so long yesterday.

3 Please keep in mind the three things I have discussed,
4 and that the burden is on the State to prove guilt beyond a
5 reasonable doubt. If you do that, I am sure you will arrive
6 at a decision that Mr. Rodriguez is not guilty of the charge
7 of trafficking cocaine.

8 Thank you.

9 THE COURT: Ladies and gentlemen, we will now begin
10 the evidentiary portion of this trial. Mr. Holloway, the
11 State may call its first witness.

12 SOLICITOR: State would call Justin Rogers to the stand.

13 THE COURT: All right.

14 JUSTIN ROGERS, being duly
15 sworn, testified as follows:

16 CLERK: Thank you, please be seated.

17 THE COURT: Please give the Court Reporter your full
18 name, and spell your first and last names.

19 WITNESS: Yes, sir. My first name is Justin, J U S T
20 I N, and my last name is Rogers, R O G E R S.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Please tell the jury -- I know you're wearing your
25 badge and uniform, but will you tell the jury for the record

J. ROGERS ON DIRECT

1 where you work?

2 A. Yes, sir. I'm employed by the South Carolina Depart-
3 ment of Public Safety, assigned to the Highway Patrol, which
4 is umbrellaed under the SCDPS.

5 I'm currently assigned to the Aggressive Criminal Enforce-
6 ment Team. I came over to this Team in April of 2010. Our
7 primary focus is a specialized unit within the highway pa-
8 trol that focuses on interception of criminal activity bas-
9 ically.

10 Q. Okay, and you said -- is the team you're worked for
11 called ACE?

12 A. Yes, sir.

13 Q. Tell us what that means again?

14 A. Aggressive Criminal Enforcement.

15 Q. Okay, and tell the jury kind of what that means?

16 A. Basically, our primary focus is interstate travel as
17 far as trafficking of illegal narcotics, money smuggling or
18 weapons, weapons of mass destruction, stolen vehicles, or
19 wanted individuals.

20 Basically, it is outside of the realm of what we com-
21 monly refer to as working wrecks or writing tickets. We
22 kind of go a little bit further and delve into criminal patrol.

23 Q. Okay. When you say aggressive, you're not talking about
24 storming peoples' houses or pulling them over at will?

25 That's correct?

J. ROGERS ON DIRECT

1 A. No, sir. The term aggressive just refers to high vol-
2 ume traffic stops.

3 Q. Now, how long have you worked for the Highway Patrol?

4 A. I became employed with the Highway Patrol in January of
5 2006.

6 Q. Okay, and is there anywhere else you have worked in
7 law enforcement?

8 A. No, sir.

9 Q. What is your current rank?

10 A. I'm currently ranked as a Lance Corporal.

11 Q. Okay, and what sort of drug intervention programs do
12 you work with the Highway Patrol?

13 A. As far as . . .

14 Q. Well, what sort of techniques do you use in order to
15 locate drugs that are, of course, being concealed on the
16 Interstate?

17 A. A lot of that is going to come off of what we refer to
18 as indicators consistent with criminal activity. Those in-
19 dicators could mean extreme nervousness or similar things
20 that we are trained for that we go through pretty much every
21 year, a good level of training.

22 Things that are out of the ordinary in the totality of
23 the circumstances. Whether it is a consensual encounter or
24 whether it's a traffic stop, basically we're taking anything
25 and everything into account from the time that we have any

J. ROGERS ON DIRECT

1 interaction with the public. That is a common sense thing
2 where it's just not adding up.

3 I think the big thing that we look at and most of the
4 time any interaction we have with the public is where are
5 you coming from, where are you going to, what's the purpose
6 of your trip.

7 The trafficking of narcotics is controlled by financial
8 gain, irregardless of what that financial gain is. The drug
9 business is all about greed.

10 Q. Now, going to this particular case, what were you doing
11 on April 17th of 2013?

12 A. On April 17, 2013, we received information from the
13 Drug Enforcement Agency actually out of Greenville. Their
14 counter-part out of Atlanta had passed on some information
15 that there was a possible load of heroin that was going to
16 be traveling northbound and coming through our State.
17 And it was going to be on a La Cubana passenger bus, and we
18 were familiar with the La Cubana bus line prior to that.
19 We had interaction with various bus lines, but this particu-
20 lar one, they make scheduled stops at this location on White
21 Horse Road which is a gas station slash McDonalds.

22 Q. In what county is that located?

23 A. That's Greenville County, South Carolina.

24 Q. Okay, so you would go to this parking lot that is a
25 gas station slash McDonalds?

J. ROGERS ON DIRECT

1 A. Yes, we would.

2 Q. And from there -- what time did you arrive there in the
3 first place?

4 A. The encounter with the driver was approximately twelve
5 O nine, so we arrived probably anywhere from fifteen to
6 thirty minutes prior to that.

7 Q. Okay, and when you arrived and you see the bus, what
8 next?

9 A. Myself and my supervisor at the time who was Corporal
10 Dowis, my partner who is Lance Corporal Harrison -- we
11 were all positioned in the parking lot. The bus made entry
12 off of White Horse Road and parked to the right side of the
13 parking lot.

14 I immediately walked towards the bus and encountered
15 the bus driver as he was exiting the bus.

16 Q. Okay, and when you approached him, was he all the way
17 off the bus? Had he taken one step off the bus, or where
18 was he positioned?

19 A. He was off the bus. If he wasn't on the ground, he was
20 on the bottom step. He had actually already opened the door
21 and was exiting.

22 Q. Okay, and your patrol cars, where were they at?

23 A. They were in the back portion of the parking lot.

24 Q. Okay, and describe how well lit was this parking lot?

25 A. It is twelve at night and it is a public place. There

J. ROGERS ON DIRECT

1 is fairly good lighting there as far as street lamps on the
2 perimeter of the building.

3 Q. Okay, so at this point you are talking to the driver,
4 and what happened after that?

5 A. I talked with the driver and basically explained to
6 him that -- at first I asked him if everything was okay as
7 far as a random safety check which we commonly will do, just
8 to make sure there is no unruly passengers or anything like
9 that.

10 So I asked him about that, and he said there was no
11 problem. Through the course of kind of explaining to him
12 that in the drug world, whether it be drug trafficking or-
13 ganizations or drug cartels, they will utilize public trans-
14 portation as a means to move their drugs, to kind of reach
15 him on that a little bit.

16 He had been in the business for a while so he was prob-
17 ably aware of that, but . .

18 Q. As you were talking to him, what, if any, indication
19 did he display that he didn't understand what you were
20 saying?

21 A. Mr. Zambrana's English was broken. He was originally
22 from Florida, out of the Miami area. There was a couple
23 of times that I just wanted to reassure that he understood
24 so I did ask him about did he understand what I'm saying,
25 and he would say yes or nod his head that he understood.

J. ROGERS ON DIRECT

1 It was broken English but he understood me. We were
2 still able to carry on a conversation in English.

3 Q. Okay. So you're explaining to him why you are there.
4 Correct?

5 A. Right.

6 Q. Okay, and what did you want to tell him?

7 A. Well, basically in this instance right here, this was
8 a scheduled stop. This is not a traffic stop. This is what
9 we refer to as a consensual encounter.

10 We have them pretty much everyday, and if he's okay
11 to be there I'm okay to be there; if he doesn't want to talk
12 to me he doesn't have to. That's why I introduced myself as
13 Trooper Rogers and explained to him why I'm there; what I'm
14 talking with him about.

15 During the course of that, Corporal Dallas was on the
16 scene. We had a K-nine that is available for our Team. At
17 that time, I asked the bus driver if he had any problem with
18 Corporal Dallas bring the K-nine to the exterior of the ve-
19 hicle or the bus.

20 At that time, he said no, no problem; go right ahead.
21 As he said that, he turned to open up the luggage compart-
22 ments on the bottom of the bus.

23 Q. Okay. Did he open it on his own or did you instruct
24 him to open them?

25 A. No, he opened them on his own. The driver opened them

J. ROGERS ON DIRECT

1 on his own. I asked him if he had luggage -- I believe he
2 was asked do you have luggage in your stowaway compartments,
3 and he turned and said yes, and he proceeded to open them of
4 his own free will.

5 Q. Okay, and as you were talking to the driver, where was
6 the K-nine at?

7 A. The K-nine, Tigger, was still in Corporal DOWIS' unit.

8 Q. So the K-nine is not attached to the driver as you are
9 asking him for consent to run the K-nine around the bus?

10 A. No, sir. Tigger was not present until after we got
11 permission.

12 Q. Now, when the officer has to -- how long did that take,
13 how long had transpired?

14 A. In this instance?

15 Q. Yes.

16 A. In this instance from first contact with the driver,
17 five or six minutes before the dog was employed.

18 Q. Okay, and when you say the K-nine unit was employed,
19 what does that mean?

20 A. It just means that Corporal Dallas would have went
21 back to his vehicle. He would have leashed Tigger and pre-
22 sented the exterior of the bus to him.

23 Q. Okay, and which side of the bus were the doors opened?

24 A. As you are looking straight at the bus, it would be
25 the left side.

J. ROGERS ON DIRECT

1 Q. Okay. Is that the side opposite the exit door or the
2 same side?

3 A. The same side.

4 Q. Okay, and how was -- this cargo bay is full of suitcases,
5 right?

6 A. Yes, sir.

7 Q. And how was that organized?

8 A. With this particular bus line, they were running -- from
9 the time we were making contact with them, they would make
10 three more stops, final destination stops.

11 North Carolina, New York and Philadelphia, or Philadel-
12 phia and New York. So basically the compartment bins are
13 arranged in destination spots.

14 When he pulls up to North Carolina he knows exactly
15 where all that North Carolina luggage is. Each passenger
16 who checks a piece of baggage is given -- similar to travel
17 on an airline, you have a baggage claim ticket, and they
18 attach a baggage ticket to stowaway luggage.

19 In that way, when you exit you present your ticket and
20 the numbers will line up and you can claim it.

21 Q. At this point, how many passengers are on the bus?

22 A. We originally -- when I asked originally, I guess he
23 said it was thirty-nine but then he went back and it was act-
24 ually around twenty passengers.

25 Q. Okay, and this is a public place parking area?

J. ROGERS ON DIRECT

1 A. Yes.

2 Q. And how many people did you see get off the bus or get
3 on the bus?

4 A. None, and the Greenville stop on White Horse Road is a
5 midway stop point. It is a location where they can drop pas-
6 sengers off and pick passengers up.

7 This night he either had one getting off or one was
8 getting on, but no passengers were demanding that they be
9 let off the bus, and ultimately at that point they were free
10 to do as they pleased.

11 Not only did we encounter a consensual encounter, in
12 the interactions I might have with the driver because he was
13 in control of it, but at that point I had no interaction with
14 the passengers.

15 Q. Okay, and at about this time what did the driver do
16 at the door? The door to the bus?

17 A. The driver actually -- I guess it was possibly two or
18 three minutes into the encounter -- I'm not familiar with it
19 but this is a 2013 MCI bus.

20 Obviously when he stepped off of the bus, I guess he
21 has a button or something, but he closed the door. He was
22 not instructed to close the door. I don't know why he did,
23 unless that is some policy or issue. I don't know, but he
24 did close the passenger door.

25 Q. Did he stay outside the bus or go inside the bus?

J. ROGERS ON DIRECT

1 A. He came to the exterior. He never made it into the
2 passenger area. As this encounter progressed, and later on,
3 yes, but that was after some other factors had came up.

4 Q. Okay. Now, what happened with the Knine?

5 A. Corporal Dowis--after he had Tigger go to the luggage
6 department doors, he advised me that Tigger did give or he
7 did receive a positive alert for the presence of an illegal
8 odor which established probable cause.

9 Q. Okay. Now, at this point of the alert, what did you
10 do with the passengers?

11 A. At that point, once we received a Knine alert and the
12 probable cause had been established, we started with the pas-
13 sengers. It is our way with bus lines -- we don't want to
14 hold the passengers up. We don't want to hold the drivers
15 up.

16 We want to move as fast and efficiently as we can, not
17 to make anybody mad or upset.

18 In this case here, the three luggage bins were pretty
19 full, and we actually brought the passengers off one by one,
20 and as the passengers exited we asked them if they had lug-
21 gage. If they had luggage, show your ticket and we will
22 separate that luggage.

23 And that was what our intentions were, to go ahead and
24 pull all the luggage off so we could identify if somebody
25 did or didn't.

J. ROGERS ON DIRECT

1 It is common in these situations with bus lines that
2 whether it is money or whether it's contraband or narcotics,
3 the reason that they use a bus line is . . .

4 MR. CRANGLE: Your Honor, he's turning now not into a
5 fact witness, but he is becoming an expert on how drugs are
6 . . .

7 THE COURT: Sustained.

8 BY SOLICITOR:

9 Q. . . .

10 A. Basically the luggage could be not claimed or aban-
11 doned so we that's why we ran that -- that's why we did that
12 course of action. So that all they'd go ahead and claim
13 it.

14 Q. And that would keep things organized?

15 A. Yes.

16 Q. What did you do?

17 A. As far as keeping everything organized?

18 Q. Right. The passengers, the luggage.

19 A. We would have the passengers exit the bus. We'd
20 ask them a few questions as they identified the luggage
21 and we actually separated everything in the parking lot
22 to where we could keep it as easy as possible so once
23 we concluded we could load the bus back up and not mess
24 the luggage up.

25 So we separated it based on the North Carolina

J. ROGERS ON DIRECT

1 luggage, the New York luggage and the Philadelphia lug-
2 gage.

3 Q. And did they stampede off the bus or was it kind
4 of one by one?

5 A. No, they came off one by one. That gives us or
6 gave me a chance to basically, as they were claiming
7 the baggage with those tickets, see if there was any
8 indicators we would be looking for.

9 Q. Okay, and at this point were you and the officers
10 pursuing your own investigation or why the Knine had
11 alerted, or were you pursuing the original tip from
12 DEA?

13 Q. At this point, after probable cause had been estab-
14 lished, it was -- you know, it was there. It was there
15 to begin with but it was my investigation at that point.
16 Probable cause had been established.

17 Q. And when each passenger is coming off the bus,
18 what sort of questions are you asking them?

19 A. There again, depending on -- do you have luggage, and
20 if you have luggage could you show me where it's at,
21 and we'll get it and put it where it needs to be for
22 the most part.

23 There might have been a few passengers here and
24 there that would make small conversations or whatever,
25 but nothing in depth before Mr. Rodriguez actually got

J. ROGERS ON DIRECT

1 to me.

2 Q. Do you recall --- who explained to the passengers what
3 was going on?

4 A. The bus driver had stayed by my side the entire time
5 due to the language barrier. He could understand my Eng-
6 lish in order to translate to his passengers as far as the
7 language. He was right by my side.

8 Q. Did you -- what, if any, indication or indicators did
9 you see at the time that the passengers were frightened or
10 were angry?

11 A. There was never any indication that the passengers were
12 disgruntled or angry at us or there was any -- that they
13 were really concerned.

14 I think the bus driver, after the probable cause had
15 been established by the Knine alert, he was -- I instructed
16 him to just let his passengers -- to notify them that ev-
17 erything is okay; that they didn't need to be worried or
18 frightened; that we would move as fast and efficiently as
19 we could.

20 Q. Okay. The passengers are filing off. Instruct the
21 jury at what point in time the Defendant did that?

22 A. Approximately twenty passengers -- Mr. Rodriguez was
23 around the seventeenth passenger to deboard. As Mr.
24 Rodriguez exited the bus, he was asked if he had luggage --
25 if he had luggage on the bus and he had a baggage claim

J. ROGERS ON DIRECT

1 ticket.

2 Upon doing that, he proceeded to go and at that point
3 especially when you're dealing with a bus line -- that mass
4 amount of individuals you are looking for consistent pat-
5 terns.

6 Just like we might be looking at consistent patterns
7 if we're out on the Interstate and tracking stuff. What is
8 consistent and what is not.

9 Mr. Rodriguez exited and he went straight to his lug-
10 gage and grabbed it himself and kept it right in front of
11 him the entire time.

12 All the passengers prior to that didn't do that. They
13 kind of like exited and they would hang tight and we would
14 move the luggage.

15 As Mr. Rodriguez grabbed his luggage, he kept it with
16 him the entire time.

17 Q. At this time is he holding his suitcase?

18 A. He had his luggage very tight.

19 As we carried on conversations with people, individuals --
20 more commonly, any time someone is in an extremely high
21 stressful situation, are extremely nervous, even if they're
22 -- there's going to be a nervous tic that they are going
23 to release somewhere.

24 So as I'm carrying on a conversation I'm watching his
25 eye movements and fingers, his toes. I think he shifted

J. ROGERS ON DIRECT

1 his weight. He had the luggage in what I refer to as white-
2 knuckling, which we see a lot on the Interstate when someone
3 is trying to choke-hold the steering wheel. He was doing
4 that to his suitcase, and what that is is he's holding it so
5 tight that the blood is coming out and you can see the white
6 of his knuckles because of the firm grip he's got.

7 Q. Were any of the other passengers behaving the same way
8 on that bus?

9 A. No.

10 Q. Okay, he got the suitcase, and at that point what hap-
11 pens?

12 A. At that point, everything -- there again, everything is
13 taken in the totality of it. The circumstances of the situa-
14 tion.

15 He was nervous, and that is common. It happens. If I
16 am not in uniform I'd get nervous, but what we're looking for
17 is that nervousness or if it subsides.

18 If it becomes an issue where it increases, the duration
19 of it, or if there is nothing really to worry about unless you
20 are involved in criminal activity where it's going to increase.
21 He continued to fight. He had a long-sleeved shirt on, and
22 the only time he would let loose of the luggage was when he
23 would cross his arms with what we call closed off body posture.

24 Q. What does that mean?

25 A. Closed off body posture is posture with just a sense of

J. ROGERS ON DIRECT

1 protection basically. It's human behavior in high stress-
2 ful situations. You are looking for something that gives
3 you comfort.

4 What we're trained on is we're looking for that. A
5 lot of times when you go -- especially now-days, you are
6 looking at body posture. You don't want me talking to you,
7 don't want me asking you questions. So that sense of se-
8 curity is why they do that.

9 Q. Did he demand to leave?

10 A. No. At no time did he try to walk away from me or to
11 say anything.

12 Q. Okay.

13 A. As far as conversation with Mr. Rodriguez, I did ask
14 where he was going, and he stated he was going to Philadelphia
15 and he was going to visit friends for two weeks, and that
16 he would be participating in some drag shows there.

17 So it was going to be a work-slash pleasure trip. He
18 didn't know where his friends lived. He didn't know where he
19 was going to dance at. All he knew was that he was on a
20 bus and he was heading to Philadelphia and he was going to
21 visit friends and he was going to work somewhere.

22 He assured me that he didn't know the information, but
23 he would call once he got to Philadelphia. He would call
24 his friends and they would pick him up.

25 Q. Okay, and upon hearing his responses, what were you

J. ROGERS ON DIRECT

1 thinking?

2 A. That something was not right.

3 Q. Why?

4 A. Because I don't think anybody -- you know, that is
5 what I refer to as an implausible travel plan. Most every-
6 body, if you have a travel itinerary, you're going to know
7 -- I'm not going to get on a bus and go from Atlanta all
8 the way to Philadelphia and not even know where I'm going
9 to stay or where I'm going to work.

10 And he had said that he had previously been to Philadelphia
11 so he should have been familiar with the area, at least as
12 far as where he was going, you know.

13 Q. At what point did you ask him for consent to search his
14 suitcase?

15 A. After -- after basically a period in our conversation
16 he was asked some specific questions. Everything was just
17 not adding up, so he was asked as far as transportation if
18 he had anything harmful. He advised no weapons, no illegal
19 narcotics. You know, he was asked a series of questions,
20 and he said no narcotics.

21 He began fiddling again with his shirt and his jacket
22 and broke eye contact. No marijuana, no cocaine, no meth-
23 amphetamines, no currency.

24 He was asked specifically any heroin, and he deviated
25 from all his previous responses.

J. ROGERS ON DIRECT

1 Q. You said he broke eye contact. What does that mean?

2 A. Eye contact -- if you were broke down on the side of
3 the Interstate and we're having a conversation, eye move-
4 ments as far as an indication of deception. Basically it's
5 just a subconscious reaction.

6 Q. Is there a difference between sitting across a table
7 from a friend and immediately your eyes go from left to the
8 right? Is there a difference between that and what you're
9 talking about?

10 A. . .

11 MR. CRANGLE: Objection, Your Honor. Relevance.

12 SOLICITOR: It is going toward a basis for . .

13 THE COURT: I'll allow it.

14 BY SOLICITOR:

15 Q. You can answer.

16 A. Absolutely. There is. You are asking -- in this in-
17 stance right here, all those questions that I just asked
18 him, and out of those questions, you know, he kept eyue con-
19 tact with me, and I asked him one thing that he is uncomfort-
20 able with and he breaks eye contact with me.

21 Q. What question was that?

22 A. First was did he have any narcotics, and it was only
23 on the specific question about the heroin.

24 Q. Why was that significant?

25 A. It was what I refer to as a deviated response. He had

J. ROGERS ON DIRECT

1 given me a no, no, no, on everything else, and then I say
2 any heroin, and his first response was what is that? What
3 do you mean? No comprendez.

4 Up to this point, his English had been fine. I don't
5 speak Spanish and he had had no problem understanding me
6 in English, but when I asked specifically about heroin, he
7 went way off chart.

8 Q. Okay, and what, if any, hesitation did he display when
9 you asked him for consent to search his suitcase?

10 A. None. I actually pulled Mr. Rodriguez out of the
11 crowd. At that point we were still in the crowd of individ-
12 uals because as they exited the bus they were all gathered
13 right there.

14 I asked him to step out to the side with me to speak
15 to me a little bit further. He was in a position closest
16 to the bus, and my back was to my patrol car, which at all
17 times the camera was on.

18 Q. I don't mean to interrupt, but explain to the jury
19 how the camera works when you are outside of the vehicle or
20 as you were at that time?

21 A. Our patrol vehicles are equipped with video recorders.
22 At that time it was a VHS but it has gone to digital now.
23 With VHS we wear a wireless mike. Any time -- in this case
24 right here blue lights were never activated, but we had
25 an automatic switch when we activated blue lights where the

J. ROGERS ON DIRECT

1 camera will cut on. We have a manual switch and that is
2 what I did in this case.

3 As a member of the Highway Patrol if I have any con-
4 tact with the public I have to record it. So the audio
5 and video with the wireless microphone -- this was kind
6 of hard because the diesel engine is rather loud.

7 Q. Now, Trooper Rogers, I'm handing you what has been
8 premarked as Exhibit Number 1. Can you identify that for
9 the jurors?

10 A. Yes, sir, that is my in-car video.

11 Q. Okay. Tell the jury how you know that DVD is from
12 your in-car video?

13 A. It has my initials on it.

14 Q. And have you viewed the footage on this DVD?

15 A. Yes, sir.

16 Q. And is it a very accurate depiction or not?

17 Is that accurate as far as what happened on the scene?

18 A. Yes.

19 SOLICITOR: Your Honor, we would submit this into evi-
20 dence as Exhibit 1.

21 THE COURT: Any objection?

22 MR. CRANGLE: Just a second. No objection, Your
23 Honor.

24 THE COURT: All right, State's Exhibit 1 is admitted
25 into evidence without objection.

J. ROGERS ON DIRECT

1 (In-car video admitted without objection in evi-
2 dence as State's Exhibit 1)

3 SOLICITOR: Your Honor, we would ask to publish that
4 at an appropriate time.

5 THE COURT: All right, but you're not going to do it
6 now?

7 SOLICITOR: No,

8 BY SOLICITOR:

9 Q. Now, on this DVD can you tell the jury how far into
10 it or how many minutes transpired before you actually en-
11 countered this Defendant?

