

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KALVIN ROPEL BROWN,

APPELLANT

APPELLATE CASE NO 2016-000529

RECORD ON APPEAL

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RECEIVED

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SC Court of Appeals

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**THE FOLLOWING IS ON FILE WITH THIS COURT:**

**DASHCAM VIDEO FROM THE CAR OF OFFICER WILLIAM R. GIBSON, II**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 15-GS-46-02347
	)	
Kalvin R. Brown,	)	
	)	
Defendant.	)	

### TRANSCRIPT OF BENCH TRIAL

The within bench trial in the above-captioned matter was held February 24, 2016, before The Honorable Perry H. Gravely in Courtroom 2 of the York County Courthouse in York, South Carolina; attended by counsel as follows:

#### APPEARANCES:

Marina Hamilton, Assistant Solicitor  
 Leslie Robinson, Assistant Solicitor  
 ... Appearing for State of South Carolina

Willie Bradley, Esq.  
 Patrick Sharpe, Esq.  
 ... Appearing for Defendant

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(STATUTORY JURY QUALIFICATION)

2

(DEFENDANT PRESENT)

3

(IN CHAMBERS CONFERENCE -

4

OFF RECORD STIPULATION RE: BENCH TRIAL)

5

THE COURT: Be glad to hear from

6

you. State versus Calvin Brown.

7

SOLICITOR ROBINSON: Thank you,

8

Your Honor. The State wishes to call the

9

case on Calvin R. Brown, trafficking in

10

heroin, statute number 44-53-370(e). The

11

docket number is 2015-GS-46-02347. It's a

12

true bill indictment, true billed on August

13

20<sup>th</sup>, 2014.

14

The defendant -- this is a direct

15

indictment, Your Honor. The defendant was

16

arraigned on a formal arraignment on this

17

indictment on January 27<sup>th</sup>, 2016. And I guess

18

we could go forward with any defense motions

19

at this time if they ---

20

THE COURT: All right.

21

MR. BRADLEY: Thank you, Your

22

Honor. Attorney Willie Bradley for the

23

record. If it pleases the Court, we do have

24

a Motion to suppress, Your Honor. And based

25

on any talks in chambers some of this may be

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1 -- since it's a bench -- handled certainly by  
2 Your Honor in a bench trial.

3 Our Motion to suppress, just for the  
4 record, is for any evidence found as a result  
5 of the traffic stop because the traffic stop  
6 was unreasonably delayed. The purpose for  
7 the stop was over at a certain time and we  
8 wanted to argue that anything past that  
9 point, you know, any reasonable suspicion or  
10 anything that came past that point, should be  
11 excluded, Your Honor. But, again, that ---

12 THE COURT: Well, I guess in light  
13 of the way that it is I don't mind hearing  
14 from you.

15 MR. BRADLEY: Okay. And we have  
16 three different prongs and that's the first  
17 prong of our Motion to suppress, Your Honor.  
18 And Mr. Sharpe ---

19 THE COURT: I'll be glad to hear  
20 from you.

21 MR. SHARPE: Thank you, Your Honor.  
22 If it pleases the Court, let me get some case  
23 law. May I approach, Your Honor?

24 THE COURT: Yes.

25 MR. SHARPE: (Tendering document to

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1 bench), Your Honor, the basis of this Motion  
2 is the Supreme Court, U.S. Supreme Court case  
3 of *U.S. v Rodriguez*, or Rodriguez versus the  
4 United States, that came down April 21<sup>st</sup> of  
5 last year. Just to point out, this stop  
6 occurred in February of last year; so before  
7 this Opinion came down. Your Honor ---

8 THE COURT: So the officer would  
9 not have known about that.

10 MR. SHARPE: Correct, Your Honor.  
11 Correct. And I think that might end up being  
12 relevant. But, Your Honor, basically to  
13 start out, Your Honor, this incident occurs  
14 -- the Defendant and Ms. Trappier, the driver  
15 of the vehicle, the Defendant rented the  
16 vehicle so the vehicle was in his name --  
17 rented. The driver is a young lady named  
18 Monique -- I'm going to refer to her as "the  
19 driver" for this Motion.

