

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Honorable Clifton Newman, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE CITY OF COLUMBIA,

RESPONDENT,

V.

CEDRIC XAVIER HEYWARD,

APPELLANT

APPELLATE CASE NO.

2016-000295

RECORD ON APPEAL

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

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

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

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

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

6 (CHAMBERS DISCUSSION)

7 (CASE RESUMED)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **THE COURT:** OKAY.

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

1 COPY.

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

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

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

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

8 **THE COURT:** OKAY.

9 (JURY VENIRE ENTERS THE COURTROOM)

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

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

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

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

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

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

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

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

17 (NO RESPONSE)

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

22 (NO RESPONSE)

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

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

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

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

7 (NO RESPONSE)

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

13 (BENCH CONFERENCE OFF THE RECORD)

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

16 (NO RESPONSE)

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

19 (NO RESPONSE)

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

24 (BENCH CONFERENCE OFF THE RECORD)

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

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

9 (BENCH CONFERENCE OFF THE RECORD)

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

13 (NO RESPONSE)

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

17 (NO RESPONSE)

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

22 (NO RESPONSE)

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

1 (NO RESPONSE)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **MS. LASOVAGE:** LASOVAGE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: WHAT SAYS THE CITY?

4 MS. MANGUM: PLEASE SEAT THIS JUROR.

5 MR. COMISH: PLEASE SEAT THIS JUROR.

6 THE COURT: PLEASE COME AROUND. KAREN WEINKLE.

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

9 THE COURT: WHAT SAYS THE CITY?

10 MS. MANGUM: PLEASE SEAT THIS JUROR.

11 MR. COMISH: PLEASE EXCUSE THIS JUROR.

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

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

16 THE COURT: DO YOU HAVE A SPOUSE?

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

18 THE COURT: WHAT SAYS THE CITY?

19 MS. MANGUM: PLEASE EXCUSE THIS JUROR.

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

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

25 MS. MANGUM: PLEASE SEAT THIS JUROR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 MS. MANGUM: PLEASE SEAT THIS JUROR.

4 MR. COMISH: PLEASE SEAT THIS JUROR.

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

7 MS. MANGUM: NO, YOUR HONOR.

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

10 MS. MANGUM: YES, YOUR HONOR.

11 MR. COMISH: YES, YOUR HONOR.

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

14 (BALANCE OF VENIRE EXCUSED)

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

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

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

23 (JURY LEAVES THE JURY BOX)

24 THE COURT: MR. COMISH.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **THE COURT:** ALL RIGHT.

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

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

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

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

15 DEFENDANT HEYWARD: YES, YOUR HONOR.

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

17 (JURY RETURNS TO THE JURY BOX)

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

19 MS. KAY: YES.

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

25 (JURY IS DULY SWORN BY THE COURT)

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

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

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

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

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

13 ALL RIGHT. ANY OBJECTIONS FROM EITHER SIDE?

14 MS. MANGUM: NONE, YOUR HONOR.

15 MR. COMISH: NONE, YOUR HONOR.

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

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

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

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

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

1 GUILTY. THANK YOU VERY MUCH.

2 THE COURT: THANK YOU.

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

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

5 TESTIFIES AS FOLLOWS:

6 DIRECT EXAMINATION BY

7 MS. MANGUM:

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

9 A. RONNIE ARNOLD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 A. YES.

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

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

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

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

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

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

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

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

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

7 A. SGT. REYNOLDS.

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

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

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

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

19 Q. AND WHAT DOES JURISDICTIONAL RIGHTS MEAN?

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

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

1 COMPLEX? DO YOU RECALL?

2 A. (INAUDIBLE).

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

5 A. IT'S NOTORIOUS FOR CRIME.

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

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

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

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

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

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

19 Q. WHY WOULD THAT BE A PROBLEM?

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

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

23 A. YES, MA'AM.

24 Q. WHO RESPONDED TO THAT CALL?

25 A. SGT. WEBB.

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

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

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

8 A. YES.

9 Q. CAN YOU POINT HIM OUT?

10 A. YES. MR. HEYWARD.

11 MS. MANGUM: I HAVE NO FURTHER QUESTIONS.

12 THE COURT: MR. COMISH.

13 MR. COMISH: MAY IT PLEASE THE COURT.

14 CROSS EXAMINATION BY

15 MR. COMISH:

16 Q. GOOD MORNING, OFFICER ARNOLD.

17 A. GOOD MORNING.

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

21 A. BOTH.

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

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

1 THERE.

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

4 MR. COMISH: THAT IS A QUESTION.

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

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

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

8 A. I'VE SEEN THE REPORT.

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

11 A. I LIKE TO THINK SO.

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

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

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

17 MS. MANGUM: YOUR HONOR, OBJECTION.

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

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

22 THE COURT: WHERE DID THIS -

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

25 THE COURT: LET'S HAVE A SIDEBAR.

1 (BENCH CONFERENCE OFF THE RECORD)

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

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

6 A. NO.

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

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

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

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

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

15 A. NO.

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

17 THE COURT: ANY ON REDIRECT?

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

20 REDIRECT EXAMINATION BY

21 MS. MANGUM:

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

23 A. NO.

24 Q. DID YOU WRITE A REPORT THAT DAY?

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

1 Q. WERE YOU THE ARRESTING OFFICER THAT DAY?

2 A. NO, MA'AM.

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

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

5 (WITNESS TO THE SIDE)

6 THE COURT: MAY WE EXCUSE THIS OFFICER?

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

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

9 THE COURT: THANK YOU.

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

11 WEBB.

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

13 TESTIFIES AS FOLLOWS:

14 DIRECT EXAMINATION BY

15 MS. MANGUM:

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

17 A. BOYD WEBB.

18 Q. AND WHAT'S YOUR OCCUPATION?

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

20 REGION DIVISION.

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

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

23 HALF YEARS.

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

25 ASSIGNED?

1 A. TO THE WEST REGION.

2 Q. WHAT DOES THAT MEAN, WEST REGION?

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

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

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

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

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

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

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

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

1 JUST BECAUSE OF TIME SPENT IN THE OFFICE?

2 A. NO.

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

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

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

14 A. ABSOLUTELY.

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

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

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

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

24 Q. AND SO WHAT DID YOU DO?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 A. NOT AT ALL.

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

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

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

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

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

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

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

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

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

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

19 MR. COMISH: OBJECTION. OPINION.

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

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

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

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

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

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

7 **Q.** (BY MS. MANGUM) SURE.

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

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

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

15 **Q.** HOW DID HIS BODY LANGUAGE CHANGE?

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

22 **Q.** WERE THOSE ALL INDICATORS?

23 **A.** THEY ARE.

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

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

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

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

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

21 A. WHAT'S THAT NOW?

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

24 A. HE WAS ARRESTED FOR NARCOTICS.

25 Q. SPECIFICALLY WHAT WAS HE ARRESTED FOR?

1 A. FOR POSSESSION OF MARIJUANA.

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

4 A. IT WAS.

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

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

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

8 A. I DO.

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

10 A. IT APPEARS SO.

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

13 THE COURT: ANY OBJECTION?

14 MR. COMISH: NONE, YOUR HONOR.

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

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

20 (JURY LEAVES THE JURY BOX)

21 THE COURT: HOW LONG IS THIS VIDEO?

22 MS. MANGUM: PROBABLY FIFTEEN MINUTES.

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

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

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

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

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

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

11 **MR. COMISH:** BETWEEN -

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

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

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

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

20 (JURY RETURNS TO THE JURY BOX)

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

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

5 (JURY LEAVES THE JURY BOX)

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

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

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

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

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

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

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

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

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

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

6 **THE COURT:** IS THERE A WAY TO –

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

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

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

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

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

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

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

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

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

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

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

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

13 MR. COMISH: THANK YOU, YOUR HONOR.

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

15 (LUNCHEON RECESS)

16 (CASE RESUMES)

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

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

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

25 MS. MANGUM: YES, YOUR HONOR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **DIRECT EXAMINATION BY**

16 **MS. MANGUM:**

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

19 **A.** IT DID.

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

21 **A.** YES, IT IS.

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

24 **THE COURT:** ALL RIGHT.

25 (VIDEO IS PLAYED FOR THE JURY)

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

2 A. IT IS.

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

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

5 (VIDEO CONTINUES)

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

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

11 (VIDEO CONTINUES)

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

14 A. AT THE TIME, YES.

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

16 A. JUST AS OFFICER SAFETY.

17 (VIDEO CONTINUES)

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

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

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

22 A. THE BLUE LIGHTS.

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

24 A. ME FLIPPING A SWITCH.

25 Q. AND WHY WOULD YOU DO THAT?

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

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

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

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

9 A. NO, HE DID NOT.

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

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

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

17 A. ONCE HE WAS ARRESTED.

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

19 A. THAT'S CORRECT.

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

22 A. NO, HE DID NOT.

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

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

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

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

4 THE COURT: JUST REPHRASE IT.

5 MS. MANGUM: SURE.

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

8 A. THAT'S CORRECT.

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

10 A. THAT'S CORRECT.

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

13 MS. MANGUM: YOUR HONOR.

14 THE COURT: YES. COME OVER HERE.

15 (BENCH CONFERENCE OFF THE RECORD)

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

23 (JURY LEAVES THE JURY BOX)

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

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

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

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

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

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

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

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

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

4 **THE COURT:** RIGHT.

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

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

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

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

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

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

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

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

17 MS. MANGUM: YES, YOUR HONOR.

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

20 MR. COMISH: OKAY.

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

23 MS. MANGUM: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 (JURY RETURNS TO THE JURY BOX)

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

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

5 **MR. COMISH:** YES.

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

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

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

11 **DIRECT EXAMINATION CONTINUED BY**

12 **MS. MANGUM:**

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

15 **A.** I DID NOT.

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

17 **A.** I DID NOT.

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

19 **A.** I DID.

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

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

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

23 **CROSS EXAMINATION BY**

24 **MR. COMISH:**

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

1 A. HOW YOU DOING?

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

4 A. NO.

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

7 A. NO.

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

10 A. NO.

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

13 A. YES.

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

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

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

17 THE COURT: ALL RIGHT. ANYTHING FOR REDIRECT?

18 REDIRECT EXAMINATION BY

19 MS. MANGUM:

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

23 A. ABSOLUTELY.

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

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

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

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

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

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

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

11 **Q.** THIS?

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

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

16 **A.** CORRECT.

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

19 **A.** TWO.

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

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

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

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

24 (WITNESS TO THE SIDE)

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

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

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

5 **THE COURT:** PLEASE, LADIES AND GENTLEMEN.
6 (JURY LEAVES THE JURY BOX)

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

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

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

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

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

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

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

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

6 (PAUSE)

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

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

10 (RECESS)

11 (AT CONCLUSION OF RECESS)

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

14 **THE COURT:** RIGHT.

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

20 **THE COURT:** OKAY.

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

1 DEFENDANT MADE UNDER OATH.

2 THE COURT: OKAY.

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

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

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

7 THE COURT: OKAY.

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

12 THE COURT: OKAY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MS. MANGUM: I UNDERSTAND.

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

10 (JURY RETURNS TO THE JURY BOX)

11 THE COURT: ALL RIGHT. MS. MANGUM.

12 DIRECT EXAMINATION BY

13 MS. MANGUM:

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

16 A. CHRIS B. WILLIAMS.

17 Q. AND WHAT IS IT THAT YOU DO?

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

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

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

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

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

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

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

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

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

23 A. K-9 ZORO.

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

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

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

7 Q. AND HOW ARE THOSE DOGS TRAINED?

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

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

1 (INAUDIBLE) DOG?

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

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

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

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

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

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

15 A. YES, MA'AM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Q. AND WHAT ARE THESE?

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

3 Q. AND YOU TOOK THEM THAT DAY?

4 A. THAT DAY.

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

7 THE COURT: WITHOUT OBJECTION.

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

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

12 A. ARE WE GOING FROM THE TOP?

13 Q. YES, THAT FIRST PICTURE.

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

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

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

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

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

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

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

8 Q. WERE THOSE ATTACHED TO THE DASH?

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

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

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

16 Q. AND WHAT IS THE PICTURE IMMEDIATELY BELOW?

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

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

23 MR. COMISH: NO OBJECTION.

24 THE COURT: NO OBJECTION.

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

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

2 A. YES, MA'AM.

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

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

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

9 CROSS EXAMINATION BY

10 MR. COMISH:

11 Q. GOOD AFTERNOON, SGT. WILLIAMS?

12 A. YES, SIR.

13 Q. HOW ARE YOU?

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

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

16 CAN YOU DESCRIBE SORT OF YOUR STANDARD PROCEDURE OF THE PIVOT
17 POINTS AND THEY GO AROUND THREE QUADRANTS, PIVOT THREE QUADRANTS.
18 IS THE STANDARD PROCEDURE EVER TO LET THE DOG INTO THE VEHICLE
19 BEFORE THE DOG IS GIVING AN ALERT?

20 A. NO.

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

23 A. THAT I TOOK?

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

25 A. YEAH.

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

3 A. NO.

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

7 A. I DON'T KNOW WHETHER WE -

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

11 A. NO, SIR.

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

13 A. NO, SIR.

14 Q. THREE MORE QUESTIONS.

15 A. ALL RIGHT.

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

18 A. NO.

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

20 A. NO.

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

22 A. OKAY.

23 THE COURT: REDIRECT?

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

25 REDIRECT EXAMINATION BY

1 **MS. MANGUM:**

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

5 **A.** YES, MA'AM.

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

8 **A.** THREE PROBABLY.

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

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

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

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

13 (WITNESS TO THE SIDE)

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

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

16 **TESTIFIES AS FOLLOWS:**

17 **DIRECT EXAMINATION BY**

18 **MS. MANGUM:**

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

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

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

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

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

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

1 Q. HOW LONG HAVE YOU BEEN DOING THAT?

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

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

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

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

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

14 Q. AND WHAT EDUCATIONAL EXPERIENCE DO YOU HAVE?

15 A. SPECIFICALLY FOR MARIJUANA?

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

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

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

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

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

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

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

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

25 A. INTERNATIONAL ASSOCIATION FOR IDENTIFICATION.

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

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

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

11 THE COURT: ANY OBJECTION?

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

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

14 (BENCH CONFERENCE OFF THE RECORD)

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

17 (JURY LEAVES THE JURY BOX)

18 THE COURT: ALL RIGHT, MS. MANGUM.

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

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

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

1 YOU HAVE AN ACTIVE CERTIFICATION?

2 A. YES, BECAUSE IT WAS NOT DECEMBER 31ST.

3 MS. MANGUM: DOES THAT ANSWER ANY –

4 MR. COMISH: YOUR HONOR, MAY I?

5 THE COURT: ABSOLUTELY.

6 CROSS EXAMINATION BY

7 MR. COMISH:

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

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

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

12 A. YEAH, THAT WORKS.

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

15 A. (INAUDIBLE)

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

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

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

22 A. SURE.

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

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

1 Q. CORRECT.

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

6 Q. OKAY.

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

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

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

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

19 Q. WHO WAS YOUR DIRECT SUPERVISOR?

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

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

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

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

25 (JURY RETURNS TO THE JURY BOX)

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

4 **DIRECT EXAMINATION CONTINUED BY**

5 **MS. MANGUM:**

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

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

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

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

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

15 **A.** YES.

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

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

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

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

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

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

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

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

22 A. AND IF I MAY ALSO -

23 Q. OFFICER POTASH, HOLD ON ONE SECOND.

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

1 **THE COURT:** ANY OBM?

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

3 **THE COURT:** THANK YOU.

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

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

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

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

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

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

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

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

24 Q. AND DID YOU COMPILE THAT INFORMATION?

25 A. YES, I DID.

1 Q. AND WHAT IS THIS?

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

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

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

19 THE COURT: ANY OBJECTION?

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

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

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

1 APPROPRIATE TIME.

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

3 (JURY LEAVES THE JURY BOX)

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

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

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

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

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

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

1 **THE COURT:** THE 4TH AMENDMENT ON THE BASIS OF?

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

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

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

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

16 **THE COURT:** OKAY.

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

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

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

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

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

24 **THE COURT:** OKAY.

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

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

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

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

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

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

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

6 **MR. COMISH:** OKAY.

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

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

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

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

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

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

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

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

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

14 THE COURT: YOU CHOSE NOT TO.

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

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

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

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

24 (JURY RETURNS TO THE JURY BOX)

25 DIRECT EXAMINATION CONTINUED BY

1 MS. MANGUM:

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

4 A. IT WAS POSITIVE FOR MARIJUANA.

5 Q. DO YOU RECOGNIZE THIS?

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

7 Q. AND WHAT IS THIS?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A. YES.

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

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

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

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

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

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

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

11 THE COURT: THANK YOU.

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

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

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

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

1 PROCEDURE?

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

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

8 A. YES.

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

10 A. NONE.

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

12 THE COURT: THANK YOU. MR. COMISH.

13 CROSS EXAMINATION BY

14 MR. COMISH:

15 Q. GOOD AFTERNOON.

16 A. GOOD AFTERNOON.

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

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

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

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

1 Q. BUT YOU ARE NOT A FORENSIC CHEMIST?

2 A. RIGHT.

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

5 MS. MANGUM: YOUR HONOR, OBJECTION.

6 THE COURT: I BELIEVE IT TO BE IRRELEVANT.

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

9 MS. MANGUM: YOUR HONOR.

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

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

13 THE COURT: THANK YOU. ANYTHING?

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

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

16 (WITNESS TO THE SIDE)

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

19 (JURY LEAVES THE JURY BOX)

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

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

25 THE COURT: THEY ARE RENEWED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **MR. COMISH:** NONE.

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

16 **MS. MANGUM:** YES.

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

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

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

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

22 **THE COURT:** ALL RIGHT.

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

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

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

5 MR. COMISH: YES, YOUR HONOR.

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

13 MR. COMISH: RIGHT.

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

22 MS. MANGUM: I THINK THAT'S -

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

24 THE COURT: SUBSECTION "C."

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

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

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

5 MS. MANGUM: NO.

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

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

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

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

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

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

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

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

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

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

10 MR. COMISH: RIGHT.

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

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

14 THE COURT: UH-HUH.

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

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

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

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

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

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

5 **MS. MANGUM:** SURE.

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

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

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

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

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

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

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

1 DON'T WANT TO MISREPRESENT.

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

7 MR. COMISH: OKAY.

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

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

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

13 (JURY RETURNS TO THE JURY BOX)

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

17 MR. COMISH: MAY I JUST HAVE ONE MINUTE TO FIND MY NOTES.

18 THE COURT: SURE.

19 MR. COMISH: THANK YOU. MAY IT PLEASE THE COURT. FIRST
20 OFF, LET ME APOLOGIZE BECAUSE I'M TRYING TO FIGHT A COLD BUT I'M LOSING
21 MY VOICE SO I'M GOING TO HAVE TO TAKE A FEW SIPS SO I APOLOGIZE FOR
22 THAT IN ADVANCE. SO THANK YOU FOR SITTING ON THIS CASE AND PAYING
23 CLOSE ATTENTION. NOW ALL I AM GOING TO DO IS JUST RUN THROUGH VERY
24 BRIEFLY WHAT YOU'VE HEARD AND MAKE A FEW ARGUMENTS TO YOU AND
25 THEN I'M DONE. SO LET ME START BY JUST RECAPPING WHAT HE'S CHARGED

1 WITH. SIMPLE POSSESSION OF MARIJUANA. OKAY. WE'VE HEARD TESTIMONY
2 THAT THE MARIJUANA WAS IN A CAR. WE'VE ALSO HEARD TESTIMONY THAT
3 THE CAR WAS NOT HIS. IN FACT, OFFICER WEBB READ THE REGISTRATION THAT
4 HE RAN AT THE TIME THAT HE PULLED MR. HEYWARD OVER. THAT CAR WAS
5 REGISTERED TO HIS SISTER SO IT WAS NOT IN FACT HIS CAR. WE KNOW THAT
6 THEY FOUND A GREEN LEAFY SUBSTANCE IN THE CAR WHICH TURNED OUT TO
7 BE MARIJUANA PER MR. POTASH'S CHEMICAL ANALYSIS. UNFORTUNATELY FOR
8 THE STATE, WHAT WE DON'T KNOW IS REALLY ANYTHING ELSE. THE STATE
9 NEVER SAW HIM PHYSICALLY TOUCH THAT MARIJUANA. THERE'S NO DIRECT
10 EVIDENCE THAT HE TOUCHED THE MARIJUANA, THAT HE SAW THE MARIJUANA,
11 THAT HE KNEW ABOUT THE MARIJUANA, THAT HE HAD ANY IDEA OF WHAT WAS
12 HIDDEN BEHIND THE DASH, BEHIND THAT PICTURE THAT THEY TALKED ABOUT.

