

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Honorable Alison Renee Lee, Circuit Court Judge

RECEIVED

JUL 03 2017

S.C. SUPREME COURT

ORTAVIOUS R. MITCHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002232

APPENDIX

LAURA R. BAER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN J. HUNTER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
PARTIAL TRIAL AND GUILTY PLEA TRANSCRIPT (May 21-22, 2013).....	1
COURT’S EXHIBIT NO. 2 (York County Sheriff’s Office Impound/Towing Policies and Procedures)	270
COURT’S EXHIBIT NO. 3 (Defendant’s NCIC Criminal History).....	275
COURT’S EXHIBIT NO. 4 (Search Warrant)	281
APPLICATION FOR POST-CONVICTION RELIEF	288
STATE’S RETURN.....	294
POST-CONVICTION RELIEF HEARING TRANSCRIPT (Nov. 17, 2014).....	300
APPLICANT’S BRIEF	346
STATE’S BRIEF	355
ORDER OF DISMISSAL.....	360
INDICTMENT	366

State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No.: 2011-GS-46-03323
County of York.,)

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-) Transcript of Record
)
Ortavious Romon Mitchell.,)
)
Defendant.)
)

May 21,22, 2013
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, Judge and a Jury.

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

Ms. Jennifer Colton
Mr. Matthew Shelton
Assistant Solicitor's
Sixteenth Circuit Solicitor's Office
1675-1A York Highway
York, South Carolina 29745-7422
803-628-3020
803-628-3025
Jcolton@yorkcountygov.com
For the Plaintiff

ORIGINAL

Mr. Reginald I. Lloyd
Lloyd Law Firm, LLC.
223 East Main Street, Suite 500
Rock Hill, South Carolina 29730
803-909-8707
803-909-8709
reggie@lloydlawfirm.com
For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

I N D E XE X A M I N A T I O N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Commander Marvin Brown		
	Solicitor Colton	6-31 (In Camera)
	Mr. Lloyd	31-58 (In Camera)
Investigator Lee Allen		
	Solicitor Colton	60-65 (In Camera)
	Mr. Lloyd	66-72 (In Camera)
Deputy Sharon Estep		
	Solicitor Colton	72-82 (In Camera)
	Mr. Lloyd	83-92 (In Camera)
Lieutenant Mike Ligon		
	Solicitor Colton	93-114 (In Camera)
		136-140 (In Camera)
	Mr. Lloyd	114-136 (In Camera)
		140-151 (In Camera)
Investigator Jamie Faulkenberry		
	Solicitor Colton	151-162 (In Camera)
	Mr. Lloyd	162-172 (In Camera)
Court Reporter's Certificate		269
Jury Voir Dire/Batson Sheet.		270
Clerk of Court's Random Strike Sheet .		271-273

I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	CD	4	
Ct.2	YCSO-Impound/Towing		
	Policy/Procedure (5 pages). . .	92.	112
Ct.3	Def.'s NCIC Criminal History. . .		175
Ct.4	Search Warrant (8/4/11)		231
St.1	CD	4	
St.2	Phot/Vehicle trunk, contents. .	4	
St.3	Photo/trunk, jack area	4	
St.4	Photo/closeup of trunk.	4	
St.5	Photo	4	
St.6	Photo	4	
St.7	Photo	4	
St.8	Photo	4	
St.9	Photo	4	
St.10	Photo	4	
St.11-15	Photos	4	
Def.1	Officer Allen's GS		
	Case File Summary		164

Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 COURT IN SESSION IN THE MATTER OF STATE VERSUS WHITNEY
2 NICOLE MCCRAY AND ORTAVIOUS ROMON MITCHELL, TUESDAY, MAY
3 21, 2013 AT 10:54 A.M..)

4 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, PREMARKED FOR
5 IDENTIFICATION.)

6 (WHEREUPON, STATE'S EXHIBIT NUMBERS TWO THROUGH
7 FIFTEEN PREMARKED FOR IDENTIFICATION.)

8 THE COURT: Thank you. Take your seats.

9 All right, the State.

10 SOLICITOR COLTON: Thank you, Your Honor.

11 Your Honor, this is State versus Ortavious Romon
12 Mitchell. He is before the Court on two indictments both
13 have been True Billed by the Grand Jury. The first is
14 2011-GS-46-3323, trafficking crack cocaine in an amount
15 greater than a hundred grams. And 2011-GS-46-3606, simple
16 possession of crack cocaine. The trafficking charge
17 stemmed from a traffic stop, Your Honor. A search warrant
18 was executed the following day on August 4th and that's
19 where the possession of crack cocaine charge stems from.

20 Your Honor, if I may, I'd ask that - I've discovered a
21 scribblers error on the trafficking indictment, I believe,
22 and I made Mr. Lloyd aware of this, on the face of the
23 Indictment under where it says indicted for trafficking
24 crack cocaine, South Carolina Code Section 44-53-375(c)
25 there is a Subsection 10 after that. There is no

1 Subsection 10 in the code and I ask that that be stricken
2 as a scribblers error. I believe the information contained
3 in the body of the indictment is sufficient to put the
4 defendant on notice of the charges otherwise.

5 THE COURT: Oh, over on the face it is. Okay, on the
6 body it does not have the (c). Its under the - I never
7 know whether it's the front or the back but I'll call it
8 the front - it does not contain the charge.

9 Do you see where they're talking about, Mr. Lloyd?

10 MR. LLOYD: Yes. Yes, Your Honor.

11 THE COURT: Any objection to striking the ©?

12 MR. LLOYD: No, Your Honor. She pointed that out to
13 me earlier and no objection.

14 THE COURT: All right. And I'll do that. Okay.

15 SOLICITOR COLTON: And, Your Honor, to my
16 understanding there is a Motion to Suppress the evidence of
17 - recovered with regard to the trafficking. At this point
18 the State is prepared to proffer evidence in support of -

19 THE COURT: All right. Call your first witness.

20 SOLICITOR COLTON: Thank you, Your Honor.

21 Your Honor, the State would call --

22 MR. LLOYD: Your Honor, before we start ---

23 THE COURT: All right. Mr. Lloyd.

24 MR. LLOYD: --- the Defense would move to sequester
25 the witnesses who are going to testify.

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-6-

1 THE COURT: All right, the motion is granted
2 reciprocally if there is any motions on behalf of the
3 Defense they should be sequestered also.

4 SOLICITOR COLTON: Your Honor, can I make the option,
5 Jamie Faulkenberry.

6 THE COURT: The case agent can stay in.

7 MR. LLOYD: Your Honor, just for the record too, if
8 possible we'll do that. Mr. Mitchell's father may testify
9 against the State and I would ask that he step out as well.

10 THE COURT: I say any witnesses on either side are
11 sequestered.

12 (SEQUESTERED WITNESSES LEAVING COURTROOM.)

13 THE COURT: All right. You can call your first
14 witness.

15 SOLICITOR COLTON: Thank you, Your Honor.

16 Your Honor, the State calls Marvin Brown.

17 (WHEREUPON, MARVIN BROWN,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 DIRECT EXAMINATION - IN CAMERA

20 COMMANDER MARVIN BROWN BY SOLICITOR COLTON:

21 Q. Mr. Brown, can you please state your full name and
22 occupation?

23 A. Marvin Reid Brown and I work for the Sixteenth
24 Circuit Solicitor's Office assigned to the Drug Enforcement
25 Unit.

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-7-

1 Q. And what's your title?

2 A. Chief Investigator with the Solicitor's Office and
3 Commander with the Drug Unit.

4 Q. And by Commander you're head of the Drug Unit?

5 A. Supervisor, yes, head of the Drug Unit.

6 Q. And how long have you been with the DEU?

7 A. The Drug Unit we formed September of 1998.

8 Q. And how long have you been the Commander?

9 A. September 1998.

10 Q. And how long have you been a police officer?

11 A. Thirty-seven years.

12 Q. And where did you start off in policing?

13 A. Rock Hill City.

14 Q. Did you start off as a patrol officer?

15 A. I did.

16 Q. And how long have you been involved specifically with
17 narcotics?

18 A. Since about 1977.

19 Q. And what is the Multi-jurisdictional Drug Enforcement
20 Unit?

21 A. The Drug Enforcement in 1998 the chief, the chief's
22 here in York County, the Sheriff, and the Solicitor, we
23 came together and formed one large Drug Unit from all
24 existing Drug Units. Eight agencies within the county to
25 include the Solicitor's Office. We have one Drug Unit

1 called the Drug Enforcement Unit, the DEU, it's made up of
2 about twenty-two officers and two legal support persons.
3 And we have three officers, one in Fort Mill, Rock Hill and
4 York.

5 Q. Just describe briefly the type of investigations the
6 narcotics unit undertakes.

7 A. We, our primary job is drug enforcement. We also deal
8 with underage drinking, gambling, vice operations, and we
9 handle the Federal cease fire gun cases so drugs and guns
10 is mainly what we do.

11 Q. And would that involve all levels of narcotics from
12 the street level interacting with drug users all the way up
13 to high level, high level trafficking cases?

14 A. Yes, ma'am.

15 Q. Now are you familiar with the Defendant, Ortavious
16 Mitchell?

17 A. I am.

18 Q. Are you familiar with Whitney McCray?

19 A. I am.

20 Q. And can you tell the Court how well you are familiar
21 with individuals?

22 A. The night of the traffic stop is the first time I saw
23 or talked with Whitney. I knew of Ta before then. I had
24 heard Ta's name here and there.

25 MR. LLOYD: Objection, Your Honor.

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-9-

1 THE COURT: Well this is without a jury and I over
2 rule your objection. It is - It obviously be hearsay but
3 I'll over rule your objection for the purposes of the
4 Jackson versus Denno.

5 MR. LLOYD: Thank you, Your Honor.

6 SOLICITOR COLTON: Your Honor, - Sorry.

7 Q. Commander Brown, during the course of your narcotics
8 investigations are you familiar with the drug level - the
9 drug trafficking, drug trade, in the city of Rock Hill?

10 A. Yes I am.

11 Q. And do you know of Mr. Mitchell's involvement in that
12 drug trade in Rock Hill?

13 A. I had heard of Ta Mitchell more specifically on July
14 11th, 2001. We received a crime stopper in reference to Ta
15 Mitchell which is the same Ta Mitchell that I knew.

16 Q. And do you recall in the - what the content of that
17 crime stopper's tip was?

18 A. For the most part I have not seen it lately, just
19 spell it out that Ta Mitchell was - the words in the Crime
20 Stopper's the king pin. Said he had SUV's, motor cycles.
21 Gave us an address, age range, that type thing. As a
22 result I did ride out to Leach Road where Ta lives got some
23 tag numbers. Run out late at night, early in the morning
24 and looked at the residence that Ta was supposed to be
25 living in. And this was during the month of July.

1 Q. And were your officers able to develop a confidential
2 informant in reference to Mr. Mitchell?

3 A. Yes. During this time we were looking for a person
4 who were willing to buy off Leach Road where Mr. Mitchell
5 lives and we in fact did find a - an informant who had been
6 buying off Leach Road and who agreed to make some crack
7 cocaine purchases for us on Leach Road.

8 Q. And describe Leach Road.

9 A. Leach Road is coming from Rock Hill going to York when
10 you pass Northwestern High School it's about a quarter mile
11 on the left. There is a large nice area there; I'm not
12 sure the name of it, that caters to the older people and
13 it's right before you get to that, that large area. It
14 runs off to the left. It's a short road and it cul-de-sacs
15 kind of at the end with a couple of homes and a couple of
16 mobile homes; about four or five homes and SLED - retired
17 SLED agent Gene Mackey lives off to the left.

18 Q. Would you consider that based upon your training and
19 experience, to be a high crime, high drug area?

20 A. We had been making drug buys and doing search warrants
21 on Leach Road for at least twenty years. It is a high
22 crime area.

23 Q. This confidential informant, what information did
24 that informant tell you and your officers?

25 MR. LLOYD: Your Honor, I again I renew our objection

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-11-

1 not just on hearsay but also the confidential - -

2 THE COURT: What - What was the question again?

3 SOLICITOR COLTON: What was the information the
4 confidential informant told him.

5 Essentially, Judge, the confidential informant gave
6 them information about Mitchell that established part of
7 what their probable cause was to stop the vehicle.

8 THE COURT: Subject to the objection I'll go ahead and
9 hear it. Again this is without a jury but I - How does
10 that --

11 SOLICITOR COLTON: Judge, I believe --

12 THE COURT: What does that fall into?

13 SOLICITOR COLTON: Your Honor, under the totality of
14 the circumstances there is two reasons. The information
15 that was provided by the confidential informant initiated
16 in part the investigation into Mr. Mitchell. But I think
17 that the information could have been the basis for the
18 search warrant in part that coupled with the anonymous tip
19 that I referenced in chambers under the totality of the
20 circumstances I think it gives a little bit more credence
21 to the anonymous tip because they had developed a
22 confidential informant was able to make purchases from that
23 area, they recovered from that area the crack cocaine and -

24 THE COURT: But all that is though is pure hearsay.

25 MR. LLOYD: Exactly, Your Honor. And beyond that this

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-12-

1 would have been very stale information. Number one it
2 doesn't even apply to the confidential informant having any
3 interaction at the time he was supposedly being advised for
4 the DEU. It's when he supposedly - And just so Your Honor
5 knows, he supposedly made statements that he seen Mr.
6 Mitchell with drugs in the past. Certainly it would be too
7 stale to go to a magistrate and get a search warrant based
8 on that maybe down the road in August but they have not
9 identified this confidential informant. It's not just
10 hearsay but from Mr. Mitchell's right to confront this
11 witness we would object to the introduction - -

12 THE COURT: Well subject to the objection since this
13 is an in camera hearing and I'd have to have a proffer on
14 it anyway I'll go ahead and hear it. I'll give it such
15 weight and credibility - weight as I believe it should
16 have, if any.

17 SOLICITOR COLTON: Yes, sir.

18 THE COURT: And I don't know, Mr. Lloyd raised the
19 staleness, I'm gonna use a different word, I'm gonna use
20 vagueness as to when all this occurred during the month of
21 July 2011 starting on the 11th and this arrest apparently
22 took place on August 4th.

23 SOLICITOR COLTON: Yes, sir.

24 THE COURT: 2011, so I think you need to be a little
25 more specific in the dates and times if you want me to

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-13-

1 consider it.

2 SOLICITOR COLTON: Yes, sir. And I plan on - I plan
3 on being more specific about it, Your Honor. Just a matter
4 of - maybe this is just preliminary regarding
5 identification of the confidential informant cause I know
6 that was raised, I think it's no different in the standard
7 for the probable cause existed whether it be in the search
8 warrant and the affidavit that is sent to the Magistrate or
9 whether there is probable cause to search the car is the
10 same.

11 It's whether or not a search warrant could have been
12 obtained. I think that a confidential source of that
13 information about this defendant while in and of itself
14 would not be sufficient to perhaps get a search warrant,
15 when it's coupled with all the other information known to
16 law enforcement raises the credibility in between, that's
17 why the probable -

18 THE COURT: Okay. Well I'm being ask to listen to it
19 but how do you take - You're basing a prong of the totality
20 on hearsay. It's not tipped cause its - I understand
21 general information is not a tip i.e, or something's
22 happening right now better go check. So you're trying to
23 put it in the umbrella of the totality of the circumstances
24 but that - it's still got to stand on it's own before you
25 can suck it into the totality argument I think. You can't

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-14-

1 say well you look at everything in total when some of the
2 things you're looking at I can't --

3 SOLICITOR COLTON: Well --

4 THE COURT: Well just go ahead and followup on the
5 questions and we'll see where we go.

6 SOLICITOR COLTON: Yes, sir.

7 Q. You were able to develop a confidential informant?

8 A. I'd known this informant about a year. This informant
9 had made at least one under cover buy for us and everything
10 the informant told me I was able to - everything I was able
11 to verify was true and correct so I'd known the informant
12 for about a year and the informant had worked in an under
13 cover capacity the informant stated they could buy on Leach
14 Road and five days before the stop of the car - I think it
15 was five days, I'd had to look - July the 29th or
16 something.

17 We actually made a phone call to a subject who lives
18 on Leach Road in order to obtain crack cocaine from this
19 individual who this informant had stated was tied to Tai
20 Mitchell. The purpose of buying from the informants is to
21 work our way up to Ta.

22 Q. And when did - There was a phone call, was crack
23 cocaine purchased from this individual?

24 A. Yes we called. Our intention was to go to Leach
25 Road. We called this individual who ordered some crack

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-15-

1 cocaine and the individual said that they were not on Leach
2 Road they were on Wild Cat Creek Road. We did meet with an
3 individual on Wild Cat Creek, we did a controlled purchase
4 and we purchased crack cocaine from the person who actually
5 lives on Leach Road but they were on Wild Cat Creek Road.

6 Q. And what other information did this confidential
7 informant provide --

8 A. The informant said that they normally buy from Gary
9 Leach, Kenny Mitchell, and that the person had not bought
10 from Ta but they had seen Ta with large amounts of drugs
11 but could not buy from Ta cause they normally buy smaller
12 amounts than what Tai would sell but they did buy from
13 relatives of Ta and we in fact did buy from a relative of
14 Ta that day.

15 Q. And did the informant advise you that they had
16 knowledge was Tai selling out of the house?

17 A. Yes out of his house large amounts of crack cocaine.

18 Q. And did they give you specific information as to times
19 - times and amounts that the informant - that Mr. Mitchell
20 would sell crack cocaine?

21 A. The informant stated that Tai would only sell Fifty
22 Dollars or more of crack cocaine and the informant normally
23 it was Twenty Dollar rock type person so the informant had
24 not bought from Tai Mitchell. They did buy from all these
25 other persons and did in fact make a buy for us five days

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-16-

1 before we did the traffic stop.

2 Q. Do you recall if the informant advised you whether or
3 not they had seen Mr. Mitchell with crack cocaine?

4 A. Yes large amounts.

5 Q. . Would you consider this based upon - -

6 THE COURT: You - We're mixing a little bit of
7 words here. You're talking at one time about a
8 confidential informant and now you've drop the word
9 confidential.

10 SOLICITOR COLTON: I'm sorry.

11 THE COURT: You just ask about something the
12 informant.

13 SOLICITOR COLTON: I'm sorry not being specific.

14 THE COURT: It's significant. Well it's a significant
15 difference in somebody with whom they had confidence and
16 just somebody they don't know.

17 SOLICITOR COLTON: Yes, sir.

18 Q. This is the same individual that we're speaking about,
19 Commander Brown, as the confidential informant as one in
20 the same person?

21 A. Yes, I've known for about a year who had done under
22 cover work for us in the past.

23 Q. Now when talking about him or her as a confidential
24 informant, would you consider this individual a
25 confidential and reliable informant or simply a

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-17-

1 confidential informant?

2 A. I've known this informant for about a year and the
3 informant worked for us wearing a body wire. And the
4 information this informant gave us was always true and
5 correct. I've never found this informant to give us any
6 information that was not true and correct. And when we
7 debriefed the informant, talked about different persons,
8 the informant would tell me of persons I already knew
9 about, things that these people did, so I would consider
10 this person to be a reliable informant.

11 Q. And the buy from Mitchell's relative did ultimately
12 you made a crack cocaine by the confidential informant you
13 saying is a confidential reliable informant. Did that
14 produce crack cocaine?

15 A. Yes.

16 Q. And was that individual arrested?

17 A. Yes that individual was arrested.

18 Q. And do you recall where that individual was arrested?

19 A. Yes. That individual was arrested August the 4th when
20 we went back to search Mr. Mitchell's residence that
21 individual was standing in the parking lot in front of Mr.
22 Mitchell's house and was arrested at Mr. Mitchell's house
23 out in the parking lot.

24 Q. And --

25 A. On the day of the search.

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-18-

1 Q. And did you find any information by that individual
2 related to Mr. Mitchell - defendant?

3 A. We - A cell phone, and in that cell phone was some
4 text messages indicating that Ta Mitchell had been busted
5 and we were searching his house.

6 Q. So at this point in time you had some information,
7 some information from a confidential reliable informant
8 regarding Mr. Mitchell's involvement in crack cocaine and
9 that was near the Leach Road house and some background
10 information you had from other sources?

11 A. Yes. The crime Stopper was independent and different
12 from the confidential reliable informant so the informant
13 and the Crime Stopper information mirrored up and was
14 pretty much the exact same - not the exact same information
15 but very similar information about the address, type
16 vehicles, the amount of drugs, that type thing.

17 Q. And you didn't seek a search warrant for Mr.
18 Mitchell's house without that?

19 A. I'm sorry.

20 Q. Based upon that controlled buy and the information
21 you had you didn't seek a search warrant for Mr. Mitchell's
22 house at that point?

23 A. No we did not cause I felt like we were short on
24 information to actually go in his house at that point. We
25 did not obtain a search warrant.

✓
COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-19-

1 Q. Now on August 3rd, 2011, did your officers receive
2 more information about Mr. Mitchell?

3 A. Yes. We received a very specific phone call in
4 reference to his activities that day. The vehicle he was
5 in, where he was going, what he was doing, who he was with,
6 the type car, who owned the car, very specific information.

7 Q. And was this the same person - Did your officers
8 believe this to be the same person who made that original
9 Crime Stopper's tip?

10 A. That's what they said.

11 Q. Now, are you familiar with the details regarding
12 that anonymous tip?

13 A. I did not receive the call but I'm pretty much
14 familiar with the call; pretty much everything that was
15 said, but I did not personally receive the call.

16 Q. Did based upon that information did you drive your
17 officers - What did you have your officers do?

18 A. I didn't. Lieutenant Ligon who's the supervisor on
19 the western side of the county was heading up this part of
20 the investigation. He had everyone move towards I85 in the
21 Blacksburg area and wait for the car to come back off the
22 interstate and in fact it did come back off the interstate.
23 They followed the car back to York County.

24 Q. And you participated in the traffic stop?

25 A. They had stopped the car. I was in the Rock Hill area

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-20-

1 I came up after the car was stopped but arrived shortly
2 thereafter. I arrived before Mr. Mitchell was arrested but
3 after the car stop.

4 Q. And where was the traffic - Where did the traffic
5 stop occur?

6 A. Past Moss Justice three or four tenths of a mile down
7 on the left is a neighborhood and Mr. Mitchell pulled into
8 that neighborhood on the left and pretty much parked in the
9 middle of the street.

10 SOLICITOR COLTON: I beg the Court's indulgence.

11 (PAUSE AT 11:16 A.M..)

12 Q. Commander Brown, when you arrived on scene were you
13 able to confirm the identity of the driver?

14 A. Yes. When I arrived on scene Lieutenant Ligon walked
15 over and talked with me and Ta Mitchell was driving and
16 Whitney McCray was on the passenger side.

17 Q. And tell us about your interaction with the driver
18 and Ms. McCray when you arrived on scene.

19 A. I arrived on scene Lieutenant Ligon walked by me and
20 talked to me briefly. He and I made the decision to go
21 ahead and arrest Mr. Mitchell for the traffic violation and
22 we had him out of the car and I had a conversation with
23 him.

24 Q. What traffic violation was he arrested on?

25 A. I believe it was left to center and speeding. I'm not

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-21-

1 sure. It was a uniform officer who actually stopped him.
2 I know they tried to stop him before Moss Justice. It was
3 several officers behind him. Speeding left to center I
4 believe if I'm correct is what I was told but I wasn't here
5 for the traffic stop.

6 Q. Were you able to determine who actually owned that
7 vehicle?

8 A. Yes. The vehicle belonged to Ms. McCleod. I believe
9 it was Sheika as Vivian. I know Vivian, I know the
10 mother of the owner of the vehicle off Leach Road.

11 Q. And was she present?

12 A. She was not at that time. She showed up later.

13 Q. And was she present when the decision was made to
14 place Mr. Mitchell under arrest for traffic violations?

15 A. No she was not present.

16 Q. And after Mr. Mitchell was arrested for the traffic
17 violations, what did you have your officers do?

18 A. He was arrested for the traffic violations, we had
19 Ms. McCray call and get the insurance information on the
20 car and we - after we arrested him we conducted an
21 inventory search of the vehicle.

22 Q. Ms. McCray was a passenger in the car?

23 A. She was a passenger in the car.

24 Q. And were there any other individuals on the scene
25 with possession of that vehicle?

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-22-

1 A. No. She did not own the car, she does not have a
2 driver's license and the owner of the car was not on the
3 scene so I instructed the officers to go ahead and call for
4 a tow vehicle, tow truck, and come tow the vehicle. Placed
5 Mr. Mitchell under arrest and then we placed Ms. - at that
6 time Mr. Mitchell was the only one under arrest and we ask
7 what vehicle - tow truck to come and tow the vehicle.

8 Q. And why did you ask for a vehicle tow truck to come
9 and two vehicles?

10 A. Mr. Mitchell was under arrest and Ms. McCray
11 couldn't drive the vehicle. We would not have released the
12 vehicle to her it's not her vehicle so we were going to tow
13 the vehicle at that point.

14 Q. And other than not having a driver's license would
15 you have otherwise released the vehicle to Ms. McCray?

16 A. No. She did not - She's not the owner of the car; we
17 would not have released the car to her.

18 Q. And is that subject to policy?

19 A. Yes. Unwritten procedures. We wouldn't release a car
20 to someone who on the passenger side who is not in control
21 of the vehicle who didn't own the vehicle.

22 Q. And she did not have a driver's license?

23 A. And she did not have a driver's license we couldn't
24 allow her to drive.

25 Q. This vehicle you mentioned you stopped at a road off

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-23-

1 of Highway 5; is that correct?

2 A. Yes. It's down from Moss Justice to the left.

3 Q. And did the vehicle pull over to your knowledge to the
4 side of the road?

5 A. It did but not right away. It could a pulled into
6 Moss Justice or by the Animal Shelter to the right. These
7 are large parking lots but he went on down and pulled into
8 a neighborhood on the left.

9 Q. And did the vehicle stop in its lane of traffic or
10 was it pulled over to the side where the vehicle could have
11 been secured on the side of the road?

12 A. It pretty much stopped in the lane of traffic a little
13 bit closer to the middle of the road. Just pulled - Turned
14 into a neighborhood and stopped.

15 Q. Can you explain what the towing policy is for the
16 Multi-jurisdictional Drug Enforcement Unit?

17 A. The towing policy if we arrest someone we call for the
18 wrecker on the list either the wrecker the driver can ask
19 for a particular wrecker service or we get the next wrecker
20 service on rotation and once we do that we also do a
21 standard inventory of the contents of the vehicle. It's a
22 procedure that I actually wrote back in 1999 after the
23 decision out of Florida about inventory policies.

24 Q. And why do you inventory that vehicle?

25 A. Well our policy is very clear and it's written it's

1 for anything, personal items that belong to the person who
2 owns the car, the people in the car, and for safety
3 reasons, dangerous instruments that type thing.

4 Q. What area of the vehicle do you search pursuant to
5 this inventory policy?

6 A. We searched the interior of the vehicle, the console,
7 glove compartment, the trunk area, the cargo area. We do
8 not go under the vehicle under the hood and that type thing
9 on our Inventory Policy.

10 Q. Did you policy specifically articulate that you can go
11 into unlocked containers?

12 A. Yes. Locked and unlocked containers such as brief
13 cases in the trunk or those type things.

14 Q. As well as the trunk and cargo area?

15 A. Yes. Inside the interior of the car and in the trunk,
16 cargo area. Some SUV's have a cargo area it includes that
17 particular area.

18 Q. And do you recall what if anything was found during
19 the inventory search?

20 A. Yes. When the inventory search of the vehicle in the
21 trunk area of the cargo area to the side where - This is a
22 1999 Honda from '99 through 2002 their all the same - it's
23 a little jack area to the right. Its one plastic knob you
24 turn it and it opens into the jack area. In that jack area
25 was a bag with a large amount of crack cocaine.

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-25-

1 Q. And was this - Did officers have to use screwdrivers
2 or otherwise tools to manipulate that area?

3 A. No. It's a part of the jack area of the cargo area
4 that you turn the knob and there it sat. We found money,
5 guns, oil, jumper cables, you name it. It's a storage
6 compartment in the cargo area that's made into the car.
7 It's not a hidden compartment. We always look in that
8 storage area when we do an inventory search.

9 Q. And by saying we found things like that, you mean in
10 prior inventory searches? Not in this particular case.

11 A. Yes. That's a common area to store drugs, guns,
12 money, personal items.

13 Q. And to your knowledge was there a jack in that storage
14 area?

15 A. No there was no jack in the area. It's a little
16 compartment within the trunk and there was no jack. It was
17 just a bag with the drugs in it.

18 Q. Commander Brown, I show you what's been marked for
19 identification purposes State's Two, Three and Four.

20 Can you describe with specific reference to each
21 exhibit number what we're seeing in those pictures?

22 A. State Exhibit Number Two would be the trunk of the
23 vehicle and the contents of the trunk of the vehicle once
24 you open the trunk.

25 Q. And State's Three.

1 A. State's Exhibit Three is when - it's the jack area of
2 the little small area down where this handle fits and the
3 jack goes into the compartment to the right. On the floor
4 of the trunk is the little door that fits up in there.
5 They're all pretty much the same from '99 through 2002 so
6 that's the jack compartment area without a jack.

7 And State's Exhibit Number Four is just a close up
8 of the jack compartment this - there in the cargo area.

9 Q. And to your knowledge was the jack anywhere in the
10 vehicle?

11 A. It's some contents in the trunk. I don't remember
12 seeing a jack. I do remember seeing the compartment area
13 and the large bag which is placed inside the compartment
14 area.

15 Q. And in addition to having viewed this vehicle, do you
16 have - have you ever examined cars from this make and model
17 years how are the cars and the jack areas of them?

18 A. Yes. Honda cars a very popular car and this year
19 model is real popular too but we always look in this jack
20 compartment because we found money, guns, personal items in
21 this compartment. The jack is oddly enough the jack is
22 normally not in that compartment. It's used for other
23 things.

24 Q. What happened when the Drug Unit - Do you remember
25 who recovered the drugs?

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-27-

1 A. Yes. Officer Jamie Faulkenberry seated here recovered
2 the bag and the drugs were in a bag.

3 Q. And what happened after the drugs were recovered?

4 A. We - We told Mr. Mitchell he was also charged with the
5 drugs and before that when I called for a wrecker service
6 he was - ask me tow the vehicle to his house at least three
7 different times but at that point we cancelled the wrecker
8 service and placed him into the back seat of the patrol car
9 and charged - and went ahead and arrested Ms. McCray and
10 about right at almost at the same time, but right after we
11 found the drugs, the owner of the vehicle pulled up.

12 Q. Let me back you up for one minute because you
13 mentioned that Mr. Mitchell started to ask about where the
14 vehicle was gonna be towed. Was that after he was arrested
15 for the traffic violations?

16 A. Yes. As soon as we cuffed him up for the traffic
17 violation he - I told 'em to go ahead and call a wrecker
18 and he ask me could the vehicle be towed to his house. I
19 told him that would be up to the wrecker service and he ask
20 again - actually I think he ask about three times if the
21 vehicle could be towed to his house and that was before we
22 found the drugs. And once we found the drugs at that point
23 I told 'em to go ahead and cancel the wrecker service; we
24 would have to look into the possibility of seizing the
25 vehicle through asset forfeiture at that point. But then

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-28-

1 the owner drove up and had Mr. Mitchell's - I know Mr.
2 Mitchell's mother Bobbie she was in the - She and I believe
3 her husband Ronald and the owner Ms. McCleod was - drove up
4 at that time. I didn't know how they - When Ms. McCray
5 called and ask about insurance information at that point
6 she told 'em where we were at so they came to the scene.

7 Q. Let me back you up for one minute. What did you
8 think? Was that normal, a normal response from somebody
9 who had been pulled over for a traffic violation to ask you
10 about the vehicle being towed?

11 A. The owner will sometimes ask to have it towed to their
12 home but he's not even the owner. He was asking that the
13 vehicle be towed to his house. And I told him to go the
14 wrecker service but my intention was not to let him tow the
15 vehicle to his house; he didn't own the vehicle so that's
16 not common for people to ask the vehicle to be towed to
17 their house when they don't own the vehicle.

18 Q. At this point Mr. Mitchell and Ms. McCray are under
19 arrest and you found narcotics. And Ms. McCleod the owner
20 of the vehicle shows up after that?

21 A. Yes she shows up. She was with Ms. - I think its
22 Bobbie Mitchell which is Ta's mom. They were very
23 pleasant, very nice. I spoke to them. Ta's mother ask me
24 what was going on. I told her what we just - what we had
25 found and then Ms. McCleod was in the back seat and I ask

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-29-

1 her - told her technically her car was subject to seizure
2 until we did a little bit more investigation to make sure
3 it really was her car and who it belonged to and all that
4 and I ask her could we keep her car over night at Moss
5 Justice and if we could drive it up the street and she that
6 we could and I told her just to meet me at Moss Justice the
7 next day about two o'clock and we would talk about her car.
8 So she verbally gave consent for us to keep her car and
9 drive her car to Moss Justice.

10 Q. And the next day to your knowledge did Ms. McCleod
11 show up in reference to the vehicle?

12 A. She did.

13 Q. And was the vehicle - Did she agree to have the
14 vehicle processed?

15 A. She did. She agreed to have the vehicle processed
16 and she made a statement about the contents of what was in
17 the vehicle and the contents of what should not have been
18 in the vehicle.

19 Q. And was the written statement - Was that a written
20 statement or an oral statement?

21 A. It was a written statement. She gave a written
22 statement about the contents of her car.

23 Q. And was the consent written or oral? The consent to
24 have the car processed.

25 A. I believe it was in the written statement. We also

COMMANDER MARVIN BROWN - DIRECT BY SOLICITOR COLTON
IN CAMERA

-30-

1 got consent to process her vehicle.

2 Q. Commander Brown, I know you didn't receive the
3 specific anonymous tip based upon the information though
4 you have in regarding that and what your officers told you
5 they observed and you observed yourself on scene, did you
6 feel you had definite probable cause to search that
7 vehicle?

8 A. I did. I know Ta's family, I knew his grandmother
9 just passed, I had been doing a background investigation on
10 him and his house based on a confidential informant, the
11 information which was five days earlier based on everything
12 even though it was a anonymous tip in all the factors put
13 together my personal opinion was we had enough probable
14 cause to search the car but out of the abundance of caution
15 we went ahead and arrested him also on the traffic
16 violations and the car didn't even belong to him so, but,
17 yes I felt like we had probable cause at that point had I
18 before or probable cause to search a vehicle which
19 movability and all that yes the answer to your question I
20 felt like we had probable cause to search the vehicle.

21 Q. And you didn't seek a magistrate for searching his
22 vehicle?

23 A. I did not.

24 Q. Why not?

25 A. The vehicle was on the side of the road, we had the

COMMANDER MARVIN BROWN: DIRECT BY SOLICITOR COLTON
IN CAMERA
CROSS BY MR. LLOYD - IN CAMERA

-31-

1 rules about the lesser expectations of privacy and the
2 mobility. The car didn't belong to him and then the owner
3 of the car showed up, you know, and she allowed us to keep
4 the car afterwards. After we found the drugs the owner
5 showed up.

6 Q. And do you see Ortavious Mitchell in this courtroom?

7 A. Yes. He's seated to the right here beside Mr. Lloyd.

8 Q. And that's the individual also known as Ta you
9 referenced here during your testimony?

10 A. Yes. Ta Mitchell is what we know him by.

11 Q. Thank you.

12 SOLICITOR COLTON: Please answer any questions the
13 Defense counsel may have.

14 CROSS-EXAMINATION - IN CAMERA

15 COMMANDER MARVIN BROWN BY MR. LLOYD:

16 Q. Commander Brown, let me ask you, where were you when
17 you received the information that Mr. Mitchell's car had
18 been pulled over?

19 A. I was approaching the scene. I was kept informed
20 by Lieutenant Ligon what was going on and they were
21 following the car back from Blacksburg. I was in the Rock
22 Hill area so I left and I was coming back toward York. I
23 got there about the time the car was stopped or shortly
24 thereafter.

25 Q. And had you instructed Lieutenant Ligon to pull him

1 over whenever he was able to identify the car?

2 A. No. Lieutenant Ligon has been around a long time. He
3 knew. I didn't instruct him to pull the vehicle over. He
4 - The plan was when Mr. Mitchell got back in York County
5 and we felt comfortable he was in York County and once we
6 observed traffic violations to give us the probable cause
7 to stop the vehicle then the plan was to stop the vehicle.

8 Q. Okay. What if he had not made any traffic violations
9 were you going to stop the vehicle then?

10 A. We had not got to that point but my opinion would be
11 yes we would have stopped the car. If he committed no
12 traffic violations all the way to Leach Road I would have
13 pulled up behind him on Leach Road and got out and did a
14 consensual encounter. We probably would not have stopped
15 the car in a traffic stop. We probably would have followed
16 him all the way to Leach Road but at some point he would
17 have been approached on Leach Road or stopped but he did
18 commit traffic violations.

19 Q. And you would have followed him to Leach Road and
20 made a consensual encounter because you didn't have
21 probable cause to search the vehicle at that point.

22 A. No.

23 Q. Right?

24 A. The - We probably - We had not made that decision. We
25 probably would have followed him to Leach Road for the

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-33-

1 element surprise that in for a high speed chase so that
2 when he stopped we could get out with him. We follow
3 people quite often to a convenient store and that type
4 thing. No, my personal opinion is we had plenty of
5 probable cause to stop and search the vehicle but we also
6 had traffic violations so we had - I felt like we had it
7 two fold.

8 Q. Okay. And we're gonna go back to that probable cause
9 link that you had. Let's go back to the CI that you had.

10 A. Okay.

11 Q. . You said you'd known the CI for about a year?

12 A. About a year.

13 Q. You said they made about one buy for you?

14 A. And plus give us information on several other persons
15 but as far as I can remember the CI had made one buy which
16 the buy can be drugs in a second buy.

17 Q. Did you keep a case jacket or CI file on this
18 individual?

19 A. Yes we do.

20 Q. The CI ever give you information what wasn't correct?

21 A. No. No.

22 Q. When did the CI tell you that he saw Mr. Mitchell
23 with - around any crack cocaine or powder cocaine?

24 A. Sometime towards the end of July 2011.

25 Q. Okay. Did the CI tell you how he came to see that?

1 A. The CI said that they had made many purchases of crack
2 cocaine on Leach Road and was pretty familiar in that they
3 called out the names of pretty much everybody on Leach
4 Road. Knew Ta by Ta, knew Gary by Gary and knew Kenny
5 by Kenny so the CI was very familiar with the persons that
6 live on Leach Road.

7 Q. But when did the CI see Mr. Mitchell with cocaine?

8 A. I'm not sure when the CI actually saw Ta Mitchell
9 with a large amount of cocaine.

10 Q. Based on this CI did you do any surveillance on Mr.
11 Mitchell's house?

12 A. I did.

13 Q. Okay. Well you said you rode by and got some license
14 tags; is that right?

15 A. You cant' do surveillance, it's tough to do
16 surveillance on Leach Road at Mitchell's house but yes.
17 Now I didn't do surveillance. I rode down I guess
18 depending on how you define surveillance. I did go down
19 late at night after midnight and early in the morning and
20 looked at the residence to get some tag numbers. To
21 actually sit there and watch traffic come and go I did sit
22 at the home for the elderly and watch traffic go in and out
23 but it was very hard to determine exactly which house they
24 were coming from.

25 Q. So you didn't see any suspicious activity at the

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-35-

1 Mitchell house?

2 A. No there was a lot of traffic in and out so since we
3 couldn't do the surveillance like I wanted to our next step
4 was to start making drug buys off Leach Road. That was
5 another approach.

6 Q. Okay. Commander Brown, you're talking about Leach
7 Road.

8 A. Yes, sir.

9 Q. I'm talking about Mr. Mitchell's house.

10 A. When you go down Leach Road - -

11 Q. But let's separate those two.

12 A. Go ahead.

13 Q. Okay. I just want to make sure. I'm talking about
14 Mr. Mitchell's house, not the general Leach Road area okay.

15 Did you do any surveillance on Mr. Mitchell's house
16 to see whether or not there was a large amount of traffic
17 coming in and out of his house?

18 A. When you come to the end of Leach Road, you have to
19 understand Mr. Mitchell's house is about four or five
20 residences and they're very close and it's community
21 parking for the most part. So when you pull down and park
22 you might - somebody might park in front of one residence
23 and walk down to Mr. Leach's house. The answer to your
24 question is, there is a lot of traffic coming in and out
25 parking in front of Mr. Mitchell's house but I could not be

1 honest with you to say they were coming in and out of Mr.
2 Mitchell's house.

3 Q. So the answer is you never saw any unusual amount of
4 traffic coming in and out of his house?

5 A. In and out of his house I did not.

6 Q. Did you see - Did you put up and pole cameras for
7 example to watch his house?

8 A. No we didn't put up any pole cameras.

9 Q. So at the time the CI gave you that information,
10 that's all you had; is that right?

11 A. No.

12 Q. Regarding Mr. Mitchell.

13 A. No. I've gotten other people calling Mr. Mitchell.
14 We had a Crime Stopper on Mr. Mitchell. We had a CI
15 information on Mr. Mitchell and we in fact had intentions
16 on sending a CI down to Leach Road to try to make buys in
17 order to work our way to Mr. Mitchell.

18 Q. Okay.

19 A. But other people had called on Mr. Mitchell. Not just
20 the CI; not just the crime stoppers but others had called
21 on Mr. Mitchell.

22 Q. Okay. Anonymous people?

23 A. Yeah a couple. Over a period of time people were
24 calling on Ta about his motorcycles, SUV's, activity going
25 on on Leach Road. We make a lot of arrest down that way

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-37-

1 people that we've arrested.

2 Q. How long ago did they call on Mr. Mitchell, these
3 other folks?

4 A. Probably anywhere six months prior maybe.

5 Q. In those six months did you do any surveillance on
6 Mr. Mitchell's house to determine whether or not it looked
7 like he was selling drugs out of his house?

8 A. We made some buys off Leach Road from other persons
9 but to answer your question is that we have not made any
10 buys directly out of Mr. Mitchell's house.

11 Q. Commander Brown, that's not my question.

12 A. Okay.

13 Q. In the six months after all these other people called
14 about Mr. Mitchell, did you do any surveillance to see if
15 it even looked like to you Mr. Mitchell was selling drugs
16 out of his house?

17 A. We did go down Leach Road; we got addresses, tag
18 numbers, but we could not do direct surveillance on his
19 house in general. We arrest about a hundred and fifty
20 people a month so Mr. Mitchell was on our list but not like
21 Number One on our list.

22 Q. And based on your CI you had the impression your
23 CI had access to Mr. Mitchell's house?

24 A. The CI clearly told us the CI could buy from Mr.
25 Mitchell's relatives and had seen him with drugs but

1 couldn't buy from him directly because the CI didn't buy a
2 large enough amount. Our intention was is to buy from
3 people who would then roll on Mr. Mitchell or increase the
4 amount of drugs we bought but Mr. Mitchell was the target
5 of these buys.

6 Q. But your CI told you that Mr. Mitchell - he'd seen Mr.
7 Mitchell with large quantities of drugs; is that right?

8 A. At least one time.

9 Q. Okay. Did you ever wire up your CI and have him
10 either approach Mr. Mitchell or go with somebody else while
11 they were purchasing cocaine from Mr. Mitchell?

12 A. That was the purpose of the buy on July 29th I believe
13 was to go down Leach Road wired up with a video cam and
14 make a buy hoping to see Mr. Mitchell and others but when
15 the confidential reliable informant made a phone call the
16 person was not on Leach Road, was on Wild Cat so we were
17 forced to go to Wild Cat Creek Road and make the buy that
18 time in an effort and we would go back to Leach Road later.

19 Q. Okay. Commander Brown, is your answer to my question
20 no?

21 A. What's your question again? I thought I answered it.

22 Q. Did you ever wire up your CI to either go try to
23 purchase from Mr. Mitchell or to accompany somebody else
24 who was able to purchase from Mr. Mitchell?

25 A. The answer to your question is yes we wired up the

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-39-

1 CI to go buy from a person that was directly tied to Mr.
2 Mitchell but was unable to go to Mitchell directly unless
3 we would a just got lucky.

4 Q. Now was it tied to Mr. Mitchell; related to Mr.
5 Mitchell?

6 A. Both. Lived on - We wired the informant with the
7 intention of going to Leach Road to buy from that person
8 hoping that Mr. Mitchell would be there and tie up Mr.
9 Mitchell in the whole. That was the purpose to go to Leach
10 Road but when the CI, the confidential reliable informant
11 made the phone call the informant was redirected to another
12 street. The intention was to go to Leach Road wired up to
13 buy from Mr. Mitchell or a person working for Mr. Mitchell.

14 Q. Well your intention was to go buy from Mr. Mitchell
15 was it because your CI had a contact with Mr. Mitchell;
16 isn't that right?

17 A. Yes. The intention was to buy from a relative of
18 Mr. Mitchell hoping that Mr. Mitchell would be there and be
19 involved in the negotiations.

20 Q. Had your CI had any conversation with Mr. Mitchell
21 where he was negotiating with Mr. Mitchell to buy drugs?

22 A. No, the CI was to negotiate with a relative of Mr.
23 Mitchell.

24 Q. Did the relative tell the CI that Mr. Mitchell would
25 be there with him when he sold the CI drugs?

1 A. No but Mr. Mitchell had been there prior when the CI
2 was down there buying from other relatives.

3 Q. So the CI was saying well Mr. Mitchell was on - what
4 is it, Leach Road?

5 A. Uh-huh.

6 Q. Okay. Mr. Mitchell was on Leach Road when you bought
7 some drugs before?

8 A. Before yes. Yes at Mr. Mitchell's house.

9 Q. He was at Mr. Mitchell's house?

10 A. If you'd been out on Leach Road you'd know it was a
11 community parking. People gather out in front of the
12 houses not out of Mr. Mitchell's house but at Mr.
13 Mitchell's house. The people standing around out front
14 we'd done a raid there recently and arrested three they
15 stand around outside with the drugs hidden under the grills
16 and that type thing. The CI bought from that community
17 parking area in front of Mr. Mitchell's house in the past.

18 Q. The parking area happens to be in front of Mr.
19 Mitchell's house; is that right?

20 A. That's correct. That what he - Yes.

21 Q. It ain't Mr. Mitchell's property is it?

22 A. No but he parks there like everyone else.

23 Q. Its not his house is it?

24 A. His house is there along with the other -

25 Q. His house isn't in the community park is it?

✓ COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-41-

1 A. The houses is about five residences and everybody
2 parks out front; the drugs are sold out front.

3 Q. Does Mr. Mitchell own the park?

4 A. You talking about where they park?

5 Q. Yes, sir.

6 A. He parks - They all park there. I don't know who
7 owns the actual parking lot.

8 THE COURT: You don't know then.

9 A. I don't know.

10 Q. Mr. Mitchell have a house there on that park?

11 A. He lives with his parents.

12 Q. Across the street?

13 A. It's not a park. It's a parking area. He lives
14 there with his parents.

15 Q. Across the street?

16 A. Across the street from?

17 Q. From this parking area?

18 A. No. It's out in front of the houses. You pull down
19 and it's like a dirt area where people park in front of all
20 these houses. It's like a cul-de-sac and all these houses
21 in a cul-de-sac and people park. Some of them pull up
22 right beside their trailers but some of them park right out
23 front. We just were there the other day. It's a parking
24 area, a dirt area, where people park to all the houses.
25 The people from Mr. Mitchell's house, Ms. Mitchell's house,

1 would park in front of their house.

2 Q. And that's where your CI purchased cocaine from a
3 previous occasion?

4 A. No. Yes. The control buy was not there. The control
5 buy was at a different - the CI said that they had
6 purchased crack cocaine in that area and we made several
7 buys in that area over the years - in that parking area
8 yes.

9 Q. From somebody other than Mr. Mitchell?

10 A. From somebody other than Mr. Mitchell.

11 Q. Now on August 3rd, 2011 Lieutenant Ligon was waiting
12 off the interstate for a car that matched the description
13 of the anonymous tip; is that right?

14 A. That's my understanding.

15 Q. Who was with Lieutenant Ligon?

16 A. Officer Jamie Faulkenberry and Officer Lori Campbell
17 and Officer Lee Allen. I think they had a patrol officer
18 on standby in York County. They were all up around
19 Blacksburg, 85 area. I was not there. This is my
20 understanding they were waiting on the Honda car to come
21 off the interstate.

22 Q. Now earlier in an answer to Ms. Colton's question when
23 we were talking and lets go back to the CI in just a
24 moment. When we were talking about the CI, you said well
25 at that point you were short on information to obtain a

✓ COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-43-

1 search warrant. Do you recall that testimony?

2 A. To go inside his house.

3 Q. You were short on information from the CI to go inside
4 Mr. Mitchell's house. Is that your testimony?

5 A. Yes. That was before all this other information
6 came in.

7 Q. And we'll get there.

8 A. Yes.

9 Q. But at the point that the CI gave you information
10 you didn't believe you had enough probable cause to get a
11 search warrant to go to his house; is that right?

12 A. My point, my intention was to try to make a - -

13 Q. Commander Brown, you are allowed to answer or explain
14 your answers but this is a yes and no question. You just
15 testified to Ms. Colton that at that point with the
16 information you had one anonymous tip from Crime Stopper's;
17 is that right? And one conversation with the CI where he
18 said he had seen ---

19 A. Correct.

20 Q. --- Mr. Mitchell with cocaine ---

21 A. Right.

22 Q. --- or seen him around cocaine.

23 A. Right.

24 Q. And you said in response to her question at that
25 point you felt that you were short on information to get a

1 search warrant for his house; is that right?

2 A. Correct. For his house.

3 Q. Now on August the 3rd he - Mr. Mitchell to your
4 knowledge gets off the interstate; is that right?

5 A. Yes.

6 Q. Anything illegal about that?

7 A. No.

8 Q. Mr. Mitchell happened to be in what you later find
9 out is his cousin's car; is that right?

10 A. Yes.

11 Q. Anything illegal about borrowing his cousin's car?

12 A. No.

13 Q. Lieutenant Ligon did not initiate the traffic stop
14 on Mr. Mitchell; is that right?

15 A. He was - He had a traffic officer do the stop.

16 Q. Okay. He's got blue lights though. Right?

17 A. He does have blue lights but the traffic officer has
18 a camera and Mr. Ligon does not.

19 Q. Now do you have any idea how long they had been on
20 the side of the road with the traffic stop by the time you
21 arrived?

22 A. Not long at all cause they were following the car
23 when I left Rock Hill just a few minutes, a couple of
24 minutes.

25 Q. Were you aware that prior to your arrival Ms. McCray

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-45-

1 was seated in the car along with Mr. Mitchell and had
2 already called the owner of the car to locate the insurance
3 card within the car?