12 A. Roughly -- possibly forty-five minutes or maybe some
13 forty minutes.

14 Q. Forty minutes?

15 A. As far as where -- the point where we actually get
16 into asking for consent to search.

17 Q. During that forty minute period, did anybody demand
18 to leave?

19 A. None of the passengers demanded to leave.

20 Q. All right.

21 A. None of the passengers came up and said, hey, we got
22 to go. Everybody was just kind of standing around.

23 Q. Okay. At any point in time, did the driver tell you
24 I have to go?

25 A. No.

J. ROGERS ON DIRECT

1 Q. Okay. Now, what was the Defendant's response to you
2 asking to search his suitcase?

3 A. What I said to Mr. Rodriguez -- I explained to him
4 that his story just didn't add up basically; that I didn't
5 believe it, and there was a -- I had my suspicions as far
6 as a reasonable suspicion.

7 He was immediately asked for consent to search his
8 bag, at which point he said, no problem; go ahead. The
9 bag was positioned in front of him and he offered it to
10 me.

11 Q. So he actually -- during this time was the bag on the
12 ground or was he holding it?

13 A. The bag was on the ground, although he had been hold-
14 ing it the entire time. Right there in front or on the
15 right side of the bus, and I believe I brought it back to
16 the front -- the front of the bus to carry on the conversa-
17 tion away from the other passengers.

18 I asked specifically in reference to the bag, are you
19 responsible for it; has it been in your possession the
20 entire time; did you pack it. He kind of distanced himself
21 a little bit from the bag when he was asked that specific
22 question.

23 Q. You said he kind of distanced himself away from the
24 bag. What does that mean?

25 A. I think he stated that he had just bought the bag two
136

J. ROGERS ON DIRECT

1 weeks ago and this was the first time he was using it,
2 and he said, no, the bag hadn't been in his possession
3 the entire time, and then he came back and said, yeah,
4 yeah, I just bought it. That he had just bought it two
5 weeks ago.

6 Q. And did you search the suitcase?

7 A. After his consent was granted, yes.

8 Q. Describe that process?

9 A. He consented to the search, and when I looked in the
10 bag there were two separate bags inside of the suitcase.
11 It is pretty much your standard travel bag with wheels
12 on it.

13 There was a small tote bag and a plastic garbage
14 bag that had clothes. Everything was separated. It was
15 not like a piece of luggage that you would pack if you
16 were going on a trip. Everything was separated.

17 As I removed those, you could -- before he opened
18 the bag you could see on the back side a large bulge. It
19 was uncharacteristic of this style suitcase.

20 So once I opened it and I removed those, I unzipped
21 the inside lining and you could see raincoat material
22 that they had cut strips out of and placed with super
23 glue on it. Super glue will typically turn white, espec-
24 ially on black plastic or vinyl material, so at that time
25 I knew that they had altered the suitcase.

J. ROGERS ON DIRECT

1 Q. Okay. During the search of the suitcase, did you
2 take photographs?

3 A. Yes, we did take photographs.

4 Q. Who was taking the photos?

5 A. Originally I started taking photos, and once I saw
6 the manipulation of it and that there was most likely a
7 hideaway compartment in it, for us it is standard that
8 we'll go ahead and start shooting pictures. That way we
9 will have that.

10 Q. Okay, Trooper Rogers -- one second.

11 (Brief pause in proceeding)

12 BY SOLICITOR:

13 Q. I'm showing you what have been premarked as State's
14 Exhibits 3 through 27. I would ask you to identify these
15 for the jury.

16 A. Yes, sir. Exhibit 3 will be a CD of roadside pictures
17 and 4 through 27 would be just printouts of pictures
18 that are on the disc.

19 Q. So State's Exhibits 4 through 27 are photos of what
20 is on Exhibit 3. Is that correct?

21 A. Yes, sir, they are.

22 Q. Photos taken by you and who else?

23 A. Myself and Corporal Dowis.

24 Q. Okay, and are those photos, Exhibits 4 through 27,
25 are they accurate pictures of the search of the suitcase?

J. ROGERS ON DIRECT

1 A. Yes, they would be. They were taken during the course
2 of the search.

3 SOLICITOR: I would ask to move these Exhibits in
4 evidence.

5 THE COURT: Any objection?

6 MR. CRANGLE: No, Your Honor.

7 THE COURT: All right, State's Exhibits 3 through 27
8 are admitted into evidence without objection.

9 (State's Exhibit 3, CD, and State's Exhibits 4 - 27,
10 photographs, admitted without objection into evidence.)

11 SOLICITOR: Your Honor, we would ask permission to
12 publish State's Exhibit 3, the CD, at this time.

13 THE COURT: All right.

14 (Whereupon, the CD, Exhibit 3, was played for the
15 jury by Solicitor)

16 BY SOLICITOR:

17 Q. Corporal Rogers, this is like an old school slide
18 show. Can you tell the jury what they are seeing.

19 A. Yes, this is the suitcase after the insides had been
20 removed. Clothes, boots, miscellaneous clothes.

21 Q. Okay. What is this?

22 A. The same photo, just closer in.

23 Q. Okay.

24 A. This is after the interior lining had been unzipped
25 which exposed the frame or support of the suitcase on the

J. ROGERS ON DIRECT

1 back side.

2 Q. What do we see on -- I guess the top of the inside
3 right there?

4 A. That's the material, the raincoat material, that I've
5 explained.

6 Q. Okay.

7 A. The screws down here at the bottom have been pulled
8 which is not common.

9 Q. And what is that black type -- that right there?

10 A. That is where it was super-glued back in, to try to
11 make it look accurate.

12 Q. Okay. What about here? What is that right there?

13 A. That is super glue that has turned after it was put
14 on there.

15 Q. Okay. As an officer, what does that tell you? As
16 you are seeing this, what does it say?

17 A. That they have loaded something there.

18 Q. What is this?

19 A. That's just the exterior wheels. It's not really rele-
20 vant.

21 Q. Okay. I'm going to keep going there.

22 A. This right here is showing one of the screws on the
23 -- three screws on the bottom of that. You can see where
24 the screws have been worn down pretty good.

25 Q. Okay. I'm going to hand you what is a pointer.

J. ROGERS ON DIRECT

1 A. Okay.

2 Q. Okay, right here?

3 A. Yes, this is where it was unscrewed and unscrewed
4 there and one over here, and this whole plastic piece has
5 been removed. These are black built in screws that you
6 can see some silver where they have made contact with a
7 screw driver, when there would be no reason for it.

8 This is the driver's license of the bus driver.

9 Q. Okay.

10 A. This is myself trying to remove the track to gain ac-
11 cess to the back of the suitcase.

12 This is after we actually removed the top track. We
13 removed the brace, and this piece of plastic is what we
14 are actually looking at in previous pictures.

15 In between this piece of plastic and the exterior
16 shell -- this is the bag of heroin here.

17 Q. Okay. There is a piece of plastic here and we got
18 all the screws out and displayed the heroin that was act-
19 ually sealed in back of it.

20 Q. What is it wrapped in?

21 A. It is saran wrapped. It had two more bags, and that
22 is axle grease -- is that red -- they do that
23 to try to turn off as far as the Knine.

24 This is the only form of identification he had on
25 him.

141

J. ROGERS ON DIRECT

1 This is his gum, his La Cubana bus ticket.

2 Q. All right.

3 SOLICITOR: I would like to publish the video that is
4 in evidence as Exhibit 1.

5 THE COURT: Before we do that, I have a conference
6 call I need to make at eleven, so I'd like to go ahead and
7 break for about twenty minutes right now.

8 I apologize for that but it is something I need to
9 do. Given where we are in this trial, maybe it is a good
10 time to go ahead and take a morning break.

11 I'm going to excuse you now to the jury room so you
12 can stretch your legs and use the restroom, get something
13 to drink, whatever the case may be.

14 Do not discuss the case even among yourselves at this
15 point in time. It is too early for deliberations. Do not
16 do any investigation.

17 We'll take probably about twenty minutes before we
18 bring you back out.

19 Thank you very much. Everyone else remain seated
20 while the jury leaves.

21 (Jury excused from Courtroom)

22 THE COURT: We're going to take a twenty minute break.
23 Trooper Rogers, we are in the middle of your testimony so
24 you cannot discuss your testimony with anyone, either what
25 you have testified thus far or what you anticipate you

J. ROGERS ON DIRECT

1 MR. CRANGLE: Thank you, Your Honor.

2 THE COURT: Anything further before we bring the jury
3 back in from the State?

4 SOLICITOR: No, sir.

5 THE COURT: Anything from the Defense?

6 MR. CRANGLE: No, Your Honor.

7 THE COURT: All right, Mr. Rogers, you can come back
8 and take the stand. You are still under oath.

9 (Witness returning to stand)

10 Go ahead and bring the jury in.

11 (Jury returned to Courtroom)

12 THE COURT: Ladies and gentlemen, welcome back. We
13 are ready to proceed with the State's first witness.

14 Mr. Holloway?

15 SOLICITOR: Thank you, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR:

18 Q. Trooper Rogers, you said that your vehicle had a
19 camera?

20 A. Yes, sir.

21 Q. And we discussed the video in this case. Is that
22 correct?

23 A. Yes, sir.

24 SOLICITOR: Your Honor, I would like at this point to
25 publish the DVD.

J. ROGERS ON DIRECT

1 THE COURT: Any objection.

2 MR. CRANGLE: No, Your Honor.

3 THE COURT: All right.

4 SOLICITOR: Thank you, Your Honor.

5 (Whereupon, the in-car video shown to the jury at
6 this point)

7 BY SOLICITOR:

8 Q. You are saying the word she?

9 A. That's right.

10 Q. Kind of explain to the jury what you're talking about?

11 A. Mr. Rodriquez initially indicated himself as being
12 female.

13 Q. And that's why you were talking to your colleague?

14 A. That's right.

15 (Video continuing to be shown)

16 Q. The person you're talking to, is that person in the
17 Courtroom?

18 A. Yes, sir.

19 Q. Would you point that person out?

20 A. Mr. Rodriquez.

21 Q. I'm handing you what's been pre-marked as State's Ex-
22 hibit 30. Can you identify what is in this box?

23 A. . .

24 Q. You want me to tell you what's in there?

25 A. No, I know what's in there but it's sealed.

J. ROGERS ON DIRECT

1 Q. Okay, tell the jury -- who brought this to
2 Court?

3 A. I brought that to Court.

4 Q. Okay, and how did you receive Exhibit 30?

5 A. This was -- on scene it was basically taken into
6 custody by the DEA and sent to their lab in Miami. A
7 chemist would have analyzed it there and it would have
8 been housed in Miami.

9 What they did was they -- upon request about this
10 trial it was sent back to the local DEA office here to
11 an agent.

12 They keep everything inside the chain of custody, and
13 they will store it at the Greenville facility. Yes-
14 terday they signed it out to me for trial purposes, so
15 it is now -- well, it's in the Court right now, but it
16 was -- that was originally where it came from.

17 Q. Have you seen inside the box?

18 A. Yes.

19 Q. Okay. Would it help you to be able to see the evi-
20 dence bag?

21 A. Yes.

22 Q. Okay.

23 SOLICITOR: Your Honor?

24 THE COURT: Any objection?

25 MR. CRANGLE: Is he moving it in evidence, Your

J. ROGERS ON DIRECT

1 Honor?

2 THE COURT: He's asking right now to open it for iden-
3 tification.

4 MR. CRANGLE: No objection.

5 (Brief pause in the proceeding)

6 BY SOLICITOR:

7 Q. Without showing it to the jury just yet -- we'll
8 do that later -- can you hold the Exhibit out of the box
9 and see if you see any initials or signatures on that?

10 A. Yeah, there's an evidence label.

11 Q. Okay, do you see yours on that?

12 A. Yeah, at the bottom of the bag.

13 Q. Okay. Are you sure about that?

14 A. Yes.

15 Q. And when you picked this up, was there any sign of
16 tainting or destruction?

17 A. None. There is none.

18 It is not in the way it is described in the picture.
19 Obviously, it's been broken down for analysis, for pur-
20 poses of that, so it's a little bit different, but as
21 far as the integrity of the chain of custody, no.

22 Q. You testified earlier that it had grease on it. Is
23 that right?

24 A. Correct.

25 Q. Is there grease still on there?

J. ROGERS ON DIRECT

1 A. Yes, it's actually the exterior wrappings and pack-
2 aging was separate from the actual heroin, but, yes, that
3 wrapping is there.

4 Q. Okay. You testified earlier that the suitcase was
5 loaded. What does that mean?

6 A. Loaded, referring to it is loaded with contraband.

7 Q. Okay. Thank you so much for answering my questions.
8 Please answer any questions Mr. Crangle has for you.

9 A. Yes, sir.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION.

12 BY MR. CRANGLE:

13 Q. Trooper Rogers, you received a tip regarding this
14 case. Right?

15 A. Yes, sir.

16 Q. And that it was a light-skinned black male?

17 A. Yes, sir.

18 Q. And you got that from the DEA?

19 A. I got that from my supervisor.

20 Q. Right, from your supervisor. Is your supervisor a
21 part of the DEA?

22 A. No, sir. He is -- at that time he was a ranking sup-
23 ervisor with the Highway Patrol.

24 Q. You mentioned earlier that heroin trafficking is for
25 financial gain. Right?

J. ROGERS ON CROSS

1 A. Yes, it is.

2 Q. How many drug interactions have you been involved
3 in in your career?

4 A. Numerous.

5 Q. Could you put that in numbers?

6 A. Roughly -- since 2006, I'd say well over a hundred
7 and fifty.

8 Q. What about significant cases, and by significant you
9 don't mean that many heroin possessions?

10 A. No, sir.

11 Q. So you mean higher levels?

12 A. Higher levels, yes, sir.

13 Q. You said something about the cartel being involved,
14 is that correct?

15 A. Yes, sir.

16 Q. Okay, and the cartel uses people to transport drugs.
17 Is that correct?

18 A. Yes, sir.

19 As far as -- most of your cartels are going to be es-
20 tablished across the border and set up in the U.S. There
21 is going to be a drug cartel versus the EDA which is a drug
22 trafficking organization. There are documented shows on
23 TV and that's accurate. It comes across the border to stack
24 houses, and so forth and so on.

25 Q. Okay, and people who transport drugs are called mules,

J. ROGERS ON CROSS

1 right?

2 A. Yes.

3 Q. And that is kind of slang for someone who carries the
4 drugs. Right?

5 A. Right. Drug traffickers.

6 Q. Why don't the cartel members carry drugs?

7 A. That I couldn't tell you. I can speculate, but I
8 -- it's hard to say why they do that.

9 Q. And the cartel treats it like a business. Correct?

10 A. It is a business for them. All business, absolutely.

11 Q. And people die in this business?

12 A. Yes.

13 Q. You spoke to Mr. Rodriguez?

14 A. Yes.

15 Q. And he told you he had a friend who died. Correct?

16 A. He made reference to a friend that got killed. Yes,
17 sir.

18 Q. Okay. We've watched the video, and in the video you
19 asked him if you could search his bag. Correct?

20 A. Yes, I asked him for consent to search his bag.

21 Q. And he immediately said yes, sure, go ahead. Right?

22 A. Yes.

23 Q. Okay, and within that bag -- and we've seen the pic-
24 tures -- they have packaging inside. Right?

25 A. Yes.

MR. ROGERS ON CROSS.

1 Q. And that had been torn apart and put back together?

2 A. Yes.

3 Q. And you mentioned in your testimony that they had
4 torn it apart. Is that right?

5 A. Correct, presumably they.

6 Q. And they packed the bag, being the cartel?

7 A. Not necessarily. I'm not going to say that -- going
8 to speculate that it was a cartel member who packed that
9 bag.

10 Q. In your hundred and fifty cases, have you known the
11 cartel to try and package the drugs in a more advanced
12 way?

13 A. It's hard to say without going into the stats out
14 there. I mean, your common trends in drug trafficking
15 can change, whether it's a complex mechanical part or whe-
16 ther it is utilization of suitcases, whether it is utili-
17 zation of electronics.

18 There is a lot of ways to conceal contraband or what-
19 ever. It would be easy to say, yes, as far as connection
20 to drug cartels.

21 Have we seen it both ways? We've seen it both ways.
22 We've seen it in chests. Have we seen it with random guys
23 off the street? Yes. Someone who just wants to make some
24 money and has an intricate compartment in his car. Yes.

25 Q So you can't really say only this one specific person

MR. ROGERS ON CROSS

1 uses this method of transportation.

2 Q. But in your experience it is not unusual to try to
3 conceal the drugs in some fashion?

4 A. That's true.

5 Q. And that is true of large scale drug trafficking. Cor-
6 rect?

7 A. Possibly. The majority of your bigger loads are going
8 to be concealed.

9 Q. And when you mention these hidden compartments, is it
10 something they take apart and rig it on their own?

11 A. Yes.

12 Q. Would they sometimes have it on a truck, buried . .

13 A. Yes.

14 Q. . . underneath clothes or something?

15 A. Yes.

16 Q. And they may do it professionally by using something
17 mechanical to take apart and making a storage place?

18 A. Yes.

19 Q. And in this case, I have in my hand State's Exhibit
20 Number 7. Take a look at that. Do you recognize that
21 picture?

22 A. Yes, sir, I do.

23 Q. Okay, in this case, we have the interior of a suitcase.
24 Right?

25 A. Right.

MR. ROGERS ON CROSS

1 Q. And right here is superglue, right?

2 A. Yes.

3 Q. Okay, and then it is torn apart and put back together?

4 A. They do that with that plastic there. All it is is an
5 interior. Imagine when you open a suitcase you have that
6 sack or lining. Only that is underneath that, and the
7 only thing standing between that bag and the suitcase is
8 just open. So that is where the bag of heroin was con-
9 cealed but they would have had to dis-assemble that to make
10 that arch. It's just a simple bag, but that's unnatural.

11 Q. And dis-assembling and re-assembling is something that
12 is done by cartels?

13 A. I'm not saying -- I'm not going to state it is specifi-
14 cally drug cartels that uses that.

15 Q. But it is used in efforts to accomplish their pur-
16 pose?

17 A. It is used by individuals that are involved in drug
18 trafficking.

19 Q. Drug trafficking -- okay

20 Thank you. That's all the questions I have.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Just briefly. You testified on cross examination that
25 the interior of the suitcase was unnatural?

MR. ROGERS ON REDIRECT

1 A. Yes. Prior to opening the suitcase you could see
2 marks..

3 Q. Okay, and I direct your attention to State's Exhibits
4 4 and 5. Whose clothes were these?

5 A. They were identified as belonging to Mr. Rodriguez.

6 Q. And is right here?

7 A. The boots.

8 Q. And where are the boots here?

9 A. In that stack of clothes there.

10 Q. Right next to this heroin is the Defendant's cloth-
11 ing, correct?

12 A. Correct.

13 Q. Thank you very much. That's all I have.

14 THE COURT: All right, you may step down.

15 (Witness excused from stand)

16 SOLICITOR: May he be excused?

17 THE COURT: Any objection?

18 MR. CRANGLE: No, Your Honor.

19 THE COURT: You may leave.

20 THE COURT: You may call your next witness.

21 SOLICITOR: We'd call Brad Dowis.

22 BRAD DOWIS, being duly sworn,
23 testified as follows:

24 THE COURT: State your name for the Court Reporter
25 and spell your first and last names.

B. DOWIS ON DIRECT

1 WITNESS: Brad or Bradley, B R A D L E Y, Dowis, D O
2 W I S.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. For the record, I note you are wearing a badge?

6 A. Yes, sir.

7 Q. Would you tell the jury where you work?

8 A. The South Carolina Department of Public Safety, the
9 Highway Patrol as it's more commonly referred to. We are
10 a division of the Department of Public Safety.

11 Q. And how long have you worked at the Department?

12 A. Since the year 2000,

13 Q. Okay, and did you work anywhere else as a police of-
14 ficer?

15 A. The Beaufort County Sheriff's Office.

16 Q. And you started there?

17 A. In 1997.

18 Q. And what is your role as a trooper? What role do you
19 serve?

20 A. I was most recently promoted to Sergeant with the
21 South Carolina Highway Patrol, and I work for a unit that
22 includes the ACE team.

23 Q. Okay, and in this role you serve as a Sergeant with
24 the ACE unit?

25 A. Yes, primarily I have corporals that are under me and

B. DOWIS ON DIRECT

1 we work on different teams. We have motorcycle units
2 and I've got corporals who work the motorcycle unit, and
3 I have corporals that work on the Safety Improvement team
4 all over South Carolina. Interdiction is also included.

5 Q. Okay. Now, on April 17, 2013, tell the jury how you
6 became involved in this case?

7 A. I became involved -- I was actually a corporal at
8 the time, and I was working directly on the Interdiction
9 Team, the aggressive law enforcement team.

10 I got a call from the DEA telling me that there was
11 a possibility that there was someone transporting a large
12 amount of heroin on a LaCubana bus, and that we were to
13 take over the bus when it pulled into the area.

14 We were working that night so we decided to take a
15 look at the bus. It made a normal stop in the County.

16 Q. And when you went out there, you had a partner in
17 your vehicle. Is that right?

18 A. That's correct.

19 Q. And who was your partner?

20 A. The Knine, Tigger.

21 Q. Okay. How long had you been with Tigger at that
22 time?

23 A. Tigger and I had been together probably about three
24 years. I think Tigger actually came on the Highway Patrol
25 in October of 2010.

B. DOWIS ON DIRECT

1 Q. Describe for the jury what sort of training you have
2 be given to be what they call a dog handler?

3 A. To be a handler?

4 Q. Yes, what sort of training do you go through?

5 A. The handler and the dog actually train together, so
6 we actually go to a course in Alabama to train together.

7 Q. What things do you do?

8 A. It's called the Alabama Knine Law Enforcement Officer
9 Training School.

10 Q. Okay, and would you describe to the jury what sort of
11 training this Knine unit goes through before being allowed
12 to go out on the roadway with an officer?

13 A. Well, without going into technical details, I would
14 explain that the dog is trained on base odors or basic
15 odors which are methamphetamines, marijuana, cocaine and
16 heroin, and trained to basically detect those odors.

17 He is trained to alert a certain way when he does de-
18 tect those odors.

19 Q. Okay, and the handler -- when you are training with
20 the Knine unit, tell the jury what that involves? I mean,
21 how closely did you work with Tigger before taking him on
22 the roadway?

23 A. Oh, I'd say we did an initial four week training,
24 you know, where we learn each other and bond, and I learned
25 how he works.

B. DOWIS ON DIRECT

1 I learned how he worked and how to utilize him. All
2 handlers go through this course. We learn each other, and
3 I learn to utilize him, how to look for what he's trying
4 to tell me out on the road.

5 Q. And in the three weeks prior to this incident, what
6 sort of certification did you go through?

7 A. Then, like I say, it was a four week certification,
8 and then we train twice a month, eight hours to ten hours.
9 That's twice a month.

10 Two days a month we do training to keep him up to
11 date on his odors, and then it will end up being more
12 than just two days because I'm always doing discipline
13 training with him throughout the process, and we're always
14 doing training besides the two days a month with the High-
15 way Patrol.

16 We also do a unit recertification process where we
17 actually go back to Alabama and we re-certify with the dog
18 to make sure that the dog is doing what he's supposed to
19 be doing, make sure I do what I'm supposed to be doing.

20 Q. You are an officer all the time. What do you do with
21 Tigger during those times?

22 A. We do a lot of physical training, do a lot of basic-
23 ally training above and beyond what is mandated. We have
24 odors that we use to keep up the dog and we do that con-
25 stantly throughout the month.

B. DOWIS ON DIRECT

1 Q. Describe an exercise you put Tigger through to test
2 his nose, see if he's sharp?

3 A. Well, we hide stuff. I or another trooper will hide
4 contraband in a concealed area and we do that just to see
5 -- we take them in these areas to make sure they are not
6 indicating or alerting on things he's not supposed to be
7 indicating or alerting on.

8 Then he, you know -- you obviously see that in working
9 with him.

10 Q. Okay, and when he finds something in the training pro-
11 cess, do you give him something?

12 A. Yes. Yes, we do.

13 Well, he's not -- I mean, obviously he's not working
14 for money. He's working for a reward or a toy, and that's
15 what I give him. We have different toys that he works
16 for.