13 NOW THE STATE IS GOING TO ARGUE THAT THERE IS
14 CIRCUMSTANTIAL EVIDENCE SUCH THAT A REASONABLE PERSON CAN INFER
15 BEYOND A REASONABLE DOUBT THAT MR. HEYWARD KNEW ABOUT THAT
16 MARIJUANA. BUT LET ME TAKE A SECOND JUST TO REVIEW WHAT
17 CIRCUMSTANTIAL EVIDENCE WE KNOW. WE KNOW THAT OFFICER ARNOLD
18 WAS, YOU KNOW, LOOKING AT SOMEBODY AND FOR A SECOND THERE HE HAD
19 PERFECT CLARITY OF RECOLLECTION AND POINTED OUT MY CLIENT BUT LATER
20 WHEN I ASKED HIM DO YOU RECALL CERTAIN CONVERSATIONS HE SAID, WELL,
21 IT WAS FOUR YEARS AGO, MY MEMORY IS REALLY FUZZY, I DON'T REMEMBER
22 ANY CONVERSATIONS THAT DAY BUT WE DO KNOW THAT LIKE SECONDS
23 PREVIOUSLY HE SAID, WELL, I DID CALL OFFICER WEBB. SO DO YOU REMEMBER
24 ANY CONVERSATIONS? DOES HE CLEARLY REMEMBER MR. HEYWARD? AND,
25 REMEMBER, WHAT WAS THE TIP? A BLACK MAN IN AN APARTMENT BUILDING

1 AND THAT WAS ENOUGH TO SPECIFICALLY IDENTIFY THAT PARTICULAR BLACK
2 GENTLEMAN? LADIES AND GENTLEMEN, THAT IS FOR YOU TO DECIDE. IS THAT
3 ENOUGH CIRCUMSTANTIAL EVIDENCE? WHAT OTHER CIRCUMSTANTIAL
4 EVIDENCE DO WE HAVE? THAT THERE WAS A PICTURE OF WILLIE NELSON ON
5 THE DASH, THAT THERE WAS RELIGIOUS PARAPHERNALIA ON THE DASH.

6 I DON'T KNOW ABOUT YOU BUT MY WIFE IS PORTER RICAN. WHEN
7 I VISIT HER IN PORTER RICO THERE IS NOTHING BUT RELIGIOUS PARAPHERNALIA
8 ON THE DASH. RELIGIOUS PARAPHERNALIA COULD MEAN ANYTHING. DOES IT
9 MEAN BEYOND A REASONABLE DOUBT THAT THERE IS MARIJUANA BEHIND THE
10 DASH? LADIES AND GENTLEMEN, THAT IS FOR YOU TO DECIDE. WE KNOW
11 THERE IS A PICTURE OF WILLIE NELSON BUT WE DON'T KNOW WHO PUT IT
12 THERE. THEY COULD HAVE DUSTED IT FOR PRINTS BUT FOR ALL WE KNOW
13 THEY DIDN'T. THERE'S NO TESTIMONY THAT THEY DIDN'T. I DON'T KNOW
14 WHO PUT IT THERE BUT IT COULD HAVE BEEN MR HEYWARD. MAYBE IT COULD
15 HAVE BEEN ANYBODY BECAUSE WE JUST DON'T KNOW.

16 NOW THE STATE HAS ALSO MADE A BIG DEAL ABOUT, WELL, WE
17 KIND OF THINK THIS IS MR. HEYWARD'S CAR DESPITE THE FACT THAT IT'S
18 REGISTERED TO HIS SISTER, BUT ALL THEY COULD SORT OF BRING TO YOU GUYS
19 TO CONVINCING YOU THAT IT'S HIS CAR, IT'S HIS AND ONLY HIS CAR, WAS THAT
20 OFFICER WILLIAMS SAW HIM DRIVING IT THREE TIMES. DID THEY SAY OVER
21 WHAT TIME FRAME? WAS IT THREE TIMES OVER THE INTERVENING THREE AND
22 A HALF YEARS? I DON'T KNOW. WAS IT THREE TIMES IN A DAY? WHO KNOWS?
23 DID ANYBODY ELSE SEE HIM DRIVE IT? WE DON'T KNOW. IS THAT ENOUGH TO
24 GO BEYOND A REASONABLE DOUBT THAT IT WAS IN FACT HIS CAR? THAT'S FOR
25 YOU TO DECIDE. EXCUSE ME FOR JUST ONE SECOND.

1 LADIES AND GENTLEMEN OF THE JURY, THE STATE'S CASE COMES
2 DOWN TO A FEW SCATTERED CLUES AND REASONABLE PEOPLE CAN ASSIGN
3 ANY NUMBER OF INTERPRETATIONS TO THESE FEW SCATTERED CLUES. OH,
4 THAT CAR, IT BELONGS TO HIS SISTER. HIS SISTER OWNS TWO CARS. MY
5 MOTHER OWNS TWO. DOES THAT MAKE ME A DRUG DEALER? SHE HAS TWO
6 CARS IN HER NAME. I DROVE HER CAR FIVE TIMES. DOES THAT MEAN
7 EVERYTHING IN THAT CAR BELONGS TO ME? IT'S A HOUSE OF CARDS, LADIES
8 AND GENTLEMEN. AND I SUBMIT TO YOU THAT YOU PULL AWAY ONE LITTLE
9 CARD AND THAT WHOLE HOUSE IS GOING TO COME TUMBLING DOWN. SO AS
10 YOU GO BACK TO THE JURY ROOM TO DELIBERATE I WOULD LIKE YOU TO KEEP
11 THESE SIMPLE FACTS IN MIND. THERE IS ABSOLUTELY NO DIRECT EVIDENCE
12 LINKING MY CLIENT, MR. HEYWARD, TO THAT PILL BOTTLE. THE CASE IS A
13 HOUSE OF CARDS. WHAT I WANT YOU TO DO IS START POKING AT THAT HOUSE
14 OF CARDS AND SEE HOW FIRM IT REALLY IS. SHE HAD TWO CARDS TO HER
15 NAME. IF YOU PRESS ON THAT, DOES THAT MAKE THE HOUSE FALL DOWN? OH,
16 HE DROVE THAT CAR THREE TIMES. DOES THAT MEAN WITHOUT A SHADOW OF
17 A DOUBT - BEYOND A REASONABLE DOUBT, EXCUSE ME -- BEYOND A
18 REASONABLE DOUBT THAT THAT WAS HIS CAR? LADIES AND GENTLEMEN, THAT
19 IS FOR YOU TO DECIDE AND THAT IS YOUR HEAVY DUTY TODAY. HOWEVER, I
20 SUBMIT TO YOU THAT THAT CIRCUMSTANTIAL EVIDENCE DOES NOT REACH THE
21 STATE'S HEAVY BURDEN OF BEYOND A REASONABLE DOUBT. AND I SUBMIT TO
22 YOU THAT YOU WILL RETURN, ONCE YOU HAVE CAREFULLY CONSIDERED ALL
23 THE FACTS AND EVERYTHING, A VERDICT OF NOT GUILTY. THANK YOU VERY
24 MUCH.

25 MS. MANGUM: THE DEFENDANT IS HERE BECAUSE HE WAS

1 CHARGED WITH SIMPLE POSSESSION OF MARIJUANA AND WHAT THAT REQUIRES
2 IS THAT THE DEFENDANT BE IN POSSESSION OF MARIJUANA. THE JUDGE IS
3 GOING TO TELL YOU ABOUT THE LAW. SHE'S GONNA GIVE YOU THE LAW AND
4 YOU ARE GOING TO HAVE TO APPLY THAT LAW TO THE FACTS TODAY.

5 HERE'S WHAT THE EVIDENCE SHOWS FROM THE CITY. WE HAD
6 NOT ONE, NOT TWO, BUT THREE OFFICERS WHO SPECIALIZE IN DRUG
7 SUPPRESSION, WHO HAVE SPENT CAREERS KEEPING OUR CITY SAFE. WE HAD
8 THREE OFFICERS WHO TESTIFIED THAT THAT DEFENDANT WAS PART OF A TIP IN
9 A COMMUNITY WHERE THERE WERE DRUG PROBLEMS, THAT THEY OBSERVED
10 THAT DEFENDANT LEAVE AN APARTMENT BUILDING WHERE THERE WERE NO
11 DRUG PROBLEMS, THAT THAT DEFENDANT COMMITTED TWO TRAFFIC
12 VIOLATIONS AND WAS PULLED OVER FOR THOSE TRAFFIC VIOLATIONS, THAT
13 AFTER HE WAS PULLED OVER FOR THOSE TRAFFIC VIOLATIONS THE DRUG DOG,
14 K-9 ZORO - YOU SAW HIM ON THE VIDEO - CAME TO THE SPOT. IT'S ALL LEGAL
15 AND IT'S ALL LAWFUL, CAME TO THE SPOT, WALKED AROUND THAT CAR, MADE
16 A HIT AND IN THE EXACT SPOT WHERE THAT DOG HIT THE OFFICERS FOUND
17 MARIJUANA. WE KNOW IT WAS MARIJUANA BECAUSE OFFICER POTASH
18 TESTIFIED THAT HE TESTED IT. AND WHAT THEY FOUND IN THAT CAR THAT DAY
19 WAS MARIJUANA. DEFENSE COUNSEL WANTS THIS CASE TO CENTER AROUND
20 PHYSICAL POSSESSION, THAT THE DEFENDANT DIDN'T HAVE IT IN HIS POCKET,
21 THAT THE DEFENDANT WASN'T DRIVING HIS VEHICLE AND SO, THEREFORE, IT
22 CAN'T POSSIBLY BE HIS. AND HE SAID THE CITY PROVIDED NO DIRECT
23 EVIDENCE THAT THAT MARIJUANA WAS HIS. BUT THAT'S NOT TRUE. AND THE
24 JUDGE IS GOING TO TELL YOU ABOUT DIRECT EVIDENCE. DIRECT EVIDENCE
25 INCLUDES THE OFFICER'S TESTIMONY. DIRECT EVIDENCE INCLUDES THE VIDEO

1 THAT YOU SAW. THAT IS DIRECT EVIDENCE. AND AS WE WERE WATCHING THAT
2 VIDEO I WROTE DOWN SOME OF THE THINGS THAT THE DEFENDANT SAID. AND I
3 REMEMBER, AND I HOPE YOU DO, TOO, SOME OF THE THINGS HE DIDN'T SAY.
4 WHEN THAT CAR WAS PULLED OVER INITIALLY FOR A TRAFFIC VIOLATION THE
5 DEFENDANT NEVER SAID, HEY, IT'S NOT MY CAR. I'M SORRY IF THE BLINKER
6 DOESN'T WORK BUT IT'S NOT MY CAR. HE NEVER SAID THAT. WHAT HE DID SAY
7 WAS IN REFERENCE TO THE LIGHT AND THE ISSUE WITH THE BLINKER, HE SAID
8 WHEN HE GOT OUT OF THE VEHICLE IT DOES LOOK LOW. A DIRECT QUOTE. I
9 CHECK IT ON THE REGULAR. I CAN'T FIND THE COVER, I'VE BEEN TRYING. ALL
10 OF THOSE THINGS ARE EVIDENCE. EVIDENCE OF WHAT? THAT THE DEFENDANT
11 DOESN'T OWN THE CAR? I DON'T THINK SO. ALL OF THOSE ARE THINGS THAT
12 PEOPLE WHO HAVE CONTROL AND POSSESSION SAY AND THAT'S WHAT THE
13 DEFENDANT DID HAVE ON THAT VEHICLE. IT DOESN'T MATTER WHO THE CAR
14 WAS REGISTERED TO. THE DEFENDANT HAD CONTROL OF THAT VEHICLE. HE
15 ADMITTED THAT HE DID THE MAINTENANCE ON THE CAR. HE ADMITTED THAT
16 HE CHECKS IT FREQUENTLY. ALL OF THOSE THINGS INDICATE THAT HE HAD
17 POSSESSION OF THAT VEHICLE.

18 IN TERMS OF HIS SISTER, IT IS IMPORTANT TO NOTE THAT
19 ALTHOUGH THE CAR WAS REGISTERED TO HIS SISTER SHE ALSO HAD ANOTHER
20 VEHICLE REGISTERED TO HER. THAT'S AN IMPORTANT PIECE OF THIS. IT'S ALSO
21 IMPORTANT TO REALIZE THAT OFFICER WILLIAMS TESTIFIED THAT HE SAW THE
22 DEFENDANT ON AT LEAST THREE OTHER OCCASIONS DRIVING THIS EXACT SAME
23 VEHICLE. ALL OF THOSE THINGS ARE EVIDENCE. THE LAW DOES NOT REQUIRE
24 FOR YOU TO FIND THIS DEFENDANT GUILTY THAT HE HAD TO BE THE
25 REGISTERED OWNER OF THE VEHICLE. AND THE JUDGE WILL TELL YOU MORE

1 ABOUT THAT. ALL YOU HAVE TO FIND IS THAT HE HAD CONSTRUCTIVE
2 POSSESSION WHICH MEANS THAT HE HAD THE ABILITY TO CONTROL THAT CAR
3 AND WHAT WAS GOING ON WITH IT.

4 I ALSO WANT TO REMIND YOU ABOUT SGT. WEBB'S TESTIMONY
5 AND YOU SAW THE VIDEO. THE DEFENDANT WAS EASY TO GET ALONG WITH,
6 WAS SORT OF JOKING. THEY WERE HAVING A FINE CONVERSATION AND THE
7 MINUTE THAT HE BROUGHT UP THE SEARCH OF THE CAR I HOPE YOU NOTICED
8 THAT HIS DEemeanor CHANGED, THAT HE SAT ON THAT VEHICLE, THAT HE AT
9 ONE POINT PUT HIS HANDS BEHIND HIS BACK. SGT. WEBB TESTIFIED ABOUT THE
10 CONCERN THAT HE WAS GOING TO FLEE THE SCENE AND ON THE VIDEO YOU SEE
11 HIM KIND OF WALK AWAY, YOU SEE ANOTHER OFFICER WALK UP TO HIM. ALL
12 OF THOSE THINGS ARE IMPORTANT PARTS OF THIS PUZZLE. AND ALTHOUGH I
13 DON'T AGREE WITH THE ANALOGY OF DEFENSE COUNSEL ABOUT THE HOUSE OF
14 CARDS, I THINK A BETTER ANALOGY IS IF YOU THINK ABOUT A PUZZLE AND IF
15 WE TAKE ONE OF THOSE PIECES - WE ARE NOT SURE WHAT THE WHOLE PICTURE
16 IS SO IF WE JUST HAD THE CROSSES ON THE VEHICLE, THAT ONE PIECE
17 WOULDN'T BE ENOUGH FOR A FULL PICTURE. BUT WHEN YOU TAKE ALL OF
18 THOSE PIECES OF THE PUZZLE AND YOU PUT THEM TOGETHER, WHEN YOU TAKE
19 AN INFORMANT, A TIP, WHEN YOU TAKE A DEFENDANT IN A HIGH DRUG AREA,
20 WHEN YOU TAKE A LAWFUL STOP, WHEN YOU TAKE SUSPICIOUS BEHAVIOR OF
21 THE DEFENDANT, WHEN YOU TAKE A LAWFUL SEARCH BY A DRUG K-9, WHEN
22 YOU TAKE THE MARIJUANA THAT WAS FOUND, WHEN YOU TAKE THE
23 STATEMENTS OF THE DEFENDANT, WHEN YOU TAKE THE OBSERVATIONS OF THE
24 OFFICER THAT HE DRIVES THAT CAR, WHEN YOU TAKE ALL OF THOSE PIECES
25 THEN ALL OF A SUDDEN THAT PUZZLE COMES INTO FOCUS. AND I THINK WHEN

1 YOU LOOK AT THAT PUZZLE THERE IS ONLY ONE THING THAT YOU CAN DO AND
2 THAT IS TO FIND THIS DEFENDANT GUILTY OF SIMPLE POSSESSION OF
3 MARIJUANA. THANK YOU.

4 THE COURT: ARE THERE ANY MATTERS WE NEED TO TAKE UP
5 BEFORE I CHARGE THE JURY?

6 MS. MANGUM: NOT FROM US, YOUR HONOR.

7 MR. COMISH: JUST THE RENEWAL, YOUR HONOR.

8 THE COURT: ALL RIGHT. MADAM FOREPERSON AND MEMBERS OF
9 THE JURY, YOU'VE HEARD THE TESTIMONY, THE EVIDENCE AND THE
10 ARGUMENTS OF BOTH SIDES. I WILL NOW EXPLAIN THE LAW THAT APPLIES TO
11 THIS CASE. AS I MENTIONED EARLIER, UNDER OUR LAW YOU AND I HAVE
12 SEPARATE AND DISTINCT DUTIES. ONLY YOU, THE JURY, CAN MAKE FINDINGS
13 OF FACT IN THE CASE. I'M NOT PERMITTED TO INDICATE TO YOU HOW I FEEL
14 ABOUT THE TESTIMONY AND THE EVIDENCE PRESENTED. THROUGHOUT THE
15 TRIAL I'VE ATTEMPTED TO BE FAIR AND IMPARTIAL TOWARD EACH OF THE
16 PARTIES INVOLVED. THE TRIAL IS VERY IMPORTANT TO THE CITY AND THE
17 DEFENDANT AND YOU HAVE SWORN TO SEE THAT BOTH THE CITY AND THE
18 DEFENDANT HAVE A FAIR AND IMPARTIAL TRIAL. YOU ARE NOT TO BE
19 GOVERNED BY SYMPATHY, PREJUDICE OR PUBLIC OPINION. IT'S ESPECIALLY
20 IMPORTANT THAT YOU PERFORM YOUR DUTY DILIGENTLY AND
21 CONSCIENTIOUSLY FOR ORDINARILY THERE IS NO MEANS OF CORRECTING AN
22 ERRONEOUS DETERMINATION OF FACT BY THE JURY. NOW IT'S MY DUTY TO
23 GIVE YOU THE LAW AND YOU MUST ACCEPT AND APPLY THE LAW AS I GIVE IT
24 TO YOU AND BE GUIDED BY IT IN YOUR CONSIDERATION AND DELIBERATION OF
25 THE EVIDENCE IN THE CASE. NOT ONLY ARE YOU THE SOLE JUDGES OF THE

1 FACTS IN THE CASE, BUT YOU, AS THE JURY, ARE THE SOLE AND EXCLUSIVE
2 JUDGES OF THE EFFECT AND THE VALUE OF THE EVIDENCE IN THIS CASE, AS
3 WELL AS THE CREDIBILITY OF ALL THE WITNESSES WHO HAVE TESTIFIED IN
4 THIS CASE.

5 NOW I REMIND YOU THAT WHAT THE ATTORNEYS HAVE TOLD YOU
6 IN OPENING STATEMENTS AND CLOSING ARGUMENTS IS NOT EVIDENCE. TO
7 DETERMINE THE FACTS IN THIS CASE, YOU HAVE TO EVALUATE CREDIBILITY
8 WHICH MEANS BELIEVABILITY OF EACH WITNESS. YOU WILL APPLY THE TEST
9 OF TRUTHFULNESS THAT YOU ARE ACCUSTOMED TO APPLYING IN YOUR DAILY
10 LIVES. AND SOME OF THE THINGS THAT YOU MAY CONSIDER AS YOU DECIDE
11 WHETHER OR NOT TO BELIEVE A WITNESS'S TESTIMONY ABOUT A PARTICULAR
12 MATTER INCLUDE WHAT WAS THE MANNER AND APPEARANCE OF THE WITNESS
13 WHO TESTIFIED. WAS HE STRAIGHTFORWARD OR HESITANT IN ANSWERING?
14 WAS THE TESTIMONY OF THE WITNESS CONSISTENT OR INCONSISTENT? HOW
15 DID THE WITNESS COME TO KNOW THE FACTS THAT HE TESTIFIED TO? WHAT
16 WAS HIS ABILITY TO KNOW THE FACTS? IS THERE SOME REASON A WITNESS
17 WOULD WANT TO GIVE TESTIMONY? IS A WITNESS POTENTIALLY BIASED OR
18 PREJUDICED TOWARD ONE SIDE OR ANOTHER?

