

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODRIQUEZ J. WOLFE,

APPELLANT

APPELLATE CASE NO. 2015-000433

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated January 26-28, 2015)	1
OPENING STATEMENT BY MR. EDWARDS	2
OPENING STATEMENT BY MR. KOGER	4
TESTIMONY	
WILLIE MCCAULEY	
Direct Examination by Mr. Edwards	7
Cross-Examination by Mr. Koger	31
Redirect Examination by Mr. Edwards	43
Recross Examination by Mr. Koger	46
STEPHEN MICHAEL WILLIAMS	
Direct Examination by Mr. Edwards	48
Cross-Examination by Mr. Koger	58
LARRY ZIVKOVICH	
Direct Examination by Mr. Edwards	60
Cross-Examination by Mr. Koger	69
Redirect Examination by Mr. Edwards	71
MARTY JOURNEY	
Direct Examination by Mr. Edwards	72
Cross-Examination by Mr. Koger	80
STATE RESTS	84
MOTION FOR A DIRECTED VERDICT BY MR. KOGER	84
RESPONSE BY MR. EDWARDS	85
RULING BY THE COURT	85
DEFENSE RESTS	86
CLOSING ARGUMENT BY MR. EDWARDS	88
CLOSING ARGUMENT BY MR. KOGER	92

JURY CHARGE.....	101
JURY NOTE.....	114
COURT'S RESPONSE TO JURY NOTE	114
RECHARGE OF JURY	116
VERDICT	128
JURY POLL	129
SENTENCING	131
INDICTMENTS	132
CERTIFICATE OF COUNSEL.....	136

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 2 (DVD OF TRAFFIC STOP)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2014-GS-38-0946; 1207

State of South Carolina,)
)
Plaintiff,)
)
v.) Transcript of Record
)
Rodriquez J. Wolfe,)
)
Defendant.)
)
)
)
_____)

January 26 - 28, 2015
Orangeburg, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge and a jury

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

Josh Edwards, Esquire
Attorney for the State

Joshua Koger, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

1 During the trial of the case, I will also appoint a
2 foreperson to preside over the jury room. And basically the
3 jury's spokesperson is the foreperson. There is not a
4 greater weight given to the foreperson regarding any voting
5 or anything like that. They're merely the liaison to the
6 Court. If you need anything, the foreperson will certainly
7 let us know that. And I will give you further instructions
8 upon that further down -- regarding the case.

9 In order to preserve everyone's rights I will ask the
10 State and Defense if there's any objections to the opening
11 charge to the jury?

12 MR. EDWARDS: None from the State, Your Honor.

13 MR. KOGER: None from the Defense, Your Honor.

14 THE COURT: Ladies and gentlemen, please pay close
15 attention as we will now begin with opening statements.

16 Solicitor.

17 MR. EDWARDS: Thank you, Judge.

18 Mr. Koger, Judge Murphy, may it please the Court?

19 THE COURT: Yes, sir.

20 STATE OPENING STATEMENT

21 BY MR. EDWARDS:

22 Why did he run? That's the question I want y'all to
23 think about when you listen to the evidence that I'm going
24 to show you in this case. The evidence is going to show you
25 that this Defendant, Rodriguez Wolfe, ran from the police

State v Wolfe

1/27/15

25

1 near a license checkpoint on Cannon Bridge Road, here in
2 Orangeburg County. You're going to see the video from the
3 Highway Patrolman's dash cam. It's going to show that the
4 Defendant drove up to the checkpoint, saw the officers,
5 stopped, spun his car around, tires squealing, and ran the
6 other way. When the officers got behind and told him to
7 stop with their blue lights, he sped up. Lead them on a
8 high-speed chase that ended with the Defendant crashing and
9 overturning his vehicle. He's lucky to be in the court room
10 today. You're not allowed to do that. There's a law
11 against it. It's called failure to stop for a blue light.
12 These are the elements. The Defendant was driving a car on
13 a public road. He was signaled to stop and he did not stop.
14 That simple. I'll ask my question to you again, why did he
15 run? He had drugs in the car.

16 The evidence will show you that the Defendant was in
17 possession of an eighth of an ounce, roughly three and a
18 half grams of crack cocaine. He possessed the crack
19 cocaine. It was in his car. He knew it was there. The
20 second element is that he had the intent to distribute or
21 deliver it to other people. You're going to hear expert
22 testimony about exactly how much three and a half grams of
23 crack cocaine is. It's a lot. Probably enough to get
24 everybody in the courtroom high. These two elements require
25 you to judge the Defendant's state of mind at the time. He

1 had to be in knowing possession of the crack cocaine. If
2 someone's in possession of something, it's safe to infer
3 that they know they're in possession of it. For example, I
4 know this pen's in my hand right now.

5 Intent to distribute, another mental state. You're
6 going to have to judge this by the amount of drugs. Was
7 this for one person or was this for more than one person.
8 In fact, the statute says you're allowed to infer the intent
9 to distribute based on the possession of just one gram of
10 crack cocaine. He had three and a half times that much in
11 this case.

12 I'm going to sit down now so we can get to the
13 evidence. I want to thank you for serving on the jury. I
14 look forward to presenting the case to you.

15 THE COURT: Mr. Koger.

16 MR. KOGER: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. KOGER: Solicitor.

19 DEFENSE OPENING STATEMENT

20 BY MR. KOGER:

21 The State posed the question in the opening why did he
22 run. And there's going to be information that's going to
23 come out in this courtroom today and maybe tomorrow that
24 will give you the information to make the determination why
25 did he run.

1 It's important to remember that opening statement, it's
2 not evidence. It's important to remember that what the
3 Solicitor just stated is his version of what happened on
4 April 29th, 2014. It's just his version of the story. But
5 before you can make the determination of what happened on
6 April 29th, 2014, you must have the complete story. You
7 must know everything that happened in the early morning
8 hours of April 29, 2014.

9 Now, the Judge has touched upon how you are going to
10 come about that information. And you are going to come
11 about that information by witnesses sitting in this chair
12 and they coming to either swear or affirm to tell the truth,
13 the whole truth and nothing but the truth so help them God.
14 You're also going to make the determination of what happened
15 on April 29th, 2014 by evidence that is admitted into the
16 courtroom during this trial and you're going to make a
17 determination what is not admitted into evidence in this
18 particular trial. So the version that the State just gave
19 is their version, and it's not the complete version.

20 Now, the State made mention on the possession of intent
21 to distribute crack cocaine that it's possession and the
22 intent to distribute, he also mentioned money. But there's
23 other factors that's going to come out in this trial today
24 and tomorrow that you will have to consider to even
25 determine whether this is the correct offense. And, also

1 another thing too, this witness chair right here, my client
2 have a Fifth Amendment right not to take the stand. And
3 you'll get jury instruction in the end that the Judge will
4 tell you that he has a Fifth Amendment right. Or if I was
5 sitting at that table, I would have a Fifth Amendment right
6 or if you were sitting at that table, you would have a Fifth
7 Amendment right not to take the stand. And you cannot take
8 that, the fact that he doesn't take the stand into
9 consideration.

10 This case is not about whether you are against drugs in
11 Orangeburg County. That's an honest answer. We all are
12 against drugs in Orangeburg County. But this case is about
13 the State proving their case beyond a reasonable doubt.
14 Proving every element of the charges that are brought
15 against Mr. Wolfe in this particular case. And it's not as
16 simple as Mr. Edwards just stated, this, this, and that.
17 Let's get on with it. But this is an important to case Mr.
18 Wolfe right here. And I do not and he does not want you to
19 just hurriedly giving decision, hurriedly making any type of
20 determinations but what come out of this courtroom today and
21 maybe tomorrow. This case is also important to Orangeburg
22 County. And you were selected because both sides felt that
23 you were going to be attentive. You were going to look at
24 the details and you would render a just verdict.

25 Beyond a reasonable doubt, not to belabor the point,

State v Wolfe Willie McCauley - Direct 1/27/15 29

1 that's the burden of proof here. That's not only the burden
2 of proof for Mr. Wolfe but for anyone that set at a defense
3 table in this state or in this nation, and I submit to you
4 that once you hear the evidence, once you analyze the lack
5 thereof, that you'll come back not guilty for Mr. Wolfe on
6 the possession with intent to distribute. And you will
7 determine whether he's guilty or not of the failing to stop
8 for a blue light. Thank you.

9 THE COURT: Solicitor, you may call your first
10 witness.

11 MR. EDWARDS: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 MR. EDWARDS: The State calls Willie McCauley.

14 THE CLERK: Please place your left hand on the
15 Bible and raise your right hand.

16 (WHEREUPON, Willie McCauley was
17 duly sworn.)

18 THE CLERK: Thank you. You may have a seat.
19 Please state your name for the record and spell your last
20 name.

21 MR. MCCAULEY: Trooper McCauley, South Carolina
22 Highway Patrol. My last name, McCauley. M-c-C-a-u-l-e-y.

23 THE COURT: Your witness.

24 WILLIE MCCAULEY - DIRECT EXAMINATION

25 BY MR. EDWARDS:

State v Wolfe Willie McCauley - Direct 1/27/15 30

1 Q Good morning?

2 A Good morning, sir.

3 Q Trooper McCauley, where do you live?

4 A I live here in Orangeburg.

5 Q And where do you work?

6 A Here in Orangeburg with the South Carolina Highway
7 Patrol.

8 Q Okay. How long have you been with the highway patrol?

9 A For almost seven years.

10 Q And what's your rank?

11 A I'm Lance Corporal.

12 Q Lance Corporal?

13 A Yes, sir.

14 Q And you didn't start at this rank, did you?

15 A No, sir.

16 Q How many times have you been promoted within the
17 highway patrol?

18 A Four times.

19 Q Have you been with the highway patrol your entire
20 career?

21 A Yes, sir.

22 Q In order to be a highway patrolman, what sort of
23 training or education do you have to have?

24 A We go through twenty-two weeks of training. It
25 consists of mainly defensive tactics.

State v Wolfe Willie McCauley - Direct 1/27/15 31

1 Q Where is this training?

2 A South Carolina Criminal Justice Academy in Columbia.

3 Q Okay. Thank you.

4 A We go through defensive driving, defensive tactics,
5 weapons training, go over law procedures, courtroom
6 procedures.

7 Q You have to know a little bit about the law to be a
8 policeman; don't you?

9 A Yes, sir.

10 Q Okay. And you know why you're here today; correct?

11 A Yes, sir; correct.

12 Q Do you remember a chase that took place on April the
13 29th of 2014?

14 A Yes, sir.

15 Q Tell me a little bit about it?

16 A Myself and Trooper Steve Williams, we were on a license
17 checkpoint on Cannon Bridge Road and Luke Street here in
18 Orangeburg County. Just -- we stand in the middle of the
19 road with reflective vests on. We had a sign on each side
20 of our location, about maybe a hundred yards from where we
21 were standing, just to warn drivers. We also had lights and
22 patrol vehicles and just out there to check driver's
23 licenses.

24 Q Okay. And for the record, where exactly was this?

25 A Cannon Bridge Road and Luke Street.

1 Q Is that in Orangeburg County?

2 A It's in Orangeburg County.

3 Q Okay. And these checkpoints, who decides when and
4 where, where to do a checkpoint?

5 A Usually, our supervisors decides that.

6 Q Who's your supervisor?

7 A Corporal Burris.

8 Q Okay. And it was just you and Trooper Williams there
9 that night?

10 A Yes, sir.

11 Q Okay. Do you remember what brought this chase about?

12 A Yes, sir. We were standing in the road. We both had
13 -- well, Trooper Williams had a vehicle pulled over already.
14 I was standing in the road just waiting for vehicles to come
15 by. I looked to my right, which was -- would be considered
16 south on Cannon Bridge Road. I saw a vehicle headlights.
17 When he saw the signs, hit the shoulder of the road and also
18 --

19 Q About how far away was the vehicle from you?

20 A That was probably an eighth of a mile, I'd say.

21 Q An eighth of a mile. In yards if you could guess?

22 A About a football field length and a half.

23 Q Got you. And just a little bit more about the check.

24 What were y'all doing with the cars that were coming

25 through? Were y'all stopping and searching everybody in the

State v Wolfe Willie McCauley - Direct 1/27/15 33

1 cars?

2 A No, sir. We were basically checking for driver's
3 license. A person comes up. We ask for a driver's license,
4 registration and proof of insurance.

5 Q How long did this take for each car to come through?

6 A Well, we were only there for about five minutes so he
7 had one vehicle pulled over and I'd checked another vehicle.
8 That's it. Less than five minutes.

9 Q What time of day was this?

10 A This was about, I'd say about 2:05 in the morning. A
11 little after 2:00 o'clock.

12 Q It was dark?

13 A Yes, sir.

14 Q Okay. So just real quick. Is your main mission as a
15 highway patrolman to prevent drugs from hitting in the
16 street or is your main mission something else?

17 A My main mission is to reduce fatalities on the road.
18 We do that by enforcing the DUI law, speeding law, seatbelt
19 laws.

20 Q Highway safety?

21 A Highway safety.

22 Q And would you say DUIs are probably the main thing that
23 you're looking -- that and not having licenses and things
24 like that are the main thing you're looking for at these
25 traffic checks?

1 A Yes, sir.

2 Q Okay. Okay. So you told me that the vehicle stopped
3 and started to back up?

4 A Yes, sir.

5 Q Are you allowed to back up in the middle of the road?

6 A No, sir. Especially not on a curve.

7 Q Okay. And so he was around the curve?

8 A Yes, sir.

9 Q Then what did you do then?

10 A He started to back up, which was a curve, started to
11 back up.. And once I got in my patrol car, I went down the
12 road towards him, it was still my headlights to his
13 headlights. And all of a sudden he did what we call a
14 bootleg, which is to sling the steering all the way to the
15 right, give it gas, and the vehicle will pretty much
16 fishtail around.

17 Q Okay. So this was a sudden rapid type of movement?

18 A Yes, sir.

19 Q Did you hear any tires squealing?

20 A No, sir. I didn't hear any tires squealing.

21 Q Did you see any dust being kicked up?

22 A Yes, sir.

23 Q So did you believe at that point the tires were
24 spinning?

25 A Yes, sir.

State v Wolfe Willie McCauley - Direct 1/27/15 35

1 Q Okay. So what happened next?

2 A I got in my car, I activated my blue lights. Well, I
3 caught up to the vehicle, activated my blue lights and
4 started to call the traffic stop in, which protocol what we
5 do let the dispatcher know what's our location, what kind of
6 car it is and the tags and activated my blue lights and
7 attempted to get him to stop.

8 Q Why did you decide to stop the car at this point?

9 A Because whenever we're at a checkpoint and we see some
10 people turn around on us, from my experience, they're
11 running from us. They're turning around for a certain
12 reason. And it's our job to find out what that is.

13 Q Is it safe to say this was suspicious conduct to you?

14 A Yes, sir.

15 Q When you pulled up behind him in your car, did you see
16 him break the law in any other way?

17 A Yes, sir. Absolutely. After we made a right turn off
18 Cannon Bridge Road on to Riley Road --

19 Q First of all, was he staying within his lane the whole
20 time?

21 A No, sir.

22 Q Okay.

23 A Made a right turn onto Riley Road. And he was driving
24 up the center. At some points, all four tires of his
25 vehicle was in the opposite lane of travel. And I called my

1 Corporal and let him know what I had. He was driving
2 recklessly and couldn't maintain his lane.

3 Q Okay. At what point did you turn the blue lights on?

4 A I turned my blue lights on while I was still on Cannon
5 Bride Road and right at Riley Road, while he was making his
6 right turn onto Riley Road.

7 Q Did he stop when you turned your blue lights on?

8 A No, sir.

9 Q Is that against the law?

10 A Yes.

11 Q Describe the chase for me?

12 A I activated blue lights and sirens and he wouldn't
13 stop. I got maybe within forty feet of his vehicle. I
14 didn't want to get too close. Maintain -- we were going
15 about, probably seventy-five miles an hour. Lights and
16 sirens on. We go about a mile, mile and a half. The
17 vehicle made -- it looked like it was trying to make a right
18 turn. There's a T-intersection. It looks like he maybe
19 tried to make a right turn onto Mixon Road. He tried to
20 make it but was going too fast so he got back on the road.
21 He ran off the road and got back onto the road. There's a
22 couple of curves on Riley Road, which we were traveling on.

23 Q This was not a straight road. This was a curvy road?

24 A It's a very curvy road.

25 Q Okay.

State v Wolfe Willie McCauley - Direct 1/27/15 37

1 A And he was driving on the opposite side of the road. I
2 told my Corporal over the radio, he's driving off the side
3 of the road. And as soon as I said that, he came around --
4 there's a sharp curve. He came around the curve, over-
5 corrected and the vehicle rolled over to the roof.

6 Q Okay. What did you do at that point?

7 A At that point I got out of my vehicle, got out of my
8 car and at gunpoint, just for my safety, and I -- at that
9 point, he was crawling out, out of the driver's side window.
10 It was on its roof. Started crawling out of his driver's
11 side door and I ordered him to show me his hands. And he
12 did that. And I pretty much had him at gunpoint, making
13 sure he wasn't making any movements.

14 Q Did you handcuff him at that point?

15 A Yes, sir.

16 Q Did you check out the scene to see if there was anybody
17 else in the car?

18 A Yes, sir. I asked if there were any other passengers
19 inside the vehicle. He said no. But for myself I wanted to
20 check. And I did a walk-around the vehicle, looked inside
21 and looked behind it just to make sure no one was thrown
22 outside the vehicle.

23 Q Did you look all around to make sure there was nobody
24 running away from the car?

25 A Correct. Didn't see anybody.

1 Q Are you one hundred percent sure that he was the only
2 person in the car?

3 A Yes, sir..

4 Q Do you see the person who was driving the car in the
5 courtroom today?

6 A Yes, sir. Mr. -- the gentleman right there in the blue
7 shirt with dreds on.

8 Q When you were chasing Mr. Wolfe, did you see anything
9 being thrown from the car?

10 A No, sir.

11 Q Okay. So tell me about when you decided to put the
12 handcuffs on Mr. Wolfe. At this point is he under arrest?

13 A Yes, sir.

14 Q Okay. Do you know what Miranda rights are?

15 A Yes, sir.

16 Q Did you read him his Miranda rights?

17 A Yes, sir.

18 Q And what are the Miranda rights supposed to inform the
19 Defendant?

20 A It informs the Defendant of his rights that he's got
21 certain constitutional rights. Doesn't have to speak with
22 us just so he doesn't incriminate himself.

23 Q Okay. Did you ask him if he understood his rights?

24 A Yes, sir.

25 Q Did he tell you that he understood his rights?

State v Wolfe Willie McCauley - Direct 1/27/15 39

1 A Yes, sir.

2 Q Did he speak with you anyway after you read him his
3 rights?

4 A I think he was going to. He was saying that he was
5 afraid. He wanted to get home to his kids.

6 Q So he said he was afraid. Did he give you any other
7 more concrete reasons as to why he would run?

8 A I think more of he was afraid. He -- I think, if I
9 recall correctly, just mainly he was afraid. He was trying
10 to get home.