17 Primarily a long cylinder pipe, whether it be plastic
18 or copper -- we have plastic and copper, metal and rubber.
19 He's working for that toy, is what he's doing. That's
20 what Tigger is working for.

21 Q. What training do you put him through to make sure
22 he is not alerting just to get the toy or some-
23 thing in return?

24 A. Well, we will run a lot of blank areas or blank build-
25 ings, and what I mean by blank is we'll actually take the

B. DOWIS ON DIRECT

1 dog and run him around the car or several cars or into a
2 building to make sure he is not giving a false positive,
3 which would mean that he's trying to buffalo me into giv-
4 ing him a toy.

5 Q. Okay, and what certification did you have as of April
6 17 of 2013?

7 A. My certification was with the Alabama Knine Law
8 Enforcement Officers Training Program.

9 Q. Okay. What sort of training do you put the Knine
10 through to keep people from being scared of the Knine when
11 you get him on the scene?

12 A. There are certain things you do in training and on a
13 scene to keep people from being scared and such. Obvi-
14 ously he's going to be under my control the whole time I'm
15 around them.

16 He will be on the lead unless I choose to take him
17 off the lead. There are certain areas I can't get to with
18 a lead, but we always work on training with him and there
19 is not -- the dogs we have at the Highway Patrol are not
20 attack dogs anyway, so we are not too concerned about it.
21 They are protector dogs.

22 Q. And what kind of dog is your Knine? What breed.

23 A. It's a Belgian Malinois.

24 Q. How old is Tigger?

25 A. Tigger is about five and a half years old now.

B. DOWIS ON DIRECT

1 Q. Now, in this particular case, how did you know the
2 driver had said to go ahead and deploy the Knine?

3 A. I was advised by Lance Corporal Rogers.

4 Q. Okay, and up to that point where was Tigger?

5 A. He was in his kennel in my patrol car.

6 Q. Okay, and where does he live? Where did he stay?

7 A. At that time he was living with me.

8 Q. Now, once you got the go-ahead, describe for the
9 jury what you did on the scene?

10 A. I took Tigger out with the leash at the patrol ve-
11 hicle. Usually I will have a starting point at the ve-
12 hicle, which is a pattern that we learn. Then front left,
13 front left of the vehicle, and I run Tigger in a counter-
14 clockwise motion around the vehicle, letting him sniff
15 the exterior of the vehicle.

16 Q. Okay, and describe his status at the luggage doors
17 at this point?

18 A. I think the bus driver had already opened the doors
19 at that point or part of the doors, and that is
20 pretty common.

21 I mean, most of these bus drivers know what we are
22 doing when we stop to talk to them. Most of them are
23 very cooperative and they don't want any contraband on
24 their buses. They don't want anybody that may hurt the
25 public.

B. DOWIS ON DIRECT

1 Most of them know what's going on and most of them
2 are very cooperative. Most of them will open up the cargo
3 bay doors.

4 Q. Okay, and when you got to the cargo bay describe what
5 you did with Tigger then?

6 A. I was -- once I get around the cargo bay doors I will
7 commonly let him off the leash so he can get up into the
8 cargo bay. They are very large doors. If you've ever
9 seen underneath on the bus on the side of the bus where
10 they store this luggage, it's a pretty substantial area
11 under there so I will unleash Tigger and let him do his
12 thing of finding contraband for us.

13 Q. Okay, so at the time he is under the cargo bay door,
14 he is not on a leash?

15 A. Correct.

16 Q. Now, what, if any, signals did Tigger give to you?

17 A. Tigger -- different dogs are trained differently.
18 Tigger is trained to -- his alert, I guess, is a passive
19 alert, but he's trained to sit when he finds the odor of
20 any contraband.

21 Q. Okay, and what did he do there?

22 A. He proceeded into the cargo bay area and when he
23 got to the rear portion of the cargo bay area he gave an
24 alert. Basically his body posture changed and his breathing
25 changed.

B. DOWIS ON DIRECT

1 He will try to pinpoint where the odor is coming from,
2 and then he will sit, and that is what happened here.

3 He basically sat on a large pile of luggage in the
4 rear cargo area of this bus.

5 Q. And at this point as the officer or his handler, what
6 did you do?

7 A. I don't do anything at that point. Once he gives an
8 indication that there is something illegal there, I will
9 call him back to me. I will call him back to me and put
10 him back on the leash and back up -- we will back up and
11 I will tell an officer at this point, which was Officer
12 Rogers, that the dog alert, meaning there was an odor of
13 narcotics coming from the bus.

14 Q. At any point in time did you bring your Knine around
15 the passengers on the bus?

16 A. No.

17 Q. Okay, and on the video we saw you bring Tigger back a
18 second time. What was going on with that?

19 A. Tell me where you're talking about?

20 Q. Well, was there a time -- let me just ask you, were
21 there any times when the bus was on the scene that you
22 brought Tigger on the bus?

23 A. A lot of times -- if he was deployed on the bus, it
24 would have been while the passengers were off the bus.

25 You know, just like in a passenger vehicle, I'm not going

B. DOWIS ON DIRECT

1 to deploy a Knine into a passenger vehicle or into a bus
2 when there are occupants still on the bus.

3 That's for two reasons. That's for Tigger's safety,
4 for my safety, and the occupants of the bus, their safety.

5 Q. Okay, and did you actually take him on the bus?

6 A. I think that I did in this case.

7 Q. Okay.

8 A. But I'm not sure.

9 Q. What, if anything, did you find as far as -- did you
10 find any contraband on the bus?

11 A. No.

12 Q. Now, in this case, did you see the suspect or are
13 you aware at this point there is a suspect when the Knine
14 is going around the bus?

15 A. No.

16 Q. Okay, and at any point in time did you take Tigger
17 around this Defendant?

18 A. No, sir. I did not take him around the Defendant.

19 Q. Thank you very much. Please answer any question the
20 Defense has for you.

21 THE COURT: Mr. Crandle.

22 CROSS EXAMINATION

23 BY MR. CRANGLE:

24 Q. Do you have a routine in checking a bus?

25 A. Yes.

B. DOWIS ON CROSS

1 Q. Do you always follow that same routine with Tigger?

2 A. That's correct.

3 Q. The bus driver wouldn't want you to go on there if
4 you were hurting the public. Correct?

5 A. Correct.

6 Q. By that I mean, carrying drugs and hurting people that
7 way?

8 A. Carrying drugs. They don't want anybody causing dis-
9 turbances. I guess what I'm saying for the most part is
10 the bus drivers we deal with seem to be law-abiding and
11 they cooperate with law enforcement.

12 Q. But people who are in the drug area are known to be
13 violent and to hurt people. Correct?

14 A. Oh, yes.

15 Q. And you have been a trooper since 2000 and an officer
16 since 1998?

17 A. That's correct.

18 Q. So seventeen years?

19 A. Yes.

20 Q. And with seventeen years of law enforcement you've
21 seen people who are involved in the drug trade to be par-
22 ticularly violent?

23 A. Correct.

24 Q. Okay, and moving cargo and doing things like that
25 are used to further that goal. Correct?

B. DOWIS ON CROSS

1 A. I don't know how to answer that question.

2 Q. Let me kind of back up and rephrase it here. Okay?

3 The drug trade is a violent trade, correct?

4 A. Yes.

5 Q. Okay, and when I say violent, I don't mean they are
6 mean. I mean they kill people. Correct?

7 A. Correct.

8 Q. And you have seen people killed as far as in the drug
9 trade?

10 A. I have not seen anybody killed personally, no. I
11 mean, obviously the drug trade is violent and people are
12 killed who are caught up in it.

13 Q. Okay.

14 A. Nobody has been killed in front of me if that is what
15 you're asking.

16 Q. Right. I understand that.

17 That's all the questions I have. Thank you.

18 THE COURT: Redirect?

19 SOLICITOR: No Redirect, Your Honor.

20 THE COURT: You may step down.

21 SOLICITOR: May he be excused?

22 THE COURT: Any objection?

23 MR. CRANGLE: No, Your Honor.

24 THE COURT: All right, you're free to leave. Thank
25 you very much.

1 (Witness excused from stand)

2 THE COURT: It's time to take lunch. Ladies and gen-
3 tlemen, we're going to go ahead and break for lunch. You
4 can go to lunch on your own but please do not discuss the
5 case among yourself. Don't conduct any independent inves-
6 tigation.

7 It's twelve fifteen, and let's be back in the jury
8 room at two o'clock. That will give you an hour and forty-
9 five minutes to get your lunch.

10 Have a good lunch, and we'll see you back at two
11 o'clock.

12 (Jury excused for the lunch period)

13 THE COURT: Anything from the State before we break
14 for lunch?

15 SOLICITOR: No, sir.

16 THE COURT: Anything from the Defense before we break
17 for lunch?

18 MR. CRANGLE: One of the interpreters had to leave,
19 but nothing concerning this trial.

20 THE COURT: All right. Do we need another interpre-
21 ter or can we go with just one?

22 INTERPRETER: Someone will be coming after lunch.

23 THE COURT: That's not a problem then. Thank you.

24 (Whereupon, the Court stood in recess as far as the
25 within matter until the case was continued)

1 information seriously enough to get a report. I didn't
2 find out about it until we were into this case that there
3 was a report and the State didn't know about it. We don't
4 have a copy of it.

5 THE COURT: We will address that if it comes up at
6 that time. I will make a decision then. Okay?

7 All right, anything further from the Defense before
8 we bring the jury in?

9 MR. CRANGLE: No, Your Honor.

10 THE COURT: All right, let's bring the jury in.

11 (Jury returned to the Courtroom)

12 THE COURT: All right, ladies and gentlemen, welcome
13 back. I hope everyone had a good lunch. I appreciate
14 everyone being on time, and I apologize for keeping you
15 back in the jury room for so long.

16 The State may call the next witness.

17 SOLICITOR: Thank you, Your Honor. The State calls
18 Charles Cloninger.

19 CHARLES CLONINGER, being duly
20 sworn, testified as follows:

21 THE COURT: Please give the Court Reporter your full
22 name and spell it, please.

23 WITNESS: Charles Cloninger. First name is spelled
24 C H A R L E S, and last name is spelled C L O N I N G E R.

25 THE COURT: All right, sir.

MR. CLONINGER ON DIRECT

1 SOLICITOR: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR:

4 Q. Tell the jury where you work?

5 A. I work in the Atlanta Field Division of the DEA.

6 Q. Okay, and how long have you worked there?

7 A. Well, I've worked in Georgia my entire career but I
8 have been assigned to the DEA since 2008.

9 Q. And what other places have you worked in law enforce-
10 ment?

11 A. I was employed by Harleyville Police Department, and I
12 was assigned to a federal task force that operates in South
13 Carolina and Georgia.

14 Q. Now, describe your role in this case. What was your
15 role?

16 A. To enforce the laws of the State of Georgia and Federal
17 laws.

18 Q. Okay, describe what sort of cases you work on?

19 A. Primarily they are all dealing with international
20 drug trafficking investigations.

21 Q. Tell the jury how you became involved in this case?

22 A. During the course of another investigation we deve-
23 loped information that drugs were being transported in
24 commercial buses. Based on information we had, we set up
25 surveillance in bus terminals in the Atlanta area.

MR. CLONINGER ON DIRECT

1 We focused our attention on this one bus in particu-
2 lar, and we knew it stopped at a passenger pick-up point
3 here in Greenville. At that point, we contacted the South
4 Carolina State Patrol to get their Interdiction Team in-
5 volved.

6 Q. And as a result of what they did on the scene, to
7 your knowledge what happened?

8 A. Basically, there was a consensual encounter in which
9 they located a suitcase containing a significant quantity
10 of heroin.

11 Myself and my partner responded to that location fol-
12 lowing the arrest of the Defendant.

13 Q. Okay, and did he agree to talk to you?

14 A. He did.

15 Q. Okay, prior to talking to him, what rights did you ad-
16 vise him of, if any?

17 A. We read -- my partner is a Spanish speaker, and he
18 spoke with him primarily in English. Out of an abundance
19 of caution he read him his rights off a DEA card which is
20 is in Spanish and English.

21 He read it in Spanish first to make sure he under-
22 stood them.

23 Q. Okay, and were any promises or threats made to him?

24 A. The only thing basically was to allow him to call
25 and see his family if he cooperated with our investigation.

MR. CLONINGER ON DIRECT

1 We would make his cooperation known to the prosecution as
2 far as pending charges.

3 Q. What did he tell you about what he was doing on that
4 bus?

5 A. . . .

6 MR. CRANGLE: Objection, Your Honor. Renewing my
7 prior objection.

8 THE COURT: I'll allow it. Overruled.

9 A. Basically he was paid Two Thousand Dollars to trans-
10 port the suitcase to Philadelphia, a drug-containing suit-
11 case which he picked up in Atlanta, Georgia.

12 Q. Did he know what substance was in the suitcase?

13 A. He said he did not. He knew it was drugs
14 but he did not know the quantity or what substance, to my
15 knowledge.

16 Q. Okay. Now, about how long did you talk with him?

17 A. Approximately fifteen minutes.

18 Q. Did he mention anything about who he was working for?

19 A. He did. He said he was working for a man whose name
20 was Jhona or Jonathon, who he was introduced to by Jhona's
21 sister.

22 Q. Okay. When -- was he paid on the front end or the
23 back end of the trip?

24 A. I honestly don't recall. He just said he was would
25 be paid Two Thousand Dollars to transport the drugs from

MR. CLONINGER ON DIRECT

1 point A to point B, but I'm not sure if he was paid before
2 or was to be paid on arrival in Philadelphia.

3 Q. All right, what, if any, threats did they make to
4 him to get on that bus?

5 A. None, that I know of.

6 Q. Thanks very much. Please answer any questions the
7 Defense may have.

8 THE COURT: Cross examination.

9 CROSS EXAMINATION

10 BY MR. CRANGLE:

11 Q. This entire investigation began in Atlanta. Correct?

12 A. Yes, sir, correct.

13 Q. And it was a part of an on-going investigation going
14 on. Right?

15 A. Correct.

16 Q. Okay, and before you found out about this bus, how
17 big an investigation are you talking about, as far as any
18 suspects?

19 A. It's an entire organization.

20 Q. What kind of organization are you looking at?

21 A. I can't give you a name or number. I mean, there
22 are . .

23 Q. How many people have you identified as suspects as
24 far as this case?

25 A. This particular case?

MR. CLONINGER ON CROSS

1 Q. Uh hm.

2 A. I can't give you a number on that either, honestly.
3 There are a number of cells being supplied by the same
4 Mexican base in the drug trafficking organization.

5 Q. Okay, but in that Atlanta cell, how many have been
6 identified in the Atlanta cell?

7 A. I can't give you a number for that either.

8 Q. You don't know or ...

9 A. It grows by the day.

10 Q. All right. Do you have a ballpark idea?

11 A. It's more than ten and probably more than a hundred.

12 Q. All right, and who is the . .

13 A. It is a Mexico-based drug trafficking organization
14 that is currently controlling. It goes to the Atlanta area
15 and is distributed from there.

16 Q. What is that organization's name?

17 A. It doesn't have a name as far as I know.

18 Q. Okay, and does Mexico have cell phone pickup to the
19 United States?

20 A. That's correct.

21 Q. That's a part of this case?

22 A. This case is a part of every other case I've investi-
23 gated since 2010. It's basically the same people in Mexico
24 in control.

25 You take and arrest one cell, and they have replacement

MR. CLONINGER ON CROSS

1 workers. It is a constant -- like a shift change.

2 Q. Okay, and you said they send replacement people. Are
3 they sent from Mexico?

4 A. Sometimes.

5 Q. Okay.

6 A. They come from California, from various areas, var-
7 ious parts of the world.

8 Q. But the cartel directs them on where to go, is that
9 right?

10 A. Well, they are recruited to work but I don't know at
11 what point they are told to go where.

12 Q. Prior to this bus being stopped, had you identified
13 my client at all?

14 A. We saw him get on the bus. He was possibly identi-
15 fied as far as those drugs.

16 Q. Okay. Prior to seeing him get on the bus, had you
17 noticed him?

18 A. No.

19 Q. Has he ever been a part of the cartel before?

20 A. No.

21 Q. Have any other witnesses you have talked to -- did
22 any of them ever mention my client?

23 A. Not by the -- I didn't know his name, sir.

24 Q. Did they ever mention anyone that looked like my
25 client?

180

MR. CLONINGER ON CROSS

1 A. The information that led us to the bus stop was what
2 we had.

3 Q. How was he described?

4 A. As a light-skinned Hispanic male who would be trans-
5 porting drugs on a bus.

6 Q. They described a light-skinned Hispanic male?

7 A. Yes.

8 Q. And that was it?

9 A. That was the information I had.

10 Q. Okay. Not a light-skinned black male but a light-
11 skinned Hispanic male?

12 A. That's correct.

13 Q. Okay.

14 A. The bus company is La Cubana, and we have had multi-
15 ple dealings with that bus, with other Hispanic bus compan-
16 ies. I've never seen a black male passenger on one of
17 those buses.

18 Q. Okay.

19 A. That was the information we provided to DEA in South
20 Carolina which they in turn relayed to the South Carolina
21 State Patrol. I didn't have direct contact with Trooper
22 Rogers.

23 Q. So my client never showed up in any sort of report or
24 that Emmanuel Rodriguez was involved in the cartel in any
25 way?

MR. CLONINGER ON CROSS

1 A. No, sir.

2 Q. Prior to this bus being stopped?

3 A. That's correct.

4 Q. Did you do a report as far as your conversation with
5 my client?

6 A. I did not. My partner did.

7 Q. Are you aware of the contents of the report?

8 A. Yes.

9 Q. Would you recognize the report if you saw it?

10 A. I would.

11 Q. Is that the report, these two pages?

12 A. It is.

13 Q. You didn't write the report but do you recognize all
14 the factual information in there?

15 A. I do. I've seen this report, yes.

16 Q. Okay.

17 MR. CRANGLE: Your Honor, at this time I would move
18 to publish this information.

19 THE COURT: Is this a part of the evidence?

20 SOLICITOR: No, sir, I haven't entered it.

21 THE COURT: All right.

22 MR. CRANGLE: I don't know I want to introduce it. I
23 just want to publish it.

24 THE COURT: It would have to be introduced in evi-
25 dence.

MR. CLONINGER ON CROSS

1 MR. CANGLE: Then I would move to admit it.

2 THE COURT: All right, this would be Defendant's Ex-
3 hibit . .

4 MR. CRANGLE: Number 1.

5 THE COURT: Okay.

6 MR. CRANGLE: Your Honor, I would at this time move
7 Defense Exhibit Number 1 in evidence.

8 THE COURT: Any objection?

9 SOLICITOR: None, Your Honor.

10 THE COURT: Defendant's Exhibit 1 in evidence with-
11 out objection.

12 (Investigation report by DEA agent admitted in evi-
13 dence without objection as Defense Exhibit 1)

14 MR. CRANGLE: May I publish this, Your Honor?

15 (Conference at the bench between counsel and the Court)

16 MR. CRANGLE: I apologize, Your Honor.

17 BY MR. CRANGLE:

18 Q. Do you recognize this?

19 A. Yes, this is the report generated by my partner,
20 Anthony McCrory.

21 Q. And you recognize all the information inside it?

22 A. Yes, sir.

23 Q. And this goes into what happened with the suitcase
24 and what you testified to previously?

25 A. Yes.

MR. CLONINGER ON CROSS

1 Q. And he talked about meeting Jhona through his sis-
2 ter, is that correct?

3 A. That's correct.

4 Q. And who are these people here?

5 A. People who were identified during the investigation.

6 Q. People that files were opened on?

7 A. Yes, they are people we are currently investigating.

8 Q. So when he said, for example, Jhona and Victoria,
9 that is a part of their file. Right?

10 A. That is who we suspected the Defendant referred to.
11 He only knew him by Jhona or Jonathon, so I think that is
12 who he is, who he is referring to, although we can't defin-
13 itively say it is one and the same, but we added it to
14 the report because we suspect it's the same person.

15 Q. And you all had already created a report or an index
16 as far as the Jhona report?

17 A. We are currently investigating Jonathon Torres, and
18 Victoria Torres would be Jonathon's sister.

19 Q. Okay.

20 A. Who is currently in federal custody in the South-
21 ern District of Alabama. Her name is really Diana Torres.

22 Q. What is she in custody for?

23 A. Drug trafficking.

24 Q. Trafficking in what?

25 A. I believe her charge in Alabama is on methamphetamines.

MR. CLONINGER ON CROSS

1 Q. And where is Jhona?

2 A. He is at large.

3 Q. Okay.

4 A. He is not currently indicted anywhere.

5 Q. Okay. Prior to this case with Mr. Gonzales, did you
6 have any file on Jonathon Torres?

7 A. No. A part of this report is for future reference.

8 Q. Future reference?

9 A. It goes into a data base for retrieval at a later time
10 if that name comes up, and we index it to direct you to the
11 agent who worked it so you can work with him.

12 Q. So it cross-references things?

13 A. It does.

14 Q. Okay. Now, you have created a file on Jonathon Torres?

15 A. There are probably a hundred fifty Jonathon Torres
16 in the DEA database. We can't say that all are one and the
17 same. It's not that uncommon of a name although there are
18 variations of the spelling.

19 So it's a reference but it does not indicate it's the
20 same person that Mr. Rodriguez was referring to.

21 Q. And Jonathon's sister you referred to . .

22 A. Her real name is Diana Torres. I believe it's the
23 same person but I have not had an opportunity to speak
24 with your client to verify that since his arrest, so I can't
25 say definitively it is one and the same.

MR. CLONINGER ON CROSS

1 Q. And are they a part of this same Mexican cartel?

2 A. Yes. They are workers, U. S. base workers for this
3 same organization.

4 Q. Okay. Jonathon and Jhona are the same person?

5 A. That's correct.

6 Q. All right. Thank you. That's all the questions I
7 have.

8 THE COURT: Redirect?

9 SOLICITOR: No, Your Honor.

10 THE COURT: All right, you may step down.

11 (Witness excused from stand)

12 THE COURT: I understand we have a different interpreter
13 since one had to leave before lunch, so let's go ahead
14 and place this interpreter under oath.

15 (Interpreter sworn by the Clerk)

16 THE COURT: Give the Clerk your name.

17 (Answer was not audible)

18 THE COURT: All right, the State may call the next
19 witness.

20 SOLICITOR: The State calls Ms. Adkins to the stand.

21 ELIZABETH ADKINS, being duly
22 sworn, testified as follows:

23 THE COURT: Would you please give the Court Reporter
24 your full name, spelling your first and last names.

25 WITNESS: Elizabeth Adkins, E L I Z A B E T H, Adkins
is A D K I N S.

MS. ADKINS ON DIRECT

1 DIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Ms. Adkins, would you tell the jury where you work?

4 A. I work for the Drug Enforcement Administration at SLED.

5 Q. And what is your official job title?

6 A. I'm a forensic chemist.

7 Q. Okay, and what does that work entail?

8 A. I analyze exhibits that are brought to me and report
9 on my findings. I testify in Court when needed.

10 Q. Is this your first time appearing in Court to tes-
11 tify?

12 A. No.

13 Q. Okay, and could you give us a ballpark of how many
14 times you've testified in federal and state courts?

15 A. I have testified over a hundred times in federal and
16 state courts

17 Q. Okay, and describe your education and experience for
18 the jury?

19 A. I have a bachelor of science degree in forensic chem-
20 istry from Ohio University.

21 Q. And what sort of training did you go through in order
22 to be able to test drugs like heroin?

23 A. I attended a basic chemistry school at Quantico,
24 Virginia, for five weeks, and I had five weeks of forensic
25 in-house training.