4 A. I was not aware of it at the time; I was aware of it
5 shortly thereafter yes cause that's --

6 Q. And that all happened before you got there; isn't
7 that right?

8 A. No. She was still seated in the car when I got
9 there. He was standing outside the car. He was not under
10 arrest. She was still in the car.

11 Q. That's not my question. My question is, Ms. McCray
12 had already made the call to the owner of the car about the
13 insurance information before you arrived; is that right?

14 A. I don't know. I don't know.

15 Q. Now you explained to Ms. Colton about your policy
16 regarding number one inventory searches. What is your
17 policy regarding impounding of vehicles?

18 A. Impoundment?

19 Q. Yes, sir.

20 A. If we will tow a vehicle we call the tow service and
21 we do an inventory policy. If we're gonna seize the
22 vehicle and it's close by, sometimes we will drive the
23 vehicle to the agency to save us a tow bill. But when we
24 tow a vehicle we fill out a tow sheet. We list the
25 valuables on the tow sheet and we follow the inventory

1 policy.

2 Q. Do you have a written inventory policy?

3 A. I do.

4 Q. Do you have a written impoundment policy?

5 A. We have a written tow sheet where we fill out the
6 tow'sheet.

7 Q. My question is do you have a written policy that
8 instructs officers when they're gonna impound a vehicle or
9 when they're gonna allow an owner to call somebody to pick
10 up the vehicle or when they're gonna allow the driver to
11 have it towed back to their residence for example?

12 A. No we don't have a written policy on impoundment. We
13 have a written policy on inventory and we have a tow sheet
14 that we fill out.

15 Q. And prior to your arrival are you aware that Ms. -
16 that Deputy Estep I believe, is that how she pronounces her
17 name?

18 A. I'm not sure. I think so.

19 Q. Estep. Are you aware that she had a conversation
20 with Ms. McCray about - I'm sorry - with Mr. Mitchell about
21 having the car towed?

22 A. I don't know. I had a conversation about having the
23 car towed with him.

24 Q. And you're not aware as to whether or not she had
25 already had that conversation?

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-47-

1 A. . No.

2 Q. And when you arrived where you aware as to whether or
3 not the owner was on the way?

4 A. No I was not aware. The owner was not there when
5 I arrived. I arrived there moments after - -

6 Q. My question is were you aware that whether or not the
7 owner was on the way?

8 A. The answer is I was not aware if the owner was on the
9 way. The owner was not there when I arrived.

10 Q. When you arrived were you aware as to whether Ms.
11 McCray's driving status was whether she had a driver's
12 license or permit or anything?

13 A. Not at that time.

14 Q. And prior to finding any of that out, you had already
15 made a decision when you arrived that Mr. Mitchell was
16 going to be placed under arrest for these traffic
17 violations - -

18 A. After discussing it with Lieutenant Ligon absolutely
19 we agreed that we were gonna arrest him and she did not own
20 the car that the owner of the car was not present so the
21 car was not gonna be released to her. Lieutenant Ligon and
22 I discussed this. When you watch the video he left the
23 vehicle and came back to me. He and I discussed this. Mr.
24 Mitchell was placed under arrest and the vehicle was gonna
25 be towed.

1 Q. And he was placed under arrest so that you can
2 conduct a search of the vehicle; isn't that right?

3 A. He was placed under arrest and we intended to do an
4 inventory search. Not a probable cause search but an
5 inventory search.

6 Q. Okay.

7 A. But we also felt like we had probable cause.

8 Q. Okay. Well let's talk about the probable cause.

9 A. Okay.

10 Q. From the time he gets off the interstate what does
11 he do that raises probable cause? Does he do anything
12 illegal other than the traffic violations?

13 A. The fact that we received a anonymous call and
14 everything that he did coming off the interstate driving a
15 Honda car going back toward York County at the time of day
16 all of that was corroborated from the anonymous tip that he
17 would - everything else was correct about the drugs plus
18 the investigation we had done prior on Mr. Mitchell so you
19 ask me anything he done by himself was illegal no but based
20 on a anonymous tip everything was falling right in line of
21 what the tip had said. The tipster had said about where
22 they went, what time they coming back, and the car they're
23 driving, who's car it belonged to, the tag number, the
24 whole works.

25 Q. Commander Brown, have you ever gotten a search warrant

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-49-

1 based on an anonymous tip?

2 A. No not by itself. We had a lot more than that in
3 this case.

4 Q. So the only thing that you had from the time Mr.
5 Mitchell gets off the interstate and the time he's pulled
6 over by Deputy Estep, one anonymous call back in July was
7 it?

8 A. July 11th was the Crime Stoppers.

9 Q. Crime Stoppers. Your CI's information and the
10 August 3rd anonymous tip?

11 A. The CI's information, the fact that I personally
12 drove up and got his tag numbers, ran his driver's license
13 through to see if he was suspended or not, and back during
14 July to verify that he was - drove a - I think it was a
15 dark blue Tahoe, the motorcycles, the mobile home, the
16 address of the home, that's the information the
17 confidential reliable informant gave me.

18 That's also information that came from Crime Stoppers
19 so I verified some of that information. Then the
20 Confidential reliable informant talked about Ta Mitchell
21 and his drug dealings and then we were able to make a buy
22 from a relative of Mr. Mitchell's then we go the
23 information a second time on that particular day, very
24 specific information, very specific about what all was
25 gonna happen that day.

1 Q. Commander Brown, ---

2 A. But putting it all together the totality --

3 Q. --- does the anonymous tip on August the 3rd it gave
4 you the kind of car he was gonna be driving; is that right?
5 Mr. Mitchell.

6 A. Yes.

7 Q. That was the information in the anonymous tip?

8 A. Officer Lee Allen got that information. I didn't get
9 it specifically but my understanding is yes the type car he
10 was driving.

11 Q. Anything illegal about driving that - Was it a Honda?

12 A. It's a 1999 Honda Accord.

13 Q. Anything illegal about driving that Honda Accord?

14 A. Not by itself but you ---

15 Q. Okay. But that's my question.

16 A. --- got the totality of circumstances.

17 Q. My question is there's nothing illegal about being
18 in a Honda Accord?

19 A. Except he had two hundred and nineteen grams of crack
20 in the trunk.

21 THE COURT: Well, well --

22 A. Honestly.

23 THE COURT: I know. We'll move along. I'm familiar
24 with you've got the totality of circumstance situation but
25 I think we'll move quicker, he's asking specific questions

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-51-

1 so let's just answer those.

2 A. Yes, sir.

3 Q. The anonymous tip also indicated that he would be
4 coming back on Highway 5; is that right?

5 A. I don't know. That's my understanding but I'm not
6 sure.

7 Q. Nothing illegal about driving down Highway 5 is it?

8 A. No not if you don't commit any violations.

9 Q. Did the anonymous tip other than say hey he's gonna
10 have drugs in the car, did he predict any other criminal
11 behavior or suspicious behavior?

12 A. I didn't receive the tip. It did talk about drugs.

13 Q. Well you're aware of the tip aren't you?

14 A. Yeah I'm aware of the tip. The tip talked about
15 trafficking an amount of drugs.

16 Q. Somebody told you about the - one of your
17 officers told you about what the tip had said didn't they?

18 A. Yes but not - I'm - Not in great detail. I don't
19 remember exactly everything. I don't want miss something
20 that the tip said cause I didn't take it myself. Yeah the
21 tip was about the car, destination, time of day, who was in
22 the car, that type information yes.

23 Q. Anything illegal about any of the information that
24 the tip gave you?

25 A. Other than drugs in the car.

1 Q. Which you wouldn't know unless you do the search; is
2 that right?

3 A. I'm not - Based on personal knowledge correct.

4 Q. Anything observable that the tip told you none of that
5 was illegal. Right?

6 A. Not by itself I agree.

7 Q. Now you indicated that Mr. Mitchell could have had
8 the car towed; is that right?

9 A. I'm not sure what you're - -

10 Q. Pursuant to your impoundment policy Mr. Mitchell could
11 have had the car towed?

12 A. We were gonna have the car towed.

13 Q. Okay.

14 A. Maybe I'm missing something. I told - -

15 Q. Under your impoundment policy does Mr. Mitchell as
16 far as you knew he was in the car legally. Right?

17 A. Yes. He --

18 Q. The car hadn't been reported stolen?

19 A. He could have picked the wrecker of his choice, I
20 think that's what you're asking, or we called the next
21 wrecker on the list.

22 Q. Now you said pursuant to your inventory search policy
23 you searched the interior of the car.

24 A. Yes, sir.

25 Q. And what are you looking for when you're doing an

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-53-

1 inventory search?

2 A. We're looking for personal items of value that belong
3 to the person and anything of safety that might cause harm.
4 Explosives, guns, that type thing.

5 Q. And you said it's not your policy to go under the hood
6 of a car for example.

7 A. Not on an inventory search.

8 Q. Are you aware whether or not your officers went under
9 the hood of the car?

10 A. Then once the drugs were found it changed from an
11 inventory search to a probable cause search at that time
12 everything would have been free game under the hood under
13 the - to answer your question I don't remember. I don't
14 know if they went under the hood.

15 Q. Do you know whether they went under the hood of the
16 car before the drugs were found?

17 A. I don't know.

18 Q. Now you said you normally would look where the jack
19 is; is that right? Under your inventory policy.

20 A. Not under cars with tires underneath and the jacks on
21 top but yes in a Honda car where the little cargo
22 compartment area is to - We always do that in the newer
23 Honda cars when you open the trunk you lift up and the
24 spare tires right there and they place items all around the
25 spare tire. So yes we always look in those type Honda

1 cars.

2 Q. And when you're talking about items, you're talking
3 about you gave examples to Ms. Colton you said drugs.

4 A. Money.

5 Q. Money.

6 A. Guns.

7 Q. Guns.

8 A. I keep oil and jumping cables in mine.

9 Q. / But those are the examples you gave to Ms. Colton; is
10 that right?

11 A. Yes.

12 Q. Okay. And that means you're looking for evidence
13 of a crime, not valuables that you want to make sure get
14 returned to the owner?

15 A. Money. Money is valuables that we get accused of
16 from time to time. Guns was something of safety reasons.
17 They also put drugs in there but money, jewelry, I can't
18 recall any jewelry lately, but money, guns, oil, jumper
19 cables, other valuables is placed in that little jack
20 compartment. It's very common on a Honda car.

21 Q. It's common for people just to store their goods in
22 the area where the jack is?

23 A. I do. I have a Honda car.

24 Q. What do you keep in there?

25 A. Tools, jumper cables, oil, jack.

COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-55-

1 Q. . In the same kind of Honda car?

2 A. No. I had a Honda car like that. My Honda car now
3 is what I keep in there.

4 Q. And we just saw pictures of that.

5 A. Uh-huh.

6 Q. You were able to keep tools and what else were you
7 keeping in there?

8 A. You ask me what people keep in their cars.

9 Q. No. I'm talking about this type of Honda.

10 I. That type Honda we found weapons and money and
11 personable items. It's a small jack area but we found
12 personal items.

13 Q. Look at Exhibits - Exhibits Three and Four.

14 First of all, did you have this type of Honda?

15 A. I did.

16 Q. You had that kind of Honda?

17 A. Yes, sir.

18 Q. What did you keep in that? You look at Exhibits
19 State's Exhibits Three and Four. What did you keep in that
20 area?

21 A. In that particular Honda I kept my jack.

22 Q. It would a fit tools in there?

23 A. In that particular Honda I did not. You ask me about
24 Honda car --

25 Q. This is a small shallow area isn't it?

1 A. Yes which very usually you can put a weapon or put
2 money in there.

3 Q. So at the time you made the decision to arrest Mr.
4 Mitchell, first of all, your intention once they made the
5 traffic stop was never to write a ticket; is that right?

6 A. No we wrote tickets. My intention was to conduct
7 the traffic stop and never allow Mr. Mitchell to leave in
8 that car that's correct. But to write traffic tickets I
9 think he was issued two traffic tickets.

10 Q. Right. But you weren't gonna write him a traffic
11 ticket and let him be on his way; is that right?

12 A. Oh, no, he was not gonna be allowed to go. He was
13 placed under arrest and put in handcuffs.

14 Q. So that you could do a search of the car; is that
15 right?

16 A. He was - He was placed in handcuffs cause we - That's
17 our policy when we transport people. We did an inventory
18 of the car after he was placed under arrest.

19 Q. But why wouldn't you do the search if you had
20 probable cause?

21 A. Two fold.

22 Q. Why didn't you do the search prior to arresting him?

23 A. Had he been the owner I would have ask consent and get
24 it three fold. I'd go as many different directions as I
25 can.

✓ COMMANDER MARVIN BROWN: CROSS BY MR. LLOYD - IN CAMERA

-57-

1 Q. My question again is, why didn't you go ahead and
2 conduct the search, as you said you had probable cause
3 prior to arresting him?

4 A. In making sure it's possible the answer is I try - If
5 I have a search warrant I often ask for consent and I try
6 to - I felt like we had probable cause but I also felt
7 like the inventory of the vehicle we could inventory the
8 vehicle and possibly inevitable discovery down the road
9 because the owner was very cooperative.

10 Q. And in fact Mr. Mitchell expressly denied permission
11 to search the vehicle; isn't that right?

12 A. Yes.

13 MR. LLOYD: I beg the Court's indulgence.

14 (PAUSE.)

15 Q. Commander Brown, let me ask you, you talked to Mr.
16 Mitchell on the side of the road about having the car
17 towed?

18 A. I did. He was standing in the door we talked about
19 his grandmother and I did tell him we would tow the car.

20 Q. Okay. Did he say tow the car to his house or did he
21 say tow the car to Leach Road?

22 A. I understood him to say tow it to his house.

23 Q. And you're aware that the owner of the car also lives
24 on Leach Road?

25 A. Yes.

1 Q. The owner of the car is a neighbor of Mr. Mitchell's;
2 isn't that right?

3 A. Maybe a relative. Yes. Yes.

4 Q. His cousin; is that right?

5 A. I think so.

6 Q. Okay. Now the individual that you said you arrested
7 based on the buy from the CI.

8 A. Uh-huh.

9 Q. Does he live on Leach Road?

10 A. He does.

11 Q. Where does he live at on Leach Road?

12 A. I'm not sure. It's not at Mr. Mitchell's house but
13 he lives on Leach Road.

14 Q. But you're positive he lives on Leach Road?

15 A. Absolutely one hundred percent. Before we arrested
16 him that day he gave us a Leach Road address.

17 Q. All right.

18 MR. LLOYD: No further questions.

19 THE COURT: Redirect?

20 SOLICITOR COLTON: No, Your Honor.

21 THE COURT: Okay. You can step down and have a seat.

22 COMMANDER BROWN: Thank you, Your Honor.

23 (WITNESS LEAVING WITNESS STAND.)

24 THE COURT: We're gonna take a break.

25 Just for planning purposes how many other witnesses

1 do you have on this issue?

2 . SOLICITOR COLTON: Three I believe, Your Honor, but
3 they should be short.

4 THE COURT: All right. We'll take a short about a ten
5 minute break.

6 MR. LLOYD: Thank you, Your Honor.

7 (COURT IN RECESS AT 12:05 P.M..)

8 (COURT BACK IN SESSION AT 12:20 P.M..)

9 THE COURT: Call your next witness.

10 SOLICITOR COLTON: Thank you, Your Honor.

11 Your Honor, can we - I just have a brief matter.

12 The former co-defendant is Ms. McCray; is one of our
13 witnesses' right now. There is some issue about whether
14 the co-defendant walked back - and I don't know cause I
15 wasn't there, I was in here - the co-defendant walked back
16 and tried to speak to her in the back hallway for the
17 circumstances and I realized I made my officers and Ms.
18 McCray aware of the sequester order and what that entails
19 and I wanted to bring it to the Court's attention because
20 the appearances are always problematic to anyone in the
21 courtroom or Mr. Mitchell what the sequester order entails.

22 MR. LLOYD: Your Honor, it's my understanding Ms.
23 McCray is not testifying in this suppression hearing. She
24 is Mr. Mitchell's girlfriend and the mother of his child.
25 They virtually live together. He was going back she's been

OFFICER LEE ALLEN: DIRECT BY SOLICITOR COLTON - IN CAMERA

-60-

1 very ill and he went back and tried to comfort her. She
2 has nothing to my understanding certainly from our side
3 it's my understanding she's not being called as a witness
4 in this suppression hearing.

5 SOLICITOR COLTON: Judge, I haven't made that
6 determination at this point. She may or may not be a
7 witness. At this point she's not.

8 THE COURT: Well he's checked on her. Let's keep them
9 apart then for this stage.

10 Call your next witness.

11 SOLICITOR COLTON: Thank you, Your Honor.

12 And, Your Honor, there are actually four witnesses but
13 two of them I think are gonna be very brief. The first
14 witness would be Lee Allen.

15 THE COURT: Stop right here and put your left hand
16 on the Bible and raise your right.

17 (WHEREUPON, LEE ALLEN, BEING
18 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 MADAM CLERK: Thank you, you may have a seat.

20 DIRECT EXAMINATION - IN CAMERA

21 OFFICER LEE ALLEN BY SOLICITOR COLTON:

22 Q. Mr. Allen, can you state your full name for the
23 record?

24 A. Douglas Wesley Allen, Junior.

25 Q. And where do you work right now?

OFFICER LEE ALLEN: DIRECT BY SOLICITOR COLTON - IN CAMERA

-61-

1 A. Currently for Sunbelt Rentals.

2 Q. Back in 2011 where were you employed?

3 A. Clover Police Department. I was assigned to the
4 York County Multi-jurisdictional Drug Enforcement Unit.

5 Q. And specifically the month of July and August of 2011
6 were you part of the Multi-jurisdictional Drug Enforcement
7 Unit?

8 A. That's correct.

9 Q. And did you - How long have you been a police officer
10 at this time?

11 A. Nearly five years.

12 Q. And were you involved in the investigation of
13 Ortavious Mitchell?

14 A. Yes.

15 Q. And what point in time did you first become involved
16 in this investigation?

17 A. On the morning of the incident. I can't remember the
18 dates exactly. If you have the summary I could possibly
19 look through them.

20 Q. Would looking at your summary refresh - Did you write
21 it into the summary?

22 A. Correct yes.

23 Q. At the time you were the case agent?

24 A. Yes.

25 Q. And in looking at that summary would refresh your

1 recollection?

2 A. Yes. On the morning or early afternoon on August 3rd,
3 2011 I received a phone call from someone that wanted to
4 remain anonymous. They informed me right away that they
5 also had called in a Crime Stopper's tip in the month of
6 July. They said that they had knowledge that a person
7 named as Ta Mitchell would be traveling to Anderson, South
8 Carolina and they would be going to purchase a large
9 quantity of crack or cocaine. They told me that they would
10 be traveling on Highway 5 when returning home from Anderson
11 to Leach Road. And they said that Ta would be in a tan
12 four-door Honda belonging to a Ms. Shaniqua McCleod and
13 that if the tag was run it should come back to a residence
14 on Leach Road. They said that Ta would be arriving at his
15 residence on Leach Road with the dope referring to the
16 crack or the cocaine sometime later that evening.

17 Q. Did you convey that information to the other officers
18 in the DEU and your supervisors?

19 A. Yes I did.

20 Q. And what did you and your fellow officers do in
21 response to receiving that information?

22 A. We traveled out to a location in the area on Highway
23 5 and which was the route from 85 to Highway 5 we believed
24 that the subject might be traveling and awaited in the area
25 to see if we could spot the vehicle coming back.

OFFICER LEE ALLEN: DIRECT BY SOLICITOR COLTON - IN CAMERA -63-

1 Q. And you received this - You received this information
2 prior to even going out and initiating this investigation
3 on this particular day.

4 A. Correct. I did not have any knowledge there was a
5 Crime Stopper's tip until the caller informed me that he
6 had been the one to place it.

7 Q. And were you with Lieutenant Ligon up at Blacksburg on
8 Highway 5?

9 A. Lieutenant Ligon was just across the border in
10 Blacksburg. I would have stayed on our side of the line on
11 Highway 5.

12 Q. Where were you on Highway 5?

13 A. Somewhere - I was in a church parking lot. I'm not
14 sure exactly where on Highway 5 but I was in a church
15 parking lot down past where Highway 5 would meet - I'm
16 sorry, Highway 55 would meet Highway 5 somewhere in that
17 area.

18 Q. Okay. And did you see the defendant driving the
19 vehicle?

20 A. Yes.

21 Q. Did you - Tell me about what you saw, what you
22 observed about the defendant driving the vehicle. This is
23 prior to him being stopped on Highway 5.

24 A. Okay. Well when I realized - What I saw was
25 Lieutenant Ligon advised us he had spotted a vehicle

1 matching the description we were looking for. I waited to
2 see a tan Honda pull by me followed by Lieutenant Ligon. I
3 followed in the surveillance at that time.

4 Q. Were you behind Lieutenant Ligon or were you in front
5 of Lieutenant Ligon?

6 A. I was well behind.

7 Q. And ultimately was this vehicle stopped by law
8 enforcement officers?

9 A. Yes.

10 Q. Do you know who the vehicle was stopped by?

11 A. I believe Deputy Estep with the Sheriff's office.

12 Q. And what was your participation in that traffic stop?

13 A. At one point early in the traffic stop I believe I
14 approached the car from the rear at that point Deputy Estep
15 I believe was engaging with the driver. I walked back
16 towards my car and later was handed identification to run
17 to check names and addresses and warrants, things like
18 that.

19 Q. The following day did you meet with the owner of the
20 vehicle?

21 A. I did.

22 Q. And do you recall what the owner of the vehicle's
23 name was?

24 A. I believe Ms. McCleod.

25 Q. Okay. And did you ask her for written consent to

OFFICER LEE ALLEN: DIRECT BY SOLICITOR COLTON - IN CAMERA -65-

1 search - to process that vehicle?

2 A. Yes.

3 Q. Did you - Did she provide you with a written statement
4 regarding now Mr. Mitchell and Ms. McCray came to be in
5 possession of that vehicle?

6 A. I know she gave me a statement from memory. I believe
7 there was also a written statement that she gave me as
8 well. I know she told me that the day of the arrest that
9 Mr. Mitchell told her that his truck was over heating and
10 that his car had a flat tire and that's why he needed to
11 borrow her car.

12 Q. After the arrest of Mr. Mitchell, on August 4th did
13 you serve as the affiant for an application for a search
14 warrant?

15 A. Yes I did.

16 Q. And did you obtain a search warrant for Mr. Mitchell's
17 house - home?

18 A. Yes.

19 Q. Did you include all the information that you -

20 I don't have any further questions for Mr. Allen. I'm
21 sorry.

22 THE COURT: Cross?

23 MR. LLOYD: Thank you, Your Honor.

24 CROSS-EXAMINATION - IN CAMERA

25 OFFICER LEE ALLEN BY MR. LLOYD:

1 Q. Mr. Allen, on August the 3rd you received the
2 anonymous crime or was it a Crime Stopper's tip but
3 it was an anonymous tip?

4 A. Yes, sir.

5 Q. And you said during that conversation is when the
6 caller told you he had called back in July?

7 A. He said that he had placed a Crime Stopper's tip the
8 previous month.

9 Q. Now when you talked to the anonymous caller, did you
10 ask him if he was in any way related to Mr. Mitchell?

11 A. I did not no.

12 Q. Did you ask him if he had ever dealt with Mr. Mitchell
13 in purchasing drugs?

14 A. I don't recall.

15 Q. Did you ask him if he had ever seen Mr. Mitchell with
16 drugs?

17 A. Would it be all right if I referred back to my notes?

18 Q. Yes, sir.

19 A. Thank you.

20 I don't see here in the summary so I must not have.

21 Q. Did you ask the anonymous caller where in Anderson
22 Mr. Mitchell was going?

23 A. I'm sure I did. My notes don't reflect that but he
24 told me he was going to Anderson.

25 Q. But he had told you specifically where in Anderson

OFFICER LEE ALLEN: CROSS BY MR. LLOYD - IN CAMERA

-67-

1 he was going? And you think your notes would have
2 reflected that?

3 A. Yes, sir.

4 Q. And your notes do not reflect that?

5 A. No, sir, they don't.

6 Q. Okay. Did he give you any indication during that
7 phone conversation that Mr. Mitchell was improperly or was
8 going to be improperly in possession of the vehicle?

9 A. All he told me was that he would be in a tan Honda
10 belonging to Ms. McCleod and that if we ran the plate on
11 the car that it would come back to a residence on Leach
12 Road.

13 Q. Now, did anybody follow or attempt to find out from
14 the anonymous caller where he lived?

15 A. If they did I'm not aware.

16 Q. Are you aware of anybody finding out from the
17 anonymous caller his name?

18 A. I ask if he would give his name and he said he
19 wouldn't.

20 Q. Other than this allegation that the anonymous caller
21 said that Mr. Mitchell would be bringing drugs back, is
22 there anything else in that phone call that said anything
23 he was gonna be doing was illegal?

24 A. Other than the fact that he would be going to Anderson
25 to pick up drugs and bring 'em back nothing other than

1 that.

2 Q. Not illegal to be in the Honda?

3 A. No, sir.

4 Q. Not illegal to be coming down Highway 5?

5 A. No, sir.

6 Q. Now when you got behind - You said you were behind
7 Lieutenant Ligon?

8 A. Yes, sir.

9 Q. Did you observe - Did the Honda pass you or was
10 Officer - Lieutenant Ligon already in pursuit of the Honda?

11 A. I waited until I saw a vehicle matching the
12 description that was given and saw Lieutenant Ligon
13 following the vehicle before I pulled out and began to join
14 in the surveillance of the vehicle.

15 Q. Now at some point did you have a discussion with
16 Lieutenant Ligon about calling a marked car to conduct a
17 traffic stop?

18 A. I don't remember if that was me. I do believe if
19 my memory is correct that Officer Faulkenberry may have
20 done that but I can't recall if I did that.

21 Q. Was anybody in the car with you?

22 A. With me? No, sir.

23 Q. Was anybody in the car with Lieutenant Ligon?

24 A. I don't recall. I don't - No I don't recall.

25 Q. Now when the car is eventually stopped for this

OFFICER LEE ALLEN: CROSS BY MR. LLOYD - IN CAMERA

-69-

1 traffic violation, did you have any conversation with Mr.
2 Mitchell?

3 A. I don't believe I did.

4 Q. Did you have any conversation with Ms. McCray?

5 A. I - Once she was placed in handcuffs I read her
6 Miranda from a card that I kept in my wallet at the time.

7 Q. Now in your - Let me just be clear. Did you
8 understand at the time of the traffic stop that Mr.
9 Mitchell was gonna be placed under arrest for custodial
10 arrest for those traffic violations?

11 A. I honestly, you know, wasn't up there involved in the
12 actual going's on on the traffic stop so I don't know, you
13 know, what was planned.

14 Q. Had you all discussed, you and Lieutenant Ligon
15 discuss, searching the vehicle once it was stopped for this
16 traffic violation?

17 A. Our purpose was to further our investigation. No we
18 had not planned on just arbitrarily searching the car, you
19 know, without reason.

20 Q. And it would have been arbitrary and without reason
21 because there was no probable cause in your estimation
22 based just on the traffic stop; is that right?

23 A. I believe we had reason to look - try and look a
24 little bit further into our investigation based on the
25 calls that we had received and the fact that locating the

1 vehicle traveling back in a way that, you know, we had been
2 advised from the anonymous tip, you know, a few of the
3 details were matching.

4 Q. Okay. Based on your understanding of the information
5 you had based on your anonymous caller, you could have made
6 an investigatory stop; is that right?

7 A. I believe so.

8 Q. At what point during the prior to Mr. Mitchell being
9 arrested and placed in handcuffs what other facts
10 manifested themselves while you were there on the side of
11 the road that would have given you probable cause to search
12 the vehicle?

13 A. From where I was standing because I had like I said no
14 real direct involvement with the actual going on in the
15 business of the traffic stop, I would have not seen
16 anything because I was back near my car checking driver's
17 information, vehicle information, things like that.

18 Q. Did Lieutenant Ligon come back to your car and say
19 hey this just happened let's search the vehicle?

20 A. No, sir.

21 Q. Did Deputy Estep ever come back to you and say hey
22 these facts just happened up at the vehicle we're gonna go
23 ahead and do a search?

24 A. No, sir.

25 Q. And in fact in your summary of the case you referred

OFFICER LEE ALLEN: CROSS BY MR. LLOYD - IN CAMERA

-71-

1 to - First of all, where you there when Commander Brown
2 showed up?

3 A. Yes, sir.

4 Q. And when Commander Brown shows up he immediately
5 instructs Lieutenant Ligon to place Mr. Mitchell in
6 handcuffs and place him under arrest; is that right?

7 A. If he did I wasn't there for that conversation.

8 Q. In your summary of the case you actually talk about
9 once Mr. Mitchell was placed under arrest that the search
10 was done pursuant to an inventory search; is that right?

11 A. Yes, sir.

12 Q. And had it been done for any other reasons you would
13 have put that in your report; is that right?

14 A. Yes, sir.

15 Q. But nobody else at the time you wrote your case
16 summary ever provided you with any information suggesting
17 that this was anything other than an inventory search; is
18 that right?

19 A. Not until - Not until after the drugs were located
20 in the trunk did it become a matter of us seizing the
21 vehicles so at the time it was an inventory search.

22 Q. Let me ask you, the search warrant that you procured
23 for Mr. Mitchell's house, that was based on the drugs that
24 were found in the car; is that right?

25 A. I believe it was that plus some other things.

OFFICER LEE ALLEN: CROSS BY MR. LLOYD - IN CAMERA
DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA

-72-

1 Q. And were those other things that - Would you have
2 taken those other things by themselves to the magistrate
3 for a search warrant?

4 A. No, sir.

5 MR. LLOYD: I beg the Court's indulgence.

6 (PAUSE AT 12:41 P.M..)

7 MR. LLOYD: Thank you, Mr. Allen. Answer anything on
8 redirect.

9 THE COURT: Anything further from the State?

10 SOLICITOR COLTON: I'm sorry, Your Honor.

11 No, sir.

12 THE COURT: All right, you can step down. I
13 appreciate your time. Thank you.

14 (WITNESS LEAVING WITNESS STAND.)

15 SOLICITOR COLTON: The State calls Deputy Estep.

16 (WHEREUPON, SHARON ESTEP,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION - IN CAMERA

19 DEPUTY SHARON ESTEP BY SOLICITOR COLTON:

20 Q. Deputy, can you state your full name?

21 A. Sharon Estep.

22 Q. And were do you work?

23 A. York County Sheriff's Office.

24 Q. How long have you been with the Sheriff's office?

25 A. Twelve years.

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -73-

1 Q. And what are your present duties at the Sheriff's
2 office?

3 A. I work on the patrol division.

4 Q. And what is the patrol division?

5 A. I answer calls for service, traffic control.

6 Q. And how long have you been with the patrol division?

7 A. Twelve years.

8 Q. And were working in that capacity back in August of
9 2011?

10 A. Yes I did.

11 Q. And did you have an opportunity to encounter Whitney
12 McCray and Ortavious Mitchell?

13 A. Yes.

14 Q. And can you tell the Court how you came to be involved
15 in that investigation?

16 A. I received a request from Lieutenant Ligon to be in
17 the area of the Moss Justice Center, they were gonna stop a
18 vehicle for some drug charges and they thought that when
19 they initiated the traffic stop that he was gonna run.

20 Q. And where were you located while they were - Was that
21 - Let me ask it this way. What is that - What were you
22 doing immediately before you were physically involved in
23 the stop with Mr. Mitchell? I mean where was Mr. Mitchell
24 beforehand before you actually were involved in the traffic
25 stop itself?

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -74-

1 A. Where was I at before?

2 Q. Yes.

3 A. I was just on routine patrol.

4 Q. Did you receive a phone call or were you called from
5 anybody?

6 A. Yes.

7 Q. From who?

8 A. I received it from - I believe it was my sergeant.

9 Q. And what were you directed to do at that point?

10 A. Just stay in the area of the Moss Justice.

11 Q. And at some point in time did - were you told - Were
12 you ever told of a particular car to look out for or
13 anything like that?

14 A. I think in that point in time I did not. Not on the
15 phone call.

16 Q. How did you come to pull over Mr. Mitchell's car?

17 A. It was radio traffic from Lieutenant Ligon.

18 Q. And what did Lieutenant Ligon tell you?

19 A. He stated that just the location of the car, what the
20 car looked like.

21 Q. And did he advise you - Had you seen any traffic
22 violations yourself?

23 A. Yes.

24 Q. And the vehicle that you drive for traffic
25 enforcement, is that a marked patrol vehicle?

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -75-

1 A. Yes it is.

2 Q. Does it have blue lights and sirens?

3 A. Yes it does.

4 Q. To your knowledge does Lieutenant Ligon's vehicle
5 have blue lights and sirens?

6 A. Yes it does.

7 Q. And is it a marked vehicle?

8 A. No.

9 Q. And by marked vehicle you mean marked police, standard
10 sheriff's office marked police?

11 A. That's right, it does not.

12 Q. And did you at some point observe the Honda?

13 A. Yes I did.

14 Q. Okay. And where was that?

15 A. I believe it was right around the York School District
16 office area on the Alexander Love.

17 Q. And that's right down by the Moss Justice Center?

18 A. Yes, ma'am.

19 Q. And what did you do when you observed the vehicle?

20 A. I witnessed - observed the vehicle to go travel left
21 to center.

22 Q. And by left to center, what specifically did you see
23 the vehicle do?

24 A. It barred to the left going towards the middle lines
25 in the roadway.

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -76-

1 Q. And did the wheels of the vehicle pass over the yellow
2 lines?

3 A. It hit the driver side front and rear front or rear
4 driver's side touched the line.

5 Q. Okay. And based upon your training and experience
6 would that constitute a violation of driving left to
7 center?

8 A. Yes, ma'am.

9 Q. And what did you do when you saw this violation?

10 A. I initiated blue lights to initiate the traffic stop.

11 Q. And do you remember exactly where you initiated your
12 blue lights?

13 A. It was right to the entrance into the Moss Justice
14 Center in the main entrance.

15 Q. And did the vehicle immediately pull over there?

16 A. No, ma'am.

17 Q. And we're talking about the first entrance to the Moss
18 Justice Center. Is that the very front as opposed to the
19 back entrance a couple hundred feet down where you pull
20 into the sheriff's office?

21 A. That's correct. It was --

22 Q. So it was at the front entrance where most of the
23 general public come in?

24 A. That's correct.

25 Q. The vehicle didn't pull over to the side of the road

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -77-

1 there?

2 A. No, ma'am.

3 Q. Would it have had the ability to do that?

4 A. Yes, ma'am.

5 Q. Did the vehicle pull over into that parking area
6 of Moss Justice Center?

7 A. No, ma'am.

8 Q. Did - How far did it travel before it ultimately
9 pulled over?

10 A. Traveled down past another entrance into where we
11 fuel up into a neighborhood on the left hand side.

12 Q. And made a left turn into that neighborhood?

13 A. That's correct.

14 Q. And were there any other businesses or parking lots
15 available for this vehicle to pull into before you got to
16 that spot?

17 A. That's correct.

18 Q. And - What type of road is this? Do you recall the
19 name of that development?

20 A. It's Brook Hollow Court.

21 Q. Okay. And is it a residential area or is it a
22 business area?

23 A. It's residential.

24 Q. And did the vehicle pull over to the side of the road
25 there?

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -78-

1 A. No, ma'am. He was still kind of in the lane of
2 travel.

3 Q. How far did the vehicle travel into this development?

4 A. Just enough for me, for his - The vehicle and my
5 vehicle to pull in.

6 Q. And what did you think based upon your training and
7 experience was the reason why this vehicle hesitated to
8 stop?

9 MR. LLOYD: Objection, Your Honor.

10 THE COURT: I sustain. I sustain.

11 MR. LLOYD: There is no --

12 THE COURT: I sustain the objection.

13 BY SOLICITOR COLTON:

14 Q. Did that concern you that the vehicle didn't stop?

15 A. Yes, ma'am.

16 Q. Why did that concern you?

17 A. They took prior knowledge of him possibly gonna run.

18 Q. Was the behavior that - Was the behaviors you observed
19 consistent with your concerns?

20 A. Yes.

21 Q. What happened after the vehicle stopped?

22 A. I approached the passenger side of the vehicle and
23 ask the driver for driver's license, registration and proof
24 of insurance.

25 Q. Was the vehicle still running at this point in time?

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -79-

1 A. Yes, ma'am.

2 Q. And what - Did you do anything in response to that?

3 A. I ask him to turn his vehicle off.

4 Q. Did he immediately turn the vehicle off?

5 A. No, ma'am.

6 Q. Do you recall how many times you had to request that
7 he turn the vehicle off?

8 A. It was about three times.

9 Q. And did that concern you?

10 A. Yes, ma'am.

11 Q. Why did that concern you?

12 A. I believe he was gonna take off.

13 Q. Was the driver able to produce the driver's license?

14 A. Yes.

15 Q. Vehicle registration?

16 A. The passenger of the vehicle was looking for that
17 registration.

18 Q. How about the insurance information?

19 A. The passenger was looking for the insurance
20 information and had to call someone to - the driver - the
21 owner of the vehicle to see where it was located inside the
22 vehicle.

23 Q. Did you speak to the owner of the vehicle on the
24 phone?

25 A. I didn't.

1 Q. Was the insurance and registration ultimately
2 produced?

3 A. Yes.

4 Q. Did you run that information?

5 A. I didn't.

6 Q. Was the owner of the vehicle present in the
7 vehicle?

8 A. No.

9 Q. How many people were in the vehicle?

10 A. Two.

11 Q. And do you recognize one of the individuals, any
12 individuals that were in the vehicle?

13 A. Ortavious Mitchell and Whitney McCreary.

14 Q. And do you see Mr. Mitchell in the courtroom?

15 A. Yes, ma'am.

16 Q. Can you please point him out to the Court?

17 A. The black shirt and tie.

18 SOLICITOR COLTON: Your Honor, we ask that the record
19 reflect that she's identified Mr. Ortavious Mitchell
20 sitting next to his attorney.

21 (WITNESS INDICATED TOWARD DEFENDANT.)

22 Q. Was Mr. Mitchell requested to exit the vehicle at
23 some point?

24 A. Yes, ma'am.

25 Q. By you? Was that by you?

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -81-

1 A. No, ma'am.

2 Q. Was it another law enforcement officer?

3 (WITNESS INDICATED AFFIRMATIVELY.)

4 Q. Did Mr. Mitchell say anything as he was exiting the
5 vehicle?

6 A. He was telling the passenger in the car, Ms. McCreary,
7 not to say anything.

8 Q. And at this point in time had you advised him of
9 any other reason for the stop besides the traffic
10 infractions?

11 A. Yes, ma'am, I did.

12 Q. And what did you tell him? What did you advise him
13 of?

14 A. I advised him what I observed, the violation of left
15 of center.

16 Q. Did you mention narcotics or suspicion of narcotics or
17 anything else?

18 A. No, ma'am.

19 Q. And based on your experience in traffic violations,
20 is that unusual to you that Mr. Mitchell would tell a
21 passenger in a car not to speak to you or not to speak?

22 A. Yes, ma'am.

23 Q. Did Mr. Mitchell - Well ultimately was it your
24 decision to place Mr. Mitchell under arrest ---

25 A. No ---

DEPUTY SHARON ESTEP: DIRECT BY SOLICITOR COLTON - IN CAMERA -82-

1 Q. --- for the traffic violation?

2 A. --- it was not.

3 Q. Did you participate any further in the actual
4 arrest process of Mr. Mitchell?

5 A. Just the transport from the location of the traffic
6 stop to the York County Detention Center.

7 Q. Was Mr. Mitchell and Ms. McCray ultimately they were
8 both charged with narcotics?

9 A. Yes.

10 Q. And they were both placed into your vehicle?

11 A. Yes, ma'am.

12 Q. And you transported back to the Moss Justice Center?

13 A. That's correct.

14 Q. And you left - Did you leave your video tape running?

15 Was your car equipment with video and audio? Was your
16 audio microphone on then?

17 A. I did.

18 Q. Did you leave that running the entire time?

19 A. Yes I did.

20 Q. And was that able to observe what you observed at the
21 traffic stop?

22 A. That's correct.

23 Q. Thank you.

24 SOLICITOR COLTON: Please answer any questions the
25 Defense counsel may have.

DEPUTY SHARON ESTEP: CROSS BY MR. LLOYD - IN CAMERA

-83-

CROSS-EXAMINATION IN CAMERA

1

2

DEPUTY SHARON ESTEP BY MR. LLOYD:

3

Q. Deputy Estep. Am I pronouncing that correct?

4

A. That's correct.

5

Q. Now you said that Lieutenant Ligon radioed ahead

6

to you and said we're gonna be making a traffic stop on

7

a drug case; is that right?

8

A. Yes.

9

Q. And when he radioed to you did he say the car had

10

already committed any traffic violations?

11

A. Yes he did.

12

Q. And what did he tell you the traffic violation was?

13

A. Speeding.

14

Q. Now is - We know that Lieutenant Ligon's car is

15

equipped with blue lights and siren. Does he have a radar

16

gun in his car?

17

A. I've never seen the inside of his vehicle.

18

Q. And you have one in your car.

19

A. I do. At this time I did not on August 3rd.

20

Q. The 3rd. Your camera starts running once you activate

21

your blue lights; is that right?

22

A. Yes it does but it actually backs up about thirty

23

seconds.

24

Q. So the thirty seconds prior to you activating your

25

blue lights on Mr. Mitchell, that thirty seconds is

1 captured on the video that you made; is that correct?

2 A. That's correct.

3 Q. Now on the video, did you ever review your video?

4 A. I did.

5 Q. Okay. On the video do you ever see Mr. Mitchell
6 touch the yellow line?

7 A. On the video it's - it's dark so it's a little
8 unclear on the video.

9 Q. And you said that he touched the yellow line. How
10 far over the yellow line or how far did his tires go over
11 in touching the yellow line? An inch?

12 A. Probably half an inch.

13 Q. Half an inch? Now, Deputy Estep, you've been doing
14 traffic - within the traffic division for twelve years you
15 said?

16 A. Patrol division for twelve years.

17 Q. Patrol division?

18 A. Uh-huh.

19 Q. Have you ever pulled anybody over before for just
20 touching the yellow line?

21 A. Yes, sir.

22 Q. And you normally arrest that individual for touching
23 the yellow line?

24 A. No, sir.

25 Q. You normally write them a ticket if they touch the

DEPUTY SHARON ESTEP: CROSS BY MR. LLOYD - IN CAMERA

-85-

1 yellow line by half an inch over?

2 A. Yes, sir.

3 Q. Write 'em a warning ticket or a regular ticket?

4 A. Usually a warning.

5 Q. Now when you arrived on the scene you have a
6 conversation with Mr. Mitchell and Ms. McCray; is that
7 right?

8 A. Yes, sir.

9 Q. And they were in fact asking you why they were being
10 pulled over; isn't that right?

11 A. I believe Mr. Mitchell ask me.

12 Q. And at that point did you tell him well I saw your
13 tires touch the yellow line?

14 A. Driving left to center, uh-huh.

15 Q. Did you tell him that you saw his tires touch the
16 yellow line?

17 A. I didn't go into detail about the violation.

18 Q. You said I'm pulling you over for driving left of
19 center?

20 A. Uh-huh.

21 Q. And Mr. Mitchell became agitated about that didn't
22 he?

23 A. Not at that point in time he didn't.

24 Q. But he continued to ask you about that issue of
25 whether or not he had crossed the center line didn't he?

1 A. I don't remember him continuously asking me anything
2 about it.

3 Q. And you were present at the vehicle when Ms. McCray
4 called the owner of the car to help locate the registration
5 or the proof of insurance; is that right?

6 A. That's right.

7 Q. And in fact they had that conversation on speaker
8 phone didn't they? You couldn't hear --

9 A. I think it was on speaker phone.

10 Q. But it was your understanding that she was talking to
11 the owner of the vehicle?

12 A. Yes.

13 Q. And based on that conversation with the reported
14 owner of the vehicle they were able to locate - was it
15 insurance or registration?

16 A. It was the insurance.

17 Q. They were able to locate the insurance card and
18 provide that to you; is that right?

19 A. Yes they did provide it.

20 Q. Now did you take the insurance, registration and
21 driver's license back to run it?

22 A. I did not.

23 Q. Okay. And at no point did you ever radio in license
24 tag, the driver's license, the registration or anything
25 regarding this stop did you?

DEPUTY SHARON ESTEP: CROSS BY MR. LLOYD - IN CAMERA

-87-

1 A. No, sir.

2 Q. And in fact the DEU Unit took over the traffic stop
3 once all of them showed up; isn't that right?

4 A. Yes, sir.

5 Q. Now at some point did you have a conversation with
6 Mr. Mitchell about having the vehicle towed?

7 A. Never.

8 Q. You never had a conversation with him?

9 A. No, sir.

10 Q. You never ask him who he wanted - which tow company
11 he wanted?

12 A. No, sir.

13 Q. Did you ever over hear a conversation like that?

14 A. No, sir.

15 Q. Is it fair to say that your duties once the DEU Unit
16 had showed up was basically just to be there and maintain
17 order?

18 A. I was there to assist them yes.

19 Q. And let's go back to the stop itself. You said that
20 he didn't pull into the first exit of the Moss Center. The
21 car that Mr. Mitchell was in did slow down didn't it once
22 you blue lighted it?

23 A. It did slow down, uh-huh.

24 Q. Now you've been in the patrol division you said
25 twelve years?

1 A. Yes, sir.

2 Q. Does the York County Sheriff's office have an
3 impoundment policy?

4 A. We do. We either - We have a rotation list or we
5 ask them who they prefer. Normally we just do it off of
6 the rotation.

7 Q. You have a written policy regarding impoundment of
8 vehicles?

9 A. I don't believe so.

10 Q. You've never seen one?

11 A. Uh-huh.

12 Q. Does your policy or your understanding of what
13 you're allowed to do would it allow the owner of the
14 vehicle to come get the car?

15 A. Yes, sir.

16 Q. It would allow the driver of the vehicle to pick out
17 which tow company they wanted to come tow a car?

18 A. Generally on arrest though we do try to use our
19 rotation list.

20 Q. Now do you have - Are you familiar with an inventory
21 search policy by the York County Sheriff's office?

22 A. I'm not sure if there's a specific policy no.

23 Q. Have you ever seen a policy regarding an inventory
24 search?

25 A. No, sir.

DEPUTY SHARON ESTEP: CROSS BY MR. LLOYD - IN CAMERA

-89-

1 Q. Have you ever conducted an inventory search?

2 A. Yes, sir.

3 Q. What is your understanding of the purpose of an
4 inventory search?

5 A. To check the contents of the vehicle and trunk area to
6 make sure that, you know, what property's in there.

7 Q. How many inventory searches do you think you've done
8 over your twelve years?

9 A. Probably fifty.

10 Q. You ever search under the hood of a car during an
11 inventory search?

12 A. No, sir.

13 Q. You ever go in the gas cap area or the gas tank area?

14 A. No, sir.

15 Q. Do you ever pull paneling out of the car, out of the
16 trunk or the interior of the car?

17 A. Not if nothing looks suspicious.

18 Q. Now you were on scene the entire time this stop was
19 going on; is that right?

20 A. Yes, sir.

21 Q. And you in fact transported Mr. Mitchell; is that
22 right?

23 A. Yes, sir.

24 Q. Other than the arrest for the traffic violations - and
25 it was my understanding you told Ms. Colton you did not

1 make the call to arrest him from the traffic violations; is
2 that right?

3 A. That's correct.

4 Q. And would you normally have made a custodial arrest
5 for these types of traffic violations?

6 A. No, sir.

7 Q. To your knowledge who did order that Mr. Mitchell be
8 placed in handcuffs?

9 A. I believe that was Lieutenant Ligon.

10 Q. Other than Mr. Mitchell being placed under arrest --

11 Well let me rephrase that question. When Mr. Mitchell
12 was placed under arrest did you observe agents of the DEU
13 searching the vehicle?

14 A. No, sir, not before he was placed under arrest.

15 Q. Once he was placed under arrest did you observe
16 officers or agents of the DEU start a search of the
17 vehicle?

18 A. I did.

19 Q. And did anybody ever tell you during that search
20 that this was an inventory search?

21 A. No.

22 Q. Based on your twelve years of doing inventory searches
23 did this appear to you to be an inventory search?

24 A. Yes.

25 Q. And why did you think it was an inventory search?

DEPUTY SHARON ESTEP: CROSS BY MR. LLOYD - IN CAMERA

-91-

1 A. Cause they were checking all the areas of the vehicle
2 for property.

3 Q. Did you see them lift the hood of the car up?

4 A. I did not.

5 Q. Did you see them open paneling within the car?

6 A. I did not see that.

7 Q. And did you see them open the gas cap?

8 A. No.

9 Q. Or the gas door?

10 A. No.

11 Q. Now you said to Ms. Colton that Mr. Mitchell told Ms.
12 McCray not to say anything; is that right?

13 A. That's correct.

14 Q. And in fact Mr. Mitchell doesn't say that to Ms.
15 McCray until after he's placed in handcuffs; isn't that
16 right?

17 A. After handcuffs yes.

18 Q. And in fact Ms. McCray also ask you when do you all
19 start arresting people for traffic violations; isn't that
20 right?

21 A. I'm sorry. Will you ask that one more time?

22 Q. At some point Ms. McCray ask you when did you all
23 start arresting people for traffic violations. Do you
24 recall that?

25 A. I remember her saying that.

1 Q. And prior to them saying that, prior to Mr. Mitchell
2 saying don't say anything and prior to Ms. McCray saying
3 when did you all start arresting people for traffic
4 violations, did they do anything suspicious in your mind?

5 A. No, sir.

6 MR. LLOYD: Nothing further, Your Honor.

7 SOLICITOR COLTON: The State has no redirect, Your
8 Honor.

9 THE COURT: All right. You can step down.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: I think we might ought to break for lunch.
12 It's about five after one so we'll break until 2:30.
13 We'll be at ease until 2:30.

14 MR. LLOYD: Thank you, Your Honor.

15 (COURT IN LUNCH RECESS AT 01:07 P.M..)

16 (COURT BACK IN SESSION AT 02:55 P.M..)

17 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, PREMARKED FOR
18 IDENTIFICATION.)

19 THE COURT: Thank you. You may take your seats.

20 All right, you ready to call your next witness?

21 SOLICITOR COLTON: Yes, sir.

22 The State would call Mike Ligon.

23 THE COURT: Mr. Ligon, please come up and place your
24 left hand on the Bible and raise your right.

25 (WHEREUPON, MIKE LIGON, BEING

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-93-

1 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 THE COURT: All right.