19 NOW THERE ARE TWO TYPES OF EVIDENCE FROM WHICH A JURY
20 MAY PROPERLY FIND THE TRUTH AS TO THE FACTS OF THE CASE. ONE IS DIRECT
21 EVIDENCE, SUCH AS THE TESTIMONY OF AN EYE WITNESS. THE OTHER IS
22 INDIRECT OR CIRCUMSTANTIAL EVIDENCE. THE PROOF OF A CHAIN OF
23 CIRCUMSTANCES POINTING TO THE EXISTENCE OR NON-EXISTENCE OF CERTAIN
24 FACTS. A POLICE OFFICER'S PERSONAL OBSERVATIONS OF THE DEFENDANT'S
25 ACTION, APPEARANCE OR CONDITION CONSTITUTE DIRECT EVIDENCE BECAUSE

1 IT'S BASED ON THE OFFICER'S ACTUAL KNOWLEDGE OF THE SITUATION AND
2 REQUIRES NO INFERENCE FROM THE JURY. BEFORE YOU CAN CONVICT A
3 DEFENDANT ON CIRCUMSTANTIAL EVIDENCE, THE CIRCUMSTANTIAL EVIDENCE
4 MUST MEASURE UP TO THE REQUIREMENTS OF LAW. SO I CHARGE YOU THAT
5 WHERE IT'S UNDERTAKEN BY THE STATE IN A CRIMINAL CASE TO PROVE THE
6 GUILT OF THE DEFENDANT BY CIRCUMSTANTIAL EVIDENCE ONLY, NOT ONLY
7 MUST THE CIRCUMSTANCES BE PROVEN, BUT THEY MUST POINT CONCLUSIVELY
8 TO THE GUILT OF THE ACCUSED AND MUST BE WHOLLY AND IN EVERY
9 PARTICULAR PERFECTLY CONSISTENT WITH EACH OTHER AND THEY MUST ALSO
10 BE ABSOLUTELY INCONSISTENT WITH ANY OTHER THEORY THAN THAT OF THE
11 GUILT OF THE ACCUSED. COURTS IN THIS STATE HAVE RULED THAT IN CASES OF
12 CIRCUMSTANTIAL EVIDENCE THAT EVERY CIRCUMSTANCE WHICH IS RELIED
13 UPON BY THE STATE AS MATERIAL MUST BE BROUGHT TO THE TEST OF STRICT
14 PROOF. ALL THE FACTS PROVED MUST BE CONSISTENT WITH EACH OTHER AND
15 TAKEN TOGETHER SHOULD BE OF A CONCLUSIVE NATURE PRODUCING TO A
16 REASONABLE AND MORAL CERTAINTY THAT THE DEFENDANT AND NO ONE ELSE
17 COMMITTED THE OFFENSE CHARGED. IT IS NOT ENOUGH THAT THEY CREATE A
18 PROBABILITY THOUGH A STRONG ONE AND ASSUMING ALL THE FACTS WHICH
19 THE EVIDENCE TENDS TO ESTABLISH TO BE TRUE THERE MAY YET BE
20 ACCOUNTED FOR ANY THEORY WHICH DOES NOT INCLUDE THE GUILT OF THE
21 DEFENDANT THEN THE PROOF FAILS. THE REASON FOR THIS IS THAT ALL
22 PRESUMPTIONS OF LAW INDEPENDENT OF EVIDENCE ARE IN FAVOR OF THE
23 INNOCENT AND EVERY PERSON IS PRESUMED INNOCENT UNTIL HE IS PROVED TO
24 BE GUILTY. ONE CANNOT BE CONVICTED ON SUSPICION HOWEVER STRONG
25 THAT SUSPICION MIGHT BE. A VERDICT OF GUILTY CAN BE BASED UPON

1 CIRCUMSTANTIAL EVIDENCE AS SAFELY AS UPON DIRECT EVIDENCE PROVIDED
2 THE CIRCUMSTANTIAL EVIDENCE RELIED UPON TO PROVE GUILT MEASURES UP
3 TO THESE REQUIREMENTS OF THE LAW THAT I'VE JUST STATED TO YOU.

4 THE LAW DOES NOT REQUIRE ANY DEFENDANT TO PROVE HIS OR
5 HER INNOCENCE OF A CRIME. ON THE CONTRARY, THE LAW REQUIRES THE CITY
6 TO ESTABLISH THE DEFENDANT'S GUILT BY LEGAL EVIDENCE BEYOND A
7 REASONABLE DOUBT. THE LAW PRESUMES THE DEFENDANT TO BE INNOCENT
8 OF THE CHARGE MADE AGAINST HIM UNTIL HIS GUILT HAS BEEN PROVEN
9 BEYOND A REASONABLE DOUBT. THE BURDEN OF OVERCOMING THIS
10 PRESUMPTION IS PLACED ON THE CITY AND RESTS UPON THE CITY
11 THROUGHOUT THE TRIAL UNTIL THE CITY HAS SATISFIED YOU BY EVIDENCE OF
12 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

13 NOW ONE WAY TO DESCRIBE REASONABLE DOUBT IS TO SAY A
14 DOUBT BASED UPON REASON AND COMMON SENSE. THAT KIND OF DOUBT THAT
15 WOULD MAKE A REASONABLE PERSON HESITATE TO ACT. ANOTHER WAY TO
16 DESCRIBE REASONABLE DOUBT IS TO SAY IT IS PROOF THAT WILL LEAVE YOU
17 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

18 NOW IT IS UNLAWFUL FOR ANY PERSON IN OUR STATE
19 KNOWINGLY OR INTENTIONALLY TO POSSESS A CONTROLLED SUBSTANCE
20 UNLESS THE SUBSTANCE WAS OBTAINED DIRECTLY FROM OR PURSUANT TO A
21 VALID PRESCRIPTION OR ORDER OF A PRACTITIONER WHILE ACTING IN THE
22 COURSE OF HIS PROFESSIONAL PRACTICE. I FURTHER CHARGE YOU THAT
23 MARIJUANA IS A CONTROLLED SUBSTANCE. POSSESSION OF MARIJUANA MAY
24 BE ACTUAL OR CONSTRUCTIVE. ACTUAL POSSESSION MEANS THAT THE
25 MARIJUANA WAS IN THE ACTUAL PHYSICAL CUSTODY OF THE DEFENDANT.

1 CONSTRUCTIVE POSSESSION MEANS THAT THE DEFENDANT HAD DOMINION AND
2 CONTROL OR THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER EITHER
3 THE MARIJUANA ITSELF OR THE PROPERTY IN WHICH THE MARIJUANA WAS
4 FOUND. ACTUAL KNOWLEDGE OF THE PRESENCE OF MARIJUANA IS STRONG
5 EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE.
6 THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE INFERRED WHEN THE
7 SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE DEFENDANT'S CONTROL.

8 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
9 THE DEFENDANT KNOWINGLY OR INTENTIONALLY POSSESSED MARIJUANA.
10 KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY.
11 INTENTIONALLY MEANS WILFULLY INTENDING THE RESULT WHICH ACTUALLY
12 OCCURS, NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY
13 ACTS OR CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM
14 WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. THE MERE
15 PRESENCE AT THE SCENE WHERE THE DRUGS WERE FOUND IS NOT ENOUGH TO
16 PROVE POSSESSION. THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE
17 INFERRED WHEN THE SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE
18 DEFENDANT'S CONTROL. HOWEVER, THIS INFERENCE IS SIMPLY AN
19 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH
20 THE OTHER EVIDENCE IN THE CASE AND TO BE GIVEN THE WEIGHT YOU DECIDE
21 IT SHOULD HAVE.

22 YOU HAVE BEEN CHOSEN AND SWORN AS JURORS IN THIS CASE TO
23 TRY THE ISSUES OF FACT PRESENTED BY THE ALLEGATIONS OF THE TICKET AND
24 THE DENIAL MADE BY THE NOT GUILTY PLEA OF THE ACCUSED. YOU ARE TO
25 PERFORM THIS DUTY WITHOUT BIAS OR PREJUDICE AGAINST ANY PARTY. THE

1 LAW DOES NOT PERMIT JURORS TO BE GOVERNED BY SYMPATHY, PREJUDICE OR
2 PUBLIC OPINION. BOTH THE ACCUSED AND THE PUBLIC EXPECT THAT YOU WILL
3 CAREFULLY AND IMPARTIALLY CONSIDER ALL THE EVIDENCE IN THE CASE,
4 FOLLOW THE LAW AS INSTRUCTED BY THE COURT AND REACH A JUST VERDICT
5 REGARDLESS OF THE CONSEQUENCES.

6 THE FAILURE OF THE DEFENDANT TO TAKE THE STAND AND
7 TESTIFY IN HIS BEHALF DOES NOT CREATE ANY PRESUMPTION AGAINST HIM. I
8 CHARGE YOU THAT YOU MUST NOT PERMIT THIS FACT TO WEIGH IN THE
9 SLIGHTEST DEGREE AGAINST THE DEFENDANT, NOR SHOULD THIS FACT ENTER
10 INTO DISCUSSIONS OR DELIBERATIONS OF THE JURY. THE CONSTITUTION OF
11 THE UNITED STATES GIVES THE DEFENDANT THE ABSOLUTE RIGHT TO DECIDE
12 NOT TO TESTIFY AND TO REQUIRE THE GOVERNMENT TO PROVE ITS CASE. YOU
13 MUST IGNORE THIS DECISION NOT TO TESTIFY WHEN YOU DECIDE WHETHER HE
14 IS GUILTY OR NOT GUILTY. A DEFENDANT IS PRESUMED INNOCENT. HE DOES
15 NOT HAVE TO PROVE HIS INNOCENCE, IT IS THE GOVERNMENT THAT MUST
16 PROVE GUILT.

17 NOW THERE'S NOTHING PARTICULARLY DIFFERENT IN THE WAY A
18 JURY SHOULD CONSIDER THE EVIDENCE IN A CRIMINAL CASE FROM THAT
19 WHICH ALL REASONABLE PERSONS TREAT ANY QUESTION DEPENDING UPON
20 THE EVIDENCE PRESENTED TO THEM. YOU ARE EXPECTED TO USE GOOD SENSE,
21 CONSIDER THE EVIDENCE IN THE CASE FOR ONLY THOSE PURPOSES FOR WHICH
22 IT'S BEEN ADMITTED AND GIVE IT A REASONABLE AND FAIR CONSTRUCTION IN
23 THE LIGHT OF YOUR COMMON KNOWLEDGE AND NATURAL TENDENCIES AND
24 INCLINATIONS OF HUMAN BEINGS.

25 THE CITY OF COLUMBIA AND THE DEFENDANT ARE ENTITLED TO

1 THE INDIVIDUAL OPINION OF EACH JUROR ON THE ISSUES OF FACT IN THIS CASE.
2 IT IS THE DUTY OF EACH OF YOU TO CONSIDER AND WEIGH ALL THE EVIDENCE
3 IN THE CASE AND FROM SUCH EVIDENCE TO DETERMINE IF YOU CAN THE
4 QUESTION OF GUILT OR INNOCENCE OF THE DEFENDANT. I CHARGE YOU THE
5 SIMPLE QUESTION IS WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. THE
6 WORD VERDICT COMES FROM THE LATIN WORD VEREDICTO WHICH MEANS TO
7 SPEAK THE TRUTH. YOUR VERDICT SHOULD SPEAK THE TRUTH AS YOU FIND IT
8 TO BE.

9 NOW IN A FEW MINUTES WE ARE GOING TO ASK YOU TO RETIRE TO
10 THE JURY ROOM. I'LL NEED TO CHECK WITH THE ATTORNEYS, MAKE SURE WE
11 HAVE NO FURTHER LEGAL MATTERS THAT NEED TO BE TAKEN UP AND THEN
12 I'LL SEND IN A JURY VERDICT FORM AND ALLOW YOU TO BEGIN
13 DELIBERATIONS. WHEN YOU HAVE REACHED A VERDICT, IF YOU'LL KNOCK ON
14 THE DOOR MS. WILLIAMS WILL LET THE COURT KNOW. YOU'LL WRITE YOUR
15 VERDICT ON YOUR VERDICT FORM AND, MADAM FOREPERSON, IF YOU WOULD
16 SIGN THAT. ALL RIGHT. IF YOU WILL, RETURN TO THE JURY ROOM FOR JUST A
17 MINUTE, WE'LL SEND THEM ON IN.

18 (JURY LEAVES THE JURY BOX)

19 **THE COURT:** ANY OTHER MATTERS WE NEED TO TAKE UP BEFORE
20 THE JURY BEGINS?

21 **MS. MANGUM:** NONE, YOUR HONOR.

22 **MR. COMISH:** JUST RENEWING, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. THANK YOU SO MUCH. TELL THEM
24 THEY CAN START DELIBERATING.

25 (JURY DELIBERATING)

1 (RECESS)

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

3 (JURY RETURNS TO THE JURY BOX)

4 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, I
5 UNDERSTAND YOU'VE REACHED A VERDICT. I HAVE THE VERDICT FORM THAT
6 THE COURT OFFICER HAS PROVIDED TO ME. THE VERDICT FORM READS IN THE
7 MATTER OF CEDRIC XAVIER HEYWARD, WE FIND THE DEFENDANT GUILTY. IT'S
8 DATED MARCH 4TH, 2015, AND SIGNED BY YOU, MADAM FOREMAN?

9 **FOREMAN:** CORRECT.

10 **THE COURT:** ALL RIGHT. THANK YOU SO MUCH FOR YOUR
11 SERVICE.

12 (JURY IS DISMISSED)

13 **THE COURT:** ALL RIGHT. I'LL HEAR FROM THE PARTIES WITH
14 REGARD TO SENTENCING.

15 **MS. MANGUM:** YOUR HONOR, AS I MENTIONED EARLIER, MR.
16 HEYWARD HAS BEEN CHARGED AT LEAST THREE OTHER TIMES WITH SIMPLE
17 POSSESSION. I THINK ONE OF THOSE WAS A CONVICTION. HE WAS MADE A FAIR
18 OFFER IN THIS CASE AND SO WE'LL BE ASKING FOR THE THIRTY DAYS.

19 **THE COURT:** ALL RIGHT.

20 **MR. COMISH:** YOUR HONOR, MY CLIENT TAKES CARE OF HIS
21 YOUNG DAUGHTER SO HIS DAUGHTER'S MOTHER CAN WORK. IN THIS CASE
22 WE'LL BE ASKING FOR A FINE RATHER THAN ANY JAIL TIME. HE ALREADY DID -
23 IT WAS JUST ONE DAY BUT HE DID DO A JAIL ON THIS. HE'S VERY CONCERNED
24 ABOUT WHAT'S GOING TO HAPPEN WITH HIS DAUGHTER AND THE DAUGHTER'S
25 MOTHER'S LIVELIHOOD. AT THIS TIME, I WANT TO TAKE A FINAL OPPORTUNITY

1 TO RENEW ALL OBJECTIONS JUST FOR THE PURPOSES OF THE RECORD.

2 THE COURT: THEY ARE THERE.

3 MR. COMISH: I GET IN TROUBLE IF I DON'T DO IT AT THE VERY
4 END.

5 THE COURT: THEY ARE THERE. THEY ARE SO NOTED.

6 MS. MANGUM: YOUR HONOR, MAY I ADD JUST A COUPLE OF
7 THINGS IN TERMS OF SENTENCING. THIS IS A DEFENDANT THAT OUR OFFICERS
8 HAVE HAD FREQUENT CONTACT WITH. THIS CONTINUES TO BE A PROBLEM.
9 ALTHOUGH HE CERTAINLY HAS A RIGHT TO FILE A COMPLAINT AFTER ARREST
10 AND ALL THOSE THINGS. HE CONTINUES TO DO THAT WITH THESE OFFICERS.
11 HE'S FILED I.A. COMPLAINTS THAT ARE FACTUALLY INACCURATE. NOTHING
12 HAS EVER BEEN SUSTAINED BUT THEY REMAIN ON THESE OFFICERS' RECORDS
13 AND SO WE WOULD LIKE ALL OF THAT TO BE TAKEN INTO ACCOUNT. I THINK
14 IT'S TIME THAT THIS DEFENDANT LEARNS THAT C.P.D. MEANS WHAT THEY SAY.

15 MR. COMISH: YOUR HONOR, I THINK THAT'S INAPPROPRIATE. MY
16 CLIENT WAS CONVICTED OF SIMPLE POSSESSION, NOT OF FILING REPORTS IN
17 ANY SENSE.

18 MS. MANGUM: I JUST MENTION THAT BECAUSE THERE'S A LACK OF
19 RESPONSIBILITY IN TERMS OF WHAT'S HAPPENING HERE.

20 MR. COMISH: FILING REPORTS IS NOT INDICATIVE OR DISPOSITIVE
21 OF RESPONSIBILITY OR THE LACK THEREOF. I CAN TELL YOU WHAT MY CLIENT
22 TOLD ME AND THAT HE'S VERY CONCERNED ABOUT THE STATUS OF HIS
23 DAUGHTER. HE'S CURRENTLY LOOKING FOR EMPLOYMENT AND HE'S HOPING -
24 HE'S BEEN TOLD BY SEVERAL EMPLOYERS THAT THE RESOLUTION OF THESE
25 PARTICULAR CHARGES THEY MIGHT CONSIDER EMPLOYING HIM. I WOULD LIKE

1 FOR HIM TO HAVE THE OPPORTUNITY TO START WORK AS SOON AS POSSIBLE. I
2 WOULD – I'M PLANNING TO APPEAL THIS CASE AND IN LIGHT OF THAT, YOU
3 KNOW, THE STATE SHOULD I WIN AN APPEAL CAN ALWAYS REFUND HIS MONEY
4 BUT THEY CAN'T REFUND HIS TIME IN THE WHATEVER PROBABILITY CHANCE
5 THAT THAT DOES HAPPEN. AND I JUST HATE TO SEE HIM DO THE TIME IF THIS
6 SHOULD BE OVERTURNED.

7 THE COURT: MR. HEYWARD, HOW LONG HAS IT BEEN SINCE
8 YOU'VE WORKED?

9 DEFENDANT HEYWARD: DURING THE COURSE OF MY CHILD'S
10 MOTHER'S PREGNANCY I FINALLY FOUND A JOB AT THE HICKORY POINT IN
11 IRMO, SOUTH CAROLINA. I WORKED FOR A FEW MONTHS WHERE I WAS
12 DISCHARGED. THEY LET ME GO. AND THEN IT CAME UNDER NEW MANAGEMENT
13 AND SEVEN-ELEVEN BOUGHT OUT THE COMPANY SO THEY DECIDED TO RE-HIRE
14 ME AND I RAN THE KITCHEN. AND DUE TO THE LIKE TRANSPORTATION ISSUES I
15 EVENTUALLY WAS LET GO.

16 THE COURT: OKAY. HOW LONG AGO WAS THAT?

17 DEFENDANT HEYWARD: THAT WAS IN 20... IT WAS JUST BEFORE
18 MY DAUGHTER'S BIRTHDAY.

19 THE COURT: SO HOW OLD IS SHE?

20 DEFENDANT HEYWARD: SHE'S TWO.

21 THE COURT: OKAY. SO IT WAS TWO YEARS AGO OR A YEAR AGO?

22 DEFENDANT HEYWARD: IT WAS OVER A YEAR NOW.

23 THE COURT: OVER A YEAR CONSISTENT. OVER A YEAR SINCE
24 YOU'VE WORKED ANYWHERE?

25 DEFENDANT HEYWARD: YES, MA'AM, BUT I HAVE – I SHOULD

1 HAVE HAD BROUGHT THEM BUT I HAD INTERVIEWS, A LOT OF INTERVIEWS.
2 WAL-MART -- HAD A COUPLE OF 'EM. AMAZON. A COUPLE INTERVIEWS FOR
3 WAL-MART.