MS. ADKINS ON DIRECT

1 Q. And in your experience how many times have you tested
2 for heroin?

3 A. Probably over two thousand times.

4 Q. Okay. Is this your first time in South Carolina to
5 testify in your capacity as a chemist?

6 A. No.

7 Q. Okay. Can you describe how many previous times?

8 A. Well, it's been ten years so . . .

9 SOLICITOR: Your Honor, I would ask that the Court
10 recognize Ms. Adkins as an expert in chemistry and test-
11 ing of drugs.

12 THE COURT: Do you have any questions?

13 MR. CRANGLE: No, Your Honor.

14 THE COURT: All right, I find this witness to be an
15 expert in forensic chemistry.

16 Ladies and gentlemen of the jury, I will give you
17 some instructions on expert testimony when I charge you on
18 the law of the case, but all you need to know for now is
19 that typically a witness can only testify as to his or
20 her personal observations or knowledge, what they saw,
21 what they tasted, what they smelled, things of that na-
22 ture.

23 There is an exception for witnesses who are qualified
24 as an expert, which means that in addition to testifying
25 from their own personal knowledge they can render an opinion

MS. ADKINS ON DIRECT

1 in the field in which they are qualified as an expert.
2 She can render an opinion in the field of forensic chem-
3 istry.

4 All right, Mr. Holloway.

5 BY SOLICITOR:

6 Q. Tell the jury how you became involved in this case?

7 A. I was given an exhibit to analyze for my supervisor.

8 Q. And who is that?

9 A. It was Jill Renken.

10 Q. Who is it now?

11 A. Allen Kennedy.

12 Q. Now, can you describe how this Exhibit came to your
13 desk? How does it work that drugs of this nature are sent
14 to you?

15 A. Well, they are either delivered by an agent or they
16 are Fed X'd to the laboratory by the P.D. evidence techni-
17 cian.

18 Q. And is it common to send drugs by Fed X?

19 A. Yes.

20 Q. Now, I hand you what has been previously marked as
21 State's Exhibit 28, and ask you to identify this for the
22 jury? Who signed this?

23 A. Chris Brown.

24 Q. And would he be the one who sent the package in this
25 case?

MS. ADKINS ON DIRECT

1 A. Yes.

2 Q. Pointing to this signature right here. Who is that?

3 A. Chris Polasco.

4 Q. Who is he?

5 A. The evidence technician that received the package.

6 Q. And what does he do once he receives it?

7 A. He records it in the laboratory notebook after he re-
8 ceived it from Chris Brown, and after he enters it there
9 it comes to me.

10 Q. When you received it, was there any evidence it had
11 been tainted or broken into or torn open, or anything like
12 that?

13 A. No.

14 Q. Once you received it, what did you then do with the
15 package?

16 A. After I received it and got the information from the
17 package, the information on there, I take the gross weight
18 of it.

19 SOLICITOR: Your Honor, I would move to admit State's
20 Exhibit 28 in evidence.

21 THE COURT: Any objection?

22 MR. CRANGLE: No, Your Honor.

23 THE COURT: State's Exhibit 28 admitted into evidence
24 without objection.

25 (Report of collected property admitted in evidence
without objection as State's Exhibit 28)

MS. ADKINS ON DIRECT

1 BY SOLICITOR:

2 Q. Now, then you began to analyze this substance?

3 A. Yes.

4 Q. Take us through that process.

5 A. Well, first I got a gross weight of the drugs, so I
6 opened it and got the weight of just the drug itself.

7 Q. What was the gross weight of the package?

8 A. The gross weight was two thousand three hundred and
9 ninety-five grams.

10 Q. Okay, what was the net weight?

11 A. The net weight was two thousand seventeen grams.

12 Q. I hand you what has been premarked as State's Exhibit

13 29. Can you identify this for the jury?

14 A. This is the report I made.

15 Q. And the gross weight is what you've just testified
16 to?

17 A. Yes.

18 Q. And that is contained on that document?

19 A. Yes, it is.

20 Q. Okay, this figure right here, what does that mean?
21 What is it talking about? Eighty-five point three.

22 A. That means that the drug that was heroin was eighty-
23 five point three percent pure.

24 Q. In layman's terms can you tell the jury how you are
25 positive that this isn't some other drug?

MS. ADKINS ON DIRECT

1 A. Well, I do three instrumental analysis tests. One
2 is a gas chromatograph, mass spectrometer and one is to
3 compare the sample to a known standard so that I can com-
4 pare the known heroin standard to this drug.

5 Then the gas chromatograph is for the purity.

6 Q. I show you what has been marked as State's Exhibit
7 30. Would you look at what the contents are -- look in
8 there and confirm what this is?

9 A. This is the powder that I tested in this case.

10 Q. And what indication is on the package you see that
11 helps you know that for sure?

12 A. I see my handwriting and also the lab case number
13 matches and the laboratory number matches.

14 Q. Okay.

15 SOLICITOR: Your Honor, I would ask to move State's
16 Exhibit 29 into evidence.

17 THE COURT: Any objection?

18 MR. CRANGLE: No objection.

19 THE COURT: State's Exhibit 29 in evidence then with-
20 out objection.

21 (Lab report admitted in evidence without objection
22 as State's Exhibit 29)

23 BY SOLICITOR:

24 Q. And once you tested this, what did you do with it?

25 A. Once I tested it, I sealed it back up and gave it

MS. ADKINS ON DIRECT

1 back to the lab technician to return to the vault.

2 Q. Who has access to that vault?

3 A. The evidence technician, supervisors, and the labora-
4 tory is right there.

5 Q. Who are those people? I mean, what are their names,
6 just for the record.

7 A. Robert Brown, evidence technician; Chris Polasco, evi-
8 dence technician; Claudio Hernandez, evidence technician;
9 then our supervisors and the lab director is Robert
10 Campbell.

11 Q. Thank you very much. Please answer any questions the
12 Defense Counsel may have for you.

13 MR. CRANGLE: May I have a moment?

14 Your Honor, I have no questions of the witness.

15 THE COURT: All right, you may step down. Thank
16 you.

17 (Witness excused from stand)

18 THE COURT: Let's go ahead and take our afternoon break.
19 Please go back into the jury room for ten or fifteen min-
20 utes to give you an opportunity to stretch your legs and
21 use the restroom.

22 Do not discuss the case even among yourselves at this
23 point in time.

24 We'll take ten or fifteen minutes.

25 (Jury excused from Courtroom)

1 THE COURT: Anything to take up from the State be-
2 fore we take our break?

3 SOLICITOR: No, sir.

4 THE COURT: Anything to take up from the Defense?

5 MR. CRANGLE: Yes, sir. I have something I'd like
6 to bring back up.

7 THE COURT: We'll take it up when we come back.

8 (Court took recess and the matter then resumed)

9 THE COURT: All right.

10 (Conference at the bench between counsel and the Court
11 off the record)

12 THE COURT: So Diane question mark, arrested question
13 mark.

14 MR. CRANGLE: Yes, sir. those are my personal notes
15 that I marked there.

16 THE COURT: Any objection, Mr. Holloway, to redact-
17 ing that off of there?

18 SOLICITOR: No, sir.

19 THE COURT: All right, we'll just redact it or white
20 it out.

21 MR. CRANGLE: Sorry about that.

22 THE COURT: No problem at all. You all take a look
23 at it and see if it is okay.

24 SOLICITOR: That's good.

25 THE COURT: Okay.

1 All right, anything from the State before we bring
2 the jury in?

3 SOLICITOR: No, sir.

4 THE COURT: From the Defense?

5 MR. CRANGLE: No, Your Honor.

6 THE COURT: All right, let's bring the jury in.

7 (Jury returned to the Courtroom)

8 THE COURT: Ladies and gentlemen, welcome back, and
9 we will continue the trial of this case.

10 Mr. Holloway, you may call your next witness.

11 SOLICITOR: The State would call Chris Brown to the stand.

12 CHRIS BROWN, being duly sworn,
13 testified as follows:

14 THE COURT: Please give the Court Reporter your name,
15 spelling your name.

16 WITNESS: Christopher, C H R I S T O P H E R, Ross
17 is R O S S, and Brown, B R O W N.

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Mr. Brown, can you tell the jury where you work?

21 A. I'm employed as an Anderson County Sheriff's Detec-
22 tive and assigned to the DEA's Greenville Task Force on a
23 full time basis as task force officer.

24 Q. Okay, and what sort of cases do you work on?

25 A. We work mainly conspiracies, organizational level drug
195

C. BROWN ON DIRECT

1 cases for federal prosecution.

2 Q. And your role on the task force, describe that for
3 the jury?

4 A. I'm a task force officer, and I serve as a case agent
5 on certain investigations and assist in investigations in
6 others.

7 Part of my job there is again to investigate drug
8 trafficking organizations operating in the Upstate of South
9 Carolina.

10 Q. Tell the jury how you became involved in this case?

11 A. We were called by the South Carolina Highway Patrol
12 to assist them in a bus interdiction at a bus stop they
13 have where there was located a large amount of what turned
14 out to be heroin.

15 Q. Okay, and when you arrived, what did you do on the
16 scene?

17 A. I took possession of the drugs or the suspected drugs
18 in order to send them to our lab, the Southeast Regional
19 Lab in Miami, Florida.

20 Q. I hand you what has been premarked as State's Exhib-
21 its -- this is actually already admitted into evidence as
22 State's Exhibit 28.

23 A. Yes, sir.

24 Q. Can you identify this for the jury?

25 A. Yes. This is what we call a DEA form seven, and it
196

C. BROWN ON DIRECT

1 serves as an evidence sheet for drugs essentially.

2 Q. Okay, and who filled that out, the top portion?

3 A. I did.

4 Q. Okay, and what's the purpose behind that form?

5 A. This essentially creates evidence as DEA drug evi-
6 dence, and once we fill this sheet out and a copy, essen-
7 tially it's an evidence ticket to our lab in Miami.

8 Q. Okay, I hand you up what's previously been marked as
9 State's Exhibit 30. Can you -- without showing the jury,
10 can you identify this for the jury?

11 A. Yes, this is a box that is addressed to me from Fed-
12 eral Express originating from the Southeast Region speci-
13 fically the lab director, Mr. Campbell.

14 Q. And when was this package Fed-X'd?

15 A. The shipping date was on the second of September of
16 2014.

17 Q. Now, if you could pull out the contents and place the
18 bag -- if you could identify the initials on the baggy?

19 A. There are a couple of packages here, two packages.
20 One package is a DEA self-sealing evidence envelope, SSEE.
21 It originated from the Miami lab as evidenced by the label
22 on the front.

23 The second bag is a bag that originated with the
24 South Carolina Highway Patrol, not the DEA, and the con-
25 tents of the bag contain another bag which was -- it looks
197

C. BROWN ON DIRECT

1 it was sealed by me at some point.

2 Q. Okay, and this Exhibit and contents of the Exhibit,
3 are they in the same condition as they were when you sent
4 them to Miami originally?

5 A. They are and they're not. There are two separate
6 bags now. One bag appears to contain the original pack-
7 aging that I got the original -- then it was flat and
8 solid -- in a flat, solid condition, and it appears the
9 lab manipulated it for testing.

10 Q. Okay.

11 SOLICITOR: Your Honor, I would ask to admit State's
12 Exhibit 30 into evidence.

13 THE COURT: Any objection?

14 MR. CRANGLE: Yes, Your Honor. I would renew my
15 prior objection.

16 THE COURT: All right. State's Exhibit 30 admitted
17 into evidence over objection.

18 (Heroin admitted in evidence over objection as State's
19 Exhibit 30)

20 BY SOLICITOR

21 Q. I would publish this Exhibit to the jury. I was ask-
22 ing you about this just now.

23 A. Yes, sir.

24 Q. Let's put it back in the box.

25 A. Yes, sir.

C. BROWN ON DIRECT

1 Q. Thank you very much, Mr. Brown. If you would answer
2 any questions Defense Counsel has for you.

3 A. Yes, sir.

4 CROSS EXAMINATION

5 BY MR. CRANGLE:

6 Q. You are a member of the DEA Task Force, is that cor-
7 rect?

8 A. That's correct.

9 Q. And what do you do?

10 A. Investigate drug crimes.

11 Q. With regards to this specific case, did you talk to
12 the Defendant?

13 A. I did not.

14 Q. Do you have any idea where the drugs came from?

15 A. I do not.

16 Q. All you know is that you sent the drugs along the way?

17 A. Yes, to our lab.

18 Q. Were you under control of the drugs the entire time?

19 A. Yes, sir, until they were shipped and I released cus-
20 tody.

21 Q. And that was the Fed X shipment and tracking are
22 what we have?

23 A. Yes, sir.

24 Q. And then it goes to Miami and back . .

25 A. It goes to our lab and then it comes back, yes.

C. BROWN ON DIRECT

1 I checked it into our drug evidence, our temporary drug
2 evidence log through our drug evidence custodian at DEA,
3 and it was checked out I assume by the Highway Patrol.

4 Q. Okay. Thank you. That's all the questions I have.

5 THE COURT: Redirect?

6 SOLICITOR: None, Your Honor.

7 THE COURT: All right, you may step down.

8 (Witness excused from stand)

9 THE COURT: The State may call its next witness.

10 SOLICITOR: Your Honor, the State calls John
11 Garrett to the stand.

12 JOHN GARRETT, being duly
13 sworn, testified as follows:

14 THE COURT: State your name for the Court Reporter and
15 and spell your first and last names.

16 WITNESS: Jonathan, J O N A T H A N, Garrett, G A
17 R R E T T.

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Tell the jury where you work?

21 A. I work with the Greenville County Sheriff's Office.

22 Q. And what is your role there?

23 A. I'm an investigator and assigned to the United States
24 Drug Enforcement Agency as a task force officer for DEA.

25 Q. Okay, and describe your duties with the task force,

J. GARRETT ON DIRECT

1 what sort of cases you work on?

2 A. Narcotics, all narcotics, and my case load is narcot-
3 ics investigation -- I am in Greenville but it is under a
4 federal statute and I still have authority with the Sher-
5 iff's Office to investigate cases of State violation of
6 narcotics laws.

7 Q. As a member of the task force, have you conducted
8 controlled buys?

9 A. We have.

10 Q. Describe for the jury what a controlled buy is?

11 A. During narcotics investigations, we try to make a
12 purchase and target in the investigation our bad guy.

13 In a controlled buy it is an undercover officer or
14 a confidential informant. Either way, whichever it is,
15 an undercover or confidential informant will wear a wire.

16 The undercover officer or confidential informant will
17 record the buy and purchase narcotics to further the inves-
18 tigation.

19 Q. When you are using a confidential informant or you
20 are doing it yourself, how involved are you in determining
21 the price you are going to pay for a drug?

22 A. Everyone is suspicious or most of the people we en-
23 counter are suspicious of someone trying to make a pur-
24 chase. So we will negotiate prices and use certain terms
25 that are used on the street, and we portray ourselves as
201

J. GARRETT ON DIRECT

1 another drug dealer to purchase narcotics.

2 Q. Okay. How many times have you done a controlled buy
3 with heroin?

4 A. At least eighteen.

5 Q. Okay, and when was the last case you worked on with
6 regard to heroin?

7 A. I am involved in two right now.

8 Q. Okay.

9 A. The most recent was a purchase where we negotiated --
10 approximately three weeks ago in Greenville, South Carolina,
11 and we were negotiating between twenty-four hundred and
12 twenty-eight hundred dollars an ounce. That was for a
13 pound of heroin. Twelve hundred an ounce is what we in-
14 tend to purchase it for.

15 Q. And have you seen the video and the heroin in this
16 case?

17 A. I have.

18 Q. Okay, and explain how you saw the heroin in this case?

19 A. I was assigned to the Drug Enforcement Administra-
20 tion, and it was in the chain of custody. I with Task
21 Force Officer Chris Brown and observed it in our office
22 this week.

23 Q. Okay, and the heroin in this case, is it powder heroin
24 or tar heroin?

25 A. Powder heroin.

J. GARRETT ON DIRECT

1 Q. Okay, and can you tell us what's the difference?

2 A. Well, powder heroin is like a talcum powder or like
3 flour. The tar is hard and black, and it has to be melted
4 to be used, where the powder only has to be dissolved to
5 be used.

6 Q. And as part of your duties, do you try to stay abreast
7 of the market rate for heroin and other drugs?

8 A. We do.

9 Q. And that is for Greenville?

10 A. Greenville and the Southeast Coast. With the Drug
11 Enforcement Administration, a lot of our investigations
12 will originate or end in Atlanta or Charlotte, or as far
13 as Texas.

14 Q. How many times have you testified as an expert in
15 Court?

16 A. As an expert, seven times.

17 Q. Okay.

18 SOLICITOR: Your Honor, I would ask to have Agent
19 Garrett qualified as an expert in the field of drug trans-
20 actions.

21 THE COURT: Any challenge or questions?

22 MR. CRANGLE: As an expert in drug transactions, no,
23 Your Honor. No challenge or questions.

24 THE COURT: All right. He would be an expert in the
25 field of drug transactions.

J. GARRETT ON DIRECT

1 BY SOLICITOR:

2 Q. Let me hand you up what has been admitted in evidence
3 as State's Exhibit 30. Can you identify the contents of
4 the package?

5 A. I can.

6 Q. Okay.

7 A. This is the powder heroin that was involved in this
8 investigation.

9 Q. And in your expertise, did you determine the weight
10 and purity of this heroin?

11 A. Yes.

12 Q. And call you tell us what the wholesale value and
13 the street value are?

14 A. Based on my experience and training, with the trans-
15 actions we've conducted, Twelve Hundred Dollars for a half
16 ounce and Twenty-four Hundred for an ounce.

17 As it is there, eighty-five percent pure that I read
18 in the documentation, at least Two Hundred Five Thousand
19 Dollars.

20 Q. That's the wholesale value?

21 A. That's the wholesale value.

22 Q. Okay. Now, the purity level was what?

23 A. Eighty-five point three percent.

24 Q. And can anybody use that pure of heroin?

25 A. No, they cannot.

J. GARRETT ON DIRECT

1 It's lethal.

2 Q. Okay.

3 A. That pure a heroin is lethal..

4 Q. And what would a dealer have to do in order to make
5 it to where a customer can use it?

6 A. They dilute it, or as they call it in the business,
7 cutting it or stepping on it.

8 As I understand it, it is cutting it with water-
9 soluble substances. It's cut two, three or four times,
10 so the concentration of purity would go down to between
11 five and twenty-five percent, so it can be used by a user.

12 Q. And what does cutting it do to the value?

13 A. Well, when you increase the volume you would have
14 more heroin to sell. It brings the purity down so it can
15 be sold, and it increases the volume.

16 Q. Based on that, in your expert opinion, what is the
17 street value of this heroin in this case?

18 A. Street value after it has been cut is three times, I
19 would say, to Half a Million or Six Hundred Thousand Dol-
20 lars.

21 Q. Okay. In your experience, have you ever seen that
22 much heroin?

23 A. I've been a law enforcement officer twenty-one years
24 and worked with the Border Patrol for four years, and I've
25 seen a lot of drugs. This is the largest powder heroin I

J. GARRETT ON DIRECT

1 have seen in my career.

2 Q. What would be the amount or dosage for the average
3 customer to use?

4 A. I have worked undercover also, and on forty-nine oc-
5 casions approximately ten of those were street level quan-
6 tities of heroin, and the quantities I purchased then were
7 Twenty-five Dollars for a bindle which is less than a gram.

8 Q. Okay, thank you very much. Please answer any ques-
9 tions opposing counsel may have.

10 CROSS EXAMINATION

11 BY MR. CRANGLE:

12 Q. Agent Garrett, how long have you been . .

13 A. Twenty-one years.

14 Q. Okay, and wholesale what this drug is -- this is Two
15 Hundred Thousand Dollars worth of heroin I hold in my
16 hands, wholesale?

17 A. Correct.

18 Q. Half a Million at retail?

19 A. Yes, sir.

20 Q. What is there to prevent me from walking away from
21 the drug cartel and taking Half a Million Dollars worth
22 of heroin in my pocket?

23 A. Threats, coercion -- they want their money.

24 Q. By threats, what do you mean?

25 A. Depending on what the conditions or circumstances .

J. GARRETT ON 'CROSS'

1 were with the person who is delivering it or in possession
2 of it.

3 Q. In your experience, if someone were carrying this . .

4 SOLICITOR: Your Honor, I'm going to object to this.
5 It is irrelevant and calls for speculation.

6 THE COURT: He's qualified as an expert in the field
7 of drug transactions. He can give the testimony, so go
8 ahead.

9 BY MR. CRANGLE:

10 Q. All right, let me back up. If I was a mule and I was
11 supposed to deliver that, and I ran with that, what would
12 the cartel do to me?

13 A. There would be repercussions. They would do you bod-
14 ily harm definitely.

15 Q. By bodily harm, you mean they would injure me?

16 A. Correct.

17 Q. Or more likely they would just kill me; or they
18 would try to?

19 A. Correct.

20 Q. And you have been a DEA Agent over the years and a
21 law enforcement officer, and you know that cartels kill
22 people. Right?

23 A. That's correct.

24 Q. Okay, and they get cooperation by intimidation and
25 threats and things of that nature. Right?

J. GARRETT ON CROSS

1 A. Yes, and they recruit members to be mules that are
2 more involved with them like blood relatives into the or-
3 ganization.

4 Q. So your family can be recruited?

5 A. That's correct.

6 Q. And they can use force against a mule or make a mule
7 do what they want them to do. Right?

8 A. Correct.

9 Q. Okay, and when a mule doesn't do what they are told
10 to do, what happens?

11 A. On occasion I have seen here in Greenville where one
12 -- one in Greenville and one in Georgia had a family that
13 was kidnapped.

14 Q. Kidnapped?

15 A. Yes.

16 Q. Do you know if the family was killed?

17 A. I do not.

18 Q. Is it possible a family member was killed?

19 A. It's possible. They were caught by law enforcement
20 but I do not know if they were killed or not.

21 Q. I don't have anything further. I'm sorry. May I
22 have a moment?

23 THE COURT: Yes, sir.

24 (Brief pause in proceeding)

25 BY MR. CRANGLE:

J. GARRETT ON CROSS

1 Q. When you were talking about cutting the heroin, you
2 mean they dilute it?

3 A. Right.

4 Q. So they add stuff to it to make it more?

5 A. That's right.

6 Q. So if I added whatever the weight is, whatever you
7 said it was, it would be a lot safer?

8 A. Right.

9 Q. And it doubles the quantity?

10 A. Right.

11 Q. And the price would double with regard to the purity,
12 correct?

13 A. Yeah, that's correct.

14 Q. And you can cut it down as much as you want, but that
15 also increases the price?

16 A. Yes, per unit dosage.

17 Q. What I'm getting at is if I cut it ten times, does
18 that necessarily mean the price is ten times more?

19 A. ...

20 Q. You see what I'm saying?

21 A. Well, it is sold by an ounce, and an ounce is twenty-
22 eight hundred, but it is not -- twenty-eight grams an
23 ounce is not two hundred eighty per gram on the street --
24 it is that the lower the concentration the higher the
25 price.

J. GARRETT ON CROSS

1 I mean, the lower the price -- the lower the price
2 because it is (inaudible).

3 Q. But the retail that the consumer would pay would be
4 conservatively Half a Million Dollars up to Seventy-five
5 Hundred?

6 A. Correct.

7 Q. In your experience, you have seen two cases of people
8 personally harmed for not doing what they were told to
9 do?

10 A. Yes. These are real cases where they were transport-
11 ing drugs.

12 Q. And in your expertise as a DEA Agent, you know mules
13 are forced to do these things??

14 A. Some are.

15 Q. Under threats of physical harm, including death?

16 A. Some are.

17 Q. Have you seen that personally?

18 A. Yes, I have...

19 Q. Thank you. That's all the questions I have.

20 THE COURT: Redirect?

21 SOLICITOR: Just briefly.

22 REDIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Is the most common way to send a courier or a mule
25 to transport drugs?