3 SOLICITOR COLTON: Thank you, Your Honor.

4 DIRECT EXAMINATION IN CAMERA

5 LIEUTENANT MIKE LIGON BY SOLICITOR COLTON:

6 Q. Lieutenant Ligon, can you please state your full
7 name for the record?

8 A. James M. Ligon.

9 Q. And what is your title?

10 A. I'm a Lieutenant with the York County Sheriff's
11 office.

12 Q. And how long have you been with the Sheriff's office?

13 A. Total law enforcement eighteen years.

14 Q. And where are you currently assigned?

15 A. To the York County Multi-jurisdictional Drug
16 Enforcement Unit.

17 Q. And what's your title within the York County Multi-
18 jurisdictional Drug Enforcement Unit?

19 A. I'm one of the commander's on the Unit.

20 Q. What unit do you command?

21 A. The west side of the county.

22 Q. And that would be out at the Moss Justice Center?

23 A. Yes, ma'am.

24 Q. And how long have you been with the Multi-
25 jurisdictional Drug Enforcement Agency?

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-94-

1 A. Twelve years.

2 Q. And how long have you been involved in narcotics
3 investigations?

4 A. Pretty much my whole career. Almost eighteen years.

5 Q. How long have you been a lieutenant and a commander
6 of the DEU Unit?

7 A. The past five years.

8 Q. And are you familiar with the defendant Ortavious
9 Mitchell?

10 A. Yes, ma'am, I am.

11 Q. And how do you know Mr. Mitchell?

12 A. From previous search warrants off of Leach Road that
13 have been served on Mr. Mitchell's house.

14 Q. You knew him from sight before August of 2011?

15 A. Yes, ma'am.

16 Q. And you are familiar with where he lives?

17 A. Yes, ma'am.

18 Q. And where is that?

19 A. That's on Leach Road.

20 Q. Now on this particular day back in August were you
21 commander of the west side Multi-jurisdictional Drug
22 Enforcement Unit ---

23 A. Yes, ma'am, I was.

24 Q. --- August 3rd, 2011?

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

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-95-

1 Q. How did you become to be involved in the investigation
2 of Mr. Mitchell on that particular date?

3 A. At the time Investigator Allen who was employed on
4 the Drug Unit had contacted me, advised he had received
5 information on a tip that Mr. Mitchell would be traveling
6 in a gold Honda Accord. He was in route to Anderson I
7 believe it was and would then be traveling back down I85
8 back into York County with a large quantity of crack
9 cocaine.

10 Q. Did he indicate anything about the vehicle beyond the
11 color and the type as far as being a tan Honda?

12 A. Yes, ma'am. They advised that it'd be gold - a gold
13 tan Honda, four door, and also it had South Carolina plates
14 that would come back to a residence on Leach Road.

15 Q. Did he indicate who the owner of the vehicle was?

16 A. Yes, ma'am, they did.

17 Q. Do you recall who that was?

18 A. To the best of my knowledge I believe it was a
19 Shaniqua McCleod.

20 Q. And once you came upon that knowledge, did you have
21 any other knowledge or any other information prior to
22 getting that anonymous tip? Do you recall?

23 A. As far as this particular incident no, ma'am.

24 Q. What did you do after you received the information
25 about that anonymous tip?

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-96-

1 A. Basically the investigators in my unit and myself
2 went out and went to the area of Highway 5 and went into
3 the Blacksburg area. I actually went into Blacksburg.
4 There is a store there that when you get off or come on the
5 interstate right there at I85 and I posted at that store
6 looking for the vehicle which was described in the tip.

7 Q. And how - What time do you think it was when you got
8 out to that area?

9 A. Approximately between maybe seven, 7:30 that evening.

10 Q. And how long did you stay out there?

11 A. It was probably about just after ten o'clock when I
12 observed a vehicle come off I85 back onto Highway 5
13 traveling toward York.

14 Q. How many vehicles do you think you noticed in the
15 three hours that you had been there?

16 A. Quite a few.

17 Q. And why did this vehicle draw your particular
18 attention?

19 A. Because it matched the description that was given in
20 the tip.

21 Q. And did you immediately pull that vehicle over cause
22 it matched the tip?

23 A. No, ma'am, I did not.

24 Q. What did you do?

25 A. At that point in time I radioed to the other officers

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-97-

1 that were in the area giving surveillance. I then followed
2 the vehicle, ran the tag on the vehicle or called the tag
3 out to the other officers. One of the other investigators
4 ran the tag and advised me that it did come back to Ms.
5 McCleod off of Leach Road at that time. At that time I
6 then tried to get up close enough to the vehicle to where I
7 could identify the driver who was named in the tip which
8 would a been Ta Mitchell or Tavius Mitchell. From what I
9 could tell based off knowing Mr. Mitchell from the past it
10 appeared to be him.

11 Q. Were you a hundred percent certain or did it appear -

12 A. It appeared to be him. I was not a hundred percent
13 certain at that time but everything else did match up
14 according to what the tipster said.

15 Q. And were in a marked patrol car or unmarked patrol
16 car?

17 A. Unmarked.

18 Q. Why weren't you able to confirm whether or not that
19 was Mr. Mitchell?

20 A. It was dark that night and it had been raining.

21 Q. How close did you get to Mr. Mitchell's car?

22 A. Probably with as far as pulling up beside him it was
23 half a car length maybe just to where the front of my
24 bumper was up with the driver side door of that vehicle.

25 Q. Why did you pull right next to him to confirm that -

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-98-

1 who - the identify of Mr. Mitchell?

2 A. Because I did not want Mr. Mitchell to possibly see
3 me and identify me as a narcotics agent.

4 Q. After you confirmed that information and ran the tag,
5 what you visually saw about the vehicle, the individual
6 you say you believe to be Mr. Mitchell, consistent with Mr.
7 Mitchell, what did you do at that point?

8 A. At that point in time I just watched the car until
9 other officers were able to get in as far as doing
10 surveillance and tailing the vehicle and attempted to gain
11 any type of violation on the vehicle at that time.

12 Q. And what did you observe that vehicle do? I guess how
13 far from Blacksburg where you initially saw the vehicle
14 were you until you got close to the Moss Justice Center?

15 A. We were probably almost near the York Comprehensive
16 High School on Alexander Love which is the Bypass at which
17 time the vehicle - I paced the vehicle at 57 miles an hour
18 in a 45 mile an hour zone.

19 Q. And by pacing did you have a radar detection device?

20 A. No, ma'am, I did not.

21 Q. Have you ever been certified in radar detection
22 devices?

23 A. Yes, ma'am.

24 Q. How come you don't have that in your vehicle?

25 A. Once again, it's an unmarked vehicle and it's used

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-99-

1 for under cover operations. I don't feel like a radar
2 sitting on the dash would be conducive to our
3 investigations.

4 Q. Would you please tell the Court how you perform a
5 pacing of a vehicle or gauging of the speed.

6 A. What you basically do is you would pace that vehicle
7 you would get behind that vehicle and maintain the same
8 speed that that vehicle is maintaining to where you're not
9 falling behind the vehicle or gaining on the vehicle.

10 Q. And you gauge that vehicle at initially 45?

11 A. Yes, ma'am.

12 Q. Okay. And then it sped up and you were still gauging
13 it at 57. I guess that's how that works?

14 A. Yes, ma'am.

15 Q. And is there any - To your knowledge - I mean is there
16 any requirement that you have to have radar - detectible
17 radar where you can pull somebody over or initiate a
18 traffic stop for speeding?

19 A. No, ma'am. I mean it was well over the posted speed
20 limit at 12 miles an hour.

21 Q. Is this a common way to gauge someone's speed in
22 violation of the speed laws?

23 A. Yes, ma'am.

24 Q. Did you report that speeding violation to anybody?

25 A. Yes, ma'am, I notified the other officers and advised

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-100-

1 them that the vehicle in question was traveling 57 miles an
2 hour in a 45 mile an hour zone at which time I also had
3 contacted to have a patrol deputy in a marked unit to
4 assist in this and attempt to stop Mr. Mitchell's vehicle -
5 or the vehicle that Mr. Mitchell was driving.

6 Q. Did you see the driving left to center violations?

7 A. No, ma'am, I did not.

8 Q. Did you report to Deputy Estep there was a speeding
9 violation that you had observed?

10 A. Yes, ma'am, I did.

11 Q. And even as part of the DEU would you - would you have
12 the lawful authority to pull the vehicle over for a
13 speeding violation?

14 A. Yes, ma'am, I would have.

15 Q. And as a sheriff's officer as well?

16 A. Yes, ma'am.

17 Q. And did Deputy Estep to your knowledge initiate a
18 traffic stop?

19 A. Yes, ma'am, she did.

20 Q. And did you assist in that traffic stop?

21 A. Yes, ma'am, I ultimately did.

22 Q. And what did you observe when you or what did you do
23 when Deputy Estep pulled that car over?

24 A. I waited for Deputy Estep to actually approach the
25 vehicle at which time when she made contact with the driver

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-101-

1 she had told him repeatedly to cut the vehicle off at which
2 point he did I think after the third or fourth time in
3 instructing him to do so. At that point in time she
4 obtained the driver's license and was waiting for actually
5 the vehicle information; proof of insurance, the
6 registration, and things of that nature, and I came up to
7 the vehicle at that time.

8 Q. Let me go back to where Deputy Estep initiated the
9 traffic stop. How close were you to Mr. Mitchell's vehicle
10 when Deputy Estep initiated the traffic stop?

11 A. Probably three cars back or so.

12 Q. Was Deputy Estep in the marked car behind you or in
13 front of you?

14 A. Marked vehicle in front of me. The reason we wanted
15 a marked vehicle was based off the tip and the quantity of
16 drugs that was potentially inside the vehicle based off the
17 tipster. If there was any type of pursuit we wanted to
18 ensure that there was a marked vehicle so there would be no
19 question that it was police that were actually trying to
20 stop the vehicle.

21 Q. Do you recall where Deputy Estep initiated the blue
22 lights?

23 A. It was right around Moss Justice Center.

24 Q. How far do you believe that that car traveled? Did
25 you observe that car travel - excuse me - driven by Mr.

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-102-

1 Mitchell before it stopped and came to a stop?

2 A. Just under maybe a quarter of a mile.

3 Q. Were there areas that that vehicle could have pulled
4 over before it finally came to a stop?

5 A. Yes, ma'am. There was actually two roadways just
6 off to the right hand side and there was a church parking
7 lot just before the neighborhood that the vehicle turned
8 off to on the left hand side of the road.

9 Q. And by the left hand side of the road, the vehicle
10 turned left?

11 A. Yes, ma'am.

12 Q. And do you recall where the vehicle turned into?

13 A. There is - It's just a neighborhood right up from the
14 Moss Justice Center on the left hand side of the road.

15 Q. And where did the vehicle come to a stop?

16 A. Just past the entrance into the neighborhood and in -
17 somewhat pretty much in the middle of that lane of travel
18 as you turn into the neighborhood.

19 Q. Based on your training and experience did that
20 concern you that the vehicle traveled for that length of
21 time?

22 A. Yes, ma'am, it did.

23 MR. LLOYD: Objection again, Your Honor.

24 THE COURT: Yeah, I sustain the objection.

25 BY SOLICITOR COLTON:

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-103-

1 Q. . What if anything did you do when you observed the
2 vehicle not pulling over?

3 A. Generally when a vehicle is stopped in most cases
4 those vehicles either look for lighted areas to pull into.
5 Once again there was a lite church parking lot there on the
6 left hand side just before the neighborhood. Generally
7 when a vehicle proceeds in that manner and doesn't stop
8 immediately or shortly thereafter --

9 MR. LLOYD: Again, objection, Your Honor.

10 THE COURT: I -

11 MR. LLOYD: That's speculation, Your Honor.

12 THE COURT: I sustain the objection. The car was
13 stopped and he didn't want to and I know that's where you
14 all are headed.

15 SOLICITOR COLTON: I understand, Judge.

16 Judge, I understand your ruling. The basis for that
17 was that part of what this issue is, is probable cause and
18 I think it's gonna be argued that there is subjective
19 understanding of the situation why they were suspicious of
20 his car and was it criminal in nature and merely not his
21 behavior. I think the argument is gonna be that these
22 officers subjected an interpretation of what occurred was
23 pretextual for the stop then I think there is subjective
24 interpretation but I don't think that's the law. I think
25 if we go there there's subjective understandings the

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-104-

1 situation of why they did things becomes an issue.

2 THE COURT: Well I sustain the objection but let's go
3 ahead.

4 BY SOLICITOR COLTON:

5 Q. What did you do when Deputy Estep stopped the vehicle
6 and approached the passenger side?

7 A. I then got out and went to the actual passenger side
8 of Deputy Estep's vehicle to observe what was taking place
9 as far as the stop went.

10 Q. And during this stop who ran - Well let me ask you
11 this. What was your participation in the stop at that
12 point?

13 A. At that point I actually - I was observing what was
14 taking place between Deputy Estep and Mr. Mitchell and Ms.
15 McCray who were occupants of the vehicle.

16 Q. What did you observe?

17 A. I observed Deputy Estep get the driver's license and
18 information from them at which point I went up and got the
19 driver's license. Investigator Allen had come on the scene
20 at that time and I ask him to go and run the license and
21 stuff and handed it to him.

22 Q. At some point was Mr. Mitchell ask to step out of the
23 vehicle?

24 A. Yes, ma'am, I ask Mr. Mitchell to step out of the
25 vehicle.

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-105-

1 Q. Do you recall what if anything he said at that point?

2 A. Once Mr. Mitchell stepped out of the vehicle he was
3 asking why he was being stopped. I advised him of the
4 violations that had been committed - that had been
5 committed and that's why he was being stopped at which
6 point in time there was some other things that took place
7 and then ultimately I placed Mr. Mitchell under arrest.

8 Q. And obviously you confirmed, you were certain at that
9 time that that was Mr. Mitchell?

10 A. Yes, ma'am.

11 Q. Did you get any confirmation about who the owner
12 of the vehicle was further?

13 A. Yes. I mean after - Of course after the registration
14 and all had been located in the vehicle yes, ma'am.

15 Q. Was the vehicle a four-door, tan Honda?

16 A. Yes, ma'am, it was.

17 Q. Was there anything based upon your understanding of
18 the tip that you felt was inconsistent or inaccurate with
19 what the tipster had said based on your observations?

20 A. No, ma'am. Everything was right on with what the
21 tipster had said.

22 Q. And when you saw the traffic violations this was on
23 Highway 5 in York County?

24 A. Yes, ma'am, it was.

25 Q. At some point in time was the decision made to

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-106-

1 arrest Mr. Mitchell for traffic violations?

2 A. Yes, ma'am, it was.

3 Q. Can you tell the Court about that, how it came to
4 pass?

5 A. He drove left to center and was also speeding; he was
6 at which point in time he was placed in handcuffs and
7 placed under arrest.

8 Q. Is this the first time that you've done that, DEU
9 officer and law enforcement officer?

10 A. No, ma'am, it is not.

11 Q. What happened after Mr. Mitchell was taken into
12 custody?

13 A. Once he was taken into custody Investigator Kimble
14 then read Mr. Mitchell his rights. After he was advised
15 of his rights in my presence, I ask Mr. Mitchell if there
16 was anything illegal in the vehicle or anything that he
17 wanted to tell us about at which time he advised me that
18 the vehicle did not belong to him.

19 Q. What happened after Mr. Mitchell was taken into
20 custody? What did you and - It was - Was Commander
21 Brown there?

22 A. Yes, ma'am, he was.

23 Q. Did you have a conversation with Commander Brown
24 about the vehicle --

25 A. Yes. Basically what took place was after he was

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-107-

1 placed under arrest Ms. McCray who did not have any
2 ownership to the vehicle as well we conducted an inventory
3 of the vehicle cause it was going to be towed.

4 Q. Why was it gonna be towed?

5 A. Because Mr. Mitchell was placed under arrest.

6 Q. Why didn't you give the vehicle to Ms. McCray?

7 A. Because she wasn't the owner of the vehicle.

8 Q. And where was the owner? Was the owner of the vehicle
9 present on the scene?

10 A. Not at that time no, ma'am.

11 Q. And during the inventory search on this particular
12 vehicle, did you take part in that?

13 A. No, ma'am, I did not.

14 Q. What standard - You're a sheriff officer, also a DEU
15 officer, do you authorize inventory searches for your -
16 these officers to perform?

17 A. Yes, ma'am, I do.

18 Q. And you've been trained in inventory searches and
19 procedures?

20 A. Yes, ma'am, through our policy, through the Sheriff's
21 office policy yes, ma'am.

22 Q. And you perform them yourself?

23 A. Yes, ma'am, I do.

24 Q. As a general matter what areas do you regularly
25 search during the course of an inventory search?

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-108-

1 A. All common areas of the vehicle, all compartments
2 with inside the vehicle; the trunk area, and all
3 compartments that are inside the trunk area of the vehicle.

4 Q. Would that included locked and unlocked compartments?

5 A. Yes, ma'am, it would.

6 Q. Do - Are you authorized to open locked containers
7 even if it caused breakage?

8 A. Yes, ma'am, we can.

9 Q. Are you familiar with where these areas to this
10 vehicle that were searched?

11 A. Yes, ma'am, I am.

12 Q. And do you know - Do you know whether or not products
13 were ever recovered from this vehicle?

14 A. Yes, ma'am, they were.

15 Q. And do you know where they were recovered from?

16 A. Yes, ma'am, I do.

17 Q. And can you tell the Court where they were recovered
18 from?

19 A. It's from the jack compartment area in the trunk.

20 Q. And do you have your officers perform searches of
21 those areas?

22 A. Yes, ma'am, I do.

23 Q. Do you know if the jack was actually in the trunk?

24 A. No, ma'am, I don't.

25 Q. Do you know if it was in the jack compartment?

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-109-

1 A. Yes, ma'am, I do know it was in the jack compartment.

2 Q. The jack was in the jack compartment?

3 A. No, ma'am, I didn't go in and search the vehicle.

4 After Investigator Faulkenberry had actually located the
5 drugs in the jack compartment he showed me that at which
6 time I advised him that everything needed to be secured and
7 we also needed to place Ms. McCray under arrest as well
8 because she was present in that vehicle at the time of the
9 stop.

10 Q. So Ms. McCray's now placed under arrest because the
11 narcotics were found and in addition to the two arrest
12 warrants for traffic - the two arrest tickets from the
13 traffic violation Mr. Mitchell is going to be taken into
14 custody for trafficking as well?

15 A. Yes, ma'am.

16 Q. Did your officers stop the inventory process at that
17 point?

18 A. No, ma'am, they did not.

19 Q. What did they do?

20 A. They continued the inventory of the vehicle and also
21 I went back and spoke with Commander Brown and based off
22 the amount of the drugs that were located in the vehicle it
23 was determined that the vehicle would no longer be towed.
24 It would actually be seized at that time.

25 Q. And was the owner - Did the owner of the vehicle show

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-110-

1 up at some point?

2 A. At some point yes she did and she spoke with Commander
3 Brown. I did not speak with her personally but I know she
4 spoke with Commander Brown.

5 Q. Lieutenant Ligon, I'm gonna show you what's been
6 identified Court's Exhibit Two for identification purposes.

7 Do you recognize that document?

8 A. Yes, ma'am, I do.

9 Q. Can you please tell the Court what that is?

10 A. This is basically impounding towing vehicle off a
11 traffic stop. This would be our policy and procedure on
12 how we deal with towed vehicles in doing an inventory
13 search.

14 Q. And that would be the sheriff's office policy?

15 A. Yes, ma'am, it would be.

16 Q. And under Subsection D, Subsection A deals with the
17 abandonment of unattended vehicles. Subsection B deals
18 with illegally parked abandoned vehicles. Am I correct?

19 A. C?

20 Q. No, B is illegally parked - -

21 A. B. Yes, ma'am.

22 Q. Subsection C, abandoned vehicles on public property.

23 A. Yes, ma'am.

24 Q. And then under Subsection D other incidences when
25 a vehicle is made to tow.

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-111-

1 A. Yes, ma'am.

2 Q. And can you please read under Subsection D other
3 instances when vehicles may be towed where you and your
4 deputies have authority to tow it.

5 A. You want me to read the whole thing or just which
6 Subsection?

7 Q. Subsection C.

8 A. Subsection C. "Any vehicle from which a deputy
9 makes an arrest and there is no reasonable party to whom
10 the arrestee can turn over possession of the vehicle."

11 Q. It says "Deputies may cause a vehicle to be towed
12 under any of the following circumstances." Subsection C is
13 one of those following Subsections?

14 A. Yes, ma'am.

15 Q. Thank you. And then Subsection E outlines the
16 inventory procedures.

17 A. "Any vehicle for which there is legal basis for
18 seizure of the vehicle which of course would be the crack
19 that was located inside the vehicle. And also Subsection
20 F, "If any vehicle to be held for processing of evidence in
21 the course of an investigation the vehicle is also held for
22 fingerprints" for everything to be fingerprinted on the
23 vehicle as well.

24 SOLICITOR COLTON: And part of the Sheriff's office
25 procedures on this form, Your Honor, that I move Court

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-112-

1 Exhibit Two be moved into evidence as a Court's Exhibit.

2 MR. LLOYD: No objection, Your Honor.

3 THE COURT: In without objection.

4 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
5 MARKED, RECEIVED INTO EVIDENCE.)

6 BY SOLICITOR COLTON:

7 Q. Is there anything in that - And you are familiar with
8 that, you've read it before? Are you familiar with that
9 outside of actually reading the document in court today?
10 Correct?

11 A. Yes, ma'am.

12 Q. Is there anything in the DEU procedures that are
13 inconsistent with the Sheriff's officer procedures?

14 A. No, ma'am.

15 Q. And is there anything that you did that night or
16 authorized your deputies - your investigators to do that
17 night that was inconsistent with your towing policy ---

18 A. No, ma'am.

19 Q. --- and standard procedures? And is this a common
20 area for your deputies and you yourself to search pursuant
21 to an inventory policy?

22 A. Yes, ma'am.

23 Q. Do you have personal knowledge of the types of in
24 other situations the types of evidence or contraband or
25 valuables and personal property that was recovered from

LIEUTENANT MIKE LIGON: DIRECT BY SOLICITOR COLTON
IN CAMERA

-113-

1 this type of area, cargo area, box - jack boxes and you
2 recovered it and any kind of personal value items, et
3 cetera from other traffic stops?

4 MR. LLOYD: Objection, Your Honor.

5 THE COURT: I over rule the objection.

6 A. Yes. I mean we've had things such as CD's, DVD's,
7 personal items which a person doesn't want sitting out in
8 the open. I've found jewelry before in 'em.

9 Q. Lieutenant Ligon, you mentioned that the determination
10 was made to seize the car after the narcotics were found?

11 A. Yes, ma'am.

12 Q. And so at that point in time the inventory search
13 for the towing purposes were completed you found the
14 narcotics and then how do you get to the seizure from
15 there?

16 A. I mean basically based off the amount of dope that was
17 seen in the vehicle it appeared well over the amount that
18 you would need to seize a vehicle pursuant to State
19 statutes. The vehicle was seized but we also - the vehicle
20 just like I said here it was also determined that the
21 vehicle was going to be processed through Subsection F. It
22 was going to be held for processing of evidence, any type
23 of physical evidence that we could also recover from the
24 vehicle as well.

25 Q. So it could be held as evidence of a crime or under

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-114-

1 the seizure?

2 A. Yes, ma'am.

3 Q. Thank you.

4 SOLICITOR COLTON: Please answer any questions Defense
5 counsel may have.

6 CROSS EXAMINATION - IN CAMERA

7 LIEUTENANT MIKE LIGON BY MR. LLOYD:

8 Q. Lieutenant, in response to Ms. Colton's you said
9 early on that you followed Mr. Mitchell's vehicle in an
10 attempt to gain any kind of violation?

11 A. Yes, sir.

12 Q. What did you mean by that?

13 A. Basically we had the tip as far as things - the tip
14 that came in everything matched up as far as the tip. I
15 felt like even at that time based off the tip and
16 everything else that we concluded based off the tip that we
17 did have - we did have reasonable suspicion even possibly
18 probable cause to stop that vehicle and detain it. But I
19 wanted to take it even a step further and get a traffic
20 violation on that vehicle before we stopped it ---

21 Q. Lieutenant Ligon.

22 A. --- and detained it.

23 Q. I'm sorry, you finished? Lieutenant Ligon, how long
24 have you been with the police department?

25 A. Eighteen years.

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-115-

1 Q. Eighteen years?

2 A. Yes, sir.

3 Q. Have you ever got this search warrant - probable
4 cause for a search warrant based on an anonymous tip?

5 A. Once everything's been corroborated and all not in
6 these specific instances but after a vehicle is stopped yes
7 I have gotten search warrants for vehicles.

8 Q. Based upon - -

9 A. As someone else's stop yes, sir, I have gotten search
10 warrants on vehicles.

11 Q. Understand my question. You've gotten a search
12 warrant based on nothing but an anonymous tip?

13 A. If everything else has been corroborated on the tip
14 yes.

15 Q. Such as what?

16 A. Such as persons driving a vehicle, vehicle
17 description, tag of vehicle, location where vehicle was
18 coming from, person's common knowledge of this person and
19 how descriptive they are.

20 Q. Okay. You've gone to a magistrate and got a search
21 warrant based on that?

22 A. For other officers yes, sir, I have.

23 Q. Okay. And did you tell the magistrate that anything
24 else that happened during the course of that traffic stop
25 or was it just magistrate we got a anonymous tip that said

1 this person will be in a vehicle, that this is the color of
2 the vehicle, the make of the vehicle, and this is where
3 they'll be?

4 A. No, sir. There's been other factors in traffic stops
5 as far as violations and things of that nature as well.
6 It wasn't solely just stopping the car because everything
7 else added up no, sir. To answer your question, no.

8 Q. Okay. No, you have not gotten a search warrant based
9 solely on a anonymous tip?

10 A. No.

11 Q. And you were waiting on a violation ---

12 A. Yes, sir.

13 Q. --- so that you could pull the vehicle over?

14 A. Yes, sir.

15 Q. If you believed you had probable cause why didn't you
16 just pull the vehicle over without a violation, traffic
17 violation?

18 A. Once again, I wanted to take it a step further and
19 have that violation as well.

20 Q. So your contention is that had he not gone an inch
21 or half an inch over the yellow line, and had he not been
22 speeding, you were gonna pull the vehicle over and conduct
23 a search based on the information you had at that point?

24 A. Yes, sir, I would have.

25 Q. And at that point you had an anonymous call to

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-117-

1 Crime Stopper's; is that right?

2 A. Yes, sir, and also another individual from - that
3 had contacted Investigator Allen at that point in time as
4 well. There was a Crime Stopper's and there was also
5 another call to Investigator Allen.

6 Q. And when did the Crime Stopper's call come in?

7 A. I'm not really sure. I don't have that information.

8 Q. Was it July?

9 A. That he was - That he was actually doing these things?

10 Q. The Crime Stopper's tip, did it come in in July?

11 A. I don't know.

12 Q. The anonymous call that came in did the anonymous call
13 other than saying hey, that cars gonna have some dope in
14 it, anything in that phone call suggested that he would be
15 engaged in any kind of illegal activity with the vehicle?

16 A. Once again I didn't take the call. I went off of
17 what Investigator Allen related to me from that
18 conversation with the tipster.

19 Q. Did Investigator Allen tell you that the car was
20 stolen?

21 A. No, sir, he didn't.

22 Q. Did he tell you that the anonymous call said that
23 Mr. Mitchell wouldn't have permission to be in the vehicle?

24 A. No, sir, he didn't.

25 Q. The only thing the anonymous call identified for Mr.

1 Allen as well as the information that you were basing it on
2 was that the car would be coming down Highway 5 at some
3 point that night; is that right?

4 A. From coming on I85 - from I85 from Anderson yes to -
5 On Highway 5 back to Rock Hill via Highway 5 in that
6 vehicle.

7 Q. Nothing illegal traveling down Highway 5 is it?

8 A. In that vehicle matching that description with a tag
9 coming back to Leach Road.

10 Q. All readily observable factors. Right?

11 A. Yes, sir.

12 Q. Nothing in that anonymous tip said that he was going
13 to a specific house and get drugs and put 'em in the car
14 did he?

15 A. Said he was going to a residence in Anderson to pick
16 up drugs and bring them back to York County.

17 Q. What residence did the anonymous call say?

18 A. Did not say.

19 Q. Did he say anything --

20 A. Based off what - Based off of what Investigator Allen
21 advised me of.

22 Q. Did you have any information from Investigator Allen
23 about this anonymous call that gave you anything that you
24 could verify or check other than seeing Mr. Mitchell's car
25 coming down Highway 5?

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-119-

1 A. Well, I knew Mr. Mitchell, I know we've executed
2 search warrants on Mr. Mitchell's residence in the past for
3 drugs and buying narcotics from Mr. Mitchell. I know
4 that the ---

5 Q. Let me --

6 A. --- vehicle - You're asking me.

7 Q. Let me ask you about that.

8 A. Yes, sir.

9 Q. You've executed a search warrants on Mr. Mitchell's
10 house related to Mr. Mitchell?

11 A. People at his residence.

12 Q. Related to Mr. Mitchell?

13 A. Yes, sir.

14 Q. Okay. What search warrant did you execute related
15 to Mr. Mitchell?

16 A. It's been quite a couple of years back. We've also
17 been there for --

18 Q. Did it involve - Did the case involve Mr. Mitchell?

19 A. No, sir.

20 Q. Okay. Did anybody - Did Mr. Mitchell get arrested
21 related to those search warrants?

22 A. No, sir. I advised that I - been an execution at
23 search warrants at Mr. Mitchell's residence and he had been
24 present when we executed them.

25 Q. Because he lived there. Right?

1 A. Yes, sir.

2 Q. With his parents. Right?

3 A. Yes, sir. It was ask if I knew - how I knew him.

4 That's how I knew him, sir.

5 Q. Right. But you're not suggesting ---

6 A. Yes, sir.

7 Q. --- that any of those search warrants or cases that
8 you were involved in ever involved Mr. Mitchell; is that
9 true?

10 A. Yes, sir.

11 Q. Now when you got in behind Mr. Mitchell coming off
12 Highway - onto Highway 5 ---

13 A. Yes, sir.

14 Q. --- how many cars were in front of Mr. Mitchell?

15 A. None to my knowledge at that point in time, sir.

16 Q. Were there any cars between Mr. Mitchell's car and
17 your car?

18 A. . At the time of the stop yes, sir. There was a patrol
19 car and I believe there was two other unmarked vehicles.

20 Q. How far do you think you followed Mr. Mitchell?

21 A. From Blacksburg all the way to the Moss Justice
22 Center. I don't know, fifteen miles or better.

23 Q. Okay. Were there cars in between you all at any
24 point in there?

25 A. No, sir, other than other narcotic's officers that

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-121-

1 were on the surveillance team.

2 Q. Okay. Were they between you and Mr. Mitchell?

3 A. At times we'd switch off yes, sir.

4 Q. Now this pacing method that you described to Ms.

5 Colton. Describe for me again how do you pace this

6 vehicle?

7 A. I get in behind the vehicle and basically I get to a

8 speed to where first of all I drive the speed limit if they

9 pull away then I then advance on that vehicle and I get to

10 where that vehicle is no longer either falling behind to me

11 or exceeding me. At that time that's basically what they

12 consider pacing that vehicle.

13 Q. So how far - How fast did you get up to while you

14 were following Mr. Mitchell?

15 A. I paced him at 57 miles an hour in a 45 mile an hour

16 zone.

17 Q. No. My question was how fast did you go?

18 A. 57 miles an hour.

19 Q. You were going 57?

20 A. Yes, sir.

21 Q. And when you radioed Deputy Estep did you tell her

22 that he was speeding?

23 A. Yes, sir, he was doing 57 miles an hour in a 45 mile

24 an hour zone.

25 Q. Now when you all start writing the tickets for that

1 speeding?

2 A. Well once he got brought back to the Moss Justice just
3 because we ran for warrants, we ran for checks on Ms.
4 McCray, we ran the vehicle information during that time, at
5 some point in time I went ahead and he was placed under
6 arrest, Commander Brown had come on the scene, he was
7 placed under arrest. The drugs were found and then the
8 ticket - I was actually in the process I believe of writing
9 one of the tickets and stopped when Investigator
10 Faulkenberry - I was in the process of the speeding ticket
11 when Investigator Faulkenberry actually got him - got the
12 drugs out of the car.

13 Q. Was Deputy Estep who initiated the traffic stop when
14 did she do her ticket? Do you know?

15 A. That was once we got back to the Moss Justice Center.

16 Q. In other words prior to Mr. Mitchell being placed in
17 handcuffs, you all hadn't started actually writing the
18 ticket had you?

19 A. No, sir. Investigator Allen was still running
20 checks on warrants and warrants and that thing.

21 Q. In fact the entire time up until Mr. Mitchell was
22 placed in handcuffs its not related to investigating
23 driver's license or the registration; you wanted to detain
24 him there so that you could do a search of the vehicle.
25 Right?

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-123-

1 A. No, sir. His driver's license, the registration and
2 all that were being run there was more than one officer on
3 the scene therefore Investigator Allen was taking care of
4 that while the other party investigation was going on.

5 Q. In fact there was so many officers on the scene who
6 could run his driver's license. Right?

7 A. Uh-huh.

8 Q. Anything come back on his driver's license?

9 A. No, sir.

10 Q. Anything come back on the registration?

11 A. No, sir.

12 Q. Anything come back as a problem related to the
13 insurance?

14 A. No, sir.

15 Q. Okay. But instead of either writing him a ticket or
16 a warning ticket for these traffic violations, you
17 continued to detain him on the side of the road; is that
18 right?

19 A. No, actually I didn't continue to detain him; I
20 actually arrested him for those violations. And I can
21 actually take him to the Moss Justice Detention Center and
22 then write those tickets in the Detention Center if I
23 choose to do so.

24 Q. Your purpose for arresting him - First of all, did you
25 decide to arrest him before Commander Brown got there?

1 A. When Commander Brown got there we spoke about it and
2 then he was placed under arrest.

3 Q. And in fact Mr. Mitchell was asking you all why am
4 I being detained; is that right?

5 A. Yes, sir.

6 Q. And at some point when he's asking why was I pulled
7 over, didn't you tell him shut up I'm asking the questions
8 here?

9 A. No, sir, I did not.

10 Q. You never said that?

11 A. No, sir, I did not. I don't speak to people that way
12 on traffic stops. I treat people with respect.

13 Q. Well this wasn't a traffic stop was it?

14 A. Yes, sir, it was.

15 Q. This was a violation so that you could search the
16 vehicle wasn't it?

17 A. It was a traffic stop. Doesn't matter whether it was
18 a violation to stop the vehicle or not it was a traffic
19 stop.

20 Q. Were you gonna let Mr. Mitchell get a ticket and drive
21 off that night?

22 A. No, sir.

23 Q. You were gonna arrest him?

24 A. Yes, sir.

25 Q. Why were you gonna arrest him?

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-125-

1 A. Based off the tip.

2 Q. And the arrest was gonna give you probable cause to
3 search the car; is that right?

4 A. We do the inventory search based off of the arrest.

5 Q. Your purpose for placing him under arrest was to do
6 an inventory search?

7 A. The purpose for placing him under arrest was to do
8 an inventory search on the vehicle.

9 Q. Your purpose for placing him in handcuffs was so you
10 could search the car.

11 A. Do an inventory search on the vehicle, sir. Standard
12 policy.

13 Q. Now, Lieutenant, if you don't place him under arrest,
14 you'd have no reason to do an inventory search; isn't that
15 right?

16 A. And once again he's placed under arrest for the
17 violations and the inventory - -

18 Q. Lieutenant, that's not my question.

19 A. And I'm answering your question. An inventory
20 search ---

21 Q. If he is not --

22 A. --- pursuant to policy was done on the vehicle.

23 Q. If he's not placed in handcuffs he's getting a ticket
24 he could have driven on and you would have had no grounds
25 to do a search; isn't that right?

1 A. I would have not done an inventory search on that
2 vehicle.

3 Q. You would have had no grounds to search the vehicle
4 under any circumstances; isn't that right?

5 A. He was arrested and an inventory search was done on
6 the vehicle, sir.

7 Q. I understand what happened, Lieutenant. My question
8 to you is, if you'd just written him a ticket --

9 A. No we would not have conducted an inventory search.

10 Q. You would have had no grounds to do any search; isn't
11 that right?

12 A. We would not have conducted an inventory search on
13 that vehicle.

14 Q. And so your purpose for placing him in handcuffs
15 for - By the way, did Deputy Estep ever tell you how far
16 over the yellow line he went?

17 A. No, sir, he[sic] didn't.

18 Q. Would it surprise you that she says he went maybe
19 half an inch touching the yellow line?

20 A. She advised me he went over, he drove left to
21 center.

22 Q. Okay.

23 A. She's an officer of the law.

24 Q. So for touching half an inch touching the yellow line
25 and for his speeding your goal was to place him in

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-127-

1 handcuffs so that you could conduct a search for narcotics;
2 isn't that right?

3 A. He was placed under arrest for his violations and an
4 inventory search was conducted on that vehicle, sir.

5 Q. We go back to my original question.

6 A. And I answered your question.

7 Q. If you had not - If you had just written him a
8 ticket and let him go on his way and you would have had no
9 grounds to search the vehicle. Right?

10 A. An inventory search would not been conducted of that
11 vehicle.

12 Q. No search would a been conducted ---

13 A. Cause the vehicle would not have been --

14 Q. --- of the vehicle. Right?

15 A. An inventory search would not been conducted of that
16 vehicle because he would a been on his way and the vehicle
17 would not have been towed.

18 Q. Had he not been placed in custodial arrest you would
19 have had no reason to do an inventory search; is that
20 right?

21 A. Correct, sir.

22 Q. You would have had no reason to be protecting the
23 owner's property or belongings in the vehicle; is that
24 right?

25 A. Yes, sir.

1 Q. And you all made up your mind long before the
2 traffic stop or some point during the traffic stop and Mr.
3 Mitchell wasn't gonna drive off with a ticket; isn't that
4 right?

5 A. We decided to place him under arrest for the
6 violations yes, sir.

7 Q. So that you could search the vehicle to see if there
8 were drugs in the car; isn't that right?

9 A. To do an inventory search of the vehicle, sir.

10 Q. At some point were you all under the hood of the car?

11 A. No, sir. Not to my knowledge nobody went under the
12 hood.

13 Q. Did you go in the gas cap?

14 A. No, sir.

15 Q. Now, when's the first time - Are you familiar with
16 this, I think it was marked Court's Two.

17 A. Exhibit Two. Yes, sir.

18 Q. Have you seen this lately before today?

19 A. Yes, sir. I work for the sheriff's office I been there
20 eighteen years.

21 Q. And you're very familiar with this Impoundment Policy?

22 A. Yes, sir. It was revised on 9/11/2011 and we have to
23 sign it advising. You can speak with Kevin Jones. We have
24 to sign an advisement. Anytime there is an advisement of
25 these policies we have to sign a notice on this.

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-129-

1 Q. Okay. Any major difference between this policy and
2 the time Mr. Mitchell was arrested?

3 A. No, sir.

4 Q. And when you were reading before other instances when
5 vehicles may be towed on Page 2, do you see that?

6 A. Okay.

7 Q. Are you with me?

8 A. Yes, sir, I'm with you.

9 Q. Okay. It says Deputies may call the vehicle to be
10 towed under any of the following circumstances. Do you see
11 that?

12 A. Yes, sir.

13 Q. And you read for Ms. Colton earlier what is Subsection
14 1(d)?

15 A. 1(c).

16 Q. 1(c). I'm sorry.

17 A. Yes, sir.

18 Q. It says any vehicle from which a deputy makes an
19 arrest and there is no responsible party to whom the
20 arrestee can turn over possession of the vehicle. That
21 allows you to tow the vehicle; is that right?

22 A. Yes, sir.

23 Q. Okay. Was Mr. Mitchell allowed to call the owner and
24 have the owner come get the car?

25 A. Generally we don't make it - We don't stay out there

1 and wait for people to show up who could be twenty, thirty
2 minutes into coming and pick up a vehicle.

3 Q. Ms. McCray was there wasn't she?

4 A. Yes, sir, but she didn't own the vehicle.

5 Q. Okay. Ms. McCray could have waited for the owner.

6 Right?

7 A. No, sir, we wouldn't leave Ms. McCray and the vehicle
8 there on the side of the road.

9 Q. Because you're concerned about her welfare?

10 A. Yes, sir.

11 Q. And in fact the owner of the vehicle along with Mr.
12 Mitchell's dad show up before you all have a chance to even
13 tow the vehicle; isn't that right?

14 A. Yes, sir, but that was well after the vehicle had been
15 inventoried and the drugs had been located in the jack area
16 of the vehicle - the jack compartment.

17 Q. So my point is, it wouldn't have taken them half an
18 hour to get there; isn't that right?

19 A. Actually - I mean I don't know exactly how long how
20 long all that took, but probably well into a half hour I'm
21 sure.

22 Q. The owner shows up. At that point Mr. Mitchell's in
23 handcuffs; isn't that right?

24 A. Yes, sir, he is.

25 Q. And Mr. Mitchell's in handcuffs, again, so that you

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-131-

1 can do this inventory?

2 A. No. Mr. Mitchell's in handcuffs because he was
3 arrested.

4 Q. Well, Lieutenant Ligon, even if you arrest him, you
5 could have given him an opportunity to have the car towed.
6 Right?

7 A. We call the next on rotation. We call the wrecker.

8 Q. You could have it towed or you could have allowed - -

9 A. And it was gonna be towed but once before it's towed
10 an inventory search is conducted of the vehicle.

11 Q. Again, ---

12 A. Pursuant ---

13 Q. --- did you ever ask Mr. Mitchell ---

14 A. --- to --

15 Q. --- if he wanted somebody to go get the car?

16 A. Mr. Mitchell advised me that the vehicle did not
17 belong to him.

18 Q. Well, he had permission to be in the vehicle; isn't
19 that right?

20 A. Once again, Mr. Mitchell advised me the vehicle did
21 not belong to him.

22 Q. He had permission to be in the vehicle; isn't that
23 right?

24 A. Not to my knowledge he didn't.

25 Q. Okay. Are you aware that while Deputy Estep is up

1 there talking to Mr. Mitchell and Ms. McCray that they're
2 actually on the phone with the owner?

3 A. No, sir.

4 Q. Set aside the inventory search.

5 A. Okay.

6 Q. Okay. When you arrested Mr. Mitchell ---

7 A. Yes, sir.

8 Q. --- on what grounds would have done a search of
9 the vehicle?

10 A. Based off the policy ---

11 Q. Set aside ---

12 A. --- of the inventory search.

13 Q. --- the inventory search. I'm not talking about the
14 inventory search.

15 A. Okay.

16 Q. Okay. What other grounds would have allowed you to
17 do a search of the vehicle?

18 A. Nothing. We had an inventory search policy. That's
19 why we searched the vehicle to inventory the vehicle.

20 Q. Cause you didn't have probable cause to do a search.

21 A. Once again, he was arrested and placed under arrest

22 ---

23 Q. I understand that.

24 A. --- and an inventory search was conducted.

25 Q. My question to you is other than the inventory search,

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-133-

1 cause - Let's say the owner of the vehicle was in the car.

2 A. If he'd a had drugs on him we would have searched the
3 vehicle.

4 Q. But you didn't find drugs on him.

5 A. No, sir, I didn't so the vehicle was searched ---

6 Q. Well my question --

7 A. --- based off the inventory policy.

8 Q. My question, again, set aside the inventory search,
9 what grounds can you list for the Court today that would
10 have allowed you to search the vehicle simply because he
11 was arrested?

12 A. I think based off the information that came from the
13 tipster we could search that vehicle, sir.

14 Q. Okay. And that information being what?

15 A. Meaning he went to an area, he was supposed to pick
16 up a large quantity of dope, come back into York County
17 going to his residence, based off that information itself I
18 think we had enough to search it then but we took it a step
19 further.

20 Q. You believe that an anonymous call saying that
21 somebody's gonna be on the road at a certain time is
22 probable cause. Is that what you're telling me?

23 A. Yes, sir. If they can - If everything that they tell
24 in that tip is corroborated I do believe so.

25 Q. Anything illegal in that that you could observe Mr.

1 Mitchell doing that corroborated the tip was any of that
2 illegal?

3 A. I think the tip along with everything else that's
4 corroborated based in that tip yes I think we had probable
5 cause.

6 Q. The tip and everything that was corroborated?

7 A. Yes, sir.

8 Q. What was corroborated?

9 A. The vehicle, the area he was coming from, him driving
10 that vehicle, the tag where it come back to.

11 Q. Do yo know whether he went to Anderson?

12 A. Huh?

13 Q. Do you know whether he went to Anderson?

14 A. No, sir, I don't know that he went to Anderson but
15 he come off I ---

16 Q. Okay. So the only thing ---

17 A. --- 85 --

18 Q. The only thing you know ---

19 THE COURT: Whoa, whoa, whoa, whoa. Let's go one at
20 a time.

21 Q. The only thing that you know is that he was getting
22 off on Highway 5?

23 A. Yes, sir, from I85.

24 Q. And the only thing you were able to corroborate is
25 that Mr. Mitchell is in this tan Honda Accord.

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA

-135-

1 A. That comes back to Leach Road.

2 Q. That comes back to an address on Leach Road?

3 A. Yes, sir.

4 Q. That comes back to a car owned by his cousin?

5 A. Yes, sir.

6 Q. That is what you're telling this court gave you
7 probable cause or would have given you probable cause to
8 search the vehicle?

9 A. I believe so but he was also arrested for traffic
10 violations. An inventory search was conducted of the
11 vehicle and during that inventory ---

12 Q. My question --

13 A. --- search - You ask me a question, sir, can I
14 finish?

15 Q. The question is not about the inventory search.

16 A. Okay.

17 Q. My question was simply, those factors ---

18 A. Yes, sir.

19 Q. --- that we just went through are what you're
20 saying gives you probable cause to search the vehicle?

21 A. I think it would have but we went a step further and
22 did other things yes, sir.

23 Q. List for me any other factors that I'm leaving out
24 that would have given you probable cause other than Mr.
25 Mitchell's in a tan Honda Accord on Highway 5.

LIEUTENANT MIKE LIGON: CROSS BY MR. LLOYD - IN CAMERA -136-
REDIRECT BY SOLICITOR COLTON - IN CAMERA

1 A. What else would you like for me to list for you, sir?

2 Q. List for me other factors that I'm leaving out that
3 would have given you probable cause.

4 A. I don't think there is anything else to list for you,
5 sir.

6 Q. So the sum total of your probable cause was the
7 anonymous call on August the 3rd?

8 A. Yes, sir, previous information that we had yes, sir.

9 MR. LLOYD: Thank you.

10 REDIRECT EXAMINATION - IN CAMERA

11 LIEUTENANT MIKE LIGON BY SOLICITOR COLTON:

12 Q. Lieutenant Ligon, based upon the information you knew
13 about Mr. Mitchell, the anonymous tip, was that - Would you
14 consider that to be a very detailed anonymous tip?

15 A. Yes, ma'am, it was.

16 Q. And your personal observations, do they corroborate
17 everything in that anonymous tip?

18 A. Yes, ma'am, they did.

19 Q. Did anything prove to be false about that anonymous
20 tip?

21 A. No, ma'am, it did not.

22 Q. Do you feel that that could have only come from
23 somebody who had intimate knowledge of the situation?

24 A. Yes, ma'am, I do.

25 Q. Was it predictive of the future situation, the

LIEUTENANT MIKE LIGON: REDIRECT BY SOLICITOR COLTON
IN CAMERA

-137-

1 information?

2 A. Yes, ma'am.

3 Q. . Because you received that tip before you all going
4 out to investigate?

5 A. Yes, ma'am, we did.

6 Q. And the tip and what it predicted would happen, did
7 Mr. Mitchell's conduct follow that prediction?

8 A. Yes, ma'am, it did.

9 Q. Were there any deviations from that prediction?

10 A. No, ma'am, there were none whatsoever.

11 Q. At the point in time when you pulled Mr. Mitchell
12 over for the traffic stop, and definitely confirmed his
13 identification ---

14 A. Yes, ma'am.

15 Q. --- is it safe to say that the only thing you hadn't
16 confirmed was whether or not there were drugs in the car?

17 A. Yes, ma'am.

18 Q. And what type of drugs did this informant - I'm sorry,
19 anonymous tipster say were going to be in that car?

20 A. They advised there was gonna be crack cocaine in the
21 vehicle.

22 Q. And how much did they say - How much crack cocaine
23 did they say was gonna be in the car?

24 A. A lot.

25 Q. And at that point in time the only thing that you

LIEUTENANT MIKE LIGON: REDIRECT BY SOLICITOR COLTON
IN CAMERA

-138-

1 didn't know was whether or not there was crack cocaine in
2 the car?

3 A. Yes, ma'am.

4 Q. And do you believe it was more than likely that you
5 would find crack cocaine in that car?

6 A. Yes, ma'am, I did.

7 Q. And did you?

8 A. Yes, ma'am, we did.

9 Q. Do you have to your knowledge any policy at the
10 sheriff's office that dictates that you are never permitted
11 to arrest somebody for a traffic violation?

12 A. No, ma'am.

13 Q. What about a violation that only carries a fine?

14 A. We can't --

15 Q. Prohibited from arresting somebody for a crime that
16 carries a fine?

17 A. Right. Right.

18 Q. Are you prohibited or not?

19 A. No we're not prohibited.

20 Q. And that's within your discretion?

21 A. Yes, ma'am, it is.

22 Q. And Mr. Mitchell is not the first individual you've
23 ever arrested for a speeding violation?

24 A. No, ma'am, it is not.

25 Q. Are you aware in your eighteen years of experience in

LIEUTENANT MIKE LIGON: REDIRECT BY SOLICITOR COLTON
IN CAMERA

-139-

1 the sheriff's office or the DEU ever having a policy that
2 requires you to determine who owns a vehicle and call them
3 and give them the option of having to come pick their car
4 before you decide to tow it?

5 A. No, ma'am.

6 Q. In fact to the contrary your policy requires you to
7 tow that vehicle?

8 A. Yes, ma'am.

9 Q. And had you not towed that vehicle you would be in
10 violation of your policy?

11 A. Yes, ma'am.

12 Q. Would you have left that car in the middle of the
13 road?

14 A. No, ma'am, I would not.

15 Q. Had Mr. - Ms. McCleod the owner of the vehicle showed
16 up five minutes before you found those narcotics, and told
17 you she didn't want you to search the car, she wanted to
18 drive it off, would you have given her that car?

19 A. I can't honestly answer that and say yes or no to
20 that. I don't know based off of everything else that we
21 received. I think we would have continued to search that
22 vehicle.