4 THE COURT: SO HOW HAVE YOU BEEN SUPPORTING YOURSELF
5 DURING THIS TIME?

6 DEFENDANT HEYWARD: MY FAMILY.

7 THE COURT: I MEAN. HOW ARE YOU EATING? HOW DO YOU GET
8 FOOD, HOW DO YOU HAVE A ROOF OVER YOUR HEAD?

9 DEFENDANT HEYWARD: I EAT WITH MY SISTER.

10 THE COURT: OKAY.

11 DEFENDANT HEYWARD: AND MY CHILD'S MOTHER, SHE IS
12 EMPLOYED. SHE'S AN ENTERTAINER.

13 THE COURT: WHERE IS SHE AN ENTERTAINER?

14 DEFENDANT HEYWARD: AT -- I CAN'T REMEMBER THE TECHNICAL
15 NAME BUT IT'S A BAR. IT'S A CLUB OFF OF BROAD RIVER ROAD.

16 THE COURT: SO IF I CONSIDER SOME KIND OF A FINE, HOW ARE
17 YOU GOING TO PAY A FINE?

18 DEFENDANT HEYWARD: IT WILL BE PAID EVEN IF I HAVE
19 (INAUDIBLE).

20 MR. COMISH: YOUR HONOR, I UNDERSTAND MY CLIENT'S MOTHER
21 IS HERE AND IS WILLING TO VOUCH FOR HIS PAYMENT OF THE CLAIM -- OF THE
22 FINE, EXCUSE ME.

23 THE COURT: OKAY. WELL, MOM PAYING THE FINE DOESN'T GET
24 ME TOO FAR.

25 DEFENDANT HEYWARD: IT'S LIKE THE SEASON HAS CHANGED

1 AND IT'S A LOT OF YARD WORK AVAILABLE AND I WILL BE MORE THAN WILLING
2 IF I CAN - I AM POSITIVE THAT THIS MONEY WILL BE PAID.

3 MR. COMISH: WITH YOUR HONOR'S DISCRETION, I'M SURE MR.
4 HEYWARD WOULD BE WILLING TO DO A NUMBER OF COMMUNITY SERVICE
5 HOURS IN LIEU OF ANY PART OF THE FINE. I DON'T THINK THE MOTHER IS
6 SAYING SHE'LL PAY IT BUT WILL VOUCHSAFE THE PAYMENT SHOULD MR.
7 HEYWARD PROVE UNABLE TO AND HIS TAKING CARE OF THE CHILD IS WHAT
8 ENABLES THE CHILD'S MOTHER TO WORK.

9 THE COURT: WHEN WAS THE LAST TIME YOU WERE ARRESTED?
10 WAS THAT 2012?

11 DEFENDANT HEYWARD: THE LAST TIME I WAS ARRESTED WAS - I
12 BELIEVE IT WAS MARCH THE 11TH OF 2011. NO, '12.

13 THE COURT: IS THAT CHARGE STILL PENDING?

14 DEFENDANT HEYWARD: NO, MA'AM, THAT CHARGE -- IT'S NOT
15 PENDING ANY MORE AND I WAS NOT GUILTY.

16 THE COURT: YOU FOUND WERE FOUND NOT GUILTY?

17 DEFENDANT HEYWARD: I ASSUME THEY THREW IT OUT RIGHT
18 BEFORE WE WENT UP FRONT AFTER A FEW MONTHS CONTINUANCES I GUESS.

19 THE COURT: OKAY. SO IN OUR SYSTEM I SEE - YOU ARE CEDRIC
20 XAVIER LAMAR?

21 DEFENDANT HEYWARD: YES, MA'AM.

22 THE COURT: AND SO I SEE A SPEEDING CHARGE, AN OPERATING
23 AN UNSAFE MECHANICAL CONDITION. THOSE ARE STILL PENDING, TOO?

24 DEFENDANT HEYWARD: YES, MA'AM, I ASSUME. DO YOU HAVE A
25 DATE? I WAS ALSO WAITING A FEW OTHER SUMMONS, COURT SUMMONS.

1 **THE COURT:** OTHER JURY TRIALS?

2 **DEFENDANT HEYWARD:** YES, MA'AM.

3 **THE COURT:** IT LOOKS LIKE THERE'S A SPEEDING ON THE JURY
4 TRIAL DOCKET. THERE'S AN OPERATING VEHICLE UNDER UNSAFE MECHANICAL
5 CONDITION ON THE JURY TRIAL DOCKET. THERE'S ANOTHER SPEEDING ON THE
6 JURY TRIAL DOCKET. THERE'S A PREVIOUS MARIJUANA CHARGE THAT WENT TO
7 A SHOW CAUSE HEARING BUT ENDED UP GETTING PAID.

8 **DEFENDANT HEYWARD:** I BELIEVE THAT WAS AROUND - I PAID
9 IT?

10 **THE COURT:** IT EITHER GOT WRITTEN OFF OR GOT PAID.

11 **DEFENDANT HEYWARD:** THE LAST TIME I WAS INCARCERATED IT
12 WAS DUE TO MARIJUANA BUT THE CHARGE WAS DROPPED.

13 **THE COURT:** I REALLY DON'T WANT TO PUT YOU IN JAIL BECAUSE
14 - AND I DON'T THINK, YOU KNOW, INTERNAL AFFAIRS COMPLAINTS ARE
15 ANYTHING THAT MEANS THAT I SHOULD PUT YOU IN JAIL. ON THE OTHER HAND
16 I WOULD REALLY LIKE TO SEE SOME CHANGED BEHAVIOR.

17 **DEFENDANT HEYWARD:** YES, MA'AM.

18 **THE COURT:** YOU KNOW, YOU ARE JUST GOING DOWN THE SAME
19 TRACK OVER AND OVER AGAIN.

20 **DEFENDANT HEYWARD:** I WAS TRYING. AND I REALLY WANTED
21 TO HAVE A GOOD JOB SO I CAN ESPECIALLY TAKE CARE OF MY DAUGHTER AND
22 THAT WAS IMPOSSIBLE OR SO I WAS TOLD WITH HAVING A PENDING CHARGE.
23 MY CONFIDENCE WAS SHOT DOWN MANY TIMES. I'VE SPENT NIGHTS AT HOME
24 CRYING. IT'S JUST BEEN A HEADACHE. MY DAUGHTER RIGHT NOW IS THE ONLY
25 - I FEEL LIKE EVER SINCE SHE WAS BORN I HAD A REASON TO TRY AND DO

1 BETTER AND STRAIGHTEN UP AND SHE'S LITERALLY ALL I HAVE. I HAVE BEEN
2 TRYING WITH TEMP SERVICES, TRYING TO GET TEMP SERVICE AT FOUR THIRTY
3 IN THE MORNING AND IT SEEMS LIKE THEY ONLY WANT PEOPLE THAT THEY
4 BEEN WORKING WITH OR THAT HAVE EXPERIENCE.

5 **THE COURT:** ALL RIGHT. WELL, I HEAR THE SOLICITOR'S - I HEAR
6 THE CITY ATTORNEY'S REQUEST. I AM GOING TO ACCEPT THE VERDICT, FIND
7 YOU GUILTY AND IMPOSE SIX HUNDRED AND TWENTY DOLLARS OR THIRTY
8 DAYS. ALL RIGHT. NOW LET ME SAY THIS. IF THE SIX HUNDRED AND TWENTY
9 DOLLARS ISN'T PAID I AM NOT GOING TO HESITATE TO IMPOSE THE THIRTY
10 DAYS.

11 **DEFENDANT HEYWARD:** YES, MA'AM, I UNDERSTAND.

12 **THE COURT:** YOU UNDERSTAND. AND, YOU KNOW, JUST BECAUSE
13 YOU GET ARRESTED IS NOT A REASON TO FILE AN INTERNAL AFFAIRS
14 COMPLAINT. I'M NOT SAYING YOU CAN'T EVER FILE ONE AGAIN AND I DON'T
15 KNOW WHETHER THOSE ARE VALID OR NOT BUT JUST BECAUSE YOU GET
16 ARRESTED IS NOT A REASON.

17 **DEFENDANT HEYWARD:** YES, MA'AM.

18 **THE COURT:** ALL RIGHT. GOOD LUCK TO YOU.

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

20

21 (ADJOURNED)

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
In The Court of Common Pleas

APPEAL FROM THE
CITY OF COLUMBIA MUNICIPAL COURT

The Honorable Dana D. Turner
Municipal Court Judge

Ticket Number 81734FP

The State,.....Respondent,

v.

Cedric Xavier Heyward,.....Appellant.

NOTICE OF APPEAL

Mr. Cedric Xavier Heyward, by and through counsel, Jonathan Scott Comish, appeals his conviction and sentence in this case. The Honorable Dana D. Turner imposed sentence on March 4, 2015.

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Appellant Cedric Xavier Heyward, seeks relief from his conviction and sentence on ticket number 81734FP. On March 4th, 2015 a jury trial was held in the City of Columbia Municipal Court. Appellant was found guilty by the jury and sentenced by the Honorable Dana D. Turner. All motions below were made by Appellant, and were preserved at the end of the trial. This appeal follows.

ISSUES ON APPEAL

1. *Holding a trial for ticket number 81734FP after a delay of 45 months without any judicial review of the delay violated Appellant's rights under the Speedy Trial Clause of the 6th Amendment.*

The United States Supreme Court held in *Doggett v United States* that excessive delay between indictment and trial can cause a per se prejudice to the defendant. Moreover, the Court held that a delay of more than 17 months should trigger an automatic judicial review of the reasons for the delay. 505 U.S. 647 (1992).

While not meeting the 8 ½ year delay of *Doggett*, this case was heard by a summary court which, presumably, operates on a shorter timeframe than a general sessions court as in *Doggett*. As such, a delay of 45 months implicates the concerns raised by the Supreme Court in *Doggett*. In addition, there was specific testimony that the time delay had impacted the memory of key witnesses. At a minimum, *Doggett* requires at least some judicial oversight as to the reason for such an excessive delay.

2. *Officer Arnold was allowed to testify over Defense Counsel's objection in violation of Riddle v. State and Brady v. Maryland.*

The state was served with timely *Brady* and *Riddle* motions. *Riddle v. State*, 369 S.C. 39, 631 S.E.2d 70 (2006) and *Brady v Maryland*, 373 U.S. 83 (1963), require that the State to disclose witness statements to the Defense.

Officer Arnold was only mentioned once in all of the discovery provided with no indication as to the content of his testimony and what, if anything, he had witnessed.

Defense Counsel as well as another attorney witnessed the City Prosecutor conferring with Officer Arnold and other witnesses in the courtroom before the trial started. When the group noticed they were being observed, they retired from the courtroom to continue their discussions elsewhere.

These discussions fall within the purview of both *Riddle* and *Brady* and were, therefore, subject to Defense Counsel's motions.

Any testimony derived therefrom and not provided to Defense prior to commencement of trial would thus be in violation of Rule 5 and inadmissible.

3. *Officer Webb was allowed to testify as to the psychological factors governing Defendant's choice of movement and location without being qualified as an expert, over Defense Counsel's objection.*

During his testimony, Officer Webb described his interrogation technique and offered his opinions of the significance of Defendant's movements while under interrogation, claiming that choosing to stand in a particular location was evidence of Defendant's guilt. Such testimony is a clear violation of SCRP Rule 701(c), as it steps into the field of psychology and requires specialized knowledge, skills, and training.

This testimony is inadmissible from a witness who is not qualified as an expert.

4. *Chain of custody evidence was admitted over Defense Counsel's objection in spite of the fact that said evidence did not satisfy the requirements SCRP Rule 6(b) or State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (2004).*

SCRP Rule 6(b) requires that, upon Defense Counsel's timely request, each signatory to a chain of custody will be required to testify subject to the constraints of practicability. Defense Counsel made timely objection over a year prior to trial.

If a signatory to the chain of custody is unable to be present in court, *State v. Taylor* allows other witnesses to satisfy SCRP Rule 6(b) with testimony as to the identity of the missing signatories and the rules of the evidence room. However, the chain of custody was admitted *prior* to any of this sort of testimony.

Moreover, the testimony did not identify the missing signatories, nor did it explain why the evidence was unaccounted for by the chain of custody form for a period of 12 days – one Donna Martin checked the evidence from a locker and left a conspicuous blank on the form, then submitted it to the analyst Potash 12 days later. As such, the chain of custody should be inadmissible under both SCRP Rule 6(b) and *Taylor*.

5. *Officer Webb intentionally extended the traffic stop, without any reasonable suspicion of criminal activity, in order to allow the drug dog time to arrive on scene. This constitutes an illegal 4th Amendment seizure and requires suppression of any evidence obtained as a result of the seizure*

It is well established that a drug dog team may take a "free air sniff" around a car in the course of a normal traffic stop. However, *State v. Hewins*, 760 SE 2d 814, 409 SC 93 (2014), the culmination of a significant line of South Carolina case law, precludes the officer from prolonging the stop beyond the scope, in both time and manner, of a normal traffic stop, absent any reasonable suspicion of criminal activity.¹

¹ See also: *State v. Trindal*, 698 SE 2d 203, 388 SC 518 (2010); *State v. Provet*, 747 SE 2d 453, 405 SC 101 (2013).

In the video of the stop, admitted into evidence and shown at trial, Officer Webb can be observed repeatedly returning to his car and engaging in prolonged conversation with Officer Williams, the drug dog handler. Moreover, Officer Webb, upon concluding the normal line of questioning, can be heard interrogating the Defendant as to whether he knew of any narcotics in his neighborhood and whether he had any illegal narcotics in his possession.

These actions of Officer Webb unavoidably prolonged the traffic stop, and were an intentional attempt to give Officer Williams time to arrive on scene. In fact, Officer Webb can be heard encouraging Officer Williams to make haste, during one three minute interlude in which Officer Webb stopped writing the warning citation in order to return to his cruiser and hold a conversation with Officer Williams.

As Officer Webb's actions prolonged the traffic stop beyond the scope allowed by *Hewins*, and he was unable to articulate any valid reasonable suspicion for doing so, the concomitant search was illegal under the 4th Amendment, and any results of that search should have been suppressed.

6. *Officer Williams, despite the fact that his drug dog did not alert in the course of the "free air sniff" admitted his drug dog into the interior of Defendant's car. As Officer Williams had no probable cause to do so, the dog's actions inside the car constitute an illegal search under the 4th Amendment.*

Carroll v. United States, 267 U.S. 132 (1925), allows an officer to search a vehicle without a warrant, if that officer has probable cause to do so.

Officer Williams testified at trial that his dog, Zorro, was an "aggressive alert" dog, meaning that if Zorro detected the odor of contraband narcotics, Zorro would bark or scratch to alert Officer Williams to the odor.

During the course of the "free air sniff" on the exterior of the vehicle, Zorro provided no such alert. It is clear from the video of the stop, admitted into evidence and shown at trial, that Zorro, despite what appeared to be hand signals from Officer Williams, was singularly uninterested in the exterior of the vehicle.

Zorro did not, in fact, give any "aggressive" alert until Officer Williams had admitted him into the vehicle. As the state had no probable cause, and Defendant had audibly denied consent to search the vehicle, admitting an agent of the state into the interior of the car to search for narcotics constitutes an illegal search under the 4th Amendment, and any contraband found as a result of the search should be suppressed.

7. *During cross examination of the state's drug analyst, the State, without stating any grounds, objected to Defense counsel's question as to the current state of the Columbia Police Department's drug lab. Despite Defense Counsel's argument that the question goes toward the credibility of the lab, the objection was sustained.*

As Defense Counsel's question was directly relevant to the credibility of the drug analyst's

State v. Heyward

testimony, that question was valid under SCRE 402. The objection, especially as it was presented without any grounds, should have been overruled.

Since the Defense was erroneously prevented from pursuing a relevant line of questioning, this ruling prejudiced the Defense's ability to make its case.

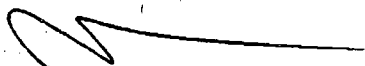
8. Defense was prevented from showing the remainder of the recording of the traffic stop, in violation of SCRE 106

The State admitted a video recording of the traffic stop into evidence. The State only wished to show the first fifteen minutes of the stop to the jury. Defense Counsel requested either the video be shown in full, or, at a minimum, that the jury be shown a brief conversation between officers that occurred later in the tape.

SCRE 106 allows an adverse party to require the introduction of any other part of a recorded statement when another part of that statement is introduced by a party. Since the contents of the conversation were directly relevant to the reason Officer Webb was following the Defendant, those statements should have been admitted into evidence. However, the Defense Counsel was not allowed to present that conversation to the jury, prejudicing both his case at trial, and his case at appeal, as those statements were directly relevant as to whether Officer Webb had reasonable suspicion to seize Defendant.

WHEREFORE, Appellant respectfully requests this Court to vacate his conviction and remand the case with instructions to set it for a jury trial.

Respectfully submitted,



Jonathan Scott Comish
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Case Number: 2015CP4001604

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The State of South Carolina,)
Respondent)

vs.)

APPELLANT'S BRIEF

Cedric Xavier Heyward,)
Appellant)

TO: Honorable Tanya Gee, Richland County Court of General Sessions
CC: Jessica Mangum, City Attorney

Jonathan Comish,
Attorney for Respondent

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

1. Whether the State was in violation of *US v Doggett* 505 U.S 647 (1992) by not calling the case to trial for 45 months, and whether the Judge was in error by not initiating a judicial review of the delay within 17 months, as required by *Doggett*.
2. Whether the Trial Judge erred in admitting drugs into evidence over Defense Counsel's objection when the State had not satisfied Defense Counsel's timely demand, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure
3. Whether Officer Webb illegally prolonged the traffic stop, absent reasonable suspicion of criminal activity, in order to give Officer Williams time to arrive with the K9 unit, in violation of the 4th Amendment of the US constitution, and an overwhelming line of cases culminating in *Rodriguez v. U.S.* 575 U.S. ____ (2015).
4. Whether Officer Williams admitting his drug dog into Appellant's car without that dog alerting during his free air sniff was an illegal search under the 4th Amendment.
5. Whether the Trial Judge made an error of law in sustaining the State's objection to Appellant's attempt to introduce evidence as to the current state of the Columbia Police Department's Drug lab. The objection was made without the State stating the grounds for the objection.
6. Whether the Trail Judge made an error of law in cutting off the tape of the traffic stop, entered into evidence by the State, less than halfway through its play time over Appellant's objection.

Appellant Cedric Xavier Heyward was arrested on March 11, 2012, for possession of marijuana. On March 4, 2015, a jury trial was held in the City of Columbia Municipal Court. Appellant was found guilty by the jury and sentenced by the Honorable Dana D. Turner. All Motions below were made by Appellant, and were preserved at the end of the trial. This timely appeal follows.

Statement of Facts

On March 11, 2011, Cedric Heyward left his apartment complex where Officer Arnold was conducting a stakeout based on information gleaned from an anonymous tip. When Heyward left the complex, Officer Arnold radioed Officer Webb to follow Heyward, because he was a black man who had left that apartment complex and was potentially a person of interest. Officer Webb then began following Heyward, and when he saw Heyward make a lane change in a construction zone that he perceived as too close to the vehicle in front, and potentially without a turn signal. Once the two cars made it past the construction zone, Officer Webb activated his blue lights and proceeded to pull Heyward over. At the stop, the officer collected Heyward's documentation, and asked another officer at the scene to contact Officer Williams, a drug dog handler. Officer Webb then asked Heyward to exit the vehicle to discuss the violation, and Heyward complied, leaving his car door ajar when he exited the vehicle. The two men entered into a discussion about the traffic violation and the problem with Heyward's tail light, and Officer Webb spends part of that discussion working on writing the citation.