20 But, Your Honor, they were going up  
21 77, heading towards Charlotte. Their actual  
22 final destination was Morganton, North  
23 Carolina. I'm not sure if you're familiar  
24 with where Morganton, North Carolina is -- I  
25 wasn't -- but it's about halfway between

1 Asheville and Charlotte.

2 So basically, they're going up  
3 there. It's our opinion this is pretty much  
4 a pre-textual stop. You could see on the  
5 video the cars drive by.

6 The officer, Officer Gibson makes  
7 the stop for following too closely. As  
8 you're watching the video you see all these  
9 cars drive by. None of them appear that  
10 they're too close. It's our opinion that  
11 Officer Gibson sees the Florida tags that are  
12 on the car that the Defendant rented in  
13 Georgetown and follows him based on that.  
14 Either way, he catches up with them and pulls  
15 them over for following too closely.

16 When they get the blue lights, the  
17 driver -- they're approaching an inter-  
18 section. I believe it was Exit 73. But  
19 there's a bridge that goes over the -- under  
20 the highway. And so she goes past that to  
21 pull over, so she's not stopped on the bridge  
22 or the overpass.

23 Your Honor, at that point, the  
24 officer approaches the car. He has a State  
25 Constable with him that approaches the

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1 passenger. Well, I guess they both approach  
2 the passenger's side and they ask, you know,  
3 'Why are you following too close? Where are  
4 you going?'

5 He eventually gets the driver out of  
6 the car. This is at 10:30 in the morning,  
7 a.m. So -- and it's in February, so it's  
8 pretty cold. So they go and get into Officer  
9 Gibson's patrol vehicle. At this point, they  
10 determine essentially that she doesn't have a  
11 driver's license. She's given him a false  
12 name. They run it through the system and,  
13 you know, nothing comes up. She's given a  
14 false name. So, in our opinion, at this  
15 point, that's when the traffic stop should  
16 have ceased. Make the arrest for the under-  
17 lying offense.

18 And, Your Honor, to go further -- and  
19 there's some case law -- well, further, he  
20 ends up going to -- approaches Mr. Brown in  
21 the passenger side, asked him some questions.  
22 And in the report it says they give different  
23 stories about where they're going. Well, if  
24 you watch the video, they give the same story  
25 about where they're going. She's not

1 familiar with where they're going but she  
2 said somewhere around Asheville. Well, in  
3 his -- you know, he's thinking 'oh, well,  
4 Asheville's not this way.' So I'm thinking  
5 that's some of the suspicion he uses. But,  
6 you know, as I just pointed out, they're  
7 heading up to Charlotte, and then going to  
8 Morganton as opposed to going the I-26 route.  
9 That's neither here nor there.

10 But, Your Honor, at that point he  
11 asked the defendant out of the car and goes  
12 on. But to point to *Rodriguez v. United*  
13 *States*, a seizure becomes unlawful if it was  
14 "prolonged beyond the time reasonably  
15 required to complete the mission of issuing  
16 the ticket for the violation"; which, in our  
17 opinion, it could have been done.

18 Your Honor, in this case, the stop  
19 occurred at 12:06 a.m., a little after  
20 midnight, which is kind of adding to the  
21 reasonable suspicion.

22 Now, the Supreme Court addresses  
23 what a seizure is. It states a "seizure's  
24 mission is to address the traffic violation  
25 that warranted the stop and also attend to

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1 any related safety concerns." Well, in this  
2 case those related safety concerns would be  
3 the fact that she doesn't have a driver's  
4 license. So, in our opinion, after he  
5 determines that she doesn't have a driver's  
6 license and he can't figure out who she is,  
7 he made the arrest. Traffic stop's over.

8 Your Honor, the Supreme Court goes  
9 on to say, because addressing the infraction  
10 is the purpose of the stop, "it may last no  
11 longer than is necessary to effectuate that  
12 purpose. Authority for the seizure thus ends  
13 when tasks tied to the traffic infraction are  
14 or reasonably should have been completed."  
15 Here, he takes her out of the car, goes and  
16 sits her in his car. Talks to her. Can't  
17 figure out who she is. You know, obviously,  
18 if he can't figure out who she is, he can't  
19 determine whether she's got a driver's  
20 license. Make the arrest right then.