11 Q Did you give him field sobriety tests to make sure that
12 he wasn't drunk driving?

13 A Yes, sir.

14 Q What test did you give him?

15 A The standard gaze test.

16 Q And what's that tests?

17 A That's just a test of take our pencil out and just
18 check the person's nystagmus, checking a person's eyeballs
19 pretty much.

20 Q And what does that tell you?

21 A Well, there are certain things we look for. And what I
22 was looking for that night I didn't see.

23 Q Describe what you're looking for?

24 A Well, what we're looking for. We'll have a pen about
25 twelve inches from the person's face. We'll got to the

State v Wolfe Willie McCauley - Direct 1/27/15 40

1 right -- first we'll check to make sure the person doesn't
2 have a glass eye or what we call a lazy eye. One eye
3 follows. The other, it follows. We make sure both eyes,
4 eyeball are tracking equally. We go to the left side first
5 and if we see the eyeballs jerking, which means -- alcohol
6 in the system relaxes your muscles. So if that eyeball
7 starts to jerk right there, that's what we're looking for.
8 We bring it to the other side and see the same thing. And
9 then we bring it back forty-five degrees, which you had a
10 forty-five degree angle we're looking for the same thing,
11 that your eyeball is not jerking.

12 Q How many times have you performed this type of test?

13 A In seven years maybe a thousand times.

14 Q A thousand times. You're, at this point, probably
15 pretty good at spotting people that have twitchy eyeballs
16 and that have other signs of being intoxicated?

17 A Yes, sir.

18 Q In this case, did the Defendant appear to be
19 intoxicated?

20 A No, sir.

21 Q No twitching in his eyeballs?

22 A No twitching.

23 Q Did anybody else show up?

24 A Yes, sir. Trooper Williams, who was -- he was on the
25 license check with me.

State v Wolfe Willie McCauley - Direct 1/27/15 41

1 Q And a superior officer; correct?

2 A Yes, sir. As a matter of fact, during the chase on the
3 video you can hear me telling him I need him to come up here
4 with me. And he stopped what he was doing. And he arrived
5 maybe -- I'm going to say about a minute -- after I had
6 placed Mr. Wolfe under arrest.

7 Q Okay.

8 A Also Corporal Burris arrived, which is our shift
9 supervisor and Orangeburg County deputies arrived later on
10 because they say highway patrol involved in chase result in
11 a wreck. And we're not allowed to work any wrecks that we
12 are involved in.

13 Q Involved in? Okay. So I think you said earlier that
14 the vehicle was overturned?

15 A Yes, sir. It was on its roof.

16 Q Okay. If a vehicle is overturned on the highway, what
17 do you do?

18 A Well, that vehicle -- again, it was a chase, a pursuit.
19 Once we secured him, we secured the scene and we called for
20 Orangeburg County deputies to come work the collision.

21 Q Okay. And is the vehicle eventually going to have to
22 be towed?

23 A Yes, sir.

24 Q Particularly if you place the driver and the sole
25 occupant of the vehicle under arrest?

1 A Correct. It's going to be towed.

2 Q The vehicles have to be towed?

3 A Yes, sir.

4 Q Is there any sort of procedure that you go through when
5 you know a vehicle is going to have to be towed and
6 impounded?

7 A Yes, sir. We do an inventory.

8 Q What is an inventory?

9 A Inventory is just we go through the vehicle and put
10 down his belongings, what's on the report. That way to
11 protect him and also protect the tow truck driver. For
12 instance, the tow driver cannot be accused of stealing
13 something that was not inside the vehicle. And the same
14 thing with him. It protects both parties.

15 Q So it's just as much to protect the driver and the
16 owner of the vehicle than it is to protect law enforcement.

17 A Correct.

18 Q You want to make sure they have all their things;
19 correct?

20 A Yes, sir. And it also protects us.

21 Q Okay. Did you inventory the vehicle in this case?

22 A Yes, sir.

23 Q What did you find in the vehicle?

24 A While doing the inventory, maybe just small belongings,
25 nothing expensive. But also while looking inside the

State v Wolfe Willie McCauley - Direct 1/27/15 43

1 vehicle on the roof of the vehicle -- the vehicle was upside
2 down. On the roof of the vehicle, on the driver's side,
3 there was a small clear bag of what I thought at the time
4 was crack cocaine.

5 Q Okay. Have you seen crack before this incident?

6 A Yes, sir.

7 Q Is that what it look like?

8 A Yes, sir.

9 Q Did you find anything else in the vehicle that you
10 returned to the Defendant?

11 A Maybe some money. As a matter of fact there was about
12 -- a little over fifty dollars of his what we counted.

13 Q Okay. And this whole incident was captured on video;
14 correct?

15 A Yes, sir. Directly from my dash cam.

16 Q And how does that camera work?

17 A The camera works one of two ways. The camera works --
18 one way it can work, we have what we call a microphone here.
19 If I press that button right there, the camera automatically
20 comes on. And also a second way is whenever we're inside
21 the vehicle we press the -- on that case pursuit, which is
22 automatically the blue lights comes on and automatically the
23 camera comes on. So anytime I hit that button, the camera
24 automatically comes on.

25 Q Got you. So when you find drugs in a car, what's the

1 procedure you go through?

2 A Whenever we find any contraband in --

3 Q Well, what's contraband?

4 A Anything illegal.

5 Q Something you're not supposed to have?

6 A Something you're not supposed to have.

7 Q Okay.

8 A What happen we -- it goes into our evidence. We'll
9 take it, secure it inside of our vehicle. And from that
10 point, once we secure that person to the jail, once they're
11 in the jail, we go back to our patrol office, which is here
12 in town. We'll put it in an evidence bag.

13 Q Okay. Tell me a little bit more about these bags?

14 A The evidence bags, it's clear --

15 Q Does it have a name?

16 A It's a SLED evidence bag.

17 Q Do some people refer to them as a BEST kit?

18 A A BEST kit, yeah. And there's a strong adhesive on the
19 top portion. Once you secure the evidence inside that bag,
20 seal it up, put the person's name on it, our name on it, the
21 date and time that it was confiscated. And also there's a
22 case number. We drop it into our -- there's a seal --

23 Q What's the purpose of the case number?

24 A The case number is so it can be tracked.

25 Q So you can keep track of what drugs or what; correct?

State v Wolfe Willie McCauley - Direct 1/27/15 45

- 1 A Yes, sir. And it keeps track of what drugs belongs to
2 -- or what contraband belongs to what person.
- 3 Q Got you.
- 4 A And who confiscated it.
- 5 Q Got you. Now, when you looked in the car where exactly
6 was the crack cocaine in the car?
- 7 A It was on the driver's side roof.
- 8 Q Okay. So it wasn't in a lock box or anything?
- 9 A No, sir.
- 10 Q It wasn't in the glove box?
- 11 A No, sir.
- 12 Q Was it hidden in the trunk?
- 13 A No, sir.
- 14 Q Was it hidden anywhere?
- 15 A No, sir.
- 16 Q Was it in plain view?
- 17 A Plain view.
- 18 Q Loose?
- 19 A Loose, in a white clear bag. A clear bag.
- 20 Q Tell me a little bit more about the markings you made?
- 21 A The markings on the evidence bag is my case -- well,
22 case number, his personal information, name --
- 23 Q Do you write these yourself?
- 24 A Myself, with a Sharpie.
- 25 Q Do you recognize any of the writing on this bag? Go

State v Wolfe Willie McCauley - Direct 1/27/15 46

1 ahead and look at it and familiarize yourself with it?

2 A Okay. This is my name.

3 Q Is that your handwriting?

4 A Yes, sir.

5 Q. You wrote that?

6 A Yes, sir. Person sealing the bag. Contents, a white
7 rock, which I put crack on it. My agency. The date it was
8 sealed. My name down here and my signature.

9 Q So that's the bag?

10 A Yes, sir..

11 Q This is the bag from that night?

12 A Yes, .sir.

13 Q Thank you. Is there any way to open a bag, a BEST kit,
14 without scissors or something to cut the bag open?

15 A There's a way you can open it but you would --

16 Q How do you open one of these bags?

17 A You would have to destroy the entire bag because that
18 adhesive strip is so strong. You pretty much have to rip
19 that entire bag open.

20 Q And you'd be able to tell if somebody tried to open the
21 bag; correct?

22 A Correct.

23 Q This bag appear to be tampered with in any way to you?

24 A No, sir.

25 Q Okay. So tell me a little bit more about what happened

State v Wolfe Willie McCauley - Direct 1/27/15 47

1 with the drugs when you took. You put it in the BEST kit
2 and sealed it; correct?

3 A Correct.

4 Q Did you place it in your car after that?

5 A No, sir. At this point we're in the office. I'm in
6 the office. I sealed the evidence up. The evidence that's
7 dropped into our drop box.

8 Q Well, you take it back to Orangeburg; correct?

9 A Yes, I did.

10 Q From the scene of the accident you take it back to
11 Orangeburg?

12 A From the scene of the accident, yes.

13 Q Okay.

14 A In our patrol office.

15 Q Okay.

16 A And once it's sealed in the evidence bag, it's dropped
17 into what we call a -- it's our evidence box, which is a
18 large steel mailbox. It's bolted to the floor. Once it's
19 in that mailbox, the only person that have access to it are
20 the supervisors.

21 Q Okay. And who are your supervisors?

22 A Sergeant Rogen.

23 Q Okay. Do you recognize this?

24 A Yes, sir. That's the chain of custody.

25 Q You see your name where in the chain of custody?

State v Wolfe Willie McCauley - Direct 1/27/15 48

1 A Yes, sir. My name is right there. From me to
2 temporary storage.

3 Q Did you make any markings on that with a pen?

4 A My initials right here.

5 Q That's your initials. You wrote that?

6 A Yes, sir. Yes, sir.

7 Q If you could, just explain what all this means?
8 Explain what happened to the drugs?

9 A Okay. This is the chain of custody. This case number,
10 its evidence type, the date it was confiscated right here.
11 The highway patrol, my name right here. Date of the
12 incident. The violator's name, which would be Mr. Wolfe.
13 The evidence type which item one, quantity of one. This
14 right here is the description of items confiscated would be
15 white rocks, which is crack cocaine, which I typed. Sealed
16 in the BEST kit right here. From this point on here, from
17 my possession, it goes into our drop box, which is -- it
18 says temporary storage in Orangeburg. And from this point
19 on it's been moved from the evidence box on 4/29. And
20 someone takes it to, from temporary storage to CEF, which is
21 our central evidence facility in Columbia --

22 Q That's part of the highway patrol then?

23 A Yes, sir, part of highway patrol, by the sergeant. The
24 only person with access to it. It goes from Sergeant Rogan,
25 it moves from his hand on the 30th to Trooper Ashley's hands

State v Wolfe Willie McCauley - Direct 1/27/15 49

1 CEF.

2 Q And what happens to the drugs when they get to CEF?

3 Are they clocked-in there as well?

4 A Yes, sir. They are.

5 Q And did somebody sign for the drugs on that form?

6 A Yes, sir. I see a -- I don't know the person's name.

7 I see a name right here and the safe at CEF on 4/30.

8 Q Okay. After they are taken to Columbia and taken to
9 your central evidence facility, who actually tests the drugs
10 to see what they are, to make sure they're actually crack
11 cocaine?

12 A There's a SLED agent that does that.

13 Q So somebody takes it from your evidence facility to
14 SLED?

15 A Yes, sir.

16 Q And that's where the drugs are tested?

17 A Yes, sir.

18 Q And do they make markings when they receive it at SLED?

19 A Yes, sir. From CEF right here to SLED right here and
20 it's the person's name right here and SLED right there.

21 Reason for movement, analysis testing.

22 Q Before I get -- what is this number?

23 A That's the BEST kit number.

24 Q Is that the same number that's on the bag?

25 A Yes, sir.

State v Wolfe Willie McCauley - Direct 1/27/15 50

1 Q Thank you. Okay. Whose car was Mr. Wolfe driving that
2 night? Was it his own car? Do you check the registration?
3 Do you check the license tags and --

4 A Yes, sir. I believe he said it belonged to his aunt.

5 Q Okay. So he told you that it belonged to someone he
6 knew and that he had permission to be driving it that night?

7 A Yes, sir.

8 MR. EDWARDS: I beg the Court's indulgence.

9 BY MR. EDWARDS:

10 Q Do you make an incident report after something like
11 this happens?

12 A Yes, sir.

13 Q And on that incident report do you write the tag and
14 the make and model of the vehicle?

15 A Yes, sir.

16 Q Can you read that for the jury?

17 A Yeah. I put it down right here, SUV Jeep. Tag number
18 . Owner's name, B. Anderson. And address is
19 , Barnwell.

20 Q And because the Defendant told you that he had
21 permission to use the vehicle, you didn't suspect any sort
22 of foul play or anything like that?

23 A No, sir.

24 Q And did he tell you he was the driver of the vehicle?

25 A Yes, sir.

State v Wolfe Willie McCauley - Direct 1/27/15 51

1 Q Did he admit there was no one else in the vehicle?

2 A Yes, sir.

3 Q Okay. I think you said earlier that this whole thing
4 was recorded?

5 A Yes, sir. It was recorded.

6 Q Have you seen the recording?

7 A Yes, sir.

8 Q You watched it with me in my office; correct?

9 A Correct.

10 Q Is this the video that you saw from the office that
11 day?

12 A Yes, sir.

13 Q Is this video a fair and accurate representation of
14 what actually happened that night?

15 A Yes, sir.

16 MR. EDWARDS: Your Honor, I'd move to admit this
17 into evidence as State's Exhibit 2.

18 THE COURT: State's Exhibit 2. Any objection?

19 MR. KOGER: No objection, Your Honor.

20 THE COURT: All right. It's admitted.

21 (State's Exhibit No. 2, DVD, was
22 marked and entered.)

23 MR. EDWARDS: At this time, Your Honor, I'd like
24 to play the video for the jury?

25 THE COURT: Yes, sir.

State v Wolfe Willie McCauley - Direct 1/27/15 52

1 (State's Exhibit No. 2, DVD, was
2 played/paused)

3 BY MR. EDWARDS:

4 Q And Trooper McCauley, the video continues on for some
5 time; correct?

6 A Right.

7 Q And what does the rest of the video show you doing with
8 the Defendant?

9 A Pretty much transporting him to the Orangeburg jail.

10 Q And the video shows the entire ride back to the
11 Orangeburg jail; correct?

12 A Yes, sir.

13 Q Just to be clear from earlier, the Defendant admitted
14 to you that that was his friend or a friend of a friend's
15 car that he was driving that night?

16 A Yes, sir.

17 Q When you were bending down by the open door, that's
18 when you found the drugs?

19 A Yes, sir.

20 MR. EDWARDS: Your Honor, that's all I have at
21 this time.

22 THE COURT: Thank you.

23 Counsel please approach for just a second.

24 (Off the record bench conference with counsel and the
25 Court.)

State v Wolfe Willie McCauley - Cross 1/27/15 53

1 THE COURT: Any cross-examination?

2 MR. KOGER: Yes, Your Honor.

3 WILLIE MCCAULEY - CROSS-EXAMINATION

4 BY MR. KOGER:

5 Q Is that Officer McCauley?

6 A Yes, sir.

7 Q Okay.

8 MR. KOGER: May I approach the witness, Your
9 Honor.

10 THE COURT: You may, sir.

11 BY MR. KOGER:

12 Q Officer McCauley, this is the incident report that you
13 completed surrounding this incident April 29th, 2014;
14 correct?

15 A Yes, sir.

16 Q All right. And can you take a moment to refresh
17 yourself with the contents of that report?

18 A (Reviews document)

19 MR. KOGER: May I approach, Your Honor.

20 THE COURT: You may.

21 BY MR. KOGER:

22 Q Is it fair to say that in this incident report that you
23 wrote -- there's not any mention of the vehicle belonging to
24 Mr. Wolfe's aunt?

25 A Correct. It's not here.

1 Q It's not in your report. And how soon after this
2 incident was this report written?

3 A Within, I would say -- the video from that scene right
4 there takes about another fifteen minutes for me just to get
5 to the jail. Once I left the jail, I went straight to the
6 patrol office, which is about a mile from the jail. And
7 that's when I started on my report, writing my -- it took --
8 it probably took me about twenty or thirty minutes to do
9 that report.

10 MR. KOGER: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. KOGER:

13 Q Would you say at the bottom this report, it has June
14 the 5th, 2014?

15 A At the bottom of this report, here?

16 Q That's correct.

17 A I don't see -- Yes, sir. That's on here.

18 Q Would that be the date of the final report on this
19 particular incident?

20 A I don't know what this date is, but this report was
21 done within thirty -- within an hour of me doing this
22 report.

23 Q Okay. But you would say that on the report that your
24 name was listed, that that report has June 5th, 2014?

25 A Yes, sir.

State v Wolfe Willie McCauley - Cross 1/27/15 55

1 Q Okay. And you would again admit that there's nothing
2 in that report that state that this vehicle belongs to the
3 aunt of Mr. Wolfe; correct?

4 A No, sir.

5 Q Okay. And you even was meticulous enough to put on the
6 front of the report the registration information to Ms.
7 Brenda Anderson; correct?

8 A Yes, sir. That's part of our report.

9 Q But near that information on the top sheet, there's no
10 mention that the vehicle that was involved in this incident,
11 that it's registered to Ms. Anderson, was the aunt of Mr.
12 Wolfe; correct?

13 A No, sir.

14 Q And would you agree you stated that this is the video
15 of the incident/accident; correct?

16 A Yes, sir.

17 Q And would you agree that there's no mention on that
18 video that the aunt -- that this vehicle belonged to the
19 aunt of Mr. Wolfe; correct?

20 A I believe further down in the video it's mentioned of
21 who owned it.

22 Q Okay. But the question is from what was seen in the
23 courtroom, there's no mention that Ms. Anderson is the aunt
24 of Mr. Wolfe; correct?

25 A Correct.

1 Q And in your report that was dated June 15, 2014,
2 there's no mention in the report that the aunt of -- that
3 the owner of the car was the aunt of Mr. Wolfe; correct?

4 A Back to the date, this report it's on the same night.

5 Q Okay. But there's no mentioning in that report, the
6 same night, that the vehicle belonged to the aunt of Mr.
7 Wolfe; correct?

8 A Correct.

9 Q Now, you just had opportunity --

10 MR. KOGER: May I approach, Your Honor.

11 THE COURT: You may.

12 MR. KOGER: Okay.

13 BY MR. KOGER:

14 Q You just had the opportunity to read the report. Now,
15 he was charged with failure to stop for blue light; correct?