23 Q. But that didn't happen cause Ms. McCleod ---

24 A. No it did not.

25 Q. --- showed up afterwards?

LIEUTENANT LIGON: RECROSS BY MR. LLOYD - IN CAMERA

-140-

1 A. No, ma'am, it didn't.

2 SOLICITOR COLTON: Thank you.

3 MR. LLOYD: A couple of things, Lieutenant.

4 RECROSS-EXAMINATION - IN CAMERA

5 LIEUTENANT MIKE LIGON BY MR. LLOYD:

6 Q. Predictive information in the anonymous tip was that
7 Mr. Mitchell would be in a tan Honda Accord; is that right?

8 A. Uh-huh.

9 Q. Other than the speeding that you said you witnessed
10 and this crossing over of the yellow line, anything else
11 suspicious about Mr. Mitchell being in that tan car coming
12 down Highway 5?

13 A. Yes, sir. When the vehicle once again when the
14 traffic stop was initiated on the vehicle he proceeded
15 almost a quarter of a mile before he actually pulled over
16 and stopped and there were locations along the way that he
17 could have done so which led us to believe that either
18 evidence was being destroyed or he was attempting to
19 conceal evidence at that point in time or maybe thinking
20 about fleeing.

21 Q. Other than your initiation of the traffic stop,
22 anything suspicious about being in a tan car coming down
23 Highway 5?

24 A. Outside of the tipster advising us that he was gonna
25 be coming in a tan car down Highway 5 him driving with a

LIEUTENANT LIGON: RECROSS BY MR. LLOYD - IN CAMERA

-141-

1 tag that come back to Leach Road and that there would be a
2 large quantity of crack in the vehicle I would suppose not.

3 Q. And what you counted on was the tip has come in to us
4 and we're gonna search this car and determine whether or
5 not there is crack or some cocaine in the car and that
6 indicates to you that the tip was reliable?

7 A. Yes, sir.

8 Q. Not before doing the search but after you found the
9 drugs; is that right?

10 A. No, sir. I felt the tip was reliable even up to the
11 point before we found the drugs.

12 Q. The tip gives you no indication of illegality other
13 than hey have you searched the car and you're gonna find
14 drugs in there?

15 A. But we also have the violations that he committed --

16 Q. The tip didn't tell you anything about he was gonna
17 violate traffic

18 A. No, sir, it did not.

19 Q. The car traveling down the road in and of itself is
20 not suspicious is it?

21 A. Everything else if you put the pieces of that puzzle
22 together yes, sir, it could be and it is. Everything was
23 confirmed that was said by the tipster.

24 Q. Okay.

25 A. Even though to the point except before we found the

1 dope or the drugs.

2 Q. Ms. Abercrombie sitting back there who is a lawyer
3 in Rock Hill.

4 A. Okay.

5 Q. Okay. I know she's going back to Rock Hill at some
6 point this afternoon.

7 A. Yes, sir.

8 Q. And if I say she's coming and describe her car to you
9 and tell you that she's gonna have - be traveling down
10 Highway 5 back into Rock Hill she's gonna have crack in
11 there ---

12 A. Is Ms. --

13 Q. --- does that give you suspicion --

14 A. Has she ever been charged with any drug offenses
15 and convicted?

16 Q. Has Mr. Mitchell been charged with drug offenses and
17 been convicted?

18 A. Yes, sir.

19 Q. He's been convicted of a drug offense?

20 A. Yes, sir.

21 Q. What drug offense?

22 A. His criminal history.

23 THE COURT: I didn't hear the answer.

24 Q. His criminal history?

25 A. Yes, sir.

LIEUTENANT LIGON: RECROSS BY MR. LLOYD - IN CAMERA

-143-

1 Q. What criminal history is that?

2 A. You don't have Mr. Mitchell's criminal history, sir?

3 Q. Answer --

4 THE COURT: You're the one who brought that up. You
5 need to answer. You can tell him you said he's got a
6 criminal history and he wants to know what it is. You're
7 the one who said he had one.

8 A. He's been convicted of drug offenses yes, sir.

9 Q. When did you find that out?

10 A. That was afterwards after his criminal history was ran
11 on him that evening.

12 Q. You didn't have that when you pulled him over?

13 A. No, sir, I didn't.

14 Q. Even though you were familiar with him?

15 A. Yes, sir, I'm familiar with him.

16 Q. Even though you were looking for him?

17 A. Yes, sir.

18 Q. Did you run a history on him before you went looking
19 for him?

20 A. No, sir, I did not.

21 Q. So bringing up this whole issue about his criminal
22 history has additional grounds for suspicion to pull him
23 over for probable cause in your interpretation - -

24 A. Sir, you -

25 Q. Lieutenant, I'm asking the question. Okay?

1 A. Okay.

2 Q. That had nothing to do with factoring in any kind of
3 suspicion of probable cause did it?

4 A. Not at that time no, sir.

5 Q. No. That was just gratuitous on your part.

6 A. No, sir, I don't think so. What do you mean by
7 gratuitous on my part?

8 Q. You just wanted to throw that out there because it had
9 nothing, absolutely nothing to do with your decision to
10 pull him over.

11 A. You ask me the question that if she was riding down
12 the road ---

13 Q. Right.

14 A. --- and leaving from here. I simply ask you did
15 she - would she have any prior drug convictions.

16 Q. No.

17 A. Did is say - I didn't say that I ran --

18 Q. You said you pulled him over because she doesn't have
19 a prior conviction but he does.

20 A. You ask me, sir, if she was traveling down the road
21 and you gave me that information not her.

22 Q. Yes, sir.

23 A. We all - We all learn about things on the way. Now
24 I may ---

25 Q. You would --

LIEUTENANT LIGON: RE-CROSS BY MR. LLOYD - IN CAMERA

-145-

1 A. --- run a criminal history on her to see if she
2 has any prior drug offenses as far as if she was leaving
3 from here and you said that she had drugs on her person. I
4 may run --

5 Q. But you didn't run on one Mr. Mitchell.

6 A. No, sir, I didn't but that wasn't the question that
7 you ask me.

8 Q. Okay. My question to you was, if I tell you that Ms.
9 Abercrombie is gonna be going down Highway 5 this afternoon
10 ---

11 A. Yes, sir.

12 Q. --- headed back into Rock Hill ---

13 A. Yes, sir.

14 Q. --- and give you the description of her car ---

15 A. Yes, sir.

16 Q. --- which I'm familiar with.

17 A. Yes, sir.

18 Q. And anybody that stands in the parking lot would be
19 able to see it.

20 A. Yes, sir.

21 Q. If I give you that, you're interpretation of probable
22 cause is that should she be traveling down the highway this
23 afternoon in that color car you'll be able to pull her over
24 and search her based on probable cause?

25 A. I think we would have to corroborate other things in

1 that tip.

2 Q. Okay.

3 A. And if she committed a violation we would pull her
4 over.

5 Q. Such as what would have to corroborate?

6 A. I mean everything that you told me.

7 Q. Okay.

8 A. Her being in that vehicle those things.

9 Q. Which is all you had to corroborate on Mr. Mitchell?

10 A. Yes, sir, at that time. Yes, sir.

11 Q. Okay. And if she committed a traffic violation, let's
12 say she's touching the yellow line.

13 A. Yes, sir.

14 Q. And you would pull her over based on the traffic
15 violation and my tip?

16 A. Yes, sir.

17 Q. And would you conduct a search of her vehicle?

18 A. If we found it to be that she needed to be arrested
19 and then her vehicle towed an inventory search would be
20 conducted of her vehicle.

21 Q. And if she touches the yellow line would you place
22 her in handcuffs?

23 A. I think I would have to make that determining factor
24 as officer discretion at that time, sir.

25 Q. Okay. What would you play out in your mind to tell

LIEUTENANT LIGON: RECROSS BY MR. LLOYD - IN CAMERA

-147-

1 you whether or not you should place her in handcuffs or
2 not?

3 A. I think that would be based off the traffic stop
4 itself and gaining information in speaking with her and
5 things of that nature. Officer discretion.

6 Q. Speaking with her would help you decide whether or not
7 you're gonna place her in handcuffs?

8 A. Yes, sir, it could.

9 Q. What in speaking with Mr. Mitchell made you decide to
10 place him in handcuffs?

11 A. After speaking with Commander Brown and Commander
12 Brown's dealing of Mr. Mitchell and the family in the past
13 it was determined that he was gonna be placed under arrest
14 and that's what we did.

15 Q. So there's nothing that Mr. Mitchell said, it was
16 speaking with Commander Brown?

17 A. Yes, sir.

18 Q. And it was speaking with Commander Brown's past
19 dealings and what he was relating to you - - -

20 A. He's dealings, yes, sir.

21 Q. Was his past dealings was with Mr. Mitchell's family;
22 is that right?

23 A. . And Mr. Mitchell yes, sir.

24 Q. Okay. It had nothing to do with Mr. Mitchell?

25 A. No. And Mr. Mitchell. I've never direct - I've

1 never directly dealt with Mr. Mitchell other than being
2 present during search warrants and things at his residence.

3 Q. Okay. Well what did Commander Brown tell you about
4 Mr. Mitchell then?

5 A. Commander Brown advised me that he's had informants
6 that have purchased narcotics, that those informants
7 advised that they've received those narcotics from Mr.
8 Mitchell and that they were selling narcotics from Mr.
9 Mitchell.

10 Q. Lieutenant Ligon, are you telling me right here now
11 that Commander Brown has told you that he's got informants
12 who purchased drugs from Mr. Mitchell?

13 A. From other individuals who get their drugs from Mr.
14 Mitchell.

15 Q. Okay. Does he tell you that those informants saw
16 Mr. Mitchell give them drugs?

17 A. We didn't have that in depth of a conversation on the
18 side of the road no, sir.

19 Q. Okay. So your belief is that Commander Brown told
20 you that he had some informants. Is it more than one?

21 A. Yes, sir.

22 Q. More than one informant who has purchased drugs.

23 A. From the past.

24 Q. From some other people who got those drugs and the
25 informant knew that they got the drugs from Mr. Mitchell?

LIEUTENANT LIGON: RE-CROSS BY MR. LLOYD - IN CAMERA

-149-

1 A. Yes, sir.

2 Q. . And you're - And he told you all this on the side of
3 the road?

4 A. Yes, sir.

5 Q. More than one informant. Yes?

6 A. Yes, sir.

7 Q. Did he tell you when they had purchased drugs from
8 him?

9 A. No, sir, not at that time.

10 Q. Did he tell you why they hadn't gotten a search
11 warrant prior to this to go search Mr. Mitchell's house?

12 A. No, sir, he did not.

13 Q. In fact Commander Brown told you once he got out on
14 the scene to go ahead and place Mr. Mitchell under arrest;
15 isn't that right?

16 A. Yes, sir, he did.

17 Q. Okay. And you wanted to place him under arrest, you
18 and Commander Brown, because you wanted to be able to
19 search the vehicle; isn't that right?

20 A. We did an inventory search of the vehicle.

21 Q. You wouldn't have done --

22 A. After he placed under arrest we did - We've gone
23 this route again but I'll be glad to do it.

24 Q. I'm not talking about semantics here.

25 A. Yes, sir.

1 Q. You placed him under arrest so that you would have
2 the ability to quote unquote do this inventory search;
3 isn't that right?

4 A. He was placed under arrest for his violations and an
5 inventory search was conducted.

6 Q. Because you wanted to search the vehicle. Right?

7 A. We conducted an inventory search of the vehicle yes,
8 sir.

9 Q. You're just not --

10 THE COURT: What he's asking you is, you arrested him
11 rather than give him a uniform ---

12 A. Yes, sir, we --

13 THE COURT: --- citation because you wanted to do
14 a search. I mean you either did or you didn't.

15 A. Yes, sir. I mean - Yes, sir, he was arrested and
16 an inventory search was conducted on the vehicle yes, sir.

17 Q. So this whole issue about the arrest and doing an
18 inventory search, had nothing to do with trying to protect
19 Ms. Shaniqua -

20 THE COURT: McCray.

21 A. McCleod.

22 Q. McClepd. I'm sorry.

23 A. Yes, sir.

24 Q. Ms. McCleod's property. It was so that you could
25 search the vehicle for drugs.

INVESTIGATOR JAMIE FAULKENBERRY: DIRECT BY SOLICITOR COLTON -151-
IN CAMERA

1 A. Yes, sir.

2 MR. LLOYD: Thank you.

3 THE COURT: All right. You can step down. Thank you.

4 LIEUTENANT LIGON: Thank you, Your HONOR.

5 (WITNESS LEAVING WITNESS STAND.)

6 SOLICITOR COLTON: Jamie Faulkenberry, Your Honor.

7 (WHEREUPON, JAMIE

8 FAULKENBERRY, BEING FIRST CALLED AND DULY SWORN, TESTIFIED

9 AS FOLLOWS:)

10 DIRECT EXAMINATION - IN CAMERA

11 INVESTIGATOR JAMIE FAULKENBERRY BY SOLICITOR COLTON

12 Q. Investigator Faulkenberry, can you state your full
13 name for the record?

14 A. Jamie B. Faulkenberry.

15 Q. And where do you work?

16 A. York County Sheriff's Office.

17 Q. What's your rank?

18 A. I'm an Investigator.

19 Q. And where are you currently assigned?

20 A. The York County Multi-jurisdictional Drug Enforcement
21 Unit.

22 Q. And were you there assigned to the Drug Unit August
23 3rd, 2011?

24 A. Yes, ma'am.

25 Q. And were you involved in the investigation of

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-152-

1 Ortavious Mitchell?

2 A. Yes, ma'am.

3 Q. And how did you come to be involved in that?

4 A. Investigator Allen advised me earlier that day that
5 a phone call had come into the office naming a Ta Mitchell
6 going to Anderson, South Carolina to pick up what they said
7 was a large amount of crack. Stated he would be coming
8 back up I85 and take Highway 5 all the way back to York and
9 take Highway 5 back to Rock Hill to his residence on Leach
10 Road which is off of Highway 5. The tipster advised that
11 they would be driving a tan, Honda registered to a female
12 off of Leach Road.

13 Q. And do you recall if you were provided with the name
14 of the female?

15 A. From - On the vehicle?

16 Q. Yes.

17 A. Yes, ma'am.

18 Q. Do you recall the name?

19 A. Shaniqua McCleod.

20 Q. And pursuant to that information what did you and your
21 other narcotics do?

22 A. I contacted Lieutenant Ligon since he was my commander
23 at the time, advised him of the situation, we agreed that
24 it would be a good idea to involve patrol in this
25 investigation as well so I contacted Sergeant Day who is

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-153-

1 the patrol supervisor in the York District that night and
2 ask could we unitize a patrol vehicle to initiate a traffic
3 stop if one need be.

4 Q. And where were you located during this investigation?

5 A. I positioned my vehicle on Alexander Love.

6 Q. And at some point in time did you receive information
7 that the vehicle had been spotted?

8 A. Yes, ma'am.

9 Q. Who did that come from?

10 A. Lieutenant Ligon.

11 Q. And what did Lieutenant Ligon advise you of?

12 A. Lieutenant Ligon advised me that he was setting up at
13 the intersection of I85 and Highway 5 in the Blacksburg
14 area; stated that he had gotten on a vehicle that matched
15 the description. He ask us to run the tag. His radio
16 wouldn't reach to dispatch and he was calling us on the
17 phone. He ask to run the tags to see who it came back to.
18 He said he was pretty sure it was Tavius who was driving
19 but he couldn't be positive at the moment. I don't
20 remember if I or another officer called dispatch. I think
21 another officer called dispatch and ask them to run the tag
22 and the tag came back to Ms. McCleod on Leach Road.

23 Q. And at some point in time did you personally observe
24 this vehicle?

25 A. Yes, ma'am.

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-154-

1 Q. And where was that?

2 A. Past us - Us I mean myself and Officer Estep, Deputy
3 Estep - on Alexander Love traveling towards Moss Justice.

4 Q. Did you personally observe any traffic violations?

5 A. No, ma'am, I did not.

6 Q. Have you been involved in cases before where traffic
7 violations led to arrest?

8 A. Yes, ma'am.

9 Q. For the traffic violations?

10 A. Yes, ma'am.

11 Q. And is that something that's prohibited by the
12 sheriff's office or DEU policy?

13 A. No, ma'am.

14 Q. Basically its within the Judge's discretion - I mean
15 the officer's discretion ---

16 A. Yes, ma'am.

17 Q. --- whether or not to arrest?

18 A. Yes, ma'am.

19 Q. At some point in time - Well what was your involvement
20 on scene with the vehicle or Mr. Mitchell or Ms. McCray?

21 A. Once we united the traffic stop I passed the traffic
22 stop and just kind of watched the area to make sure there
23 weren't anyone else involved that may pull up behind the
24 officers or any other issues as far as people stopping by,
25 congested traffic, people getting around, in case someone

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON -155-
IN CAMERA

1 left on foot from the vehicle or anything like that. Just
2 kind of in the area in case they needed more officers.

3 Q. And did you have any interaction with Mr. McCray - Ms.
4 McCray?

5 A. I don't believe so.

6 Q. How about Mr. Mitchell?

7 A. I don't believe so.

8 Q. What did you do? Did you - At some point in time
9 did you become aware that Mr. Mitchell was placed under
10 arrest?

11 A. Yes, ma'am.

12 Q. And he was placed under arrest by Mr. - by Lieutenant
13 Ligon?

14 A. Yes, ma'am.

15 Q. And do you know if that was ordered by Commander
16 Brown or not?

17 A. I'm not sure.

18 Q. Once Mr. Mitchell was placed under arrest, what did
19 you do?

20 A. Lieutenant Ligon contacted me ask me to meet him over
21 there and I got out, he advised him we were gonna inventory
22 search the vehicle so I assisted in doing an inventory
23 search of the vehicle.

24 Q. And who else performed the inventory search of the
25 vehicle and did they assist you?

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-156-

1 A. There was someone searching the passenger area but
2 I'm not sure who it was.

3 Q. And did he tell you any specific areas to search or
4 not search?

5 A. No, ma'am.

6 Q. What areas did you search?

7 A. I began at the trunk of the vehicle.

8 Q. Where did you search in the trunk?

9 A. I searched the trunk area and it was a couple of bags
10 in the trunk area and a couple of compartments inside the
11 trunk area.

12 Q. And you said compartments in the trunk area. Where
13 were they located?

14 A. The one that stands out was there was a square plastic
15 door on the right side of the interior of the trunk that
16 opened up by simply turning a latch.

17 Q. And why did you search this area?

18 A. Cause it's common. It's common to find people putting
19 their belongings and other things inside the trunk
20 especially minor locked compartments, jewelry, belongings,
21 stuff like that, and its common to find different stuff
22 that people didn't realize was even in the trunk.

23 Q. And as a sheriff's officer and or as a DEU officer
24 would this be a common area for you to seek to search?

25 A. Yes, ma'am.

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-157-

1 Q. Is there anything in your policy or procedures it be
2 the sheriff's office or the DEU that prevents you from
3 searching these areas?

4 A. No, ma'am.

5 Q. And had this been a locked or a sealed up area would
6 you have been authorized, under your understanding of the
7 policy, to break those locks?

8 A. Yes, ma'am.

9 Q. Or to break those seals?

10 A. Yes, ma'am.

11 Q. In fact you can do that at the - if it causes as much
12 minimal damage as possible?

13 A. Yes, ma'am, I believe that's how its worded is a
14 locked compartment can be opened using the minimal damage
15 to the structure.

16 Q. And did you have to do that to get this compartment
17 opened?

18 A. No, ma'am.

19 Q. What did you have to do to get this compartment
20 opened?

21 A. It was simply a plastic locking mechanism and you turn
22 the knob it just opened.

23 Q. Did it require a key?

24 A. No, ma'am.

25 Q. Did you have to break the car?

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-158-

1 A. No, ma'am.

2 Q. Did you have to break anything in the car?

3 A. No, ma'am.

4 Q. Did you have to use any tools?

5 A. No, ma'am.

6 Q. And so what was your purpose in searching this area?

7 A. We do a full inventory of a vehicle to inventory any
8 valuables, any personal belongings, anything like that in
9 the vehicle.

10 Q. To your knowledge is that the purpose of the policy?

11 A. Yes, ma'am.

12 Q. And who were you trying to protect by inventorying
13 this car?

14 A. It's actually to accommodate the owner, the driver,
15 the occupants of the vehicle. Anyone that may have
16 property in that vehicle needed to be logged.

17 Q. Once the decision is to take this car into custody
18 has been made, who is liable for that vehicle?

19 A. We are.

20 Q. And what would you do procedurally once you made that
21 decision - beyond an inventory search -once the inventory
22 search is completed what occurs next?

23 A. If it's gonna be towed we're gonna request a wrecker
24 to come and tow it to their impound lot.

25 Q. And where was it towed to?

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-159-

1 A. Which ever wrecker comes and tows it it's towed to
2 their impound.

3 Q. And have you ever been in a situation where someone
4 has claimed that something was missing to the car that
5 was initially in the car, claim the police had taken that
6 item or lost it?

7 A. Not personally but I've had other officers that have
8 had that issue.

9 Q. Is it your understanding that that creates problems
10 with the sheriff's office?

11 A. Yes, ma'am.

12 Q. Now at the point in time when you're conducting the
13 inventory search is the owner of the vehicle present?

14 A. No, ma'am.

15 Q. Did you have any indication that the owner of the
16 vehicle would become present?

17 A. No, ma'am.

18 Q. Did you call the owner of the vehicle?

19 A. I did not no.

20 Q. Are you required to call the owner at that point

21 A. No, ma'am.

22 Q. When you removed the panel, what was behind the panel?

23 A. There was a plastic bag I believe that contained a
24 newspaper which contained another plastic bag that had
25 crack in it.

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-160-

1 Q. Were there any other items of value in that container
2 area?

3 A. No, ma'am.

4 Q. Was there - Where was this located?

5 A. It was in the rectangular compartment I spoke of on
6 the right side of the interior of the trunk.

7 Q. And was there anything else in there?

8 A. No, ma'am.

9 Q. And was there any hardware there, any equipment at
10 all, anything?

11 A. No, ma'am.

12 Q. What did you know this spot to contain? What did it
13 appear to contain?

14 A. It appeared to be where the jack was supposed to be
15 held.

16 Q. Was there a jack in that location?

17 A. No, ma'am.

18 Q. Was there a jack anywhere in the vehicle?

19 A. Not that I recall.

20 Q. And would this be an item that you would be
21 responsible for in inventorying a vehicle?

22 A. Yes, ma'am.

23 Q. Investigator Faulkenberry, is there anything in your
24 procedure policy, with the Sheriff's office or the DEU,
25 that requires you to over look contraband, firearms,

INVESTIGATOR JAMIE FAULKENBERRY - DIRECT BY SOLICITOR COLTON
IN CAMERA

-161-

1 dangerous weapons in performing an inventory search?

2 A. That requires us to over look it?

3 Q. Uh-huh.

4 A. No, ma'am.

5 Q. In fact what are you required to do when you find
6 those items?

7 A. Anything that's found to be a danger of any kind, any
8 kind of contraband is required to at the very minimal to be
9 seized and a report be done to document whatever is found
10 in the vehicle.

11 Q. And have there been times before when you had
12 information about a particular person then made a decision
13 to arrest based upon a traffic violation?

14 A. Yes, ma'am.

15 Q. And whether you've known there was - Have you had a
16 subjective understanding, your personal understanding, or
17 hope that there may be drugs in the car, there have been
18 situations like that?

19 A. Yes, ma'am.

20 Q. And there's nothing in the sheriff's office policy
21 that precludes your subjective hopes of what you may find
22 in a car from performing your duties in arresting that
23 person and inventorying the car?

24 A. No, ma'am.

25 Q. And having it towed?

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-162-

1 A. No, ma'am.

2 SOLICITOR COLTON: Please answer any questions Defense
3 counsel may have.

4 THE COURT: Cross.

5 MR. LLOYD: Thank you, Your Honor.

6 CROSS EXAMINATION - IN CAMERA

7 INVESTIGATOR JAMIE FAULKENBERRY BY MR. LLOYD:

8 Q. Is it Officer Faulkenberry or Investigator?

9 A. That's fine. Either one is fine.

10 Q. Investigator, you saw earlier and I think it's still
11 up there, Court's Number Two, the impound Policy.

12 THE COURT: Are there two Number Two's? I've got one
13 of the photos marked as a Number Two. And also this is
14 Number Two.

15 SOLICITOR COLTON: These are State's Exhibits. I
16 didn't have them marked as Court Exhibits.

17 THE COURT: Oh. Court's Exhibit Two.

18 And those are State's Exhibits?

19 MR. LLOYD: Yes, sir.

20 THE COURT: I knew I heard two. Okay.

21 BY MR. LLOYD:

22 Q. I'm gonna show that to you.

23 A. Okay.

24 Q. Have you seen that before?

25 A. Yes, sir.

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-163-

1 Q. And anything in that policy, impoundment Policy, that
2 prevents somebody who is pulled over from calling somebody
3 else to pick up the car?

4 A. Give me one second, I'll double check.

5 (PAUSE.)

6 A. I don't believe it specifically says you can't.

7 Q. Now what involvement other than you take the original
8 Crime Stopper's call; is that right?

9 A. No, sir.

10 Q. You don't?

11 A. No, sir.

12 Q. The July 11th, 2011, Crime Stopper's tip?

13 A. No. I don't take the calls themselves. Essentially
14 what happened is, is in the west office all entails Crime
15 Stopper's are assigned to an individual to simply keep
16 track of it and make sure they're follows up on; divi them
17 up to two other officers to make sure they're evenly
18 distributed so one officer doesn't have too many and that
19 kind of thing.

20 What happened was anytime something came to me that
21 was my job to divi up the Crime Stopper's if I received a
22 Crime Stopper tip what would happen was and I believe in
23 this case when I saw that it was Leach Road, that is
24 actually part of our Rock Hill area,, so it got transferred
25 to the Rock Hill office to follow up on.

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-164-

1 Q. I'm just gonna show you - -

2 MR. LLOYD: So mark this for identification.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER ONE, PREMARKED
4 FOR IDENTIFICATION.)

5 Q. I'm gonna show you what's been marked as Defendant's
6 Exhibit Number One.

7 A. Okay.

8 Q. Have you seen that before?

9 A. Yes, sir, briefly.

10 Q. And that is a Case Summary that Investigator Allen
11 did?

12 A. Yes, sir.

13 Q. If you'll flip over to the second page, I believe at
14 the top.

15 A. Okay.

16 Q. It indicates that on July - I believe 11, 2011 you
17 received the Crime Stopper's call; is that right?

18 A. Well I received the tip itself. What happens is when
19 you call Crime Stopper's - I'm honestly sure who you speak
20 to - some are done via internet, some are done via phone
21 call - the person that calls it in is issued a number by
22 Crime Stopper's to keep up with because it does pay out and
23 it's later made anonymous and still be - and still have
24 some kind of way to get in touch with that individual to
25 give them the award if one applies.

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-165-

1 What I received was a sheet with that information on
2 it. When I saw that it was a Leach Road address it was
3 documented that we received it but it was also - it was
4 sent to the Rock Hill office for followup because it was
5 out of our immediate area that we usually deal with.

6 Q. I understand. Thank you.

7 A. Yes, sir.

8 Q. And, Investigator, just to clarify then, what's marked
9 as Defendant's One as Investigator Allen's Case Summary, to
10 the extent that there is any suggestion that you actually
11 personally spoke with the person that would be wrong; is
12 that right?

13 A. That's correct.

14 Q. And after you received some memorialization of this
15 Crime Stopper's call, did you ever talk to anybody else
16 related to Mr. Mitchell?

17 A. I don't believe so other than forwarding it like I
18 said to the Rock Hill office. I don't believe so.

19 Q. Did you ever receive any information from Lieutenant
20 Ligon or Commander Brown about a confidential informant?

21 A. I did not no, sir.

22 Q. And you on August the 3rd, 2011 you never talked to
23 this anonymous tipster?

24 A. No, sir, I did not.

25 Q. On August the 3rd during the traffic stop, is it fair

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-166-

1 to say that essentially you were just on scene up until you
2 started the inventory search?

3 A. Yes, sir, I was in area if assistance was needed yes,
4 sir.

5 Q. You didn't talk to Mr. Mitchell?

6 A. I don't believe so.

7 Q. You didn't talk to Ms. McCray?

8 A. I don't believe so.

9 Q. Don't know whether Mr. Mitchell ask that somebody
10 come pick up the car?

11 A. I don't believe - I have no idea.

12 Q. You were unaware of any problems with Mr. Mitchell's
13 license or anything ---

14 A. I wasn't ---

15 Q. --- objectionable?

16 A. --- no, sir.

17 Q. You didn't see anything suspicious once you got on the
18 scene with Mr. Mitchell?

19 A. No, sir.

20 Q. Now you indicated to Ms. Colton that you have in the
21 past arrested people so that you could do an inventory
22 search?

23 A. I'm sorry, I misunderstood the question. I thought --

24 Q. And that --

25 A. I'm sorry. I thought the question was had I arrested

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-167-

1 someone for minor traffic violations and I had.

2 Q. And I believe - and I may be wrong so I'm not
3 asserting this to you. I'm just asking.

4 A. Right.

5 Q. Did you tell her that you would arrest the people in
6 the hopes during the course of an inventory search you
7 might find drugs?

8 A. I have heard that by other officers. I have
9 personally have not had to no, sir. And I apologize if I
10 misunderstood the question.

11 Q. And I may have misunderstood your answer. You had
12 heard that other officers will arrest people on traffic
13 violations in order to conduct inventory searches for
14 drugs?

15 A. I've been told that people have done arrest for
16 traffic violations and during inventory searches have done
17 so depending on what the circumstances around that traffic
18 were.

19 Q. I just want to be clear I understood your first
20 answer.

21 A. Yes.

22 Q. Did you just testify that you had heard that other
23 officers will arrest people on traffic violations so that
24 they can do an inventory search for drugs?

25 A. Not solely to do an inventory search.

1 Q. So their main purpose or another purpose is to
2 actually search for contraband or other evidence versus
3 doing an inventory search?

4 A. Are you asking me was that the other officers intent?

5 Q. Yes, sir.

6 A. I don't know. I don't have a way of answering that.

7 Q. But what you had heard was that these people were
8 being placed under arrest, custodial arrest.

9 A. Yes, sir.

10 Q. So that those officers could do inventory searches?

11 A. You mean on this traffic stop?

12 Q. Or on these other instances.

13 A. I wasn't specifically told that no. I was never told
14 hey we searched this car just so - Excuse me. I was never
15 told we arrested this guy just so we could search his car
16 no, sir, I that's - if I understand your question.

17 Q. Well, I may be a little bit confused then cause I
18 thought that's what you just said. Did you just testify
19 earlier that you had heard that some officers will arrest
20 people for traffic violations so that they can conduct
21 inventory searches for contraband or other evidence?

22 A. Like I said, I was never told specifically no we did
23 this just so we could search the car, if that's what you're
24 asking.

25 Q. Well let me ask you. How long have you been with the

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-169-

1 sheriff's office?

2 A The sheriff's office? Five years.

3 Q. And how long have you been in law enforcement?

4 A. Eight years.

5 Q. Would you deem it proper to place somebody under
6 arrest for a traffic violation just so you can search their
7 car?

8 A. Depending on the circumstances. If you feel like
9 you have probable cause outside of that.

10 Q. If you had probable cause outside of the traffic
11 incident, then in your mind it's okay to arrest them?

12 A. Yes, sir.

13 Q. If you don't have probable cause outside of the
14 traffic incident would you arrest somebody just so you
15 could search their vehicle?

16 A. Not necessarily.

17 Q. What under any circumstances you can think of, can
18 you describe for the Court when you would arrest somebody
19 just so you could do - on a traffic violation - just so
20 that you can do an inventory search?

21 I. I'm trying to answer this without being specific so -

22 Well I guess what I'm gettin at is, this case would
23 be a - from my understanding - this case would be an
24 example when you had a - when you have officers who have
25 prior dealings with an individual you get different tips

1 from different sources saying this individual is doing
2 that, you get a tip about a specific time, date, location;
3 that kind of thing, I wouldn't - I guess to answer your
4 question - if it's answered - if this answers it better -
5 if I stopped somebody at random without knowing anything
6 about 'em just, you know, running a traffic light that I
7 don't know never dealt with, never heard of, anything like
8 that, in that particular instance no not by itself would I
9 just arrest them, just run the traffic light to do an
10 inventory.

11 But this case would be a primary example where I would
12 say that may be applicable as is other officers say that
13 they are familiar with the individual, they've got prior
14 knowledge, they've got the corroborative information that
15 they have, you know, stuff leading up to that to lead you
16 to believe that there is something in the vehicle other
17 than just the traffic violations itself; if I'm not being
18 to vague.

19 Q. No, actually I appreciate your answer.

20 A. Okay.

21 Q. Let me ask you this. What did any of the other
22 officers tell you they knew about Mr. Mitchell?

23 A. They didn't tell me anything.

24 Q. Did they tell you that they corroborated anything
25 about Mr. Mitchell?

INVESTIGATOR JAMIE FAULKENBERRY - CROSS BY MR. LLOYD
IN CAMERA

-171-

1 A. That evening yes, sir, that incidence.

2 Q. And what did they corroborate about Mr. Mitchell?

3 A. It was my understanding that the vehicle he was
4 operating - again he was supposed to be operating a tan,
5 Honda, coming from Anderson. They give an approximate
6 time frame, I'm not sure what it was off the top of my
7 head, supposedly coming up 85 from Anderson, would take
8 Highway 5, stay on Highway 5, travel up Highway 5 to Leach
9 Road where he would eventually stop and take the contraband
10 he had obtained. And he was supposed to be driving a gold,
11 Honda, tan or gold Honda, registered to a Ms. McCleod and
12 the address was Leach Road but they weren't sure what the
13 tag number was on it.

14 Q. Okay. Earlier you mentioned a couple of questions
15 back that some of those officers that have had prior
16 dealings with Mr. Mitchell. To your knowledge did any of
17 them have any prior dealings with Mr. Mitchell?

18 A. I'm not sure.

19 Q. Were you in here when Lieutenant Ligon was testifying?

20 A. Yes, sir.

21 Q. Lieutenant Ligon talked about Mr. Mitchell having a
22 past drug arrest history; is that what you heard?

23 A. I heard it back and forth about a criminal history.

24 I'll be honest with you, I got a little confused.

25 Q. Lieutenant Ligon ever tell you that Mr. Mitchell

1 had prior drug arrest?

2 A. He didn't tell me that no, sir.

3 Q. But you heard that a minute ago?

4 A. Like I said I heard - I got confused about the whole
5 criminal history discussion to be honest with you.

6 Q. At any point were you all looking under the hood of
7 the car?

8 A. I didn't no, sir.

9 Q. Did anybody else?

10 A. I'm not sure.

11 Q. Anybody look in the gas cap area of the vehicle?

12 A. I'm not sure.

13 MR. LLOYD: I have nothing else, Your Honor. Thank
14 you.

15 THE COURT: Any redirect?

16 SOLICITOR COLTON: I have nothing else, Your Honor.

17 THE COURT: All right. You can step down.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Is that the witnesses' for the State?

20 SOLICITOR COLTON: Yes, sir, it is.

21 THE COURT: All right. We'll take a break at this
22 time.

23 MR. LLOYD: Your Honor, we decided whether we needed
24 to call anybody, unless Ms. Colton rejects --

25 Will you all stipulate that he has no prior drug

1 arrest or we can --

2 SOLICITOR COLTON: I don't know, Judge. I think - I
3 would stipulate he doesn't have anything.

4 THE COURT: Well why don't you all check on that while
5 we take a break.

6 MR. LLOYD: Thank you.

7 (COURT IN RECESS AT 04:22 P.M..)

8 (COURT BACK IN SESSION AT 04:47 P.M..)

9 THE COURT: Take your seats.

10 Mr. Lloyd, does the Defense have any witnesses on
11 this issue?

12 MR. LLOYD: No, Your Honor. We do want to clarify,
13 the witness - Ms. Colton - I don't want to misrepresent her
14 - I don't believe she's able to stipulate to Mr. Mitchell's
15 prior record so we would want to bar his rap sheet that
16 they provided us in discovery as a Court's Exhibit.

17 SOLICITOR COLTON: Judge, I can stipulate as to what's
18 on the NCIC. I will say that I've had my experience before
19 we started at least as a practical matter to go to each
20 agency and Magistrate court to see if there has been any
21 convictions for drug offenses or other ticketable offenses,
22 marijuana, paraphernalia or ticketable offenses.

23 Now my understanding from folks at NCIC is if they are
24 arrested for a ticket those aren't getting fingerprinted
25 and therefore they're not gonna get put into the Federal

1 data base. So I can - I will stipulate what's on the NCIC.
2 I haven't checked all of the individual agencies even in
3 our county, North Carolina, for a minor misdemeanor
4 offenses of that nature that may be on there. As far as I
5 know there aren't any but I can't say that for certain that
6 there aren't cause I don't know that.

7 THE COURT: Its looks like finding out how angels can
8 dance on the head of a pin.

9 SOLICITOR COLTON: Yes, sir. .

10 THE COURT: If he had it or not the officer's didn't
11 know it at the time.

12 SOLICITOR COLTON: I don't believe that they knew.
13 You're right, they testified to that.

14 THE COURT: Well I mean there hasn't been any
15 testimony that anybody knew about it.

16 SOLICITOR COLTON: Yes.

17 THE COURT: And it was alluded to gratuitously by one
18 the officer that if Ms. Abercrombie in Exhibit A had a
19 criminal record then they might want to stop her because
20 she got a tip that she was driving down Highway 5 but
21 that's the only interjected. That was interjected in a
22 hypothetical and it doesn't go anywhere. It doesn't help
23 the Court one way or the other in regard to the Court's
24 analysis of probable cause or search incident to arrest.

25 So, like I say it's like how many angels can dance on

-175-

1 the head of a pin. We'll put it in for whatever it's
2 worth.

3 MR. LLOYD: Yes, sir. And I did not want to call Mr.
4 Mitchell just to testify to that.

5 THE COURT: Okay.

6 MR. LLOYD: But had we called him, Judge, he's never
7 been arrested for a drug offense but we did want to put
8 that in.

9 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
10 AND MARKED, RECEIVED INTO EVIDENCE.)

11 MR. LLOYD: We have no other witnesses to call.

12 THE COURT: All right. The Defense's position - What
13 position - Do you have any cases on the search?

14 MR. LLOYD: Yes, sir. Beg the Court's indulgence.

15 THE COURT: If the search is an issue.

16 MR. LLOYD: I will address these, Your Honor.

17 I think the way that they've sort of testified to the
18 issue of probable cause to search and many of the officers
19 and investigators tried to testify that there was in fact
20 probable cause to merely do the search even without doing
21 the inventory or doing an arrest. They simply - the
22 investigatory stop or - I'm sorry, the anonymous tip that
23 was called in.

24 Your Honor you are probably somewhat familiar with
25 this issue cause one of your cases went up to the Court of

1 Appeals regarding that in *State v. Willard*. But prior to
2 that case in 2000 there was *State v. Green* which is 341
3 South Carolina 214, 532 S.C.2d 896, 2000 case Court of
4 Appeals.

5 And in that case, Your Honor, the South Carolina Court
6 of Appeals discussed what happens with these anonymous
7 tips. And much like all the jurisprudence that I've seen
8 and in fact I've seen none that suggest otherwise - come in
9 on the heels of *Florida v. J.L* which I'm sure Your Honor is
10 familiar with and certainly had to deal with in the *Willard*
11 case.

12 All those cases say, Your Honor, at best when you're
13 analyzing this anonymous tip it might go to reasonable
14 suspicion to do an investigatory stop. There is not a case
15 out there that says an anonymous tip in and of itself gives
16 you probable cause. And as all those cases that stem after
17 *Florida v. J.L.* which I'm sure Your Honor is familiar with,
18 529 U.S. 266, 2000 case, the issue there, Your Honor, is it
19 enough corroboration, independent corroboration by the
20 police that number one this is the individual that we
21 should be looking at. And two, that shows predictive -
22 predictive information about criminal behavior or
23 suspicious behavior.

24 In *State v. Green* the Circuit Court denied the
25 defendant's motion to suppress after a stop and search led

-177-

1 to the finding of drugs. In Green the anonymous tip much
2 like in this case said that White in that case and - I'm
3 sorry, Green, would be leaving a particular place at a
4 particular time and the anonymous tip gave a description of
5 the car. In fact the Court said quote in the present case
6 the anonymous caller provided police with Green's name" -
7 Mitchell's name - "a description of the car he was driving,
8 a description of the Honda Accord, tan Honda Accord - "and
9 the location that Green would be departing."

10 Now the Court said quote these items are readily
11 observable and do not supply sufficient indicia over
12 reliability to establish reasonable suspicion to justify an
13 investigatory stop."

14 Again, Your Honor, that's all anonymous tips ever rise
15 to the level of. Is it enough in and of itself even if you
16 can corroborate that information to get past reasonable
17 suspicion. Does it establish probable cause? *Florida v.*
18 *J.L.* does it say it establishes probable cause. None of
19 the progeny of *Florida v. J.L.* suggest that.

20 And also the Court of Appeals recognized that in
21 saying that in and of itself, anybody can see that.
22 Anybody can tell you that. What's important in all of
23 these cases is that there be some indication that the
24 officers can corroborate that in fact this person has been
25 able to predict suspicious activity..

1 Not just who they are, not just for descriptive
2 purposes, but in fact some suspicious activity that would
3 then allow the officers to make that investigatory stop.

4 All these cases, Your Honor, even talk about *Alabama*
5 *v. White* which came in 1990, U.S. Supreme Court case 496,
6 U.S. 325, 1990 case. In *White* the police received an
7 anonymous telephone tip that Ms. White would leave a
8 particular apartment at a specific time with cocaine in her
9 possession. The caller also informed the police what
10 vehicle White would drive and her final destination.

11 Now in that particular case once the stop was made,
12 White actually gave consent to the search of her purse.
13 But the Court in *White* was very clear that, again, all this
14 arises to what the anonymous tip is that the police have
15 enough to do a *Terry* stop. Had they just stopped Mr.
16 Mitchell and said hey, which they did, can we search the
17 vehicle, it's over with.

18 Once he denies the consent to search, the
19 investigatory stop is over with unless something else
20 happens that allows them to continue that traffic stop.
21 And I want to talk about that in a minute because I think
22 what we have here was very much an unconstitutional
23 prolonging of that traffic stop.

24 But in the case Your Honor decided *State v. Willard*
25 374 South Carolina 129, 647 S.E.2d 252, 2007 case, again

-179-

1 the Court of Appeals is dealing with an issue what does the
2 anonymous allow the police to do. And in this particular
3 case what's interesting is they said look, this is not just
4 - even though this person was anonymous as a quote unquote
5 tipster, in an officer's presence that tipster made a phone
6 call to the defendant. During the course of that phone
7 call they discussed - said the Court of Appeals - what
8 sounded like a drug deal. That the Court said supported a
9 Terry stop, an investigatory stop. None of these cases say
10 that that supports probable cause in and of itself but it
11 did support an investigatory stop.

12 Now one of the things that, again, we keep coming back
13 to is what exactly that these officers have. All they had
14 on Mr. Mitchell is Mr. Mitchell would be in a car, a tan
15 Honda car, that it would come back to an address on Leach
16 Road. Had they actually checked the address would a come
17 back next door to Mr. Mitchell as his cousin's car.
18 Clearly he had permission to have the car. Clearly he
19 confronted Deputy Estep. He actually calls them looking
20 for the registration. Nothing suspicious about him being
21 in the car.

22 I want to point out to the Court, 1997 opinion out of
23 Ohio in *State v. Rose*, 118, Ohio App3rd, 864, 694 N.E.2nd
24 156, 1997 opinion. In that case - and again talking about
25 all this - and I may point out the Court actually reversed

1 the denial of a Motion to Suppress and said that this was -
2 that the anonymous tip did not create a reasonable
3 suspicion justifying in that case an inventory search.

4 But what the Court was honing in on is *Alabama v.*
5 *White, J.L.*, all - not J.L. at that time but *Alabama v.*
6 *White* and they kept in that particular case honing in on
7 its not enough for the anonymous tip to give to the
8 officers what anybody can see. And when we talk about
9 predictive information, it's not just predictive
10 information that somebody's gonna leave a house at any
11 certain time; somebody's gonna show up at a different
12 location at a certain time or they're gonna take a certain
13 route.

14 It's that they're predicting suspicious activity. Not
15 just where somebody's going. Anybody can see that.
16 Anybody might know that. But what they're looking for and
17 in here the Court actually said and I will quote - the
18 Court is saying in that Ohio case, the Supreme Court in
19 *Alabama v. White* held that if a tip has a relatively low
20 degree of reliability more information would be required to
21 establish the requisite quantity of suspicion than would be
22 required if the tip were more reliable.

23 Here the officers, they said, needed more information
24 before they can even justify stopping Rose's car. Some
25 tips completely lacking any indicia of reliability would

1 either warrant no police response or require further
2 investigation before a forcible stop of a suspect would be
3 authorized.

4 Again, Your Honor, what the Court's have been very
5 clear about is an anonymous tip can't just show up and
6 subject you or I or any other citizen to a full blown
7 search. That's what these officers were testifying to.

8 They were testifying that based on an anonymous tip
9 they would have had probable cause to conduct a full blown
10 search of Mr. Mitchell's vehicle. Now what we know is is
11 that the first anonymous tip provided them really no
12 information other than saying well Mr. Mitchell's a drug
13 dealer. Even Commander Brown talks about the CI's
14 information.

15 And it's kind of interesting because even though
16 Commander Brown is the one who actually dealt with the CI,
17 Lieutenant Ligon blows him up into more importance than
18 even Commander Brown gave. Because you remember Commander
19 Brown's testimony he said, look at that point in time what
20 the CI told me didn't feel like it was enough. It wasn't
21 enough to even go get a search warrant for his house.

22 That's before we even get to the issues of the fact
23 that the information from the CI at best would have been
24 stale. It could never - They could never - They could
25 never taken that to a Magistrate to even get a search

1 warrant. But it had nothing to do with the vehicle. It
2 had nothing to do with telling Commander Brown or anybody
3 in the DEU that Mr. Mitchell would be traveling this
4 particular day; that Mr. Mitchell was gonna go buy drugs,
5 and that the CI over heard this. Or that the CI even had
6 anything to do with Mr. Mitchell himself.

7 And you remember Mr. - Commander Brown said well this
8 CI said that well Mr. Mitchell supplies these other people
9 and so we were gonna try to set up this buy on Leach Road.

10 The CI gets that wrong. I ask Commander Brown, did he
11 ever give you wrong information? No. Says he sets up this
12 deal that was gonna be recorded on Leach Road and instead
13 they're way out there on Wild Cat Creek Road to do this
14 deal. Mr. Mitchell is no where near. Mr. Mitchell's name
15 isn't brought up by the CI. Mr. Mitchell's not there in a
16 vehicle at the residence or at this location so the CI as
17 Commander Brown I think correctly said brings nothing to
18 this.

19 So then when you have this August 3rd or April 3rd,
20 2011, anonymous tip, the anonymous tip says hey, Mr.
21 Mitchell's gonna be in a tan car that will come back to
22 this address on this particular name Shaniqua McCleod. And
23 oh by the way, at some point tonight he's gonna be coming
24 back on Highway 5 into Rock Hill. That's it. That is what
25 these officers testified would give them probable cause to

1 do a search.

2 Now, Your Honor, and I don't want to predict Ms.
3 Colton's argument to you, but there is none of these cases,
4 none of them across the country that suggest that that
5 would allow you to do any kind of search. None of them.
6 *Green, Florida v. J.L., Alabama v. White*, all talk about an
7 investigatory stop, not a search. So what happens to allow
8 them to do the search? Nothing. He drives down Highway 5.
9 Now they said he was speeding. They said he touched the
10 yellow line, so they place him under arrest. Other than
11 those violations nothing that they sight gives them
12 probable cause to do a search of that vehicle.

13 In fact I believe it was Mr. Allen who even admitted
14 well yeah there's nothing, nothing else there. There was
15 nothing suspicious, nothing that elevated it to probable
16 cause to do a search. And I think also Faulkenberry was
17 reluctantly saying oh I heard that some people you know do
18 this rouse of arresting people on these traffic violations
19 so they can do a search.

20 Even Lieutenant Ligon who was very adamant about it,
21 we're gonna place him under arrest so we can do this
22 inventory search, we're gonna place him under arrest so we
23 can do this inventory search. And I want to talk about the
24 inventory search separate.

25 But in that case the reason why they wanted to place

1 him under arrest is so they can search the car. Not
2 because he articulates anything else about probable cause.
3 The only thing he ever cites back to is the anonymous phone
4 call on the 3rd.

5 Commander Brown who said he had a CI - Well,
6 Lieutenant Ligon says he had a CI, multiple CI's who had
7 bought from or been around when Mr. Mitchell was selling
8 drugs. Commander Brown didn't say that. Your Honor heard
9 his testimony.

10 Lieutenant Ligon also interjecting this thing about
11 Mr. Mitchell's record even though he didn't look at his
12 record prior. He can't cite any arrest that he knows of
13 about Mr. Mitchell being arrested for drugs. So the only
14 thing he has doesn't give him probable cause. None of it
15 does. So we're back to what reason do we have to get into
16 this car? We will arrest him on a traffic violation. And
17 I think the witness said it best when he said we were
18 waiting to see if we could gain any kind of violation.
19 Wanted to gain a violation so they could place him under
20 arrest to do a search. These people - Everyone of these
21 officers testified that what they wanted to do was search
22 the car.

23 Not - They weren't worried about Ms. McCleod's
24 property. Had they just written him a ticket Ms. McCleod's
25 property would have been back at her house and Mr. Mitchell

-185-

1 would have taken the car back to her. They didn't want to
2 do that. And if we talk about these impoundments and
3 inventory searches, all of these cases that I've looked at,
4 Your Honor, the first thing they say is look, the first
5 thing you got to do because an impoundment is a Fourth
6 Amendment issue. So all these cases talk about is there a
7 standard policy that says this is when you're gonna impound
8 a car otherwise as the court's have said, and I'll cite a
9 few of them in a moment, the danger is that you're gonna
10 have police just impounding cars just for the sake of
11 searching and that's what happened here.

12 Now one of the cases I think one of the Judge's that I
13 think Your Honor is very familiar with, Judge Henderson,
14 who is on the D.C. Circuit Court of Appeals, did a very
15 good analysis of impoundment cases. And she set out
16 beginning with the U.S. Supreme Court's decisions in
17 *Opperman* why it is that we have to hold law enforcement to
18 these standards.

19 And in that case the *United States versus Proctor* 489,
20 F.3rd, 1348 (2007) Judge Henderson who is not - certainly
21 not known for being very lax about defendant's and very
22 liberal in terms of putting restraints on law enforcement
23 said "whether a search and seizure is unreasonable within
24 the meaning of the Fourth Amendment depends upon the facts
25 and circumstances of each case." And she cites *South*

1 *Dakota versus Opperman* at 428, U.S. 364 (1976).