21 And to further that, Your Honor,  
22 at that point, we believe that since the  
23 Defendant hadn't done anything wrong, he'd be  
24 free to go. Take the car and go on. They  
25 don't need to impound the car. We have

1 somebody that hasn't committed any crimes who  
2 is responsible for the car, that can take car  
3 on and continue his journey.

4 The Supreme Court further goes on  
5 and says "an officer may conduct certain  
6 unrelated checks during the underlying lawful  
7 traffic stop but he may not do so in a way  
8 that prolongs the stop." During this, the  
9 oral arguments for this case, the government  
10 acknowledged that a dog sniff, in such  
11 routine measures as just mentioned, which  
12 would be checking the driver's license for  
13 any outstanding warrants, inspecting the  
14 registration, proof of insurance, things  
15 related to make sure the roadways are safe.

16 But the government acknowledges in  
17 their oral argument that a dog sniff, unlike  
18 the routine measures just mentioned, is not  
19 an ordinary incident to a traffic stop.

20 Your Honor, further the Supreme  
21 Court goes on to say that traffic stops are  
22 especially fraught with danger to police  
23 officers, (reading): "So an officer may need  
24 to take certain negligibly burdensome  
25 cautions in order to complete his mission

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1 safely. On-scene investigation into other  
2 crimes, however, detours from that mission."  
3 Basically saying that, you know, if you're  
4 going to investigate someone besides the  
5 traffic stop, you're putting your safety  
6 basically in danger.

7 Your Honor -- at the end of the  
8 Opinion, Your Honor, the Court goes on to say  
9 that the critical question is not whether the  
10 dog sniff occurred before or after the  
11 officer issues a ticket but whether  
12 conducting the sniff prolongs, i.e., adds  
13 time to the stop.

14 Your Honor, just recently on the  
15 January 27<sup>th</sup> advance sheets, our State Supreme  
16 Court came down with Opinion that the case  
17 was overturned based on *Rodriguez*. Actually,  
18 it was before *Rodriguez* came out that it was  
19 overturned. But it was overturned because  
20 the traffic stop was prolonged. It was  
21 overturned by the Court of Appeals.

22 Well, the Supreme Court reversed.  
23 But the reason they reversed is, is because  
24 if you look at every -- they said basically  
25 if you look at the totality of the

1 circumstances involved in the whole stop and  
2 the case here, Morris -- actually *Moore*, Your  
3 Honor -- there's enough reasonable suspicion  
4 to prolong the stop to investigate for drugs.

5 THE COURT: Let me ask you this.

6 MR. SHARPE: Yes, sir?

7 THE COURT: At what did the  
8 officer determine that this was a rental car  
9 in fact?

10 MR. SHARPE: Oh, immediately.

11 Immediately.

12 THE COURT: Okay. And then at  
13 what point did the Defendant come into the  
14 picture under an investigation or what --  
15 tell me ---

16 MR. SHARPE: After the officer had  
17 determined that the driver didn't have a  
18 driver's license and that she was lying to  
19 them. She couldn't give them a Social  
20 Security number. Gave him a name, he called  
21 it in and they couldn't find it.

22 THE COURT: And the rental, I  
23 guess that he presented them with a rental  
24 agreement or insurance agreement as to who  
25 could drive?

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1 MR. SHARPE: Right. Right.

2 THE COURT: It was in his name,  
3 the Defendant's?

4 SOLICITOR HAMILTON: Correct, Your  
5 Honor. Because whenever he asked for the  
6 registration and insurance, that's when he  
7 gave him those.

8 MR. SHARPE: Now, Your Honor, as I  
9 was saying, the Court had allowed -- in this  
10 case allowed reasonable suspicion because he  
11 had reasonable suspicion when looking at the  
12 totality of the circumstances. Now, some of  
13 those circumstances were it's 1:10 in the  
14 morning. A third party had rented the car  
15 the afternoon before. So they had rented the  
16 car, you know, 1:00 in the afternoon,  
17 essentially twelve hours prior to the stop.  
18 Well, this individual, when the officer  
19 approached the car, he's talking on the  
20 cellphone. That added to the suspicion. He  
21 smelled like alcohol. He ended up passing  
22 the field sobriety test, which is where the  
23 stop prolonged. Because after he passed  
24 field sobriety, then they prolonged the  
25 search.