16 A Correct.

17 Q And he was charged with possession of crack cocaine on
18 that night; correct?

19 A Correct.

20 Q All right. Was he also charged with driving under
21 suspension?

22 A Correct.

23 Q And I think -- and correct me if I'm wrong -- you say
24 that when -- I thought you said a thousand times you gave
25 the horizontal eye nystagmus test or a hundred times?

State v Wolfe Willie McCauley - Cross 1/27/15 57

1 A Thousand.

2 Q A thousand times.

3 A Just estimating.

4 Q All right. Estimating. So -- and I think you stated
5 you worked for highway patrol for seven years?

6 A Yes, sir.

7 Q And that's been the extent of your career at the
8 highway patrol?

9 A Yes, sir.

10 Q Okay. So basically you're talking about a thousand
11 times -- you had stopped between a hundred and forty and a
12 hundred and fifty times per year; correct?

13 A Yes, sir.

14 Q Okay. And those stops revolves around -- because a
15 part of your main mission, DUIs; correct?

16 A Correct.

17 Q DUSs; correct?

18 A I mean it's DUI, seat belts and speeding.

19 Q Okay. But you have stopped people for driving under
20 suspension, once you found out the license suspended;
21 correct?

22 A Yes, sir.

23 Q Okay. And in your experience as a law enforcement
24 officer, have people ran from law enforcement because they
25 have a suspended license?

1 A Say that question again, please?

2 Q Okay. In your experience as a law enforcement officer
3 with your thousand stops, have you had opportunity to stop -
4 - people have ran from the police because they have
5 suspended license?

6 A Yes, sir.

7 Q And in this case Mr. Wolfe had a suspended license;
8 correct?

9 A Yes, sir.

10 Q And that's why you charged him with driving under
11 suspension; correct?

12 A He was charged with driving under suspension.

13 Q Okay. Now, the video showed -- I think you testified
14 to the car going between seventy and seventy-five miles per
15 hour; correct?

16 A Yes, sir.

17 Q And you testified to and the video showed erratic
18 driving on the part of Mr. Wolfe; correct?

19 A Correct.

20 Q Okay. But I think you also stated that you gave him
21 that horizontal eye nystagmus test, which is used to
22 determined whether a person can be charged with driving
23 under suspension and he passed; correct?

24 A Correct.

25 Q And I think you also say that when you spoke with him -

State v Wolfe Willie McCauley - Cross 1/27/15 59

1 - and I don't know whether -- I'm assuming this was after
2 you gave him the warnings about how much he had to drink on
3 that particular night. He said two beers; correct?

4 A Yes, sir. He said two beers.

5 Q Okay. From your experience as a law enforcement
6 officer, is it possible that a person can run from law
7 enforcement after they've been drinking, thinking that if
8 they get stopped they'll be charged with DUI?

9 A Yes, sir. We've had people run from us because they
10 were under the influence.

11 Q Okay. Now -- and again, I think you testified, you
12 said -- were you the one that found the drugs in the
13 vehicle?

14 A Yes, sir.

15 Q Okay. And according to the video and according to your
16 testimony, you would assume that this vehicle was
17 overturned; correct?

18 A Yes, sir. It is.

19 Q Okay. It flipped?

20 A Yes, sir.

21 Q All right. And you were saying this vehicle flipped at
22 about seventy or seventy-five miles per hour?

23 A No, sir. It didn't flip at that speed. Our --

24 Q But you -- I'm sorry. Go ahead.

25 A Our top speed during the entire chase was probably

1 about seventy-five miles an hour.

2 Q Okay. But it flipped at a high rate of speed?

3 A Yes, sir.

4 Q Okay. All right. And you would agree that from the
5 images on the video, right here it's still on, that that
6 roof was caved in somewhat?

7 A Yes, sir. Somewhat.

8 Q Okay. And you would agree that when you attempted to
9 open the door, it was difficult for you to open the door to
10 that vehicle; correct?

11 A Yes, sir.

12 Q And it was difficult for you to open the door to that
13 vehicle because it was partially wrecked; correct?

14 A Yes, sir.

15 Q Okay. Do you have any knowledge or information where
16 these drugs were placed prior to the vehicle flipping over?

17 A No, sir.

18 Q Okay. You have no idea whether the vehicle was in a --
19 whether the drugs were in a glove compartment; correct?

20 A Correct.

21 Q You would have no knowledge whether the drugs was in a
22 closed console between the bucket seats; correct?

23 A Correct.

24 Q You would have no idea whether the drugs was in the
25 back seat in a compartment; correct?

State v Wolfe Willie McCauley - Cross 1/27/15 61

1 A Correct.

2 Q So all you know that when you found the drugs they was
3 on top of the roof?

4 A Yes, sir.

5 Q And you don't know of any prior place beforehand?

6 A No, sir.

7 Q Okay. You don't know whether the glove compartment
8 came open; correct?

9 A Correct.

10 Q And you don't know whether the -- if it has a closed
11 console, that came open; correct?

12 A Correct.

13 Q You don't know whether it was -- the drugs were
14 concealed in the back seat. And when it flip over, it came
15 out; correct?

16 A Correct.

17 Q And you would agree again that in your report there is
18 no mentioning that my client stated that the vehicle
19 belonged to his aunt; correct?

20 A The portion you saw, no. Further down --

21 Q But in this report, in your report, you didn't place
22 it; correct?

23 A Correct.

24 Q Did you do any follow-up investigation as far as with
25 the owner of this vehicle? Did you contact Ms. Anderson?

1 A No, sir.

2 Q Okay. So your extent of the information with Ms.
3 Anderson was when you checked the registration; correct?

4 A Correct.

5 Q And then you placed the information on the front sheet
6 minus the information about Mr. Wolfe being the aunt;
7 correct?

8 A Correct.

9 Q I mean Ms. Anderson being Mr. Wolfe's aunt; correct?

10 A Correct.

11 Q Okay. Now, did you receive a written waiver, a written
12 Miranda waiver from Mr. Wolfe?

13 A Did I receive a written --

14 Q Did you receive a Miranda -- you read him his rights.
15 Did you give him the document to sign saying that he waived
16 his Miranda rights?

17 A No, sir.

18 Q Okay. And with the statement did you take a written
19 statement from Mr. Wolfe?

20 A No, sir.

21 Q So not only it's not in your incident report, but you
22 did not get a statement from Mr. Wolfe stating that this
23 vehicle belongs to my aunt?

24 A No, sir.

25 Q And as of yet, you still have not gotten that statement

State v Wolfe

Willie McCauley - Cross

1/27/15

63

1 from him?

2 A No, sir.

3 MR. KOGER: May I beg the Court's indulgence, Your
4 Honor?

5 THE COURT: Yes, sir.

6 BY MR. KOGER:

7 Q Now, you also package up the drugs and eventually it
8 got to SLED within a day or two; correct?

9 A Yes, sir.

10 Q Okay. And wouldn't you say that these drugs are
11 packaged in a baggie?

12 A Yes, sir.

13 Q Okay. And wouldn't you say that it was packaged in one
14 large baggie; correct?

15 A Yes, sir.

16 Q And wouldn't you say that these drugs are not in any
17 type of individual baggies; correct?

18 A Correct.

19 Q Okay. And you packaged the drug up in the BEST kit as
20 you testified to for analysis for the substance; correct?

21 A Yes, sir.

22 Q Did you also request of SLED to dust the prints of the
23 bag?

24 A No, sir.

25 Q So, therefore, you did not request the prints of the

State v Wolfe Willie McCauley - Redirect 1/27/15 64

1 plastic bag in which the drugs was found in; correct?

2 A Correct, I didn't.

3 Q Correct?

4 A Correct.

5 Q And so there would have been a possibility that if the
6 bag had been submitted for testing for prints, that someone
7 prints -- that someone else prints, other than the accused
8 would have been on the bag?

9 A That's possible.

10 Q All right. And for clarification of the Court, the
11 prints of the accused is not on the bag; correct?

12 A Correct.

13 Q And that's because you did not submit it to SLED for
14 prints; correct?

15 A Correct.

16 MR. KOGER: I beg the Court's indulgence one more
17 time, Your Honor.

18 BY MR. KOGER:

19 Q So in our summary, Officer McCauley, you didn't know the
20 prior placement of the drugs before the flip; correct?

21 A Correct.

22 Q All right. And you found the drugs after the vehicle
23 flipped; correct?

24 A Correct.

25 Q And the statement that you referred to from Mr. Wolfe

State v Wolfe Willie McCauley - Redirect 1/27/15 65

1 you didn't write it down; correct?

2 A No, sir. It's recorded already.

3 Q Okay. But you didn't take a written statement?

4 A No, sir. I didn't.

5 Q Okay. And in a report that is dated June 5th, 2014

6 that you stated you did soon thereafter, there's no

7 mentioning in your report when these facts were first in

8 your memory, in your mind, that he stated that this -- that

9 that vehicle Brenda Anderson is the owner; correct?

10 A The report was written on 4/29, is shows in the report.

11 The report was written on the same night.

12 Q Okay. That being said, does it points out that he said

13 that Ms. Brenda Anderson was the owner of the vehicle, his

14 aunt?

15 A No, sir. It's not on that report.

16 Q Okay. And it's your testimony that you submitted the

17 substance for drug analysis, but you didn't submit for

18 fingerprint analysis; correct?

19 A Correct.

20 Q Thank you.

21 MR. KOGER: No further question.

22 THE COURT: Redirect?

23 MR. EDWARDS: Yes, Your Honor.

24 WILLIE MCCAULEY - REDIRECT EXAMINATION

25 BY MR. EDWARDS:

1 Q Defendant Rodriguez was driving the car; correct?

2 A Yes, sir.

3 Q And he was the only person in the car?

4 A Correct.

5 Q And he was in control of the car?

6 A Yes, sir.

7 Q And we all heard on the video that you advised him of
8 his Miranda rights?

9 A Yes, sir.

10 Q Did he tell you he understood his Miranda rights?

11 A Yes, sir.

12 Q If someone tells you that they understand their Miranda
13 rights, are you always going to get them to write on a piece
14 of paper that I understand my Miranda rights?

15 A No, sir.

16 Q Are you required to do that?

17 A No, sir.

18 Q Have you ever been trained to do that; if they tell you
19 orally and you had a situation like this in the middle of
20 nowhere, you don't have a pen and paper on you?

21 A We don't in situations like that, no.

22 Q Counsel asked you if people run from the police because
23 have a suspended license or because they'd been drinking.
24 Do people also run from the police because they have crack
25 cocaine in their car?

State v Wolfe Willie McCauley - Recross 1/27/15 67

1 A Yes, sir.

2 Q Did you ask the Defendant why he ran?

3 A Yes, sir.

4 Q I never heard you. Did he tell you why he ran?

5 A If I recall correctly, I believe he said he was scared.

6 Q He said it about twenty times. Did ever he mention
7 that he had a suspended license?

8 A No, sir.

9 Q Did he give that as a reason why he would run?

10 A No, sir.

11 Q Did he tell you that he had been drinking?

12 A He said he had about two beers.

13 Q Did he tell you that he ran because he'd been drinking?

14 A No, sir.

15 Q And you asked him why he ran several times; didn't you?

16 A Yes, sir.

17 Q And he didn't tell you this one single time?

18 A No, sir.

19 Q Earlier I asked you who he told you that the vehicle
20 belonged to. You didn't say that you were sure who he told
21 you; correct? You said you think it was his aunt?

22 A Correct.

23 MR. EDWARDS: Your Honor, I'd like to play the
24 rest of the video.

25 (Court's Exhibit No. 2, DVD, was

State v Wolfe Willie McCauley - Recross 1/27/15 68

1 resumed/paused.)

2 BY MR. EDWARDS:

3 Q Did he say who the aunt was; did he say it was his
4 girlfriend's relative? It wasn't a hundred percent clear
5 who he said, but he said it was his girlfriend's something;
6 correct?

7 A Yes.

8 MR. EDWARDS: Your Honor, may we approach?

9 THE COURT: You may.

10 (Off the record bench conference with counsel and the
11 Court.)

12 MR. EDWARDS: Thank you, Trooper McCauley.

13 MR. KOGER: May I approach?

14 THE COURT: Solicitor?

15 (Off the record bench conference with counsel and the
16 Court.)

17 WILLIE MCCAULEY - RECROSS EXAMINATION

18 BY MR. KOGER:

19 Q Earlier you testified to, Officer McCauley, that he
20 says that it was his aunt; correct?

21 A The owner?

22 Q Yeah.

23 MR. EDWARDS: Objection. He's mis-characterizing
24 the testimony of a witness. He said he thought it was.

25 THE COURT: Just ask him what his testimony was.

State v Wolfe Willie McCauley - Recross 1/27/15 69

1 BY MR. KOGER:

2 Q What was your testimony?

3 A I believe I said I thought that he said the vehicle
4 belonged to his aunt. But clearly, it wasn't clear because
5 it sound like he said -- he mentioned his girlfriend and
6 then he mentioned his wife and that threw me off.

7 Q So you will admit that what you just testified to about
8 his girlfriend something was different from what you
9 testified to earlier?

10 A No, sir. I said earlier that I thought that the
11 vehicle belonged to his aunt. And clearly on the video it
12 shows that you hear me ask him -- the other trooper who the
13 vehicle belonged to.

14 Q But you testified under redirect that it was his
15 girlfriend's something; correct?

16 A Correct.

17 Q Thank you.

18 MR. KOGER: No further questions.

19 THE COURT: Trooper McCauley, you may step down,
20 sir. Thank you.

21 Ladies and gentlemen of the jury, it's about 1:15 or
22 1:10. It's a good time for us to take a break and have our
23 lunch break. If you could be back in your jury room at
24 2:30, that should give you enough time to eat lunch and get
25 back to your jury room. And hopefully we can all get

State v Wolfe Stephen Williams - Direct 1/27/15 72

1 your name, again, for the record and spell your last name
2 for the record.

3 MR. WILLIAMS: Trooper Stephen Michael Williams.
4 Williams, W-I-l-l-I-a-m-s.

5 THE COURT: Your witness.

6 MR. EDWARDS: Thank you, Judge.

7 STEPHEN WILLIAMS - DIRECT EXAMINATION .

8 BY MR. EDWARDS:

9 Q Good afternoon, Trooper Williams?

10 A Good afternoon.

11 Q How are you?

12 A Good.

13 Q If you don't mind, tell the jury where you're from?

14 A Originally -- Orangeburg is my home. I'm originally
15 from Springfield, South Carolina.

16 Q Okay. And where do you work?

17 A I work for the South Carolina Highway Patrol. I've
18 been on for, this January is four and a half years.

19 Q And what rank do you have with the highway patrol?

20 A Right now my rank is senior trooper, which is at the
21 four-year mark, you make the senior trooper mark.

22 Q Okay. So is this sort of a promotion from when you
23 first start?

24 A Correct.

25 Q Have you been with the highway patrol your whole time

State v Wolfe Stephen Williams - Direct 1/27/15 73

1 in law enforcement or were you originally with a different
2 agency?

3 A The entire time of my law enforcement career, I have
4 been with the South Carolina Highway Patrol.

5 Q What is your understanding of the purpose and the goal
6 of the highway patrol?

7 A The purpose and the goal of the South Carolina Highway
8 Patrol is, instilled in us is removing impaired drivers,
9 speeding, seat belts, make sure the roadways are safe for my
10 family as well as everybody else's family.

11 Q Thank you.

12 A Thank you.

13 Q And you know why you're here today; correct?

14 A Correct.

15 Q Okay. Before I get to that, tell the jury about your
16 training, education you have?

17 A My training in law enforcement, I received twenty-one
18 weeks at the South Carolina Criminal Justice Academy. Back
19 in January of 2011, I began with the Highway Patrol and I
20 began my training. We receive legals, CDV training,
21 driving, firearms, pretty much everything that I needed to
22 be successful as a state trooper.

23 Q And you're familiar with a chase that happened on April
24 29th, 2014, involving yourself and Trooper Willie McCauley?

25 A Correct. Yes, sir.

1 Q Tell the jury what happened?

2 A Well, it was the wee hours of the morning. I believe
3 it was around 2:00 that morning. I'm not sure what,
4 actually what day it was, but it was 2:00 in the morning.
5 Myself and senior trooper -- well, at that time, I believe
6 he was a lance corporal, Willie McCauley, we was having a
7 driver's license checkpoint on Cannon Bridge Road at Luke
8 Street. If you're familiar, that's where the four-lanes
9 turn into the two lanes on Cannon Bridge Road, just down
10 from Cox Wood. It wasn't about 2:00 in the morning. We
11 haven't been there maybe ten minutes max. While sitting
12 there, I had a vehicle already on the shoulder. I was
13 conducting a standardized field sobriety test on a possible
14 impaired driver. While conducting my field sobriety test, I
15 had my back facing towards Orangeburg. So I was looking
16 down Cannon Bridge Road. Lance Corporal Willie McCauley
17 hadn't had any violators yet. He was monitoring traffic. I
18 noticed the vehicle coming towards me, all of a sudden make
19 an abrupt stop and started backing down the roadway. I
20 notified Lance Corporal Willie McCauley of the vehicle, at
21 which he saw it the same time I did. Being I was tied up
22 with the possible impaired driver, he proceeded to go stop
23 the individual for improper backing on the roadway. He took
24 off after the vehicle. Due to officer safety, I didn't want
25 to leave another person by hisself where the person might be

State v Wolfe Stephen Williams - Direct 1/27/15 75

1 possibly trying to run from us or hide something. I felt
2 like the driver was capable enough to be -- keep on driving
3 so he was given back his license, registration and I
4 proceeded to go assist Lance Corporal Willie McCauley. I
5 didn't actually get involved in the pursuit. And I came up
6 to the scene after the collision occurred and made contact
7 with Lance Corporal Willie McCauley, who at that time,
8 already had the subject in handcuffs. I just stayed there
9 to make sure he was okay until our supervisor arrived.

10 Q Thank you. And you mentioned earlier that the car was
11 backing up in the road?

12 A Correct.

13 Q Are you allowed to do that?

14 A No, sir.

15 Q And when the car made the abrupt turn, did you -- were
16 you under the impression that he was trying to run or evade
17 you?

18 A Correct. I was under the impression that he was trying
19 to evade the license check.

20 Q And that aroused your suspicion?

21 A Correct.

22 Q Okay. So Lance Corporal McCauley is in pursuit. You
23 were finishing up with the gentleman you're dealing with.
24 And then where do you go after that?

25 A After I finish --

State v Wolfe Stephen Williams - Direct 1/27/15 76

1 Q After you finish and you decide you're going to go help
2 and assist Trooper McCauley?

3 A After I finished with the gentleman I was dealing with,
4 I proceeded down Cannon Bridge Road, lights and sirens. He
5 advised me on the radio that he was in pursuit of the
6 vehicle. I proceeded down Cannon Bridge, made a right-hand
7 on Riley Street. That's just before the Young's gas station
8 for those who's familiar. Once I made the right onto Riley,
9 we probably went almost -- all the way to Cordova Road,
10 around a sharp curve. And that's where I came up on the
11 scene where Lance Corporal Willie McCauley was, with the
12 vehicle that had overturned.