The conversation between the two men shifted, as Officer Webb progressed from asking Heyward about his work and plans for the day to asking if he knows of any narcotic sales in the area and if he has any narcotics on his person or in the vehicle. When Heyward answers in the negative, Officer Webb then asked for permission to search Heyward's car. Heyward declined to allow him to do so, and Officer Webb immediately spoke to another officer and told him to call Officer Williams, while continuing to work on writing the warning citation.

At that point, Officer Webb returned to his cruiser with the citation book and has a two and a half minute conversation with Officer Williams, providing him with directions to the scene, asking how long it would take him to arrive at the scene, and informing Officer Williams that Heyward declined to let him search the car, reminding Officer Williams to turn down his

radio when he entered the scene. Officer Webb then exited his car and resumed writing the citation.

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Approximately thirteen minutes and forty seconds into the stop, Officer Williams arrives with Zorro, his drug dog. About twenty seconds later, Officer Webb finally radios in to check Heyward's name. After briefly prepping the dog to get him ready to search around the car, Officer Williams begins to lead Zorro around the car, tapping the front passenger side, sticking his hand into the interior of the car through the open door, hitting the trunk with his hand, and then returning Zorro to the open door, all the while working to keep Zorro from heading off into the woods.

When Zorro was led back to the open door, he jumped into the open door, and alerted at the dash. When officers searched the dash, they located a pill bottle with a green leafy substance inside, and proceeded to arrest Heyward. They then searched the rest of the car, and did not find any further substances.

Argument

A. *Doggett v. U.S.*

Cedric Xavier Heyward was arrested on May 27, 2011 for Simple Possession of Marijuana, warrant number 81734FP. His trial on that charge commenced on March 4, 2015 for that charge. The length of time between arrest and trial totals 1377 day, or 45 months and 5 days.

At trial, Appellant moved for dismissal based on the State's violation of *Doggett*. In *Doggett*, the Supreme Court held that a delay of 8 to 12 years between a defendant's arrest and indictment violated his 6th Amendment right to a speedy trial. *Doggett*, 505 U.S. at 648. In reaching this conclusion, the court found that the 8 year delay "far exceeds the threshold needed to state a speedy trial claim; indeed we have called shorter delays 'extraordinary.'" *Id* at 658. According to the Court, "... the lower courts have generally found post-accusation delay 'presumptively' prejudicial,' at least as it approaches one year." *Id* at 652.

Doggett requires judicial review of any delay in prosecuting a case if the case has not come to trial within, generally speaking, 15 months. *Id.* at 658. There was never any record of any judicial review in this case. The Trial Court failed to exercise one of its basic responsibilities – to ensure a defendant a fair and impartial trial. In the absence of any review of the substantial

The court held that an extraordinary delay causes prejudice to the defendant to be presumptive. *Id* at 656-657. Moreover, the court found that the presumptions' importance increases proportionally to the length of the delay. *Id*. Since the delay of the present matter exceeded the one year threshold by 33 months, and the importance of the prejudicial presumption increases with delay, the State should have faced quite an obstacle in overcoming the presumption of prejudice. Thus, the Trial Judge committed an error of law in refusing to consider whether the State had overcome the presumption of prejudice to the Appellant. (*Heyward* tr. at 17.)

Thus, Appellant respectfully asks the court to reverse the Trial Judge's ruling on this matter.

B. *Chain of custody evidence was admitted over Defense Counsel's objection in spite of the fact that said evidence did not satisfy the requirements of SCrimRP Rule 6(b) or State v. Taylor, 360 S.C 18, 598 S.E.2d 735 (2004).*

SCRCrimP 6(b) provides that "The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a). This requirement is "inescapable" and "mandatory, not permissive." *State v. Joseph, 491 S.E.2d at 281* (citing *State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981)*, which clarified that courts should construe the word "shall" as mandatory in statutory provisions). Defense counsel made a timely objection over a year prior to trial in compliance with the rule.

If a signatory to the chain of custody is unable to be present in court, *State v. Taylor* allows other witnesses to satisfy SCRCrimP 6(b) with testimony as to the identity of the missing signatories. However, no such testimony was provided prior to the admission of the chain of custody. The State did not provide the missing technician either in person or through affidavit to testify about her role in handling the evidence and the reason for the 12-day gap in the evidence log, and no other officer or witness testified about her role in the chain.

Although case law has stated that chain of custody only needs to be established as far as practicable, the court in *State v. Joseph* held that a technician who moved to Michigan was

According to the State, Donna Smith was, at the time of the trial, working in the Columbia Police Department Evidence Room. (*Heyward* Tr. at 52) The evidence room is located in the Columbia Police Department Headquarters, situated fewer than 500 feet from the courtroom in which the trial was being held. It would not have been impracticable to require either her presence or, in the absence of her presence, an affidavit from her explaining what the 12-day gap in the evidence log represented. The failure to comply with SCRCrimP 6(b) was in error, and the chain of custody should be inadmissible.

Therefore, Appellant respectfully asks this Court to reverse the Trial Judge's ruling.

C. *Officer Webb intentionally extended the traffic stop, without any reasonable suspicion of criminal activity, in order to allow the drug dog time to arrive on scene. This constitutes an illegal 4th Amendment seizure and requires suppression of any evidence obtained as a result of the seizure.*

It is well established that a drug dog team may take a "free air sniff" around a car in the course of a normal traffic stop. However, the most recent case in the line of South Carolina precedent precludes the officer from prolonging the stop beyond the scope, in both time and manner, of a normal traffic stop, absent any reasonable suspicion of criminal activity. *State v. Hewins*, 409 S.C. 93, 760 S.E.2d 814 (2014). Furthermore, in the most recent Supreme Court decision to address this topic, "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. U.S.*, 135 S.Ct. 1609, 1614 (2015)¹. Although the Court acknowledged that "the Fourth Amendment tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention," the Court pointed out that an officer may not engage in these investigations "in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining the individual." *Id.* at 1615. The Supreme Court pointedly noted that during oral arguments, the Government acknowledged that "a dog sniff, unlike . . . routine measures, . . . is not an ordinary incident of a traffic stop. *Id.* So, "[a] dog sniff is not fairly characterized as part of the officer's traffic mission." *Id.* Therefore, the

¹ Both *State v. Belcher*, 685 S.E.2d 802 (2009) and *Griffith v. Kentucky*, 479 US 314 (1987) provide for the retroactive application of new rulings to cases that are on direct appeal.

vital question, as the court notes, is not “whether the dog sniff occurs before or after the officer issues a ticket,” but “*whether conducting the sniff ‘prolongs’—i.e., adds time to—‘the stop.’*” 134
Id. (emphasis added). If the sniff does prolong the stop beyond the scope, absent reasonable suspicion, then it is impermissible

A traffic stop may be extended if the officer has a reasonable suspicion of criminal activity. Under South Carolina law, proving reasonable suspicion is a substantial burden on the state. In *State v. Hewins*, conduct that consisted of driving in a known drug area, continuing to be nervous after being told he would receive a warning instead of a citation, and quickly responding that he did not have any drugs was insufficient to furnish the officer in that case with sufficient reasonable suspicion to extend the traffic stop. *State v. Hewins*, 409 S.C. at 117, 760 S.E.2d at 826 (2014).

Here, Officer Webb engaged in dilatory tactics. In the video of the stop, admitted into evidence and presented at trial, Officer Webb repeatedly returned to his car and engaged in prolonged conversations with Officer Williams, the drug dog handler. In fact, after the defendant exercised his right to refuse to give consent to search his car, Officer Webb told another officer to call Officer Williams, and he also returned to the car to encourage Officer Williams to hasten to the scene and to turn his radio down once he arrived. He checked his watch repeatedly while writing the citation. He did not run Heyward’s name until 14 minutes into the stop, when the drug dog shows up. He engaged in a series of calculated measures that prolonged the stop beyond what it should have taken to write a simple warning citation in order to give Officer Williams time to arrive at the scene. Once Officer Webb concluded the line of questioning pertaining to the traffic stop, he turned the conversation towards narcotics, asking if Heyward was aware of narcotic activity in the neighborhood and asking if he had any illegal narcotics in his possession.

Moreover, Officer Webb did not have the requisite reasonable suspicion needed to extend the stop. Since Officer Webb did not run Heyward’s name until fourteen minutes into the stop, he did not have reasonable suspicion develop from that avenue. Furthermore, according to Officer Webb’s testimony, Heyward sat on his car, walked around the scene, and when the drug dog arrived on the scene, put his hands behind his back. These factors constitute the entirety of reasonable suspicion articulated by Officer Webb, but, like in *State v. Hewins*, these behaviors are simply not enough to rise to the level of reasonable suspicion required to extend the stop.

According to the testimony given by Officer Arnold, the undercover officer at the apartment complex, the tip that they received was an anonymous tip about a “black man” coming

from the apartment complex in question. (*Heyward* Tr. at 26). Testimony later in the trial from¹³⁵ Officer Williams only served to reinforce the anonymity of the tipper, and the over-generality of the tip: "I believe it was a black male that was selling narcotics from an actual apartment there." (*Heyward* Tr. at 65). No other information was provided any testimony: there were no further descriptors that would point to Heyward and no distinguishing features that would give the officer reasonable suspicion that Heyward was the individual named in the tip. As the Supreme Court noted in *Florida v. J.L.*, a "bare report of an unknown, unaccountable informant who neither explained how he knew about the [suspected criminal activity] nor supplied any basis for believing he had inside information" was insufficient as a basis for reasonable suspicion to stop a suspect. *Florida v. J.L.*, 529 U.S. 266, 271 (2000).

Officer Webb's conduct prolonged the traffic stop beyond the scope permitted by *Hewins* and *Rodriguez*. He failed to demonstrate any reasonable suspicion that allowed him to do so, and the search that resulted from this impermissible seizure was illegal under the Fourth Amendment. Therefore, Appellant respectfully asks this Court to overturn the ruling of the Trial Judge and order that the results of the unconstitutional search be suppressed.

D. *Officer Williams, despite the fact that his drug dog did not alert in the course of the "free air sniff," admitted his drug dog into the interior of Defendant's car. As Officer Williams had no probable cause to do so, the dog's actions inside the car constitute an illegal search under the Fourth Amendment*

Under *Carroll v. United States*, an officer may search a vehicle without a warrant, provided that officer has probable cause to do so. *Carroll v. United States*, 267 U.S. 132 (1925). A drug dog may provide the probable cause that an officer needs to search a car, but in *Illinois v. Caballes*, the Supreme Court noted that probable cause came from a dog alerting on the exterior of a car. *Illinois v. Caballes*, 543 U.S. 405, 409 (2005).

Officer Williams testified at trial that his dog, Zorro, was an "Aggressive Alert" dog, a designation that meant Zorro would bark or scratch if he detected the odor of contraband narcotics to alert Officer Williams to the odor. (*Heyward* Tr. at 63). However, during the course of the "free air sniff" on the exterior of the vehicle, Zorro's conduct did not approach the designation of an "aggressive alert." (*Heyward* Tr. at 67). There is no evidence of barking or scratching or any other conduct indicating that Zorro has detected any narcotic odor until he was encouraged into the vehicle. *Id.* The video of the stop, which the State introduced at trial, shows

that Zorro was much more interested in investigating the woods next to the car than the car itself,¹³⁶ despite Officer Williams' hand signals. Zorro wasn't even interested in the interior of the car the first time Officer Williams impermissibly stuck his hand into the interior of the vehicle during the first pass around the vehicle, and only returned to the car door upon encouragement from Officer Williams.

Zorro did not give an "aggressive alert" while outside the vehicle, and gave no indication that he had detected a narcotic odor. As the state had no probable cause, and Heyward had audibly, firmly, and unambiguously denied consent to search the vehicle, admitting an agent of the state into the interior of the car to search for narcotics constituted an illegal search under the Fourth Amendment, and any evidence found as a result of the search should be suppressed.

Therefore Appellant respectfully asks this Court to reverse the Trial Judge's ruling and order that any evidence produced from the unconstitutional search be suppressed.

E. The Trial Court sustained an objection to one of Defense Counsel's questions during the cross examination of the State's expert witness, George Potash. The objection was to a relevant line of questioning, and was made without any stated grounds.

SCRE 611(b) permits cross examination of a witness on "any matter relevant to any issue in the case, including credibility."

At trial, Appellant attempted to pursue a line of questioning directly related to the credibility of George Potash, and the Columbia Police Department Drug Lab, to which he was seconded during the analysis of the drugs found in *Heyward*. Stating no grounds, the State objected to this line of questioning, and that objection was sustained.

The judge found that the line of questioning was irrelevant. However, SCRE 401 defines relevancy as: "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without evidence."

As the trial was for Simple Possession of Marijuana, whether the substance was tested with scientific rigor, and whether the substance was properly stored, labeled, and handled is central to the determination of the action – any deficit therein would call into question the accuracy of the drug analysis.

On August 21 2014, Solicitor Dan Johnson ordered the Columbia Police Department's Drug Lab to cease operations. This order was in response to a report submitted to Columbia Police leadership on July 11, 2014, which found multiple serious defects in the labs handling, storage, and analysis of evidence.

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As the Drug Lab had been operating under standards deficient enough to warrant closure for a prolonged period of time, inquiry into those standards and the state of the drug lab was relevant to the probability that the marijuana presented at trial was in fact properly handled, analyzed and stored and thus admissible under SCRE 401.

Therefore Appellant respectfully asks the Court to reverse the Trial Judge's ruling on this matter.

F. *Defense was prevented from showing the remainder of the recording of the traffic stop, in violation of SCRE 106.*

SCRE 106 states: "When a writing, or recorded statement, or part thereof is introduced by a part, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

The State introduced the dash cam video from Officer Webb's patrol car without objection. During the trial, the State played approximately the first 15 minutes of the video. Appellant announced his intention to introduce the remainder of the video on cross examination, pursuant to his right under SCRE 106. The State manifested her intention to object to that portion of the video, and the court recessed for lunch.

During arguments concerning the admission of the remainder of the video, the State's position was that the remainder of the video was irrelevant to the issues at trial. Appellant countered that it was absolutely relevant and that the jury was entitled to the totality of the circumstances surrounding the arrest. Moreover, that portion of the video contained conversations indicating that the officers knowingly misidentified Appellant as the target of their drug interdiction detail. By not allowing Appellant to show the video on cross-examination the judge not only made an error of law as to SCRE 106, but also prejudiced the Appellant's ability to mount an appeal, as it denied Appellant the opportunity to put evidence on record that casts further doubt on the already tenuous idea that Officer Webb had reasonable suspicion to detain Appellant.

Therefore Appellant respectfully asks the court to reverse the Trial Judge's ruling on this³⁸
matter.

State of South Carolina)	In The Court of Common Pleas
County of Richland)	Fifth Judicial Circuit
	2015-CP-40-01601

State of South Carolina,	)	
Plaintiff,	)	
vs.	)	Transcript of Record
Cedric Xavier Heyward,	)	
Defendant.	)	

August 14, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

Jessica R. Mangum, Esquire
Attorney for the City of Columbia

Jonathan S. Comish, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
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Certificate Page	
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: All right, who is appealing? Mr?

2 MR. COMISH: Good morning, Your Honor. My name is
3 Jonathan Comish. I represent Mr. Heyward.

4 THE COURT: Yes, sir, Mr. Comish.

5 MR. COMISH: Thank you, Your Honor. May it please the
6 court? This appeal comes from the City of Columbia
7 Municipal Court. A little facts by way of background.

8 Mr. Heyward was arrested March 11, 2011, for simple
9 possession of marijuana. We had a trial on March 4th of
10 2015, during which time I made several motions of
11 suppression which were overruled, and I filed a timely
12 appeal, and this is before you based on that appeal.

13 THE COURT: All right.

14 MR. COMISH: I believe there are several dispositive
15 issues in this case, and I'll take them up in order.

16 The first one would be a chain of custody argument,
17 and this is really -- it's -- State vs. Taylor says that
18 chain of custody is -- there's two ways to analyze it.
19 It's either you analyze its admissibility, or you go to the
20 weight of the evidence. They said:

21 If and only if there has been no testimony as to
22 the identification of the signatories to the
23 chain of custody, it becomes an admissibility
24 issue.

25 In the present matter, the chain of custody was

1 admitted over my objection prior to any identification of
2 the signatories being named, and in particular that would
3 be Donna Martin, who is the, I assume, the evidence
4 custodian at the city court. Ms. Mangum made
5 practicability arguments, and again that, I believe, comes
6 from *State vs. Taylor*, that it was impractical for her to
7 be there. Ms. Mangum said that she was currently in the
8 evidence locker at the Columbia Police Department. As Your
9 Honor is well aware, that evidence locker is less than 500
10 feet from the actual courtroom.

11 THE COURT: I'm not sure what -- what physical
12 building are we talking about?

13 MR. COMISH: The City of Columbia headquarters and the
14 City of Columbia Municipal Court, which are on the same
15 block.

16 As regards impracticability, *State vs. Joseph* ruled
17 that an evidence custodian who moved far as away from
18 Michigan was still required to be in court. The other
19 aspect of this is I also made an objection pursuant to Rule
20 6 saying, and I quote:

21 The defendant may demand in -- appearance in
22 court persons within the chain of custody in the
23 same manner as provided in section A.

24 Section A referring to the actual technician doing the
25 analysis. We made a timely demand on March 12, 2012, and

1 those persons were not present in the courtroom.

2 THE COURT: You made a demand per Rule 6?

3 MR. COMISH: Yes, Your Honor, and I, I have that with
4 me should you wish to see it.

5 THE COURT: I carry this book everywhere. It has all
6 the rules. I commend it to everyone.

7 And last week we didn't have one in this courtroom,
8 Mr. Jim, so I had to get one out of room 3-A there and I
9 had her take it back. So, this is from Judge Benjamin, but
10 it should be in every room. Every judge needs one of
11 these.

12 And tell which rule of this you're talking about
13 again, criminal rule?

14 MR. COMISH: South Carolina Rule of Criminal
15 Procedure, Rule 6. It may be Rule 114. It's Chemical
16 Analysis and Chain of Custody.

17 THE COURT: And highlight it for us. Tell me ---

18 MR. COMISH: Excuse me?

19 THE COURT: Highlight the part that you're concerned
20 about.

21 MR. COMISH: This would be subsection B.

22 THE COURT: All right. Yes, sir.

23 MR. COMISH: Would you like me to just briefly read
24 the rule?

25 THE COURT: The part of your argument, tell me about

1 it.

2 MR. COMISH: For the purpose of establishing a chain
3 of physical custody or control of evidence
4 entered upon section A of this rule, a certified
5 or sworn statement signed by each successive
6 person having custody of the evidence, that he or
7 she delivered it to the person stated ---

8 THE COURT: She's trying to keep up with you, the
9 court reporter.

10 MR. COMISH: I apologize. I'll start again slowly.
11 For the purpose of establishing a chain of
12 physical custody or control of evidence entered
13 under section A of this rule, a certified or
14 sworn statement signed by each successive person
15 having custody of the evidence, that he or she
16 delivered it to the person stated, is evidence
17 that the person had custody and made delivery as
18 stated without the necessity of the person who
19 signed the statement being present in court,
20 provided, (1) the statement contains a sufficient
21 description of the substance or its container to
22 distinguish it; and (2) the statement says the
23 substance was delivered in substantially the same
24 condition as when received.

25 Continuing:

1 A defendant may object to the chain of custody in
2 writing, setting forth with specificity what part
3 of the sworn statement is challenged and the
4 basis therefore. The challenge shall be filed
5 with the court and served on the state within
6 thirty days of receipt of the sworn statement and
7 in no event later than ten days before trial.

8 THE COURT: What happened here?

9 MR. COMISH: We never received the sworn statement.
10 We have a chain of custody form, but there's not a sworn
11 statement. We filed proper objection during argument at
12 trial. The city attorney attempted to admit the chain of
13 custody into evidence with no testimony as to
14 identification of the signatories, did not call the
15 signatories to testify. And the judge overruled me,
16 saying, and I'm quoting here from the transcript.