1                   Now, as I said, the car was rented  
2                   by a third-party the previous day. But the  
3                   individual in this case also stated that the  
4                   car was rented, ironically, in Morganton,  
5                   North Carolina, ironically. So he rents the  
6                   car and he tells the officer that he's on his  
7                   way to visit his grandmother who lives in  
8                   Marion, North Carolina. But he's on his way  
9                   from Lawrenceville, Georgia, which is in  
10                  Atlanta.

11                  THE COURT:        Uh-huh.

12                  MR. SHARPE:    You know, the Atlanta  
13                  Metropolitan area. So that added to it.  
14                  When he exited the vehicle, he left the door  
15                  open and had to go back and close the door.  
16                  That was something they pointed out. He  
17                  smoked a couple of cigarettes while they're  
18                  at the stop. That contributed to his  
19                  nervousness.

20                  And while I'm bringing up nervous-  
21                  ness, Your Honor, I'd like to point out too  
22                  that Officer Gibson might try to get up on  
23                  the stand and say that they were acting  
24                  nervous. But, Your Honor, that's not the  
25                  case. He doesn't mention nervousness, not

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1 one time in his report. He doesn't mention  
2 that they're being anxious, not one time in  
3 his report. And, further, it's all on video  
4 so you can see it for yourself that there's  
5 no nervous behavior.

6 And another thing about this stop in  
7 the Moore case, Your Honor, the defendant had  
8 six hundred dollars in his pocket in a wad.  
9 You know, when he Terry-frisked him he found  
10 it. And he'd already told them that he was  
11 unemployed. So they found it a little  
12 suspicious that someone that's unemployed has  
13 got a rental car and is driving around with  
14 six hundred dollars (\$600) in their pocket.

15 Now, Your Honor, here the Defendant  
16 and the driver both tell the officer that Mr.  
17 Brown is working to open a restaurant. He  
18 only has a hundred and thirty dollars in his  
19 pocket. One of the things that Officer  
20 Gibson said was suspicious is that they  
21 didn't have any luggage. Well, their plan  
22 was to go up to Morganton, North Carolina and  
23 pick up the Defendant's daughter and bring  
24 her back to Georgetown. So, you know,  
25 there's no need for luggage. They're going

1 -- she tells them -- the driver tells Officer  
2 Gibson that either they're going to come back  
3 tonight or tomorrow.

4 Oh, another thing, Your Honor, the  
5 car was due to be returned the next day.  
6 Also, Your Honor, to confirm the trip to  
7 Morganton, the Defendant's driver's license  
8 is a North Carolina license with a Morganton  
9 address. You know, nothing suspicious about  
10 that.

11 Now, further, Your Honor, in the  
12 Court of Appeals Opinion on the *Moore* case,  
13 they cite the Fourth Circuit. I just want to  
14 touch on this one last time. They cite the  
15 Fourth Circuit, it's on -- I don't think I  
16 gave you a copy of this but the case is *U.S.*  
17 *v Foster*. If you want me to give you a cite  
18 to that, I can. It's ---

19 THE COURT: What page is it on?

20 MR. SHARPE: Your Honor, I gave you  
21 the Supreme Court opinion.

22 THE COURT: Okay. You didn't give  
23 me *State v Moore*.

24 MR. SHARPE: Yeah, but what I'm  
25 trying to tell you is this one is the Court

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1 of Appeals Opinion, not from the Supreme  
2 Court.

3 THE COURT: Oh, okay. Okay.

4 MR. SHARPE: So the case cite is  
5 634 F3rd 243 and it's Fourth Circuit 2011.  
6 Do you want me to give that to you again?

7 THE COURT: Try it again.

8 MR. SHARPE: 634 F3rd 243 and it's  
9 Fourth Circuit, 2011.

10 THE COURT: Okay.

11 MR. SHARPE: Well, basically what  
12 they say is -- the Court of Appeals in the  
13 Moore case says that, (reading): "We share  
14 the Fourth Circuit's concern regarding the  
15 State's inclination toward abusing whatever  
16 facts are present, no matter how innocent,  
17 as indicia of suspicious activity."