13 Q Okay. And just describe where Lance Corporal McCauley
14 and the subject were at the time?

15 A When I arrived on the scene, I noticed the subject was
16 -- I believe he was on his chest with his hands behind his
17 back. He was already cuffed. And Lance Corporal Willie
18 McCauley was checking the vehicle to make sure nobody else
19 was inside the vehicle, nobody was trapped or ejected. And
20 we removed him from the vehicle because it began to smoke.
21 We didn't want it to catch on fire and nobody get burned up.

22 Q Did you look around the vehicle to see if there was
23 anybody running away from the vehicle?

24 A Correct. Lance Corporal Willie McCauley scanned around
25 and also after he had assistance, I also scanned around and

State v Wolfe Stephen Williams - Direct 1/27/15 77

1 walked around the vehicle to make sure nobody was thrown or
2 tried to evade on foot.

3 Q And did you find anybody?

4 A I did not.

5 Q Did you hear the Defendant say whether or not anyone
6 was with him?

7 A Whenever he was -- I did not hear from him, per se.

8 Q Right.

9 A But just hearsay.

10 Q That's fine. Yeah. So describe the next couple of
11 minutes for me. Does anyone else arrive? What do you do
12 with the Defendant at this point?

13 A Once I arrived on scene the subject was placed on his
14 feet. He was placed -- I think he was -- Lance Corporal
15 Willie McCauley read him his rights. He was searched to
16 make sure he didn't have any weapons or contraband on him.
17 Once he was searched, he was then placed inside Lance
18 Corporal Willie McCauley's vehicle. I believe he was asked
19 if he needed medical attention. I'm not sure exactly if he
20 got the medical attention -- I knew he had to take him to
21 the emergency room. I don't believe a ambulance came to the
22 scene. Then, while I was on scene -- any time a South
23 Carolina Highway Patrol gets into a pursuit or any kind of
24 incident, our supervisor has to arrive on scene to make sure
25 everything was done per policy and procedures. Area --

State v Wolfe Stephen Williams - Direct 1/27/15 78

1 he arrived on the scene, Corporal J.H. Burris. He and also
2 Orangeburg County Sheriff's Office. Any time we was
3 involved in a collision they have to investigate the actual
4 collision itself.

5 Q Thank you. Thank you. And so because the vehicle was
6 on its roof, at that point was the vehicle going to have to
7 be towed?

8 A Correct. It was going to have to be towed.

9 Q And is it procedure and policy of the highway
10 department that when you tow a vehicle you inventory its
11 contents?

12 A Correct. Anytime it's -- if you take anybody to jail,
13 if you have a collision that has to be towed just for a
14 person's interests, so nothing gets stolen out of the
15 vehicle, we have to do a search inventory.

16 Q And who performed the inventory search in this case?

17 A The inventory was done by Lance Corporal Willie
18 McCauley. And I looked through the vehicle, just through
19 the windows. I didn't get down on my knees to search. I
20 didn't want to get cut or anything. But Lance Corporal
21 Willie McCauley did the inventory.

22 Q But you were able to observe Lance Corporal McCauley as
23 he did the search?

24 A Correct. I observed him while he was doing the search.

25 Q What did Lance Corporal McCauley pull out of the car?

State v Wolfe Stephen Williams - Direct 1/27/15 79

1 A Lance Corporal Willie McCauley handed me his hat, while
2 he was down on his knees and looked up under the vehicle to
3 do a search and to take any inventory of what was inside the
4 vehicle. He got down, I believe down on all-fours to look
5 inside the driver's door or -- I believe the driver's or
6 passenger's side door. He looked inside of it. He
7 immediately -- we immediately notice a bunch of stuff
8 disarranged inside the vehicle. Of course, with it being
9 overturned. He then advised he had some contraband, a white
10 rock-like substance that we believed was possible crack
11 cocaine inside the vehicle.

12 Q Were you able to see whether the glove box or the
13 center console was open?

14 A Oh, I was not able to see that.

15 Q Because you were standing up and you weren't down on
16 your knees looking in the car; correct?

17 A Correct.

18 Q Okay. Did you see Lance Corporal McCauley pull
19 anything out of his pockets or anything like that?

20 A No, sir. I didn't see him pull anything out of his
21 pockets.

22 Q Did the Defendant say why he ran?

23 A Just briefly, I overheard him talking with Lance
24 Corporal Willie McCauley. I believe the only reason he
25 though he needed to evade us, I think possibly -- I think it

State v Wolfe Stephen Williams - Direct 1/27/15 80

1 was his license. He said he thinks his license was going to
2 be suspended and he just turned around for his license
3 purposes.

4 Q Did he say that or did you discover that later?

5 A We discovered that later.

6 Q Okay. Did you see Lance Corporal McCauley put the
7 drugs into a BEST kit?

8 A I did not.

9 Q Do you know what a BEST kit is?

10 A Correct.

11 Q Describe the purpose of a BEST kit?

12 A Our BEST kits is at our office in Orangeburg. Any time
13 we make any drug, especially cocaine, it has to go into a
14 BEST kit. And there's a chain of custody to make sure
15 nothing gets misplaced or anything like that. And it goes
16 straight to SLED where they do their analysis to confirm
17 that it is actually the drug that we believe it is.

18 Q Driving under suspension, is this a felony offense? For
19 a first offense?

20 A It is not.

21 Q Do you know the possible penalties for driving under
22 suspension first offense?

23 A Driving under suspension first is a six hundred and
24 fifty-two dollar fine or possibly thirty days in jail. The
25 thirty days is suspended upon the six hundred and fifty-two

State v Wolfe Stephen Williams - Direct 1/27/15 81

1 dollars paid.

2 Q And with a minor offense like that, it's not prosecuted
3 in general sessions court with the prosecutors office. The
4 officers actually will prosecute those themselves in summary
5 court; correct?

6 A Correct.

7 Q Would you say it's typical for someone who is pleading
8 guilty or found guilty of driving under suspension first
9 offense to get a fine or is it more common for them to go to
10 jail?

11 A It's more common -- as long as they're respectful to
12 the judge, they receive a fine. And the majority of time a
13 scheduled time payment because nobody would really have -- I
14 know I don't -- six hundred and fifty-two dollars at the
15 time, to assist them get the fine paid.

16 Q And so would you say in the majority of cases, a fine
17 is the penalty?

18 A Correct. A fine.

19 Q Would you say the vast majority of cases a fine is the
20 penalty?

21 A Yes, sir. Vast majority.

22 Q Okay.

23 MR. EDWARDS: That's all I have for now, Your
24 Honor.

25 Please answer any questions defense may have.

1 THE COURT: Your witness..

2 STEPHEN WILLIAMS - CROSS-EXAMINATION

3 BY MR. KOGER:

4 Q Trooper Williams, you say you've been with the force
5 four and a half years?

6 A Correct, sir.

7 Q And in four and a half years, how many traffic stops
8 have you conducted?

9 A I couldn't put a number on it. It'd be in the couple
10 thousand.

11 Q Couple thousand?

12 A Yes, sir.

13 Q Okay. And wouldn't you say on some of the traffic
14 stops people do run when they are faced with a possible --
15 getting stopped with a suspended license?

16 A Correct.

17 Q And wouldn't you also say that people do run if they
18 think there may be taken away for DUI?

19 A Correct.

20 Q Okay. Now, you also testified that Mr. Wolfe was
21 searched; correct?

22 A Correct.

23 Q Did you actually search him?

24 A I did not.

25 Q Okay. All right. Were any drugs found on his person?

State v. Wolfe Stephen Williams - Cross

1/27/15 83

1 A I'm not sure.

2 Q Okay. All right. And then you also say that you went
3 to the vehicle but you didn't get down on all fours; is that
4 correct?

5 A Correct.

6 Q So wouldn't you say that Officer McCauley conducted a
7 more thorough search of the vehicle?

8 A Correct.

9 Q Okay. But you also testified to on direct that when
10 you did look in there, everything was disarranged; correct?

11 A Correct.

12 Q And that's because the vehicle overturned; correct?

13 A Correct.

14 Q Thank you.

15 MR. KOGER: No further questions.

16 THE COURT: You may step down, Trooper. Thank
17 you.

18 MR. WILLIAMS: Thank you.

19 THE COURT: You may call your next witness?

20 MR. EDWARDS: Thank you, Judge. The State calls
21 Larry Zivkovich.

22 THE CLERK: Please your left hand on the Bible and
23 raise your right hand.

24 (WHEREUPON, Larry Zivkovich was
25 duly sworn.)

State v Wolfe Larry Zivkovich - Direct 1/27/15 84

1 THE CLERK: Thank you. Please have a seat. Please
2 state your name again for the record and spell your last
3 name.

4 MR. ZIVKOVICH: Lawrence Zivkovich. Z-i-v-k-o-v-i-
5 c-h.

6 THE CLERK: Thank you.

7 THE COURT: Your witness..

8 LARRY ZIVKOVICH - DIRECT EXAMINATION

9 BY MR. EDWARDS:

10 Q How are you doing Mr. Zivkovich?

11 A I'm fine.

12 Q What do you do for a living?

13 A I'm a forensic scientists at the South Carolina Law
14 Enforcement Division, commonly known as SLED.

15 Q Okay. And how long have you been with SLED?

16 A A little over eight and a half years.

17 Q And what is your job or your duties at SLED?

18 A I work in the drug identification section, which we
19 analyze substances are submitted for controlled substances.

20 Q And are these brought to you by other law enforcement
21 agencies?

22 A Yes, sir.

23 Q Such as the highway patrol?

24 A Yes, sir.

25 Q If the highway patrol has a drug case, they bring you

State v Wolfe Larry Zivkovich - Direct

1/27/15

85

1 the drugs to test?

2 A Yes, sir.

3 Q Describe your educational background for me?

4 A I have a bachelor of science in chemistry from the
5 University of South Carolina and I have fifteen years as a
6 chemist, ten at the Department of Health and Environment
7 Control and five years on the bench, and three years total
8 at the South Carolina Law Enforcement Division.

9 Q Thank you. And what sort of -- beyond your bachelor's
10 degree, what sort of training do you have to have in order
11 to do your job?

12 A When I was hired at SLED, I went through a program that
13 they have to teach people how to identify drugs. And that
14 was a six-month program. And then after that, I went to two
15 different seminars with the DEA and the federal agencies.

16 Q Okay. And are you familiar with a substance known as
17 cocaine base?

18 A Yes, sir.

19 Q Does this have another common name?

20 A Street slang is crack.

21 Q Crack cocaine?

22 A Yes, sir.

23 Q And have you had the opportunity to analyze substances
24 that were thought to be crack cocaine through your job at
25 SLED?

1 A Yes, sir.

2 Q About how many times would you say?

3 A Approximately four or five thousand.

4 Q Four or five thousand?

5 A Yes, sir.

6 Q That's a lot. This is your day to day job then?

7 A Yes, sir.

8 Q You do this all the time?

9 A Yes, sir.

10 Q Do you have a multitude of cases in any given week?

11 A Yes, sir.

12 Q Okay. Have you been qualified as an expert witness in
13 South Carolina courts before?

14 A I have.

15 Q Do you have any sort of specialized knowledge, which
16 you think could be helpful to a lay person and jury to
17 understand about how substances are tested to see whether or
18 not they're illegal drugs?

19 A Yes, sir.

20 Q How many times have you been qualified as an expert in
21 court?

22 A Twenty-seven.

23 Q Twenty-seven times.

24 MR. EDWARDS: Your Honor, I move that Mr.

25 Zivkovich be admitted as an expert witness in the field of

State v Wolfe Larry Zivkovich - Direct 1/27/15 87

1 chemistry and analysis of narcotic drugs.

2 THE COURT: Any voir dire?

3 MR. KOGER: No voir dire. No objection, Your
4 Honor.

5 THE COURT: All right.

6 Ladies and gentlemen of the jury, normally a person
7 cannot give opinion testimony. Normally, when a person
8 testifies, they must testify as to what they either saw,
9 heard, sensed by smell or something of that nature.
10 However, there is an exception when someone is qualified as
11 an expert witness because of their education or their
12 experience. They are permitted to give their opinion in
13 certain areas if the court qualifies them in that way. This
14 witness will now be qualified in the field of chemistry and
15 drug analysis. And he may be able to give an opinion in
16 that area. That does not mean that you must accept that
17 opinion, but it's evidence for you to use in any way that
18 you see fit and give it the weight and the credibility that
19 you believe is appropriate.

20 MR. EDWARDS: Thank you, Your Honor.

21 BY MR. EDWARDS:

22 Q Mr. Zivkovich, I'm going to hand you what I've marked
23 as State's Exhibit 1. Can you study this and when you
24 familiar with it, can you tell me what it is?

25 A Yes, sir. It's a BEST kit that was submitted to South

1 Carolina Law Enforcement Division for drug analysis, which I
2 received and verified that the seal was intact on May 1st,
3 2014.

4 Q Are there any markings on that bag that you recognize?

5 A Yes, sir. I wrote that the seal was intact and dated
6 it May 1st, 2014 with my initials on the kit that was
7 submitted. And then I was finished with my analysis, I
8 placed a heat seal with May 2nd, 2014 and my initials over
9 the heat seal.

10 Q You personally wrote that on the back?

11 A Yes, sir.

12 Q Tell me a little bit about what a BEST kit and why, in
13 your field, it's very important to use that type of bag?

14 A The kit was designed specifically for drug cases so
15 that the officers out in the field would have a consistent
16 way to submit drugs or suspected drugs. So it's something
17 that they take in the field. And when they seal the
18 evidence they bring it into SLED. And when they bring into
19 SLED we assign a unique lab number for the SLED purposes.
20 And these BEST kits are used just for drugs, nothing else.

21 Q Okay. And when you receive a BEST kit, do you always
22 examine it to make sure it hasn't been tampered with?

23 A Yes, sir.

24 Q And have you made any sort of notations to indicate
25 that that had not been tampered with when you received it?

State v Wolfe Larry Zivkovich - Direct 1/27/15 89

1 A Yes, sir. When we receive a kit, the top of the kit is
2 sealed with a glue seal. And then the sides of the kit have
3 writing on them. And if the seal has been tampered with,
4 and we call these tamper evident seals. You can tamper with
5 them but if you do it will become evident because the glue
6 on here will be displaced or the writing will be displaced.
7 And on this particular kit, I examined it on May 1st, 2014
8 and noted on top of the kit that it was, in fact, sealed.

9 Q And you do this in every case you have; correct?

10 A Yes, sir. .

11 Q And you will notice if there has been tampering with
12 the bag? That would be evident?

13 A Yes, sir.

14 Q Okay. And this bag is in the same condition -- the
15 bag, within the bag, it was in the same condition that it
16 was in when you received it?

17 A Except for obviously --

18 Q Obviously, you had to open it?

19 A Yes, sir.

20 Q Thank you. Now, when you receive evidence, do you put
21 your own numbers on it to make sure that it stays
22 identifiable within your own -- within SLED?

23 A Yes, sir. The bag itself is given a number by our log-
24 in technicians. And then once we open the kit and start
25 examining the evidence, we give each individual item a

1 specific item number.

2 Q Okay. Can you read the item number for me, please?

3 A The item number on the bag is L1405527.1.1,

4 Q Can you read this number on the bottom of this chain of
5 custody sheet?

6 A It is L14-05527.

7 Q Now, when you received the substance, did you test it?

8 A I did.

9 Q What tests did you perform?

10 A If I can refer to my notes?

11 Q Absolutely.

12 A After I opened the bag I did a chemical analysis on it
13 to determine whether it would possibly be a controlled
14 substance. After doing a chemical analysis, I did an
15 instrumental analysis for confirmation.

16 Q Okay. And what particular test did you do?

17 A It's a cobalt-thiocyanate test and what that does, it's
18 an indicate for cocaine or cocaine base.

19 Q How does that work?

20 A It's got two different chemicals. And when you add a
21 substance to it, if cocaine is present then the chemical
22 will turn blue. And then with the addition of another
23 chemical, it'll stay blue. And if it's a cocaine base, the
24 indication is usually that there is no color change of the
25 first chemical and then the second color change would be a

State v Wolfe Larry Zivkovich - Direct 1/27/15 91

1 blue color.

2 Q Can you expect consistent results each time you perform
3 these tests?

4 A With some variation. It depends on if there are other
5 substances added to the cocaine or other.-- this is called a
6 presumptive test. It's not a positive tests because there
7 are other substances that can mimic those same color
8 changes.

9 Q Okay. Is that the only test you performed on this
10 particular bag?

11 A That's the only chemical test, yes.

12 Q Okay. And as a scientist chemicals have a specific
13 makeup and you expect certain chemicals to react with other
14 chemicals the same exact way every time?

15 A Yes, sir.

16 Q Thank you. Was this cocaine when you tested it?

17 A My testing showed that it was a cocaine base.

18 Q Okay. And can you say with a degree of certainty, a
19 degree of scientific certainty that that's what it is?

20 A Yes, sir.

21 Q To a reasonable degree of scientific certainty?

22 A Yes, sir.

23 Q Thank you.

24 MR. EDWARDS: Your Honor, I would move to admit
25 Exhibit 1 into evidence.

1 THE COURT: Any objection?

2 MR. KOGER: Without objection, Your Honor.

3 THE COURT: It's in.

4 (State's Exhibit No. 1, drugs, was
5 marked and entered.)

6 MR. EDWARDS: Thank you, Judge.

7 BY MR. EDWARDS:

8 Q And is this the crack cocaine right here?

9 A Yes, sir.

10 Q This big rock?

11 A Yes, sir.

12 Q Crack cocaine is a rock-like substance?

13 A Usually, yes, sir.

14 Q It's hard?

15 A Yes, sir.

16 Q Okay. Do you usually make a final report whenever you
17 finish your tests?

18 A Yes, sir.

19 Q Do you recognize this report?

20 A Yes, sir. It's a report that I issued for SLED Number
21 L14-05527.

22 Q Which is the cocaine that you just had in your hand,
23 the crack cocaine you just had in your hand?

24 A That's correct.

25 Q Okay. Did you weigh the crack cocaine?

State v Wolfe Larry Zivkovich - Cross 1/27/15 93

1 A I did.

2 Q Do you have an exact weight on that form?

3 A I reported that cocaine base was found with a net
4 weight of 3.53 grams plus or minus .01 grams.

5 Q 3.53 grams?

6 A Yes, sir.

7 Q Okay. And what kind of scale do you use to measure the
8 drugs when you have them?

9 A We have a digital Sartorius scale.

10 Q I'm going to assume that's an accurate scale?

11 A Yes, sir. The plus or minus .01, that's -- the scale
12 is accurate up to one one hundredth of a gram.

13 Q So it could have been 3.52 or it could have been 3.54,
14 but it wasn't 1.1, essentially?

15 A No, sir.

16 Q Thank you. So just to be clear you tested this bag and
17 you found it to be without a doubt 3.53 grams of crack
18 cocaine?