2 She says "automobiles are effects and thus within the
3 reach of the Fourth Amendment." She then goes on to say
4 that the decision to impound - the seizure - is properly
5 analyzed as distinct from the decision to inventory or
6 search the vehicle and therefore you have to go through
7 this analysis to determine was the impoundment first
8 reasonable.

9 Proctor says that the U.S. Supreme Court in *Opperman*
10 prohibits the exercise of police discretion so long as that
11 discretion is exercised - I'm sorry - does not prohibit
12 them from exercising police discretion so long as that
13 discretion is exercised according to standard criteria and
14 on the basis of something other than suspicion of evidence
15 of criminal activity.

16 Something other than suspicion for criminal activity.
17 And she cites that quote which is a direct quote out of a
18 case called *Illinois versus Lafayette* 462 U.S. 640 (1983).
19 So what we heard in the testimony was the decision to
20 actually impound the car had nothing to do with really
21 protecting the owner's property; making sure the owner's
22 property got back to her safely, not wanting to leave Ms.
23 McCray in the car while the owner shows up. They all
24 testified that what they wanted to do was search the
25 vehicle.

-187-

1 Ligon as well as the other agents even said hey look
2 we were gonna arrest him, he was not gonna leave there with
3 a ticket. Why did they want to arrest him? So they could
4 do a search. It wasn't for these legitimate reasons. It
5 was as the Court noted on the basis of suspicion of
6 evidence of criminal activity.

7 In fact Judge Henderson went on and said that we
8 believe that if a standard impoundment procedure exist a
9 police officer's failure to adhere thereto is unreasonable
10 and violates the Fourth Amendment. In her opinion from
11 writing for the majority she said thus before impounding
12 the vehicle an officer should provide the arrestee with the
13 opportunity to arrange for it's removal.

14 Why is that important, Your Honor? Its important
15 because if that's what you're really concerned about, if
16 you're really impounding the car to protect the owner, let
17 him make arrangements to either have the owner pick it up,
18 have somebody else drive it, have it towed. I think it was
19 Deputy Estep who said yeah, it was some discussion about
20 towing the vehicle but I had to let Mr. Mitchell have
21 somebody come and tow it some place. Even Commander Brown
22 said yeah we were gonna call a tow truck.

23 That's legitimate. That's a real interest of
24 protecting property. Not let's just arrest him so we can
25 search the vehicle. And in talking about the inventory

1 itself, again, and what we think is on the video is
2 searching under the hood of the car. They're searching in
3 the gas compartment, cap area of the car. And they're
4 pulling panels from the car in the trunk.

5 Now they keep testifying that well sometimes we find
6 stuff in there. People store money and drugs and guns in
7 there. That's what they were looking for; that's a search.
8 And as all these cases - all of them - and I will run a
9 string cite in a moment, Your Honor, all of them talk about
10 this very thing, the danger of inventory searches turning
11 into searches for evidence and they all condemn it. Every
12 single case condemns law enforcement turning an inventory
13 search into a search for evidence. Every single one of
14 them. And that's what all of these agents actually
15 testified was going on. That's what they said they were
16 looking for.

17 In *U.S. v. Walker* 81 Fed. App's 294 (2003) case the
18 Court of Appeals for the Tenth Circuit said, again not a
19 very liberal Circuit, an inventory search is a well defined
20 exception to the law requirement of the Fourth Amendment.
21 Designed to effect three purposes. Protection of the
22 owner's property, protection of the police against claims
23 of lost or stolen property and protection of the police
24 from potential danger. What they go on to say though, Your
25 Honor, is an inventory search must be justified by

1 administrative purposes and must not be a rouse for a
2 general rummaging in order to discovery incriminating
3 evidence.

4 What do they cite there? They cite *Florida v. Wells*,
5 495 U.S. 1 (1999). That's to stop this very danger. This
6 very danger where these officers testified to as we don't
7 care what we want to do in a search of somebody's vehicle
8 we're gonna arrest him for a traffic violation that anybody
9 else would have gotten a ticket for. And we're gonna
10 search that vehicle to look for drugs because that's what
11 this tip told us was in the car - drugs. Now it's
12 interesting, Your Honor, all of these cases - First of all
13 all of these cases involve drug cases. They all involve
14 somebody actually getting eventually found drugs in the car
15 because of these anonymous tips and because of these
16 inventory searches and that's what made the law in this
17 case.

18 The U.S. Supreme Court, our Court's of Appeals, our
19 state courts have all said here's where you're gonna draw
20 the line. It's not because you got found with drugs in the
21 car. It's because we're not gonna let average citizens be
22 subjected to this kind of a Fourth Amendment intrusion
23 simply because in these cases you found what you were
24 actually looking for. They didn't do it the right way.
25 And that's what we literally keep coming back to over and

1 again in their testimony before this court.

2 We were - Pardon my language, Your Honor, we were hell
3 bound to search this vehicle no matter what based on
4 nothing but this anonymous tip. And when we did our stake
5 out that's all we had. We didn't follow him home to see
6 what he took out of the car. We didn't follow him to see
7 if he took something out to somebody else's house. We
8 didn't do anything to see if he was acting in any way like
9 a drug dealer. This is all we had was what was readily
10 identifiable and observable by anybody. *State v. Green*
11 says that's not enough. So the only way they were gonna
12 get into that trunk or get into that vehicle was to do this
13 quote unquote inventory search.

14 And Lieutenant Ligon I think quite honestly was very
15 ~~if~~ Your Honor, it was almost chilling quite honestly as a
16 lawyer that Lieutenant Ligon's testimony almost with a
17 chuckle was we know how to do a search. We know how to
18 search your vehicle. We don't care about facts, we don't
19 care about probable cause we know what we can do. We can
20 place you under arrest and then I'm gonna inventory your
21 car. And I'm gonna open panels and I'm gonna search
22 through everything in there. Not because I have probable
23 cause I don't need probable cause.

24 And that was born out that night on the side of the
25 road when they never started writing a ticket. Nobody ever

-191-

1 testified that they were writing a ticket or do anything
2 related to that traffic stop that night. They were there.
3 DEU was there to search that car.

4 And quite honestly, Your Honor, Lieutenant Ligon's
5 flippancy about I'm doing an inventory search, over and
6 over again, every time I ask him, that's why you wanted to
7 get in there was to search that car? We're doing an
8 inventory search. What he's really saying to this Court
9 and to the citizens is I don't need probable cause. I'm
10 not gonna worry about that. I'm never gonna worry about
11 that. I have a suspicion I'm gonna place you in handcuffs
12 and I'm gonna do an inventory search of your car regardless
13 of the Fourth Amendment. That's what was chilling, Your
14 Honor, because there's not one case that supports that.

15 In fact everyone of these cases say that's the very
16 thing that we want to guard against. That is the very
17 conduct of law enforcement that these cases say the Fourth
18 Amendment is there for is to protect people from that.

19 And before we get off of the subject all together,
20 Your Honor, *United States versus Digiovanni* - I'm gonna
21 spell it, Your Honor, with these names.

22 D-I-g-I-o-v-a-n-n-I, 650 F.3d 498 (2011) case out of the
23 Fourth Circuit. Again, not a historically liberal court,
24 Judge Hamilton writing for the majority. Again, in talking
25 about these traffic stops and equating them into Terry

1 stops.

2 And the Court said there, Judge Hamilton wrote, "If a
3 police officer seeks to prolong a traffic stop to allow for
4 investigation into a matter outside the scope of the
5 initial stop, he must possess reasonable suspicion or
6 receive the driver's consent."

7 What these guys did, Your Honor, is they pull this car
8 over after tailing it according to Ligon for miles. Estep
9 who initiates the traffic stop, a uniform deputy, basically
10 disappears out of this whole incident. She said look,
11 after that I had nothing else to do with it. After they
12 provided - Mr. Mitchell and Ms. McCray provided both of
13 their identifications, Mr. Mitchell's driver's license,
14 after they provided registration for the vehicle, after
15 they in front of Deputy Estep call the owner of the vehicle
16 and say hey we been pulled over where is the insurance
17 card. They give all of that to her..

18 What was interesting it was Investigator Allen said or
19 Ligon, I forget, she doesn't do anything else with it.
20 Allen then gets part of this information and he starts
21 running checks. Ligon gets some - a driver's license and
22 starts looking to see if there are any warrants out for Mr.
23 Mitchell. The person who actually did the traffic stop,
24 which is the reported reason that they're pulling him over,
25 does nothing else that night that related to this stop

1 except drive them to the jail.

2 I would suggest under this Fourth Circuit case that
3 was an unnecessary and unconstitutional prolonging of the
4 traffic stop. And in fact that case, the Fourth Circuit,
5 actually reversed the Defendant's conviction. The Court
6 said, "A police officer may ask questions unrelated to the
7 purpose of the stop, provided that the unrelated
8 questioning does not extend the encounter beyond the period
9 reasonably necessary to effectuate the purposes of the
10 lawful detention." The lawful detention was the traffic
11 violations.

12 But as you heard from everyone of these witnesses',
13 Your Honor, they didn't care about that. They only write
14 the ticket until they get back to the jail. What they
15 cared about and the sole purpose that Mr. Mitchell and Ms.
16 McCray were kept on the side of that road was when the rest
17 of the DEU get there and for them to place him under arrest
18 so they can do a search. Prior to that there was no
19 probable cause.

20 Your Honor, before we leave I'll give you a cite to
21 some other cases but all stand for the same principle.
22 But in researching this case, two years now it's been
23 pending, I've not been able to find one case that says
24 number one, an anonymous tip is probable cause so all you
25 get at best - And we would argue here that as in State v.

1 Green this doesn't even get you to reasonable suspicion to
2 make the investigatory stop. But at best that's what you
3 get. And everyone of them testified well nothing else
4 happened. Nothing else happened on the side of the road
5 that raised it to probable cause to do a search.

6 Why is Mr. Mitchell irate on the side of the road?

7 Why is he questioning them on the side of the road?

8 Probably because he didn't understand why he's being pulled
9 over, if as Deputy Estep says she told him you crossed the
10 center line, like any citizen would say what are you
11 talking about? He didn't cross a yellow line. And what
12 does Deputy Estep say? Well maybe half an inch of his tire
13 touched the yellow line. This was a rouse from the start,
14 Your Honor. This was a game from the start. But not one
15 of these cases, not one of them, suggest that that
16 anonymous tip leads to probable cause.

17 So then what do we get into? We got to get to the
18 impoundment. As the Court in the cases I cited to you said
19 Look you got to impounding the car for some other reason.
20 Not because you believe that there is suspicion of crime
21 activity. You got to be impounding that vehicle for a very
22 legitimate administrative purpose.

23 Ligon, Brown, Allen, Faulkenberry, everybody was
24 testifying that what they wanted to do was search the
25 vehicle. That was the purpose of the impoundment. As

-195-

1 Ligon said, that was the whole purpose of placing Mr.
2 Mitchell under arrest. Otherwise he would have been given
3 a ticket and gone on his way. They placed him under arrest
4 so that they can impound the car and wanted to impound the
5 car not because of an administrative purpose - legitimate
6 administrative purpose - but so that they could search that
7 vehicle. That makes it unconstitutional. And with all
8 due respect to these officers about what they may have seen
9 in the past, Your Honor, you saw the pictures, the size of
10 this area, they all testified that's where the jack is.

11 It's strains credibility to suggest that these
12 officers on the side of the road that night were worried
13 about Ms. McCleod's jack. Not a one of them could even
14 tell you if the jack was in the car.. If they were so
15 worried about where is her jack so we can put it on this
16 inventory list, where is the list? They looked in the car.
17 They looked in that compartment. They found a bag and then
18 we'll forget about Ms. McCleod's jack. We don't care about
19 a jack anymore. Remember, they're supposed to be doing
20 this inventory search to protect her property. They wanted
21 to go in that compartment to make sure she had her jack.
22 Not one of them can tell you whether there was a jack in
23 there or not.

24 This is an unconstitutional search, Your Honor. This
25 violates every principle of search and seizure law. If

1 this type of activity is upheld here is what we know is
2 gonna happen. Here's what we know is authorized by law
3 enforcement, that if I go out here today and I get caught
4 driving a mile over the speed limit, if I have my tires
5 touch the center line, with no probable cause law
6 enforcement can place me in handcuffs so they can search my
7 vehicle. That is a complete wiping away of the Fourth
8 Amendment; a complete wiping away. And it says you can
9 play those games; you can play those games with people's
10 livelihood and you can play those games with their liberty.
11 I want to get you, which is what Lieutenant Ligon said, if
12 I want you - and look for that violation - I'm gonna see if
13 I can get me a violation and then I'm gonna place you under
14 arrest, and low and behold, probable cause out the window.
15 Fourth Amendment out the window. I'm using this Inventory
16 search to search that vehicle.

17 Thank you, Your Honor.

18 THE COURT: Ms. Colton.

19 SOLICITOR COLTON: Thank you, Your Honor.

20 . Your Honor, I think that the first request to argument
21 - public policy argument tends to indicate that the
22 officers that what they testified was that they believed
23 that they had probable cause and whether they did or not is
24 for you to determine, Your Honor, and not the officers to
25 determine that, but they believed they did. And that they

-197-

1 waited for a traffic violation yes that's true because they
2 knew at that point they would have lawful authority,
3 statutes and the case laws of this state to make an arrest.
4 And they also knew that pursuant to their inventory search
5 they could tow the car they could tow the car.

6 They're subjective opinion as to whether or not they
7 would find drugs in the car or find what they were looking
8 for gave it added insulation as a separate basis to justify
9 an intrusion into that vehicle. Just as Commander Brown
10 testified when they have search warrants certainly they are
11 search warrants they believe would be valid when they go in
12 and have them executed. But they ask for consent, they ask
13 for essentially a back up plan.

14 Because if we come into court and a search warrant
15 fails for some reason they can still claim to have a
16 consent to be in that apartment and basically or a house to
17 have a back up plan for that. And I believe that that's
18 what Commander Brown was testifying to.

19 Yes he thought that he had probable cause based upon
20 all the information. I think what's most important about
21 whether or not there was probable cause or what Commander
22 Brown knew. Commander - Lieutenant Ligon knew part of
23 this. He knew the anonymous tip. He knew the confirmation
24 of that that he visualized. He didn't know a lot of
25 information about that confidential informant and the

1 background information; that came from Commander Brown. So
2 those two things taken in conjunction I think Commander
3 Brown's the only person that knew the totality of the
4 circumstances at that point. He believed that he had
5 probable cause.

6 And I'll save that argument for later but I think the
7 better argument for the State at this point is regarding
8 that traffic stop and arrest. Clearly there is probable
9 cause to stop that vehicle. The officers stopped for
10 speeding which is a violation of the laws of the State of
11 South Carolina. That's probable cause right there. A
12 separate officer, Deputy Estep, saw him driving left of
13 center. A separate violation of the laws, the traffic laws
14 of the State.

15 I think its clear that that provides probable cause.

16 In fact *State versus Parker* which is 254, S.E. 2d 904,
17 it's a 1978 case, is directly on point. "When an officer
18 observes --

19 THE COURT: What was that cite again? 245?

20 SOLICITOR COLTON: I'm sorry. 245, S.E. 2d 904.

21 THE COURT: Okay.

22 SOLICITOR COLTON: It's 1978. Specifically states that
23 an officer observed a motorist driving on the wrong side of
24 the road has probable cause to arrest which is exactly what
25 Deputy Estep had.

-199-

1 South Carolina Sub-Code Section 17-13-30 states that
2 law enforcement officers are authorized by statute by the
3 common law of arrest without a warrant for offenses
4 committed in their view. It doesn't distinguish whether
5 they're misdemeanors. It doesn't distinguish whether it's a
6 fine. It doesn't distinguish whether they are felonies.
7 It says that they have lawful authority to arrest when this
8 offense occurs in plain view. I think that's reiterated in
9 *Parker*.

10 I think that if you look to *Atwater versus the City of*
11 *Lago Vista* which is 121 Supreme Court case 1536, that
12 interprets - and that's the U.S. Supreme Court, Your Honor,
13 interpreting South Carolina's Code Section 17-13-30 which
14 is the law enforcement arrest powers. "An officer has
15 probable cause to believe an individual has committed a
16 criminal offense even if it's a minor offense he may arrest
17 for a crime." So there is no balancing test required.

18 And I believe that was for a speeding violation with
19 only a fine - only punishment for that is a fine. So we're
20 not even talking about imprisonment. We're talking about
21 speeding where the only punishment was a fine. It's
22 exactly what we have here. Officer Ligon observed that.

23 In addition a violation of left to center does carry
24 time. It's a fine or thirty days. And it's an offense
25 punishable by jail time. Either one of those would justify

1 the stop and arrest of an individual. I may not like it,
2 certainly Mr. Lloyd doesn't like it, I may not agree with
3 it but that's the law and that's what we're bound to
4 follow.

5 And whether its arbitrary or not the legislature has
6 never spoken to that. Clearly they could have. They could
7 designate what you can and can't arrest for. That you can
8 only arrest for anything carrying more than sixty days or
9 carrying more than a year in jail and the court's would
10 have been bound to fine that but they've never held that
11 you can't arrest somebody for a fine. They've never said,
12 to my knowledge, whether it's arbitrary or not and it's
13 enforcement that's gonna be the determination or that it
14 was a balancing test as to whether you can or can't arrest.

15 To the contrary, they said that there is no balancing
16 test and for those two reasons I believe that the stop of
17 that vehicle was viable and the arrest, whether or not we
18 agree with it, is lawful.

19 And at that point the question becomes what do we do
20 with the vehicle, a vehicle that was stopped by the driver
21 Mr. Mitchell who is now under arrest in the lane of traffic
22 at the front of a development; the officers meet there
23 impeding traffic? I suppose they could. Did they give it
24 to an individual they may or not know has possession of
25 that vehicle or authorization to drive it by the owner?

-201-

1 They do know that no one in that vehicle is the owner.

2 Do they give it to somebody, Ms. McCray, who doesn't
3 have a driver's license? I would hope they wouldn't do
4 that. Do they call Ms. McCleod? No they don't. Are they
5 required to? No they are not pursuant to their policy.

6 Now, what could she have said? I don't know what she
7 did say but they're not required to do that. She could
8 have showed up and eventually she did but they're not
9 required to do that. They are required once Mr. Mitchell's
10 under arrest and going to jail and they have a driver who
11 cannot operate that vehicle and no duty to give the car, in
12 fact they had liability I believe - -

13 THE COURT: Help me a little bit. I'm gonna interrupt
14 you because I didn't interrupt Mr. Lloyd. Ms. McCleod I
15 don't remember the time or anybody testify whether or not
16 the car had been towed - or not towed - apparently driven
17 over to the Moss Center before Ms. McCleod arrived or after
18 she arrived?

19 SOLICITOR COLTON: It was after she arrived.

20 THE COURT: That's what I thought.

21 SOLICITOR COLTON: Yes., Your Honor, the sequence of
22 events: The car is pulled over, Mr. Mitchell is arrested,
23 they begin giving Terry search, the narcotics are found,
24 Ms. McCray and Mr. Mitchell are under arrest and after the
25 narcotics are found Ms. McCleod shows up and Mr. -

1 Commander Brown has a conversation on what was going to be
2 done with the vehicle, whether it was gonna be towed to the
3 Moss Justice Center or Ms. McCleod would give consent to
4 have it driven over. Ms. McCleod consented to Marvin Brown
5 to have the vehicle driven by law enforcement across the
6 street to the Moss Justice Center.

7 Judge, arguably had Ms. McCleod shown up five minutes
8 earlier before they found the drugs, I think it's a
9 different analysis. I think she can reclaim her property
10 at that point. I wouldn't dispute that. But she didn't
11 and at that point the officer's only recourse is to tow
12 that vehicle out of that lane of traffic and in order to do
13 that they have to follow procedure and protocol which they
14 did.

15 The sheriff's office and DEU either way, these are all
16 DEU and sheriff's officers so any policy, Estep's,
17 Commander Ligon's; anybody else's, they follow the protocol
18 to a tee on what they could impound and what they couldn't
19 impound.

20 And pursuant to the towing policy, which is not
21 arbitrary, it says that they must. They must tow that
22 vehicle and in order to do that they have to inventory the
23 car. Now whether subjectively they hoped to find drugs or
24 not, I don't is an I issue because at that point in time
25 when Mr. Mitchell is under arrest they can't leave the car

-203-

1 there and they can't give it to Ms. McCray nor would they.

2 And what they - And I don't believe there is any
3 evidence in my recollection of the tape is that they didn't
4 over the ---

5 THE COURT: Well I haven't seen the tape.

6 SOLICITOR COLTON: --- gas tanks.

7 THE COURT: I haven't seen the tapes so I can't
8 consider that.

9 SOLICITOR COLTON: Yes, sir.

10 THE COURT: There has been some discussion about it
11 but I haven't seen it so I can't consider it.

12 SOLICITOR COLTON: What Your Honor heard was where
13 they searched pursuant to the inventory was where they were
14 authorized to be. Car jack or not it's a closed container
15 and certainly it's part of the manufacturer's apparatus of
16 the vehicle intended to store jacks. There's clearly an
17 area to store a jack; officers testified to that.
18 Commander Brown testified he had the same similar car where
19 he stores items.

20 They didn't have to break the seal. They didn't have
21 to use a screwdriver. They didn't have to cut anything
22 out. They didn't have to manipulate anything other than a
23 knob to open up that just as they would a glove box, or a
24 set of console, or look in behind a mat case behind the
25 car, open the top of your truck - trunk and they said this

1 is what they commonly did.

2 I think their policy covers whether it was locked or
3 unlocked. It wasn't. It wasn't an issue. They routinely
4 have found items of value there commonly used for storage.
5 Commander Brown testified he often found guns in that area.
6 And those are the three basic areas in which *South Dakota*
7 *versus Opperman* which Mr. Lloyd alluded to at 428 U.S. 364
8 claims that or it was held to that inventory searches are
9 appropriate when the procedure- when the procedure meets
10 three separate needs: "The protection of the owner's
11 property while it remains in police custody; the protection
12 of the police against claims or disputes over lost or
13 stolen property; and the protection of the police from
14 potential danger."

15 Commander Brown spoke to all those types of items
16 being found. I think the policy has been enacted by the
17 sheriff's office and DEU to protect that property. I think
18 officers had an obligation to protect Ms. McCleod's
19 property; had an obligation to protect Mr. Mitchell's and
20 Ms. McCray from claims that they stole the property. And I
21 think that the jack area is a viable area to search and to
22 look for it. Clearly the jack wasn't there. And Ms.
23 McCleod claiming her property the next day could have said
24 Mr. Mitchell stole it.

25 THE COURT: You said the jack wasn't there. You said

-205-

1 the jack wasn't in the jack compartment.

2 SOLICITOR COLTON: Officer Faulkenberry testified --

3 THE COURT: Listen to what - I know. Listen to what I
4 say. The jack wasn't in the jack compartment. That was
5 the testimony.

6 SOLICITOR COLTON: Yes, sir.

7 THE COURT: Where was the jack?

8 SOLICITOR COLTON: Officer Faulkenberry testified that
9 no jack was recovered from the vehicle. He did not see a
10 jack in the vehicle. And I think there was several
11 officers who did not recall and couldn't say that but
12 Officer Faulkenberry who was searching the trunk, the trunk
13 area, said there was no jack.

14 THE COURT: Go ahead.

15 SOLICITOR COLTON: But regardless of whether it was
16 present or not they certainly would have to know it was
17 there or not because that would be something that could
18 later be claimed to be stolen because it was easily
19 movable.

20 I don't think its so clear that subjective opinions of
21 law enforcement or whether it was pretextual or not in
22 their undertaking is the defining factor as to whether or
23 not a search is valid or not under the Fourth Amendment. I
24 believe its more of a procedural nature where the policy
25 itself is pretextual where the nature of the search, to

1 rummage, et cetera, exceeds what is a normal inventory
2 search.

3 The Supreme Court in *United State versus Whren* 116,
4 Supreme Court 1769, 1996 cites *Arkansas versus Sullivan*
5 which is a arrest stemming from a traffic violation where
6 an inventory search reveals narcotics. I think the issue
7 is still open in that case in arguing the specific -
8 specifically to inventory searches.

9 *Whren* stands for the proposition that the officers
10 subjective motivation in determining whether an arrest is
11 pretextual is improper when the officer has probable cause
12 - improper. So they cite several aspects of *Arkansas*
13 *versus Sullivan*. I don't think the reading of that case is
14 necessarily clear but I think if you follow the lines of
15 *Whren* it seems to indicate that what the officers later
16 didn't believe as long as the inventory search was valid in
17 it's scope and application is irrelevant.

18 And I guess that the common sense argument to that
19 would be that officers if that was the standard and
20 officers whether or not they were looking for something
21 determined whether or not a search was viable under the
22 Fourth Amendment; if officers had any information about
23 anybody that was a criminal, were suspected of maybe
24 criminal activity, or short of probable cause, or knew
25 anything criminal in nature that they thought that they

-207-

1 could find something in the vehicle, they couldn't perform
2 an inventory search because they might find something. And
3 if they found something the argument could be well then it
4 must have been pretextual because they were searching for
5 it and I don't think that's what these cases stand for.

6 I think all the Federal Appellate Court's - and I
7 concede if there is a case out there that says specifically
8 that an inventory search absolutely cannot be pretextual
9 under the facts set out here I'm not aware of, Your Honor,
10 but some of the Federal Appellate Courts as Mr. Lloyd
11 mentioned have addressed that.

12 But I think if you look at those cases in broad
13 context the distinguishing factors in all those cases are
14 whether the pretextual to inventory searches are valid they
15 try to find whether or not the policy itself is pretextual
16 in nature or whether the protocol - the procedural
17 inventory was followed. And by that and then we discussed
18 a little bit some discussion about *Wells* 495 U.S. - I'm
19 sorry, Supreme - 110 Supreme Court 1632 was mentioned and
20 cited is better than I'm doing, Your Honor, by Mr. Lloyd
21 about *Wells*. *U.S. versus Mundy* I think puts that into the
22 context it deserves and kind of interprets it. It's a
23 Third Circuit case and it's at 621 F.3d 283.

24 And *Mundy* seems to speak to this distinction mainly
25 that reliance on *Wells* and *Salmon* is misplaced because in

1 each of those cases what the court was finding was that
2 there was no standard policy or procedure governing the
3 implementation of an inventory search. And I think that's
4 different that what we have here.

5 In those cases the officers simply called it an
6 inventory search. They had no protocol, they had no
7 sheriff's office policy. They had no guidelines. They
8 basically just made it up. I think I can do an inventory
9 search because I'm gonna call a tow. And there was nothing
10 for them to follow. And the context of a case like that it
11 is unfettered discretion by officers, because they're not
12 following the rules. They not following that unlimited
13 intrusion that officers are permitted when they have a car
14 impounded to protect the property of others and to protect
15 themselves from liability. And I think its distinguishable
16 from what we have here because we do have a policy.

17 Wells specifically dealt with a closed container,
18 unlocked suitcase, opened by a state trooper says it's
19 improper is that "no policy whatsoever with respect to
20 opening of closed containers" period. And I think that's
21 what that case turns on.

22 Similarly in *Salmon* and in *Court v. Mundy* puts up the
23 same context from Wells. The distinguishing factor again
24 is the complete absence of relevant inventory search
25 protocol which underscores our decision. --- explain that

1 the government had failed to point to any standardized
2 criteria or routine governing the scope of inventory
3 searches. And I think that is also distinguishable from
4 what we have here. Not only do we have a policy and
5 procedure that's written, and not arbitrary, we have
6 officers who testified that that's the policy and procedure
7 that they followed and that they didn't deviate from.

8 And I don't believe there was any testimony to the
9 contrary. I don't believe there was any testimony that
10 officers didn't follow the protocol and procedures and
11 search exactly where they felt that they were authorized to
12 do so by their policy.

13 I think in some and the State would concede how the
14 officers got into the trunk had they pulled out the chasse
15 of the car had they opened up the cover to the speakers or
16 the covers to the speaker system, had they gone into areas
17 even if their policy says that they can commit breakage and
18 do those things, I think its arguable that that would be a
19 much different situation because I think it goes beyond the
20 scope of what their policy says.

21 I think that at that point that's rummaging. That's
22 looking for items of crime because people would generally
23 not open up their speaker system to keep their items -
24 their valuables in there. And I don't believe policy would
25 allow them to do that. But that's simply not what we have.

1 It's not a rummaging, it's looking for a place where they
2 have lawful authority to look pursuant to the inventory.

3 And I believe, although Lieutenant Ligon couldn't
4 articulate it in the best manner, every other officer that
5 testified testified the basis for the search, regardless of
6 their subjective wants and needs and hopes to find
7 contraband, the purpose of the search was to protect the
8 property, to protect themselves from liability, and insure
9 when this car was being towed that they had a record of
10 what was in there when they took custody of it.

11 And Mr. Lloyd spoke a little bit about calling the
12 owner; perhaps that would be a viable option. I think,
13 Your Honor, if you look through some of those Appellate
14 Court cases the Court of Appeals, the Eighth Circuit and I
15 think recall if Mr. Lloyd cited this or not, the United
16 States versus Taylor which is a 636 F.3d 461 discusses a
17 pretextual search and says that pretextual searches in
18 essence should be unconstitutional.

19 But if you look deeper into the facts to that case the
20 decision held that because the towing cost itself required
21 the officers and the policy required officers to give the
22 driver the option of having the vehicle remain where the
23 arrest occurs having the vehicle towed or having it left in
24 the custody of somebody else pursuant to the policy they
25 should have done it. The officer never did that. The

-211-

1 officer made their own arbitrary decision to have the
2 vehicle towed. And in addition to that policy, the towing
3 policy allowed for officers to tow a vehicle where it was
4 suspected in the use of narcotics.

5 That simply isn't the case here either, Your Honor.
6 In that case the policy lent itself to arbitrary
7 application by the officers because there was no basis. It
8 could be just the subjective opinion of an officer I think
9 it might be used in narcotics therefore I can tow it and
10 have it searched. There was no public policy justification
11 for that as Opperman said to protect the person's property,
12 to protect the owner's property, to protect law enforcement
13 from liability.

14 So in sum this public policy justifications that you
15 need for that inventory search were present here. The
16 officers did testify that that was their reason for it.
17 Whether it was their sole reason or whether it was not but
18 it comported with their justifications and in reality their
19 ability to do that under what defines an inventory search.
20 Just because that we don't like it doesn't mean its not the
21 law. And just because we don't like it, it doesn't' mean
22 that they didn't have lawful authority to do it. They did.

23 In looking on and trying to get a little more closer
24 to home, Your Honor, the Court of Appeals case *State versus*
25 *Morris* a 1993 case I think provides the factual scenario

1 that's closer to what we have here, Your Honor. That's at
2 312 S.C. 116 in *State versus Morris*. In *State versus*
3 *Morris* officers had information and it - Officers had
4 information that some kidnaping or something had
5 transpired. They were giving out a BOLO that this
6 individual who's nickname was Duck Booty was a possible
7 suspect in the kidnaping and that he was wanted to question
8 him along this matter and they got confirmation that the
9 license plate would be TRY THIS. Officer's see the vehicle
10 and they stop the vehicle labeled TRY THIS. They get out
11 with that individual and they find an open container in the
12 car. They look in the car and they arrest him and they do
13 an inventory search and find more than drugs. I think its
14 very similar. It was a challenge - There is no challenge -
15 I'm sorry, Your Honor.

16 They say that the investigatory stop was supported by
17 reasonable suspicion the open container gave probable cause
18 to arrest the defendant. Following that the inventory
19 search pursuant to their towing policy, acceptable means to
20 tow the car, and to regardless of what their subjective
21 basis for that.

22 The Court's indulgence.

23 (PAUSE AT 05:50 P.M..)

24 SOLICITOR COLTON: And, Your Honor, all that aside,
25 when it comes to a matter of probable cause for searching

-213-

1 an automobile I believe the standard is the same as what
2 can be utilized in determining whether or not to get a
3 search warrant. Certainly the officers could have gotten a
4 search warrant or could have applied for a search warrant
5 in this case. Commander Brown testified that he developed
6 this confidential informant, this confidential informant
7 was a confidential reliable informant based upon the
8 confirmation of the controlled buy, the information that
9 panned out in the previous occasions, and he felt confident
10 in relying on the informant and the information that they
11 had provided.

12 Would that have been enough for a search warrant for
13 Mr. Mitchell's house? I don't know. I don't suspect it
14 would have been but it certainly would have been enough for
15 a stop of this vehicle in and of itself.

16 I think you can't negate the information of a
17 confidential reliable informant as the source one in this
18 particular case simply because it didn't involve this
19 vehicle or this particular vehicle that wasn't registered
20 to Mr. Mitchell.

21 But I don't think you can negate it completely because
22 that goes to the totality of the circumstances under that
23 Commander Brown knew about what had transpired. He knew
24 that Mr. Mitchell was a high level drug dealer. He knew
25 that this informant had provided information as to the

1 types of quantity of drugs that he would deal with. He
2 knew that he had - that he had a confidential informant
3 that had purchased crack cocaine from Mr. Mitchell's
4 employees so to speak. And this all occurred including the
5 controlled buy five days before we get the anonymous tip.

6 And I think the anonymous tip is just the standard
7 type of anonymous tip that just vaguely recites anything
8 observable to any person on the street corner. It's
9 predicted in nature and I think that's important. The only
10 person that had that degree of specific knowledge and
11 closeness to Mr. Mitchell could have provided such a
12 detailed tip.

13 I know we talked to a certain extent about how an
14 anonymous tip does not by - or in State versus Green. I
15 think the differentiating factor with Green and while Green
16 still recognizes Alabama versus White is still good law,
17 which is an anonymous tip, which is similar to this case, I
18 think everything is gonna fall on every - The determination
19 of whether the probable cause exist is gonna fall into the
20 details.

21 Alabama versus White has not been over ruled. Its
22 still good law. Anonymous tips in certain situations are
23 still viable justifications for Terry stops and for
24 officer's investigations. I think that in Green although
25 cursory reading of it indicate that anonymous tips are no

1 longer viable, Green differentiates White and says this
2 falls on the other side of --

3 THE COURT: Help me a little bit there though. But
4 they're using probable cause to justify the search not the
5 stop.

6 SOLICITOR COLTON: I'm sorry, Your Honor.

7 THE COURT: I understand they're using the probable
8 cause as one of their reasons that they had the right to
9 search.

10 SOLICITOR COLTON: Yes, sir.

11 THE COURT: Not the right to stop.

12 SOLICITOR COLTON: Yes, sir. I think it's a component
13 of it. I think when you couple it with the confidential
14 informant's information, the detailed manner of it - -

15 THE COURT: I'm not going into that. I'm just saying
16 the reason they are relying on probable cause is not for
17 the stop but the search.

18 SOLICITOR COLTON: Yes, sir. Yes, sir.

19 THE COURT: Cause - And the reason I brought it up at
20 that time but I don't have those cases in front of me but
21 you indicated that whatever that last case gave the
22 officers the right to stop for a Terry search.

23 SOLICITOR COLTON: The Green case.

24 THE COURT: Right, the stop.

25 SOLICITOR COLTON: Yes, sir. The Green case, yes,

1 sir.

2 Judge, I mention that in context of yes the Terry stop
3 - I'm sorry. Reasonable suspicion to stop for the Terry
4 stop as Your Honor knows is a slippery slide. The more
5 information that you have it tips the scales for reasonable
6 suspicion all the way up to probable cause it's a stop.

7 What I'm arguing is --

8 THE COURT: My point is, they didn't stop --

9 SOLICITOR COLTON: No, sir.

10 THE COURT: They didn't make this stop based on
11 reasonable suspicion but based on the anonymous tip. They
12 based the stop on the traffic --

13 SOLICITOR COLTON: The traffic violation. I think
14 that they --

15 THE COURT: I think you're kind of mixing apples and
16 oranges at least from my view. Maybe that's just --

17 SOLICITOR COLTON: I don't think I'm being clear about
18 it, Judge. I think my positions with this is yes they
19 could have stopped him and done the inventory search. On
20 the other hand they had an independent reason based upon
21 probable cause to do the search. There's two legitimate
22 matters from which to get to the drugs in the car is what
23 I'm arguing.

24 And by way of that argument, Judge, I think I confused
25 the issue a little bit before you but I think the argument

-217-

1 is that we totally discount the anonymous tip as not having
2 anything to do with this case. And for sake for the
3 argument of whether or not it's pretextual that's the only
4 time it becomes relevant and I don't think that's
5 necessarily the case.

6 I think the anonymous tip and the fact that it was
7 detailed and the fact that it was so predictive of future
8 conduct that only a person who was close to the source and
9 it was credible could have predicted where this individual
10 would be, what road he was traveling, what type of car,
11 whether it was four doors or two doors, the color of it,
12 where he was going, that the car license tag would come
13 back to a Leach Road address and the owner of the vehicle
14 would be Shaniqua McCleod; the only other fact that the
15 officers had to confirm at that time was whether or not
16 there was crack cocaine in the car, large quantities of
17 crack cocaine.

18 So I don't think we discount that as being viable
19 information as a basis to stop and a basis to search. I
20 think it's a slippery slope to get there.

21 Would it provide reasonable suspicion? I believe it
22 would. Would it have provided probable cause? I think
23 once it's corroborated by what the officers saw the fact
24 that it's predicted which I think is a factor of whether or
25 not this was a reliable tip or reliable information brings

1 it to a higher level to get to probable cause. It was very
2 detailed and officers took painstaking efforts to confirm
3 every detail that was relayed to them in the anonymous tip.

4 In fact nothing that they observed or were able to
5 confirm from the identify of Mr. Mitchell to the owner of
6 the vehicle by name first and last, to where the tag would
7 come back to, to the make and the model of the car, was
8 proven false. And I think they had a very good faith bases
9 in relying upon that.

10 The only factor - And I look at that as a second
11 source. It's not the same as a confidential informant. I
12 agree and I will address that even one of them in and of
13 themselves not enough for probable cause - none. A
14 confidential informant's information provides no time out.
15 We don't know if that's stale or not within five days but
16 it certainly doesn't give you the car, and it doesn't give
17 you the reasons in the information.

18 I think that would be insufficient to get a search
19 warrant. I think it's insufficient for probable cause.
20 But when you couple that source one with source two and the
21 detailed nature and the independent corroboration by
22 officers, I think that we get there. They're two different
23 individuals giving relatively the same information about
24 Mr. Mitchell. One very detailed; one places him in the
25 car, one in a particular time and place and the officers

1 observe the conduct that is consistent with somebody
2 engaging in criminal activity.

3 It wasn't an innocuous traffic stop. I believe they
4 all testified that Mr. Mitchell didn't pull off immediately
5 when he should have. He went approximately a quarter of a
6 mile. I'm surprised they didn't charge him with failure to
7 stop for a blue light in this particular case but he didn't
8 immediately yield. He could have pulled into the Moss
9 Justice Center a well lite area. He could have pulled into
10 the second entrance to the Moss Justice Center another well
11 lite area.

12 There was a side street to the left prior to where he
13 actually stopped and there is the back road to the gas
14 pumps and dump. Any of those areas he could have pulled
15 off let alone the side of the road. He didn't. They
16 believed it to be evasive and that's consistent with
17 criminal conduct. I think that's an individual observation
18 of criminal conduct. Or suspicion of criminal conduct.
19 And that again gives weight and credibility to that
20 anonymous tip.

21 He chose to make a left hand turn and he stopped in
22 the line of traffic from when Deputy Estep ask him to stop
23 his vehicle he didn't. She had to tell him several times.
24 An indication to law enforcement was that he was going to
25 run. That's in fact the reason why they got Deputy Estep

1 involved in the process the first place. If they were
2 gonna do something hinky underhanded about the traffic stop
3 and driving left to center why would they have an officer
4 who could potentially record that on their video camera
5 come to the scene and record it? They wouldn't have. So
6 it's not nefarious in that manner. They were just trying
7 to gather as much information as they could. And they
8 didn't make Mr. Mitchell give them suspicion that he may be
9 fleeing.

10 THE COURT: They did base the search on his not
11 stopping for a quarter of a mile or turning off the car.
12 I don't think there was any testimony to that. At the time
13 of the stop they planned to search. So you see what you're
14 telling me is these things they relied on, I don't think
15 they really relied on them. You may say they were
16 corroborating but --

17 SOLICITOR COLTON: I'm saying they're corroborating.

18 THE COURT: Okay. Go ahead.

19 SOLICITOR COLTON: Judge, I think they corroborate,
20 Judge, and I think that each one of those adds a separate
21 way of whether or not it was more likely than not and
22 that's a standard for probable cause. More likely than not
23 that the narcotics would be in the car. I ask Lieutenant
24 Ligon that. I don't think his opinion really matters in
25 that regard whether he's subjective or whether he thought

-221-

1 it was more likely than not that the drugs were in the car.
2 I think the only opinion that matters is yours.

3 . The Judge has to make the determination but in going
4 to get a search warrant if he had presented all those facts
5 to a magistrate would a magistrate give at that place and
6 time knowing what those officers knew from the confidential
7 informate the confidential buy the ties to the drugs and
8 narcotics to detain Mitchell with the confidential reliable
9 informant said that Mr. Mitchell had seeing him with
10 narcotics and knowing the types of quantities of drugs that
11 Mr. Mitchell was engaged in coupled with an independent
12 person not related to that confidential informant place the
13 drugs in the car giving all that detailed information
14 confirmed by the officers and them seeing what they saw all
15 that information would a magistrate be authorized in giving
16 them a search warrant?

17 I think the answer is yes under the totality of the
18 circumstances cause the standard would be would it be more
19 likely than not for those narcotics to be in that car. And
20 I think yes I think that's the only factor that's not
21 missing here. Everything known to the officers, everything
22 was corroborated in the anonymous tip, the information was
23 detailed, the only thing those officers didn't know was
24 whether or not the drugs were actually in the car. And I
25 think they had a reasonable basis to believe that. It was

1 more likely than not that they would and they didn't. Not
2 to boot strap the drugs to get in the back end but that's
3 the real question is it more likely than not the drugs
4 would be found and I think it is. Everything was
5 corroborated and based on the totality of the
6 circumstances, not one little individual factor, we get
7 there. And that's even if you put that issue aside from
8 the arrest and the inventory search of the car.

9 But I just submit to Your Honor that the absence of
10 any showing that they were required to call the owner; turn
11 the car over to somebody else and do anything in deviation
12 of their policy, the inventory search was valid regardless
13 of what their subjective opinion is or their subjective
14 hopes were, they were under the lawful authority to do what
15 they did.

16 Thank you, Your Honor.

17 THE COURT: Mr. Lloyd, you have a very very brief --

18 MR. LLOYD: Your Honor, I'm not gonna go back into it.
19 I think Your Honor has heard all this. I would point out
20 again though, Your Honor, their policy doesn't say they
21 have to impound the vehicle. It says they may.

22 I would also point out that Commander Brown I think in
23 being very honest said there was never an indication or
24 never an intent on their part to let Mr. Mitchell leave the
25 scene of that traffic stop.

-223-

1 THE COURT: He was seized at that stop.

2 MR. LLOYD: And I think he was being very honest. And
3 I would point out and I want to hand up - I want to make
4 sure - I printed some of these out over the break and I
5 want to make sure that the other side has these cites and
6 we would hand these cases up to Your Honor.

7 But I would point out in *U.S. versus Ibarra*,
8 I-b-a-r-r-a, 725 F.d 1195 District Court in Wyoming 1989
9 case, again that District Court citing what I think we both
10 agree is the *Opperman* decision and going back to that
11 analysis said under *Opperman* an inventory search was
12 reasonable when at a minimum it is incident to a lawful
13 impoundment and not - not conducted as a pretext concealing
14 an investigatory police motive. What are they citing?
15 They're citing *Opperman*.

16 And what does the District Court cite in addition - as
17 additional authority? They cite the *United State's versus*
18 ---- 556 F.2d 442, Ninth Circuit 1977. That case said
19 inventory search unlawful when motivated by investigatory
20 purposes.

21 Your Honor, again not to belabor this point, but the
22 reason why inventory searches, impoundments and inventory
23 searches are upheld is because law enforcement is - if they
24 find evidence, if they stumbling across it, what all of
25 these cases say is what we don't want is law enforcement

1 using it whether it's a written policy or unwritten policy
2 using this as a means to search, to get around the Fourth
3 Amendment, to get around the requirement of probable cause.

4 And the final thing, Your Honor, again whether *State*
5 *v. Green* or any of these other cases, again, all the
6 anonymous tip gets you to is reasonable suspicion. It gets
7 you to do a Terry stop. Commander Brown I think was being
8 very honest. He doesn't even know when that CI saw drugs
9 or supposedly saw Mr. Mitchell in possession of drugs.

10 In fact I think I recall Commander Brown said, well,
11 he had told us like six months ago basically the same
12 thing. They didn't do anything to corroborate that.
13 Didn't search, didn't do pole cameras, didn't do
14 surveillance, he didn't do anything. Just like on this
15 particular day with that anonymous tip they didn't do
16 anything else. They didn't look to see if there was any
17 suspicious activity.

18 All they did was confirm or thought that they had
19 confirmed that Mr. Mitchell was in the car and at that
20 point Mr. Mitchell was gonna get pulled over which is what
21 Lieutenant Ligon testified to, Commander Brown,
22 Faulkenberry, Estep, Allen. He was gonna get pulled over
23 and he wasn't gonna leave that scene. Plain and simple, he
24 was not leaving there until they searched that vehicle.

25 I want to make sure that the State has these cases,

-225-

1 case cites, Your Honor, and then we would pass these copies
2 of these cases up to Your Honor for your review.

3 THE COURT: Okay.

4 (DOCUMENTS RECEIVED UP BY THE COURT.)

5 THE COURT: Anything else briefly, Ms. Colton?

6 SOLICITOR COLTON: No, Your Honor.

7 THE COURT: All right. Why don't you get those cases
8 and bring them back and I'll see counsel in chambers and
9 we'll be at ease until 9:30 in the morning.

10 Will you bring your cases back?

11 MR. LLOYD: Yes, sir. Thank you, Your Honor.

12 Your Honor, Mr. Mitchell is still out on bond at this
13 point.

14 THE COURT: What's the State's position?

15 I'll tell you, I prefer that as to the nature of these
16 charges that he remain incarcerated during the pendency for
17 the offenses - pendency of the trial simply because of the
18 magnitude of the charges, so he'll remain incarcerated.

19 MR. LLOYD: Your Honor, for the record, this case has
20 been pending for twelve - or two years now and Mr. Mitchell
21 has appeared when they told him to. He's in fact been
22 pushing them to call this case and the State understandably
23 has been tied up with some very important issues and
24 important cases. Mr. Mitchell has appeared every time;
25 he's appeared here today and he's done everything -

1 THE COURT: Well I'm gonna be consistent and I
2 generally would require someone with charges such as this
3 to remain incarcerated so I'll require him to remain
4 incarcerated.

5 MR. LLOYD: Thank you, Your Honor.

6 (COURT IN RECESS AT 06:05 P.M..)

7 (COURT IN SESSION IN THE MATTER OF STATE V. ORTAVIOUS
8 ROMON MITCHELL, WEDNESDAY, MAY 22, 2013 AT 10:51 A.M..)

9 THE COURT: Thank you. You may take your seats.

10 All right, we are ready to proceed in Mr. Mitchell's
11 case, Ortavious Romon Mitchell.

12 Counsel is present, Mr. Mitchell is present. We've
13 had some issues involving Mr. Mitchell's medical situation
14 which has now been straightened out.

15 Is that correct, Mr. Lloyd?

16 MR. LLOYD: That's correct, Your Honor.

17 THE COURT: Okay. And I had under consideration a
18 Motion to Suppress the drugs found in the Honda automobile
19 on August 3rd, 2011, on a stop in close proximity to where
20 we are right now.

21 I'm going to deny the motion as to probable cause. I
22 find that there was no probable cause which would support a
23 search. However, that's moot because the search was not
24 effected based on probable cause. That is, the probable
25 cause was not the basis for the search so I don't need to

1 really analyze whether or not probable cause existed.

2 As to reasonable suspicion: Based on the anonymous
3 tip and information obtained from a reliable confidential
4 informant that Mitchell had been seen with drugs. And
5 again, I emphasize this was testified that there had been
6 come from a confidential reliable, and the reasons for the
7 reliability are articulated by the witness Commander Brown,
8 that he had been seen, the Defendant, with large quantities
9 of drugs.

10 While that may have been somewhat stale information,
11 I'm not sure when that exact date was, I don't think that
12 they can order because again it would have been stale as
13 far as obtaining any kind of warrant. But I think as far
14 as reasonable suspicion when you look at the anonymous tip
15 and in factor in that information that the law enforcement
16 had that this adds credibility - adds support to my finding
17 of there being a reasonable suspicion and I don't find but
18 it but the officers determined that there was reasonable
19 suspicion. Again this is based on an anonymous tip and the
20 other information that they had at the time.

21 Again the time is not real clear from my notes as to
22 when this large quantity of drugs was seen by the
23 confidential informant in the possession of Mr. Mitchell.

24 I find that a reasonable suspicion was heightened
25 although reasonable suspicion was not perhaps enough at the

1 time of the search for making a stop and a search. I find
2 that it was at least sufficient for the setting up of
3 surveillance. I find that the anonymous tip was
4 corroborated by citing of the described car coming off I85.

5 Now, there is a wrinkle I don't think covered in the
6 testimony that it being that the tip was that Mr. Mitchell
7 would be going along that route to Anderson. I don't
8 recall any testimony as to which exit, not the number, but
9 whether or not Officer Ligon saw the vehicle getting off
10 after having been going west toward Anderson or east coming
11 from Anderson. I don't know that that's - While I'm
12 finding that that's not a significant link in the chain but
13 that I find - That I find the car being seen in that area
14 exiting 85 from a general direction corroborated the
15 anonymous tip and made - created at least another
16 articulable reason leading to reasonable suspicion.

17 I find that the failing to stop and leaving the engine
18 running after the car did stop not to be a determining fact
19 that it was reasonable suspicion. Again the reasonable
20 suspicion was not the reason for the stop. The reason for
21 the stop was a traffic violation.

22 I find the traffic violations were legal. I realize
23 that the Defense feels over reaching in arresting someone
24 for two traffic offenses one which appears to have been
25 extremely minor, the crossing of the center - Not crossing

1 the center line, but touching the center line.

2 I find that the stop was legal. I find that the
3 arrest again while maybe considered over the top for
4 traffic stops was legal. I find that this was not a
5 prolonged stop; that is, I do find that the prolonged stop
6 issue is not an issue. The testimony as I understood it is
7 that once Mr. Mitchell was stopped, he was going to be
8 arrested and not allowed to leave. So he was seized or at
9 least in the custody from the time of the stop or the
10 moment of the stop until he was actually arrested after
11 Officer Brown testified that he conferred with Officer
12 Ligon to make the arrest. Officer Ligon or Lieutenant
13 Ligon made it clear that once Mr. Mitchell was stopped he
14 was not going to be allowed to leave.