J. GARRETT ON REDIRECT

1 A. Right.

2 Q. And for payment?

3 A. Correct.

4 Q. Thank you.

5 THE COURT: All right, you may step down.

6 (Witness excused from stand)

7 THE COURT: The State may call its next witness.

8 SOLICITOR: Your Honor, the State rests.

9 THE COURT: All right. Ladies and gentlemen, the
10 State has rested their case, so we are now to the point
11 where I have to take up some legal matters or matters of
12 law with the attorneys.

13 I will excuse you back to the jury room. We do it
14 outside the presence of the jury not to hide anything
15 from you but, as I told you at the start of the trial,
16 you and you alone decide the facts of the case, and I de-
17 cide the law.

18 When I discuss the law to be applied with the attor-
19 neys, the attorneys, the Judge sometimes have to discuss
20 factual issues. Anything that we say is not in the evi-
21 dence of this case regarding the factual issues, so we do
22 not want you to hear what we may say, that I might say as
23 the Judge or the attorneys might say, in deciding the law
24 to apply or to influence your decision as to what the
25 facts are.

1 THE COURT: All right.

2 MR. CRANGLE: As far as how long it is going to take,
3 probably about thirty minutes, I would say, but I don't
4 know how long Cross Examination is going to take.

5 THE COURT: Anything from the State before we bring
6 the jury in?

7 SOLICITOR: No, sir.

8 THE COURT: Anything from the Defense?

9 MR. CRANGLE: No, sir.

10 THE COURT: All right, let's bring the jury in.

11 (Jury returned to Courtroom)

12 THE COURT: Ladies and gentlemen, welcome back. The
13 State has rested its case and it is now time for the Defen-
14 dant to present a case, if he chooses to do so.

15 All right, the Defense may call its first witness.

16 MR. CRANGLE: Your Honor, the Defense calls Emmanuel
17 Rodriquez.

18 EMMANUAL MARQUEZ RODRIQUEZ,
19 being duly sworn, testified as follows:

20 (Interpreter also sworn)

21 THE COURT: Please state your full name.

22 WITNESS: Emmanuel Marquez Rodriquez.

23 DIRECT EXAMINATION

24 BY MR. CRANGLE:

25 Q. Good afternoon, Mr. Rodriquez.

DEFENDANT ON DIRECT

1 Tell the jury where you're from.

2 A. (Inaudible) Mexico.

3 Q. And how old are you?

4 A. Thirty-three.

5 Q. How old were you when you first came to the United
6 States?

7 A. Seventeen.

8 Q. How did you come?

9 A. My parents brought me.

10 Q. Okay, Mr. Rodriguez, if you would speak into the
11 microphone.

12 A. Yes.

13 Q. Where did you live?

14 A. Atlanta, Georgia.

15 Q. What do you do?

16 A. I have been working in the entertainment industry
17 for over ten years with gay and transvestite shows, and I
18 also -- I am also a dance instructor.

19 Q. Mr. Rodriguez, were you deported in 2012?

20 A. Yes.

21 Q. Okay, where did you go?

22 A. (Inaudible) Mexico.

23 Q. How did you go there?

24 A. I rafted the river.

25 Q. Did you have family there?

DEFENDANT ON DIRECT

1 A. Yes, my grandfather, my uncle and -- uncles and aunts
2 and my cousins.

3 Q. Okay. Mr. Rodriguez, are you gay or transgender?

4 A. Yes, trans-sexual.

5 Q. In Mexico did you find out information regarding how
6 other trans-sexual people were being treated?

7 A. Yes.

8 Q. Mr. Rodriguez, did you read any newspaper while you
9 were in Mexico?

10 A. Yes.

11 MR. CRANGLE: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Conference at the bench between counsel and the
14 Court off the record)

15 BY MR. CRANGLE:

16 Q. Mr. Rodriguez, do you recognize this picture?

17 A. Yes.

18 Q. And what is it a photo of?

19 A. Of a homosexual or transvestite killed by the cartel.

20 Q. Did you read this in Mexico?

21 A. In Mexico. I read it in Mexico.

22 Q. Okay. Is that why you -- was this after you had
23 been deported?

24 A. It was before. It had been happening for many years.

25 Q. What had been happening for many years?

DEFENDANT ON DIRECT

1 A. That the cartels had been killing homosexuals, trans-
2 gender and trans-sexuals, and making them deals and if
3 they don't do it they kill them.

4 Q. While you were in Mexico did you come in contact with
5 someone named Diana or Yerby?

6 A. Yes. Yerby Torres.

7 Q. And where did you come into contact with Yerby?

8 A. She contacted me through Facebook and I gave her a
9 phone number of my uncle so that she would call me.

10 Q. Did she reach out to you or did you reach out to her?

11 A. She reached out to me to find out why I had been de-
12 ported.

13 Q. Did you later talk to her?

14 A. She contacted me.

15 Q. Did she offer you any help on getting back into the
16 United States?

17 A. Yes.

18 Q. What kind of help did she give you?

19 A. That I needed to come back here because there are
20 homosexuals here; that I needed to come back because my
21 life was in danger.

22 Q. When you were in Mexico, did you perform any shows?

23 A. No.

24 Q. Why not?

25 A. Because they don't pay for that there. It is not a

DEFENDANT ON DIRECT

1 job there.

2 Q. At that time where were you staying?

3 A. After I came back I rented an -- I rented an
4 apartment in Atlanta.

5 Q. Did Diana help you get back or Yerby?

6 A. Yes, she brought me over.

7 Q. Diana and Yerby are the same person with two dif-
8 ferent names. Is that correct?

9 A. Yes, it's the same person.

10 Q. Did Diana have a brother?

11 A. She had one and seven more. One of them was in
12 Philadelphia or New Jersey.

13 Q. What was his name?

14 A. Jhona. Jonathon.

15 Q. And I have in my hand what's been marked Defendant's
16 Exhibit Number 1. What was the -- did you know Jonathon's
17 last name?

18 A. Yes, Torres.

19 Q. Did you later learn that?

20 A. Not from before because in 2010 I knew her real name
21 and last name.

22 Q. Are Diana and Jonathon Torres involved in drug traf-
23 ficking?

24 A. Yeah, Jonathon Torres is in Mexico. Yeah, brothers
25 in the cartel.

DEFENDANT ON DIRECT

1 Q. Okay.

2 A. Her brothers are part of the cartel.

3 Q. Did Diana ask you for anything to get you from Mexico
4 back to the United States?

5 A. Yes, but she brought me over so I had to pay her back
6 one way or another.

7 Q. Okay, and how did you pay her back?

8 A. That I was going to be responsible for Four Thousand
9 Dollars, and then when I was in Houston they said Eight
10 Thousand Dollars more because the one who brought me over
11 was a female police officer.

12 Q. When you got to Atlanta, how much did that number go
13 to?

14 A. She wanted to charge me another Two Thousand Dollars
15 for the trip from Houston to Atlanta but I came by myself.
16 My sister sent money for me.

17 Q. How did she send money?

18 A. It was Western Union.

19 Q. Did you ever meet Jonathon in person?

20 A. Yes, in February of 2013. Yes, in February 2013.

21 Q. Who approached you originally about carrying a bag
22 of heroin?

23 A. Jonathon always had a group of men with him, four
24 or three. I never knew their names but they were
25 the ones who came.

DEFENDANT ON DIRECT

1 Q. Sometime around 2011 did you have a friend who was
2 killed?

3 A. Yes. In my apartment. He died on my bed.

4 Q. Did Jonathon ever carry a holster?

5 A. One of his men did. He always drove good cars like
6 Lincolns, late models.

7 Q. When Jonathon's men approached you, what did they
8 tell you?

9 A. . .

10 SOLICITOR: Objection, Your Honor. Hearsay.

11 THE COURT: Sustained.

12 BY MR. CRANGLE:

13 Q. Why did you take the bag?

14 A. Because Jonathon threatened me. He said that he had
15 brought me over from . . .

16 SOLICITOR: I'm sorry. Again, hearsay.

17 Q. Without saying what Jonathon said, Mr. Rodriquez,
18 how did you feel?

19 A. Afraid -- afraid because I know what those people
20 are capable of.

21 Q. Were you afraid for your family's safety?

22 A. Yes, mostly for my grandmother in Mexico and my aunts
23 and uncles and my cousins.

24 Q. How would they find your family?

25 A. The city is a small city, and they know my last name

1 and I told Diana my full name before, and that was my
2 mistake.

3 Q. When you got the bag, did you know you were carrying
4 drugs?

5 A. No.

6 Q. When you got on the bus, did you realize you were car-
7 rying drugs?

8 A. At the bus station I went to the bathroom and it felt
9 very heavy so I looked inside and that's when I saw what
10 it was, but I couldn't get it out because it was smushed
11 in and if I pulled it out it would break.

12 Q. Were you scared that anyone was following you?

13 A. Yes, because he said that somebody else would come --
14 was going to come with me.

15 Q. Who said that?

16 A. One of Jonathon's men.

17 Q. Why didn't you call the police?

18 A. Because I was afraid I would be deported back to
19 Mexico and the cartel would get me.

20 If I showed them the drugs the police would arrest
21 me.

22 Q. So you did what the cartel asked?

23 A. Yes.

24 Q. Did you use the drugs?

25 A. What do you mean, use the drugs?

DEFENDANT ON DIRECT

1 The police -- they would deport me. The police may
2 arrest me and deport us to Mexico.

3 Q. After you got on the bus, why wouldn't you run? Why
4 wouldn't you take the drugs and run?

5 A. Those drugs were all that was there for my family.
6 The drugs were not more than my family.

7 Q. When you spoke with the police, did they interview
8 you?

9 A. Yes.

10 Q. And you have seen some of the witnesses come up and
11 talk about the case. Correct?

12 A. No, I don't remember.

13 Q. Do you remember the people that interviewed you
14 about the drugs?

15 A. Yes. It was a black man, a black-race man.

16 Q. Did you cooperate with the police?

17 A. Not with them. With the Ice Agent when he went to
18 interview me. I asked him to help me.

19 Q. Did you give the DEA Jonathon and Yerby's names?

20 A. Only Jonathon, which I had.

21 Q. Did you give them a phone number?

22 A. From the phone -- they took my phone and checked the
23 last calls that I had made, and they took it from there.
24 They took it from there.

25 Q. Did you cooperate fully with the police?

DEFENDANT ON DIRECT

1 A. What do you mean cooperate fully? I don't under-
2 stand.

3 Q. Did you tell law enforcement everything you knew?

4 A. No, sir, I didn't.

5 Q. Did you tell Immigration everything you knew?

6 A. Yes, because he was -- immigration because he was
7 the only one who came to see me. The DEA, CIA, the
8 Marshalls -- nobody came to actually talk to me about the
9 drugs or anything.

10 Q. Why did you carry the drugs?

11 A. Because I was thinking that I had to. That his sis-
12 ter had been arrested, and one way or another they needed
13 to collect the money -- one way or another.

14 Q. Thank you. That's all I have.

15 THE COURT: Cross Examination.

16 CROSS EXAMINATION

17 BY SOLICITOR:

18 Q. Mr. Rodriguez, you admit to this jury that you com-
19 mitted a crime to come back in this country?

20 A. Yes, coming back to this country. Yes.

21 Q. And you testified a second ago you couldn't recall
22 the DEA agent who testified earlier. Is that correct?

23 A. I don't know any of them that came here. I don't
24 know any of them.

25 Q. Even though you saw this video?

DEFENDANT ON CROSS

1 A. Yes.

2 Q. And that video showed you and Trooper Rogers, didn't
3 it?

4 A. Yeah, I do know the police officer that arrested me,
5 but I don't know anybody at the DEA.

6 Q. Okay. So now you know one of the officers who tes-
7 tified earlier?

8 A. Yes, the officer that arrested me, Officer Roberts,
9 Rogers.

10 Q. I show you what has been marked Defense Exhibit 1.

11 Okay, this is an Exhibit your own lawyer introduced.

12 Correct?

13 A. I don't understand the question.

14 Q. Your lawyer introduced this Exhibit, didn't he?

15 A. Yes, sir.

16 Q. Are you going to translate for him the number at the
17 top here?

18 A. I say this.

19 Q. The top right here . . .

20 (Counsel speaking at the same time as Interpreter
21 and witness)

22 A. Yes, I understand.

23 BY SOLICITOR:

24 Q. Okay. For the record, what do these words say?

25 A. . .

DEFENDANT ON CROSS

1 Q. I'm asking what these two phases are.

2 A. . .

3 THE COURT: You ask the question and she will trans-
4 late it.

5 Q. Let's try it this way. That says U. S. Department
6 of Justice, doesn't it?

7 A. Yes.

8 Q. It also says Drug Enforcement Administration, doesn't
9 it?

10 A. Yes.

11 Q. So that is statement that was typed by a DEA agent?

12 A. Yes.

13 Q. So when you tell the jury you didn't speak to any-
14 body from the DEA, that was a lie?

15 A. That's the one who came -- the DEA agent who came
16 was a black man.

17 Q. Okay. The name right here -- this right here is
18 McCrory?

19 A. Yes, but I don't know who that is.

20 Q. And right here says Cloninger?

21 A. . .

22 Q. It says other officers . . .

23 A. . .

24 (Counsel speaking without answers being given)

25 BY SOLICITOR:

DEFENDANT ON CROSS

1 Q. Let me ask. Do you mean this gentlemen right here?

2 A. The DEA agent that came that night -- that's it.

3 And then he said -- I didn't take it as an interview be-
4 cause he left the room -- he left him with me.

5 Q. How many people from DEA talked to you?

6 A. Only the black officer and . .

7 Q. That wasn't my question. My question was how many
8 DEA officers talked to you?

9 A. . .

10 Q. You talked to one person from the DEA?

11 A. I don't remember him showing me his name. No other
12 agents approached me right there.

13 Q. Take a look at this Exhibit. I assume you have seen
14 this since your lawyer put it in evidence.

15 Tell the jury whether this is a fair and accurate
16 statement?

17 A. Please look at what it says.

18 Q. I can read it. I can read it into the record.

19 A. I don't understand.

20 Q. Okay, did you lawyer show you this Exhibit before the
21 trial?

22 A. I'm sorry. Right here in the trial.

23 Q. So today was the first time you saw this?

24 A. Yes, today is the first day I see it.

25 231

DEFENDANT ON CROSS

1 Q. Okay. (Reading Defense Exhibit 1)

2 THE COURT: Slow down so she can . . .

3 (Solicitor reading Exhibit 1)

4 Q. So Agent McCrory talked to you?

5 A. Yes, the black guy. He only approached me.

6 Q. The fact is that you were paid to transport this
7 heroin?

8 A. They did not pay me a cent. They were only credit-
9 ing that money from -- because they had brought me over
10 from Mexico.

11 Q. Okay, so you were paying how much for the trip back
12 to America?

13 A. She told me -- Yerby told me originally it was Four
14 Thousand and then it was Eight Thousand, then it was Two
15 Thousand Dollars more. It was Ten Thousand then. It was
16 a trap.

17 Q. But you had to come back to America, didn't you?

18 A. Yes, I came back to the United States.

19 Q. Which you knew was against the law of this country?

20 A. Yes, but I was afraid my life was in danger in
21 Mexico.

22 Q. Was your life not in danger in being here in America?

23 A. I felt safe here where there is law enforcement and
24 police.

25 Q. Okay, let me ask you this. You said your friend

DEFENDANT ON CROSS

1 was killed, is that right?

2 A. Yes.

3 Q. Where was that?

4 A. It was here.

5 Q. Which is in America?

6 A. Yes.

7 Q. Now, this lady is paying your way back to America,
8 isn't she?

9 A. She said I would be responsible but she was the one
10 who had the contact with the police officer who did the
11 crossing.

12 Q. I'm sorry? It was a police officer?

13 A. Yes, a female police officer took us through the
14 border in her vehicle, me and another person, and
15 (inaudible)

16 Q. So she did that in exchange for a price, didn't
17 she?

18 A. I don't know what the deal was with her and Yerby.
19 Yerby is the one who made the arrangements and I just
20 came. I came over because I was afraid they were going
21 to kill me in Mexico.

22 Q. Okay. You knew this wasn't a free trip, didn't you?

23 A. Yeah, they were forcing me the Chinese way. They
24 were forcing me and threatening me.

25 SOLICITOR: Judge, that response is beyond the scope

DEFENDANT ON CROSS

1 of my question.

2 THE COURT: Ask your next question.

3 BY SOLICITOR:

4 Q. How soon after you came to this country did they
5 hand you the bill for Eight Thousand Dollars?

6 A. She never took a penny from me. She just wanted to
7 use me. She wanted to use my family, taking advantage
8 of the fact that my mom and my sisters are citizens. She
9 wanted to use me as a mule.

10 Q. Okay, in exchange for what?

11 A. The fact that she had brought me over here from
12 Mexico.

13 Q. She was holding this over your head?

14 A. Yes, she brought me over.

15 Q. As what?

16 A. As a mule.

17 Q. Okay, and the mule to transport what?

18 A. The drugs.

19 Q. Okay, what drugs?

20 A. I don't know. I don't know what drugs they dealt
21 with.

22 Q. So you were doing this because she was holding it
23 over your head and she paid your way back to this country,
24 correct?

25 A. She and I never actually had a deal made. She said

DEFENDANT ON CROSS

1 she would be responsible for me and that we were going
2 to open another nightclub, and I was going to pay her
3 later on. That was what I understood.

4 Q. So she wanted you to be a business partner?

5 A. No, not at all. We never agreed that,

6 Q. You just said she's going to help you with a busi-
7 ness. Was it a dance studio? A dance club?

8 A. No. No, we weren't going to -- that was how we'd
9 work together. She would be a dancer and I was a waiter,
10 and we were going to find another place to work like that,
11 like we did in Mobile, Alabama.

12 Q. And she's the sister of Jonathon, is that correct?

13 A. Yes, she's Jonathon's sister.

14 Q. And he is the drug dealer that made you go on this
15 trip?

16 A. Yeah.

17 Q. You testified earlier that you knew what these people
18 were capable of doing. Is that right?

19 A. Yes, they were part of a cartel,

20 Q. And you got really involved in it, didn't you?

21 A. No, I did not -- I didn't want to do anything with
22 them, but they were the ones looking for me. At clubs
23 where I worked they would come over and leave me messages,
24 and I would not answer the phone and they would get upset.
25 They were the ones looking for me.

1 Q. Were they looking for you in America or in your
2 hotel?

3 A. In Atlanta.

4 Q. When did you come to America in the first place?

5 A. (Inaudible)

6 Q. Did she tie you up?

7 A. No, she didn't tie me up, but I knew there were al-
8 ready two men looking for me. They were looking for me to
9 pick me up, and I don't think it was to give me presents.

10 Q. Okay, well, there were men trying to find you in
11 Atlanta and they were trying to find you down there. Is
12 that right?

13 A. . .

14 Q. (Before answer could be given) They were always
15 trying to find you. Right?

16 A. In Atlanta.

17 Q. Everybody is always looking for you?

18 A. Yes, when I was living in Atlanta they was not happy.
19 I don't know what they were told but then they sent the
20 cartel on me.

21 Q. Did you tell the troopers you were being threatened?

22 A. No, I didn't tell them because I was afraid. The
23 cartel has connections with the police also in the United
24 States.

25 Q. You testified in America you were safer because of

DEFENDANT ON CROSS

1 more police presence. Which is it?

2 A. But it is bigger here. There is more security here
3 than in Mexico.

4 Q. That's not my question. You just said that you can't
5 trust law enforcement here in America. Is that right?

6 A. Yes.

7 Q. You just testified the reason why you didn't tell
8 the troopers, help, I've been threatened; somebody is going
9 to kill me, is because you couldn't trust the police. Is
10 that right.

11 A. It is true because at some point they were the ones
12 that pointed the police in my direction. They were the
13 ones that set the police after me.

14 Q. For what?

15 A. Diana was arrested in February or March. The car-
16 tel has come to a deal with the DEA. They give the peo-
17 ple involved in drugs and then Yerby gets released, and
18 the agent told me that she had been let out -- that she
19 had been released and she has double identity, and how
20 come? She has no papers and they let her go. That is
21 the truth.

22 Q. Here is my question. You testified that these peo-
23 ple in Atlanta put the police on you, to follow you. Is
24 that what you're saying?

25 Isn't what you're saying that they put the police on

1 your tail?

2 A. The DEA -- the DEA sent the police to arrest me.

3 Q. But you testified that the people in Atlanta talked
4 to the DEA in the first place. Is that right?

5 A. Yes, they negotiated. She had an attorney. They
6 even wanted my mom and my sisters to sign so that Diana
7 could be released. I thought that was very strange, and
8 then that's what the police told me.

9 Q. Here's my question. They hand you a lot of heroin
10 to transport to Philadelphia. Is that right?

11 A. Yes, but I didn't know how much it was or what it
12 was. I realized it was a package.

13 Q. You knew it was heroin, didn't you?

14 A. No, I didn't know what it was.

15 Q. You knew that they wanted you to transport that. Is
16 that correct?

17 A. Yes, they forced me to. They were going to get me
18 by McDonald's when I was going to work, close to my apart-
19 ment.

20 Q. Tell this jury -- explain to the jurors why they'd
21 give you a package and then turn you in to the police?

22 A. Well, because they negotiated with the DEA. Diana
23 was arrested in February or March. They negotiated with
24 the DEA. In that way, she gets out or she gets a reduc-
25 tion in her sentence. That's how the DEA works in corrupted

DEFENDANT ON CROSS

1 way.

2 Q. So you were the big fish in this operation in
3 Atlanta. Are you telling the jury that?

4 A. That's my truth.

5 Q. Okay, thank you.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. CRANGLE:

9 Q. Let's talk about Mexico, and then I'll talk to you
10 about the United States.

11 A. She was in Atlanta and she called me to see if I was
12 okay; she knew -- she was like, oh, my friend, are you
13 okay; are you doing okay.

14 Q. Whose idea was it to get you back across?

15 A. Hers.

16 Q. Thank you.

17 THE COURT: You may step down.

18 (Witness excused from stand.

19 THE COURT: Ladies and gentlemen, this is a good time
20 for us to go ahead and break for the day.

21 Please do not discuss the case among yourselves at
22 this point in time and do not begin deliberations. Do
23 not conduct any independent investigation.

24 I hope everybody has a good evening. Please be back
25 tomorrow morning at nine, and we'll try to get started

1 soon after nine.

2 Thank you very much.

3 (Jury excused for the evening)

4 THE COURT: Mr. Crangle, do you have any other
5 witnesses you want to call for the Defense?

6 MR. CRANGLE: No, Your Honor. That's all the wit-
7 nesses for the Defense.

8 THE COURT: We'll call the jury in tomorrow morn-
9 ing and you can rest.

10 MR. CRANGLE: Yes, sir.

11 THE COURT: Do you anticipate anything in reply?

12 SOLICITOR: No, sir.

13 THE COURT: Then I'll let you rest on the record to-
14 morrow morning but let's go ahead at this point in time.
15 Are there any motions to take up?

16 MR. CRANGLE: Your Honor, I would renew my motion
17 for directed verdict. I want to make sure my objections
18 are preserved on the suppression and Jackson versus Denno.

19 I would like to discuss a little bit about the jury
20 charge to get a framework for my closing argument.

21 THE COURT: All right. I will note your prior mo-
22 tions and motion for directed verdict. I would deny the
23 motion.

24 As I understand, all we've got now -- we'll bring
25 the jury back tomorrow morning; you will rest on the record,

1 does address what I was concerned about.

2 THE COURT: All right. Anything from the State be-
3 fore we bring the jury in?

4 SOLICITOR: No, sir.

5 THE COURT: Anything from the Defense?

6 MR. CRANGLE: Only that I need to rest on the record.

7 THE COURT: I'll bring the jury in and let you rest
8 on the record. Then I'll ask Mr. Holloway whether there is
9 any reply. If not, I will instruct them that it is time
10 for closing arguments and then my charge.

11 Go ahead and bring them in.

12 Place the interpreters under oath.

13 (Interpreters placed under oath. Present were Liz
14 Zapata and Theresa Sanneson)

15 (Jury returned to the Courtroom)

16 THE COURT: Ladies and gentlemen, welcome back. I
17 hope everybody had a good evening, and I appreciate your
18 being on time.