19 A Yes, sir.

20 MR. EDWARDS: I've got nothing further at this
21 time, Your Honor.

22 THE COURT: Cross-examination

23 LARRY ZIVKOVICH - CROSS-EXAMINATION

24 BY MR. KOGER:

25 Q Pronounce your last name for me again?

State v Wolfe Larry Zivkovich - Redirect 1/27/15 94

1 A Zivkovich.

2 Q Zivkovich. Agent Zivkovich?

3 A Yes, sir.

4 Q I apologize in advance.

5 A Not a problem.

6 MR. KOGER: May I approach, Your Honor.

7 THE COURT: You may.

8 BY MR. KOGER:

9 Q Would you agree that this rock-like substance is in a
10 baggie?

11 A Yes, sir.

12 Q Wouldn't you agree that it is in baggie?

13 A Sir?

14 Q That it is one baggie? Just one bag?

15 A Yes, sir.

16 Q Okay. And you don't work in the latent prints
17 department; do you?

18 A No, sir.

19 Q And you just work -- you in the department which
20 ascertains what substance that you receive; correct?

21 A That's correct.

22 Q And I think you attested to, this is your field, your
23 only job. You've done it four to five thousand times?

24 A Yes.

25 Q Okay. Have you -- during your time at SLED, have you

State v Wolfe Larry Zivkovich - Redirect 1/27/15 95

1 passed on baggies to the latent prints department if
2 requested?

3 A I have.

4 Q Do you know how many times have you done that?

5 A If I had to take a guess it would be a guess. Maybe
6 fifty times.

7 Q Fifty times, okay. But you have passed on baggies to
8 the latent print department for prints?

9 A Yes, sir.

10 Q Okay. Was that requested in this particular case?

11 A Not to my knowledge. I would have noted it on my
12 worksheet.

13 MR. KOGER: Thank you, Your Honor. No further
14 questions.

15 THE COURT: Redirect.

16 MR. EDWARDS: Your Honor, just to tidy this up. I
17 meant to have State's Exhibit 3 admitted into evidence.

18 THE COURT: Any objection?

19 MR. KOGER: Without objection.

20 THE COURT: It's in.

21 (State's Exhibit No 3, Forensic
22 report, was marked and admitted.)

23 LARRY ZIVKOVICH - REDIRECT EXAMINATION

24 Q Mr. Zivkovich, did you just say out of five thousand
25 cases that you've had only fifty were submitted for

1 fingerprints?

2 A That would just be a guess. It's not something that
3 happens often. But, yes, I have done that.

4 Q Thank you.

5 MR. EDWARDS: Nothing further, Judge.

6 THE COURT: You may step down, agent. Thank you.
7 You may call your next witness.

8 MR. EDWARDS: Thank you, Your Honor.

9 May the witness be released?

10 THE COURT: You may be released, Agent. Any
11 objections?

12 MR. KOGER: No objections, Your Honor.

13 MR. EDWARDS: The State calls Marty Journey.

14 (WHEREUPON, Marty Journey was duly
15 sworn.)

16 THE CLERK: Thank you. Have a seat. State your
17 name again for the record, spell your last name for the
18 record.

19 MR. JOURNEY: Martin Journey. J-o-u-r-n-e-y.

20 THE COURT: Your witness.

21 MARTY JOURNEY - DIRECT EXAMINATION

22 BY MS. EDWARDS:

23 Q Mr. Journey, what do you do for a living?

24 A I'm the Lieutenant supervisor for the Orangeburg County
25 Sheriff's Office, narcotics division?

State v Wolfe Marty Journey - Direct

1/27/15

97

1 Q So Lieutenant Journey?

2 A Yes, sir.

3 Q And how long have you been with Orangeburg County
4 Narcotics Division?

5 A Approximately fifteen years.

6 Q Have you been in narcotics for your entire time as a
7 police officer?

8 A Approximately twelve years.

9 Q Twelve years. And I caught you on sort of short
10 notice. You were prepared to wear a suit and tie to Court
11 today, were you not?

12 A Yes, sir, I was.

13 Q I take the blame for that. Now, tell me, what are your
14 duties with the narcotics division?

15 A I supervise narcotics agents that work for me and we
16 basically investigate narcotics violations throughout
17 Orangeburg County.

18 Q How many officers work underneath you?

19 A Three.

20 Q Tell the jury, if you will, a little bit about your
21 training as a law enforcement officer and in the field of
22 narcotics in particular?

23 A I've been through numerous trainings, from the DEA type
24 training to, you know, the South Carolina Department of
25 Criminal Justice trainings. Numerous drug investigative

1 classes, types of classes to be able to identify types of
2 drugs, cocaine, heroin, methamphetamine, marijuana, those
3 type things.

4 Q Do you have ongoing training? It's not a one-time deal
5 when you first become an officer, it's an on-going
6 throughout your career?

7 A Yes, sir. That's correct.

8 Q Okay. Now, I know your day to day activity is to
9 investigate narcotics. But just, if you can, describe to
10 the jury what you do with your job? How do you investigate
11 narcotics?

12 A Most of the time we identify confidential informants.
13 These confidential informants we sign up, register and give
14 them a number. And at that point, they work for us in an
15 undercover capacity. We will go and make purchases from
16 individuals. We give the informant documented money to
17 purchase whatever we're purchasing at the time from the
18 Defendants. They're selling either heroin, methamphetamine,
19 cocaine or any type of illegal narcotics. We would send the
20 individual in to purchase these narcotics and they bring
21 these drugs back to us. And to make the case on the
22 individual we bought it from, of course, we have electronic
23 type equipment on them, surveillance type equipment, audio,
24 video, sound, and we would know what's going on during the
25 operation and controlled buy and controlled atmosphere. At

State v Wolfe Marty Journey - Direct

1/27/15

99

1 that point, we do make cases sometimes with certain
2 informants. You know, sometimes either one person or up to
3 multiple individuals at one time and go back at a later date
4 and make arrests of these individuals. Some times we have
5 probable case in these drug transactions and get a search
6 warrant for these individuals' locations where they're
7 selling from. And that's pretty much our main standard,
8 what we do is controlled buys of illegal narcotics in
9 Orangeburg County.

10 Q So you actually have the opportunity to observe drugs
11 and money exchanging hands?

12 A Yes, sir.

13 Q Many times?

14 A Many times.

15 Q Okay.

16 A Actually, I've even worked, when I first came on, as
17 undercover. A lot of people know my face now so I can't go
18 purchase the drugs such as crack cocaine.

19 Q So you are familiar with crack cocaine?

20 A Yes, sir.

21 Q And you pretty much know it when you see it?

22 A Yes, sir.

23 Q I know you can't give an exact weight with your
24 eyeballs. But you can kind of eyeball some crack cocaine
25 and tell if it's a lot or a little?

1 A Yes, sir.

2 Q And can you kind of estimate the weight of crack
3 cocaine based on the size of it?

4 A I can estimate it, yes, sir.

5 Q After fifteen years you can estimate. Okay. And have
6 you -- I assume that you've observed a wide range of
7 different quantities of crack cocaine being sold?

8 A Yes, sir.

9 Q In your experience, what is a personal use of dose of
10 crack cocaine?

11 A Personal use dose on the street averages around .2
12 grams of crack cocaine, is what we see when we purchase it
13 and go back and weigh it, and approximate weigh it at that
14 time before it's actually analyzed by a chemist and give it
15 a weight, a certified type weight at that point after it's
16 tested. But normally .2 grams is what we see. It's twenty
17 dollars worth of crack cocaine, which is equivalent to, I'd
18 say, for a layman's terms, a small pebble or a small pebble
19 rock, that size.

20 Q Would you describe this as a small pebble?

21 A I would say these two rocks right here would be
22 equivalent to about twenty dollars of crack cocaine each.
23 And this right here would be equivalent probably, you know,
24 I'd say ten of those or more. You could probably say about
25 three hundred plus dollars of crack.

State v Wolfe Marty Journey - Direct 1/27/15 101

1 Q I'll make it easy for you. Three and a half grams,
2 3.53 grams of crack cocaine.

3 A Yes, sir.

4 Q Can you give an approximate street value?

5 A Well, sometimes it's not going to be exact but I can
6 get a round figure here because some people sell, you know,
7 maybe a little bit more, maybe a little less. We know the
8 average 3.5 grams you could sell at .2 grams. I would take
9 five of those to make one gram, which would be equivalent to
10 a hundred dollars. And you can multiply that times three,
11 then you have three hundred dollars. And if you've got .5
12 grams at that point -- you could round it up or down at that
13 point with .5, it could be equivalent to three rocks, which
14 is sixty dollars, I'll say fifty dollars off of that. So
15 3.5, possibly three hundred and fifty dollars street value.

16 Q Okay. And is 3.5 gram roughly equivalent to an eighth
17 of an ounce?

18 A An eighth of an ounce, you know, I'd have to write
19 something out on a piece of paper. I know 28.35 grams is an
20 ounce, so you can pretty much divide that into that.

21 Q Is there anything significant about an eighth of an
22 ounce. Is that a common --

23 A That's a common, that's a common known street sale.

24 Q Is there a slang word for an eighth of an ounce?

25 A Yes, sir. An eight ball.

1 Q An eight ball?

2 A Yes, sir.

3 Q Now, you're familiar with the drug laws, obviously,
4 because you enforce them?

5 A Yes, sir.

6 Q Is there any sort of statutory guideline for the amount
7 of weight of crack cocaine where when making arrest you'll
8 know how to charge someone?

9 A Yes, sir. Going into the statute 44-53-370 and 375,
10 which would be crack cocaine. 370 would be most of your
11 other narcotics. Those statutes, state statutes also
12 federal statutes. Anything from a small amount,
13 say, for instance, what you have there, if I were to charge
14 someone out on the street or whatever, I would charge with
15 PWID, possession with intent to distribute crack cocaine
16 would be the charge.

17 MR. EDWARDS: Your Honor, at this time, I would
18 move to admit Lieutenant Journey as an expert in illegal
19 narcotics transactions.

20 THE COURT: Any voir dire?

21 MR. KOGER: No voir dire. No objection.

22 THE COURT: He's so qualified.

23 BY MR. EDWARDS:

24 Q So you regular consult this one gram inference when you
25 make arrests and charge people?

State v. Wolfe Marty Journey - Cross 1/27/15 103

1 A I'm sorry?

2 Q The inference, the statutory distinction between
3 possession and PWID, you consult those on a regular basis?

4 A Yes, sir.

5 Q Okay. In your experience as a law enforcement officer,
6 if you were to find someone in possession of three and a
7 half grams of crack cocaine, would you charge them with
8 possession or PWID?

9 A PWID.

10 Q And what is PWID?

11 A Possession with intent to distribute crack cocaine.

12 Q And is the intent judged by the amount and the weight
13 of cocaine?

14 A Yes, sir.

15 Q And as you said earlier three and a half grams is much
16 more than one personal dose?

17 A Yes, sir. That's correct. You can go up to ten grams.
18 Anything over ten grams is actually trafficking.

19 Q Trafficking. Right. So you testified earlier about
20 the smaller rocks. Now, would it be possible for somebody
21 to, say, just pick up this rock by eyeball and say I'll sell
22 you this rock for twenty dollars?

23 A Those two smaller rocks there, yes, sir. The smaller
24 one, I have seen that smaller one sometimes sell for ten
25 dollars to twenty dollars. The large one definitely twenty

1 dollars, possibly up to forty dollars.

2 Q Got you. In your experience, is crack an addictive
3 drug?

4 A In my experience it is, yes, sir.

5 MR. EDWARDS: Nothing further at this time, Your
6 Honor.

7 THE COURT: Cross-examination.

8 MARTY JOURNEY - CROSS-EXAMINATION

9 BY MR. KOGER:

10 Q It's Journey, correct?

11 A Journey, yes, sir.

12 Q Officer Journey, isn't it possible that someone could
13 purchase an eight ball for their personal use?

14 A Yes, sir. That's possible.

15 Q Okay. And when you also stated that you, because of
16 your experience as a narcotics agent, that you are familiar
17 with 45-53-375; correct?

18 A I'm familiar with. I couldn't tell you the exact words
19 or nothing like that.

20 Q And isn't it true -- and you also testified as an
21 expert to a permissive inference; that's correct, right?

22 A Yes, sir.

23 Q Okay. And the amount being a particular amount for a
24 permissive inference; correct?

25 A Yes.

State v Wolfe Marty Journey - Cross 1/27/15 105

1 Q You testified -- and what was that amount again?

2 A Anything -- we could go anywhere from one gram, two
3 grams we see on the street. Someone with what your client
4 has there definitely would be PWID. Most people that a
5 twenty dollar rock are the users. You only have twenty
6 dollars, you buy it one time. That's mostly all the money
7 that they have and they do whatever they can obtain money
8 and go out and buy a twenty dollar rock. Normally a user,
9 you would not see more than a twenty dollar rock. Very
10 unusual. I haven't seen it in my experience.

11 Q But since you say you are familiar with 45-53-375, you
12 also know that a person is not -- that is not automatic.
13 There are other factors that can be determined once it get
14 to a court of law between possession and possession with
15 intent to distribute; correct?

16 A Yes, sir.

17 Q Okay. And some of those factors could be on how it's
18 packaged; correct?

19 A That's correct.

20 Q All right. For a person, even in some cases for a
21 person to deal this type of substance that they would have
22 them in individual baggies; correct?

23 A In those -- I'm sorry. I misunderstood your question,
24 sir.

25 Q Okay. In your experience this amount, if it's packaged

1 individually could even get possession with intent to
2 distribute?

3 A It could..

4 Q All right. It's not based solely on weight; correct?

5 A Yes, sir. That's correct.

6 Q And you just testified to that someone could purchase
7 an eight ball for personal use; correct?

8 A Personal use. Normally, someone that buys an eight
9 ball for personal use, I mean personal use can sell it,
10 distribute it.

11 Q Okay. But they can buy it for personal use?

12 A Well, obviously, you could.

13 Q Okay.

14 A That's not the way you see it on the street.

15 Q And also, too, from your experience as far as deciding
16 whether to charge or eventually determine whether someone is
17 in possession of crack cocaine or possession with intent to
18 distribute, the amount of money a person has on them at the
19 time of arrest could also be a factor; correct?

20 A It could be.

21 Q Okay. For instance, a person who have sixty-five
22 dollars as opposed to someone that has six hundred and fifty
23 or six thousand dollars, it would be most likely in your
24 experience that the person who had the larger amount of
25 money would be possessing with intent to distribute;

State v Wolfe Marty Journey - Cross 1/27/15 107

1 correct?

2 A I'm trying to understand your question. I believe
3 you're what asking if you had sixty-five dollars or three
4 hundred and sixty five --

5 Q No, six hundred and fifty dollars?

6 A -- six hundred and fifty dollars, either one of those
7 amounts, with the individual with that, I would consider
8 possession with intent to distribute.

9 Q Okay. Well, you know, wouldn't it be more likely if
10 someone had a larger amount of money?

11 A Not necessarily, sir.

12 Q Well, you would take that into your consideration;
13 correct?

14 A Well, I can take it into consideration, but most people
15 would probably -- what we see on the street a lot of times,
16 they don't carry a lot of money. They get rid of their
17 money as quick as possible, put it somewhere in a safe place
18 because of the issue with robbery in cases.

19 Q Okay. But you have apprehended people with large
20 amounts of money in this drug dealing thing; correct?

21 A Yes, sir. Small amounts and large amounts.

22 Q Okay.

23 MR. KOGER: Your Honor, may I beg the Court's
24 indulgence.

25 THE COURT: Yes, sir.

1 MR. KOGER: I have no further questions. Thank
2 you.

3 THE COURT: Anything on redirect?

4 MR. EDWARDS: No, Your Honor.

5 THE COURT: You may step down, sir. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: You may call your next witness.

8 MR. EDWARDS: Your Honor, the State rests.

9 THE COURT: Ladies and gentlemen of the jury, at
10 this time the state has rested their case. It's time for us
11 to take a brief recess to go through some legal issues
12 outside of your presence. If you would please retire to
13 your jury room, and we'll be right back with you in just a
14 few minutes. And please do not discuss this case as you've
15 not been instructed on the law as the case has not been --
16 Thank you.

17 (Jury out at 3:34 p.m.)

18 THE COURT: I'll be happy to hear any motions at
19 this time?

20 MR. KOGER: Your Honor, may it please the Court.
21 At this juncture at the trial, we would like to move for a
22 directed verdict. The State has not submitted enough
23 evidence at this point to warrant jury consideration on the
24 failure to stop for blue light and possession with intent to
25 distribute crack cocaine.

State v Wolfe

1/27/15

109

1 THE COURT: All right.

2 MR. EDWARDS: Your Honor, I think we've submitted
3 more than enough direct and circumstantial evidence. And,
4 as you know, there is evidence. Your Honor, it's not your
5 job -- responsibility to weight the evidence. It's the
6 jury's responsibility to weigh the evidence.

7 THE COURT: Based upon the evidence that has been
8 presented at this junction, it's, as the State stated, it's
9 not the weight of the evidence but existence of evidence and
10 there has been both direct and circumstantial evidence
11 presented as to each of the elements of each offense and I
12 will respectfully deny your motion at this time.

13 Mr. Koger, does your client intend on testifying?

14 MR. KOGER: My client does not intend on
15 testifying, Your Honor.

16 THE COURT: All right. So is he prepared for me
17 to question him regarding his wish not to testify or do you
18 need a few minutes.

19 MR. KOGER: I need a couple of minutes, Your
20 Honor.

21 THE COURT: Sure. If you want to talk to him,
22 just let me know when you're ready.

23 MR. KOGER: All right. Okay.

24 THE COURT: If you need to step into an office or
25 anything, that's fine.

1 THE COURT: Is that how you would like to proceed?

2 MR. KOGER: That's correct. I'd like to renew.

3 THE COURT: All right. Thank you.

4 All right. Let's have our jury, please?

5 THE BAILIFF: Yes, ma'am.

6 THE COURT: Thank you.

7 (Jury in at 3:51 p.m.)

8 THE COURT: Welcome back, ladies and gentlemen of
9 the jury. You may have a seat.

10 Mr. Koger.

11 MR. KOGER: Your Honor, may we approach?

12 THE COURT: Yes, you may.

13 (Off the record bench conference with counsel and the
14 Court.)

15 THE COURT: Mr. Koger?

16 MR. KOGER: Address the jury?

17 THE COURT: No, sir. Did you intend to present
18 any testimony? Does the Defendant --

19 MR. KOGER: I do not intend to present any
20 testimony.

21 THE COURT: The Defense rests?

22 MR. KOGER: Defense rests, Your Honor.

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, at this point both sides have actually rested
25 their cases. It is close to 4:00 in the afternoon and the

State v Wolfe

1/28/15

118

1 (Court in session January 28, 2015 at 9:45 a.m.)