17 THE COURT: Which judge did you have?

18 MR. COMISH: Judge Dana Turner.

19 THE COURT: All right.

20 MS. MANGUM: No problem with her return, Your Honor.

21 THE COURT: What page are you on again in this
22 transcript?

23 MR. COMISH: One second, Your Honor. Page 53.

24 THE COURT: 53.

25 MR. COMISH: That I could have asked about the chain

1 of custody on cross. She wanted me to establish the
2 identify -- the identity of the parties in the chain of
3 custody on cross to challenge the submission of the
4 evidence. It's a clear error of law as the burden rests
5 entirely with the party submitting the evidence to
6 establish the foundation required.

7 THE COURT: And you're under the impression that they,
8 don't want to worry with all this law on all these cases in
9 municipal court?

10 MR. COMISH: That's the impression that I got, Your
11 Honor. I, I don't know how you wish to structure this. I
12 have two other dispositive issues. I don't know if you
13 want to allow Ms. Mangum to respond to the issues after I
14 raise them or all at once.

15 THE COURT: How would you like for her to go?

16 MR. COMISH: I believe -- Jess, would you like to
17 respond now or wait until the end?

18 MS. MANGUM: I can respond now if you'd like to hear
19 from me.

20 THE COURT: Okay.

21 MS. MANGUM: Your Honor, in terms of Rule 6 in terms
22 of the chain of custody, Mr. Comish misunderstands the rule
23 of the law and misrepresents what happens -- happened in
24 the courtroom that day.

25 The rule requires that if the city, if the prosecution

1 wants to present affidavits rather than testimony, they may
2 do that under Rule 6. However, defense may require that
3 those persons be present. That's what the rule is. I do
4 believe in the Rule 5 that was followed as part of their
5 discovery, it's pretty standard that they object to, to the
6 use of Rule 6(b) in terms of affidavits.

7 We weren't required to present an affidavit. Whether
8 or not the chain is complete is a question for the trial
9 court. There's no requirement, there's no statute, there's
10 no case law that requires every person in the chain to be
11 present.

12 We did argue to the trial court. We had -- this is a
13 very simple case in terms of chain. We had an officer who
14 had a traffic stop who found a small amount of marijuana,
15 who testified in court that he took that marijuana. He
16 placed it in an evidence bag; he logged it into an evidence
17 locker, where it sat until our analyst withdrew it from the
18 evidence locker, tested it. All that was part of the
19 record; all of that is in the transcript.

20 THE COURT: Did the analyst testify?

21 MS. MANGUM: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. MANGUM: What we did not have was the person that
24 is in charge of the evidence room. She's listed on the
25 chain of custody sheet because she's in charge of the

1 evidence locker.

2 The city argued at that time that for her to come and
3 testify would place a tremendous burden on the city.. She's
4 the only employee in that room; the evidence room would
5 have to be shut down. There also are some other safeguards
6 that have to be put in place because that room has to be
7 secure, and so for that reason we argued that her presence
8 wasn't necessary. There was testimony from both officers
9 as to what they did with the evidence, what his role in
10 that was. So, we established her identity.

11 Her identity was on the chain of custody that was
12 provided prior to trial to defense counsel.. There were no
13 surprises here. The judge simply determined her presence
14 in the courtroom to testify was not necessary for us to
15 successfully make the chain.

16 And, Your Honor, in terms of case law, the city does
17 rely on *State vs. Valentine*, which although is factually
18 different, there is a chain of custody issue. And the
19 court does find -- and I'll read straight from the case,
20 Your Honor. I have a copy for you if you like. The court
21 says:

22 Other evidence establishes the identity of those
23 who handled the evidence and reasonably
24 demonstrates the manner of handling the evidence.
25 Our courts have been willing to fill gaps in the chain

1 of custody due to absent witnesses.

2 There's no abuse of discretion in the trial, the trial
3 judge's decision to admit this. In this case, cocaine. I
4 do have a copy of that if you'd like me to approach.

5 THE COURT: Yes. Okay.

6 MS. MANGUM: Your Honor, I'd also be glad to point out
7 in the transcript the places where the other chain
8 witnesses do describe what happens.

9 THE COURT: All right. Where is that?

10 MS. MANGUM: Of course now that I say that, I can't
11 find the sticker.

12 (A PAUSE.)

13 MS. MANGUM: Your Honor, on page 51 is where we, as
14 attorneys, begin to talk about the chain of custody. Page
15 52 is when I explained why Ms. Martin is not present.

16 Your Honor, I do want to point out on 53 where Mr.
17 Comish talks about the judge, I think he said she shifts
18 the burden, something like that. What she's saying to him
19 right there -- you can ask about that when you have these
20 officers on the stand -- she's trying to tell him that
21 those are great questions for cross-examination. At any
22 point, he could have said to any one of those officers
23 where did you take the evidence, who was in charge of that
24 evidence, do they -- are they here today, how do you know
25 that evidence was preserved. Those are all wonderful

1 questions to determine the credibility of the witnesses,
2 the weight of the evidence for the jury. That's what she's
3 telling him right there. There's nowhere in this
4 transcript where he ever asks on cross-examination anything
5 about that to those officers.

6 THE COURT: All right, any response to that particular
7 one?

8 MR. COMISH: Thank you, Your Honor. In response, I
9 believe Ms. Mangum was still conflating the issues of
10 admissibility versus credibility, and I'm reading here from
11 *State vs. Taylor*. This is the baseline rule:

12 We have found evidence inadmissible only where
13 there is a missing link in the chain of
14 possession because the identity of those who
15 handled the blood was not established, as least
16 as far as practical.

17 And here blood is okay because we're still talking
18 about fungible evidence, blood or marijuana.

19 Ms. Mangum, I believe, just conceded the fact they
20 never established the identity of the people in the chain
21 of custody. She said I could have brought that identity
22 upon cross. That's not my burden. It's her burden to
23 establish the identity before the evidence is admitted.

24 She also referred to the fact that several other
25 officers testified to the chain of custody. However, the

1 chain of custody was admitted, and you can see it here on
2 page 54, I believe. It came into evidence on page 54 after
3 the testimony of only one officer. Chain of custody must
4 be established before it is admitted into evidence. It was
5 clearly not established at that point as no identity had
6 been made of the two missing signatories, and I have their
7 names should Your Honor be ---

8 THE COURT: Is an issue before me the question as to
9 the interpretation of Rule 6, whether -- well, let me ask
10 just some questions for my own clarification.

11 Were you provided a copy of the report where the state
12 serves -- the drug analysis report instead of the person
13 having to come, the analyst? Were you served the report
14 within a certain number of days before the hearing?

15 MR. COMISH: Yes.

16 THE COURT: All right, and did you object to them ---

17 MR. COMISH: Yes, Your Honor.

18 THE COURT: --- not being required to come?

19 MR. COMISH: We objected to that.

20 THE COURT: So, therefore, the analyst came?

21 MR. COMISH: Yes, Your Honor.

22 THE COURT: And so the next thing is in addition to
23 the analyst, then the other people who are in the chain,
24 including the evidence custodian or other people who've
25 heard it that's referred to in subsection B where the rule

1 says:

2 They likewise do not have to appear, provided
3 that reports or papers mentioned in A or B shall
4 be made available to the defendant not later than
5 eleven days prior to the hearing.

6 Is that -- is the applicability of whether or not B
7 applies to waiving the other folks in the chain of custody,
8 is that an issue before me?

9 MR. COMISH: Yes, Your Honor.

10 THE COURT: All right, and in what way is that? Why
11 is that before me? In what way?

12 MR. COMISH: It's before you -- there's two different,
13 I think, sort of sub-issues. First is the chain of custody
14 submitted to us was defective. Subsection A, a certified
15 or a sworn statement signed. We did not have certified or
16 sworn statement. We just have the form with the person's
17 name.

18 THE COURT: All right.

19 MR. COMISH: So, it's defective on its face and,
20 moreover, pursuant to our authority, our right under B.

21 THE COURT: But that doesn't apply because the person
22 showed up.

23 MR. COMISH: The person did not show up.

24 THE COURT: No, the analyst.

25 MR. COMISH: No. We're objecting to the signatories

1 of the chain of custody, not the analyst's report.

2 THE COURT: Okay. So, your point is that in addition,
3 everyone in the chain must give a sworn statement?

4 MR. COMISH: That's correct.

5 THE COURT: Okay, per subsection B?

6 MR. COMISH: That's correct.

7 THE COURT: And so your argument is that person didn't
8 show up, number one. Number two, you don't have a sworn
9 statement. Number three, you didn't waive the right for
10 that person not to have to come.

11 MR. COMISH: That's correct, and as Ms. Mangum pointed
12 out, there are certain instances that they are not required
13 to come if it's impractical for the state to require them
14 to be there. In those instances, the identity of the
15 person and their function, what they do, has to be clearly
16 established before the chain can be admissible.

17 THE COURT: And that's per what?

18 MR. COMISH: That is per *State vs. Taylor*.

19 THE COURT: What does that say?

20 MR. COMISH: Give me just one second; I'll point to
21 the relevant section.

22 THE COURT: Give me the citation of *State vs. Taylor*.

23 MR. COMISH: *State vs. Taylor* is 360 S.C. 18, 2004.

24 THE COURT: All right.

25 (A PAUSE.)

1 THE COURT: This is a good refresher court on all
2 these rules and statutes and all that.

3 MR. COMISH: Yes, Your Honor. Unfortunately it turns
4 into a bit of a mess.

5 This is, this is not directly on point, but it sort of
6 illustrates what Ms. Mangum was arguing:

7 We believe it is clear from these decisions that
8 if the identity of each person in the chain as
9 handling the evidence is established, and the
10 manner of handling reasonably demonstrated that
11 no abuse of discretion is shown in the admission,
12 absent proof of tampering, bad faith, or
13 ill-motive.

14 THE COURT: Say that one more time. I was focusing on
15 where the smoke was coming out of her mic over there.

16 MR. COMISH: I apologize, Your Honor. I'll try to
17 talk more slowly the rest of the -- put it in my head.

18 We believe it is clear from these decisions that
19 if the identify of each person in the chain
20 handling the evidence is established, and the
21 manner of handling is reasonably demonstrated, no
22 abuse of discretion is shown in the admission --
23 admission, absent proof of tampering, bad faith,
24 or ill-motive.

25 THE COURT: So, how did they mess up with regard to

1 what you're just saying?

2 MR. COMISH: They did not identify the persons in the
3 chain of custody. Ms. Mangum identified them at argument,
4 but she cannot admit. She cannot testify. The testimony
5 must come from the witnesses present in the courtroom.

6 THE COURT: And who handled it who wasn't identified?

7 MR. COMISH: Donna Martin, I believe, is the chief,
8 and then there's one more name on the report. I believe
9 that's in my brief. It is not in my brief. It was a
10 sergeant -- I don't recall his name -- who only signed it
11 once. My primary concern, obviously, would be Donna
12 Martin, who is the ---

13 THE COURT: Well, and you said that person handled it.
14 In what way?

15 MR. COMISH: From the chain of custody, it appears
16 that she checked it out of the locker. There's then a
17 thirteen-day gap, and then she checks it back into the
18 locker.

19 THE COURT: What was she doing with it during that
20 time?

21 MR. COMISH: I have absolutely no idea, Your Honor.

22 THE COURT: Why would she check it out of the drug
23 room or wherever it was?

24 MR. COMISH: I would not venture to guess. Ms. Mangum
25 at argument at some point indicated that I was misreading

1 the chain, which I think is a perfect example. If I was
2 misreading the chain, then the custodian should be there to
3 correct any misapprehension that I may ---

4 THE COURT: Is that the lady who's no longer with the
5 city or someone else?

6 MR. COMISH: She is with the -- I believe at the time
7 of the trial, she was still with the city working on the
8 same block as the courtroom.

9 THE COURT: I mean, I think in the newspapers, some
10 woman from the city drug department got fired, and I
11 don't remember the name of the person. I'm just asking
12 whether ---

13 MR. COMISH: Well, this is a completely different ---

14 MS. MANGUM: It's not related to this case, Your
15 Honor.

16 THE COURT: Okay. All right.

17 MR. COMISH: Yes, Your Honor. We're not talking about
18 an actual analyst but an evidence technician.

19 THE COURT: Oh. I gotcha. I understand. All right.
20 Okay, final response on that. How many different points
21 have you got here today?

22 MR. COMISH: I'm sorry. Two major points and one
23 minor point. If we run out of time, I'm happy to skip the
24 minor point.

25 THE COURT: All right. One response on the major

1 point and then we'll move to number two.

2 MS. MANGUM: Your Honor, in terms of the chain of
3 custody, the city did present the chain as close as
4 practicable; there's testimony in the record to support
5 that. Ultimately it's up to the trial judge. There's no
6 -- there's been no allegations of abuse of discretion.
7 There really is no error of law.

8 As I said from the very start, Mr. Comish
9 misunderstands the rule. He required prior to trial that
10 we have all of those witnesses available, and so an
11 affidavit does -- simply does not apply in this case, never
12 applied.

13 THE COURT: Available in what way? For him to know
14 who they are? Available?

15 MS. MANGUM: Right, Your Honor, and that would be my
16 other point is that the defense counsel has to know who
17 those people in the chain are. He was provided that
18 documentation long, long, long ago. Certainly it is not
19 the city's duty to do his investigating for him.

20 Ms. Martin was not available the day of trial. We
21 went forward without her. There is evidence in the record.
22 We have officers that testify about her role in the
23 process; she was clearly identified. She was identified on
24 the chain of custody documents. She was identified by the
25 officers in court. Mr. Comish had the opportunity to

1 cross-examine those officers in terms of the weight of the
2 evidence. He didn't use that opportunity.

3 THE COURT: How can he ask them about what happened
4 to the item during the fourteen days it was out of the
5 locker?

6 MS. MANGUM: He could certainly ask the officers.

7 THE COURT: I mean, how would they possibly know?

8 MS. MANGUM: Well, they don't know but, but Your
9 Honor, you know as well as I do that reasonable doubt is a
10 very difficult concept, and he certainly could have asked
11 them where did you turn this over to, who did you give it
12 to.

13 Issue in court today, he could have brought it up in
14 his closing arguments that the city didn't provide a part
15 of the chain. Those are all worthy arguments that he could
16 have made. He didn't make those in court. There was no
17 error of law.

18 THE COURT: All right. Next point.

19 MR. COMISH: Thank you, Your Honor. Moving along.

20 THE COURT: How many more cases do we have here today?

21 (A PAUSE.)

22 MR. COMISH: Thank you, Your Honor. My next point
23 would be a Fourth Amendment argument.

24 THE COURT: All right.

25 MR. COMISH: About an illegal seizure. There's a new

1 rule coming down from the Supreme Court in the *United*
2 *States vs. Rodriguez* concerning when it is permissible for
3 an officer to extend a traffic stop for a dog sniff. The
4 new rule is it is impermissible when the dog sniff extends
5 the time of the traffic stop one iota.

6 THE COURT: *Rodriguez*?

7 MR. COMISH: Yes, Your Honor.

8 THE COURT: Which case -- which state is that from?
9 Maryland? New Jersey? Florida?

10 MR. COMISH: Nebraska.

11 THE COURT: Nebraska, way over there. Okay. What
12 happened there?

13 MR. COMISH: What happened there was the officer
14 detained Rodriguez for swerving his car, I believe. It was
15 a lawful traffic stop. Then gave him a warning ticket.
16 Asked him to search the vehicle. Rodriguez refused. The
17 officer detained him for purposes of running the drug dog.

18 The, I think, the conclusion, most important matter in
19 the present matter, and here I'm quoting directly, the,
20 sort of the dispositive question is:

21 Whether conducting the sniff adds time to the
22 stop. If the answer to that is yes, then absent
23 reasonable suspicion, it is an illegal seizure
24 for the purposes of informing ---

25 THE COURT: You can't wait while the dog's coming?

1 MR. COMISH: You may not.

2 THE COURT: You can't wait while they find the dog?

3 MR. COMISH: You may not.

4 THE COURT: Unless you have reasonable suspicion?

5 MR. COMISH: Unless you have -- so it becomes then a
6 two-tiered question. The first question is whether
7 reasonable suspicion exists. If so, the officer may
8 continue the detention. If not, then you must ask whether
9 the detention measurably adds any time at all to the stop.
10 If the answer to that question is no, it's a permissible
11 sniff; if the answer to that question is yes, it is an
12 impermissible sniff.

13 THE COURT: All right, and in this case?

14 MR. COMISH: In this case, I'll begin with the
15 reasonable suspicion because without that -- with that,
16 it's not an issue.

17 The reasonable suspicion attested to in the case of
18 Mr. Heyward was, one, there was an anonymous tip. The
19 anonymous tip ---

20 THE COURT: Takes us to Florida, the anonymous tip.

21 MR. COMISH: Exactly, Your Honor. That would be
22 *Florida vs. J.L.*, which means an anonymous tip cannot give
23 you reasonable suspicion.

24 THE COURT: All right.

25 MR. COMISH: And this tip is both anonymous and

1 general. Testimony at trial by Arnold was a subject was
2 dealing drugs. Testified by Officer Williams, a black man
3 was dealing drugs. So, not only was the tip anonymous. I
4 would argue that it's unconstitutionally vague. You can't
5 give a tip about a black man and then arrest that black
6 man.

7 THE COURT: Well, I had one in Chester County where
8 they said the guy who committed the robbery had on jeans
9 and a white T-shirt and the police, police officer saw a
10 car coming down the road. And he said he looked in the car
11 as they were passing by and saw that a guy was in there
12 with jeans and a white T-shirt, and he stopped the guy and
13 charged him with armed robbery.

14 MR. COMISH: Well, that would be markedly more
15 specific than in this manner.

16 MS. MANGUM: And, Your Honor, this is, this is --
17 we're going down a rabbit hole here. The defendant was
18 pulled over for two traffic violations. That was the
19 reasonable suspicion. So, the tip is not relevant to this.
20 There was a lawful traffic stop, and that was -- that
21 creates the reasonable suspicion. There's no argument from
22 defense counsel that it was not a lawful traffic stop;
23 there's nothing in the record to indicate it was not a
24 lawful stop.

25 THE COURT: I thought he was just warming up to get to

1 that point. I didn't realize that was the point.

2 MR. COMISH: Your Honor, if she wishes to concede that
3 the anonymous tip does not give him reasonable suspicious,
4 I'm happy to concede that point.

5 THE COURT: Well, as a matter of law, if that's the
6 law, then ---

7 MR. COMISH: Okay.

8 THE COURT: --- anonymous tip cannot be a reasonable
9 suspicion.

10 MR. COMISH: Moving on to the traffic stop itself.

11 THE COURT: Yes. All right.

12 MR. COMISH: The Fourth Circuit case law is quite on
13 point with *U.S. vs. Digiovanni*, and I have copies of that
14 case.

15 THE COURT: All right.

16 MR. COMISH: Should you wish it. Here, and again ---

17 THE COURT: I'll just pull it up on my computer, and
18 then I won't have to have too many cases. Just give me a
19 spelling and a year, and I'll get it on the computer here.

20 MR. COMISH: Digiovanni is D-I-G-I-O-V-A-N-N-I, Fourth
21 Circuit 2011.

22 THE COURT: And where are they from?

23 MR. COMISH: That is from Maryland, Your Honor.

24 THE COURT: Okay.

25 MR. COMISH: Here and I'm quoting page 505:

1 Under Fourth Circuit precedent, Trooper Carmel
2 was permitted to obtain Digiovanni's driver's
3 license and vehicle registration, run a computer
4 check, and issue the warning ticket.

5 If, as Ms. Mangum conceded, this was merely a traffic
6 stop, the authorities -- the officer's authority extends
7 only as much as he is conducting the traffic stop, and *U.S.*
8 *vs. Rodriguez* was clear on this as well. The officer
9 during the traffic stop without pre-existing reasonable
10 suspicion cannot turn that into a criminal investigation,
11 which is what the officer here, admittedly by his own
12 words ---

13 THE COURT: What they do to Digiovanni? What happened
14 to that?

15 MR. COMISH: With Digiovanni, they stopped him, said
16 they were issuing a warning ticket -- this is directly on
17 point because this is a warning-ticket case -- then asked
18 to search his vehicle. Digiovanni refused. They conducted
19 the search. The officers cited several factors leading to
20 reasonable suspicion: he had rented the car from Florida,
21 rented it one way; he had a go bag; he had clean shirts; he
22 appeared nervous and evasive in his responses.