15 I find that the Officer Fortenberry had the right to
16 effect an inventory search. I find that the sheriff's
17 office has a written policy, the policy was followed and
18 that the policy is reasonable. I find that the sheriff
19 like I said it had an impoundment policy that is valid and
20 reasonable and was followed in this case.

21 I find the scope of the search was reasonable.
22 Deputies were aware of the existence of the compartments in
23 this type of car and aware of the use of such compartments
24 for storage of guns, valuables and contraband.

25 I read the cases that are handed up, none of course

1 are directly on point. That's always the case or not
2 always but quite frankly usually the case. But I find that
3 the inventory search was again proper. I find that the
4 drugs found during the inventory search are admissible.
5 That is, I deny the Defendant's motion to suppress the
6 drugs based on illegal search and therefore the State can
7 offer into evidence the drugs found in the Honda on August
8 3rd, 2011.

9 All right, you ready for the jury?

10 Is the State ready?

11 SOLICITOR COLTON: Yes, sir.

12 THE COURT: Is the Defense ready?

13 MR. LLOYD: Yes, Your Honor.

14 THE COURT: All right, let's have the jury panel
15 brought up.

16 (PAUSE.)

17 THE COURT: Let's come back to order. We got the jury
18 coming up and I neglected to ask whether the Defense has
19 any further motions. Any further motions before we get the
20 jury up?

21 MR. LLOYD: No motions, Your Honor.

22 THE COURT: All right. Does either side have any voir
23 dire?

24 SOLICITOR COLTON: I do, Your Honor.

25 THE COURT: And a list of witnesses?

1 SOLICITOR COLTON: Yes, sir.

2 Judge, there is one matter I spoke to Mr. Lloyd
3 yesterday about the search warrant. . Based upon the search
4 warrant obviously containing information that law
5 enforcement had it's basis for making the stop as well as
6 the finding of the drugs from the home on 11/08 at Leach
7 Road at Mr. Mitchell's residence when Mr. Lloyd and I have
8 - much in agreement that he's going to stipulate that the
9 search warrant is valid.

10 THE COURT: And the search warrant was for the next
11 day at the Mitchell home?

12 SOLICITOR COLTON: Yes on August 3d.

13 THE COURT: On Leach Road.

14 SOLICITOR COLTON: Yes, sir.

15 THE COURT: Okay. And you're stipulating that the
16 search warrant --

17 MR. LLOYD: Yes, Your Honor. In light of your ruling
18 obviously we preserve our objection as to that issue. But
19 in light of your ruling we think there is certainly
20 probable cause for the search warrant.

21 THE COURT: Okay.

22 SOLICITOR COLTON: And, Your Honor, I made Court
23 Exhibit's Four and ask that this be entered into the
24 record.

25 (WHEREUPON, COURT'S EXHIBIT NUMBER FOUR IDENTIFIED AND

1 MARKED, RECEIVED INTO THE RECORD.)

2 THE COURT: Mr. Lloyd, do you have any voir dire?

3 MR. LLOYD: No request for voir dire.

4 THE COURT: Okay. And the strikes I believe things
5 have changed but I believe they are still five and five.

6 SOLICITOR COLTON: I believe that's correct.

7 MR. LLOYD: Yes. Yes, Your Honor.

8 (JURY ENTERS COURTROOM AT 11:05 A.M..)

9 THE COURT: Good morning, members of the jury panel.

10 I'm John Hayes along with Judge Alford who you met
11 yesterday I am the other resident circuit judge here in
12 York County. We're gonna start our first trial here for
13 this courtroom now and it is the case of the State versus
14 Ortavious Romon Mitchell.

15 Mr. Mitchell, would you please stand so the jury can
16 see you?

17 (DEFENDANT STOOD.)

18 THE COURT: This is Mr. Mitchell. You can turn around
19 so the jury see who you are. And he is represented by Mr.
20 Reginald Lloyd.

21 (ATTORNEY LLOYD STOOD.)

22 THE COURT: All right. You may be seated.

23 The State is represented by Ms. Colton and Mr.
24 Sheldon.

25 (SOLICITOR'S STOOD.)

1 MR. LLOYD: I'm sorry, Your Honor.

2 Thank you, Your Honor.

3 THE COURT: Do you need a jury list?

4 MR. LLOYD: Yes, sir.

5 THE COURT: There you go. Thank you.

6 Mr. Mitchell is charged with having on August 3rd,
7 2011, here in York County trafficking in crack cocaine.
8 It's alleged that on that date he was in actual or
9 constructive possession of a hundred grams or more of crack
10 cocaine, sometimes referred to as cocaine base, in
11 violations of the laws of this state.

12 He's charged in the second indictment upon the next
13 day August 4th, 2011, possessing crack cocaine again here
14 in York County. To each of these charges Mr. Mitchell has
15 entered pleas of not guilty. His pleas of not guilty place
16 on the State the burden of proving his guilt beyond a
17 reasonable doubt.

18 Now, I have some questions to ask like Judge Alford
19 did yesterday. However, when I ask you questions today if
20 you need to respond to any of them please stand at the time
21 and I will communicate with you from up here unless it's
22 something that I have to ask you to come forward on.

23 First, are any of you related by blood or marriage to
24 Mr. Mitchell, his counsel, or counsel for the State; if so,
25 please stand?

1 No one stands.

2 Are any of you associated in any way with the
3 Solicitor's Office, Mr. Kevin Brackett, the Sixteenth
4 Circuit Solicitor's Office; is so, please stand? That is
5 if you do any volunteer work or have been employed or have
6 a family member employed by the Solicitor's Office please
7 stand.

8 No one stands.

9 Are any of you close personal friends or acquaintance
10 of anyone who works for the Solicitor's Office?

11 Okay. Yes, sir, your name and number?

12 A. Scott Shillinglaw, 198.

13 THE COURT: All right. And you are a friend of?

14 MR. SHILLINGLAW: Mr. Sheldon.

15 THE COURT: All right. Would that affect your ability
16 to be fair and impartial in the trial of this case?

17 MR. SHILLINGLAW: Yes, sir.

18 THE COURT: I beg your pardon? .

19 MR. SHILLINGLAW: Yes, sir.

20 THE COURT: Okay. Well I'll excuse you. Don't leave
21 but we'll remove you from the draw.

22 No one else stands.

23 Were any of you members of the Grand Jury which passed
24 on these two indictments at an earlier time; if so, please
25 stand?

1 • No one stands.

2 Are any of you aware of any facts about this case?
3 Have you heard about anything concerning this case from any
4 source whatsoever? News media, talk at the office, talk
5 around home, any of you have any information concerning
6 this case via the stop that resulted in the location of the
7 alleged drugs occurred which is within about a quarter of a
8 mile of this building. So I'm adding that into your
9 knowledge so that you can tell me and completely. - Well in
10 regard to whether or not you heard anything about the case
11 or not. If you have heard anything about the case or
12 formed any opinion about this case, or expressed any
13 opinion about this case, please stand at this time?

14 No one stands.

15 Are any of you members of or contributors to
16 organizations such as Mother's Against Drunk Drivers',
17 Student's Against Drunk Driver's, Citizen's Against
18 Violence, the Trooper's Association, the Sheriff's
19 Association or the Fraternal Order of Police; if so, please
20 stand?

21 No one stands.

22 Yes, sir.

23 A. Nicholas Varraso, 227. I've donated to the Fraternal
24 Order of Police.

25 THE COURT: That's fine. Would that affect your

1 ability to be fair and impartial in this trial?

2 MR. VARRASO: No, sir.

3 THE COURT: Okay. Thank you.

4 Are any of you or a member of your immediately family
5 employed in law enforcement or in the prosecution of
6 criminal cases at any level? Anything from MP's to the
7 Judge Advocate General in the military to a Summary Court
8 judge, Magistrate, or a Municiple Solicitor, U.S. Attorney,
9 U.S. Marshall, anything like that; if so, please stand?

10 Yes, ma'am, your name and number?

11 A. Sara Dickerson, 55, and my daughter-in-law is an
12 attorney in Columbia.

13 THE COURT: All right. Just remain standing.

14 Yes, ma'am, your name and number.

15 A. Kristi Johnson, 96. I have a cousin that works for
16 the York Police.

17 THE COURT: The City of York?

18 MS. JOHNSON: County.

19 THE COURT: The county.

20 MS. JOHNSON: I think, if I'm not mistaken, he's
21 transferred to the Court now.

22 THE COURT: All right. Would that affect your ability
23 to be fair and impartial in the trial of this case?

24 MS. JOHNSON: No, Your Honor.

25 THE COURT: All right. Just remain standing.

1 . Let's stay on this side. The gentleman in the back
2 your name and number.

3 A. Lawrence Morgan, Number 143, and I have a nephew who
4 is a deputy in Texas.

5 THE COURT: Okay. Yes, sir.

6 A. Nicholas Varraso, 227, close personal friends with a
7 Clover police officer as well he is now working for the
8 Drug Enforcement Unit.

9 THE COURT: All right. Yes.

10 A. Shanie Ramirez, 174. My husband is a correctional
11 officer here at the Moss Justice Center.

12 THE COURT: All right. Well I'm going to excuse you
13 then. Your name again?

14 MS. RAMIREZ: Shanie Ramirez.

15 THE COURT: Okay. Ms. Ramirez, I'm going to excuse
16 you. Don't leave, just have a seat. Thank you.

17 Yes, ma'am.

18 A. I'm Juror 161, Linda Patterson. My nephew is Matt
19 Palmer. He works for the York County Sheriff's Department.

20 THE COURT: All right. And that's your son you say?

21 MS. PATTERSON: My nephew.

22 THE COURT: Your nephew. All right, well I'm going to
23 excuse you from this case made by the York County Sheriff's
24 Office. At least they were involved so I'll excuse you
25 from service. Just have a seat.

1 Yes, ma'am, your name and number?

2 A. Lisa Veralli, 226. I have a cousin that works for the
3 Clover Police Department and a nephew that is an MP in the
4 Air Force.

5 THE COURT: Okay. Those of you who are standing - -
6 The lady whose cousin, your name again?

7 A. Kristi Johnson.

8 THE COURT: And he is with the York County Sheriff's
9 office?

10 MS. JOHNSON: Yes, sir. I think he --

11 THE COURT: Well that's all right. I'm gonna excuse
12 you from serving on this because the York County Sheriff's
13 Office would be involved to some degree in this case so I'm
14 going to excuse you also. You can be seated.

15 Now that leaves four people standing. Of the
16 remaining four, if your connection to law enforcement would
17 prevent you from being fair and impartial in this case, or,
18 if it would prevent you from basing your verdict on the law
19 and the evidence that's developed in the trial raise your
20 right hand?

21 None do. You may be seated. Thank you.

22 I don't ask this next question to embarrass anyone and
23 I'm not going to ask you to go into details but if any of
24 you or a member of your immediate family has been
25 victimized by the drug trade; if so, please stand? By that

-239-

1 I mean if you or a family member had some type of addiction
2 or been charged with being involved in illegal drugs, or,
3 if you had some incident in your life that you feel was the
4 result of someone using illegal drugs, please stand? If
5 so, please stand?

6 All right, you've already been excused so you can sit
7 back down. Thank you.

8 Yes, ma'am, your name and number?

9 A. Cara Peters, 165.

10 THE COURT: Okay. You don't have to tell me the facts
11 but would the fact that you have this in your life
12 experience if that would prevent you from being fair and
13 impartial let me know. Would it?

14 MS. PETERS: I don't think so.

15 THE COURT: Well I can't go with - -

16 MS. PETERS: No.

17 THE COURT: Okay. Thank you.

18 No one else stands.

19 Do any of you have any beliefs, religious
20 philosophical or otherwise that would prevent you from
21 serving as a fair and impartial juror in this particular
22 trial; if so, please stand?

23 No one stands.

24 Now the following are possible witnesses in this case.
25 I don't know that all will testify but even if they don't

1 testify their names may come up. So if you are related by
2 blood or marriage, or if you are a close personal friend or
3 acquaintance of any of these individuals please stand.

4 Commander Marvin Brown, Lieutenant Mike Ligon,
5 Investigator's Lori Kimble, James Faulkenberry and Lee
6 Allen. All of those are members of the York County Multi-
7 jurisdictional Drug Enforcement Unit.

8 From the Sheriff's office Deputies Nick Schifferlie,
9 Deputy Sharon Estep, Officer James Collins, Cynthia
10 Mitcham, Detective Chris Bomar.

11 From the Solicitor's office David Sanders. From
12 Forensic's Services Unit George Weeks. And then
13 unaffiliated with any type law enforcement. Shaniqua McCleod
14 or Whitney McCray.

15 All right, two people have stood. Again your name and
16 number.

17 A. Charles Trammel, Number 220. I attend the same church
18 with Lieutenant Brown.

19 THE COURT: All right. Would that affect your ability
20 to be fair and impartial in the trial of this case?

21 MR. TRAMMEL: No, Your Honor.

22 THE COURT: All right. Thank you, you can be seated.
23 Yes, sir, your name and number.

24 A. Timothy Parker, 156, and we're in the same Sunday
25 School class with Marvin Brown.

1 THE COURT: All right. Would that affect your ability
2 to be fair and impartial in this case?

3 MR. PARKER: No.

4 THE COURT: All right. You can be seated then.

5 No one else stands.

6 Anything further from the State?

7 SOLICITOR COLTON: No, Your Honor.

8 THE COURT: Anything further from the Defense?

9 MR. LLOYD: No, Your Honor.

10 THE COURT: Finally, do any of you know of any reason
11 whatsoever why you could not or should not serve as a fair
12 and impartial juror in the trial of this particular case;
13 if so, please stand?

14 No one stands.

15 Now the way we draw juries in this setting is if your
16 name is called please come forward and bring with you any
17 personal belongings that you may have and stand beside the
18 bailiff. Turn around and face first the table where the
19 solicitor's are seated. One of them will say either
20 present the juror or excuse the juror. If you hear the
21 words excuse the juror, return to your seat, don't leave.
22 If you hear the word present the juror, turn and face the
23 table where Mr. Mitchell and his counsel are seated. Mr.
24 Lloyd will say either swear the juror or excuse the juror.
25 Excuse the juror again means you may return to your seat.

1 Swear the juror means you will take a seat in the jury box.

2 Each side has the opportunity to excuse up to five
3 individuals. And we will draw two alternates and as to
4 alternates the State would have one strike as to each and
5 the Defense two. So please come forward if you hear your
6 name called.

7 MADAM CLERK: Number 138, Brittani Miller.

8 (WHITE FEMALE COMES FORWARD.)

9 MADAME CLERK: What say you for the State?

10 SOLICITOR COLTON: Please present Ms. Miller.

11 MADAM CLERK: Defense?

12 MR. LLOYD: Please seat the juror.

13 MADAM CLERK: Please have a seat in the jury box.

14 Number 17, Scott Benner.

15 (WHITE MALE COMING FORWARD.)

16 MADAM CLERK: What say you for the State?

17 SOLICITOR COLTON: Please present Mr. Benner.

18 MADAM CLERK: Defense?

19 MR. LLOYD: Please excuse the juror.

20 MADAM CLERK: You are excused from this case.

21 Number 153, Clifford Orsburn.

22 (WHITE MALE COMING FORWARD.)

23 MADAM CLERK: What say you for the State?

24 SOLICITOR COLTON: Please present Mr. Orsburn.

25 MADAM CLERK: Defense?

1 MR. LLOYD: Please seat the juror.

2 MADAM CLERK: Please have a seat in the jury box.

3 Number 220, Charles Trammel.

4 (WHITE MALE COMING FORWARD.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR COLTON: Please present Mr. Trammel.

7 MADAM CLERK: Defense?

8 MR. LLOYD: Please excuse the juror.

9 MADAM CLERK: You are excused from this case.

10 Number 119, Rick Mast.

11 (WHITE MALE COMING FORWARD.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR COLTON: Please present Mr. Mast.

14 MADAM CLERK: Defense?

15 MR. LLOYD: Please excuse the juror.

16 MADAM CLERK: You are excused from this case.

17 Number 185, Timothy Rodgers.

18 (WHITE MALE COMING FORWARD.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR COLTON: Please excuse Mr. Rodgers.

21 MADAM CLERK: You are excused from this case.

22 Number 237, Charles Webb.

23 (BLACK MALE COMING FORWARD.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR COLTON: Please present Mr. Webb.

1 MADAM CLERK: Defense?

2 MR. LLOYD: Please seat the juror.

3 MADAM CLERK: Please have a seat in the jury box.

4 Number 141, Angela Montgomery.

5 (WHITE FEMALE COMING FORWARD.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR COLTON: Please present Ms. Montgomery.

8 MADAM CLERK: Defense?

9 MR. LLOYD: Please seat the juror.

10 MADAM CLERK: Please have a seat in the jury box.

11 Number 253, Troy Massey.

12 (BLACK MALE COMING FORWARD.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR COLTON: Please excuse Mr. Massey.

15 MADAM CLERK: You are excused from this case.

16 Number 133, Kenneth Mehring.

17 (WHITE MALE COMING FORWARD.)

18 MADAM CLERK: What say you for the State?

19 SOLICITOR COLTON: Please present Mr. Mehring.

20 MADAM CLERK: Defense?

21 MR. LLOYD: Please excuse the juror.

22 MADAM CLERK: You are excused from this case.

23 Number 136, Jodi Michael.

24 (WHITE FEMALE COMING FORWARD.)

25 MADAM CLERK: What say you for the State?

1 SOLICITOR COLTON: Please present Ms. Michael.

2 MADAM CLERK: Defense?

3 MR. LLOYD: Please seat the juror.

4 MADAM CLERK: Please have a seat in the jury box.

5 Number 199, Gean Smith.

6 (WHITE MALE COMING FORWARD.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR COLTON: Please present Ms. Smith.

9 MADAM CLERK: Defense?

10 MR. LLOYD: Please seat the juror.

11 MADAM CLERK: Please have a seat in the jury box.

12 Number 16, Andrae Benbow.

13 (BLACK MALE COMING FORWARD.)

14 MADAM CLERK: What say you for the State?

15 SOLICITOR COLTON: Please excuse Mr. Benbow.

16 MADAM CLERK: You are excused from this case.

17 Number 218, Melissa Terpstra.

18 (WHITE FEMALE COMING FORWARD.)

19 SOLICITOR SHELTON: What was the number again, Madam
20 Clerk?

21 MADAM CLERK: 218.

22 SOLICITOR SHELTON: Thank you.

23 MADAM CLERK: What say you for the State?

24 SOLICITOR COLTON: Please present Ms. Terpstra.

25 MADAM CLERK: Defense?

1 MR. LLOYD: Please seat the juror.

2 MADAM CLERK: Please have a seat in the jury box.

3 Number 22, Ingrid Bonilla.

4 (HISPANIC FEMALE COMING FORWARD.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR COLTON: Please present Ms. Bonilla.

7 MADAM CLERK: Defense?

8 MR. LLOYD: Please seat the juror.

9 MADAM CLERK: Please have a seat in the jury box.

10 Number 111, Melissa Luithle.

11 (WHITE FEMALE COMING FORWARD.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR COLTON: Please presen Ms. Luithle.

14 MADAM CLERK: Defense?

15 MR. LLOYD: Please seat the juror.

16 MADAM CLERK: Please have a seat in the jury box.

17 Number 151, Ashleigh Novellino.

18 (WHITE FEMALE COMING FORWARD.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR COLTON: Please excuse Ms. Novellino.

21 MADAM CLERK: You are excused from this case.

22 Number 165, Cara Peters.

23 (WHITE FEMALE COMING FORWARD.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR COLTON: Please present Ms. Peters.

1 MADAM CLERK: Defense?

2 MR. LLOYD: Please seat the juror.

3 MADAM CLERK: Please have a seat in the jury box.

4 Number 251, Christopher Elkins.

5 (WHITE MALE COMING FORWARD.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR COLTON: Please present Mr. Elkins.

8 MADAM CLERK: Defense?

9 MR. LLOYD: Please seat the juror.

10 MADAM CLERK: Please have a seat in the jury box.

11 Number 156, Timothy Parker.

12 (WHITE MALE COMING FORWARD.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR COLTON: Please present Mr. Parker.

15 MADAM CLERK: Defense?

16 MR. LLOYD: Please excuse the juror.

17 MADAM CLERK: You are excused from this case.

18 Strikes are four and five.

19 Number 37, Jeffre Carrion.

20 (HISPANIC MALE COMING FORWARD.)

21 MADAM CLERK: What say you for the State?

22 SOLICITOR COLTON: Please excuse Mr. Carrion.

23 MADAM CLERK: You are excused from this case.

24 Strikes are five and five.

25 Number 232, Mark Walker.

1 (WHITE MALE COMING FORWARD.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR COLTON: Please present Mr. Walker.

4 MADAM CLERK: Defense?

5 MR. LLOYD: Please seat the juror.

6 MADAM CLERK: Please have a seat in the jury box.

7 THE COURT: The alternate strikes will be one for the
8 State and two for the Defense on each.

9 MADAM CLERK: Number 76, - -

10 MR. LLOYD: Your Honor, two alternates?

11 THE COURT: Right. One strike and two strikes as to
12 each.

13 MADAM CLERK: Number 76, Brendan Hadley.

14 (WHITE MALE COMING FORWARD.)

15 MADAM CLERK: What say you for the State?

16 SOLICITOR COLTON: Please present Mr. Hadley.

17 MADAM CLERK: Defense?

18 MR. LLOYD: Please excuse the juror.

19 MADAM CLERK: You are excused from this case.

20 Number 171, Betty Powell.

21 (WHITE FEMALE COMING FORWARD.)

22 MADAM CLERK: What say you for the State?

23 SOLICITOR COLTON: Please present Ms. Powell.

24 MADAM CLERK: Defense?

25 MR. LLOYD: Please excuse the juror.

1 MADAM CLERK: You are excused from this case.
2 Number 57, James Dunham.
3 (BLACK MALE COMING FORWARD.)
4 MADAM CLERK: What say you for the State?
5 SOLICITOR COLTON: Please excuse Mr. Dunham.
6 MADAM CLERK: You are excused from this case.
7 Strikes are one and two.
8 Number 192, Megan Shelby.
9 (WHITE FEMALE COMING FORWARD.)
10 MADAM CLERK: What say you for the State?
11 SOLICITOR COLTON: Please present Ms. Shelby.
12 MADAM CLERK: Defense?
13 MR. LLOYD: Please seat the juror.
14 MADAM CLERK: Please have a seat in the jury box.
15 Number 116, Ronald Marsilio.
16 (WHITE MALE COMING FORWARD.)
17 MADAM CLERK: What say you for the State?
18 SOLICITOR COLTON: Please present Mr. Marsilio.
19 MADAM CLERK: Defense?
20 MR. LLOYD: Please excuse the juror.
21 MADAM CLERK: You are excused from this case.
22 Number 15, Lucy Bedenbaugh.
23 (WHITE FEMALE COMING FORWARD.)
24 MADAM CLERK: What say you for the State?
25 SOLICITOR SHELDON: What was the number again? I'm

1 sorry.

2 MADAM CLERK: 15.

3 SOLICITOR SHELTON: Thank you.

4 SOLICITOR COLTON: Please present Ms. Bedenbaugh.

5 MADAM CLERK: Defense?

6 MR. LLOYD: Please seat the juror.

7 MADAM CLERK: Please have a seat in the jury box.

8 THE COURT: Anything from the State involving the
9 striking of the panel?

10 SOLICITOR COLTON: No, Your Honor.

11 THE COURT: Anything from the Defense involving the
12 striking of the panel?

13 MR. LLOYD: Your Honor, may we take a little matter up
14 with the Court?

15 THE COURT: All right. I'm gonna let you go to the
16 jury room. Don't start discussing the case. You are not
17 sworn in. I'm gonna let you go into the jury room just for
18 a few minutes. And if you will follow the bailiff.

19 (JURY PANEL EXITS COURTROOM AT 11:42 A.M..)

20 THE COURT: Those of you who were not chosen I'm gonna
21 ask you to step out into the hallway. The bailiff will
22 keep you all segregated from the general public. I have to
23 take up a matter outside your presence so just stay
24 together outside or outside the jury room - or outside the
25 courtroom. Not outside the building.

1 (JURY EXITS COURTROOM AT 11:43 A.M..)

2 THE COURT: All right, Mr. Lloyd.

3 MR. LLOYD: Your Honor, we just have a Batson issue to
4 take up with the Juror's 253, 16, 37, and 57.

5 THE COURT: All right, 37 is listed on mine as being
6 Hispanic.

7 MR. LLOYD: Yes, sir.

8 THE COURT: Mr. Mitchell of course is not Hispanic.
9 He's African American by appearance. But I'll ask the
10 State then to starting with Troy Massey to give me racial
11 neutral reasons for the State exercising their strike as to
12 Mr. Massey who in fact is listed as a black male.

13 SOLICITOR COLTON: Yes, Your Honor. Mr. Massey I
14 struck people with criminal records.

15 THE COURT: Well let's take one at a time. Let's take
16 one at a time.

17 SOLICITOR COLTON: Okay.

18 THE COURT: Massey.

19 SOLICITOR COLTON: Mr. Massey there is no in reviewing
20 the jury file that he was prosecuted by Ms. Miller of our
21 office. He did go through PTI but she knew him and knew
22 that he had stole from Walmart and that is with the same
23 individual and this is approximately three years ago
24 because of the connection with the Solicitor's office the
25 fact that he was prosecuted by the Solicitor's office and a

1 criminal charge in the past the State struck Mr. Massey.

2 THE COURT: All right. How about Mr. Benbow?

3 SOLICITOR COLTON: Number 16, Your Honor?

4 THE COURT: Yes.

5 SOLICITOR COLTON: Mr. Benbow has a criminal arrest as
6 well, Your Honor, for harassment and that's why I struck
7 him.

8 THE COURT: All right. Jeffre - Joffre Carrion.

9 SOLICITOR COLTON: He has three criminal arrest, Your
10 Honor, and a conviction that's why I struck him.

11 THE COURT: All right. And finally James Dunham.

12 SOLICITOR COLTON: Mr. Dunham had a criminal arrest,
13 Your Honor, as well and that's why I struck him.

14 THE COURT: All right. Well I find all four of those
15 strikes were made for racially neutral reasons as
16 articulated by the State so the analysis now switches to
17 the Defense to show that those were pretextual and that the
18 State did not strike others who had criminal arrest or
19 criminal convictions.

20 MR. LLOYD: We have nothing else on that issue, Your
21 Honor.

22 THE COURT: All right. Well I deny the Batson Motion.
23 I find that these were racially neutral reasons; that they
24 were not pretextual and we will go with the jury as seated.
25 Let's take about a five minute break and we'll bring

-253-

1 the jury back in and of course have them sworn in and start
2 our opening statements to them. As to the jury outside if
3 you'll just tell them to call back whenever you want them
4 to call back. I won't need them the rest of the week.

5 All right, let's take about a five minute refresher
6 break.

7 MR. LLOYD: Your Honor, can we have about ten minutes
8 so I can confer with my client?

9 THE COURT: Yes, let's take - We do need to - I'll
10 tell you, we'll start back - I got about twelve to twelve,
11 we'll start back right at twelve.

12 MR. LLOYD: Thank you, Your Honor.

13 SOLICITOR COLTON: Thank you, Your Honor.

14 (COURT IN RECESS AT 11:48 A.M..)

15 (COURT BACK IN SESSION AT 12:35 P.M..)

16 THE COURT: Thank you. Take your seats.

17 Just have a seat please.

18 Ms. Colton.

19 SOLICITOR COLTON: Thank you, Your Honor.

20 Your Honor, the State and Mr. Ortavious Mitchell
21 through his attorney Mr. Reginald Lloyd entered into a plea
22 agreement in this case. Mr. Mitchell is pleading guilty to
23 one count of trafficking crack cocaine on True Bill
24 Indictment 2011-GS-46-3323. The State has agreed to
25 dismiss a possession of crack cocaine charge Indictment

1 2011-GS-46-3606.

2 Mr. Mitchell is in the exchange for a negotiated
3 sentence ten to fifteen year range. The lesser included
4 offense of trafficking in the amount of twenty to a hundred
5 grams of crack cocaine.

6 THE COURT: Mr. Mitchell, how old are you?

7 MR. MITCHELL: Twenty-seven.

8 THE COURT: Are you represented by Mr. Lloyd?

9 MR. MITCHELL: Yes, sir.

10 THE COURT: Are you satisfied with his services?

11 MR. MITCHELL: Yes, sir.

12 THE COURT: I have in front of me an indictment.
13 You've been indicted for trafficking in crack cocaine; you
14 are pleading to that offense. Now you are charged with
15 being in actual constructive possession of one hundred
16 grams or more of crack cocaine, crack cocaine base.

17 You're pleading to a lesser included quantity first
18 offense trafficking between twenty-eight and one hundred
19 grams, it's a felony, it carries from seven to twenty-five
20 years in jail and the possibility of a Fifty Thousand
21 dollar fine.

22 It's a serious offense. A serious offense is the type
23 of offense which if in your life time you receive three
24 serious or a combination of three serious and most serious
25 offenses - excuse me - you'd be subject to being

1 incarcerated for life without parole.

2 It is a violent offense. A violent offense is the
3 type of offense which if during your life time - I'm sorry.
4 A violent offense is the type of offense which while you
5 are incarcerated you would be ineligible for certain
6 programs that non-violent offenders are allowed to
7 participate in. It is a parole ineligible offense which
8 means you would have to serve at least eighty-five percent
9 of whatever sentence is imposed before you would be
10 eligible for any early work release. And if you were
11 granted early work release it would be into a community
12 supervision program with certain conditions that would have
13 to be followed or you can be reincarcerated.

14 Do you understand all that?

15 MR. MITCHELL: Yes, sir.

16 THE COURT: And its alleged that this occurred on
17 August 3rd, 2011, here in York County when you were
18 knowingly in actual or constructive possession of crack
19 cocaine. Do you understand that?

20 MR. MITCHELL: Yes, sir.

21 THE COURT: How do you plead to this charge?

22 MR. MITCHELL: Guilty.

23 THE COURT: Other than the second - Negotiation for a
24 sentence in the range of ten to fifteen years, has anyone
25 made any other promises or threats to cause you today to

1 enter your plea of guilt?

2 MR. MITCHELL: No, sir.

3 THE COURT: Are you today, Mr. Mitchell, under the
4 influence of anything that would cause you to be
5 intoxicated?

6 MR. MITCHELL: No, sir.

7 THE COURT: Mr. Mitchell, you - are you today here
8 entering your plea freely and voluntarily?

9 MR. MITCHELL: Yes, sir.

10 THE COURT: Mr. Mitchell, you're entitled to a trial
11 by a jury and in fact we had in this case empaneled a jury
12 that has not been sworn in but they are sitting in the jury
13 room at this time. You are presumed by law innocent of
14 this charge until such time as the State would be able to
15 prove if it could your guilt beyond a reasonable doubt.
16 That is you will not have to prove your innocence.

17 You have the right to remain silent, that is, you
18 cannot be compelled to testify or make any statements
19 concerning this case. You would have the right to
20 confront, to see, hear, question and cross examine through
21 your attorney the witnesses' who the State would call to
22 testify in this case. And you have the right to have your
23 witnesses', if you had any, to call and testify on your
24 behalf.

25 Do you understand you have these rights?

1 MR. MITCHELL: Yes, sir.

2 THE COURT: I advise you that you give up those rights
3 and you give up any defense to the charge by pleading
4 guilty. And you also give up any issue concerning whether
5 or not the search that we have been talking about for the
6 last two days was in fact a proper search. You give all
7 those issues and rights up by pleading guilty. Do you
8 understand that?

9 MR. LLOYD: Just one moment, Your Honor.

10 (PAUSE.)

11 MR. MITCHELL: Yes, sir, I do.

12 THE COURT: All right. I'm gonna - Knowing all those
13 things, I ask again, how do you plead to trafficking in
14 twenty-eight to one hundred grams of crack cocaine?

15 MR. MITCHELL: Guilty.

16 THE COURT: All right. Now, the facts have been
17 pretty well outlined by the earlier testimony.

18 Anything the State wants to add?

19 SOLICITOR COLTON: Just briefly that in addition to
20 the traffic stop and the two hundred and twenty grams of
21 crack cocaine that was seized, the solid crack cocaine at
22 the time, his arrest at the traffic stop, a search warrant
23 was executed the following day at this residence, a small
24 amount of crack cocaine was recovered from Mr. Mitchell's
25 sweat shirt as well as a pair of jean shorts on his bed.

1 But in addition, Your Honor, the packaging material, the
2 shrink wrap, the food saver shrink wrap that the crack
3 cocaine was packaged did - that was recovered in the car -
4 the identical type of packaging was found in Mr. Mitchell's
5 bedroom at his home as well. We also recovered a
6 fingerprint from the package of crack cocaine that was
7 located in the vehicle that came back positive to Mr.
8 Mitchell to identify his presence having held that. The
9 State would like to be heard on sentencing and would Mr.
10 Mitchell's prior record at the appropriate time.

11 THE COURT: All right. Mr. Mitchell, you heard the
12 facts that you were stopped not far from here and the
13 automobile you were operating was not your own, we
14 understand that, this crack cocaine was found. Do you
15 agree with all that?

16 Yes?

17 MR. MITCHELL: Yes, sir.

18 THE COURT: I accept your plea. I find that it was
19 freely voluntarily and knowingly and intelligently entered,
20 entered with the advice of competent counsel with whom you
21 are satisfied. I find the facts support your plea and
22 you've signed a plea of guilt. I'll be glad now to hear
23 from first the State again and then your attorney.

24 SOLICITOR COLTON: Thank you, Your Honor.

25 Your Honor, in regard to Mr. Mitchell, he has two

-259-

1 prior convictions that stem from three sets of charges that
2 was pled down from - Excuse me - contributing to the
3 delinquency of a minor, two counts of criminal sexual
4 conduct with a minor second degree. He entered into a plea
5 agreement with the State at that time; was convicted of
6 assault and battery high and aggravated nature for indecent
7 liberties with a female. That occurred in 2005.

8 Your Honor, Mr. Mitchell - law enforcement, their
9 knowledge of Mr. Mitchell at one hand came from a
10 confidential informant, came from multiple investigations,
11 they placed him as a higher level drug dealer. I think
12 that regardless of the weight we could have given that at
13 trial even if it could have been brought up I think that the
14 nature of what was recovered from his car nearly a quarter
15 a kilo of crack cocaine is quite uncommon in our county to
16 deal with on normal street level, again normal street level
17 dealers. I think that is significant, I think it confirms
18 what the officers believed about him just by the very
19 weight of the crack cocaine that was found as well as the
20 additional packaging materials recovered from his home
21 indicated that this wasn't the first time he received quite
22 a high shipment of crack cocaine.

23 And for those reasons and his prior record, Your
24 Honor, I don't think this is a case of first time drug
25 offender who's never gotten in trouble with the law. He

1 obviously has not learned his lesson from the first time he
2 got in trouble with the law howbeit a different set of
3 charges they were very serious charges and he was cut a
4 break initially. I think for those reasons, the amount of
5 crack cocaine recovered that fifteen years would be a more
6 appropriate sentence than Mr. Mitchell than the lower end
7 of that sentence - sentencing range.

8 THE COURT: All right. Mr. Lloyd, I'll be glad to
9 hear from you and then from Mr. Mitchell and I understand
10 there is some family members here if they would like to
11 speak I will certainly entertain them.

12 MR. LLOYD: Yes, sir. Thank you, Your Honor.

13 Your Honor, first, just for the record is the issue
14 that we did have a little side bar about you raised the
15 issue that he understands he's giving up his right to
16 appeal the Court's ruling on the search issue and I did
17 explain that to him and he understands that.

18 He and I just for the record had some discussion about
19 issues on -- versus direct appeal and explained to him that
20 South Carolina doesn't do conditional pleas and therefore
21 that he's waiving that direct appeal issue.

22 Your Honor, you've already heard Mr. Mitchell is
23 twenty-seven years old. He does have three young children.
24 Ms. McCray his co-defendant, Your Honor, was in and out of
25 the courtroom during the course of this proceeding, is the

-261-

1 mother of one of his children and, Your Honor, Mr. Mitchell
2 is very young. I know the Court - the State brought up an
3 issue that it happened when Mr. Mitchell was even younger
4 related to an incident where he was charged, indicent
5 liberties, or contributing to the delinquency of a minor,
6 there is a whole set of issues that went along with that
7 which is why it was pled down to what it was, Your Honor.

8 Mr. Mitchell was placed on five years probation and
9 unlike many young people that we actually see on probation
10 he actually successfully completed five years of probation.
11 And I think that that goes to some acknowledgment that
12 while he did take responsibility for that the State did
13 plead it down to some unique circumstances of that
14 particular case and really should bear no weight in this
15 particular matter.

16 Mr. Mitchell, Your Honor, as you probably noticed in
17 and out of the court this week, his mother has been here,
18 his father has been here, a number of other loved ones
19 including his brother. What Mr. Mitchell wants to do, Your
20 Honor, is have a chance to come back and put all of this
21 behind him and be there as part of his children's lives as
22 they grow up.

23 We do not believe that given the circumstances
24 although respecting Your Honor's ruling on that issue,
25 given the circumstances underlying this particular stop,

1 and what we still contend are very serious constitutional
2 implications of that, and knowing that Mr. Mitchell is
3 giving up the appeal of that particular issue, we think
4 that the sentencing should be on the much lower end of that
5 of ten years, Your Honor, instead of the fifteen years.

6 We did address with Your Honor a matter back in
7 chambers that we won't go into but I think it does point to
8 Mr. Mitchell's willingness to try to put this chapter of
9 his life behind him and move forward in some productive way
10 so we would urge the Court to consider the ten years on the
11 bottom end of this range.

12 Your Honor, would have the mother, Ms. Mitchell, come
13 forward and address the Court.

14 THE COURT: All right.

15 MS. MITCHELL: Yes, Your Honor. Ortavious Mitchell is
16 my son for twenty-seven years. I raised my son to be the
17 best father and a man he could be. Right now the way my
18 heart has been I just pray that everyone in this courtroom
19 will never feel the pain that I feel right now as a parent
20 cause right now my heart is slashed out right about now.

21 You can only raise your child the way you know how to
22 raise them but when they get a certain age you can't
23 control the things they do in life. But in this situation
24 I don't believe my son had anything to do with this car,
25 God knows I don't. But I just thank God and I just pray

-263-

1 that he stays strong and do what he has to do as man and
2 learn from this mistake.

3 But as I said at the beginning, I pray that any parent
4 in this courtroom that has kids don't have to go through
5 the pain that I'm going through because it's not no good
6 pain. It's not no good pain. And I just thank God that
7 I'm able to stand up here today to beg, to say that I'm his
8 mother, and I'm a proud mother.

9 And I just want you to hold your head up, Ortavious,
10 and be strong because you will have the support and love
11 that you always had since you was a bady. Do you
12 understand what I'm saying? Just hold your head up and be
13 strong and be the man that I raised you to be. And I love
14 you.

15 MR. MITCHELL: And I love you too.

16 THE COURT: Thank you.

17 MR. LLOYD: Your Honor, Mr. Mitchell is his father.

18 THE COURT: Yes, sir.

19 A. I'm Bart Mitchell and Ortavious' father. I came to
20 court to tell my son that I love you.

21 MR. MITCHELL: I love you too.

22 BART MITCHELL: Don't worry about it, you'll be all
23 right.

24 And this trial, I watched it, I'm gonna accept that
25 because he accepts it as a man. I accept it as a man down

1 the road. Thank you.

2 THE COURT: Thank you.

3 A. Can I say something please?

4 THE COURT: Yes, ma'am. Just come up.

5 Your name?

6 A. My name is Brittany --

7 THE COURT: Did you catch that?

8 MADAM COURT REPORTER: No, sir.

9 A. Brittany Sparenger. I've known Ortavious since I was
10 in the ninth grade. I'm twenty-six now, we have two
11 children. Our oldest daughter, our daughter will be eight
12 in August, our son just turned six in February. He's
13 always there for them, always, and fishing and all that
14 outdoor stuff, soccer games, dance recital; all of that, so
15 I'm just asking you to just be as lenient as possible cause
16 I want him to be there for him to be there for them cause
17 he's all they know. As far as something happening in 2005,
18 that has nothing to do with today. Cause like I said, I've
19 known him since 2001. He's not that type of person. He's
20 shown that they got papers as to that situation. But just
21 don't necessarily think about him but think about my
22 children. That's all they know. He's a good daddy so just
23 be as lenient as possible. Thank you.

24 THE COURT: Thank you.

25 (DEFENDANT LEANS UPON HOLDING CELL DOOR - CRYING.)

1 THE COURT: Come on back around, Mr. Ortavious
2 Mitchell. Is there anything you want to say?

3 MR. MITCHELL: Sir, I can't speak.

4 (DEFENDANT CRYING.)

5 MR. LLOYD: One moment, Your Honor.

6 THE COURT: Okay.

7 (PAUSE.)

8 MR. LLOYD: Your Honor, Mr. Mitchell does not wish to
9 address the Court at this point. As you can see he's got a
10 lot of love and support from his family. He does want me
11 to convey to the court that he's asking the court to have
12 mercy in your sentencing. Again, Your Honor, we would
13 reintegrate given the unique circumstances of this
14 particular case that we think it argues in favor of the
15 lower end of the sentence on this negotiated range and
16 we're going to ask the court for ten years.

17 THE COURT: Did he serve any time previous? I know
18 he's got one day, two days as I recall before he got out on
19 bond.

20 SOLICITOR COLTON: I believe it was three days. Three
21 days, Your Honor.

22 MR. LLOYD: Three days, Your Honor.

23 THE COURT: I'll give him credit for five days.

24 All right, the sentence is thirteen years and I'll
25 give you credit for five days. Thank you.

1 MR. LLOYD: Thank you, Your Honor.

2 SOLICITOR COLTON: Thank you, Your Honor.

3 MS. MITCHELL: I love you.

4 MR. LLOYD: Thank you, Your Honor.

5 THE COURT: I appreciate everybody's courtesies during
6 the trial. We'll take a real short break so the courtroom
7 can clear and then we'll get the jury in. I'm gonna let
8 everybody - You can stay sitting there if you want to but I
9 thought we'd let - give us about two or three minutes and
10 let everybody if they want to exit before we get the jury
11 back in.

12 (COURT IN RECESS AT 12:55 P.M..)

13 (COURT BACK IN SESSION AT 01:00 P.M..)

14 THE COURT: Thank you. Take your seats.

15 Bring in the jury.

16 (JURY REENTERS COURTROOM AT 01:02 P.M..)

17 THE COURT: Members of the jury panel, I apologize for
18 keeping you in there so long, but you may see that things
19 have changed. Mr. Mitchell is not present. He has entered
20 a plea of guilt to an offense and I have sentenced him.
21 This case, we spent all day yesterday dealing with some
22 rather intricate complex legal issues. Based on my ruling
23 Mr. Mitchell decided that it was in his best interest to go
24 ahead and work out a plea bargain and enter a plea which he
25 did.

-267-

1 This of course did not occur until after we had
2 already drawn a jury. So we have been working for the last
3 hour while you were in the jury room and as a result Mr.
4 Mitchell has entered a plea, has received an active prison
5 sentence and the case is over.

6 So that concludes your duty from here today. And if
7 you'll call back tonight after seven you will receive
8 further information. I want you to realize that your time
9 hasn't been wasted because had you not been present, had
10 you not been drawn for this jury, this case would probably
11 still be pending. Individuals charged with offenses don't
12 often realize since they don't but sometimes a plea is not
13 something that a defendant enters until certain legal
14 issues are thrashed out which we did yesterday and this
15 morning and sometimes until the jury is empaneled. So your
16 presence has accomplished something even in your very quite
17 silent way. So have a pleasant afternoon and call back
18 tonight after seven. Thank you.

19 (JURY DISMISSED AT 01:05 P.M..)

20 THE COURT: Again I want to thank everybody for their
21 curtesits and the way they handled themselves. It was a
22 very thorny issue; it was very well presented from both
23 sides. Thank you.

24 We'll adjourn from this and I'll ask the Solicitor to
25 let me know what's next.

1 MR. LLOYD: Your Honor, for the record I appreciate
2 and I think both of us do appreciate your patience and
3 courtesies this week.

4 THE COURT: Thank you. It was pleasant to work with
5 all of you. We'll break. Let me know around 2:30 at the
6 latest.

7 SOLICITOR SHELDON: Yes, sir.

8 MR. LLOYD: Thank you, Your Honor.

9 (COURT IN RECESS AT 01:05 P.M..)

10 (END OF TRANSCRIPT OF RECORD.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 21st and 22d days of May, 2013.

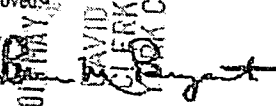
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: September 21 2014

700.07, Traffic Impounding and Towing, YCSO Policy and Procedures		
☒ New Date: 02-17-04	☒ Revised Date: 09-01-11	☒ Reviewed Date: 09-01-11
		York County Sheriff's Office 1675-2A York Hwy. York, SC 29745 803-628-3059 www.yorkcountysheriff.com
CALEA Standards Ref. Numbers: 61.4.3, 1.2.4 Approved:  2011 MAY 27 13:15 DAVID M. BRYANT CLERK OF COURT YORK COUNTY, S.C.		EXHIBIT 2 <i>evd</i> Court's 5-21-13 <i>wn</i>
Sheriff Bruce M. Bryant		09-01-11 Date:

POLICY: TRAFFIC – IMPOUNDING AND TOWING NO. 700.07

I. PURPOSE

The purpose of this policy is to provide guidelines for vehicle towing and impounding.

II. POLICY

(CALEA 61.4.3) It is the policy of the York County Sheriff's Office to tow vehicles in accordance with applicable laws and to protect property to the greatest extent possible.

III. PROCEDURE

A. ABANDONED OR UNATTENDED VEHICLES (Roadway) – (CALEA 61.4.3, b-a)

- Deputies have the authority and responsibility to ensure the safe and efficient flow of vehicular traffic on the roads and highways of York County. This sometimes requires that vehicles be removed or towed to a place of safety. A deputy who finds a vehicle left unattended on a road or highway in violation of any of the provisions regulating stopping, standing or parking, and which constitutes a definite hazard or obstruction to the normal movement of traffic, is authorized to move the vehicle to a position off the roadway or may require the driver or other person in charge of the vehicle to move it to a position off the roadway.
- Deputies will notify the registered owner in the event the vehicle is towed when the owner or person responsible for the vehicle is not present when the vehicle is towed.
- Deputies observing vehicles abandoned or unattended on the roadway that are out of the flow of traffic and not presenting a danger to the public will place an unattended vehicle tag on the vehicle documenting the date and time on the tag. After forty-eight (48) hours, the vehicle should be towed to a safe location. Deputies will request Communications notify the next wrecker on rotation to tow the vehicle. The deputy will complete a tow sheet and incident report and will notify the registered owner of

the vehicle as to the location where the vehicle has been towed. All attempts to contact the registered owner will be documented on the incident report.

**B. ILLEGALLY PARKED OR ABANDONED VEHICLES (Private Property)
(CALEA 61.4.3, b-b)**

1. It is unlawful for a person to park a vehicle (defined as a motor vehicle, trailer, mobile home, watercraft, or any other item or object that is subject to towing and storage) on the private property of another without the owner's consent. If the property is for commercial use, the owner must post a notice in a conspicuous place on the borders of the property near each entrance prohibiting parking. Proof of the posting is considered notice conclusive against the person making entry.
2. A deputy who discovers or is advised of a vehicle parked illegally on private property will make all reasonable attempts to contact the vehicle owner to remove the vehicle. If the owner cannot be located, the property owner will be notified and advised that it will be the property owner's responsibility to have the vehicle towed.

C. ABANDONED VEHICLE (Public Property) - (CALEA 61.4.3, b-b)

1. When a Deputy discovers or is advised of a vehicle left unattended on public property without the consent of the person in control of the property, the deputy will make all reasonable attempts to contact the vehicle owner to remove the vehicle and will place an unattended vehicle tag on the vehicle documenting the date and time on the tag.
2. After seven (7) days, the vehicle is presumed by law to be abandoned. Deputies will request Communications notify the next wrecker on rotation to tow the vehicle.
(CALEA 61.4.3, b-c) The deputy will complete a tow sheet and incident report and will notify the registered owner of the vehicle as to the location where the vehicle has been towed. All attempts to contact the registered owner will be documented on the incident report.

D. OTHER INSTANCES WHEN VEHICLES MAY BE TOWED

1. Deputies may cause a vehicle to be towed under any of the following circumstances:
 - a. Any vehicle so damaged at an accident scene that towing is required and whose owner/operator is unable to make disposition of the damaged vehicle;
 - b. Any vehicle left unattended upon any street, bridge or causeway and is illegally parked so as to constitute a hazard or obstruction to the normal movement of traffic;
 - c. Any vehicle from which a deputy makes an arrest and there is no responsible party to whom the arrestee can turn over the possession of the vehicle;
 - d. Upon recovery of any stolen vehicle (or vehicle operated without the owner's consent) where the owner cannot appear in a reasonable time to claim the vehicle;
 - e. Any vehicle for which there is a legal basis for seizure of the vehicle;

- f. Any vehicle to be held for processing of evidence in the course of an investigation;
 - g. When removal is necessary in the interest of public safety because of fire, flood, storm, or other emergency; or
 - h. Any vehicle upon execution of a lawful court order so specifying the seizure of such vehicle.
3. When it becomes necessary to have a vehicle towed, the deputy will contact Communications and request the next wrecker on rotation. If the owner is present or is contacted and requests a specific tow service, every effort will be made to contact that service. (CALEA 61.4.3, b-c) The deputy will complete a tow sheet and incident report. If the owner is not present or the deputy was unable to make contact with the owner before towing the vehicle, the deputy will notify the owner of the vehicle as to the location where the vehicle has been towed. All attempts to contact the registered owner will be documented on the incident report.

E. INVENTORY PROCEDURES

(CALEA 1.2.4, b-f) Upon the towing or impounding of a vehicle as described in this policy, an inventory of the vehicle will be performed. This inventory is done to protect the car owner's property, protecting law enforcement against claims of theft and damage, and protecting law enforcement and the public against dangerous instrumentalities. The following procedures will be followed.