2 THE COURT: Good morning everyone. Thank you.

3 You may have a seat.

4 Counsel, we've reprinted the jury instructions. You
5 want to take a quick look at the lesser one.

6 (Off the record bench conference with counsel and the
7 Court.)

8 THE COURT: Just for the record, we had a charge
9 conference this morning with both counsel. And counsel for
10 the Defense request a lesser included charge of simple
11 possession of ice or crack or crack cocaine charge to be
12 included with the jury instructions, which the State did not
13 have an objection to. It is now included with the proposed
14 jury instructions, that will be read to the jury. Any
15 objections to that?

16 MR. EDWARDS: No, Your Honor.

17 MR. KOGER: No, Your Honor.

18 THE COURT: And we've also added that, of course,
19 to the verdict form, which both parties have had an
20 opportunity to review?

21 MR. KOGER: Yes, Your Honor.

22 THE COURT: Anything further before we bring the
23 jury out?

24 MR. KOGER: Nothing further, Your Honor.

25 THE COURT: Let's have our jury then.

1 THE BAILIFF: Yes, Your Honor.

2 (Jury in at 10:28 a.m.)

3 THE COURT: You may have a seat ladies and
4 gentlemen of the jury. Good morning. I want to thank you
5 for your patience. I apologize for keeping you waiting this
6 morning. I promise everyone was present and ready to get to
7 work on time. Unfortunately, we had some computer issues,
8 which set us back a little bit. But I certainly apologize
9 for keeping you waiting and thank you again for your
10 patience. We will now move to the closing in the case.

11 Solicitor, you may proceed.

12 STATE CLOSING

13 BY MR. EDWARDS:

14 First of all ladies and gentlemen, I want to thank
15 y'all for being here this week. They call it service for a
16 reason. I know you had to take time out of your schedule.
17 I know it wasn't always exciting. At times on that video,
18 I'm sure you were all wondering if it was ever going to end.
19 But you made it through and on behalf of the Solicitor's
20 office, sincerely, we really do appreciate it.

21 Now, the Defendant walked in here yesterday an innocent
22 man, innocent until proven guilty. He was cloaked in a robe
23 in righteousness and you were required to presume that he
24 was not guilty until proven guilty by the State. That's no
25 longer the case because you've seen overwhelming evidence of

State v Wolfe

1/28/15

120

1 the Defendant's guilt. And that's what I want to talk to
2 you about this morning, the evidence. You walked in here
3 yesterday not knowing, if you're convinced now, then he's
4 guilty. And remember, evidence is what you heard from the
5 stand. Evidence is what you've seen admitted into evidence
6 by the Judge. Things that come out of my mouth or the
7 Defense attorney's mouth, that's not evidence. We're not
8 dealing in what ifs and we not dealing in maybes. We're
9 dealing in what we know and we're dealing with what people
10 swore to tell the truth to on the stand. Let's talk about
11 the first piece of evidence, the video you saw. You saw
12 with your own eyes what happened. You saw the police
13 officer turn on his blue lights and you saw the Defendant
14 did not stop. There can be no doubt about it. You saw that
15 the Defendant admitted that he was driving the car. You saw
16 that nobody else ran from the car. He was in dominion and
17 control of the car and everything in the car and that's what
18 possession is. He was in control of it. He possessed it.
19 You saw where the drugs were found in the car. They were
20 found loose. They weren't hidden in a lockbox somewhere.
21 They weren't in the glove box, as far as we know. They were
22 found loose in the car. What else was found loose in the
23 car? The money. Did the Defendant have any problem
24 claiming that that was his money? You know, he says yeah,
25 it's my money. He'll claim the money but he won't claim the

1 drugs. Does that make sense? You heard testimony from
2 Lieutenant Journey, who's been a narcotics police officer
3 for twelve years, he told you how much those drugs were
4 worth, three hundred and fifty dollars worth of drugs in the
5 car. He told you that that is not a personal use. He told
6 you without a doubt that if he was to arrest someone with
7 that amount of drugs, he would arrest them for possession
8 with the intent to distribute the drugs, without a doubt
9 every single time. You heard about the statute. The
10 statute says one gram is enough for you to infer that there
11 would be an attempt to distribute to others. And distribute
12 doesn't mean sell necessarily. He could have shared it. He
13 could have given it to someone else. It means that you are
14 going to deliver it to other people. Three hundred and
15 fifty dollars worth. Crack users do not stockpile crack
16 cocaine. As soon as they get enough money to buy it, they
17 buy what they can. They don't save up their money and buy a
18 whole bunch at one time. That's what drug dealers do.
19 Let's talk about the value of the drugs for a moment. He
20 wants you to believe that someone just left the drugs in the
21 car, they forgot it. Crack cocaine is worth its weight in
22 gold. It's not that somebody just forgot it, left there in
23 his car for somebody else to pick up, that makes no sense.
24 That's not what happened. He wants you to believe they
25 belong to someone else. What does the evidence show? Once

State v Wolfe

1/28/15

122

1 again, not maybes, not what ifs, not is it possible that,
2 what does the evidence show? Every single piece of evidence
3 that you've seen points to one person. He also made a point
4 that he didn't own the car. He didn't own the car. It
5 couldn't have been his. If that's the case, then nobody
6 could ever be convicted for selling drugs. You just have to
7 borrow your buddies car to sell them out of. Put the car in
8 somebody's name. Not my car; not my drugs. Never convict a
9 single person for dealing drugs. Finally, he wants you to
10 believe that he ran for some other reason besides the fact
11 that he had an eighth of an ounce of crack cocaine in his
12 car and his license was suspended.

13 Now, he would lead the police on a highspeed chase,
14 risk his own life and the life of everybody else out on the
15 highway over a fine. Does that make sense? What's more
16 likely? That he ran because of a fine or that he ran
17 because he knew about the drugs in his car? He knew. He
18 risks the lives of the innocent to save his own guilty soul.
19 Reckless disregard for anybody else. When the police asked
20 him why he ran, did he say it was because of his license.
21 On the video, when they asked him why he ran, what did he
22 say? The best explanation he could come up with was, I'm
23 scared. And he said it over and over, I'm scared. I don't
24 doubt for a minute that he was scared. Because when you're
25 guilty, you don't -- when he approached the checkpoint, when

State v Wolfe

1/28/15

123

1 he saw the police, he was scared and he panicked and he ran.
2 Do innocent men run or avoid anybody who -- they've done
3 anything wrong? Would an innocent man do that? Only the
4 guilty flee when not in pursuit when the righteous stand
5 bold as a rock. He knew the crack was in the car. He was
6 in possession of the crack and that's why he ran. He's
7 already confessed to the crime when he confessed through his
8 statement, confessed by his actions. His actions tell you
9 that he's guilty. That fear, that panic that you saw,
10 there's one word for that, guilty. And that's what he is.
11 Guilty. And that's why he ran. Now it's your duty to find
12 him guilty. Thank you.

13 THE COURT: Mr. Koger.

14 MR. KOGER: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. KOGER: Solicitor.

17 DEFENSE CLOSING

18 BY MR. KOGER:

19 The Solicitor asked on yesterday in his opening
20 statement and his address this morning why did he run? You
21 saw the video, as is the State mentioned. He said he was
22 afraid. Office McCauley took the stand said he had seven
23 and a half years of doing law enforcement work, all with the
24 South Carolina Highway Patrol. And he had made a thousand
25 stops. People run when their license is suspended. Mr.

State v Wolfe

1/28/15

124

1 Wolfe's license is suspended. People run when they think
2 they may be arrested for driving under the influence. At
3 that time, of the stop of the flipped vehicle, Mr. Wolfe had
4 2.8 grams. This is not from two law enforcement officers,
5 from Officer McCauley and Officer Williams, this is
6 something is that not uncommon.

7 Now, the State wants you to believe that he ran because
8 he had drugs in the vehicle. And when you speak about
9 possession, like you will see when the instructions are
10 given, that a person to be charged with possession of
11 anything, must have knowing possession. They must know that
12 the items are within their dominion and control. I have a
13 story happened right after I was married. Me and bride in
14 1993. And I call it the pink toothbrush story, okay? We
15 was going out to dinner and my wife was in the car. At that
16 time I was driving a little '95 Toyota Corolla. You know,
17 the one that looked like --

18 And she reached into the compartment and she saw a pink
19 toothbrush. So, naturally, my wife had a question: Where
20 did this pink toothbrush come from? I don't brush with a
21 pink toothbrush. Most likely another woman is going to
22 brush with a -- is going to use a pink toothbrush. And she
23 asked me the question. I had no idea where the pink
24 toothbrush came from. Of course, you know, she was very
25 suspicious. She was like, oh, that's likely story. What is

1 this pink toothbrush doing in my glove compartment. I was
2 speechless. Dinner didn't go too well that night, but we
3 got past that. But earlier, the prior weekend, my younger
4 sister stayed with us. She was twelve years of age. She
5 stayed the weekend with us. And, you know, I didn't realize
6 until a week later she say, Joshua, did I leave my pink
7 toothbrush in your glove compartment. Uh-huh. That's where
8 the pink toothbrush came from.

9 Now, I use that story because I had possession of the
10 toothbrush. It was in my glove compartment, but I didn't
11 have knowing possession because I didn't know it was in the
12 glove compartment. And that's what we have to prove beyond
13 a reasonable doubt that it was knowing possession, knowing
14 possession. Now, I went into a line of questioning about
15 closed compartments, closed consoles, whether it was that
16 compartments and things of that nature. That line of
17 questioning is important because it goes to this vehicle
18 being registered to another person. And it goes to before
19 the vehicle was flipped at seventy to seventy-five miles an
20 hour, where was the location and the position of the drugs
21 in the vehicle? There is no testimony where the drugs was
22 located and positioned in the vehicle before it flipped at a
23 high rate of speed. That's important because Mr. Wolfe
24 driving the car if the drugs was in a closed glove
25 compartment, if the drugs are in a closed console in the

State v Wolfe

1/28/15

126

1 middle, if the drugs was behind the seat in the back, and
2 there's no testimony that the drugs was in plain view prior
3 to the flipping of the car at a high rate of speed, that
4 goes to knowing possession. And the State has to prove that
5 beyond a reasonable doubt.

6 Officer McCauley stated on the stand he did not know of
7 the preposition or the location and position of the drugs.
8 Officer Williams used -- I think he word that when he looked
9 in the vehicle, everything was disarranged. It was
10 disarranged. They couldn't tell me whether -- they couldn't
11 tell me whether the glove compartment was open, whether the
12 closed console was open, plus you saw the condition of the
13 vehicle. You saw it flip. You saw the ceiling somewhat
14 caved in. It is not beyond the realm, it's likely that
15 being upside down, that something is opened, that a glove
16 compartment is open, depending on the impact. That a closed
17 console is open. That it is upside down. It flipped, okay?
18 It goes to where the drugs are located prior and whether Mr.
19 Wolfe had knowing -- know where it was located.

20 Now, let's go to this alleged statement because you
21 have to determine whether the statement was even made. Now,
22 I showed Officer McCauley the incident report. There was no
23 place in the incident report that Mr. Wolfe made a comment
24 about this car belong to my aunt. He went through his
25 statement thoroughly. On the front sheet on the incident

1 report we have the registration information for Ms. Brenda
2 Anderson. But there's no place in the report, that he said
3 was completed soon thereafter the accident of April 29th,
4 that Mr. Wolfe said that this vehicle belonged to his aunt.
5 I submit to you that would be a very important piece of
6 information for the incident report. Now, they're directing
7 you to the video and you'll have to make a determination
8 whether you heard it belonged to my aunt, whether you heard
9 girlfriend something. But even when I got on recross he
10 admitted at that time that it wasn't Mr. Wolfe's aunt. And
11 that goes into what I told you, from the Judge told you
12 initially about the believability and credibility of
13 witnesses, any type of inconsistencies. You have -- it is
14 your duty to take all those things into consideration to see
15 whether the State has met its burden of proof or proven
16 their case beyond a reasonable doubt in relation to the
17 possession with intent to distribute crack cocaine. That's
18 your duty.

19 Now, another thing, lack of thoroughness in the
20 investigation. And that point about whether the vehicle
21 belonged to Mr. Wolfe, whether it belonged to someone else,
22 brings me to this point here. Obviously, that night there
23 was a discrepancy who the vehicle belonged to. Obviously,
24 he was driving the vehicle, okay? It wasn't obvious at that
25 point who the drugs belonged to. They had an opportunity to

State v Wolfe

1/28/15

128

1 do further investigations to find out who the drugs actually
2 belonged to.

3 Officer McCauley packages the drugs up. It was in a
4 package. He packaged them up. He sent them to SLED. He
5 could have made one additional request. Okay, once it is
6 determined that this substance is crack cocaine, send it to
7 the latent prints department for fingerprints. Send it to
8 the latent prints department. Let's see whether Mr. Wolfe
9 fingerprints is on these, on this bag or someone else.
10 There was just one additional -- it was not an additional
11 step. Put in the documentation, have it done. And he
12 didn't do it because their investigation stopped that night.
13 They didn't question -- there's no testimony whether they
14 even questioned Ms. Anderson, whether they even went to the
15 house to find -- you know, did you give Mr. Wolfe permission
16 for your vehicle? There was no other investigation, other
17 than arresting Mr. Wolfe on that particular night. And just
18 like in New York, just like in L.A., just like in New
19 Orleans, always see CSI shows, you in Orangeburg County also
20 deserve the same level of attention to detail on cases that
21 come about in this county. The same level of attention, the
22 same level of detail because if they would have done the
23 latent prints and the latent prints would have either shown
24 Mr. Wolfe that we know would have been here or had not shown
25 Mr. Wolfe, we definitely would not have been here. They had

1 the capability. They had the technology and they decide not
2 to do it.

3 Now, all this is important because -- and, again, it's
4 curious that throughout the State's closing they didn't
5 mention the burden of proof, beyond a reasonable doubt.
6 They've got to prove their cases beyond a reasonable doubt.
7 If you are not firmly convinced, then you have to find for
8 my client, Mr. Wolfe, not guilty. This is what the
9 Solicitor's used on yesterday. They have not proven beyond
10 a reasonable doubt that Mr. Wolfe knowingly possessed crack
11 cocaine. They have not proved beyond a reasonable doubt
12 that he had intent to distribute.

13 Testimony showed that sixty-five dollars was found on
14 the scene and the State was erroneous because he did not say
15 anyplace on the video that, you know, he had sixty-five
16 dollars. But again, closing, it's not evidence. What I say
17 is not evidence. What Mr. Edwards' say is not evidence.
18 But you can recall, you can remember what came out of this
19 courtroom here today.

20 Another thing, the crack cocaine was in one big bag,
21 wasn't in individual baggies, prepared to sell with the
22 intent to distribute. And, also, too I -- Officer McCauley
23 had made an inventory of the car. Inventory means
24 everything -- you know, I've gone through the car.
25 Everything's in the car. We want to take it out because

State v Wolfe

1/28/15

130

1 that is the proper protocol. No type of electronic scales
2 found in the car, not testified to. Nothing found in the
3 car that would suggest it was the intent to distribute. And
4 that is after the State has not proven that Mr. Wolfe had
5 knowing possession of the drugs in this particular case.

6 I notice throughout, I noticed throughout, y'all have
7 been very attentive in listening to the evidence in this
8 case. And this is not an open and shut case as the
9 Solicitor told you on yesterday and trying to indicate here
10 in closing. He wants you to make a decision. He wants to
11 say we have proof in our case beyond a reasonable doubt
12 because he was in a car that was not registered to him and
13 the drugs was found in the car.

14 Disregarding whether the car flipped over, not knowing
15 where the drugs were before hand, because that's very
16 important. Because if you do not know where the drugs were
17 beforehand, whether in a closed console, remember my story
18 about the pink toothbrush. I had possession of the
19 toothbrush. I had possession. And I rode around with that
20 toothbrush for an entire week but I didn't know it was in
21 the glove compartment because I didn't go in the glove
22 compartment during that entire week. I wasn't stopped,
23 didn't have to show my license and registration. And I only
24 knew after a wife my got in, I only knew a week later that
25 my younger sister placed the toothbrush in the glove

1 compartment. That what they have to prove beyond a
2 reasonable doubt. It's not simply possession or non-
3 possession. So if they don't get passed this first prong,
4 then you are obligated to find not guilty on the possession
5 with intent to distribute crack cocaine. That's not me
6 saying that, that's the law. And Judge Murphy will go
7 through the law on jury instructions in just a couple of
8 minutes.

9 Now, the failure to stop for blue light, it is what it
10 is. And you will have to make your determination whether my
11 client was guilty or not guilty of the failure to stop for
12 blue light. But please take into consideration the
13 evidence, the testimony, to the possession with intent to
14 distribute. They must prove knowing possession, knowing
15 possession in relation to, in this particular case, that a
16 vehicle and which belonged to someone else, that the State
17 did not do any further investigation other than that night,
18 that they retrieved the drugs in a plastic bag that could or
19 could not have prints. We don't know because they didn't
20 submit it for analysis.

21 So, instead of bringing you a case that is strong, that
22 is air tight, and that can pass the beyond the reasonable
23 doubt standard in this courtroom, we leave you now to guess,
24 wonder. And you shouldn't have to do that. You shouldn't
25 have to guess. You shouldn't have to wonder. If that is

State v Wolfe

1/28/15

132

1 what you all end up having to do, then the State has not
2 meet their proof of beyond a reasonable doubt. And I ask
3 you to come back with a just verdict a right verdict in this
4 particular case of not guilty for possession with intent to
5 distribute crack cocaine and if you see fit for not guilty
6 on the failure to stop for blue lights. Thank you.

COURT'S CHARGE

8 THE COURT: Ladies and gentlemen of the jury, it
9 is now time for me to instruct you on the law of this case.
10 The indictments in this case lead to two different offenses
11 against the Defendant. The charges are failure to stop for
12 a blue light and possession with intent to distribute crack
13 cocaine. Each indictment charges a separate and distinct
14 offense. You must decide each indictment separately on the
15 evidence and the law applicable to it uninfluenced by your
16 decision as to any other indictment. The Defendant may be
17 convicted or acquitted on any or all of the offenses
18 charged. You will be asked to write a separate of guilt or
19 not guilty for each indictment.

20 The Defendant has pled not guilty to each of these
21 indictments and the plea of not guilty puts the burden on
22 the State to prove the Defendant guilty of each indictment
23 before he can be convicted of that indictment. A person
24 charged with committing a criminal offense in South Carolina
25 is never required to prove himself innocent. I charge you

1 that it is an important rule of the law that the defendant
2 in a criminal trial, no matter what the seriousness of the
3 charge may be, will always be presumed innocent of the crime
4 for which the indictment was issued, unless guilt has been
5 proven by evidence satisfying you of that guilt beyond a
6 reasonable doubt. This presumption of innocence does not
7 end when you begin your deliberations, but it accompanies
8 the Defendant throughout the trial until you reach a verdict
9 of guilt, based on evidence satisfying you of that guilt
10 beyond a reasonable doubt. The presumption innocence is
11 like a robe of righteousness placed upon the shoulders of
12 the Defendant, which remains with the Defendant until it has
13 been stripped from the Defendant by evidence satisfying you
14 of the Defendant's guilt beyond a reasonable doubt. The
15 presumption of innocence is not a legal theory. It is not
16 just a legal phrase. It is a substantial right to which
17 every defendant is entitled unless you, the jury, are
18 satisfied from the evidence of the Defendant's guilt beyond
19 a reasonable doubt.