19 I apologize for keeping you in the jury room for so
20 long but we did have some matters we needed to address.
21 We are now ready to proceed with the case.

22 The Defense may call the next witness.

23 MR. CRANGLE: Your Honor, at this time the Defense
24 rests.

25 THE COURT: All right. Anything in reply?

1 SOLICITOR: No, sir.

2 THE COURT: All right. All right, ladies and gen-
3 tlemen, the Defense has rested their case and the State
4 has nothing in reply.

5 All the evidence to be presented in this case has
6 now been presented to you. We are at the point in the
7 trial where the attorneys will make their closing argu-
8 ments to you.

9 Just like their opening statements, these closing
10 arguments are not evidence in this case. They are simply
11 the attorneys' summation as to what they feel the evidence
12 has shown, what they feel the facts are and what they feel
13 is the law to be applied to the case.

14 If at any time the attorneys make reference to some
15 factual issue that is different from the facts as you find
16 them to be, or references to law that is different from
17 the law as I will charge you, you are to disregard that
18 portion of their closing argument, because this is not
19 evidence but simply their contentions of what they feel
20 the issues in the case are and what the evidence has shown
21 in regard to their client.

22 All right, Mr. Crangle.

23 MR. CRANGLE: Thank you, Your Honor. May it please
24 the Court?

25 THE COURT: Yes, sir.

1 MR. CRANGLE: Mules don't exist in the wild They
2 don't exist naturally. A mule is the offspring of a
3 male donkey and a female horse, and it is created for a
4 purpose.

5 Mules are sterile, they don't have children, they
6 don't reproduce. Mules are used for a purpose, and that
7 purpose is to carry things.

8 Like mules, Mr. Rodriguez was selected by the cartel
9 for that purpose, and there is a lot of money involved.
10 This is a Half Million Dollars in drugs.

11 The cartel needs to get that to someone; needs to get
12 someone to carry that. A person could take that and run,
13 but what the cartel does is look for people that they can
14 work, people who have motivation to do what they want out
15 of fear -- fear for their lives, fear for their safety,
16 fear for their familys' safety.

17 You heard from an expert investigator, the last wit-
18 ness to testify for the State. He has been doing this for
19 twenty years. I asked him if the drug business was vio-
20 lent and he said yes. I said, why would the cartels be in-
21 volved with these mules. He said they are recruited or
22 they are forced.

23 I said, okay, what about these people who are forced?
24 Do you know any who have been forced? He said, yeah, I
25 know people who have been forced into this by their family;

1 or families are kidnapped.

2 I said, what happens if you don't carry drugs? If
3 you say no? Answer was very simple, very clear -- they
4 kill you. They kill your family or they harm your family.

5 Ladies and gentlemen, duress -- what I mean by duress
6 is coercion; that someone is forced into doing something,
7 and that is a fact in this case. Duress is the defense
8 in this case.

9 I bear the burden of establishing by a preponderance
10 of the evidence that Mr. Rodriguez was coerced into doing
11 this. Here the facts show that.

12 Mr. Rodriguez ended up in Mexico sometime in 2012,
13 and in Mexico he told you that transgender or homosexual
14 people are killed by the cartel.

15 They do this for two reasons. One is that they
16 have this intimidating factor but, secondly, they are
17 creating their mules. They are creating them. This is
18 what they do. They find homosexual or trans-sexual peo-
19 ple in Mexico and say, it's dangerous here and you will
20 be killed, picked up and killed. Mr. Rodriguez knew of
21 this.

22 He talked about reading it in a newspaper. That is
23 listed in Defense Exhibit 1.

24 A woman who he met in Alabama -- Ms. Torres -- she
25 called Mr. Rodriguez. She reached out to him on Facebook

1 and said, hey, you're in Mexico, right? You need to get
2 back across; you're in danger there. She recruits him
3 as a mule and gives him Half a Million Dollars worth of
4 heroin. He does that in fear for his own safety and in
5 fear of safety of his family.

6 She reached out to Mr. Rodriguez and said, I can help
7 you so you won't get killed in Mexico. I can help you to
8 get across. There is no question about that.

9 My client is here illegally, but that is not what
10 he is charged with. He's charged with trafficking in
11 heroin which is the only issue before you.

12 So once he gets across, Four Thousand turns into Six
13 Thousand; Six Thousand turns into Eight Thousand; and by
14 the time he reaches Atlanta Eight thousand turns into Ten
15 Thousand. They own him. They will kill him if he doesn't
16 do what they say.

17 Jonathon Torres and his sister gave the Defendant
18 the drugs; they said, look, take this suitcase, and go and
19 you carry it to Philadelphia on a bus -- we'll be watch-
20 ing you. The Defendant told you that.

21 He takes the suitcase and he gets on the bus. He
22 is told someone will be watching him the whole way. He
23 gets on the bus.

24 My client has Half a Million Dollars in heroin in a
25 bag. He's afraid to call the police. If he calls the police

1 he knows that Yerby will find out he called them; they
2 know his family lives in Mexico, and they'll kill his
3 family. He can't run. This is not fiction.

4 The DEA agent, the State's own witness, told us that
5 people die if they don't do what the cartel wants. This
6 is not an artificial threat. It's a real threat in this
7 case.

8 My client did that. My client was forced to do this.
9 He did what he was told. No one argues with the cartel.
10 You do what you're told.

11 This cartel was being investigated before this inci-
12 dent. The DEA agent told you that, and they only sit down
13 with him for fifteen minutes. You know why? It's only
14 a debriefing. That's what it is. It wasn't an investiga-
15 tion to see what they could find out about the cartel. He
16 gave them Yerby's phone number, gave them Jonathon's phone
17 number, and they left. They didn't ask for any more.

18 They know that mules have no choice. They are preyed
19 on and selected, and they are intended to do a job. Yerby
20 brought my client from Mexico, knowing that homosexuals and
21 trans-sexuals were selected by the cartel and brought to
22 Atlanta to get on that bus or do what they said.

23 He had no choice -- you will be killed, your family
24 will be killed. The cartel does this. That's why they
25 call them mules.

1 A mule doesn't have free will. A mule is given a
2 load to carry, and they take it. They go somewhere with
3 it.

4 Ladies and gentlemen, I ask you to keep an open mind
5 in this case. Consider all of the evidence. Their own
6 expert told you that he personally would have been harmed
7 or his family would have been harmed or killed if he did
8 not do what he was told.

9 Realize this isn't some fictional threat but it is
10 actually done, it actually has happened.

11 This was the most heroin the agent has ever seen in
12 one package in twenty years of dealing with drugs. The
13 cartel chose him and they would kill him if he did not
14 do what they said.

15 My client had no choice. He did what they told him.
16 His life was at stake, his family was at stake. He told
17 you that. The State's own witness told you that.

18 Ladies and gentlemen, my client is not guilty. He
19 was under duress, he was coerced into this. My client
20 did what he was told. I feel my client was selected and
21 was planted in this case by the cartel to carry the drugs.

22 I thank you for your time, and I ask that you re-
23 member all the facts, all the evidence, and when you are
24 done I think there is only one possible verdict, that my
25 client is not guilty of the crime of trafficking in

1 heroin.

2 Thank you.

3 THE COURT: Mr. Holloway?

4 SOLICITOR: Thank you, Your Honor.

5 Make no mistake about this. The Defendant knew pre-
6 cisely what he was doing when he got in bed with these
7 drug lords. He knew what he was doing. He knew they were
8 part of a cartel, and he testified to that from the wit-
9 ness stand on Direct Examination.

10 And yesterday when I was cross examining him I was
11 not doing that to badger him. When I questioned him over
12 and over again, I was testing his story. I was testing
13 his story, what he had told us, and even with an inter-
14 preter his story did not make sense.

15 In fact, Trooper Rogers had it right on the scene in
16 September of 2013. It didn't add up. It did not add up.
17 The fact is, yes, this is a tremendous amount of heroin.
18 I am holding Half a Million Dollars in my hands. I will
19 probably never as a prosecutor hold this much lucrative
20 merchandise again.

21 Throughout his testimony he put himself out there as
22 I'm simply a mule. I'm simply this nameless mule that
23 noone cares about. I am going to submit to you that no
24 dealer is going to simply hand off Half a Million Dollars
25 to just anybody.

1 If they put him on the bus, they are going to make
2 sure he delivers. I'm sure he had a baby-sitter at the
3 next bus stop who watched for the cartel as he carried
4 this stuff. The cartel, Yerby and Jonathon Torres, they
5 chose him. Do you think they chose him for a reason? It
6 was for a reason.

7 He is the kind of guy that they hope will just blend
8 in. They wanted an unassuming, mousy kind of person to
9 take this stuff on a six hour trip, with no problems and
10 with no law enforcement.

11 Then on that day the Trooper was following his in-
12 stincts, and he used his instincts to track down this per-
13 son, the only one from that cartel on that bus, and they
14 found him.

15 In fact, what we learned is that the tip really did
16 not pan out. It was the Trooper using his skills. They
17 aren't behavioralists or doctors. Their job is to be stu-
18 dents of human behavior because, guess what -- people lie
19 to them all the time, from speeding tickets to having a
20 Half Million Dollars in heroin. People are always lying
21 to them.

22 They are never off duty as far as watching for ex-
23 treme behavior. When they come into a scenario like this
24 they are looking at human behavior. I think that is ad-
25 mirable, and that is how they caught this Defendant.

1 Now, how do we know that this story he tells about if
2 he didn't do what they in Atlanta told him that he would
3 die? How do we know it is not all a lie?

4 First, he is going into a dance club business with
5 these people, with Diana Torres, and then they want to
6 kill him. Okay?

7 Second, they had to go to Mexico to get a courier or
8 a mule? There are no mules in Atlanta so they have to go
9 to Mexico from Atlanta, Georgia, just to get him.

10 Time and time again he's putting himself up there on
11 this pedestal so you will buy it and ignore the fact that
12 he is carrying the most heroin that this agent had seen in
13 his twenty years.

14 Listen to what he's saying. He said yesterday that
15 he never saw the heroin or knew it was heroin until he
16 was at the bus station and looks in his suitcase and he
17 saw it.

18 Look at these photographs. In State's Exhibit 4,
19 it is closed in there. There is no way the cartel people
20 -- State's Exhibit 4 and State's Exhibit 5 -- his clothes
21 are in there and there is no way these cartel people are
22 going to handle his unmentionables. He put them in there
23 himself.

24 This is a measure of concealment from law enforce-
25 ment. You see the clothing there? They wouldn't touch

1 it so that's not true. How does he in that bus station
2 in Atlanta look in this suitcase and see heroin? It's
3 concealed.

4 This man is telling this jury anything that he thinks
5 will help him get away with this, even to telling a bald-
6 faced lie like yesterday.

7 The questions I was asking him was to test his story,
8 and his story failed. It failed.

9 He said he couldn't get help in Mexico because he
10 didn't trust law enforcement. I asked him point blank,
11 why didn't you tell law enforcement and ask them to help
12 you; why didn't you tell them what you found in the suit-
13 case? He didn't do that. He didn't do that to the DEA
14 agents.

15 They didn't take a statement, the agent wasn't there,
16 then he was there. He failed -- he said he left Mexico
17 because he didn't trust law enforcement. I asked him why
18 he didn't alert law enforcement? Why didn't you say, help
19 me? That's just -- sometimes people think that I make a
20 lot of every little fact but he said he couldn't trust
21 law enforcement here in America. Well, he's also testi-
22 fied that law enforcement can be trusted.

23 He said I couldn't tell anybody with the police. I
24 couldn't tell any person in uniform or showing a badge
25 or DEA credentials that I'm in trouble and my life is at

1 stake here. Why? But he had trusted the cartel. That is
2 just ridiculous.

3 He saw he was in trouble at this point, so why not
4 go ahead and say, sir, my life was at stake -- please,
5 please help me. Why not take that opportunity? Why?
6 Because he is lying to save his skin. He's lying to save
7 his skin. He lied on the witness stand.

8 The biggest lie of all -- my goodness -- he says
9 Diana was already in custody prior to his trip, and she's
10 in trouble, so she needs to get out of trouble.

11 She needs to help herself by giving up somebody or
12 in exchange for clemency for herself. Okay? So Diana
13 who knows all the people in the organization, all the peo-
14 ple she has connections with, has had past connections to,
15 but she needs to give up this Defendant. Really? Use a
16 courier to help herself.

17 I want you to know a little secret here. If someone
18 wants to turn State's evidence they are going up the food
19 chain, not down the food chain.

20 Think about what he said on that witness stand yes-
21 terday afternoon. His story went back and forth. It was
22 never straight. He was leading Mr. Crangle down the prim-
23 rose path.

24 First it's Two Thousand, then Four Thousand, then --
25 well, that's not how it transpired and that is not what he

1 said in his statement. He said he was paid Two Thousand
2 Dollars. So was he lying in what he told law enforcement
3 here after this or was he lying when he was on the wit-
4 ness stand.

5 Our expert yesterday did testify about cartel vio-
6 lence. People are killed and especially around the bor-
7 der, but he testified the common way of hiring a mule is
8 by paying him, not by force. In his expertise, he said a
9 common way to get somebody to do something illegal, as
10 shocking as it is, it by paying them.

11 The easiest way for a cartel to stay in business is
12 to pay the employees, not threaten to take them out.
13 That would turn cooperation into chaos. The main thing
14 we have seen since we watched the Godfather over the years
15 was loyalty. Loyalty and respect, and loyalty is why they
16 trusted him and trusted him with this much heroin.

17 Let me tell you something. There is no way they'd
18 hand to him a Half Million Dollars in heroin just to set
19 him up. If they handed him a Half Million Dollars just
20 to set him up, that's handing Half a Million Dollars to
21 law enforcement. They wouldn't do that, not with Half a
22 Million Dollars.

23 That is one more lie he told you. We heard what the
24 average customer uses per dose, half a gram, and this is
25 four thousand dosages.

1 It's four thousand dosages for the people in
2 Philadelphia and around the country that this man would
3 have provided if he had gotten there successfully. Ser-
4 iously. This cartel trusted him with that to get it to
5 Philadelphia.

6 Now, the Judge will give you instructions and charge
7 you on the law. What does trafficking mean? Trafficking
8 addresses every single person, every single person in the
9 drug business, from people who are growing the ingredients
10 or manufacturing it such as methamphetamines, to the mules
11 -- every part of the organization.

12 It addresses every single person who is helping to
13 spread, if you will, the drug industry, and he was import-
14 ant -- yes, I'll deliver that. He is a trusted soldier,
15 a trusted soldier in that organization.

16 You are trafficking in heroin in this State when you
17 transport this stuff over our highways to other places.
18 That's trafficking within the organization. He is not a
19 nameless somebody. He's not. He was trusted, and he can-
20 not hide behind being a little fish. He's a big fish,
21 someone they trusted. He had an important role. He is
22 not given a small amount to transport because he is
23 trusted. He's proven that, and that's how we know he knew
24 what he was doing.

25 If you are aiding and abetting and conspiring, the

1 law says you are guilty. You are as guilty of this in your
2 role as if you were making it or growing it. You are equally
3 guilty of trafficking. Transporting is aiding and abetting
4 these people to perpetuate this business.

5 Mr. Crangle made a big deal about it's a Half Million
6 Dollars, and this man was only paid Two Thousand Dollars.
7 How do we know he was paid Two Thousand Dollars? How do
8 we know he's telling the truth? How do we know he was not
9 paid more? We only know what has come from his mouth,
10 and he has lied before.

11 He was caught red-handed -- red-handed with this her-
12 oin. That's crazy. Everything he has said and what Mr.
13 Crangle said was not corroborated. No one has corrobor-
14 ated what he said. The man is on trial and is trying to
15 save his own skin.

16 From that witness stand he talked from both sides of
17 his mouth. That is what someone would do who is guilty of
18 trafficking in heroin.

19 Thank you.

20 THE COURT: Ladies and gentlemen, all the evidence
21 in this case has been given to you and the attorneys have
22 given their closing arguments.

23 Now is the time in the trial when I will charge you
24 the law to apply to this case.

25 This Indictment in this case charges the Defendant

1 SOLICITOR: No, sir.

2 THE COURT: From the Defense?

3 MR. CRANGLE: No, Your Honor.

4 THE COURT: All right.

5 (The Court stood in recess until 1:30 P.M.)

6 THE COURT: I understand the jury has reached a ver-
7 dict. Anything from the State before we bring in the
8 jury?

9 SOLICITOR: No, sir.

10 THE COURT: Anything from the Defense?

11 MR. CRANGLE: No, Your Honor.

12 THE COURT: All right, let's bring the jury in.

13 (Jury returned to the Courtroom)

14 THE COURT: Ladies and gentlemen, welcome back. I
15 understand the jury has reached a verdict. Is that cor-
16 rect?

17 FOREMAN: We have, Your Honor.

18 THE COURT: Have you written the verdict on the In-
19 dictment?

20 FOREMAN: Yes, sir.

21 THE COURT: Please hand the Indictment to the bail-
22 iff.

23 (Indictment shown to the Court by the bailiff)

24 THE COURT: All right, I'll ask the Clerk to please
25 publish the verdict.

1 CLERK: Your Honor, the case is 2013 GS 23 7983, the
2 State versus Emmanuel Marquez Rodriquez, indictment for
3 trafficking in heroin.

4 The verdict is guilty and signed by Mr. Hudak, the
5 Foreperson.

6 Ladies and gentlemen, if you agree this is the ver-
7 dict you reached in the jury deliberation room, please
8 raise your right hands.

9 THE COURT: Let the record reflect that all jurors
10 raised their right hands.

11 Anything further for the jury by the State?

12 SOLICITOR: No, sir, Your Honor.

13 THE COURT: Anything by the Defense?

14 MR. CRANGLE: No, Your Honor.

15 THE COURT: All right.

16 (Jury excused by the Court)

17 THE COURT: Are there post-trial motions at this
18 point in time?

19 MR. CRANGLE: The Defense moves for a new trial based
20 on all the prior objections. I would renew all prior mo-
21 tions and objections, as well as my motions for a
22 directed verdict.

23 I move for a new trial and preserve all of my objec-
24 tions.

25 THE COURT: All right, the motion is noted, and I am

1 going to deny it.

2 Anything further?

3 MR. CRANGLE: No, sir.

4 THE COURT: Is there any reason not to go ahead and
5 impose sentence at this time?

6 MR. CRANGLE: No, Your Honor.

7 THE COURT: All right. Have we got a sentencing
8 sheet?

9 CLERK: Yes, sir.

10 THE COURT: All right. Mr. Crangle, anything in
11 mitigation?

12 MR. CRANGLE: Your Honor, you know everything about
13 the case. I know the sentence to be considered is twenty-
14 five years to forty years. I'd ask you to consider the
15 lower range of that sentence based on my Defendant's in-
16 volvement as you heard from Mr. Rodriquez.

17 You heard his story about the prior history, so I'd
18 ask you to consider a sentence in the lower range.

19 THE COURT: Mr. Rodriquez, anything you want to say?

20 DEFENDANT: Yes. I want to say that I will serve the
21 sentence and in many ways it saved my life.

22 THE COURT: All right, thank you.

23 DEFENDANT: God bless South Carolina.

24 THE COURT: Thank you, sir. Any prior criminal re-
25 cord?

1 SOLICITOR: Other than the ones we've talked about
2 before and entering the country. That's it, and we'd
3 leave the sentence in the Court's hands.

4 THE COURT: All right.

5 All right, Mr. Rodriguez, you have been found guilty
6 in this jury trial. The sentence of the Court is that you
7 be confined in the State Department of Corrections for
8 forty years and pay a fine of Two Hundred Thousand Dollars.
9 You will be given credit for any time served.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

WITNESSES

J. E. Rogers

S. C. Highway Patrol

4/17/2013

ARREST WARRANT NUMBER

2013A2330203091

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 9-10-2014

DOCKET NO. 2013-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

2014
TERM 2013

THE STATE

vs.

EMMANUEL MARQUEZ RODRIGUEZ

Indictment for

0149

TRAFFICKING HEROIN

VIOLATION § 44-53-0370

FILED

SEP 03 2013

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING HEROIN

At a Court of General Sessions, convened on

APR 22 2014

the Grand Jurors of Greenville

County present upon their oath:

That EMMANUEL MARQUEZ RODRIGUEZ did in Greenville County, on or about the 17th day of April 2013, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Heroin. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Emmanuel Marquez Rodriguez

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

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

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

TO: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2307983

A/W#: 2013A2330203091

Date of Offense: 4/17/2013

S.C. Code § : 44-53-0370(E)(3)(

CDR Code #: 0149

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(E)(3)(of the S.C. Code of Laws, bearing CDR Code # 0149

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ryan Holloway

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

(and/or to pay a fine of \$ 200,000.00; provided that upon the service of X days/months/years and/or payment

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

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	200,000.
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.
3% to County (if paid in installments)	\$	
TOTAL	\$	

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Paul B. Winkelman

Court Reporter:

M. Woods

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2148

9-10-14

THE STATE OF SOUTH	)	IN THE COURT OF GENERAL SESSIONS
CAROLINA	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	Warrant/Indictment Nos.: 2013A2330203091/
THE STATE	)	2013GS2307983
	)	
v.	)	MOTION TO SUPPRESS
	)	
EMMANUAL M RODRIGUEZ,	)	
	)	
<u>DEFENDANT.</u>	)	

Defendant MOVES the Court for an ORDER to SUPPRESS all evidence seized from an unconstitutional search pursuant to the Fourth Amendment of the United States Constitution and Article 1, Section 10 of the South Carolina Constitution.

FACTS

Highway Patrol received a tip from the DEA that a light-skinned black male might be traveling on the La Cubana bus line with a shipment of an unknown quantity of heroin.

When the bus pulled into the parking lot, Highway Patrol immediately met with the bus driver. Multiple troopers in uniform were at the bus stop, with their guns holstered. They began asking the bus driver questions, and no passengers exited the bus, even though it was a scheduled rest stop. The trooper asked the bus driver if anything unusual had occurred on the bus, and the driver responded no. The trooper asked for permission to run drug dogs around the bus, and the driver allowed them to run the dogs.

The drug dog alerted to the presence of drugs, and the troopers took passengers

off one-by-one, and asked the passengers to identify their bags. Defendant waited on the bus for over 15 minutes, when he was directed off the bus and to identify his bag. Once Defendant identified a bag, the Troopers asked him questions regarding where he was going, and what was in the bag. The troopers searched the bag, and found 5 pounds of heroin.

LAW

The *Fourth Amendment* protects against "unreasonable searches and seizures." *U.S. Const. amend. IV*. It protects persons and their property. *US v. Place*, 462 U.S. 696, 700 (1983).

There are three types of encounters under the *Fourth Amendment*.

1. Full seizures which require probable cause.
2. Brief *Terry* stop seizures that require reasonable suspicion.
3. Consensual encounters which do not implicate the *Fourth Amendment*.

Probable Cause

Searches without probable case are presumptively unreasonable. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). "Warrantless searches and seizures are unreasonable absent a recognized exception the warrant requirement." *State v. Brown*, 401 S.C. 82, 89 (2012). Those exceptions include the following (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile, (5) plain view, (6) consent, and (7) abandonment. *Id.*

The state bears the burden of establishing probable cause as well as the existence

of circumstances constitution an exception to the general prohibition against warrantless searches and seizures. *State v. Moore*, 377 S.C. 299, 309 (Ct. App. 2008). Probable cause is a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. *Wortman v. City of Spartanburg*, 310 S.C. 1, 4 (1992).

Terry Stops

"A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his *Fourth Amendment* rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." *State v. Woodruff*, 344 S.C. 537, 546, (Ct. App. 2001). In determining whether reasonable suspicion exists, the circumstances must be considered as a whole, and if the officer's suspicions are confirmed or further aroused, the stop may be prolonged and the scope enlarged. *Id.* The scope and the duration of the seizure must be strictly tied to and justified by the circumstances which rendered its initiation proper. *Sikes v. State*, 323 S.C. 28, 30 (1994).