- 1. The deputy will examine the exterior of the vehicle being towed and document any exterior damage on the tow sheet.
- 2. All compartments and containers within the vehicle will be inventoried and documented on the vehicle inventory sheet consistent with the caretaker purpose.. When documenting inventoried items, annotation should be specific, including make, model, serial number, distinguishing marks, etc.
- 3. Closed and/or locked containers will be opened and contents documented on the inventory sheet. Care will be exercised where there is reason to believe that a container may contain items of toxic, flammable, or explosive nature. In such cases, a supervisor will respond to the scene and make a determination on how to proceed.
- 4. Non-evidentiary items of significant value or legal but dangerous instrumentalities found in the vehicle will be removed for safekeeping and afforded adequate security. Deputies unclear as to whether property should be removed will contact their supervisor and/or evidence lieutenant for guidance.
- 5. Contraband or evidence found in the vehicle will be immediately seized and preserved in accordance with existing procedures governing the seizure of physical evidence.
- 6. A receipt will be given for all items removed from the vehicle.
- 7. If the doors, the glove compartment, the trunk, or any other containers therein are locked or otherwise sealed, great care should be taken to minimize damage to property while gaining access to conduct the inventory (*Colorado v. Bertine*, 479

U.S. 367, (1987).

F. VEHICLES TOWED AND/OR IMPOUNDED – (CALEA 61.4.3 b-c)

1. When a vehicle is removed or towed at the direction of a deputy, the deputy will complete a tow sheet and incident report and will notify the registered owner of the vehicle as to the location where the vehicle has been towed. All attempts to contact the registered owner will be documented on the incident report.
2. Vehicles are not to be towed to the Moss Justice Center/Evidence Impound unless a specific reason exists warranting the storage. If a vehicle is towed to Moss Justice Center/Evidence Impound, the following additional procedures apply:
 - a. The deputy will indicate on the evidence sheet what type of forensic examination is to be performed. If there is a test to be performed by the York County Forensic Services Unit, and the vehicle is being towed to the wrecker service, a deputy must stay with the vehicle to maintain the chain of custody until it has been processed.
 - b. The deputy will indicate on the sheet whether the vehicle was seized or part of a crime scene.
3. The deputy will sign and print his/her name and call number on the tow bill and will turn the bill into evidence with other paperwork.
4. A copy of the tow sheet will be forwarded to the Sheriff's Office front desk at Moss Justice for inclusion to the tow log and eventual filing.

G. VEHICLE SEIZURES (LARCENY, DUS/DUI VIOLATIONS)

The specific guidelines for the forfeiture, confiscation, and disposition of vehicles seized for Larceny can be found in Title 16 (§16-13-175) of the South Carolina Code of Laws. The specific guidelines for the forfeiture, confiscation, and disposition of vehicles seized for Driving Under the Influence (DUI) or Driving Under Suspension (DUS) can be found in Title 56 (§56-5-6240) of the South Carolina Code of Laws.

1. If a vehicle is seized for a Larceny, or DUI/DUS violation, as outlined in the above statutes, and meets the criteria for seizure, the vehicle will be towed to the processing bay at Moss Justice Center.
2. As with other vehicles towed to Moss Justice, the evidence sheet, a copy of the incident report and the keys directly related to the vehicle (such as ignition, trunk, tool box) will be turned into Evidence and a copy of the evidence sheet will be placed on the dashboard of the vehicle being seized. In addition, the deputy will also turn in a copy of the tow sheet, any other related investigative reports, a copy of the ticket(s) and a copy of any computer checks (vehicle registration, driver's license, etc.)
3. The law requires that YCSO notify the registered owner by certified mail within seventy-two (72) hours of vehicle seizure. For this reason, the deputy seizing the vehicle will ensure that all required paperwork is submitted to Evidence before the end of the deputy's tour of duty. The notice will be completed and mailed by an

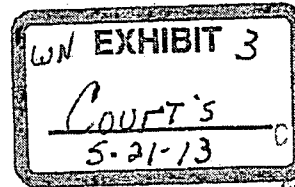
evidence technician who will then provide the Staff Attorney with a copy of all paperwork as soon as possible.

4. Once notified, the owner of the vehicle will have ten (10) days to request a hearing before the presiding magistrate or his/her designated hearing officer. The arresting deputy will be notified of any seizure proceedings and will be required to testify.
5. If a deputy is asked to assist the State Highway Patrol with a vehicle seizure, the above guidelines shall apply. The deputy will acquire a copy of all paperwork from the South Carolina State Trooper and will complete an incident report titled "Assisting Other Agency."

H. RELEASE OF TOWED VEHICLES

1. If the Sheriff's Office has not placed a hold on a vehicle which has been towed, the vehicle will be released to the owner by the tow service once all charges have been paid.
2. Vehicles seized and impounded for asset forfeiture purposes, as references in subsection F above, can only be released upon order of the courts.
3. Vehicles impounded as evidence will only be released upon written approval by the respective captain of the impounding deputy.

Reference: 039L000001
 Msg Key : ICHS
 Date/Time: 20110803235828
 Source : SCCH



CERTIFIED TRUE COPY

2014 MAY 27 PM 3:15

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

039L000001.SCCH.ICHS.20110803235828.
 TO: YRKSO003-00467274 20110803 23:58:28 003FACEACA
 FROM: SCCH 20110803 23:58:28
 ICHS/QH INQUIRY OF SCLED CCH FILES USING:
 ATN-FAULKENBERRY, JAMIE
 ORI-SC0460000 PUR-C
 NAM-MITCHELL, ORTAVIOUS ROMOND
 SEX-M RAC-B DOB-██████████

DATE-08/04/2011 TIME-00:04 PAGE-01 OF 01
 ORI-SC0460000

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
 THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
 MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-MITCHELL, ORTAVIOUS RAMON SEX-M RACE-B
 HEIGHT-511 WEIGHT-170 EYES-BRO HAIR-BLK SKIN- BORN-SC
 FPC: HENRY- NCIC-

SID-SC01514305 FBI-384855DC7
 PHOTOGRAPH AVAILABLE
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS
 DATE RECORD ENTERED--12/23/2003 DATE OF LAST UPDATE--03/23/2007

ALIAS NAMES-MITCHELL, ORTAVIOUS RAMOND

BIRTH DATES-██████████

SOC SEC NUMBERS-██████████
 SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

 INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
 SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
 (C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
 CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
 ACQUIRE A HANDGUN.

 INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
 PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
 CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
 TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
 THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
 FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
 DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY

SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.

FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC

ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL

** END OF MESSAGE **

Reference: 039L000001
Msg Key : QH
Date/Time: 20110803235829
Source : III

039L000001.III.QH.20110803235829.

TO: YRKSO003-00467275 20110803 23:58:29 0035F5FFFC
FROM: III 20110803 23:58:29

7L011881024CE42QH
SC0460000

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/MITCHELL, ORTAVIOUS ROMOND SEX/M RAC/B DOB/ [REDACTED]
PUR/C

NAME	FBI NO.	INQUIRY DATE
MITCHELL, ORTAVIOUS RAMON	384855DC7	2011/08/03

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	B	[REDACTED]	511	170	BRO	BLK	N

BIRTH PLACE
SOUTH CAROLINA

FINGERPRINT CLASS	PATTERN CLASS
RS RS WU WU WU LS LS WU WU WU	WU

ALIAS NAMES
MITCHELL, ORTAVIOUS RAMOND

SOCIAL SECURITY
[REDACTED]

IDENTIFICATION DATA UPDATED 2007/03/23

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

SOUTH CAROLINA - STATE ID/SC01514305

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

278

reference: 039L00000B
Msg Key : ICHR
Date/Time: 20110804000117
Source : SCCH

039L00000B.SCCH.ICHR.20110804000117.

TO: YRKSO003-00467280 20110804 00:01:17 003FACEAD7
FROM: SCCH 20110804 00:01:17

ICHR REQUEST FOR RAP SHEET
ORI-SC0460000 FBI-384855DC7 PUR-C
ATN-FAULKENBERRY, JAMIE

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-08/04/2011 TIME-00:07:07
REQ ORI-SC0460000 YORK CNTY SO
SID-SC01514305 FBI-384855DC7
NAME-MITCHELL, ORTAVIOUS RAMON SEX-M RACE-B
HEIGHT-511 WEIGHT-170 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--12/23/2003 DATE OF LAST UPDATE--03/23/2007

ADDITIONAL IDENTIFIERS	BIRTH			
NAME	DATES	MARKS	SOC SEC	MISC NUM
MITCHELL, ORTAVIOUS RAMOND				

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
MITCHELL, ORTAVIOUS RAMON	11/15/2003
SC0460000 YORK CNTY SO	
CASE-000077167030	
ATN-980000469950	
WARR-G776232	
CIT-16-17-490-MISDEMEANOR	

ARREST CHARGE 01-CONTRIBUTING
TO THE DELINQUENCY OF A
MINOR
OFFENSE DATE-11/15/2003
PHOTOGRAPH AVAILABLE

WARR-83524CP
CIT-56-10-270 (A) -MISDEMEANOR

ARREST CHARGE 02-OPERATING
UNINSURED MOTOR VEHICLE -
1ST OFF
OFFENSE DATE-11/15/2003

WARR-83523CP
CIT-56-1-440-MISDEMEANOR

ARREST CHARGE 03-DRIVING
WITHOUT A LICENSE
OFFENSE DATE-11/15/2003

WARR-H060634
CIT-16-3-655 (1) -FELONY

ARREST CHARGE 04-CRIM SEX

WARR-H060633
CIT-16-3-655(1) -FELONY

CONDUCT W/MINOR-<11YRS
OLD-1ST DEGREE
OFFENSE DATE-11/15/2003

CIT-56-1-440-MISDEMEANOR
DOC-04GS4601211 WARR-83523CP

ARREST CHARGE 05-CRIM SEX
CONDUCT W/MINOR-<11YRS
OLD-1ST DEGREE
OFFENSE DATE-11/15/2003

COURT CHARGE 01-DRIVING WITHO
UT A LICENSE - 2ND OFFENSE
COURT DISP-CONVICTED;30 DAYS
SUSPENDED
COURT DATE-06/22/2004
ATN-980000469950

CIT-C/L,-MISDEMEANOR
DOC-04GS4601213 WARR-H060633

COURT CHARGE 02-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;INDEC
LIBERTY W/FEMALE 10 YRS
SUSP ON 5 YRS PROB CONC
COURT DATE-06/22/2004

CIT-C/L,-MISDEMEANOR
DOC-04GS4601212 WARR-H060634

COURT CHARGE 03-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;INDEC
LIB W/FEMALE;10 YRS SUSP
ON 5 YRS PROB CONC
COURT DATE-06/22/2004

CIT-16-17-490-MISDEMEANOR
DOC-04GS4601214 WARR-G776232

COURT CHARGE 04-CONTRIBUTING
TO THE DELINQUENCY OF A
MINOR
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/24/2004

CIT-56-10-270(A) -MISDEMEANOR
DOC-00GS46 WARR-83524CP

COURT CHARGE 05-OPERATING
UNINSURED MOTOR VEHICLE
-3RD OR SUB
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/24/2004

MITCHELL, ORTAVIOUS RAMON
SC0460000 YORK CNTY SO
ATN-980000492715
WARR-F916297
CIT-16-3-653-FELONY

02/10/2004

ARREST CHARGE 01-CRIMINAL
SEXUAL CONDUCT - SECOND
DEGREE
OFFENSE DATE-02/10/2004
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

CIT-C/L,-MISDEMEANOR
DOC-04GS4601210 WARR-F916297

COURT CHARGE 01-ASSAULT/BATTE

RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;INDEC
LIBERTY W/FEMALE;NO CONTE
T;10 YRS SUSP ON 5 YRS
PROB;3 MOS H.A.;\$40 PD APP
COURT DATE-06/22/2004
ATN-980000492715

MITCHELL, ORTAVIOUS RAMOND
SC0460300 ROCK HILL PD
CASE-0703231260
ATN-46D300502807
WARR-56475DW
CIT-16-13-180(1)-MISDEMEANOR

03/23/2007

ARREST CHARGE 01-RECEIVING
STOLEN GOODS
OFFENSE DATE-03/23/2007
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/384855DC7
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION
INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

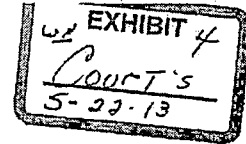
INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **



STATE OF SOUTH CAROLINA

County of York

SEARCH WARRANT

CERTIFIED TRUE COPY
 2014 MAR 27 PM 3:16
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

Date 08-04-11

Officer Any Lawful Officer

STATE OF SOUTH CAROLINA

COUNTY OF York

AFFIDAVIT

Personally appeared before me, one D.W. ALLEN
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

crack cocaine, crack cocaine paraphernalia, currency, packaging materials, scales, records to include written records, computers,
computer software, hard drives, and any other items relating to the sale and or distribution of crack cocaine

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

When you turn onto Leach Rd. from Hwy 5 you continue on Leach Rd. and keep to the right. The road will end in a driveway that is
shared by two mobile homes. When you pull into the driveway [REDACTED] will be the mobile home on the left hand side of the
driveway. The mobile home is light blue in color with dark blue shutters. with no under pinning or front porch.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See Attachment #1

Sworn to and Subscribed before me

this 4thday of August20 11Signature of Judge [Signature]

(L.S.)

1650 h.Affiant [Signature]Address 1675-2A York HwyYork, SC 29745Phone 803-628-3059

Attachment #1

[REDACTED]

The affiant, who is a certified law enforcement officer with four years experience including narcotics investigations, assigned to the York County Multijurisdictional Drug Enforcement Unit (YCMDEU) states the following facts to support probable cause to search the person and premises listed within.

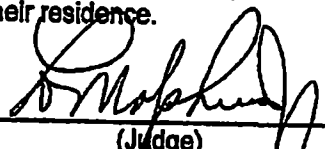
On July 11th, 2011 the affiant received a crime stoppers tip in reference to "Ta" or Ortavious Mithchell selling drugs on [REDACTED]

[REDACTED] The tip went on to say that Mitchell was the "kingpin" and has bought two tractor trailer trucks, boats, cars, and a lawn mower. He also uses his tractor trailer trucks to pick up the drugs.

Within the past week a confidential informant working under the control of the YCMDEU has purchased crack from a subject that lives on [REDACTED] and who the confidential informant has knowledge that this subjects gets their crack from "Ta" Mitchell. The informant also advised officers of the YCMDEU that they have personally seen "Ta" Mitchell sell large quantities of crack while out near his residence on Leach Rd. The CI went on to advise that "Ta" Mitchell's grandmother that lived on Leach Rd. as well had recently passed away.

On August 3rd, 2011 the affiant received a phone call from the same individual that had called in the crime stopper tip on July 11th. The anonymous tipster advised that they had knowledge that "Ta" Mitchell would be traveling to Anderson SC to purchase a large quantity of cocaine or crack and would be traveling on Hwy 5. They went on to say that "Ta" would be driving a tan 4dr Honda and that if the tag was run it should come back to a residence on [REDACTED]. They advised that "Ta" should be arriving back at his residence on [REDACTED] with the dope sometime later on in the night. The affiant then contacted other officers and they then set up near I-85 in Blacksburg SC. At approximately 9:50pm Lt. Ligon observed a vehicle matching the description that was given to the affiant come off of the interstate they travel on Hwy 5 towards York SC. Lt. Ligon got close enough to the vehicle to call out the tag number. One of the other officers ran the tag and the tag did in fact come back to a residence on [REDACTED] Lt. Ligon then continued to follow and observed the vehicle make a traffic violation. The vehicle was subsequently stopped and it was found that Ortavious or "Ta" Mitchell was driving the vehicle. During the stop officers of the YCMDEU recovered approximately 228.2 grams of crack which is just over 8 ounces of crack. When "Ta" and the passenger of the vehicle, who was identified as Whitney McCray, were asked where they were coming from they advised Blacksburg SC. When asked where they were going they advised back to "Ta's" house. Commander Brown also asked "Ta" if his grandmother that lived on Leach Rd. had recently passed away and he advised Commander Brown that she had. Lt. Ligon asked "Ta" where he lived and he advised [REDACTED] This was also verified through SC DMV records. This was also verified through York County Sheriff's Office records and it is the address he gave at the time he was booked into the Moss Justice Detention Center.

Based on the affiant's training and experience in narcotics investigations, it is believed that large scale drug dealers keep contraband, proceeds of drug sales and records, photographs, video tapes, computer hard drives and disks within the secure locations of their residence.


(Judge)

8/4/2011
(Date)
1550 hr


(Affiant)

08-04-11
(Date)

COUNTY OF York

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF York County

it appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina; as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

When you turn onto Leach Rd. from Hwy 5 you continue on [REDACTED] and keep to the right. The road will end in a driveway that is shared by two mobile homes. When you pull into the driveway [REDACTED] will be the mobile home on the left hand side of the driveway. The mobile home is light blue in color with dark blue shutters, with no under pinning or front porch.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

crack cocaine, crack cocaine paraphernalia, currency, packaging materials, scales, records to include written records, computers, computer software, hard drives, and any other items relating to the sale and or distribution of crack cocaine

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Issuing Authority

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

York
August 4

~~U.S.C.~~

120 11

11450 hrs

Signature of Judge

(L. S.)

RETURN

I received the attached Search Warrant August 4, 20 11, and have executed it as follows:
 On August 4, 20 11 at 5:20 o'clock P M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Ortavius Ramond Mitchell
 Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 - Crack

2 - Plastic bag with corner missing

3 - Crack

4 - Box containing 6, 7mm rounds

5 - Packaging material

6 - Crack

7 - Blue Acer laptop serial number LUS030B0438482477C2536

This inventory was made in the presence of Schifferle, Kimble, Allen, Brown

AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

day of

August, 20 11
[Signature] (L. S.)
 Signature of Judge 1855h

[Signature]
 (Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

COUNTY OF YorkDetavious R. Mitchell

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

(Please Print)

Submitted By: Reginald I. LloydAddress: 715 West Dekalb St.P.O. Box 1553Camden, SC 29021SC Bar #: 065024Telephone #: 803-432-0004Fax #: 803-432-0660

Other:

E-mail: lloyd.law3@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☐ JURY TRIAL demanded in complaint.☒ NON-JURY TRIAL demanded in complaint.☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

- Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20-CP-
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

- Torts - Personal Injury**
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

- Real Property**
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

- Inmate Petitions**
- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

- Administrative Law/Relief**
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

- Judgments/Settlements**
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript of Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)

- Appeals**
- ☐ Arbitration (900)
- ☐ Magistrate Civil (910)
- ☐ Magistrate Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Commission (991)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Foreign Subpoenas (650)
- ☐ Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature: Reginald I. LloydDate: May 22, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCP 1001 (06/2012)

D 1 50

FILED-RECEIVED
2014 MAY 22 AM 11:03
DAVID HAMMILL
CLERK OF COURT
YORK COUNTY

CERTIFIED TRUE COPY
2014 MAY 22 PM 3:06
DAVID HAMMILL
CLERK OF COURT
YORK COUNTY

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF YORK) FOR THE SIXTEENTH JUDICIAL CIRCUIT
)
 ORTAVIOUS R. MITCHELL/00355516)
 Full name and prison number (if any) of Applicant.)
)
 v.) APPLICATION FOR
)
 State of South Carolina) POST-CONVICTION RELIEF
)

FILED-RECEIVED
 2014 MAY 22 AM 10:53
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Perry Correctional Institution.
2. Name and location of Court which imposed sentence: York County.
3. Name(s) of co-defendant(s) (if any): None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) Indictment Number 2011GS4603323 - Trafficking Crack Cocaine.
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) May 22, 2013, 13 years.

6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X.
 - (b) after a plea of not guilty Not applicable.
 - (c) after a plea of nolo contendere Not applicable.
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Not applicable.
 - (b) the result in each such Court to which you appealed:
 - i. Not applicable.
 - (c) the date of each such result:
 - i. Not applicable.
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Not applicable.
9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) No basis under applicable South Carolina statutory and common law to appeal the Court's acceptance of guilty plea or imposition of sentence.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Applicant was denied due process and equal protection guarantees provided in the United States and South Carolina Constitutions, including by the Fifth and Fourteenth Amendments to the United States Constitution. Applicant was deprived of his right to a fair trial by the Court failing to suppress evidence seized in violation of the Fourth Amendment and by the Government proceeding with a prosecution based upon a pattern and practice of a law enforcement unit that illegally profiles and conducts searches of vehicles, such as the Applicant's vehicle, by intentionally using impoundment and inventory of vehicles to search for evidence of crimes. Further, the Government's pattern and practice of illegally impounding and inventory searching vehicles, such as in Applicant's case, amounts to violations of federal civil

and criminal civil rights laws, made applicable to the states through the Fourteenth Amendment to the United States Constitution.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) During a suppression hearing in Applicant's case, agents of the York County Multi-jurisdictional Drug Enforcement Unit acknowledged that they intended to follow and conduct a traffic stop of Applicant's vehicle and that, based upon that traffic violation, law enforcement intended to impound and conduct an "inventory" search of the vehicle. Agents testified that they "were not going to allow the vehicle to leave" following the traffic stop, meaning that they intended to use the impoundment and inventory of the vehicle to search for suspected drugs. An agent also testified that although he believed it improper or unlawful to use an inventory search as a ruse to search for suspected evidence, he was aware that other officers had previously stated that they use that procedure to conduct warrantless searches of vehicles. Despite government testimony and use of testimony clearly indicating that the subjective intent of the agents was to impound Applicant's vehicle and inventory search it for the purpose of searching for suspected drugs, the Court declined to suppress the evidence, even though the Court also found that no other probable cause existed that would have allowed a search of the vehicle. The testimony of Government agents indicates that this willful violation of existing Fourth Amendment law is a pattern and practice violating the constitutional and civil rights of Applicant and others.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

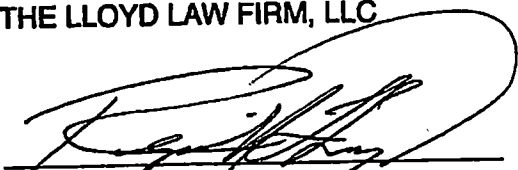
- (a) the specific nature thereof:

- i. Not applicable.
 - (b) the name and location of the Court in which each was filed:
 - i. Not applicable.
 - (c) the disposition thereof:
 - i. Not applicable.
 - (d) the date of each such disposition:
 - i. Not applicable.
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Not applicable.
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. Not applicable.
 - (b) the proceedings in which each ground was raised:
 - i. Not applicable.
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Not applicable because Applicant could not raise this issue in a direct appeal.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? not applicable
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? not applicable

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Reginald I. Lloyd, Esq., PO Box 1555, Camden, South Carolina 29021
 - (b) the proceedings at which each such attorney represented you:
 - i. Through trial, guilty plea and sentencing.
19. State clearly the relief you seek in filing this application:
Vaction of guilty plea, reversal of conviction and suppression of evidence.
20. Are you now under sentence from any other court that you have not challenged?
No.

Respectfully submitted,

THE LLOYD LAW FIRM, LLC

By: 

Reginald I. Lloyd, Esquire
715 West DeKalb Street
Post Office Box 1555
Camden, South Carolina 29021
803-432-0004 (phone)
803-432-0660 (fax)
lloydlaw3@gmail.com

Attorneys for the Applicant.

Camden, South Carolina

This 20th day of May, 2014.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of

York

I, D. Mitchell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Optimus Mitchell

SWORN to and subscribed before me this 22nd
day of May, 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires: 03/24/2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Ortavious R. Mitchell, #355516,	)	2014-CP-46-1705
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 22, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of the York County Grand Jury for Trafficking in Crack Cocaine (2011-GS-46-3323). The Applicant was represented by Reginald Lloyd, Esquire. On May 23, 2013, the Applicant pled guilty indicted. The Honorable Paul M. Burch sentenced the Applicant, pursuant to a negotiated sentence, to confinement for thirteen (13) years for Trafficking in Crack Cocaine, 28-100 grams, as a lesser included offense. The Applicant did not appeal her convictions or sentences.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In her application for post-conviction relief the Applicant alleges she is being held in custody unlawfully for the following reason:

1. "Applicant was denied due process and equal protection guarantees provide in the United State and South Carolina Constitutions, including by the Fifth and Fourteenth Amendments to the United States Constitution. Applicant was deprived of his right to a fair trial by the Court failing to suppress evidence seized in violation of the Fourth Amendment and by the Government proceeding with a prosecution based upon a pattern and practice of law enforcement united that illegally profiles and conducts searches of vehicles, such as the Applicant's vehicle, by intentionally using impoundment and inventory of vehicles to search for evidence of crimes. Further, the Government's pattern and practice of illegally impounding and inventory searching vehicles, such as in Applicant's case, amounts to violations of federal civil and criminal civil rights laws, made applicable to the states through the Fourteenth Amendment to the United States Constitution."
 - i. "During a suppression hearing in Applicant's case, agents of the York County Multi-jurisdictional Drug Enforcement Unit acknowledged that they intended to follow and conduct a traffic stop of Applicant's vehicle and that, based upon that traffic violation, law enforcement intended to impound and conduct an "inventory" search of the vehicle. Agents testified that they "were not going to allow the vehicle to leave" following the traffic stop, meaning that they intended to use the impoundment and inventory of the vehicle to search for suspected drugs. An agent also testified that although he believed it improper or unlawful to use an inventory as a ruse to search for suspected evidence, he was aware that other officers had previously stated that they use that procedure to conduct warrantless searches of vehicles. Despite government testimony and use of testimony clearly indicating that the subjective intent of the agents was to impound Applicant's vehicle and inventory search it for the purpose of searching for suspected drugs, the Court declined to suppress the evidence, even though the Court also found that no other probable cause existed that would have allowed a search of the vehicle. The testimony of Government agents indicates that this willful violation of existing Fourth Amendment law is a pattern and practice violating the constitutional and civil rights of Applicant and others."

III.

Respondent interprets Applicant's claims as allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

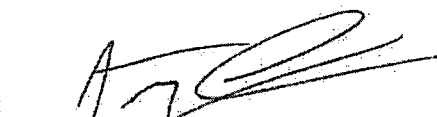
KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

September 24, 2014

By:

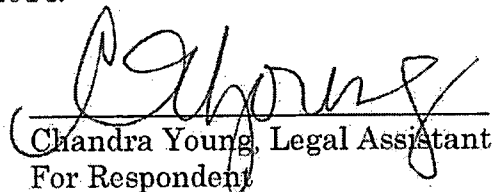

Attorneys for Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS.
COUNTY OF YORK	)	
	)	
	)	2014-CP-46-1705
	)	
ORTAVIOUS R. MITCHELL, #355516)	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Reginald I. Loyd, Esquire
 PO Box 1555
 Camden, SC 29021

DATED this 24th day of September, 2014.


 Chandra Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 ORTAVIOUS MITCHELL,

4 Petitioner,

5 Case No.

6 -against-

2014-CP-46-01705

7 STATE,

8 Respondent.

9 -----x

10 November 17, 2014

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ALISON RENEE LEE

15

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

17 REGINALD LLOYD

18 Attorney for the Petitioner

19

20 J. RUTLEDGE JOHNSON

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

1	<u>I N D E X.</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Ortavious Mitchell				
4	Mr. Lloyd	3			
5	Mr. Johnson		12		
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
3				
4		NO EXHIBIT INTRODUCED		
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 MR. JOHNSON: May it please the Court, Your Honor.
2 This is the case of Ortavious R. Mitchell versus the
3 State of South Carolina. This is case number
4 2014-CP-46-1705.

5 Mr. Mitchell was indicted at the October 2011 term
6 of the York County Grand Jury for trafficking crack
7 cocaine. He was represented by Reggi Lloyd who is also
8 representing him here today.

9 On May 23, 2013 he proceeded to trial, but then
10 plead guilty after a Suppression hearing. The Honorable
11 Paul M. Burch sentenced him to a negotiated sentence of
12 13 years for trafficking in crack cocaine, 28 to one
13 hundred grams as a lesser included offense. He did not
14 appeal the sentence.

15 On May 22, 2014, he filed a Post Conviction Relief
16 application and on September 24, 2014 the State filed
17 its Return.

18 He is represented here today by Mr. Reggi Lloyd.
19 As a matter of procedure because Mr. Lloyd was defense
20 counsel and his PCR counsel the State would ask that you
21 ask a waiver of any claims of ineffective assistance of
22 counsel on -- toward Mr. Lloyd.

23 Further, whenever the Court would hear I have a
24 motion for summary judgement.

25 THE COURT: Mr. Lloyd is there anything you with

1 issue to address at this time?

2 MR. LLOYD: Yes, Your Honor. The procedure -- and
3 I handed over a case to counsel. Actually, one
4 correction. It was actually Judge Hayes, John Hayes not
5 Judge Burch on this particular case.

6 Your Honor, I handed up -- may I approach the
7 bench?

8 THE COURT: Yes, sir.

9 MR. LLOYD: I handed up present counsel a copy.
10 Your Honor, the gist of this PCR application since the
11 occasion of Mr. Mitchell's conviction and there was a
12 plea to guilty after a motion to suppress evidence was
13 denied by Judge Hayes. In that State V Adams case the
14 Supreme Court has clarified a constitutional ruling on
15 the admission of evidence even after a traffic stop.
16 I'm assuming Your Honor has read through the transcript.

17 THE COURT: I did.

18 MR. LLOYD: This arose from a traffic stop.

19 THE COURT: Yes, sir.

20 MR. LLOYD: A search by law enforcement, the DEU
21 unit, a physical inventory search, what we believe State
22 V Adams shows is that the traffic stop which is what
23 Judge Hayes based his ruling on was proper and then did
24 allow the impound and inventory search has been
25 clarified by the State Supreme Court, that you can not

1 alleviate a Fourth Amendment violation by a legitimate
2 traffic stop where the sole purpose is the pretext to
3 get around that constitutional violation.

4 THE COURT: And I think that goes to the merits of
5 the application, does it not?

6 MR. LLOYD: Yes, Your Honor.

7 THE COURT: And before we get that far, I think as
8 I understand Mr. Johnson what you want me to clarify
9 with Mr. Mitchell is that his Post Conviction Relief
10 application does not assert any claims of ineffective
11 assistance of counsel, and as I understand the basis for
12 the Post Conviction Relief application it is arising out
13 of after the motion to suppress was denied by the Court
14 and the trial was prepared to go forward. Mr. Mitchell
15 took advantage, I guess, of a plea offer that was
16 extended to him that reduced the charges and therefore
17 reduced the exposure to jail time. He decided to accept
18 that offer and I read the plea portion as well. And so
19 Mr. Lloyd I think during the sentencing made reference
20 to the fact there is no conditional plea in South
21 Carolina which means that by pleading guilty to the
22 reduced charge that he would be giving up the
23 opportunity to appeal any rulings that were made by the
24 judge during the course of the motion to suppress. And
25 so, as I understand Post Conviction Relief applications

1 they can assert other constitutional basis to seek
2 relief in addition to ineffective assistance of counsel;
3 is that correct?

4 MR. JOHNSON: Yes.

5 THE COURT: Is that your understanding?

6 MR. LLOYD: Yes, Your Honor, that is our
7 understanding of the PCR statute.

8 THE COURT: Just to make sure, Mr. Mitchell, you
9 heard the conversation that we have been having. Do you
10 understand generally what we have been discussing so
11 far?

12 MR. MITCHELL: Yes, ma'am.

13 THE COURT: And it is my understanding that Mr.
14 Lloyd did represent you during the course of -- in
15 connection with these charges and represented you during
16 the course of the motion to suppress and the trial that
17 was to take place back in May of 2013, is that correct?

18 MR. MITCHELL: Yes, ma'am.

19 THE COURT: And you've asserted a claim of Post
20 Conviction Relief and actually it was signed by Mr.
21 Lloyd so I believe he raised it on your behalf; is that
22 correct?

23 MR. MITCHELL: Yes, ma'am.

24 THE COURT: And as I understand your application
25 you were challenging the constitutional issues relating

1 to the stop that do not affect Mr. Lloyd's -- how he
2 represented you and you are not making any claim that he
3 did anything that was in appropriate or that waived your
4 right or did anything in essence to cause you a
5 deprivation of any of your liberties?

6 MR. MITCHELL: No, ma'am.

7 THE COURT: And do you understand that by coming
8 here and having Mr. Lloyd represent you that you would
9 still be giving up that opportunity to be able to in the
10 event that you thought of something or some how or
11 another there was some other issue that may come to
12 light during the course of the proceeding you're giving
13 up that the opportunity by having him represent you at
14 this particular point by raising that particular claim?

15 MR. MITCHELL: Yes.

16 THE COURT: All right.

17 MR. LLOYD: If I may I just wanted to let the
18 Court know I did discuss that issue with Mr. Mitchell
19 and I wanted to make sure that he understood the Court
20 would colloquy on that issue and that he was free to in
21 fact raise that even now if he felt like he needed to
22 and that obviously we would address that with the Court
23 if he needed separate counsel to counsel him on that.

24 THE COURT: And at this time Mr. Mitchell do you
25 have any issues that you need to raise with respect to

1 || that?

2 Mr. Mitchell do you at this particular time have
3 any issue that you wish to raise with respect to the
4 matter in which Mr. Lloyd has represented you in
5 connection with these particular charges either
6 pretrial, during the course of the trial, during the
7 course of the hearing on the motion to suppress or at
8 this particular point?

9 MR. MITCHELL: No, ma'am.

10 THE COURT: And do you wish to go forward today
11 with Mr. Lloyd representing you as it relates to the
12 claims that you raised in your application?

13 MR. MITCHELL: Yes, ma'am.

14 THE COURT: Is there any additional questions you
15 wish to ask?

16 MR. JOHNSON: I just ask that he be sworn in just
17 for the record.

18 THE COURT: Do you solemnly swear or affirm all
19 the answers that you have giving to me have been the
20 truth so help you God?

21 MR. MITCHELL: I do.

22 THE COURT: Thank you. Anything further? Any
23 additional questions Mr. Lloyd that you feel need to be
24 asked of him at this time?

25 MR. LLOYD: On that issue no, Your Honor.

1 THE COURT: All right. Are we ready to go forward?

2 MR. LLOYD: Yes, Your Honor, petitioner is
3 prepared to proceed.

4 THE COURT: Did you want to raise your motion for
5 summary judgement.

6 MR. JOHNSON: Yes, ma'am. First of all the State
7 moves for summary judgement under 56(B) as the defending
8 party which states as the party against whom a claim is
9 asserted may at any time move with or without supporting
10 affidavits. We would state that while a due process
11 claim can be brought in PCR, that the claim that is
12 being brought is a direct appeal issue. Under Simmons
13 verses State, which is 264 SC 417, 1974. PCR is not a
14 substitute for appeal and the issue is not
15 acknowledgeable if it could be brought on appeal. There
16 is also Ashley versus State which is 260 SC 436, 1973.
17 These are direct appeal issues that are being brought.
18 Applicant chose to forgo the right to his jury trial and
19 plead guilty and by pleading guilty he waives the right
20 to appeal the police conduct in this case, which is what
21 his remedy is asking for. He is really challenging the
22 police conduct and the probable cause of the search
23 itself so the State would move for summary judgement
24 because these are direct appeal issues and not
25 recognizable in PCR because they could have been brought

1 and he waived that by pleading guilty.

2 THE COURT: So what you are saying is that the
3 issue that could have been raised on appeal can not be
4 addressed through Post Conviction Relief?

5 MR. JOHNSON: Correct.

6 THE COURT: Any response to that Mr. Lloyd?

7 MR. LLOYD: Yes, Your Honor. I'm sure Your Honor
8 is familiar with State v Gibson as well which states
9 that in this particular circumstance which we believe is
10 analogous to State v Gibson or Gibson v State.
11 Ordinarily that would be true but when there has been an
12 intervening constitutional clarification ruling by the
13 Court directly applies to this particular petitioner,
14 that that is an exception to the direct appeal issue and
15 that petitioner is in fact able to raise that on PCR.
16 Just to quote Gibson v State, the Court stated that
17 petitioner alleged in that case, constitutional
18 violation of PCR, a violation found to be
19 unconstitutional after a time for appeal lapses is not a
20 direct appeal issue nor a PCR consideration.

21 In this particular case, Your Honor, we believe
22 that State v Adams is a ruling by the State's Supreme
23 Court which was subsequent to Mr. Mitchell's conviction
24 even by a guilty plea which in fact would make the
25 search itself unconstitutional in this particular case.

1 THE COURT: And do you have the site for Gibson
2 just to make sure I have the right Gibson.

3 MR. LLOYD: Your Honor, 329 S.C. 37.

4 THE COURT: Okay.

5 MR. LLOYD: It's a 1998 case, Your Honor.

6 THE COURT: Thank you. Any response to that Mr.
7 Johnson?

8 MR. JOHNSON: Just to further the argument about
9 the guilty plea, and as Your Honor is aware, a guilty
10 plea waives all challenges or defenses accept for
11 jurisdictional issues. This is not a jurisdictional
12 question. Further State v Adams came out September of
13 this year. He plead guilty in 2013. This case would
14 not have been available and the Court would not have
15 relied on that. We still stand by the fact these are
16 direct appeal issues and is not proper for PCR.

17 THE COURT: Out of abundance of caution instead of
18 taking all that time to review that matter now I will go
19 ahead and hear the issue. I will conduct appropriate
20 research and rule accordingly on that issue at that
21 particular time, but in an effort to preserve the time
22 I'll go ahead and hear the issues related to PCR at this
23 time.

24 MR. LLOYD: Thank you, Your Honor, and we would
25 ask the Court if the Court wishes to allow us to brief

1 this issue after the hearing. But in response to the
2 State we believe that's precisely why Mr. Mitchell
3 should be allowed to proceed with raising this issue on
4 appeal.

5 At the time of his conviction the Court of Appeals
6 actually ruled on this issue again contrary to Mr.
7 Mitchell's rights and then subsequent to that plea the
8 South Carolina Supreme Court to assert and overrule the
9 Supreme Court -- the Court of Appeals rather on that
10 issue.

11 THE COURT: All right. Yes, sir, I will hear you
12 on the issues.

13 MR. LLOYD: Your Honor, at this point in time we
14 would call Mr. Mitchell to the stand.

15 THE COURT: Step forward please.

16 ORTAVIOUS R. MITCHELL, called as a witness, having
17 been duly sworn by the clerk, was examined and testified
18 as follows:

19 THE COURT: State your full name.

20 MR. MITCHELL: Ortavious Ramone Mitchell.

21 THE COURT: Thank you.

22 MR. LLOYD: Thank you, Your Honor, and Your Honor,
23 just for the Court's edification. We don't want to
24 belabor anything the Court has already heard or already
25 read. We would like to put Mr. Mitchell up just to

1 testify as to the circumstances of the stop that night.

2 THE COURT: And I will tell you for the record that
3 I did read the introductory remarks. I did not read all
4 of the testimony, but I did flag the arguments that were
5 made at the time in Court. I did read the Court's
6 ruling as it relates to the motion that was made and
7 then I also looked at the plea information. So I would
8 still need to review all of the testimony but I am
9 familiar with at least the factual circumstances
10 regarding the stop and in reference to some allegations
11 about what the officer testified to.

12 MR. LLOYD: And Your Honor, just so the Court
13 knows where we are proceeding today we did intend to
14 argue after Mr. Mitchell's short testimony some of the
15 direct testimony from that transcript.

16 THE COURT: Okay.

17 DIRECT EXAMINATION

18 BY MR. LLOYD:

19 Q Mr. Mitchell, if you would, the Court already knows
20 obviously you were arrested and convicted from an Indictment
21 back in 2011. Would you go to the night of your traffic stop
22 involved in this particular case and tell the Court just briefly
23 the circumstances leading up to your being pulled over by law
24 enforcement?

25 A I was traveling down Highway Five and right as I passed

1 the Moss Justice Center a sheriff through the blue lights on and
2 once I found out they were trying to pull me over I immediately
3 pulled over and once they pulled my over a female officer came
4 to the passenger's side and asked for license, registration and
5 proof of insurance and I gave her my license.

6 Q Mr. Mitchell if I can stop you for just a second. Who
7 if anyone else was in the vehicle with you?

8 A Whitney McCray. She was my girlfriend at the time.

9 Q If you will continue.

10 Q As I gave the officer my license and registration I
11 couldn't find proof of insurance. I was in a family member's
12 car. So I got my girlfriend at the time to call my cousin to
13 ask where the proof of insurance was and so we finally found it,
14 gave it to the officer. She didn't take it back to the car or
15 nothing. She just looked at it and through it back in the car.
16 At that time I was like what's going on? You know, I asked the
17 question like, why are we being pulled over. And a male officer
18 came to the driver's side and asked me to step out of the
19 vehicle. So I asked, why am I being pulled over, you know, and
20 he immediately telling me to step out of the car again. So I
21 went ahead and stepped out of the car and he asked me could they
22 search the vehicle and I was like no, sir. And at that time I
23 see I want to say a SUV pull up. It was a narcotic's agent.
24 And that's when Mr. Marvin Brown showed to the scene. When
25 Marvin Brown showed to the scene the uniformed officer asked me

1 to place my hands on the truck of the car and so Marvin Brown
2 came up and I asked Marvin Brown like I didn't know who exactly
3 who he was at the time but I was like sir, could you please tell
4 me why I was being pulled over. You know, what's going on? And
5 he was like you're a drug dealer. So I kind of took offense to
6 it or whatever, and he was like, he asked me -- Marvin Brown
7 asked me -- he didn't even ask. He was like you all search the
8 vehicle and like said I did not search, so they went ahead, put
9 me in handcuffs because Marvin Brown told the uniform officer to
10 place my in handcuffs and I was under arrest for speeding and
11 once they put me in handcuffs they proceeded to search the
12 vehicle.

13 Q Let's back up a little bit in that story. When you
14 told the Court that you had your girlfriend call your cousin
15 about the insurance information, was that done in front of the
16 officer who pulled you over?

17 A Yes, sir.

18 Q And was that on the speaker phone?

19 A You mean the phone -- actual phone call?

20 Q Yes.

21 A I honestly can't remember.

22 Q Was there any indication from the officer that she
23 believed the car to be stolen?

24 A No, sir.

25 Q And after the phone call with your cousin were you able

1 to produce for the officer your insurance card?

2 A Yes.

3 Q Now, at the time I believe you said Commander Brown
4 appeared on the scene. How many officers were on the scene?

5 A I remember two uniform officers, a male officer,
6 sheriff, a female sheriff, and excluding the sheriffs I am
7 assuming there was about five or six other officers.

8 Q And after the initial stop how long did it take for
9 five or six officers to appear on the scene?

10 A Maybe within the next three, four minutes. It was
11 right after the traffic stop.

12 Q And once you were outside the vehicle and Commander
13 Brown appeared on the scene you said he told another officer to
14 place you in handcuffs and place you under arrest?

15 A Yes, sir.

16 Q And that was for what offense?

17 A He said for the speeding.

18 Q At any point prior to being placed under arrest did any
19 of the other officers talk about any other traffic violations?

20 A No, sir. Well, actually one officer said something
21 about driving --

22 MR. JOHNSON: Objection to hearsay about what any
23 officer said.

24 MR. LLOYD: Your Honor, we are not offering for it
25 truth of the matter asserted but rather for why he was

1 being placed under arrest.

2 THE COURT: I will overrule the objection. You
3 may answer.

4 Q Did any other officers indicate any other traffic
5 violation as the reason for your being arrested?

6 A They said I was driving left of center.

7 Q After you were placed under arrest what happened to you
8 then physically? Were you still on the side of the road?

9 A I stood outside for a minute as they searched the
10 vehicle. I recall them going inside the vehicle looking through
11 compartments, under the hood. I remember them going in the gas
12 tank like the flap and I remember them going into the back seat
13 flipping through the -- you know, in the back seat you got like
14 an arm rest or whatever and I remember them going in the trunk.

15 Q Now, at that point did they tell you why they were
16 searching the vehicle?

17 A No, they didn't tell me. They wouldn't speak to me no
18 more after that.

19 Q At what point did they lift up the hood?

20 A After they placed me in handcuffs when they were
21 searching the car. I think it was a total of two officers
22 searching the vehicle at the time.

23 Q At the point that you saw the hood being raised had
24 anybody made any indication that any drugs or other illegal
25 evidence had been found?

1 A No, sir.

2 Q So they went under the hood of the vehicle prior to the
3 discovery of any drugs?

4 A No, sir.

5 Q I'm sorry.

6 A Can you repeat that?

7 Q They went under the hood of the vehicle prior to the
8 discovery of any drugs?

9 A Oh no, it was before.

10 Q So it was before they found any drugs?

11 A Yeah.

12 Q And you said you saw them going to the gas cap area, is
13 that right?

14 A Uh-huh.

15 Q Was that before there was a discovery of any drugs?

16 A Before.

17 MR. LLOYD: Beg the Court's indulgence.

18 Q Mr. Mitchell, let's talk about at some point that night
19 did anybody show up to the scene of this incident?

20 A Yes, sir.

21 Q From your family?

22 A Yeah, my father and my cousin, the owner of the
23 vehicle.

24 Q So the owner of the vehicle actually showed up on the
25 scene?

1 A Yes, sir.

2 Q And was this before or after the vehicle that you were
3 riding in was towed?

4 A This is before it was towed.

5 Q Now, at the time prior to the tow truck being called
6 had you had any discussions with law enforcement about having
7 the car towed either to your house or someplace else?

8 A Yes, we did.

9 Q Would you tell the Court what you asked law enforcement
10 to allow you to do?

11 A I asked them to allow me to call a personal tow truck.
12 He was a friend of my father, Rick's towing to tow the vehicle
13 back to the proper address of the owner and they was going along
14 like they was going to allow me to do it but they never allowed
15 me to call Rick's towing or they wouldn't call Rick's towing.

16 Q And after your family and your cousin who was the owner
17 of the vehicle showed up, did you have any conversations with
18 law enforcement about releasing the vehicle to them?

19 A At that time I was in the back seat of a sheriff's car
20 at the time and I was actually trying to get the officer's
21 attention but the officer I guess -- I can't -- I think my
22 father had called him over and asked them what was going on or
23 whatever and possibly could he just go ahead and take the
24 vehicle and I don't know what the conversation was about at that
25 point.

1 Q But there was somebody from your family on scene who
2 could have taken the vehicle as opposed to law enforcement?

3 A Yes, my father and the owner of the vehicle was there.

4 Q Now, were you ever written tickets there at the scene?

5 A No, sir. They brought me blue tickets like a day
6 later, a day and a half later. I was in the county then.

7 Q And what were those tickets for?

8 A One was a speeding ticket and one was driving left of
9 center.

10 MR. LLOYD: Nothing further Your Honor.

11 THE COURT: Any cross?

12 MR. JOHNSON: Briefly.

13 CROSS EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Mitchell, do you remember you began a trial and Mr.
16 Lloyd here argued a Suppression motion on your behalf, is that
17 correct?

18 A Yes, sir.

19 Q And then after Judge Hayes denied that motion it was
20 your decision to plead guilty, correct?

21 A Yes, sir.

22 Q Okay, and do you remember the guilty plea?

23 A Yes, sir.

24 Q And do you remember that the Court asked you, quote, I
25 advise you that you give up those rights and you give up any

1 defense to the charge by pleading guilty and you also give up
2 any issue concerning whether or not the search we have been
3 talking about for the last two days was in fact a proper search.
4 You give up all those issues and rights by pleading guilty. Do
5 you understand that to which you said, yes, sir I do. Yes or
6 no?

7 A Honestly at that time, being my first time being in
8 trouble and the solicitor had said they were going to give my
9 girlfriend -- which is my mother of my third child at the
10 time -- possibly ten years for conspiracy. I did what I had to
11 do and I told them that I would take the plea because part of
12 the agreement was for her to be released.

13 Q So you do in fact remember the plea?

14 A I do remember the plea.

15 Q Do you remember specifically the Court saying that to
16 you?

17 A I can't say I remember that but --

18 Q If I were to show you the transcript would that refresh
19 your recollection?

20 A I mean if it's on the paper then I guess so.

21 Q And that was under oath, correct?

22 A Yes, sir.

23 Q And your testimony just a minute ago was that you asked
24 the officer to call a towing company to tow it back to your
25 cousin's residence, right?

1 A Uh-huh.

2 Q Because you knew the drugs were in the back of the car?

3 A No.

4 Q You didn't know?

5 A No.

6 Q This isn't your first rodeo with the criminal justice
7 system, is it?

8 A As far --

9 Q You have been convicted twice before have you not?

10 A Of what?

11 Q Criminal sexual conduct?

12 A Nah, I was not committed. I mean, I wasn't convicted.
13 I took a plea.

14 Q Which means you were convicted?

15 A I guess so.

16 Q And the other one was assault and battery of high and
17 aggravated nature and taking liberties with a female, correct?

18 A Nah, that's one charge right there.

19 Q Okay. But so this is not your first rodeo with the
20 criminal justice system, is it?

21 A No, it's not my first rodeo.

22 Q Okay. And the reason that you plead guilty is that you
23 didn't want to face the 25 years minimum sentence that you were
24 going to if you were convicted at a trial, correct?

25 A No, I took the plea because I didn't want the mother of

1 my child to be doing time for something that's bogus.

2 Q But it was your decision to plead guilty, correct?

3 A Yes, it was my decision.

4 Q And it was your decision to waive the defenses and the
5 right to challenge that search, correct? Yes or no?

6 A Can you repeat that one more time?

7 Q I said, it was your decision to plead guilty, right?

8 A Yeah, it was my decision to plead guilty.

9 Q So then it follows that it's your decision to waive
10 your defenses and the right to challenge the search in order to
11 accept the guilty plea, right?

12 A And I told you the only reason why I accepted the
13 guilty plea was to free the mother of my child. So that's why I
14 did it. I had to make a sacrifice and I feel that any man in
15 that situation would have done the same thing.

16 Q So I take it as a yes?

17 A Yes. Yes.

18 MR. JOHNSON: No further questions Your Honor.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MR. LLOYD:

22 Q Mr. Mitchell, the State asked you about your conviction
23 for criminal sexual conduct. Would you explain to the Court how
24 old you were when you were charged with that?

25 A With -- with --

1 Q Criminal sexual conduct?

2 A Honestly I can't even remember. Eighteen, nineteen may
3 maybe. Something like that.

4 Q What were circumstances of that charge?

5 A The chick that I was going with at the time she was 15
6 years old and somehow I was taking her home and the cops was
7 already there. From my understanding her brother was a sheriff
8 and I think they had filled out or something and to my knowledge
9 what she told me was the guy was racist and he was mad because I
10 was a black guy and she was a white female. So, to my
11 understanding that's why they arrested me at the time when I
12 dropped her off.

13 Q You said and you indicated to the State and to the
14 Court that you did plead guilty, is that right?

15 A Yes, sir.

16 Q And it was to a lesser charge, is that correct?

17 A Yes, sir.

18 Q And the fact of that relationship and this incident was
19 that it was a consensual relationship, not in a legal sense as
20 to whether she was of consenting age or not but in the sense of
21 you two were boyfriend and girlfriend, is that correct?