23 Here the district court, which was then affirmed by
24 the Fourth Circuit Court of Appeals, said that does not
25 rise to the level of reasonable suspicion. It was an

1 unlawful dog sniff.

2 THE COURT: So, I thought they said people driving
3 rental cars charged with selling drugs, the rental car is a
4 factor that can be used in ---

5 MR. COMISH: Yes, Your Honor, it is a factor.
6 Reasonable suspicion would then be a totality of the
7 circumstances test, and even in light of that factor
8 leading towards reasonable suspicious -- suspicions, they
9 could not meet the threshold.

10 THE COURT: All right. Now this guy, your guy here,
11 what happened with him? Where was he, and what happened to
12 him?

13 MR. COMISH: He was leaving the apartment complex. He
14 was then pulled over for ---

15 THE COURT: What part of town was it? Where was he?

16 MR. COMISH: It was the -- I can find the -- just
17 humor me, the specific name of the apartment complex.

18 THE COURT: I like to have a visual perspective of
19 what I'm dealing with.. Was he down on Blanding Street
20 around the corner? Was he over on Benedict, USC, Five
21 Points?

22 MR. COMISH: I'm not from Columbia, so I'm not very
23 familiar with ---

24 THE COURT: All right, where did this happen? Where
25 does the ticket say? Where was he?

1 MS. MANGUM: Your Honor, the traffic stop occurred in
2 the 900 block of Fairfield Road.

3 THE COURT: Fairfield Road, okay. We know where
4 that's at. Okay.

5 MR. COMISH: So, my client was pulled over for failure
6 to use a turn signal and, I believe, following too close in
7 a construction zone, and I have here a transcript of the
8 video which was submitted into evidence. The officer made
9 contact with my client, asked to see his documents.

10 MS. MANGUM: And, Your Honor, I'm sorry, but just to
11 clarify, there is no transcript. This is something that he
12 created himself. The transcript is not the proper word.

13 THE COURT: Okay.

14 MR. COMISH: I created it.

15 THE COURT: His rendition.

16 MR. COMISH: My rendition of the video submitted into
17 evidence.

18 THE COURT: Okay.

19 MR. COMISH: Which I have for Your Honor to review
20 should you so wish.

21 MS. MANGUM: It was not submitted into evidence, Your
22 Honor.

23 MR. COMISH: It was submitted into evidence at trial.
24 Therefore, you are ---

25 MS. MANGUM: No, Your Honor. It was made part of the

1 court record. It was not submitted into evidence; it never
2 went to the jury. It was not part of the evidence.

3 THE COURT: This was a jury trial?

4 MS. MANGUM: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. COMISH: The officer pulled him over at 101 in the
7 recording. Two minutes thereafter, two and a half minutes,
8 he returns to the cruiser with the driver's documents. He
9 can get the driver's documents. At 431 after he pulled the
10 car over, he exits the vehicle and immediately says to
11 another officer standing nearby: Find out if Chris still
12 has Zorro. Chris is the drug handler -- the dog handler.
13 Zorro is the drug dog. He then goes back to the
14 defendant's window and says: Mr. Heyward, come back here
15 and let me explain this to you, okay?

16 And this is the point at which in his own testimony,
17 the officer says I'm conducting a criminal investigation.
18 From 411 until 809 in the video, he engages in drug
19 investigation.

20 THE COURT: 441, are you talking minutes or hours?

21 MR. COMISH: Minutes, Your Honor.

22 THE COURT: Okay.

23 MR. COMISH: And this timeline, just for your
24 reference, this stop lasted exactly as long as the stop in
25 the *Digiovanni*, which was ruled impermissibly long.

1 THE COURT: How long was that?

2 MR. COMISH: That stop was six -- I'm sorry, fifteen
3 minutes. This stop was fourteen minutes and twenty-eight
4 seconds from the time officer made contact until the time
5 my client was arrested.

6 During that period to which I just referred, he asked
7 if he was aware of narcotics for sale, which is a question
8 an officer is not allowed to ask under Fourth Circuit law.

9 THE COURT: Whether he was aware?

10 MR. COMISH: He's, he's...

11 THE COURT: Say again.

12 MR. COMISH: Under Fourth Circuit law, he's allowed to
13 get the registration, run a computer check, write the
14 ticket.

15 THE COURT: You can't ask him whether he's a drug
16 dealer?

17 MR. COMISH: At that point, you're engaging in
18 criminal investigation.

19 THE COURT: He said he was engaged in criminal
20 investigation.

21 MR. COMISH: And that is impermissible.

22 THE COURT: Okay. Well, if he says I'm in criminal
23 investigation, are you a drug dealer, and he says yes or no
24 -- I mean, what did he tell him? No, I'm not or?

25 MR. COMISH: He says no, I'm not aware or -- there are

1 narcotics everywhere. He then asked my client whether he
2 can search the vehicle. My client withholds his consent.
3 The officer then returns to his vehicle. Says hey, call
4 Chris. Hey, what's your ETA, Chris? Chris says as soon as
5 I can break away. So, at that point clearly there's
6 dilatory tactics to allow the drug dog time to get there.
7 He then radios Chris several more times. The drug dog
8 finally arrives on camera twelve minutes and forty seconds.

9 THE COURT: So, did he give him a warning or was he
10 arresting him for these traffic tickets or what?

11 MR. COMISH: His intent was to give a warning, and
12 that's per the officer's own testimony. I'm unaware as to
13 whether -- I didn't see on video whether a warning ticket
14 was actually issued.

15 MS. MANGUM: Your Honor, he issued two warning tickets
16 after the drug sniff.

17 THE COURT: All right.

18 MR. COMISH: And then the stop was concluded fourteen
19 minutes and twenty-eight seconds after initial contact,
20 when my client was arrested for the possession of
21 marijuana. So, my contention, then, is that is only
22 permissible, that length of stop -- detaining my client to
23 give the drug dog time to get there and then detaining him
24 while the drug dog sniffs -- is only permissible if there
25 is reasonable suspicion.

1 And the Supreme Court again in *Rodriguez* is clear.
2 When viewing these things, one must weigh the dilatory
3 tactics of the officer. If the officer is not diligent in
4 performing those traffic duties, that lends weight to the
5 claim that he is engaging in an unlawfully prolonged
6 seizure. So, the next question is to determine whether
7 there's reasonable suspicion.

8 THE COURT: To do what? To?

9 MR. COMISH: To detain my client.

10 THE COURT: All right.

11 MR. COMISH: For the drug dog search. We've already
12 agreed that the anonymous tip is not reasonable suspicion.
13 So, we have to go to the officer's own testimony as to why
14 he was suspicious that my client possessed narcotics. That
15 is to be found on page 38 of the transcript, and I will
16 just summarize here. The officer's ---

17 THE COURT: This is a pretty thick file. I guess I'm
18 supposed to read all of this to reach a decision in this
19 case, all these ---

20 MR. COMISH: I'll don't believe that's necessary, Your
21 Honor.

22 THE COURT: --- pages.

23 MR. COMISH: I'm hitting the highlights.

24 THE COURT: Okay.

25 MR. COMISH: On page 38, the officer testifies about

1 my client's changing body language and sitting on the trunk
2 of the car. That's what made him suspicious.

3 THE COURT: You didn't work at the Court of Appeals
4 with Dayne Phillips, did you?

5 MR. COMISH: No, Your Honor, I did not.

6 THE COURT: Okay. We get him in Lexington, and that's
7 a different story, so go ahead.

8 MR. COMISH: Yes, Your Honor. Thank you. So, I'd
9 submit that sitting on a trunk is -- in no conceivable way
10 gives the officer reasonable suspicion for a Fourth
11 Amendment search and seizure, and the courts here have been
12 clear. In *State vs. Hewins*, driving through a known drug
13 location, being nervous, and witness saying he doesn't have
14 drugs is not reasonable suspicion. *State vs. Tendal*, car
15 rented by another. Felony switch. Stretch, nervous.
16 Again, no reasonable suspicion. If those factors, which in
17 some I would argue are greater than sitting on the trunk
18 here, if those factors don't rise to reasonable suspicion,
19 there's no conceivable way that those could give the
20 officers reasonable suspicion.

21 THE COURT: So, they had no reasonable suspicion to
22 detain him per those cases and ---

23 MR. COMISH: Exactly, Your Honor.

24 THE COURT: --- he's just sitting on his car while
25 they're waiting for whatever?

1 MR. COMISH: And key, while they're waiting, which
2 would then mean that the stop has been measurably extended
3 for the drug dog sniff.

4 THE COURT: What do you say about it, Ms. Mangum?

5 MS. MANGUM: Your Honor, there's nothing in the
6 record. There is nothing argued on the lower court level
7 to support any sort of delay by the officer. It's a less
8 than fifteen minute stop from start to finish, a lawful
9 traffic stop. It was never argued that the stop was not
10 unlawful.

11 There's testimony in the record from the officer about
12 the fact that it, it -- the length of time it takes to do
13 all the things that he has to do on any lawful traffic
14 stop. He's got to check defendant to make sure there's no
15 outstanding warrants. He's got to check the registration.
16 He's relying on other people through his radio for answers.

17 And as a matter of fact, Your Honor, on page 86 of the
18 transcript when we are arguing this, I think, for the
19 second or third time during the trial -- and you'll see
20 where I say:

21 At the time when the K-9 arrives, Sergeant Webb
22 was in the process -- he was on the radio trying
23 to verify if there's any outstanding warrants.

24 When K-9 arrived, he still did not know if the
25 defendant had any outstanding warrants. When K-9 arrived,

1 he still had not completed writing his citation.

2 THE COURT: And it might take longer in South Carolina
3 than it takes in Nebraska.

4 MS. MANGUM: That's right. It's clearly, it's clearly
5 a different case. It's easy to distinguish from *Rodriguez*,
6 which is essentially the case that he relies on. In
7 *Rodriguez*, the officer writes the warning tickets, then
8 asks him to search the car. The stop is over; there's
9 nothing else going. He's checked his record. He's checked
10 the car and has written the ticket. He then asks him can I
11 search the car. He says no. There's a twenty to thirty-
12 minute delay while he waits for a K-9 dog to come, and the
13 court says that is an elongated stop.

14 That's not the case here. The dog comes while the
15 stop is still in action. By the time the K-9 arrives,
16 there's been no check on the defendant's background.
17 There's been no finalization that's been -- warning ticket
18 has not been handed to the defendant. The stop is still in
19 progress.

20 Because the stop is still in progress, we don't even
21 have to get to the reasonable suspicion, probable cause,
22 any of those kinds of things. There was reasonable
23 suspicion to pull the car and, therefore, the K-9 search
24 was -- there's no problem with that.

25 THE COURT: All right.

1 MR. COMISH: If I may briefly?

2 THE COURT: Yes, sir.

3 MR. COMISH: Once again, reasonable suspicion to pull
4 the car over is a completely different issue. That's a
5 traffic violation. We're talking about criminal
6 investigation. And *Rodriguez*, again, on page 5: It is
7 appropriate to examine whether the police diligently
8 pursued the investigation.

9 Per Ms. Mangum's own testimony, he called the warrant
10 division once the drug dog had already gotten there. He
11 called the drug dog, I believe, four or five times.
12 Therefore, he's not diligently pursuing his traffic
13 investigation.

14 MS. MANGUM: Your Honor, what I said was ---

15 MR. COMISH: And ---

16 MS. MANGUM: --- he was on the radio with the warrant
17 person.

18 THE COURT: All right.

19 MR. COMISH: Regardless of when he called the warrant
20 division, he clearly engaged in dilatory tactics. He
21 stopped the investigation several times to engage in
22 conversations with the drug dog handler. The drug dog
23 handler said hang on a minute. I'm still trying to get
24 here. I had to tow a car. He goes back. Talk, talk to my
25 guy. Comes back in. Talks to the drug dog handler.

1 If he was diligently pursuing his traffic
2 investigation rather than using that time to delay to give
3 the dog time to get there, he would have been calling the
4 headquarters saying hey, why haven't you gotten me my
5 warrants yet.

6 THE COURT: Was this a Saturday night?

7 MR. COMISH: No, Your Honor. This is 11 a.m. I do
8 not believe what -- I don't recall which day of the week it
9 is, but it is, I believe, a workday.

10 THE COURT: All right. Yes, ma'am. Final point on
11 this point.

12 MS. MANGUM: Your Honor, it was a Friday just for your
13 edification.

14 THE COURT: Friday morning, all right.

15 MS. MANGUM: And Mr. Comish misunderstands the purpose
16 of the law and the stop. It's not his place to say that
17 the officer did not have a right to or should not have
18 gotten on his radio and called for the drug dog. It's not
19 his place to say that the officer should not have asked
20 questions about whether or not the defendant knew anything
21 about drugs. These are all perfectly permissible
22 activities that officers do every day in the course of a
23 legal traffic stop.

24 THE COURT: All right.

25 MS. MANGUM: It doesn't rise to the level of violation

1 or error of law, Your Honor.

2 THE COURT: Thank you.

3 How about any minor points you had, unless you had
4 more major points?

5 MR. COMISH: I have one more Fourth Amendment point,
6 Your Honor.

7 THE COURT: All right.

8 MR. COMISH: This one will be brief but again will
9 also be dispositive. Once the drug dog ---

10 THE COURT: So far you're leading on the first
11 argument, and she's leading on the second argument.

12 MR. COMISH: Thank you, Your Honor. I hope to lead on
13 the third argument as well.

14 THE COURT: All right.

15 MR. COMISH: Once the drug dog arrived on scene, when
16 my client initially exited the vehicle, he left his door
17 open. He then went around the back and discussed with the
18 officer, you know, the traffic violation we've already
19 talked about.

20 The drug dog handler got there, got his dog warmed up,
21 and I'll just hold a piece of paper up to illustrate his
22 route. Start here. Circled the car. In the video, you
23 can see him putting his hand in the open door.

24 THE COURT: Talking about the dog now?

25 MR. COMISH: Yes, Your Honor, the dog and the handler.

1 THE COURT: All right.

2 MR. COMISH: Goes around the rear passenger bumper.
3 The dog tries to wander off into the woods. He jerks back
4 on the leash. Leads the dog back around the car. The dog
5 jumps inside.

6 Now, he testified that his dog, Zorro, was an
7 aggressive alert K-9, meaning that when -- once the dog
8 smelled drugs ---

9 THE COURT: Is Zorro still with us? Because I know
10 they've been honoring -- certain dogs die and they have ---

11 MR. COMISH: I don't ---

12 THE COURT: --- buried them with a badge and all that.

13 MR. COMISH: It was not clear in his testimony, but he
14 was constantly referring to Zorro in the past tense, so I
15 assume that maybe -- he was already an old dog in 2011.

16 THE COURT: Because I had a ceremony honoring the
17 death and burial of one dog some years ago. We don't know
18 if it's Zorro or not, so go ahead.

19 MR. COMISH: Thank you, Your Honor.

20 THE COURT: Seems like I heard Zorro because that was
21 my favorite TV program growing up, Zorro. Do you remember
22 that, or you were too young.

23 MR. COMISH: I used to watch it with my grandmother.

24 THE COURT: In reruns, all right.

25 MR. COMISH: So, Zorro is an aggressive alert dog.

1 When Sergeant Williams explained what aggressive alert
2 means, he says the dog will bark, the dog will scratch, and
3 the dog will butt with his head when it senses the odor of
4 an illegal narcotic.

5 Per his own testimony, the only time in which Zorro
6 was alerted was after he was admitted into the car. You
7 can't do that.

8 THE COURT: You don't think Zorro found anything and
9 he was directing Zorro, or what is your argument?

10 MR. COMISH: I, all I know is that Zorro did not alert
11 to the -- in the exterior of the car. Therefore, there was
12 no probable cause to search the interior of the car. Once
13 he was inside the car ---

14 THE COURT: He forced Zorro into the car? Zorro
15 wasn't acting independently?

16 MR. COMISH: It's unclear from the video exactly
17 what's happened. There are people moving back and forth.
18 I believe you can see in the first pass the handler put his
19 hand inside the car. In the second pass you can see,
20 clearly see that Zorro is not alerting, but because of just
21 the enter -- you know, people moving back and forth in
22 front of the camera, it's unclear whether Williams boosted
23 him up or he got in the car of his own accord. Of course,
24 I would submit that that is immaterial. He should not have
25 been allowed inside the car until he ---

1 THE COURT: Maybe because it took him so long to get
2 there, he didn't want to waste any time with Zorro going
3 off into the woods and all those places he wanted to.

4 MR. COMISH: It could be. They knew they were on the
5 clock; you can see them glancing at their watches the whole
6 time.

7 Once Zorro was in the car, then he clearly alerts.
8 And once again if you refer back to Williams's testimony,
9 the only alert he talks about is once Zorro is in the car,
10 he starts barking and scratching and head butting at the
11 area of the dash in which they found...

12 THE COURT: So, I'm asked to evaluate the proper means
13 of a dog sniffing a car, or what's the point of this?

14 MR. COMISH: The point of this is a government agent
15 can only search the interior of a vehicle upon probable
16 cause. The purpose of a dog sniff, a so-called free-air
17 sniff which can be, obviously as we've discussed -- does
18 not require probable cause. The purpose of that free-air
19 sniff is to give the officer probable cause to search the
20 interior of the vehicle. Free-air sniff is allowed in the
21 exterior of the vehicle. If during the course of that
22 free-air sniff the dog alerts, then the officer has
23 probable cause to search the interior.

24 In the present case, by Officer Williams's own
25 testimony, there was no alert on the exterior of the

1 vehicle. Therefore, he did not have probable cause to
2 either himself or through the dog search the interior of
3 the vehicle. Therefore, it's an illegal search and any
4 evidence derived therefrom should be suppressed.

5 THE COURT: All right, how about that, Madame
6 Prosecutor?

7 MS. MANGUM: It's a great argument, Your Honor, but
8 it's not what happened. If we could look at the transcript
9 on page 68, Officer Williams is in the middle of his
10 testimony about what happened that day. There's also a
11 video of all this that the jury has already seen at this
12 point, and he says -- I'm on line 6.

13 THE COURT: All right.

14 MS. MANGUM: Page 68.

15 THE COURT: Skipping all over this thing. I've got to
16 go back to page 1 and read the whole thing, I guess. I'm
17 on page 68 on line what?

18 MS. MANGUM: Line 6, Your Honor.

19 THE COURT: All right.

20 MS. MANGUM: He's explaining to the jury what, what he
21 did that day with the dog, with Zorro, and he says:

22 We get to the back of the vehicle. We come back
23 around. When we get back to the door is when he
24 catches ---

25 He is the dog, Zorro.

1 --- the narcotic odor, and he goes into the
2 vehicle by himself. I didn't prompt him, didn't give him
3 any commands or anything like that. He went in the
4 vehicle, and that's when he went straight. I can tell by
5 -- it's hard to see on the video because I believe somebody
6 was in it, but if you noticed his tail, he started wagging,
7 and then he went in there. He went into the vehicle. He's
8 aggressive alert.

9 And he talks about that.

10 THE COURT: So, what was Mr. Comish explaining to me
11 just a minute ago?

12 MS. MANGUM: I'm not sure, Your Honor.

13 THE COURT: His rendition of it or?

14 MS. MANGUM: I suppose so.

15 THE COURT: But not the testimony.

16 MS. MANGUM: Not the testimony. And, Your Honor,
17 further in the transcript when we argue this for the, I
18 don't know, third or fourth time, the judge says on page 87
19 at the bottom of that page, starting on page -- 20, you'll
20 see where his argument that he just made is made. And I
21 say: Your Honor, I believe that's a misinterpretation. The
22 defendant left the car door open. Essentially everything
23 I'm telling you now. It continues on to page 88, and on
24 line 10 there the court says: I don't believe -- in
25 response to what he just argued here -- I don't believe

1 that's what the testimony was.