20 What is a reasonable doubt in the law? A reasonable
21 doubt is the kind of doubt that would cause a reasonable
22 person to hesitate to act. The State has the burden of
23 proving the Defendant guilty beyond a reasonable doubt.
24 Some of you may have served as jurors in civil cases where
25 you were told that it is only necessary to prove that a fact

State v Wolfe

1/28/15

134

1 is more likely true than not true, such as by the greater
2 weight or the preponderance of the evidence. In criminal
3 cases, the State's proof must be more powerful than that.
4 It must be beyond a reasonable doubt. Proof beyond a
5 reasonable doubt is proof that leaves you firmly convinced
6 of the Defendant's guilt. There are very few things in the
7 world that we know with absolute certainty. And in criminal
8 cases the law does not require proof that overcomes every
9 possible doubt. If based on your consideration of the
10 evidence you are firmly convinced that the Defendant is
11 guilty of the crime charged, you must find the Defendant
12 guilty. If, on the other hand, you think there is a real
13 possibility that the Defendant is not guilty, you must give
14 the Defendant the benefit of the doubt and find him not
15 guilty.

16 I remind you that during this trial you and I have
17 certain duties to perform. As a trial judge, it is my
18 responsibility to preside over the trial of this case. And
19 I also have the duty to rule on the admissibility of
20 evidence offered during this trial. You are to consider
21 only the competent evidence before you. If there was any
22 testimony ordered stricken from the record in this case
23 during this trial, you must disregard that testimony. You
24 are to consider only the testimony, which has been presented
25 from the witness stand, any exhibits which have been made

1 part of the record in this case and any stipulations of
2 counsel in this case.

3 In addition to the duties of you considering the
4 evidence, I have the duty to charge you the law applicable
5 to this case. As the presiding Judge, I am the sole judge
6 of the law in this case. And it is your duty as jurors to
7 accept and apply the law as I now state it to you. If you
8 already have an idea as to what the law is or what the law
9 ought to be and it does not agree with what I now tell you
10 the law is, you must abandon this idea because you are sworn
11 to accept the law exactly as I state it to you.

12 In every case tried in this court before a jury, the
13 jury becomes the sole and exclusive judge of the facts in
14 the case. A trial judge cannot intimate, state, comment on,
15 or make any statement to the trial jury about the facts in
16 the case, since you, the jury, are the sole judges of the
17 facts in the case. You are not to infer from what I have
18 said during the progress of this trial ruling upon the
19 admissibility of evidence or otherwise, or anything that I
20 say now during the course of this instruction to you, that I
21 have any opinion about the facts in this case. The law does
22 not allow me to have an opinion about the facts in this
23 case. This is a matter solely for you, the jury to
24 determine. As jurors, it is your duty to determine the
25 effect, value, weight and truth of the evidence presented

State v Wolfe

1/28/15

136

1 during this trial.

2 There are two types of evidence, which are generally
3 presented during a trial, direct evidence and circumstantial
4 evidence. Direct evidence is the testimony of a person who
5 claims to have actual knowledge of a fact, such as an
6 eyewitness. It is evidence, which immediately establishes
7 the main fact to be proved. Circumstantial evidence is
8 proof of a chain of facts and circumstances indicating the
9 existence of a fact. It is evidence, which immediately
10 establishes collateral facts from which the main fact may be
11 inferred. Circumstantial evidence is based on inference and
12 not personal knowledge or observation. The law makes
13 absolutely no distinction between the weight or value to be
14 given to either direct or circumstantial evidence, or is a
15 greater degree of certainty required of circumstantial
16 evidence than of direct evidence. You should weigh all of
17 the evidence in the case. After weighing all the evidence,
18 if you're not convinced of the guilt of the Defendant beyond
19 a reasonable doubt, you must find the Defendant not guilty.
20 In order to establish criminal liability, criminal intent is
21 required. For example, the mental state required to be
22 proven by the State for a particular crime might be purpose,
23 intent, knowledge, recklessness, or criminal negligence.
24 Criminal intent must be proven by the State beyond a
25 reasonable doubt.

1 Criminal intent is always a matter that must be
2 determined by the jury from the circumstances surrounding
3 the situation. There is no way to prove intent to a
4 mathematical certainty. There is no way medical science can
5 dissect a person's brain and determine what the person had
6 in mind, so the law says that criminal intent may be
7 inferred from the circumstances shown to have existed. This
8 is how you make a determination of whether or not the
9 element requiring intent was present. It is not necessary
10 to establish intent by direct and positive evidence. But
11 intent may be established by inference in the same way as
12 any other act by taking into consideration the acts of the
13 parties and all of the facts and circumstances of the case.
14 Criminal intent is a mental state, a conscious wrongdoing.
15 It is up to you to determine what the Defendant intended to
16 do based upon the circumstances shown to have existed.
17 Criminal intent can arise from an action or a failure to
18 act. It may arise from negligence, recklessness or an
19 indifference to duty or consequences that is considered by
20 the law to be the equivalent of criminal intent.

21 Mere presence at the scene is not sufficient to prove
22 someone guilty of a crime. In a defendant's presence where
23 a crime is being committed or mere association with
24 association with a person who commits a crime does not make
25 a defendant an accomplice or an aider and abetter of the

State v Wolfe

1/28/15

138

1 person committing the crime. The burden is on the State to
2 prove every element of the crime charged. If you find,
3 after reviewing all of the evidence, that the State has
4 proved the Defendant was only present at the scene of the
5 crime, and that they have not proved beyond a reasonable
6 doubt any other participation in the crime, then you must
7 find the Defendant not guilty. (Inaudible) is that proof at
8 the scene of the crime is not sufficient to find someone
9 guilty.

10 Necessarily, you must determine the credibility of
11 witnesses who have testified in this case. Credibility
12 simply means believability. It becomes your duty as jurors
13 to analyze and evaluate the evidence and determine which
14 evidence convinces you of its truth. In determining
15 believability of witnesses who have testified in the case,
16 you may believe one witness over several witnesses or
17 several witnesses over one witness. You may believe a part
18 of the testimony of a witness and reject the remaining part
19 of the testimony of that same witness. You may believe the
20 testimony of a witness in its entirety or reject the
21 testimony of a witness in its entirety. You may consider
22 whether any witness has exhibited to you any interest, bias,
23 prejudice or other motive in the case. You may also
24 consider the appearance and manner of a witness while on the
25 witness stand.

1 Normally, a person cannot give opinion testimony.
2 Normally, when a person testifies, he must testify as to
3 what they either saw, heard, or sensed by smell or something
4 of that nature. However, there is an exception when someone
5 is qualified because of education or experience. They are
6 permitted to give their opinion in certain areas that the
7 Court qualifies them in that way. There were two witnesses
8 that were qualified as experts in the areas of illicit drug
9 trade practices, illicit drug trade evaluation, and one in
10 forensic chemistry in order to give opinion testimony in
11 those areas. That does not mean that you must accept those
12 opinions but it is evidence for you to use in any way that
13 you see fit.

14 I instruct you and emphasize that the fact that the
15 Defendant did not testify is not a factor to be considered
16 by you in any way in your deliberation and in your
17 consideration of the question of guilt or the innocence of
18 the Defendant. It must not be considered by you in any
19 manner whatsoever. A Defendant has a constitutional right
20 to remain silent and the assertion of this right must not be
21 considered by you in your deliberations. I repeat, under
22 your oath you are to draw no conclusion whatsoever from the
23 fact that the Defendant in this case did not testify. The
24 fact that this Defendant did not testify should not even be
25 discussed in the jury room. The burden of proof as I have

State v Wolfe

1/28/15

140

1 stated to you is on the State. The Defendant is not
2 required to prove his innocence. The burden of proof
3 remains on the State to prove guilt beyond a reasonable
4 doubt.

5 The Defendant is charged with failing to stop for a
6 blue light. In order to prove this crime, the State must
7 prove beyond a reasonable doubt that the Defendant was
8 driving a motor vehicle, the Defendant was driving a motor
9 vehicle on the road, street or highway of this state and the
10 Defendant was signaled to stop by a law enforcement vehicle
11 by means of a siren or flashing light and the Defendant did
12 not stop. In determining whether or not there are
13 mitigating circumstances, which would justify the
14 Defendant's failure to stop for the blue light, you may
15 consider actual road conditions, actual roadside conditions,
16 other conditions such as lighting and weather, officer,
17 driver, and/or passenger safety and any other circumstances
18 you believe reasonably could have mitigated the alleged
19 violation. An official signal requiring motorists to stop
20 may be a siren or flashing lights, but both are not
21 required. An attempt to increase the speed of a vehicle or
22 in some other manner avoid the pursuing law enforcement
23 vehicle when signaled by a siren or flashing light, may be
24 considered as evidence of failure to stop for a blue light.
25 However, it is merely an evidentiary fact to be taken into

1 consideration by you, along with all the other evidence in
2 the case and to be given the weight that you decide it
3 should receive.

4 The Defendant is charged with possession with intent to
5 distribute crack cocaine. The State must prove beyond a
6 reasonable doubt that the Defendant possessed crack cocaine
7 with the intent to distribute it. To prove possession, the
8 State must prove beyond a reasonable doubt that the
9 Defendant had both the power and the intent to control the
10 disposition or the use of the crack cocaine. Possession may
11 be either actual or constructive. Actual possession means
12 that crack cocaine was in the actual physical custody of the
13 Defendant. Constructive possession means that the Defendant
14 had dominion and control or the right to exercise dominion
15 or control over either the crack cocaine itself or the
16 property on which the crack cocaine was found. Mere
17 presence at the scene where the drugs were found is not
18 enough to prove possession. The Defendant's knowledge and
19 possession may be inferred when a substance is found on the
20 property under the Defendant's control. However, this
21 inference is simply an evidentiary fact to be taken into
22 consideration by you, along with the other evidence in the
23 case. And to be given the weight you decide it should have.
24 Two or more persons may have joint possession of the drugs.

25 The State must also prove beyond a reasonable doubt

State v Wolfe

1/28/15

142

1 that the Defendant intended to distribute the crack cocaine.
2 Distribute means to deliver, other than my administering or
3 dispensing a drug. Intent may be shown by acts and conduct
4 of the Defendant and other circumstances from which you may
5 naturally and reasonably infer intent. In determining
6 whether the Defendant had the intent to distribute the crack
7 cocaine, you may consider the circumstances surrounding the
8 Defendant's alleged possession. You may consider the amount
9 of the substance alleged to have been possessed, the manner
10 in which it was allegedly possessed, the place where it was
11 allegedly possessed and other factors which you consider to
12 be important. You must find the Defendant did not intend to
13 have crack cocaine solely for his own use. Possession of
14 one or more grams of crack cocaine creates an inference that
15 the Defendant possessed the crack cocaine with the intent to
16 distribute it. This inference does not relieve the State
17 from proving beyond a reasonable doubt that the Defendant
18 had the intent to distribute. It's simply an evidentiary
19 fact to be taken into consideration by you, along with the
20 other evidence in the case and to be given the weight that
21 you decide it should have.

22 If you find that the State has failed to prove beyond a
23 reasonable doubt that the Defendant is guilty of possession
24 with intent to distribute crack cocaine, you may consider
25 whether the State has proved beyond a reasonable doubt that

1 the Defendant is guilty of simple possession of crack
2 cocaine. Simple possession does not require an intent to
3 distribute the crack cocaine. There are several possible
4 verdicts which you may find in this case and there's no
5 significance whatsoever in the order of which I state it.

6 Ladies and gentlemen, your verdict must be a unanimous
7 one. Ms. Forelady, when you reach a verdict you will
8 actually write it -- circle it on the verdict form. And
9 you'll follow the instructions on the verdict form. And
10 it's very simple. It goes through each indictment as to the
11 charge of failure to stop for a blue light. It states we,
12 the jury, unanimously find the Defendant -- and it says,
13 circle one, either guilty or not guilty. There's no
14 significance in which order they're listed. One must be
15 simply stated first or second. The same as with the charge
16 of possession with intent to distribute crack cocaine.
17 Depending upon your verdict on the possession with intent to
18 distribute crack cocaine, that will determine as to whether
19 not you go on to the third verdict as to the charge of
20 simple possession of crack cocaine. Do not consider the
21 simple possession of crack cocaine if you find the Defendant
22 guilty of possession with intent to distribute crack
23 cocaine. If you find the Defendant not guilty of possession
24 with intent to distribute crack cocaine, then you must
25 consider the third verdict.

State v Wolfe

1/28/15

144

1 Ladies and gentlemen, I keep telling you not to
2 deliberate quite yet. I'm going to send you to your jury
3 room for one more second to ensure that we have covered all
4 the applicable jury instructions for the parties. And as
5 soon as the bailiff comes to the door with the verdict form,
6 along with the exhibits, then you may begin your
7 deliberations.

8 And the alternate, I'll put you to the side and I'll
9 come release you in here in just one second. Again, please
10 return to your jury room and do not being deliberations
11 until you have received the exhibits and verdict form.
12 Thank you.

13 (Jury out at 11:10 a.m.)

14 THE COURT: Any exceptions or objections to the
15 jury from the State?

16 MR. EDWARDS: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. KOGER: None from the Defense, Your Honor.

19 THE COURT: If y'all will gather up the exhibits
20 and make sure we have everything and everything in its
21 correct form.

22 COURT REPORTER: Your Honor, the evidence has been
23 cleared by the attorneys and it's going back to the jury at
24 11:11

25 THE COURT: Thank you, ma'am.

State v Wolfe

1/28/15

145

1 (Alternate juror excused at 11:11
2 a.m.)

3 (Jury deliberating at 11:11 a.m.)

4 (Court in recess awaiting verdict
5 at 11:12 a.m.)

6 (Court in session for jury question
7 at 1:03 p.m.)

8 THE COURT: Mr. Bell, are you ready?

9 MR. BELL: Just a second, Your Honor.

10 THE COURT: Ready?

11 MR. BELL: Yes, Your Honor.

12 THE COURT: All right. Let's have our jury,
13 please?

14 THE BAILIFF: Yes, Your Honor.

15 (Jury in at 1:03 p.m.)

16 THE COURT: Y'all may have a seat.

17 Ladies and gentlemen of the jury, I received your note
18 that you would like to see the State's Exhibit No. 2 again,
19 which is, of course, the video. And also after we do that,
20 you've requested that I reread the last part of the
21 instruction to the jury.

22 Can you be a little more specific as to which specific
23 instruction, Madam Forelady, you would like for me to read?
24 Was it the actual law or on the actual charges or which part
25 were you --

State v Wolfe

1/28/15

146

1 MADAM FORELADY: The charges.

2 THE COURT: The entire charge.

3 MADAM FORELADY: The last part.

4 THE COURT: Starting at which point, do you know?

5 MADAM FORELADY: (Confers with jury)

6 THE COURT: I can give you like section headings
7 and you can tell me if that's what you want to hear. If you
8 need to discuss that further, let me know. That's fine as
9 well. The last portion basically deals with the actual law
10 of failure to stop for a blue light, possession with intent
11 to distribute crack or simple possession of crack, would be
12 the last instruction, other than your verdict needing to be
13 unanimous. That was the very last section. The section
14 previous to that was whether or not the Defendant testified,
15 expert witnesses, credibility of witnesses:

16 MADAM FORELADY: The reasonable doubt. The last
17 part and the maybe a little of the first part.

18 THE COURT: I'm happy to read it all if that will
19 help.

20 MADAM FORELADY: That's fine.

21 THE COURT: Is that okay?

22 MADAM FORELADY: That's fine.

23 THE COURT: Okay. That way we don't miss
24 anything. All right. So we'll proceed with the Exhibit No.
25 2.

1 (State's Exhibit No. 2, DVD,
2 replayed for the jury.)