22 A That's right.

23 MR. LLOYD: Nothing further Your Honor.

24 THE COURT: You may step down. Thank you. Any
25 other witnesses Mr. Lloyd?

1 MR. LLOYD: No, Your Honor. We would make
2 arguments from the transcript.

3 THE COURT: Is that your case in chief?

4 MR. LLOYD: Yes.

5 THE COURT: Yes, sir I will be happy to hear from
6 you on that.

7 MR. LLOYD: Thank you, Your Honor.

8 Your Honor, before we address State v Adams, I
9 think Your Honor is a little familiar with what happened
10 on the side of the road that night and also Judge Hayes'
11 ruling. Just to give some backdrop, Judge Hayes as Your
12 Honor knows from the transcript found that there was no
13 independent probable cause to search Mr. Mitchell's
14 vehicle. The police had not established any type of
15 probable cause allowing that type of a search. What the
16 Court did say was that Mr. Mitchell was arrested. As
17 Your Honor knows the Supreme Court in this State it
18 says, look, normally we're not going to get in to the
19 subjective intent of law enforcement when they make an
20 arrest on a traffic violation even if it was some
21 pretext for a longer investigatory stop.

22 Based on the fact that Mr. Mitchell was arrested
23 for the traffic violations -- and I will address those
24 in just a moment, Your Honor -- reports that the
25 impoundment and subsequent inventory search was proper.

1 But Your Honor, as Your Honor knows and I believe the
2 State would have to agree with us, Rhyne (phonetics)
3 versus United States and it's progeny of cases, clearly
4 have held that one of the warrantless requirements
5 exceptions to the Fourth amendment is an inventory
6 search. However, as Your Honor knows, all the courts
7 have been really clear about the dividing line on
8 inventory searches and that being there can not be
9 subterfuge for an evidentiary search, and our argument
10 Your Honor is that after State v Adams, what the Court
11 -- what our Supreme Court has recognized is that you
12 can't take a traffic stop -- and I will get to the
13 language in that opinion in a moment -- and create a fix
14 to a constitutional problem. In State v Adams that
15 constitutional problem was an illegal GPS device that
16 was attached to the vehicle which allowed police to
17 track the vehicle and find the vehicle and then initiate
18 purposefully a traffic stop. In this particular case
19 what law enforcement -- and I will site for the record
20 -- clearly indicated in their testimony is that they
21 intended to stop Mr. Mitchell for a traffic violation
22 for the purpose of doing an inventory search. As the
23 record indicated, the whole pretext of this whole stop
24 was if there was a traffic stop they would immediately
25 place him under arrest and impound the vehicle and do an

1 inventory search.

2 It's interesting to note Your Honor as was
3 testified by the female deputy who actually pulled Mr.
4 Mitchell over on behalf of DEU, they called her to meet
5 them on Highway 5 and look for a traffic violation after
6 telling her that he had been speeding.

7 During her testimony before Judge Hayes her traffic
8 violation of driving left of center line, was that his
9 tire according to her maybe hit the yellow line by half
10 an inch. Not that he went over the yellow line, but his
11 tire may have hit the yellow line by half an inch. As
12 we go through the transcript Your Honor there are
13 multiple places where law enforcement indicated that
14 there sole purpose for putting Mr. Mitchell under arrest
15 was to quote, unquote, be able to do this inventory
16 search. So the constitutional violation much like the
17 attachment of the GPS was their intent and there belief
18 that they could in fact arrest him for a minor traffic
19 violation even though the officer who actually initiated
20 the stop said on all other occasions she would have
21 issued a warning at best for touching the center line --
22 was to place him under arrest so that they could then
23 follow up on there belief that this were drugs contained
24 in the car.

25 If Your Honor looks at the transcript particularly

1 regarding Mr. Marvin Brown, the commander of the DEU,
2 who as Your Honor heard from Mr. Mitchell was one of the
3 first ones on the scene, actually instructed the officer
4 to place Mr. Mitchell under arrest. The all important
5 impoundment an inventory search policy that was produced
6 by the State, Mr. Brown actually testified that he
7 wasn't aware that there was an impoundment policy. And
8 it looks like the Court in the transcript where Mr.
9 Brown's testimony was -- although at some point he did
10 indicate that maybe he had written a policy -- on page
11 22 regarding Mr. Brown -- I'm sorry not 22. Mr. Brown
12 in response to my question on page 46 of the transcript
13 actually testified that we don't have a written policy
14 on impoundment.

15 As Your Honor knows from all the inventory search
16 cases one of the first hurdles law enforcement actually
17 has to do is operate pursuant to a written standard
18 impoundment policy. Not just the inventory search
19 policy but also the impoundment policy. And later on
20 the State does introduce during that hearing an actual
21 impoundment policy, but again this goes to the fact that
22 law enforcement in this particular case made a point to
23 try to utilize this arrest on a very minor traffic
24 violation. Impoundment and inventory search as a get
25 around the Fourth amendment rational. As Mr. Brown on

1 page 53, Your Honor, of the transcript, again after he
2 testified that he had normally done many of these types
3 of inventory searches following impoundment. On page
4 53, I asked him is it your policy to go under the hood
5 of a vehicle to do an inventory search for personnel
6 items or valuable items. He said not on an inventory
7 search.

8 Mr. Mitchell testified prior to the drugs actually
9 being found in the vehicle there was a search being
10 conducted under the hood of the car and in the gas tank
11 area, the gas cap area of the car. As Mr. Brown on page
12 56, Your Honor, regarding the arrest of Mr. Mitchell for
13 these very minor traffic offenses, in his answer my
14 intention was to conduct a traffic stop and never allow
15 Mr. Mitchell to leave in that car. Again Your Honor,
16 pointing to the fact that this was all a ruse to place
17 him under arrest, to impound the car and to subsequently
18 do an inventory search to search for evidence of drugs,
19 which would have been an impermissible constitutional
20 violation.

21 If we go Lieutenant Mike Ligon's testimony, Your
22 Honor, who was in fact the officer with the DEU who got
23 behind Mr. Mitchell coming down Highway 5. In fact he
24 was the one that actually called for the marked unit to
25 pull Mr. Mitchell over for a traffic violation.

1 Beginning in my cross examination of him on page 124,
2 there was a lot of back and forth about why they were
3 placing him under arrest, and if Your Honor looks at
4 that section of the testimony in the transcript,
5 Lieutenant Ligon was very clear that the reason they
6 were going to pull Mr. Mitchell over and in fact place
7 him under arrest was simply to do an inventory search.
8 He testified numerous times during his testimony that
9 they under no circumstances were going to allow Mr.
10 Mitchell to in fact leave the scene.

11 Now again, he testified the only reason they were
12 doing that was to be able to search the vehicle. I
13 asked him on page 128, "At some point were you all under
14 the hood of the car?" He says, "No sir, not to my
15 knowledge nobody went under the hood. Did you go in the
16 gas cap?" He says, "No, sir."

17 On the video which was made a part of the record in
18 this case for Suppression hearing, it's clear on the
19 video that they are under the hood very early in the
20 search. Not after they found the drugs. It wasn't that
21 they those did those actions after there were drugs
22 found pursuant to any sort of valid search. This was
23 done immediately. After placing Mr. Mitchell in
24 handcuffs they began to do what nobody including the
25 officers who testified in this case could characterize

1 with any credibility as an inventory search for the
2 purpose of categorizing valuable items or any personnel
3 property in the vehicle. Nobody keeps personnel
4 property under the hood of a car or a gas cap.

5 Your Honor, we believe after the -- after the
6 Adams' decision, State v Adams, in that case that I
7 handed up, the Supreme Court of the United States
8 subsequent to this -- I'm sorry of South Carolina --
9 subsequent to Mr. Mitchell's conviction had a case that
10 was eerily similar on the facts. In that particular
11 case Your Honor, as Your Honor can see, what happened
12 was law enforcement placed the GPS device in
13 contravention of the state statute and the subsequent
14 ruling by the U.S. Supreme Court on GPS devices in
15 contravention of the Fourth Amendment.

16 Law enforcement in State v Adams used that device
17 to track down Mr. Adams' vehicle to wait for him to make
18 a traffic violation of some sort -- and I will get to
19 the Court's language about that in a moment -- and then
20 bring -- once they stopped him bring a drug dog to the
21 scene. Allow the drug dog to search the vehicle
22 similarly to establish probable cause for the search.
23 In fact they did find drugs in Mr. Adams' vehicle.
24 Following a denial of his motion to suppress that the
25 Court of Appeals upheld that and said, well, there was

1 this intervening traffic stop and rightful arrest and
2 detention at that point. Supreme Court reversed the
3 Court of Appeals, Your Honor, and it was very -- I think
4 the language used there was very applicable to this
5 particular circumstances. There the Court said Adams'
6 traffic violation provided any sufficient continuation
7 from the taint of the illegal search. In that case it
8 was the GPS device which allowed him to find Mr.
9 Mitchell's -- Mr. Adams' car and then pull him over. In
10 our particular case remember Your Honor the trial Court
11 found there was no independent probable cause to search
12 Mr. Mitchell's car. So what law enforcement was doing
13 in this particular case was trying to use illegally the
14 inventory search as grounds to search for drug evidence
15 in the vehicle.

16 One of the things the Court said in explaining this
17 rational in the Adams' case, even though the law
18 enforcement was proper in making a traffic stop, the
19 officer did testify that he witnessed a violation, but
20 the Supreme Court said there's a strong policy reason
21 for holding that a new and distinct crime even if
22 triggered by an legal stop is a sufficient intervening
23 event to provide independent grounds for arrest.

24 Here however, Adam's traffic violations provide an
25 insufficient continuation from the taint of the illegal

1 search. And the Court talked about the traffic stop.
2 The traffic stop was entirely predicated on the
3 information obtained from the GPS device and law
4 enforcement's desire to search Adams and his vehicle for
5 drugs. The patrol officer was instructed on the basis
6 of -- was instructed rather, to find a basis to stop Mr.
7 Adams. Again, in this particular case the marked unit
8 was instructed by Lieutenant Ligons to get behind Mr.
9 Mitchell and find a reason to pull him over. Even the
10 trial Court without the benefit of -- we've heard the
11 Jones' decision -- repeatedly referred to the stop of
12 Adams' vehicle, as quote, a trap. Noting that officers
13 would have never gotten behind Adam's to get a traffic
14 violation if officers hadn't had the tracking device.
15 Again, the constitutional violation, they wouldn't have
16 gotten behind him but for the illegal attachment of the
17 traffic GPS device to Mr. Adam's car they wouldn't have
18 gotten behind Mr. Mitchell other than to use arrest
19 impoundment and inventory search to search for drugs.

20 THE COURT: But Mr. Lloyd, there was at least some
21 information that law enforcement had through a confident
22 informant or whatever, that Mr. Mitchell was going to
23 travel this route and drive this particular car and they
24 verified that information along the way.

25 MR. LLOYD: Yes, Your Honor, I'm glad you brought

1 that up because again much like Adams, Adams there was
2 independent information did not rise to probable cause
3 to stop Mr. Adams and search his car just like in this
4 particular case. What there was was an anonymous phone
5 call to law enforcement -- two anonymous phone calls --
6 which said Mr. Mitchell will be driving back on Highway
7 5 in the car that he was found in.

8 During the testimony at the Suppression hearing we
9 went through whether there was anything illegal other
10 then those tips saying that he might have drugs on him
11 and all the officers testified no. There was nothing
12 verifiable in terms of illegal conduct which was relaid
13 to law enforcement and that's why the trial Court
14 actually found there was no probable cause. All they
15 had was anonymous tips that they could not verify who
16 those individuals were. They did not indicate any other
17 information such as he would be going to a particular
18 known drug house or anything like that and coming back.
19 It only said that he would be coming back on Highway 5.
20 And so, there was no sufficient -- in our argument --
21 evidence, and the Court correctly found there was no
22 probable cause based on those two phone calls.

23 We raised at the time that there had been regarding
24 the first anonymous phone call -- which came in crime
25 stop -- a sufficient period of time where that

1 information was staled away. I believe that law
2 enforcement although they tried to acknowledge that they
3 believed that the anonymous calls created sufficient
4 probable cause to search Mr. Mitchell's vehicle. Even
5 Commander Brown testified that he would not have had
6 enough information to get a search warrant for Mr.
7 Mitchell's house let alone the vehicle and that what
8 there intent at that point was to stop the vehicle,
9 arrest Mr. Mitchell and then -- I don't want to misquote
10 Commander Brown -- he actually said he was going to ask
11 for consent to search first and then if that failed they
12 would arrest Mr. Mitchell and impound the vehicle.

13 So we would argue that there was nothing in the
14 record which would on its own establish probable cause
15 and I think the trial Court correctly found no probable
16 cause to search Mr. Mitchell's vehicle.

17 THE COURT: So basically the trial Court's ruling
18 was because of the intervening traffic arrest?

19 MR. LLOYD: The traffic arrest, yes, Your Honor.

20 And one of the things the Supreme Court in ruling
21 in Adams, which I think is pretty telling about this
22 particular case, the Court took particular exception to
23 this use of some subterfuge to get around that violation
24 in Adams. That constitutional violation. And in fact
25 cautioned that otherwise it would be an open door to

1 create the exceptions to the Fourth Amendment violation,
2 and that's exactly what happened in this particular case
3 Your Honor. What the Court -- trial Court in ruling on
4 its suppression issue account was, when Mr. Mitchell was
5 arrested for a traffic violation -- and we can disagree
6 about the severity of those traffic violations -- but he
7 was arrested for those and the Court found that because
8 of those arrests they could impound the car and then do
9 an inventory search. What I believe Adams says is that
10 no you can't. You can not use that subterfuge. And in
11 fact the Court uses pretty strong language in warning
12 against that that in Adams. You can not use that
13 subterfuge to create a situation where you then fix your
14 own constitutional problems. And as the Court noted in
15 there in citing other cases, that most traffic officers
16 will testify that if they stayed behind an individual
17 and Adams actually says this for one or two minutes,
18 they can find a traffic violation. In Adams, the Court
19 was particularly honing in on that issue. That if they
20 were to rule any other way it would always allow for law
21 enforcement to fix a Fourth Amendment issue by saying we
22 are arresting him anyway and it is either search
23 incident to arrest or inventory search or somehow
24 otherwise fix this.

25 In this particular case in Adams the fact that we

1 violated the Fourth Amendment by attaching illegally a
2 GPS device. And so I believe that Adams' Court has now
3 said -- which was not the case when Mr. Mitchell's case
4 was before Judge Hayes -- is that we are not going to
5 allow even a quote, unquote, legitimate stop which comes
6 as a result of trying to fix law enforcement's knowing
7 violation of the Fourth Amendment to serve as that
8 panacea or that fix. In this case, law enforcement from
9 the record clearly testified -- particularly Lieutenant
10 Ligon -- there was no way Mr. Mitchell was ever going to
11 depart from that scene. He was going to be arrested.
12 He was going to be arrested. And if Your Honor looks at
13 the back and forth between me and Mr. Ligon during the
14 Suppression hearing the question was raised over and
15 over again what was the purpose of arresting him and
16 impounding the vehicle and he said repeatedly to do an
17 inventory search. That Your Honor is use of the
18 exception to a warrantless search that the Supreme Court
19 has said only allowable when it's not used as subterfuge
20 or a ruse to do an evidentiary search. How do we know
21 that it was an evidentiary search because as law
22 enforcement from DEU themselves testified they don't go
23 under the hood of a vehicle for inventory search. And I
24 think the Court is able to take judicial notice of just
25 the lack of common sense of that. If they were

1 legitimately doing an inventory search, yes, they would
2 go through the compartment of the car. They may go
3 through the glove compartment. They would probably go
4 through the trunk of the car and maybe even compartments
5 within the trunk of the car. But what was clear here
6 from the moment Mr. Mitchell was placed in handcuffs
7 that they were going to search for drugs and that was
8 the only reason that prior to the drugs being found they
9 were under the hood of the car. They were in the gas
10 cap area of the car. They were searching that vehicle
11 completely for drugs.

12 So we believe, Your Honor, not to belabor this
13 point, but we believe that Adams has created a clear
14 definition for the courts and for the State of South
15 Carolina in terms of constitutional issues regarding the
16 Fourth Amendment that were not present when Mr. Mitchell
17 did his plea.

18 The Court, the trial Court in that instance relied
19 on the fact that there was an arrest and that there was
20 an arrest properly for a traffic violation. We believe
21 Adams says that is not enough. It will not cure a
22 constitutional defect.

23 THE COURT: And Adams was pending before the
24 Supreme Court at the time that the --

25 MR. LLOYD: I believe it was on appeal. It was at

1 the Court of Appeals at the time. Subsequent to that
2 the Supreme Court took cert. An opinion was issued in
3 September of this year.

4 THE COURT: Thank you.

5 MR. LLOYD: Thank you.

6 THE COURT: Mr. Johnson.

7 MR. JOHNSON: Your Honor, I will be brief as I can
8 not hope to be as eloquent as Mr. Lloyd.

9 First is that Mr. Lloyd argued the exact same thing
10 he argued during the Suppression motion. Mr. Mitchell
11 waived the right to present that argument by pleading
12 guilty and included in Judge Hayes' colloquy where he
13 admits that he waives all defenses and challenges to the
14 search itself and any of the repercussions. So the
15 State's position is this a direct appeal issue and under
16 Simmons and Ashley we need go no further.

17 Second, as to Adams versus State under 17-27-45(B)
18 the law under PCR act is that "When a Court whose
19 decisions are binding upon the Supreme Court of the
20 State holds that the Constitution of the United States
21 or the Constitution of South Carolina, or both, impose
22 upon state criminal proceeding substantive standard not
23 previously recognized or right not in existence at the
24 time of the state court trial and if the standard is
25 intended to be applied retroactively, an application may

1 be filed no later than one year.

2 Nowhere in the Adams' decision does it state that
3 it has to be applied retroactively. If that were the
4 case we would have a plethora of litigation by GPS.
5 That's not the case.

6 So, I understand Mr. Lloyd's position is that's how
7 this case gets heard before this Court but I would argue
8 that nowhere in Adams does it state that it's to be
9 applied retroactively. As Your Honor knows many of the
10 cases the Supreme Court decides, especially Akin v Byars
11 they are talking about retroactivity. That's the new
12 case that just came out I believe last week concerning
13 LWOP sentences for minors and it says to be an applied
14 retroactively. So if the Adams court decided that this
15 case was to be applied retroactively they would have
16 stated it. That's not the case and therefore this Court
17 should not decide under Adams.

18 Third, and the one argument I have yet to hear in
19 both the Suppression hearing and in today's hearing is
20 did Mr. Mitchell even have standing to challenge the
21 search. It's not his car. That's the difference
22 between Adams and Mr. Mitchell. Adams, that's his car
23 that they stick the GPS monitor on. This is Mr.
24 Mitchell's cousin car. So the States position is that
25 he doesn't even have standing to challenge the search.

1 The pullover of the traffic violation is legal. I
2 understand that Judge Hayes states that there was no
3 probable cause but then goes to hold that the inventory
4 search and whatnot was proper. But the whole -- the big
5 question is does he have standing? The State's position
6 is that he didn't have standing and therefore his
7 argument fails on that point.

8 So for those three reasons we would ask you to deny
9 this application and not even get to the merits of the
10 case because this is a direct appeal issue and under
11 Simmons and Ashley this argument has already been
12 decided or could have been raised on appeal and he
13 waived that by pleading guilty.

14 MR. LLOYD: If I may respond just briefly?

15 THE COURT: Yes, sir.

16 MR. LLOYD: The first issue, Your Honor, we would
17 be happy to brief this issue following this hearing, is
18 that both the federal and state's cases has always held
19 that an individual who is in lawful possession of
20 vehicle does have standing to raise the issue of an
21 illegal search. In this case there was nothing to
22 suggest that the vehicle -- in fact it was addressed at
23 the Suppression hearing -- there was nothing to suggest
24 to law enforcement the vehicle was stolen or in any way
25 improperly in the possession of Mr. Mitchell and we

1 believe case law is pretty clear that as long as he has
2 permission to use that vehicle -- he was operator of
3 that vehicle with the permission of his cousin -- that
4 he certainly has standing to raise any issue of this
5 search.

6 Secondly, Your Honor, the issue of retroactivity we
7 believe does apply when you read Gibson. Supreme Court
8 did make a clarification and enunciation of a rule about
9 constitutionally in firm action being fixed so to speak
10 by law enforcement by conducting traffic stop. In fact,
11 although the statute was violated in this particular
12 case of Adams regarding seeking the court approval for a
13 GPS device. What the Court honed in on was that Jones
14 which came out of the U.S. Supreme Court had held
15 subsequent to Mr. Jones arrest -- or Mr. Adams arrest,
16 I'm sorry -- that that placement of the GPS device
17 without a Court Order was in fact unconstitutional. And
18 I would note Your Honor the language as you read through
19 State v Adams the language the Court uses is pretty
20 strong coming out of our Supreme Court. Over after over
21 again they make a point that they weren't going to allow
22 police misconduct, in that case violation of Fourth
23 Amendment, to be fixed by these pretextual stops. And
24 as Your Honor is aware ordinarily our Supreme Court has
25 said, look, we are not going to get into issues of

1 pretext when it comes to traffic stops or arrests or any
2 detention as it relates to a traffic violation. Here
3 the Court said they would and they noted that law
4 enforcements specific reason and why they reversed the
5 Court of Appeals in part was that law enforcement made
6 it clear that the reason they were going to in fact stop
7 Mr. Adams in that case was as a pretext to get the car
8 searched and we believe that holding is very applicable
9 to Mr. Mitchell's case.

10 THE COURT: What I'll ask that you all do and in
11 particular is to brief the issues, specifically as it
12 relates to the ability to be able to address the claim
13 in Post Conviction Relief, and any other issues that
14 have been raised today that you would like to brief you
15 can certainly do it at the same time. But I'm
16 interested in specifically the claims about being able
17 to address this particular issue on Post Conviction
18 Relief.

19 You can send it to me electronically by December
20 the first.

21 MR. LLOYD: Yes, Your Honor.

22 THE COURT: And then if you absolutely need to
23 reply to the other you can both send them to me at the
24 same time. If you need time to reply or there is
25 something specifically you want to raise if you just ask

1 me about it before you submit any additional materials.

2 MR. LLOYD: I will give Mr. Johnson -- I think we
3 work that out so we can make sure we have a copy early
4 enough to each other.

5 THE COURT: And hopefully that gives enough time.
6 I know Mr. Johnson will be tied up all week but next
7 week is Thanksgiving so I'll give you a little extra
8 time.

9 MR. JOHNSON: Thank you, Your Honor.

10 MR. LLOYD: Thank you.

11 THE COURT: Thank you.

12 * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 17th day of November, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 22, 2017

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Ortavious R. Mitchell, #355516,	)	Civil Action No.: 2014-CP-46-1705
	)	
Applicant,	)	
	)	APPLICANT'S MEMORANDUM
vs.	)	IN SUPPORT OF APPLICATION AND TO
	)	DENY RESPONDENT'S MOTION FOR
State of South Carolina,	)	SUMMARY JUDGMENT
	)	
Respondent.	)	
_____	)	

The above captioned Applicant for post conviction relief hereby submits this memorandum as a supplement to the testimony and arguments presented to the Court at a hearing held before the Court on November 17, 2014. Applicant respectfully requests that the Court deny Respondent's Motion for Summary Judgment and grant the Petition for Post Conviction Relief.

The Applicant, Ortavious R. Mitchell, was indicted by the York County Grand Jury for Trafficking in Crack Cocaine greater than 100 grams (Indictment No. 2011-GS-46-3323). Following a full day hearing on May 21, 2013, on Applicant's Motion to Suppress drug evidence found in Applicant's vehicle, and the trial court's denial of the motion, Mitchell pled guilty to the lesser included offense of Trafficking in Crack Cocaine, 28 to 100 grams. On May 22, 2013, the Honorable John C. Hayes, III sentenced Mitchell to confinement for a term of thirteen (13) years. Although the trial court held that law enforcement lacked probable cause to conduct a search of Mitchell's vehicle, following a traffic stop for allegedly speeding and crossing over the yellow center line, the trial court held that local police could seize Mitchell's vehicle and conduct an inventory

search of the car, despite the obvious motive of law enforcement to seize the vehicle and conduct an evidentiary search.

On Wednesday, August 3, 2011, the Defendant (“Mitchell”), along with passenger Whitney N. McCray, was the subject of a traffic stop on Brookhollow Road, in York County. Mitchell was allegedly stopped by Deputy Estep (“Estep”) for speeding and driving left of the center lane. After the traffic stop, and after other members of the York County Multi-jurisdictional Drug Enforcement Unit (“DEU”) arrived on the scene of the traffic stop, Mitchell was placed under arrest for the alleged traffic violations. A roadside search of an inner compartment in the trunk of Mitchell’s vehicle allegedly revealed the presence of more than 228 grams of crack cocaine.

S.C. Code Ann. § 17-27-20 provides, in part, that “[a]ny person who has been convicted of, or sentenced for, a crime and who claims . . . the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State. Further, § 17-27-20 allows collateral attack through the post conviction relief process if the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy” See, S.C. Code Ann. § 17-27-20(A)(6). Under South Carolina’s Post Conviction Procedure Act, almost any alleged denial of an applicant’s federal constitutional rights is cognizable in a post-conviction proceeding. See, *Finklea v. State*, 273 S.C. 157, 255 S.E.2d 447, 447-48 (1979) (South Carolina’s post conviction relief statutes are designed to incorporate all rights available under federal habeas corpus), citing, *Harvey v. South Carolina*, 310 F.Supp. 83 (D.S.C. 1970)). “Thus, [the South Carolina Post Conviction Procedure Act]

supersedes and encompasses the habeas corpus procedure provided by statute” *Gibson v. State*, 329 S.C. 37, 329 S.E.2d 426, 428 (1998). Thus, [a] petitioner may allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. *Id.*, citing, *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975). “A violation found to be unconstitutional after the time for appeal lapses is not a direct appeal issue and is not barred from PCR consideration.” *Id.*, citing, *Twitty v. Maass*, 96 Or.App. 631, 773 P.2d 1336 (1989) (PCR is the proper forum for claim based on change in constitutional law between time of direct appeal and PCR application).

Subsequent to Applicant's guilty plea, on May 22, 2013, the South Carolina Supreme Court ruled in *State v. Adams*, 409 S.C. 641, ____ S.E.2d ____ (2014) (the Supreme Court reversed the Court of Appeals decision issued in *State v. Adams*, 397 S.C. 481, 725 S.E.2d 523), that the defendant's underlying traffic violations were insufficient to dissipate the taint from law enforcement's underlying Fourth Amendment violation. After a bench trial, Adams was found guilty of trafficking cocaine and was sentenced to twenty-five years in prison. Prior to trial, Adams moved to suppress the seized drugs, contending that the installation and monitoring of a GPS device violated his Fourth Amendment rights. The GPS was installed by law enforcement, without a warrant, and was used to track Adams vehicle on a return trip from Atlanta. See, *Adams* at 644. As Adams vehicle traveled toward Charleston, investigators instructed a uniformed officer to “position himself, along with a drug canine, at a rest area on Interstate 26 in North Charleston.” *Id.* The officer was aware that Adams was a suspected drug dealer and was instructed by investigators to conduct a traffic stop on Adams. *Id.* The officer noticed two traffic violations committed by Adams prior to

Adams being pulled over. *Id.* The drug dog was used to conduct a perimeter sniff of Adams' car and, after the drug dog alerted, drugs were discovered on Adams' person. *Id.*

The South Carolina Supreme Court granted certiorari to review the Court of Appeals' decision holding that, although the police violated the Fourth Amendment, suppression of the evidence could be avoided by the intervening criminal acts doctrine, or some other alternative sustaining ground. *Id.* at 646. The Supreme Court recognized that "not all evidence conceivably derived from an illegal search need be suppressed if it is somehow attenuated enough from the violation to dissipate the taint." *Id.* at 648. "To determine whether the derivative evidence has been purged of the taint of the unlawful search, we [may] consider several factors, including: (1) the amount of time between the illegal action and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct." *Id.*, citing, *United States v. Gaines*, 668 F.3d 170, 173 (4th Cir. 2012). The Supreme Court held that Adams' traffic violations provided an insufficient attenuation from the "taint" of the Fourth Amendment violation. The Court noted that the traffic stop was entirely predicated on the information obtained from the illegal GPS device and law enforcement's "desire to search Adams and his vehicle for drugs." *Id.* Further, the Supreme Court warned that the Court of Appeals' reasoning "would unwittingly provide a blueprint for circumventing the protections of the Fourth Amendment." *Id.* at 649. Thus, Adams' traffic violations were not intervening criminal acts sufficient to dissipate

the taint of the Fourth Amendment violation and the officers' actions failed all three of the above stated attenuation factors. *Id.*¹

As in *Adams*, law enforcement attempted to utilize a traffic stop to justify an otherwise unconstitutional search of Mitchell's vehicle. In *Adams*, the Fourth Amendment violation arose from the illegally attached GPS device. In this case, the Fourth Amendment violation arises from law enforcement purposefully, and blatantly, using the inventory search warrant exception, to conduct a search for drug evidence. Although the trial court held that no independent probable cause existed to conduct a search of Mitchell's car, the trial court improperly denied Mitchell's motion to suppress on the grounds that the intervening traffic stop, impoundment and inventory search was permissible.

As an initial point relevant to his motion to suppress and post conviction petition, Mitchell does not contend that his custodial arrest for the alleged traffic violations, speeding and crossing left of the center line, is prohibited. South Carolina law recognizes the right of law enforcement officers to make a custodial arrest of a person, even where the incident is merely or normally a ticketing offense. *See, State v. Ramsey*, ___ S.C. ___, 727 S.E.2d 429 (Ct. App. 2012) ("if the offense is a traffic offense or is listed in section 56-7-10, an officer may make an arrest with a uniform traffic ticket"); S.C. Code Ann. § 17-13-30 (authorizing arrests of persons who violate any of the criminal laws of the state in the presence of the officer). *See also*,

¹ The rule set forth in *Adams* may be applied to Mitchell's subsequent petition for post conviction relief. In *Yates v. Aiken*, 484 U.S. 211 (1988), the United States Supreme Court held that the application of a "new" rule of constitutional law should be applied to cases on collateral review where the "new" decision is merely an application of well settled principles to new factual scenarios. *Id.* at 216. In *Chaidez v. United States*, ___ U.S. ___, 133 S.Ct. 1103 (2013), the Supreme Court stated that a case does not announce a new rule when a decision is merely an application of the principle that governed a prior decision to a different set of facts. *Id.* at 1107. In that circumstance, a defendant may receive collateral relief based upon the clarification of constitutional pronouncements. *Id.*

Atwater v. City of Lago Vista, 532 U.S. 318, 121 S.Ct. 1536 (2001) (holding Fourth Amendment is not violated by warrantless arrest, supported by probable cause, for minor traffic offense punishable only by a fine). However, Mitchell does contend that law enforcement's deliberate use of the impoundment and inventory procedure as a pretextual ruse to conduct an evidentiary search violates his federal constitutional rights pursuant to the Fourth Amendment.

The trial transcript is replete with examples of testimony clearly establishing that law enforcement's sole purpose for impounding and inventorying Mitchell's vehicle was to search for evidence of criminal activity.² Commander Marvin Brown testified during the suppression hearing that he made the decision to arrest Mitchell for the traffic violation and, after that arrest, the police conducted an inventory search of the vehicle. See, Tr. p. 20-21. Brown further testified that, pursuant to their inventory policy, police do not search under the hood of a car. *Id.* at p. 24 and 53. Deputy Sharon Estep, who conducted the traffic stop on behalf of the drug investigators, testified that the traffic violation she witnessed consisted of Mitchell's car tires "touching the yellow line" by "probably half an inch." *Id.* p. 84.³ Lieutenant Mike Ligon testified before the trial judge that the "purpose for placing [Mitchell] under arrest was to do an inventory search on the vehicle." *Id.* at 125. In fact, Ligon admitted that the sole purpose of the custodial arrest and inventory search was to enable the police to search Mitchell's vehicle for drugs. *Id.* at p. 150.

² Mitchell testified during the November 17, 2014 hearing that immediately after he was placed under arrest and handcuffed, police officers began searching under the hood of his car and inside the gas cap area. Those actions by law enforcement were clearly indicative of a search for evidence rather than an inventory search to protect personal property of the car owner.

³ Deputy Estep testified that she wasn't sure if her department had a "specific" inventory policy and that she had never seen such a policy. *Id.* at p. 88.

It is well settled law that impoundment and an inventory search of a vehicle pursuant to written police policy can not be a ruse for searching for evidence or criminal activity. Law enforcement's decision to impound a car must be made in good faith and not solely based upon suspicion of evidence of criminal activity. See, *U.S. v. Mitchell*, 2013 WL 3808152, p. 5 (M.D.Fla. 2013), citing, *United States v. Glover*, 441 F.App'x 748, 751 (11th Cir. 2011). Likewise, although an inventory search is a well-defined exception to the warrant requirement of the Fourth Amendment, it must not be a ruse for a general rummaging in order to discovery incriminating evidence. See, *Florida v. Wells*, 495 U.S. 1, 4 (1990); *United States v. Thompson*, 29 F.3d 62, 65 (2d Cir. 1994). Further, an inventory search is unreasonable if the impoundment itself is unreasonable. *People v. Torres*, 188 Cal.App.4th 775, 786 (2010). The United States Supreme Court has held that, in the context of inventory searches, an officer's subjective motivations for conducting the search can make the search unconstitutional, even when some objectively reasonable basis exists for the vehicle's impoundment. *Id.* at 787-88. "The individual police officer must not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime.'" *Id.* at 788 (citations omitted).

In this post conviction relief petition, the trial transcript is clear that York County law enforcement officers purposefully and intentionally concocted a scheme to arrest Mitchell on a traffic violation and then impound and inventory search his vehicle for solely as a search for illegal drugs. The subjective motivations of the officers in this case was to circumvent the warrant requirements of the Fourth Amendment. As stated in *Adams*, allowing the traffic stop and arrest to serve as an intervening basis to

manufacture an impoundment and inventory search, “would provide a blueprint for circumventing the protections of the Fourth Amendment.” *Adams, Id.* at 649. Law enforcement would be free to violate the Fourth Amendment and, thereafter, “cure all ills from the underlying Fourth Amendment violation by waiting for a fortuitous traffic offense.” *Id.* (citations omitted). Thus, pursuant to *Adams*, Mitchell’s purported traffic violations, as intervening criminal acts, may not form the basis of excusing York County law enforcement’s preconceived intent to violate the Fourth Amendment’s warrant requirement. As noted by the Supreme Court, despite the lawfulness of the traffic stop, law enforcement’s willful violation of the Fourth Amendment must not be sanctioned because “the ends do not justify the means.” *Adams* at 654.

CONCLUSION

For the reasons stated hereinabove, Mitchell respectfully requests that this Court deny Respondent’s Motion for Summary Judgment and grant his Petition for Post Conviction Relief.

Respectfully submitted,

BY: /s/ Reggie Lloyd

Reginald I. Lloyd

THE LLOYD LAW FIRM, LLC
715 West DeKalb Street
Post Office Box 1555
Camden, South Carolina 29021
(803) 432-0004 (p)
(844) 270-4813 (f)

reggie@lloydlawfirm.net
lloydlaw3@gmail.com

Attorneys for Applicant.

Camden, South Carolina

December 1, 2014.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Ortavious R. Mitchell, #355516,	)	2014-CP-46-1705
	)	
Applicant,	)	
	)	
v.	)	RESPONDENT'S BRIEF IN SUPPORT
	)	OF DENYING APPLICANT'S
State of South Carolina,	)	PCR APPLICATION
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of the Applicant's PCR application filed on May 22, 2014. Respondent submits that Applicant's application should be denied pursuant to S.C. Code Ann. § 17-27-20(B) and case law.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted by the October 2011 term of the York County Grand Jury for Trafficking in Crack Cocaine (2011-GS-46-3323). Applicant was represented by Reginald Lloyd, Esquire. On May 23, 2013, the Applicant began a trial, including a lengthy suppression hearing. When the Honorable John C Hayes, III denied the suppression motion, Applicant pled guilty as indicted. Judge Hayes sentenced Applicant, pursuant to a negotiated sentence, to confinement for thirteen (13) years for Trafficking in Crack Cocaine, 28-100 grams, as a lesser included offense. Applicant did not appeal his conviction or sentence. Applicant filed a timely PCR application on May 22, 2014. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following

reason:

1. "Applicant was denied due process and equal protection guarantees provide in the United State and South Carolina Constitutions, including by the Fifth and Fourteenth Amendments to the United States Constitution. Applicant was deprived of his right to a fair trial by the Court failing to suppress evidence seized in violation of the Fourth Amendment and by the Government proceeding with a prosecution based upon a pattern and practice of law enforcement united that illegally profiles and conducts searches of vehicles, such as the Applicant's vehicle, by intentionally using impoundment and inventory of vehicles to search for evidence of crimes. Further, the Government's pattern and practice of illegally impounding and inventory searching vehicles, such as in Applicant's case, amounts to violations of federal civil and criminal civil rights laws, made applicable to the states through the Fourteenth Amendment to the United States Constitution."
 - i. "During a suppression hearing in Applicant's case, agents of the York County Multi-jurisdictional Drug Enforcement Unit acknowledged that they intended to follow and conduct a traffic stop of Applicant's vehicle and that, based upon that traffic violation, law enforcement intended to impound and conduct an "inventory" search of the vehicle. Agents testified that they "were not going to allow the vehicle to leave" following the traffic stop, meaning that they intended to use the impoundment and inventory of the vehicle to search for suspected drugs. An agent also testified that although he believed it improper or unlawful to use an inventory as a ruse to search for suspected evidence, he was aware that other officers had previously stated that they use that procedure to conduct warrantless searches of vehicles. Despite government testimony and use of testimony clearly indicating that the subjective intent of the agents was to impound Applicant's vehicle and inventory search it for the purpose of searching for suspected drugs, the Court declined to suppress the evidence, even though the Court also found that no other probable cause existed that would have allowed a search of the vehicle. The testimony of Government agents indicates that this willful violation of existing Fourth Amendment law is a pattern and practice violating the constitutional and civil rights of Applicant and others."

The State filed a return to the motion on September 24, 2014. An evidentiary hearing was conducted on November 17, 2014. Applicant was present and represented by Reginald Lloyd, Esquire. The State moved to for summary judgment under Rules 56(b) & (c) as the issue Applicant chose to litigate was one that must have been raised on direct appeal. This Court allowed a proffer of testimony, at the beginning of which, Applicant waived any claim of ineffective assistance of counsel against Mr. Lloyd. Applicant offered testimony as to the circumstances of his arrest and the search of his vehicle. This Court took this matter under advisement and requested each party to brief the case, focusing on whether PCR was the proper forum for Applicant's claim.

ANALYSIS

Respondent's position is that Applicant is barred from bringing this challenge into the PCR forum as his issues are those that must be heard through the direct appeal process. S.C. Code Ann. § 17-27-20(B) states:

(B) [Post-conviction relief] is **not a substitute for** nor does it affect any remedy incident to the proceedings in the trial court, or of **direct review of the sentence or conviction**. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them. (Emphasis added).

Additionally, "[e]rrors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). The Applicant challenged the lawfulness of the police's conduct as it related to probable cause through a suppression motion. When Judge Hayes denied the motion, it became an appellate issue. Applicant then chose to accept a plea offer from the State and did not pursue a direct appeal. His failure to do so has waived this allegation as a ground for relief. Under South Carolina statutory and case law, the Applicant is now barred from raising this issue in the post-conviction relief forum.

Nevertheless, a defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

At the beginning of the evidentiary hearing, Applicant waived any claim he had against Counsel Lloyd as to ineffective assistance of counsel. Under Roscoe, Applicant cannot challenge his guilty plea now because he waived that claim. As such, Applicant cannot meet his burden of proof in this case.

Furthermore, a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213

S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence.

Applicant chose to plead guilty after the denial of the suppression motion. Applicant's guilty plea waived non-jurisdictional defects and claims of violations of constitutional rights, including whether law enforcement had probable cause to search his vehicle and to effectuate his arrest. Since he waived these alleged defects and constitutional rights violations, he cannot meet his burden of proof in this case.

CONCLUSION

Based upon the aforementioned information, the Respondent requests this Court deny the Applicant's application because post-conviction relief is not the correct forum to assert these constitutional rights violations and because he waived any claims by pleading guilty.

Respectfully submitted,

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 1, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Ortavious R. Mitchell, #355516,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46-01265

ORDER

FILED-RECEIVED
2014 OCT -3 PM 4:42
CLERK OF COURT
HAMILTON
COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief. Applicant Ortavious Mitchell ("Applicant") filed the application on May 22, 2014. The State ("Respondent") made its Return on September 24, 2014. A hearing was convened November 17, 2014 at the York County Courthouse. Applicant was present at the hearing and was represented by counsel, Reginald I. Lloyd, Esquire. Respondent was represented by Assistant Attorney General J. Rutledge Johnson. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the October 2011 term of the York County Grand Jury for Trafficking in Crack Cocaine greater than 100 grams (Indictment No. 2011-GS-46-03323), and Possession of Crack Cocaine (Indictment No. 2011-GS-46-3606). Reginald I. Lloyd, Esquire represented Applicant on the charges. On May 21, 2013, Applicant appeared before the Honorable John C. Hayes, III ("Trial Judge") for a pre-trial motion to suppress the evidence. An evidentiary hearing was conducted during which exhibits were introduced and witnesses testified. At the conclusion of the hearing, the Court denied the motion to suppress. After jury selection, Applicant pled guilty to a lesser charge of one count of Trafficking Crack Cocaine, 20-100 grams, for a negotiated sentence between 10 to 15 years. The Possession of Crack Cocaine charge was dismissed.

In the application for post-conviction relief, Applicant alleges that he is held in custody unlawfully on the basis of being denied due process and equal protection provided in the United States and South Carolina Constitutions, including the Fifth and Fourth Amendments to the United States Constitution. Applicant also argues that he was deprived of his right to a fair trial when the Trial Judge failed to suppress evidence that was seized in violation of Applicant's Fourth Amendment right, and when the Government proceeded with prosecution based upon an illegal profile which led to the search of the vehicle. Additionally, Applicant contends that the Government violated the Fourteenth Amendment to the United States Constitution through its pattern and practice of illegally impounding and conducting an inventory search on vehicles, which Applicant claims is apparent in this case.

However, at the post-conviction relief hearing, Respondent made a motion for Summary Judgement under Rule 56(b), SCRPC. Although Respondent agreed that post-conviction relief is the proper forum to address due process claims, Respondent argued that Applicant's claim is a direct appeal issue, and post-conviction relief is not a substitute for an appeal.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, this Court had before it the transcript of the pre-trial hearing and Applicant's guilty plea, the records from the York County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified on his behalf at the hearing. On the night of the traffic stop, August 3, 2011, Applicant was traveling on Highway 5 with his girlfriend when he was stopped by law enforcement for traffic violations. Applicant testified that after he was stopped, a female officer came to the passenger side of the vehicle and asked for his license, registration, and proof of insurance. Applicant provided the officer with the information. Applicant further testified that a male officer came to the driver's side and asked him to step out of the vehicle. Applicant stepped out of the vehicle and was told to put his hands on the trunk. Applicant was arrested for speeding and driving left of the center line. After Applicant was arrested, a narcotics agent and four to five officers arrived at the scene. Applicant asked the officer why he was stopped, and Applicant testified that the narcotics officer accused him of being a drug dealer. Initially, Applicant told the officers that they could not search the vehicle; however, after the arrest, the officers conducted an inventory search of the vehicle.

all
#2

After Applicant was placed in handcuffs, Applicant explained he was standing outside while the officers searched the vehicle. The officers searched the trunk, the gas compartment, and the backseat of the vehicle. No drugs were found until the officers searched under the hood of the vehicle. After the search, Applicant's father as well as the owner of the vehicle arrived at the scene before the car was towed, and they asked law enforcement to tow the car to the owner's address. However, law enforcement needed to process the vehicle to verify the identity of the owner. Upon cross examination, Applicant further testified that he pled guilty in order to have his girlfriend released. During the plea, the Trial Judge advised Applicant that he was forfeiting his right to all defenses and waiving his right to challenge the validity of the search.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony provided at post-conviction relief hearing. This Court has further had the opportunity to observe the witness presented at the hearing, pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant argues that his constitutional rights were violated when the court failed to suppress the drug evidence found in the vehicle he was driving at the time of the incident. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012) (citing *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985)). Courts have held that post-conviction relief is not a substitute for a direct appeal or asserting errors for the first time which could have been reviewed on direct appeal. *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974); *see also Drayton v. Parker D. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993). Accordingly, absent a claim of ineffective assistance of counsel, a post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520; *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973). Here, Applicant states that he is not arguing ineffective assistance of counsel; rather, only a constitutional violation of Applicant's rights when the Trial Judge denied Applicant's motion to suppress the evidence found in the vehicle. Applicant contends that post-conviction relief is the correct forum to address the trial court's ruling on Applicant's motion to suppress based on a new constitutional principal that occurred after Applicant's guilty plea.

Ant
#3

Courts have held that an applicant may assert constitutional violations for claims based on a new constitutional principle between the time of direct appeal and the petition for post-conviction relief. *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). The “question of whether a decision announcing a new rule should be given prospective or retroactive effect should be addressed at the time of the decision.” *Talley v. State*, 371 S.C. 535, 541, 640 S.E.2d 878, 881 (2007) (citing *Teague v. Lane*, 489 U.S. 288, 300, 109 S.Ct. 1060, 1070 (1994)). A “case announces a new rule when it breaks new ground or imposes a new obligation on the government or if the result was not dictated by precedent existing at the time ... defendant’s conviction became final.” *Lucero v. State*, 414 S.C. 238, 245, 777 S.E.2d 409, 413 (Ct. App. 2015) (quoting *Chaidez v. United States*, ___ U.S. ___, 133 S.Ct. 1103, 1107 (2013)). However, a case does not announce a new rule when it is “merely an application of the principle that governed a prior decision to a different set of facts.” *Id.* (internal quotation marks omitted). Thus, the retroactivity of decisions from the Supreme Court depends on whether they are novel. *Chaidez*, 133 S.Ct. at 1107.

In the present case, Applicant was arrested for traffic violations. Pursuant to department policies, the officers were required to conduct an inventory search of the vehicle before it was towed to a secure location. During the inventory search, the officers found drug evidence in the vehicle, and thereafter charged Applicant with Trafficking Crack Cocaine and Possession of Crack Cocaine. At the pre-trial hearing, the Trial Judge ruled that the drugs found in the vehicle are admissible at trial, and as a result, Applicant pled guilty to a lesser offense of Trafficking Crack Cocaine. Now, Applicant argues that *State v. Adams*, 409 S.C. 641, 763 S.E.2d 341 (2014), decided after his conviction, has clarified the ruling regarding admission of evidence after a traffic stop, and as a result, the Trial Judge improperly denied Applicant’s motion to suppress on the grounds that the intervening traffic stop, impoundment, and inventory search of the vehicle was permissible. Applicant further argues that this matter is similar to *Adams, supra*, in that the officers utilized a traffic stop to justify an unconstitutional search. Post-conviction relief is not the proper forum for the Applicant in this case, to address the Trial Judge’s ruling on his motion to suppress evidence.

First, the facts in *Adams, supra*, is not analogous to the facts in the present case. In this case, a drug enforcement unit, the Multi-jurisdictional Drug Enforcement Unit (“DEU”), was investigating Applicant before he was arrested. The DEU received information from a confidential informant that Applicant was seen with a large amount of crack cocaine, and from an anonymous

ad
#4

tip that Applicant was involved in illegal activities. On the day of the traffic stop, the DEU received another anonymous tip that Applicant was traveling to Anderson, South Carolina to purchase large quantity of crack cocaine. The anonymous tip provided specific details regarding Applicant's whereabouts, the type of vehicle he was driving, who owned the vehicle, and the highway Applicant would take to return home to Leach Road in York County. Based on the tip, law enforcement moved towards Highway 5 to wait for Applicant. After law enforcement identified Applicant in the vehicle on Highway 5, they followed Applicant and eventually stopped him for speeding and driving left of center line.

Contrary to this case, the officers in *Adams* installed a GPS device on the defendant's vehicle to monitor his movements unbeknownst to him. The officers initiated a traffic stop and searched the defendant's vehicle. The *Adams* Court stated that the installation of the GPS device on defendant's vehicle without a warrant was a violation of the Fourth Amendment. *Id.* As a result, the *Adams* Court ruled that one of the exceptions to the Fourth Amendment Exclusionary Rule, the Intervening Act Doctrine, did not apply since the traffic stop was entirely predicated on information obtained from the GPS device, and it was coupled with the officers' desire to search the defendant's vehicle for drugs. *Id.*

In this case, Applicant claims that the Fourth Amendment violation occurred when the officers used subjective motives to conduct an inventory search on the vehicle. Unlike *Adams*, the officers in the present case did not install a GPS to obtain information about Applicant's location; instead, the information was received from an anonymous tip. There was no violation of the Fourth Amendment in gathering the information which lead to the traffic stop. The officers were able to corroborate the information received in the tip prior to stopping Applicant. Thereafter, Applicant was arrested for traffic violations and the inventory search resulted from the custodial arrest. The Trial Judge ruled that the traffic stop was legal, and as a result of the arrest, the officers had a right to conduct an inventory search of the vehicle. The trial court also found the scope of the search was reasonable.

Second, there is no authority to show that the decision in *Adams* is a new rule. *See Lucero*, 414 S.C. 238, 777 S.E.2d 409 (Ct. App. 2015). The decision in *Adams* is not new law since the court in *Adams* applied settled law to different set of facts that existed at the time of Applicant's conviction. The Supreme Court decision was not the announcement of a novel issue of law to be applied retroactively. Therefore, Applicant cannot benefit from the ruling in a post-conviction

af
85

proceeding. Thus, any error in the trial court's ruling could have been raised on direct appeal. Post-conviction relief is not a substitute for asserting claims that could have been raised on direct appeal. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

ORDER

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED.


 ALISON RENEE LEE
 Presiding Judge

September 29, 2016
 Columbia, South Carolina

af
#6

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

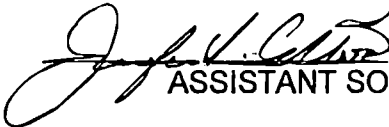
INDICTMENT

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

On or about August 3, 2011, the Defendant, Ortavious Romond Mitchell, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of One hundred (100) grams or more of crack cocaine, a cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DEU WITNESSES
YCSO/Faulkenberry

ab

ARREST WARRANT NUMBER
J-157217

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date: 10/13/11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-46-03323

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

October 13, Term 2011

THE STATE

vs.

ORTAVIOUS ROMOND MITCHELL

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375(0)10
CDR Code: 0368

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

ORTAVIOUS MITCHELL
Defendant

Witness: Stephanie Nardis, C.A.M. Superior
C.C.C. PLS. AND G.S.