2 THE COURT: Well, can I review any of that sitting
3 here on an appeal? Can I review any of this?

4 MS. MANGUM: Your Honor, I'm not sure. I find the, I
5 find the whole appeal confusing. I'm not sure exactly what
6 the issue is here. If he's claiming that it was an error
7 of law that the judge allowed the testimony, then clearly
8 that's within your purview. If he wants to argue *de novo*
9 whether or not -- what the testimony was, then clearly
10 that's not within your purview.

11 THE COURT: I'm not here to interpret your version of
12 the testimony and his version of the testimony and then
13 apply to law to whichever version I believe.

14 MS. MANGUM: Your Honor, I think the transcript speaks
15 for itself.

16 THE COURT: Okay.

17 MS. MANGUM: The officer testified. There is
18 testimony in the transcript that says that the dog alerted
19 on his own, and so there is testimony to support that
20 decision by the judge.

21 THE COURT: Okay, I've got to get this call.

22 (OFF THE RECORD.)

23 THE COURT: All right, thank you all. Who was
24 talking?

25 MR. COMISH: May I respond just very briefly?

1 THE COURT: Yes, sir. Her point was ---

2 MR. COMISH: That he alerted.

3 THE COURT: That this is not -- whatever happened is
4 not what you said happened.

5 MR. COMISH: That's right. So, I'm just going to go
6 briefly back to the transcript.

7 THE COURT: All right.

8 MR. COMISH: On page 63: Aggressive dog, which means
9 he barks or scratches at the item.

10 K-9 Zorro was an aggressive alert dog. So, if K-9
11 Zorro alerts, it's going to be scratching and barking per
12 the officer's own testimony.

13 Referring back to ---

14 THE COURT: Can I qualify the dog as an expert under
15 *State vs. Jones*?

16 MR. COMISH: I do not know, Your Honor. That issue
17 was not raised.

18 THE COURT: All right.

19 MR. COMISH: Referring back to the transcript on page
20 68 where they're talking about the search itself, Ms.
21 Mangum pointed out line 6. There is no aggressive alert
22 mentioned until line 15. He was aggressive alert the first
23 time. I believe the word alert was used was after the dog
24 was in the vehicle. He goes:

25 When we get to the back door, he catches a

1 narcotic odor. He doesn't alert. He wags a
2 tail.

3 That is not what Officer Williams himself says is an
4 alert from this dog. Officer Williams says alert is
5 barking and scratching.

6 THE COURT: Do we have a video of what the dog did?

7 MR. COMISH: Yes, Your Honor, we do.

8 THE COURT: And that's part of -- or that's what y'all
9 are saying is in evidence or not in evidence or in the
10 transcript? Am I supposed to look at that, too?

11 MS. MANGUM: No, Your Honor. I don't think the
12 question is before you.

13 THE COURT: Okay.

14 MR. COMISH: But the question that -- I mean, I'm not
15 sure that the video is necessary because we can rely on
16 Williams's testimony to see what happened, which is the dog
17 alerted in the car. Dog has to alert before he's in the
18 car.

19 THE COURT: All right. I understand that issue.
20 Y'all have done pretty good on that one. What's the next
21 one?

22 MR. COMISH The next one, and I'll just mention this
23 one briefly, Your Honor, would be a *U.S. vs. Doggett* issue.

24 THE COURT: *Doggett*?

25 MR. COMISH: Yes, Your Honor. This is a municipal

1 court case. It took us just shy of four years to bring
2 this to trial, and I made a *Doggett* motion before the
3 trial, which was ---

4 THE COURT: Was that a speedy trial motion? What is a
5 *Doggett* motion?

6 MR. COMISH: A *Doggett* is an Eighth Amendment issue
7 whether there is a presumption of prejudice to the
8 defendant based on the length of the delay in *Doggett*
9 between arrest and indictment, but the holding applies more
10 generally to any time you are arrested up until the charges
11 are resolved by trial.

12 U.S. vs. *Doggett* is a slightly different timeframe.
13 It's an eight-year delay, but then that was a federal
14 district court. My argument here is that the purpose of
15 municipal court is to move these cases along in a much
16 faster timeframe.

17 THE COURT: Why did it take so long with this one?

18 MR. COMISH: Your Honor, I have no idea. It was teed
19 up for trial several times. It was in trial the summer
20 before I started, which would have been the summer of 2014.
21 My attorney -- the attorney in my office who was at the
22 trial, Cheslyne Brighthop, said the judge, after hearing
23 motions, *sua sponte* decided to continue the trial, which
24 then took us another eight months.

25 THE COURT: Brighthop from Trenton?

1 MR. COMISH: Yes, Your Honor, Cheslyne Brighthop.
2 She's in the building at the moment, should you wish to ask
3 her just about that.

4 THE COURT: You know she's roommates with my ex-law
5 clerk.

6 MR. COMISH: Oh. Okay.

7 THE COURT: Who is a prosecutor.

8 MS. MANGUM: Your Honor, I would just say that none of
9 this is properly before you. He can't take testimony on an
10 appeal. What we have is the record, not what he heard from
11 somebody in his office.

12 THE COURT: You're a public defender now?

13 MR. COMISH: I am, Your Honor.

14 THE COURT: Okay.

15 MR. COMISH: It's another attorney in my office and,
16 as you said, any attorney in my office could come talk
17 should you require that. My order -- I mean, the *Doggett*
18 issue is clearly properly before you as that was raised and
19 preserved.

20 THE COURT: Well, you should ask Ms. Brighthop what
21 Tonya thinks of Mr. Phillips before you remind me of making
22 all these constitutional claims.

23 MR. COMISH: Is that a good thing or a bad thing, Your
24 Honor?

25 THE COURT: It's a good thing. He won his last case

1 raising all these constitutional things. It's a good
2 thing. I'm impressed by anyone who spends time to learn
3 all this stuff and to present it, and most people don't
4 even talk about it.

5 MR. COMISH: Thank you, Your Honor. I'll move very
6 briefly.

7 The whole thing is after a year between arrest and
8 trial, after a year has elapsed, a presumption of prejudice
9 to the defendant attaches to the case. That presumption of
10 prejudice only grows more important, I'm posing, as time
11 floats. In this case, there was a forty-five month time
12 delay between arrest and trial. The Supreme Court has said
13 we have found delays shorter than this eight-year delay
14 extraordinary. I submit that that should apply to a
15 municipal court case for simple possession of marijuana
16 that took forty-five months to bring to trial. So, the
17 judge committed an error of law when she did not -- she
18 denied my motion without requiring Ms. Mangum to rebut the
19 presumption of prejudice.

20 THE COURT: And what did she say?

21 MR. COMISH: That would be a pretrial motion. Beg the
22 court's indulgence for one moment.

23 MS. MANGUM: Your Honor, if I may? Our pretrial
24 motion discussion begins on page 15. He makes this exact
25 same argument. He brings out *Doggett* on page 15.

1 Beginning on line 22, the court says: All right, Ms.
2 Mangum. To which I reply -- and I'm embarrassed to read
3 what my little analogy is there. You can read it for
4 yourself.

5 MR. COMISH: Ms. Mangum spoke -- just misspoke. It's
6 actually on page 18, I believe, Your Honor, not 22.

7 MS. MANGUM: No. I'm on page 15. That's what I said,
8 page 15.

9 And then, Your Honor, it goes on to page 16 where from
10 the court's own file I read he was arrested in 2011. He
11 did not request a jury trial until of November 2011. That
12 delay is due to the defendant. He waited until February
13 2012 to request a public defender; that delay is also due
14 to the defendant. The case did not come back onto a docket
15 until July of 2014. I'll address that in a second, Your
16 Honor. Then I say the city was prepared to go forward that
17 day, July 14th. There's a note in the court file the
18 public defender asked for a continuance on that date. It
19 was then on the jury trial docket in February of 2015. I
20 personally attempted to schedule a trial; Mr. Comish was
21 not available. We then set it for a date certain, and
22 that's why we went forward.

23 In terms of the scheduling of the cases, we don't
24 schedule cases the same way that general sessions does. It
25 does not fall on the city attorney's office to do any

1 scheduling. Scheduling done completely by the court in
2 terms of jury trial. We don't call a case. It had to be
3 placed on a jury trial docket by the court, and that's also
4 in here as well. So, the delay between February 2012 and
5 July of 2014 is a court delay.

6 THE COURT: Well, he said it's a minor issue, and any
7 time I see defendant requests continuance, that usually
8 wipes that argument. So, you won that one.

9 MS. MANGUM: Thank you, Your Honor.

10 THE COURT: What else you got over there?

11 MR. COMISH: That would be all the issues, Your Honor.

12 THE COURT: All right. Very good.

13 Well, I'm going to -- as I said, you're leading on the
14 first one on the chain of custody. I'm going to review
15 everything. You're leading that one; she's leading the
16 second one.

17 MR. COMISH: And the third one, Your Honor, the
18 search?

19 THE COURT: She's leading the third one on the dog,
20 but I have to read the transcript to get a clear
21 understanding.

22 MS. MANGUM: Yes, Your Honor.

23 THE COURT: And you're leading on number one, and my
24 question in my mind is do I rule on just the one if you win
25 one, or do I rule on the one and also rule on the rest even

1 if you win the first one because if you win the first one,
2 you get a new trial. I guess you do. Is that what
3 happens?

4 MR. COMISH: If I win the first one, I would ask that
5 you order that the chain of custody be suppressed,
6 overruling her order.

7 THE COURT: Of course they get a chance to come back
8 and do a better job the next time. They can find the
9 person who wasn't there the first time if I say she's got
10 to be there. I don't think I'd reverse the conviction.
11 I'd remand.

12 MR. COMISH: We're not asking you to reverse. Just to
13 overrule her denying my objection.

14 MS. MANGUM: Your Honor, if that's what he wants,
15 we're fine with that.

16 MR. COMISH: If she wants to concede that she does not
17 need a chain of custody be introduced, we can sign a
18 consent order today.

19 THE COURT: Well, I'm a chain of custody expert, among
20 many other areas of expertise. Since I've been listening
21 to Donald Trump, I've found it's really good to just boast
22 about what you're expert in. And so I think that's why
23 I'm saying you're leading because having prosecuted for
24 eighteen years, this Rule 6, I remember when it wasn't
25 there, and it's now there and it's a substitute. That has

1 to be strictly complied with.

2 MR. COMISH: That's right, Your Honor, and
3 respectfully I would ask that you, even if you would side
4 with me on that one, include in your order the other two
5 issues even if you side against me in those.

6 THE COURT: And decide the rest of them, too?

7 MR. COMISH: Yes, Your Honor.

8 THE COURT: But courts are typically -- appellate
9 courts where I sit in appeal decide matters on as limited
10 basis as is necessary so as to not risk making an error on
11 other things that's not, that's not -- does not control the
12 decision. So, if you win number one, then quite often the
13 court says having granted -- having reversed the
14 conviction, we will not address the remaining issues. So,
15 that's often been the case.

16 MR. COMISH: Okay. Thank you, Your Honor.

17 THE COURT: But I've said she'd leading on everything
18 else, so if you get a new trial -- no matter. We'll think
19 about it.

20 MR. COMISH: Thank you, Your Honor.

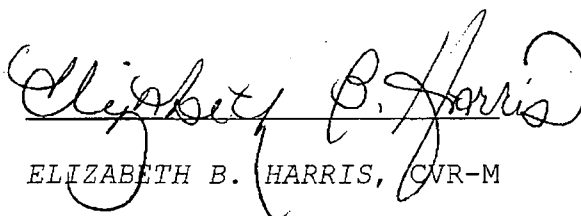
21 MS. MANGUM: Thank you, Your Honor.

22 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 14TH DAY OF AUGUST, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

DECEMBER 16TH, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No. 2015-CP-40-01601

192

State of South Carolina,)

v.)

Cedric Xavier Heyward,)

Appellant.)

ORDER DENYING APPEAL

THIS MATTER came before the Court as a Municipal Court Appeal on August 14, 2015. Present at the hearing were Jonathan Cornish, representing the Appellant, and Jessica Mangum, representing the City of Columbia.

On March 4, 2015, a jury trial was held in the City of Columbia Municipal Court. Appellant, Cedric Xavier Hewyard, was found guilty of ticket number 81734FP and sentenced by the Honorable Dana D. Turner. Appellant, through his counsel, appealed claiming of an illegal search under the Fourth Amendment. Appellant contends that that trial judge erred in overruling objections made by Appellant and finding that the search of Appellant's vehicle was lawful and that the City complied with chain of custody requirements.

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. A seizure for a traffic violation justifies a police investigation of that violation. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). A dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. *Illinois v. Caballes*, 543 U.S. 405 (2005). An officer may conduct certain unrelated checks during

an otherwise lawful traffic stop. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). The United States Supreme Court held in *Rodriguez* that a dog sniff conducted after the completion of a traffic stop, which exceeded the time needed to handle the matter for which the stop was made, violated the Constitution. ¹⁹³

In this case, the Officer who made the initial traffic stop testified that he was still in the process of issuing the warning ticket when the K-9 Unit arrived at the scene. The traffic stop itself lasted for fifteen minutes during which the Officer checked Appellant's driver's license, registration, and proof of insurance in addition to inquiring about other safety related issues. Based on a review of the record, there is no evidence of a demonstrable delay in the traffic stop beyond a reasonable duration that would constitute a constitutional violation.

Furthermore, the law allows a drug dog a "free air sniff" around the exterior of a vehicle. Appellant contends that the dog did not alert to a narcotic odor until he was inside of the vehicle. However, the Officer in charge of the K-9 Unit testified that the dog was trained only to go where narcotics odors existed, which the dog did as an alert leading to the discovery of drugs in this case.

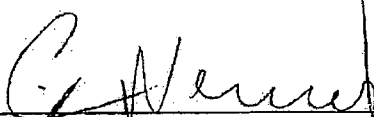
As for Appellant's assertion that the City did not properly comply with the chain of custody requirements, this is unsupported by the record. Rather, it appears that the lower court properly found that every person in the chain of custody need not be present to testify at trial, and that one only has to prove chain of custody to the extent practicable.

Having carefully considered the arguments, submissions of counsel, and applicable law, the Court finds no constitutional errors by the trial judge justifying the granting of this Appeal.

THEREFORE, IT IS ORDERED that the Appeal is DENIED.

AND IT IS SO ORDERED.

194


Clifton Newman
Presiding Judge

Columbia, South Carolina

This 12th day of January, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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FEB 17 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper, Circuit Judge

Case No. 2015-CP-40-01601

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

v.

Cedric Xavier Heyward,.....Appellant.

NOTICE OF APPEAL

Cedric Xavier Heyward appeals the order of the Honorable Clifton Newman dated January 13, 2016, which denied the appeal of his conviction (warrant no. 81734FP) in the City of Columbia Municipal Court. Appellant received written notice of the order on January 13, 2016.

November 9, 2015

Jonathan S Comish
Richland County Public Defenders Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592
Attorney for Appellant

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FEB 12 2016
Legal Department

RICHLAND COUNTY
FILED
2016 FEB 12 PM 2:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Other Counsel of Record:
Assistant City Attorney Jessica Mangum
City Attorney's Office, Columbia SC
Post Office Box 667
Columbia, SC 292002
(803) 737-4242
Attorney for Respondent

STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND)

Warrant # 81734FP

Indictment #

The State of South Carolina,)

Vs.)

CERTIFICATE OF SERVICE

Cedric Xavier Heyward)

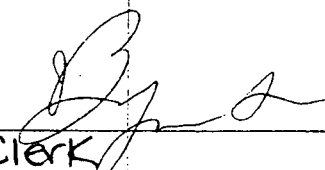
Defendant.)

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FEB 17 2016

SC Court of Appeals

The undersigned, being duly sworn, hereby deposes and says that he is a clerk for the Richland County Public Defender's Office and that on this the 10 day of Feb, 2016, he served the Court of Appeals by hand delivering the Sentencing Sheet to their office located at 1401 Main Street Columbia, South Carolina and leaving it with Jessica Magnum a person of authority at said office.


 Clerk

Richland County Public Defender's Office
 P.O. Box 192
 Columbia, South Carolina 29202
 (803) 765-2592

Columbia, South Carolina

This 10 day of February, 2016.

FILED
 ANNE H. W. McBRIDE
 C.C.P. & G.S.

2016 FEB 17 PM 4:31

RICHLAND COUNTY
 FILED

FORM 14
DESIGNATION OF MATTERS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 24 2016
SC Court of Appeals

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

Case No. 2015-CP-400-1604

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

v.

Cedric Xavier Heyward,..... Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposed the following be included in the Record on Appeal:

1. Transcript of proceedings of City of Columbia Municipal Court
2. City's Exhibit 1
3. Transcript of Court of Common Pleas proceedings

I certify that this designation contains no matter which is irrelevant to this appeal.

June 24, 2016

Jonathan Comish
Assistant Public Defender
Richland County Public Defender's Office
Post Office Box 192
Columbia, South Carolina 29202
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

Warrant Numbers: 2015-CP-400-1604

The State of South Carolina)

Certificate of Service

vs.)

Cedric Xavier Heyward)

Defendant.)

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JUN 24 2016

SC Court of Appeals

I Steven Harper

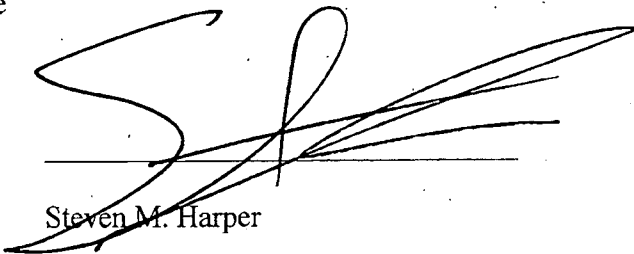
do swear that on this day I did serve a copy

of the appeal brief with the City Attorney Jessica Mangum by leaving a clocked copy of

the appeal brief in the above referenced case with the receptionist at City Attorney office
~~Court of Appeals Desk Clerk at~~

~~1220 Senate St, Columbia, SC 29201~~ on behalf of Attorney Jonathan Comish with the

Richland County Public Defenders Office


Steven M. Harper

Clerk
Richland County Public Defenders Office
1701 Main Street
Columbia, SC 29201
(803) 765-2592

Columbia, South Carolina

This 24 day of June, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

Warrant Numbers: 2015-CP-400-1604

The State of South Carolina)

Certificate of Service

vs.)

Cedric Xavier Heyward)

Defendant.)

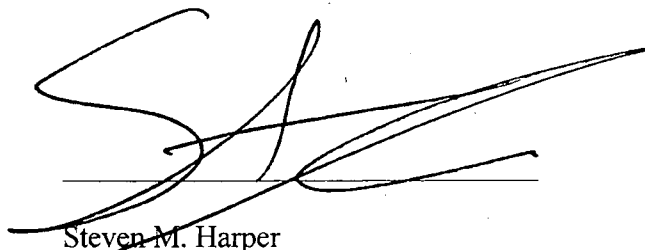
RECEIVED

JUN 24 2016

SC Court of Appeals

I Steven Harper do swear that on this day I did file an

appeal brief with the South Carolina Court of Appeals by leaving the original appeal in the above referenced case with the Court of Appeals Desk Clerk at 1220 Senate St, Columbia, SC 29201 on behalf of Attorney Jonathan Comish with the Richland County Public Defenders Office



Steven M. Harper

Clerk
Richland County Public Defenders Office
1701 Main Street
Columbia, SC 29201
(803) 765-2592

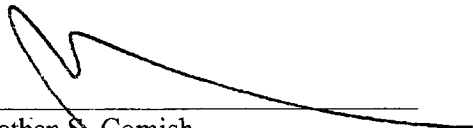
Columbia, South Carolina

This 24 day of June, 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 22, 2016



Jonathan S. Comish
Assistant Public Defender

Richland County Public Defender's Office
PO Box 192
Columbia, S. C. 29201
(803) 765-2592

ATTORNEY FOR APPELLANT

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AUG 24 2016
SC Court of Appeals