When the police rely upon a tip, to form the basis of the stop, they must show that "the tip be reliable in its assertion of illegality, not just in a its tendency to identify a determinate person." *Florida v. J.L.*, 529 U.S. 266, 269 (2000). Without this showing, the police lack reasonable suspicion to justify an investigatory *Terry* stop. *State v. Green*, 341 S.C. 214 (2000).

ARGUMENT

The Troopers relied upon a DEA tip, and the State fails to meet its burden showing that the anonymous tip was reliable enough to justify the *Terry* seizure of the bus driver and Defendant's bag. The State has no information about the reliability of the DEA's knowledge of the tip, and therefore with an anonymous tip the seizure of the bus and Defendant's property is an unreasonable seizure under the *Fourth Amendment*.

In *State v. Gamble*, the South Carolina Supreme Court explained that the State must introduce evidence and explain why the stop is lawful. *State v. Gamble*, 405 S.C. 409, 418 (S.C. 2013). In *Gamble*, the officer arrested the defendant on a separate charge and then searched the vehicle. However, the officer never explained what the separate charge was and how probable cause existed to arrest the defendant on that charge. *Id.* Without this information, the South Carolina Supreme Court held that admission of the drugs was an error, because the State could not prove any basis for the initial arrest.

Gamble directly applies to this case because the State cannot show that the DEA tip was reliable, and how that information justified the *Terry* seizure of the bus and Defendant's luggage. The State's only information is that the tip came from the DEA, and Highway Patrol knew of the tip. The State lacks any proof that the anonymous tip from the DEA received was reliable. Without this proof, there is no reasonable suspicion to detain the bus at the moment the bus driver pulls into the station. Without a lawful stop, all evidence and conduct is fruit of the poisonous tree, and must be

suppressed.

The troopers relied upon the tip, that a *light-skinned black male may* be transporting an *unknown* amount of heroin on the bus. There is no showing from the state of where they obtained this information, and the Defendant lacks the ability to cross-examine the source of this information. Therefore, the tip is anonymous and is not reliable enough to justify the seizure of the bus.

STATE'S COUNTER-ARGUMENTS

The State may argue that this was (1) a consensual encounter, and not a seizure implicating the *Fourth Amendment* OR (2) that the Defendant consented to a search of his bag. Both arguments are inconsistent with the *Fourth Amendment*.

Consensual Encounter

A consensual encounter does not implicate the *Fourth Amendment*. *Fla. v. Bostick*, 501 U.S. 429 (1992). A seizure occurs when a reasonable passenger would not feel free to decline the officers' request or otherwise terminate the encounter. *Id.* To determine whether a person feels free to leave, the Court looks to a totality of the circumstances. *Id.* The Court identified several factors; (1) whether the police informed passengers that they were free to leave, (2) whether passengers are informed that they could refuse a search, and (3) whether the officers block the exit of the bus. *See US v. Drayton*, 536 U.S. 194, (2002). The burden of proving that a police-citizen encounter was consensual is upon the State. *See U.S. v. Rodriguez*, 525 F.2d 1313, 1316 (10th Cir. 1975), *Florida v. Bostick*, 501 U.S. at 436.

No reasonable person passenger would feel free to leave the bus, when it's driver is outside of the bus being questioned by the Highway Patrol in full uniform, with multiple officers and dogs present. To a reasonable passenger, it would appear that Highway Patrol had an issue with the bus and the bus driver was explaining why he was pulled over. Furthermore, this conversation occurred in English and was outside of the listening area of the passengers. The troopers did not step on the bus, and announce a standard check and that the passengers were free to leave. They never informed the passengers of what was going on. They immediately began questioning the bus driver, and there were multiple officers surrounding the bus. Most damning to the State's argument is that not a single passenger left the bus, at the rest stop. They all remained on the bus.

The Troopers seized all passengers luggage when they questioned the driver. No passenger would be able to exit the bus and open the hatch and obtain their luggage. The driver opens the luggage bay; not a passenger. The *Fourth Amendment* protects not only people, but also property. *US v. Place*, 462 U.S. 696, 700-701 (1983). Defendant's bag was seized when the Troopers questioned the driver.

When the Troopers questioned the driver, the entire bus was seized. To a passenger on the bus, this would appear that the Troopers were concerned about the safety of the bus and its passengers, or that there was a traffic violation for the bus driver. No reasonable person would consider exiting the bus, if their own bus driver was being interrogated by the police. To any passenger, this would mean that the bus

driver was in trouble and was seized. Therefore, the encounter was not consensual and implicates the *Fourth Amendment*.

Defendant Consented to Search of Bag

Any consent obtained after an illegal seizure is ineffective to justify the search. *Florida v. Royer*, 460 S.S. 491 (1983). As explained above, the bus was illegally seized, and therefore the consent later given is invalid.

CONCLUSION

The Troopers seized the bus, based on a tip that is uncorroborated. This seizure was based on an antonymous tip, which is insufficient to justify a *Terry* stop. *See State v. Green*, 341 S.C. 214 (Ct. App. 2000). Therefore all evidence seized after the unlawful stop must be SUPPRESSED.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: _____
John Crangle, Esq.
Bar No. 100515
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Greenville, SC
Date: September 5, 2014

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	Warrant/Indictment Nos.: 2013A2330203091
THE STATE	)	
	)	
v.	)	AFFIDAVIT OF SERVICE
	)	(Hand Delivery)
EMMANUAL M. RODRIGUEZ,	)	
	)	
<u>DEFENDANT.</u>	)	

NOW COMES the below signed Investigator for the Greenville County Public Defender Office who states, after first being duly sworn, that they have served the below listed documents upon all parties by hand delivering a copy to the addresses listed below:

Pleadings Served: MOTION TO SUPPRESS

Parties Served: The Honorable Walter Wilkins
Solicitor, 13th Judicial Circuit
305 East North Street, Suite 325
Greenville, South Carolina 29601-2185

GREENVILLE COUNTY PUBLIC DEFENDER

By: _____
J.C. Starkes, Investigator
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Greenville, SC
Date: September 5, 2014

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	Warrant/Indictment Nos.: 2013A2330203091
THE STATE	)	
	)	
v.	)	AFFIDAVIT OF SERVICE
	)	(Hand Delivery)
EMMANUAL M. RODRIGUEZ,	)	
	)	
DEFENDANT.	)	

PERSONALLY APPEARED before me the below signed Investigator for the Greenville County Public Defender Office who states, after first being duly sworn, that they have served Motion to Suppress in the above-captioned case by leaving same with the Pamela McCall at Greenville County Solicitor's Office, Greenville County Courthouse, Greenville, S.C.

GREENVILLE COUNTY PUBLIC DEFENDER

By: _____
 J.C. Starkes, Investigator
 305 E. North Street, Suite 123
 Greenville, SC 29601
 (864) 467-8522

SWORN TO and subscribed before me
 this 5 day of September, 2014

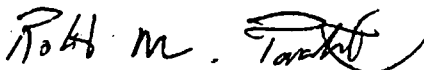
 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

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 18th, 2015

A handwritten signature in black ink, appearing to read "Robt M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMMANUAL M. RODRIGUEZ,

APPELLANT

APPELLATE CASE NO. 2014-001956

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	11

TABLE OF AUTHORITIES

Cases

<u>Adams v. Williams</u> , 407 S.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972),.....	8
<u>Alabama v. White</u> , 496 U.S. at 329, 110 S.Ct. 2412	8, 9
<u>California v. Hodari D.</u> , 499 U.S. 621, 111 S.Ct. 1547 (1991).....	10
<u>Florida v. J.L.</u> , 529 U.S. 266, 120 S.Ct. 1375 (2000)	8, 9
<u>Henry v. United States</u> , 361 U.S. 98, 80 S.Ct. 168, 171, 4 L.Ed.2d 134 (1959);	9
<u>Johnson v. United States</u> , 333 U.S. 10, 68 S.Ct. 367, 370, 92 L.Ed. 436 (1948)	9
<u>Rawlings v. Kentucky</u> , 448 U.S. 98, 100 S.Ct. 2556, 2564, n. 6, 65 L.Ed.2d 633 (1980)	9
<u>Sibron v. New York</u> , 392 U.S. 40, 88 S.Ct. 1889, 1902, 20 L.Ed.2d 917 (1968)	9
<u>Smith v. Ohio</u> , 494 U.S. 451, 110 S.Ct. 1288, 1290 (1990), ...	9
<u>State v. Robinson</u> , 306 S.C. 399, 412 S.E.2d 411 (1991).....	10
<u>State v. Woodruff</u> , 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001).....	6
<u>Terry v. Ohio</u> , 392 U.S. 1, 88 S.Ct. 1868 (1968), ...	3, 5, 7, 8

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress heroin found in appellant's luggage because the police acted on an anonymous tip that lacked sufficient indicia of reliability to establish reasonable suspicion for a Terry investigatory stop?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in heroin after a jury trial held before the Honorable Benjamin H. Culbertson on September 8 – 10, 2014, in Greenville County. A forty (40) year sentence was imposed along with a \$200,000 fine. John Crangle, Esquire was trial counsel. Ryan Holloway, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress heroin found in appellant's luggage because the police acted on an anonymous tip that lacked sufficient indicia of reliability to establish reasonable suspicion for a Terry investigatory stop.

Trooper Rogers (Rogers) with the South Carolina Highway Patrol testified at the suppression hearing that on April 17, 2013, they received information from the Drug Enforcement Agency (D.E.A.) that there was a "possible" load of heroin that would be coming northbound on the La Cubana, a passenger bus line. They knew the bus line made a regular stop at a location on White Horse Road. It was a scheduled stop. They were not given the subject's name. They only knew it would be a light-skinned, "possibly" black male. They went to the scheduled stop site about 15 minutes before the bus would arrive. Rogers and his corporal were there along with Lance Corporal Harrison. They had two unmarked vehicles and Corporal Dowis had a K-nine vehicle. (R. p. 4, line 7 – p. 5, line 24.)

While in the parking lot, the bus arrived. Rogers approached as the driver was exiting down the steps. (R. p. 5, line 25 – p. 6, line 4.) He asked the driver if there were any problems with any of the passengers on this particular trip. The driver said everything was okay. Corporal Dowis, the K-nine officer, was walking toward the bus. The K-nine shepherd was still secured in the vehicle. (R. p. 7, line 19 – p. 8, line 19.) Rogers told the driver that drug traffickers would use passenger bus lines as a means of transporting drugs. He asked the driver if he had a problem while he conducted his business because it was their policy even in a consensual encounter – he still had to document with what in this case would have been a "warning ticket." (emphasis supplied.) This testimony highlights the questionable nature of the search. The bus was packed and the driver had done nothing to be warned about. For some reason, invalid searches seem to commence with a

“warning” ticket, e.g. State v. Woodruff, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001.) He then asked the driver if it would be a problem for Corporal Dowis to go around the exterior of the bus. The driver told him it was not a problem. (R. p. 9, lines 3-25.) At that time, Corporal Dowis went back to his car to get the K-nine and walked him around the exterior of the bus. Rogers said there were between 20-25 passengers on the bus. None of the passengers were trying to exit. (R. p. 10, line 7 – p. 11, line 5.)

The K-nine alerted to the “possible presence of an illegal odor coming from the stowaway compartment. Rogers said because there was a K-nine alert, they would have all the passengers identify their luggage. He had the bus driver go in the bus and explain to all the passengers that everybody would “have” to come out of the bus and they would be asked if they had luggage. (R. p. 12, lines 4-24.) In spite of this, he said “They had free range to do what they pleased,” (R. p. 13, line 1), but they were never told this. As the police “had” the passengers exit, they would “have” them claim their luggage in “designated” spots in the parking lot. As the passengers came out they were asked if they had luggage. If they did, they were asked to present their claim ticket. (R. p. 14, lines 16-25.)

Appellant was the eighteenth passenger that had come off the bus. He presented a claim ticket and retrieved his luggage. (R. p.15, lines 7-22.) Corporal Dowis was not there. Rogers said this was his encounter just as a “traffic stop.” (R. p. 17, lines 11 – p. 23, line 10.) Rogers said there was a definite level of uncomfortable tension as he was asking appellant questions and he was giving his answers. Appellant clutched his luggage and did not want to let go of it. (R. p. 20, lines 19 – 23.) Appellant was asked to move away from the group. (R. p. 21, lines 10-11.) Rogers said they retrieved the luggage. (R. p. 21, lines 22-23.) He asked appellant for consent to search and he

told them to go ahead. (R. p. 22, lines 6-7.) With a screwdriver and a knife, Rogers was able to retrieve a black package and appellant was placed under arrest. (R. p. 23, lines 16-22.)

On cross-examination, Rogers was asked who or what was the source of the tip. He said the tip was told to the D.E.A. He did not know how the D.E.A. got the information. He knew nothing more about the source of the tip. (R. p. 26, line 24 – p. 27, line 17.) He said it was himself and three other officers at the scene and the K-nine. Two of their cars were unmarked Crown Victorias. A third car was semi-marked with a light bar, stripes, and “State Trooper” on the vehicle. He said they would not have been at the station that night but for the tip. It was not a random encounter with the bus. All of the officers were in uniform. (R. p. 29, line 2 – p. 30, line 17.) Rogers said appellant did not come off the bus until 40 minutes after it was stopped. He admitted appellant was Hispanic and not a light-skinned, black male. He said to his recollection there were not many light-skinned black males on the bus. (R. p. 35, line 11 – p. 36, line 1.)

Defense counsel moved to suppress the heroin found in the luggage because of the illegal seizure and resulting search. None of the passengers were told they were free to leave or that they could refuse a search. (R. p. 46, line 16 – p. 47, line 10.) This Terry stop was a seizure. No reasonable passenger would feel free to leave and none tried to leave. The bus was seized with all of the passengers inside. There was no reliability shown of the anonymous tip and who gave it to the D.E.A. The burden was on the State to prove that the information supplied to the D.E.A. was reliable and credible. The State did not meet that burden. The State did not prove they had a reasonable suspicion to do what they did. (R. p. 48, line 3 – p. 54, line 8.)

The trial court denied the motion to suppress. It found that law enforcement did not stop the bus! The bus stopped on its own. The bus driver gave consent to search the luggage area. The trial court realized none of the passengers left the bus but said they were not held there against their will.

(R. p. 66, line 14 – p. 67, line 25.) That ruling was in error and was based on an incorrect premise of the law.

In Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968), the Supreme Court of the United States held that the police may make a brief investigatory stop if they observe unusual conduct, that leads to a reasonable suspicion that criminal activity may be afoot and they are able to point to specific and articulable facts to justify their suspicion.

In Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000), the Court applied a Terry stop situation to a case involving an anonymous tip. In J.L., an anonymous caller reported to the Miami Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. Two officers later responded to the bus stop and saw three black males. One of the three, J.L., was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any illegal conduct. They did not see a firearm and J.L. did not make a threatening or unusual movement. One of the officers told J.L. to put his arms up. He was then frisked and a gun was found in his pocket. 529 U.S. at 268, 120 S.Ct. at 1377.

The Court observed the following:

In the instant case, the officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller. Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, see *Adams v. Williams*, 407 S.S. 143, 146-147, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity," *Alabama v. White*, 496 U.S. at 329, 110 S.Ct. 2412. As we have recognized, however, there are situations in which an anonymous tip suitably corroborated, exhibits "sufficient indicia of reliability to provide reasonable suspicions to make the investigatory stop." *Id.* at 327, 110 S.Ct. 2412. The question we here confront is whether the tip pointing to J.L. had those indicia of reliability.

The tip in the instant case lacked the moderate indicia of reliability present in *White* and essential to the Court's decision in that case. The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct. The reasonableness of official suspicion must be measured by what the officers knew (before) they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L. If *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side of the line. 529 U.S. at 270-271, 120 S.Ct. at 1378-1379.

An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. 529 U.S. at 272, 120 S.Ct. at 1379.

In the present case the police did not even have an accurate description of the suspect. There was nothing to show the reliability of the scant information passed along by the D.E.A. or the reliability of the person who gave the information to the D.E.A. The fruits of the search do not justify the initial seizure of appellant and the bus occupants. In Smith v. Ohio, 494 U.S. 451, 543, 110 S.Ct. 1288, 1290 (1990), the Court wrote:

That reasoning, however, "justify[ing] ... the search by the arrest," just "will not do." *Johnson v. United States*, 333 U.S. 10, 16-17, 68 S.Ct. 367, 370, 92 L.Ed. 436 (1948). As we have had occasion in the past to observe, "[i]t is axiomatic that an incident search may not precede an arrest and serve as part of its justification." *Sibron v. New York*, 392 U.S. 40, 63, 88 S.Ct. 1889, 1902, 20 L.Ed.2d 917 (1968); see also *Henry v. United States*, 361 U.S. 98, 102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134 (1959); *Rawlings v. Kentucky*, 448 U.S. 98, 111, n. 6, 100 S.Ct. 2556, 2564, n. 6, 65 L.Ed.2d 633 (1980).

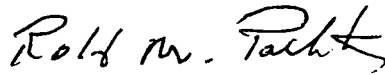
The police in this case failed to make any effort to corroborate the tip they received to see if it had a sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.

Any notion that there was a consensual search in this case is nonsense. All of the passengers of this bus were seized because they yielded to a show of authority. California v. Hodari D., 499 U.S. 621, 111 S.Ct. 1547 (1991.) They were not free to leave and they were not told they were free to leave. They all stayed on the bus and followed the orders of the police concerning getting off the bus and being paired up with their luggage claim tickets and/or luggage. A consent to search procured during an unlawful stop is invalid. Such consent cannot be the exploitation of the unlawful stop. State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991).

CONCLUSION

The drugs should have been suppressed in this case and appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak". The signature is fluid and cursive, with a large, stylized "P" and "K".

Robert M. Pachak
Appellate Defender

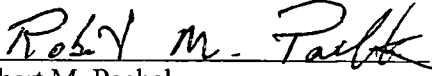
ATTORNEY FOR APPELLANT

This 25th day of August, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and 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 25th, 2015.

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

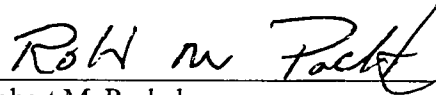
EMMANUAL M. RODRIGUEZ,

APPELLANT

APPELLATE CASE NO. 2014-001956

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of August, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of August, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 20 2015

Court of Appeals

Appeal from Greenville County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2014-001956

THE STATE,

Respondent,

vs.

EMMANUEL MARQUEZ RODRIGUEZ,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	9
 The trial judge properly denied Appellant's motion to suppress the heroin discovered in his luggage at a bus stop because the officers validly obtained consent to conduct a sniff search of the passenger bus Appellant was travelling on during a consensual encounter with the bus's driver at a scheduled stop for the bus, developed a probable cause basis to believe drugs were present on the bus after a drug-detection dog alerted on the bus's luggage compartment, and validly obtained consent from Appellant to search his luggage after Appellant exited the bus following the drug-detection dog's alert.	
CONCLUSION	19

TABLE OF AUTHORITIES

Cases:

<u>Adams v. Williams</u> , 407 U.S. 143 (1972).	17
<u>Alabama v. White</u> , 496 U.S. 325 (1990).	18
<u>California v. Carney</u> , 471 U.S. 386 (1985).	15
<u>Florida v. Bostick</u> , 501 U.S. 429 (1991).	11, 14, 16, 17
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).	11
<u>Florida v. Royer</u> , 460 U.S. 491 (1983).	11
<u>Illinois v. Gates</u> , 462 U.S. 213 (1983).	15
<u>Knight v. State</u> , 284 S.C. 138, 325 S.E.2d 535 (1985).	15
<u>Maryland v. Buie</u> , 494 U.S. 325 (1990).	11
<u>Maryland v. Wilson</u> , 519 U.S. 408 (1997).	17
<u>Skinner v. Ry. Labor Executives' Ass'n</u> , 489 U.S. 602 (1989).	13
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).	10
<u>State v. Brockman</u> , 339 S.C. 57, 528 S.E.2d 661 (2000).	10
<u>State v. Brown</u> , 401 S.C. 82, 736 S.E.2d 263 (2012).	17
<u>State v. Flowers</u> , 360 S.C. 1, 598 S.E.2d 725 (Ct. App. 2004).	10
<u>State v. Foster</u> , 269 S.C. 373, 237 S.E.2d 589 (1977).	18
<u>State v. Khingratsaiphon</u> , 352 S.C. 62, 572 S.E.2d 456 (2002).	10
<u>State v. Lane</u> , 271 S.C. 68, 245 S.E.2d 114 (1978).	14
<u>State v. Morris</u> , 312 S.C. 116, 439 S.E.2d 291 (Ct. App. 1993).	15
<u>State v. Pichardo</u> , 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005).	10
<u>State v. Provet</u> , 405 S.C. 101, 747 S.E.2d 453 (2013).	18
<u>State v. Rivera</u> , 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009).	10

<u>State v. Wright</u> , 391 S.C. 436, 706 S.E.2d 324 (2011).	18
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968).	11
<u>Texas v. Brown</u> , 460 U.S. 730 (1983).	15
<u>United States v. Drayton</u> , 536 U.S. 194 (2002).	11, 12, 13, 14
<u>United States v. Martinez-Fuerte</u> , 428 U.S. 543 (1976).	10
<u>United States v. Mendenhall</u> , 446 U.S. 544 (1980).	11, 13
<u>United States v. Ojeda-Ramos</u> , 455 F.3d 1178 (10th Cir. 2006).	16
<u>United States v. Ross</u> , 456 U.S. 798 (1982).	15
<u>United States v. Sokolow</u> , 490 U.S. 1 (1989).	17
<u>Wyoming v. Houghton</u> , 526 U.S. 295 (1999).	15
<u>Other Authorities:</u>	
U.S. Const. amend. IV.	10

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion to suppress the heroin discovered in his luggage at a bus stop because the officers validly obtained consent to conduct a sniff search of the passenger bus Appellant was travelling on during a consensual encounter with the bus's driver at a scheduled stop for the bus, developed a probable cause basis to believe drugs were present on the bus after a drug-detection dog alerted on the bus's luggage compartment, and validly obtained consent from Appellant to search his luggage after Appellant exited the bus following the drug-detection dog's alert.

STATEMENT OF THE CASE

In April of 2013, Appellant Emmanuel Marquez Rodriguez was arrested after a large quantity of heroin was discovered inside of his luggage at a bus stop. In April of 2014, the Greenville County Grand Jury indicted Appellant for one count of trafficking in heroin in an amount equal to or greater than twenty-eight grams. On September 8, 2014, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable Benjamin H. Culbertson, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a forty-year term of imprisonment along with a \$200,000 fine. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Shortly before midnight on April 16, 2013, several officers from the South Carolina Highway Patrol responded to the parking lot of a gas station and restaurant located off of Interstate 85 in Greenville, South Carolina, after receiving information from a Drug Enforcement Agency federal task force agent indicating an individual was possibly transporting a load of heroin on a La Cubana passenger bus that made scheduled stops at that location for passenger drop-offs and pick-ups. (R. pp. 4-5; p. 75; p. 77; p. 83; pp. 114-115; p. 129; pp. 133-134). Roughly fifteen minutes later, a La Cubana bus stopped in the parking lot for a scheduled stop, and the driver of the bus began exiting the vehicle.¹ (R. pp. 5-7; p. 78; State's Ex. # 1 (Recording of Incident)). When he did so, Trooper Justin Rogers approached the driver and introduced himself. (R. pp. 5-8; pp. 78-79; State's Ex. # 1). During their ensuing conversation, Trooper Rogers explained to the driver drug traffickers were known to regularly use passenger buses to covertly transport illicit substances and asked if he would permit them to conduct a sniff search of the bus using a drug-detection dog.² (R. pp. 9-10; pp. 79-80; State's Ex. # 1). The driver then immediately consented to the sniff search and opened up the luggage compartment of the bus for the officers.³ (R. pp. 9-10; pp. 80-81; p. 120; State's Ex. # 1).