3 THE COURT: All right. Ladies and gentlemen, I
4 will now recharge you on the law in this case.

5 The indictments in this case allege two different
6 offenses against the Defendant, the charges are failure to
7 stop for a blue light and possession with the intent to
8 distribute crack cocaine. Each indictment charges a
9 separate and distinct offense. You must decide each
10 indictment separately on the evidence of law applicable to
11 it, uninfluenced by your decision as to any other
12 indictment. The Defendant may be convicted or acquitted on
13 any or all of the offenses charged. You will be asked to
14 write a separate verdict of guilty or not guilty for each
15 indictment. The Defendant has pled not guilty to each of
16 these indictments and the plea of not guilty puts the burden
17 on the State to prove the Defendant guilty of each
18 indictment before he can be convicted of that indictment. A
19 person charged with committing a criminal offense in South
20 Carolina is never required to prove himself innocent. I
21 charge you that it is an important rule of the law the
22 defendant in a criminal trial, no matter what the
23 seriousness of the charge may be will always be presumed
24 innocent of the crime for which the indictment was issued
25 unless guilt has been proven by the evidence satisfying you

State v Wolfe

1/28/15

148

1 of that guilt beyond a reasonable doubt. This presumption
2 of innocence does not end when you begin your deliberations,
3 but it accompanies the Defendant throughout the trial until
4 you reach a verdict of guilt, based on evidence satisfying
5 you of that guilt beyond a reasonable doubt. The
6 presumption innocence is like a robe of righteousness placed
7 about the shoulders of the Defendant, which remains with the
8 Defendant until it has been stripped from the Defendant by
9 evidence satisfying you of the Defendant's guilt beyond a
10 reasonable doubt. The presumption of innocence is not a
11 mere legal theory. It is not just a legal phrase. It is a
12 substantial right to which every defendant is entitled
13 unless you, the jury, are satisfied from the evidence of the
14 Defendant's guilt beyond a reasonable doubt. What is a
15 reasonable doubt in the law? A reasonable doubt is the kind
16 of doubt that would cause a reasonable person to hesitate to
17 act. The State has the burden of proving the Defendant
18 guilty beyond a reasonable doubt. Some of you may have
19 served as jurors in civil cases where you were told that it
20 is only necessary to prove that a fact is more likely true
21 than not true, such as by the greater weight or the
22 preponderance of the evidence. In criminal cases, the
23 State's proof must be more powerful than that. It must be
24 beyond a reasonable doubt. Proof beyond a reasonable doubt
25 is proof that leaves you firmly convinced of the Defendant's

1 guilt. There are very few things in this world that we know
2 with absolute certainty. And in criminal cases the law does
3 not require proof that overcomes every possible doubt. If
4 based on your consideration of the evidence you are firmly
5 convinced that the Defendant is guilty of the crime charged,
6 you must find the Defendant guilty. If, on the other hand,
7 you think there is a real possibility the Defendant is not
8 guilty, you must give the Defendant the benefit of the doubt
9 and find him not guilty. I remind you that during this
10 trial you and I have certain duties to perform. As a trial
11 judge, it is my responsibility to preside over the trial of
12 the case. I also have the duty to rule on the admissibility
13 of the evidence offered during this trial. You are to
14 consider only the competent evidence before you. If there
15 was any testimony ordered stricken from the record in this
16 case during this trial, you must disregard that testimony.
17 You are to consider only the testimony, which has been
18 presented from the witness stand, any exhibits which have
19 been made a part of the record in this case and any
20 stipulations of counsel. In addition I have the duty to
21 charge you the law applicable to this case. As the
22 presiding Judge, I am the sole judge of the law in this
23 case. And it is your duty as jurors to accept and apply the
24 law as I now state it to you. If you already have an idea
25 as to what the law is or what the law ought to be and it

State v Wolfe

1/28/15

150

1 does not agree with what I now tell you the law is, you must
2 abandon this idea because you are sworn to accept the law
3 and apply the law exactly as I state it to you. In every
4 case tried in this court before a jury, the jury becomes the
5 sole and exclusive judge of the facts in the case. A trial
6 judge cannot intimate, state, comment on, or make any
7 statement to the trial jury about the facts in the case,
8 since you, the jury, are the sole judge of the facts in the
9 case. You are not to infer from what I have said during the
10 process of this trial or ruling upon the admissibility of
11 evidence or otherwise, or anything that I say now during the
12 course of this instruction to you, that I have any opinion
13 about the facts in this case. The law does not allow me to
14 have an opinion about the facts in this case. This is a
15 matter solely for you, the jury to determine. As jurors, it
16 is your duty to determine the effect, value, weight and
17 truth of the evidence presented during this trial. There
18 are two types of evidence, which are generally presented
19 during a trial, direct evidence and circumstantial evidence.
20 Direct evidence is the testimony of a person who claims to
21 have actual knowledge of a fact, such as an eyewitness. It
22 is evidence, which immediately establishes the main fact to
23 be proved. Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a fact.
25 It is evidence, which immediately establishes collateral

1 facts from which the main fact may be inferred.
2 Circumstantial evidence is based on inference and not on
3 personal knowledge or observation. The law makes absolutely
4 no distinction between the weight or value to be given to
5 either direct or circumstantial evidence, nor is a greater
6 degree of certainty required of circumstantial evidence than
7 of direct evidence. You should weigh all of the evidence in
8 the case. After weighing all of the evidence, if you're not
9 convinced of the guilt of the Defendant beyond a reasonable
10 doubt, you must find the Defendant not guilty. In order to
11 establish criminal liability, criminal intent is required.
12 For example, the mental state required to be proven by the
13 State for a particular crime might be purpose, intent,
14 knowledge, recklessness, or criminal negligence. Criminal
15 intent must be proven by the State beyond a reasonable
16 doubt. Criminal intent is always a matter that must be
17 determined by the jury from the circumstances surrounding
18 the situation. There is no way to prove intent to a
19 mathematical certainty. There is no way medical science can
20 dissect a person's brains and determine what the person had
21 in mind, so the law says that criminal intent may be
22 inferred from the circumstances shown to have existed. This
23 is how you make a determination of whether or not the
24 element requiring intent was present. It is not necessary
25 to establish intent by direct and positive evidence. But

State v Wolfe

1/28/15

152

1 intent may be established by inference in the same way as
2 any other fact by taking into consideration the acts of the
3 parties and all of the facts and circumstances of the case.
4 Criminal intent is a mental state, a conscious wrongdoing.
5 It is up to you to determine what the Defendant intended to
6 do based on the circumstances shown to have existed.
7 Criminal intent can arise from action or a failure to act.
8 It may arise from negligence, carelessness or an
9 indifference to duty or consequences that is considered by
10 the law to be the equivalent of criminal intent. Mere
11 presence at the scene is not sufficient to prove someone
12 guilty of a crime. A defendant's presence where a crime is
13 being committed or mere association with a person who
14 commits a crime does not make a defendant an accomplice or
15 an aider and abetter of the person committing the crime.
16 The burden is on the State to prove every element of the
17 crime charged. If you find, after reviewing all of the
18 evidence, that the State has proved the Defendant was only
19 present at the scene of the crime, and that they have not
20 proved beyond a reasonable doubt any other participation in
21 the crime, then you must find the Defendant not guilty. The
22 law is that proof at the scene of the crime is not
23 sufficient to find someone guilty. Necessarily, you must
24 determine the credibility of witnesses who have testified in
25 this case. Credibility simply means believability. It

1 becomes your duty as jurors to analyze and evaluate the
2 evidence and determine which evidence convinces you of its
3 truth. In determining believability of witnesses who have
4 testified in this case, you may believe one witness over
5 several witnesses or several witnesses over one witness.
6 You may believe a part of the testimony of a witness and
7 reject the remaining part of the testimony of that same
8 witness. You may believe the testimony of a witness in its
9 entirety or reject the testimony of a witness in its
10 entirety. You may consider whether any witness has
11 exhibited to you any interest, bias, prejudice or other
12 motive in this case. You may also consider the appearance
13 and manner of a witness while on the witness stand.
14 Normally, a person cannot give opinion testimony. Normally,
15 when a person testifies, they must testify as to what they
16 either saw, heard, or sensed by smell or something of that
17 nature. However, there is an exception when someone is
18 qualified because of education or experience. They are
19 permitted to give their opinion in certain areas if the
20 Court qualifies them that way. Two witnesses were qualified
21 as experts in this case. One in the area of illicit drug
22 trade practices, illicit drug trade evaluation, and the
23 other in forensic chemistry in order to give opinion
24 testimony in that area. That does not mean that you must
25 accept the opinion but it is evidence for you to use in any

State v Wolfe

1/28/15

154

1 way that you see fit.

2 I instruct you and emphasize that the fact that the
3 Defendant did not testify is not a factor to be considered
4 by you in any way in your deliberation and in your
5 consideration on the question of guilt or innocence of the
6 Defendant. It must not be considered by you in any manner
7 whatsoever. A Defendant has a constitutional right to
8 remain silent and the assertion of this right must not be
9 considered by you in your deliberations. I repeat, under
10 your oath you are to draw no conclusion whatsoever from the
11 fact that the Defendant in this case did not testify. The
12 fact that this Defendant did not testify should not even be
13 discussed in the jury room. The burden of proof as I have
14 stated to you is on the State. The Defendant is not
15 required to prove his innocence. The burden of proof
16 remains on the State to prove guilt beyond a reasonable
17 doubt.

18 The Defendant is charged with failing to stop for a
19 blue light. In order to prove this crime, the State must
20 prove beyond a reasonable doubt that the Defendant was
21 driving a motor vehicle, that the Defendant was driving a
22 motor vehicle on a road, street or highway of this state and
23 that the Defendant was signaled to stop by a law enforcement
24 officer by means of a siren or flashing light and the
25 Defendant did not stop. In determining whether or not there

1 are mitigating circumstances, which would justify the
2 Defendant's failure to stop for the blue light, you may
3 consider actual road conditions, actual roadside conditions,
4 other conditions such as, lighting and weather, officer,
5 driver, and/or passenger safety and any other circumstances
6 you believe reasonably mitigated the alleged violation. An
7 official signal requiring a motorist to stop may be a siren
8 or flashing light, but both are not required. An attempt to
9 increase the speed of a vehicle or in some other manner
10 avoid pursuing law enforcement vehicle when signaled by a
11 siren or flashing light, may be considered as evidence of
12 failure to stop for a blue light. However, it is merely an
13 evidentiary fact to be taken into consideration by you,
14 along with all the other evidence in the case and to be
15 given the weight that you decide it should receive.

16 The Defendant is charged with possession with intent to
17 distribute crack cocaine. The State must prove beyond a
18 reasonable doubt that the Defendant possessed crack cocaine
19 with the intent to distribute it. To prove possession, the
20 State must prove beyond a reasonable doubt that the
21 Defendant had both the power and the intent to control the
22 disposition or use of the crack cocaine. Possession may be
23 either actual or constructive. Actual possession means that
24 the crack cocaine was in the actual physical custody of the
25 Defendant. Constructive possession means that the Defendant

State v Wolfe

1/28/15

156

1 had dominion and control or the right to exercise dominion
2 or control over either the crack cocaine itself or the
3 property on which the crack cocaine was found. Mere
4 presence at the scene where the drugs were found is not
5 enough to prove possession. The Defendant's knowledge and
6 possession may be inferred when a substance is found on the
7 property under the Defendant's control. However, this
8 inference is simply an evidentiary fact to be taken into
9 consideration by you, along with the other evidence in the
10 case. And to be given the weight you decide it should have.
11 Two or more persons may have joint possession of a drug.
12 The State must also prove beyond a reasonable doubt that the
13 Defendant intended to distribute the crack cocaine.
14 Distribute means to deliver, other than my administering or
15 dispensing a drug. Intent may be shown by acts and conduct
16 of the Defendant and other circumstances from which you may
17 naturally and reasonably infer intent. In determining
18 whether the Defendant had the intent to distribute the crack
19 cocaine, you may consider the circumstances surrounding the
20 Defendant's alleged possession. You may consider the amount
21 of the substance alleged to have been possessed, the manner
22 in which it was allegedly possessed, the place where it was
23 allegedly possessed and other factors which you consider to
24 be important. You must find the Defendant did not intend to
25 have the crack cocaine solely for his own use. Possession

1 of one or more grams of crack cocaine creates an inference
2 that the Defendant possessed the crack cocaine with the
3 intent to distribute it.. This inference does not relieve
4 the State from proving beyond a reasonable doubt that the
5 Defendant had the intent to distribute. It is simply an
6 evidentiary fact to be taken into consideration by you,
7 along with the other evidence in the case and to be given
8 the weight you decide it should have. If you find that the
9 State has failed to prove beyond a reasonable doubt that the
10 Defendant is guilty of possession with intent to distribute
11 crack cocaine, you may consider whether the State has proved
12 beyond a reasonable doubt that the Defendant is guilty of
13 simple possession of crack cocaine. Simple possession does
14 not require an intent to distribute the crack cocaine. The
15 very last portion of the instruction was the possible
16 verdicts, which, of course, go with the verdict form. Do
17 you wish for me to explain that portion to you as well?

18 MADAM FORELADY: Yes.

19 THE COURT: Okay. On the verdict form, which you
20 have back in the back, of course, your verdict must be
21 unanimous. And the verdict form has the three separate
22 potential verdicts. The first portion on the verdict form
23 is the failure to stop for a blue light. Based upon your
24 unanimous verdict, once you find whether the Defendant is
25 guilty or not guilty, you circle that option.

State v Wolfe

1/28/15

158

1 You then move on to the possession with intent to
2 distribute crack cocaine. And then whether you find the
3 Defendant guilty or not guilty, you circle that option. If
4 you find the Defendant not guilty of that option, then you
5 may proceed to the third option, which is the possession of
6 crack cocaine. If you find the Defendant guilty or not
7 guilty of the possession of crack cocaine, then you circle
8 the appropriate verdict. And Madam Forelady, then you sign
9 the bottom of the verdict form indicating that each of you
10 has reached that verdict unanimously.

11 MADAM FORELADY: Thank you.

12 THE COURT: Does that answer the questions?

13 MADAM FORELADY: Yes.

14 THE COURT: All right. Thank you very much.

15 (Jury out at 1:46 p.m.)

16 THE COURT: Anything further from the State or
17 Defense at this time?

18 MR. EDWARDS: No, thank you, Judge.

19 MR. KOGER: Nothing from the Defense, Your Honor..

20 THE COURT: All right. We'll be at ease.

21 (Court in recess awaiting the
22 verdict of the jury at 1:46 p.m.)

23 (Court in session for verdict at
24 2:42 p.m.)

25 THE COURT: It's my understanding we have a jury

1 verdict. Anything before we bring out the jury, from the
2 State or the Defense?

3 MR. EDWARDS: No, Your Honor.

4 MR. KOGER: Nothing from the Defense, Your Honor.

5 THE COURT: Let's have our jury, please?

6 THE BAILIFF: Yes, Your Honor.

7 (Jury in at 2:43 p.m.)

8 THE COURT: You may be seated.

9 Madam Forelady, has the jury reached a verdict?

10 MADAM FORELADY: Yes.

11 THE COURT: Would you please hand it to Ms. Smith.

12 MADAM FORELADY: (Complied)

13 THE BAILIFF: Your Honor, may I approach?

14 THE COURT: You may.

15 THE BAILIFF: (Hands verdict form to judge)

16 THE COURT: Madam clerk, if you would publish the
17 verdict.

18 THE CLERK: I bring the Court's attention to the
19 State versus Rodriguez J. Wolfe, case number 2014-GS-38-0946
20 as to the charge of failure to stop for a blue light. We,
21 the jury, unanimously find the Defendant guilty.

22 As to the charge of possession with intent to
23 distribute crack cocaine. We, the jury, unanimously find
24 the Defendant not guilty.

25 As to the charge of simple possession of crack cocaine,

State v Wolfe

1/28/15

160

1 guilty. And this is signed by the foreperson January 20th,
2 2015.

3 Please poll the jury.

4 THE CLERK: As I call your name, please stand?
5 Charity Randolph.

6 JUROR NO. 150: (Stands)

7 THE CLERK: Is this your verdict?

8 JUROR NO. 150: Yes, it is.

9 THE CLERK: And is still your verdict?

10 JUROR NO. 150: Yes, ma'am.

11 THE CLERK: Thank you.

12 Frank Goodwin -- I'm sorry.

13 Dewayne Davis.

14 JUROR NO. 48: (Stands)

15 THE CLERK: Is this your verdict?

16 JUROR NO. 48: Yes, ma'am.

17 THE CLERK: And is it still your verdict?

18 JUROR NO. 48: Yes, ma'am.

19 THE CLERK: Thank you.

20 Jarrell Hickson.

21 JUROR NO. 87: (Stands)

22 THE CLERK: Is this your verdict?

23 JUROR NO. 87: Yes, ma'am.

24 THE CLERK: Is it still your verdict?

25 JUROR NO. 87: Yes.

1 MR. KOGER: Not -- But, Your Honor, we'd move for
2 a new trial on a 429 conviction. It is our position that
3 the evidence submitted does not warrant the verdicts on
4 those cases.

5 THE COURT: Thank you, Mr. Koger. But based upon
6 the evidence that was presented, the Court does find that
7 there was sufficient evidence on each offense, both direct
8 and circumstantial and I will respectfully deny your motion.

9 MR. KOGER: Thank you.

10 THE COURT: I am going to release the jury and I
11 will be back in here in just one minute if you're ready to
12 proceed with sentencing.

13 MR. EDWARDS: Yes, ma'am.

14 (Court at ease)

15 THE COURT: Solicitor, before we get started, I
16 understand -- I mean, I don't know what it is, but I
17 understand the Defendant has a prior record; is that
18 correct?

19 MR. EDWARDS: Yes, Your Honor.

20 THE COURT: Okay. So obviously on each of the
21 potential sentences, if it's a subsequent offense that
22 enhances, I'll need to know that on the record?

23 MR. EDWARDS: Yes, Your Honor.

24 THE COURT: Are the parties ready to proceed?

25 MR. KOGER: Ready to proceed, Your Honor.

State v Wolfe

1/28/15

167

1 MR. EDWARDS: Your Honor, each of the cocaine
2 charges bumps the possession up to a third of subsequent
3 offense, which carries a sentence in the range of zero to
4 ten years.

5 THE COURT: Anything further from anyone?

6 MR. EDWARDS: No, Your Honor.

7 MR. KOGER: No, Your Honor.

8 THE COURT: Mr. Wolfe certainly this is not your
9 first time before the Court. I understand that you have
10 children and have recently been working. However, obviously
11 you didn't learn your lesson for several times of this type
12 of activity. And certainly this type of activity is form of
13 cancer in our society. Not only do you destroy your future,
14 but you've destroyed other futures. The way you were
15 driving that night, not only put your life in danger but
16 those around you. That certainly cannot be tolerated in our
17 society.

18 On indictment 2014-GS-38-0946, for failure to stop for
19 a blue light, you're hereby committed to the State
20 Department of corrections for a period of three years. That
21 will be concurrent to indictment number 2015-GS-38-1207, you
22 are hereby committed to the State Department of Corrections
23 for period of ten years.

24 MR. KOGER: Thank you.

25 MR. WOLFE: Thank you, ma'am.

WITNESSES

Willie Mccauley

S C Highway Patrol

ARREST WARRANT NUMBER
G805348

Arrested: April 29, 2014

ACTION OF GRAND JURY

TRUE BILL

Michael S. Davis

Foreperson of Grand Jury
Date: September 3, 2014 **SEP 03 2014**

VERDICT

DOCKET NO. 2014GS38-0946

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Rodriquez Jermaine Wolfe

Indictment for

FAILURE TO STOP FOR A BLUE LIGHT,

NO INJURY OR DEATH

ATTEST: TRUE COPY

Winniford B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 56-6-750(B)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

132 Foreperson of Petit Jury
Date:

2014 SEP -3 AM 10:14

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0946

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT, NO INJURY OR DEATH

That in Orangeburg County, South Carolina, on or about April 29, 2014, the Defendant, Rodriquez Jermaine Wolfe, while driving a motor vehicle on a road, street, or highway of the State, did unlawfully fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren, this offense being in violation of Section 56-5-750, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Th. B. Scott, III

Thomas B Scott, III, Solicitor

WITNESSES

W. McCauley

S C Highway Patrol

ARREST WARRANT NUMBER
2014ORB33

Arrested: April 29, 2014

ACTION OF GRAND JURY
TRUE BILL

Michelle Shaw

Date **SEP 03 2014**

Foreperson of Grand Jury

Date: September 3, 2014

VERDICT

DOCKET NO. 2014GS38-1207

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Rodriquez Jermaine Wolfe

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE

ATTEST: TRUE COPY

Winnifred B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 44-53-376(B)

*** 2014**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

134

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-1207

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

That in Orangeburg County, South Carolina, on or about April 29, 2014, the Defendant, Rodriquez Jermaine Wolfe, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to do the same or possess with intent to distribute, dispense, or deliver a quantity of crack cocaine. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

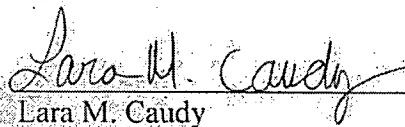
TL 3. Scott, III

Thomas B Scott, III, Solicitor

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."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

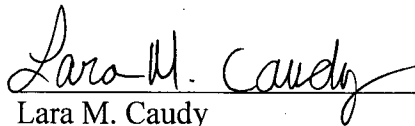
ATTORNEY FOR APPELLANT

This 20th day of October, 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."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of October, 2016.

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SC Court of Appeals