After the driver provided consent for the sniff search, Corporal Brad Dowis, who was positioned nearby, retrieved his drug-detection dog, Tigger, from his vehicle and

¹ Based on the recording of the encounter, the La Cubana bus appears to have stopped in the parking lot at or just before 12:10 a.m. on April 17, 2013. (State's Ex. # 1).

² Notably, while speaking with Trooper Rogers, the driver stepped off the bus and closed its door at approximately 12:12 a.m. (R. pp. 31-32; p. 83; State's Ex. # 1). However, none of the officers present at the scene asked the driver to do so. (R. pp. 31-32; p. 83; State's Ex. # 1).

³ Significantly, the driver provided consent for the sniff search roughly three minutes into his encounter with Trooper Rogers at approximately 12:13 a.m. (State's Ex. # 1).

walked Tigger around the bus for roughly a minute or two.⁴ (R. p. 8; p. 10; p. 81; p. 115; pp. 120-121; State's Ex. # 1). When Tigger reached the luggage compartment of the bus, he alerted to the presence of drugs by sitting on top of a large pile of luggage.⁵ (R. p. 12; p. 84; pp. 121-122). Based on Tigger's alert, Trooper Rogers concluded he had probable cause to believe drugs were hidden on the bus. (R. p. 12). At that point, the officer advised the driver of the alert, indicated he needed to identify who the various pieces of luggage stored on the bus belonged to, and asked the driver to have the passengers exit the bus one by one. (R. p. 12; p. 84; State's Ex. # 1).

Thereafter, over the course of the next thirty to thirty-five minutes, the passengers exited the bus individually, and Trooper Rogers asked each of them to identify their luggage for him as they got off the bus. (R. pp. 12-14; p. 86; State's Ex. # 1). During that unloading process, Appellant Emmanuel Marquez Rodriguez exited the bus after roughly sixteen or seventeen other passengers and presented his luggage claim ticket to Trooper Rogers when asked if he had any luggage.⁶ (R. p. 15; p. 87). Appellant then personally retrieved his own luggage, which none of the other passengers had done, and tightly clutched it to his body while exhibiting signs of an abnormal level of nervousness. (R. pp. 15-16; p. 20; pp. 87-89). Based on Appellant's behavior, Trooper Rogers decided to ask him a few questions and inquired about his travel plans. (R. p. 16; p. 90; State's Ex. # 1). During their conversation, Appellant claimed he was travelling to Philadelphia

⁴ In addition to Trooper Rogers, Corporal Dowis, and Tigger, one other uniformed officer was also present at the bus stop when the bus arrived along with two unmarked law enforcement vehicles and one semi-marked law enforcement vehicle. (R. p. 5; pp. 29-30; p. 78).

⁵ Notably, Tigger alerted within six minutes of Trooper Rogers initially approaching the bus based on the fact the recording from the bus stop shows an officer walk a drug-detection dog over to the bus at 12:15 a.m. and move the dog away from the bus at 12:16 a.m. (State's Ex. # 1).

⁶ Roughly twenty to twenty-five passengers were on the La Cubana bus when it arrived at the bus stop. (R. pp. 10-11; p. 87).

from Atlanta for two weeks to perform in some "drag shows" and to meet up with some friends. (R. p. 16; p. 90; State's Ex. # 1). However, Appellant stated he did not know where he was going to in Philadelphia, did not know the names of any of the locations where he was going to perform, and did not know where his friends lived. (R. p. 16; pp. 90-91; State's Ex. # 1). Trooper Rogers then asked Appellant if he had any weapons, marijuana, cocaine, or methamphetamines in his luggage, and Appellant responded he did not. (R. p. 18; pp. 91-92; State's Ex. # 1). However, when asked if he had any heroin in his luggage, Appellant immediately looked down, tried to pull the sleeve of his jacket over his knuckles, denied he knew what heroin was, and asked Trooper Rogers what he meant. (R. p. 18; pp. 92-93; State's Ex. # 1).

In light of Appellant's suspicious responses and behavior, Trooper Rogers asked him to step away from the other passengers, and the two moved towards the front of the bus.⁷ (R. p. 21; p. 93; State's Ex. # 1). Trooper Rogers then advised Appellant his "story was not adding up," and he again asked Appellant if he had anything illegal in his luggage. (R. p. 22; p. 96; State's Ex. # 1). After Appellant again denied he had any illegal items, Trooper Rogers asked Appellant if he would consent to a search of his luggage. (R. p. 22; p. 96; State's Ex. # 1). Appellant then responded by immediately and unhesitatingly granting Trooper Rogers permission to search and offering his luggage to the officer. (R. p. 22; p. 96; p. 109; State's Ex. # 1). Thereafter, Trooper Rogers searched Appellant's luggage and located several bags of heroin hidden underneath an altered portion of the luggage's inner material.⁸ (R. pp. 22-23; p. 97; p. 101). Appellant

⁷ Based on the recording from the bus stop, Trooper Rogers asked Appellant to step away from the other passengers at approximately 12:55 a.m. (State's Ex. # 1).

⁸ Notably, the heroin was wrapped in plastic covered with axle grease in an apparent attempt to mask the heroin's odor from a drug-detection dog. (R. pp. 22-23; p. 101).

was then quickly placed under arrest and admitted he was paid two thousand dollars to drop off the heroin-filled suitcase in Philadelphia. (R. pp. 24-25; p. 127; pp. 129-130).

Subsequently, Appellant was indicted for trafficking in heroin, and he proceeded to trial. (R. pp. 206-207). At the outset of trial, the solicitor noted the trial judge needed to preliminarily address the propriety of the search that led to the discovery of Appellant's hidden stash of heroin before proceeding forward with the trial. (R. pp. 2-3). In response, the trial judge conducted an in limine hearing on the matter, a recording of the events that occurred at the bus stop was played in the courtroom, and Trooper Rogers testified about the circumstances of his encounter with Appellant that led to his discovery of the hidden heroin.⁹ (R. pp. 4-36).

Following the presentation of that evidence, defense counsel moved to suppress the incriminating evidence discovered in Appellant's case. (R. p. 46). In support of that motion, defense counsel asserted all of the passengers on the bus, including Appellant, were seized when the driver of the bus closed its door approximately two minutes after he parked the bus and began speaking with the officers, and he noted none of the passengers exited the bus at that time. (R. p. 48; pp. 53-54; pp. 59-62). Additionally, defense counsel argued the seizure was unlawful because the officers did not have reasonable suspicion of criminal activity in light of the fact they had only received a vague anonymous tip from the D.E.A. that had not been sufficiently corroborated to establish its reliability. (R. pp. 48-49; pp. 51-53). Furthermore, defense counsel argued the officers unlawfully arrested Appellant during the encounter and unlawfully searched his luggage

⁹ In addition to Trooper Rogers, Agent Charles Cloninger, a federal drug task force agent working for the D.E.A. in Atlanta, also testified during the hearing, stated he responded to the bus stop after Appellant's heroin was found, indicated he spoke with Appellant in an attempt to ascertain the source of the heroin, and recounted the incriminating statements Appellant made during their conversation. (R. pp. 38-43).

before finding his drugs, which he contended violated Appellant's Fourth Amendment rights and warranted the suppression of the evidence. (R. pp. 51-54; pp. 59-62).

In response, the solicitor asserted the officers were constitutionally permitted to approach the driver of the bus in the parking lot and attempt to engage in a consensual encounter with him even if they did not possess reasonable articulable suspicion of criminal activity at that time. (R. p. 54). Additionally, the solicitor noted the officers did not stop the bus and, instead, approached it after it had been stopped at a scheduled stopping point. (R. pp. 54-55). Likewise, the solicitor argued the passengers were not prevented from leaving the bus by the officers during the encounter and had no contact with the officers until after a drug-detection dog alerted to the presence of drugs in the luggage compartment of the bus during a sniff search conducted with the full consent of the driver. (R. pp. 55-57). Furthermore, the solicitor noted the officers had probable cause to search the entire bus, including the luggage stored in it, based on the drug-detection dog's alert, which meant Appellant's motion to suppress the heroin discovered in that luggage should be denied. (R. p. 58).

After considering the arguments of counsel, the trial judge denied the suppression motion. (R. p. 66). In denying the motion, the trial judge found the officers did not conduct a stop or seizure of the bus by approaching it after it was stopped at a scheduled stop. (R. p. 66). After that, the trial judge determined the officers validly obtained consent from the driver of the bus to conduct a sniff search of the passenger compartment. (R. p. 66). Furthermore, the trial judge found no evidence presented during the hearing suggested the passengers were held against their wills or subjected to a forced detention or seizure by the officers at the scene, including when the driver shut the

door to the bus. (R. p. 67). For those reasons, the trial judge found suppression was not appropriate in Appellant's case. (R. pp. 66-67).

Thereafter, during trial, Trooper Rogers and the other officers present at the bus stop testified about the events of April 17, 2013, that resulted in the discovery of the heroin and Appellant's arrest. (R. pp. 75-102; pp. 103-125; pp. 128-137). Likewise, Elizabeth Adkins, the expert forensic chemist who analyzed the drugs after they were recovered in Appellant's case, testified the substance found in Appellant's luggage was over two thousand grams of heroin with a purity level of 85.3 percent, and the heroin was admitted into evidence over defense counsel's objection. (R. pp. 140-144; p. 151). Furthermore, Investigator John Garrett, a federal drug task force agent working for the D.E.A. and an expert in drug transactions, testified Appellant's heroin was lethal for human consumption based on its purity level, would have needed to be diluted as a result, and would have had a street value of \$500,000 to \$600,000 after it had been diluted. (R. pp. 153-158).

Subsequently, at the conclusion of trial, the jury convicted Appellant of trafficking in heroin. (R. p. 203). Following the verdict, the trial judge sentenced Appellant to a forty-year term of imprisonment and a \$200,000 fine. (R. p. 205).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress the heroin discovered in his luggage at a bus stop because the officers validly obtained consent to conduct a sniff search of the passenger bus Appellant was travelling on during a consensual encounter with the bus's driver at a scheduled stop for the bus, developed a probable cause basis to believe drugs were present on the bus after a drug-detection dog alerted on the bus's luggage compartment, and validly obtained consent from Appellant to search his luggage after Appellant exited the bus following the drug-detection dog's alert.

Appellant contends the trial judge erred in refusing to grant his motion to suppress the heroin found hidden in his luggage at a bus stop. In support of that contention, Appellant maintains he and the other passengers on the bus were unconstitutionally seized by law enforcement officers who allegedly had no reasonable grounds to detain them. As a result, Appellant maintains his heroin, which was discovered after he provided consent to search his luggage following the allegedly illegal seizure, was inadmissible and should have been suppressed during trial. Contrary to Appellant's contentions, the law enforcement officers involved in Appellant's case did not seize Appellant and the other passengers on the bus when they approached the driver, engaged in a consensual encounter with him, and validly obtained consent from him to conduct a sniff search of the bus using a drug-detection dog. Likewise, the officers did not seize Appellant and the others by having everyone exit the bus and identify their luggage after the drug-detection dog alerted to the presence of drugs during the sniff search, and, even if they did, that seizure was fully justified in light of the fact the drug-detection dog's alert provided the officers with a particularized and objective basis to believe criminal activity was afoot at the bus stop. Thereafter, Appellant voluntarily consented to a search of his luggage, and that consent led to the valid discovery of his hidden heroin. For those reasons, the officers' discovery of Appellant's drugs was entirely proper and did not

violate Appellant's constitutional rights, and the trial judge correctly denied Appellant's suppression motion. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). Critically, the appellate court will **not** reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

ANALYSIS

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The purpose of the Fourth Amendment is "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976). However, it is

not designed “to eliminate all contact between the police and the citizenry[.]” United States v. Mendenhall, 446 U.S. 544, 553-554 (1980). Importantly, the ultimate test for evaluating contact between law enforcement officers and citizens under the Fourth Amendment is whether that contact is reasonable. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”).

Pursuant to the Fourth Amendment, an individual’s constitutional rights are not infringed by an encounter with a law enforcement officer unless the individual is seized or detained by the officer and the officer does not possess reasonable, objective grounds for effectuating the seizure. Florida v. Royer, 460 U.S. 491, 497-498 (1983). Critically, “a seizure does not occur simply because a police officer approaches an individual and asks a few questions.” Florida v. Bostick, 501 U.S. 429, 434 (1991). Likewise, an officer does not effectuate a seizure merely by identifying himself or herself to an individual as a law enforcement officer. Royer, 460 U.S. at 497. Instead, a seizure occurs “[o]nly when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]” Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968). As a result, a law enforcement officer generally may approach a citizen in an effort to speak with or question that person without implicating the Fourth Amendment and without effectuating a seizure so long as a reasonable person under the same circumstances as the citizen would feel free to disregard the officer and leave if he or she chooses to do so. Bostick, 501 U.S. at 434.

Significantly, in United States v. Drayton, 536 U.S. 194, 199 (2002), Drayton and another man were travelling on a passenger bus while transporting a large quantity of

cocaine underneath their clothing. After the bus made a scheduled stop, three uniformed and armed police officers boarded the bus with the permission of the driver. Id. at 197. Thereafter, with one officer positioned at the rear of the bus and another officer positioned at the front of the bus near the exit, the third officer walked down the aisle and spoke with the passengers on the bus about their travel plans and luggage. Id. at 198. As he was doing so, the officer encountered Drayton and his associate, became suspicious of the two men due to the fact they were wearing heavy clothing in warm weather, and asked them if they minded if he searched their persons. Id. at 199. Both men then granted consent, and the officer ultimately discovered their hidden cocaine during his search. Id. at 199. Subsequently, Drayton and the other men sought the suppression of the cocaine as the product of an allegedly illegal seizure and search, and the United States Supreme Court ultimately granted certiorari in their cases after the Eleventh Circuit Court of Appeals reversed their convictions and determined they were entitled to suppression of the evidence. Id. at 199-200. On certiorari, the Supreme Court reversed. Id. at 200. In reversing, the Supreme Court explained law enforcement officers can approach an individual, ask questions, ask for identification, and ask for permission to search luggage without violating the individual's constitutional rights so long as a reasonable innocent person in the same situation would feel free to terminate the encounter. Id. at 201-202. With that rule in mind, the Supreme Court determined the officers did not seize Drayton and his associate because they did not do anything to convey to Drayton, his associate, or the other passengers on the bus they were required to answer their questions. Id. at 203. Specifically, the Supreme Court instructed:

There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice. It is

beyond question that had this encounter occurred on the street, it would be constitutional. The fact that an encounter takes place of a bus does not on its own transform standard police questioning of citizens into an illegal seizure.

Id. at 204. Furthermore, the Supreme Court determined the facts the officers were armed and in uniform, one of the officers was positioned near the exit of the bus, and only a few passengers had ever refused to cooperate based on the officers' experience did not convert the encounter into a seizure. Id. at 205. Therefore, the Supreme Court determined the consent provided by Drayton and his accomplice was valid, and suppression of the evidence was not warranted in their cases. Id. at 207-208.

Critically, just like the officers in Drayton, the South Carolina Highway Patrol officers involved in Appellant's case were free to approach the La Cubana bus when it stopped for its scheduled stop, to speak with its driver, and to attempt to obtain consent to conduct a sniff search from him during a consensual encounter. See id. at 200 ("Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen."). In doing so, neither Trooper Rogers nor either of the other officers present at the scene did anything to convey to the driver or the passengers on the bus they were not free to leave, and the officers did not use physical force or a show of authority to restrain anyone on the bus's freedom of movement.¹⁰ See Mendenhall, 446 U.S. at 553 ("[A] person is 'seized' only when, by

¹⁰ During trial, defense counsel contended the officers seized Appellant and the other passengers on the bus when the driver closed the bus's door approximately two minutes into the encounter. (R. p. 48). Notably though, the officers never instructed the driver to close the door or did anything else to get him to do so. (R. pp. 31-32). Therefore, the driver's act of closing the bus's door could not constitute an unconstitutional seizure on behalf of the officers. See Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 614 (1989) ("[T]he Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative[.]"). However, even if it somehow could be attributed to the officers, the recording from the bus stop appears to depict someone inside of the bus reopening the bus's door at roughly 12:14 a.m., which was only two minutes after the driver closed the door. (State's Ex. # 1).

means of physical force or a show of authority, his freedom of movement is restrained.”). Instead, Trooper Rogers simply approached the driver, politely introduced himself, explained why he was there, and asked for consent to conduct a sniff search, which was granted within roughly three minutes of his initial contact with the driver. See Drayton, 536 U.S. at 201 (“Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage – provided they do not induce cooperation by coercive means.”). As a result, the officers did not effectuate a seizure of Appellant or any of the bus’s passengers in obtaining consent for the sniff search, and their actions were substantially less intrusive than the actions of the officers in Drayton that were found to be constitutionally proper.

Thereafter, the officers used a drug-detection dog to conduct a sniff search on the bus, and the dog quickly alerted to the presence of drugs in the luggage compartment of the bus within six minutes of Trooper Rogers initially approaching the driver. At that point, the officers had a probable cause basis to believe drugs were present on the bus and at least one of the passengers on the bus was involved in criminal activity. See State v. Lane, 271 S.C. 68, 72, 245 S.E.2d 114, 116 (1978) (finding the detection of the odor of drugs alone established probable cause to believe criminal activity was afoot and justified

Therefore, it is clear the closed door did not convey to the passengers they were not free to do as they pleased under the circumstances. See Drayton, 536 U.S. at 202 (explaining the appropriate inquiry for determining if a seizure occurred on a bus is whether a reasonable innocent person would feel free to decline an officer’s requests or otherwise terminate an encounter). Similarly, defense counsel contended during trial the officers seized Appellant and the other passengers on the bus because none of the passengers exited the bus during the officers’ interactions with the driver. (R. pp. 48-49). However, the fact none of the passengers left the bus at the scheduled stop did not establish the passengers had been seized by the officers, particularly in light of the fact the stop occurred after midnight at a gas station in a city with which many – if not all – of the passengers may have been unfamiliar. See Bostick, 501 U.S. at 435-436 (“[W]hen a person is seated on a bus and has no desire to leave, the degree to which a reasonable person would feel that he or she could leave is not an accurate measure of the coercive effect of the encounter.”); see also Drayton, 536 U.S. at 201-202 (“A passenger may not want to get off a bus if there is a risk it will depart before the opportunity to reboard. A bus rider’s movements are confined in this sense, but this is a natural result of choosing to take the bus; it says nothing about whether the police conduct is coercive.” (citations omitted))).

the issuance of a search warrant); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as “a fair probability that contraband or evidence of a crime will be found”); Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard). In light of that particularized suspicion of criminal activity, the officers were constitutionally permitted to temporarily detain Appellant and the other passengers on the bus and to conduct a search of the bus along with the luggage being transported inside of it. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Morris, 312 S.C. 116, 117, 439 S.E.2d 291, 292 (Ct. App. 1993) (“[U]nder Terry, an officer may stop an automobile.”); see also Wyoming v. Houghton, 526 U.S. 295, 307 (1999) (“We hold that police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search.”); California v. Carney, 471 U.S. 386, 392-393 (1985) (recognizing the automobile exception to the warrant requirement is applicable to any vehicle that is readily mobile, including a motor home); United States v. Ross, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”).

Despite the fact they had a probable cause basis to believe at least one of the passengers on the bus was presently involved in criminal activity and was actively transporting drugs, the officers in Appellant’s case nonetheless did not take any actions to seize the passengers on the bus following the drug-detection dog’s alert. Instead, Trooper Rogers asked the driver to assist him by having the passengers individually exit

the bus and identify their luggage, and he did so without using force, threats, or a show of authority that would have conveyed to those passengers they were not free to leave. See Bostick, 501 U.S. at 439-440 (“[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ request or otherwise terminate the encounter. That rule applies to encounters that take place on a city street or in an airport lobby, and it applies equally to encounters on a bus.”); cf. United States v. Ojeda-Ramos, 455 F.3d 1178, 1183-1184 (10th Cir. 2006) (“[The officer’s] order to leave the bus and claim luggage was not a seizure and would not have been even if he had identified himself as a police officer. He wanted the passengers to comply, but he did not demand, intimidate, threaten or use force against them. However compulsory [the officer’s] order may have appeared, it would not have left an impression upon a reasonable person that he was not ‘free to leave.’ After all, [the officer] required the passengers to leave the bus, not remain on it. The passengers were not only free to leave, they could have ignored [the officer’s] request to claim their luggage. ‘While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.’ ” (citation and footnotes omitted)). Accordingly, Appellant and the other passengers on the bus were not seized simply because they were asked to exit the bus and identify their luggage.

However, even assuming Trooper Rogers’s request for the passengers to exit the bus effectuated a seizure of Appellant and the others, that seizure was reasonable and warranted in light of the fact the officers had a particularized and objective basis to

believe criminal activity was afoot based on the drug-detection dog's alert on the bus's luggage compartment. See United States v. Sokolow, 490 U.S. 1, 7 (1989) (“[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” (citation omitted)). As a result, the officers were fully justified in asking Appellant and the other passengers to exit the bus while they completed their investigation into the criminal activity revealed by the sniff search, and Trooper Rogers did not thereafter violate Appellant’s constitutional rights by speaking with him and asking him for consent to search his luggage. See Bostick, 501 U.S. at 434-435 (“[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, . . . ask to examine the individual’s identification, . . . and request consent to search his or her luggage, . . . – so long as the police do not convey a message that compliance with their requests is required.” (citations omitted)); cf. Maryland v. Wilson, 519 U.S. 408, 414-415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”). Accordingly, once Appellant voluntarily provided consent for the search, Trooper Rogers was entirely justified in searching Appellant’s luggage, and his search validly resulted in the discovery of Appellant’s hidden heroin. See State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (identifying several recognized exceptions to the warrant requirement, including the consent exception).

Significantly, the officers in Appellant’s case – despite the fact they had only received an anonymous tip – were not required to simply allow a large quantity of heroin to be transported through South Carolina on a passenger bus entirely unhindered. See Adams v. Williams, 407 U.S. 143, 145 (1972) (“The Fourth Amendment does not require

a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.”); see also Alabama v. White, 496 U.S. 325, 329 (1990) (recognizing an anonymous tip will seldom be sufficient to establish even reasonable suspicion). Instead, they were constitutionally entitled to investigate the tip by attempting to engage in a consensual encounter, and they engaged in such an encounter at the bus stop in an entirely reasonable manner, which ultimately led to them obtaining a probable cause basis to believe criminal activity was afoot and discovering Appellant’s heroin in his luggage. See State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) (recognizing only unreasonable searches and seizures are prohibited). For those reasons, the officers did not violate Appellant’s constitutional rights during the encounter at the bus stop, and the trial judge properly denied Appellant’s suppression motion. See State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013) (“South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court’s ruling.” (citations omitted)); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (“When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.”). Appellant’s conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

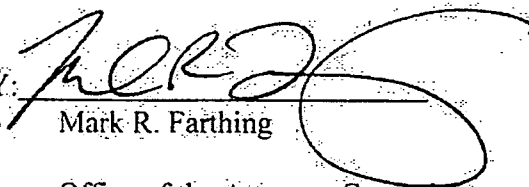
Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY:



Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2014-001956

THE STATE,

Respondent,

vs.

EMMANUEL MARQUEZ RODRIGUEZ,

Appellant.

CERTIFICATE OF COUNSEL

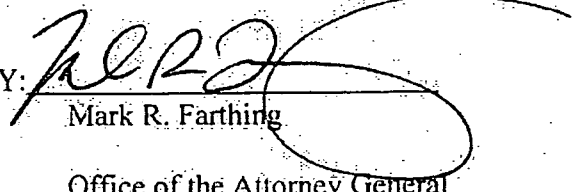
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY:


Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2014-001956

THE STATE,

Respondent,

vs.

EMMANUEL MARQUEZ RODRIGUEZ,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 20th day of August, 2015.


ANNE A. MUELLER
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727