18 The Supreme Court says, (reading):  
19 "The State must do more than simply label a  
20 behavior as suspicious to make it so. The  
21 State must be able to either articulate why  
22 a particular behavior is suspicious or  
23 logically demonstrate, given the surrounding  
24 circumstances that the behavior is likely to  
25 be indicative of some more sinister activity

1 than may appear at first glance."

2 So, Your Honor, due to all of that,  
3 Your Honor, we believe that there's not  
4 enough reasonable suspicion to prolong the  
5 stop to bring the drug dog out and do a free  
6 air sniff; and for that reason, we'd ask that  
7 you suppress the search.

8 THE COURT: Before I hear from the  
9 State, I'd like to -- I want to make a couple  
10 of comments. I think there's a distinction  
11 when you pull off when somebody's speeding  
12 and all that. 'Oh, you know, he's acting a  
13 little nervous.'

14 But here you have -- first of all, a  
15 rental car in the name of the passenger, a  
16 driver who doesn't have a license and gives  
17 false names. I think it's a lot different  
18 type of circumstance than just 'oh, and them  
19 just acting nervous' or something. You know,  
20 that's -- you know, false names and kind of a  
21 little bit different stories and I think that  
22 -- you've got a lot of -- I'll hear from them  
23 but you've got a lot of reasonable suspicions  
24 going on here. Just the fact it's a rental  
25 car. You know, here's somebody that's not

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1 driving when apparently he's a legal driver  
2 and could have been driving. Instead you  
3 have somebody that doesn't have a driver's  
4 license.

5 MR. SHARPE: Right.

6 THE COURT: They're giving false  
7 names and ---

8 MR. SHARPE: Right. And, Your  
9 Honor, I think it's reasonable assume that  
10 she's giving false names also because she  
11 knows that if she is found without a license,  
12 she's going to jail. So I think that's  
13 reasonable.

14 Yet, you know, I also think it's  
15 also reasonable that if they're coming back  
16 that night, it's also reasonable that if  
17 they're coming back that night, it's  
18 reasonable for her to drive up and him to  
19 drive back too.

20 THE COURT: My wife never lets me  
21 do that.

22 SOLICITOR HAMILTON: Thank you,  
23 Your Honor. It's the State's position that  
24 all of this is not applicable in this case  
25 because the stop had not concluded. He

1 stated that he took the driver back to the  
2 vehicle, Officer Gibson's vehicle, to  
3 question her in the back of it. During that  
4 time frame, I think it was about ten minutes,  
5 ten or fifteen minutes, he still had yet to  
6 identify who she was. She continued to give  
7 false statements, continued to give false  
8 names. At that point, he left her in the  
9 back of the vehicle, went to question the  
10 passenger to try to identify who this driver  
11 is. At this point, the investigation had yet  
12 to complete.

13 He had no idea if she had  
14 outstanding warrants if he couldn't verify  
15 her Social Security Number, which she had no  
16 idea what it was. She couldn't give a date  
17 of birth. I think the ultimate date of birth  
18 she gave was also false. So they had no  
19 identification as to who this driver was to  
20 even give her any kind of citation at that  
21 point.

22 Then they go, I think, after about  
23 fifteen minutes, maybe twenty minutes, he  
24 walks up, starts questioning the passenger as  
25 to the identity of the driver. He also given

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1 two different names. At that point it is  
2 eleven minutes, and I'm giving you the  
3 timestamps on the video. At eleven minutes  
4 the officer gets the name from the passenger  
5 of the Defendant. He goes back and forth,  
6 different names for about two minutes.

7 And then at three minutes later, the  
8 officer gets there and tells the Defendant he  
9 is going to walk the dog around the vehicle.  
10 He starts explaining the procedure for  
11 walking the dog around. That is -- from the  
12 time that he gets a statement from them as to  
13 the name, that is two minutes later. And the  
14 Defendant says to the officer that the dog  
15 will alert.

16 And we believe the investigation  
17 still at this point has not completed because  
18 they don't know who the driver is at this  
19 point still. But then at that point, he has  
20 reasonable suspicion about whether there is  
21 illegal activity going on, if there is  
22 illegal substance in this vehicle as the  
23 Defendant stated the dog would alert. So we  
24 believe that the stop had yet to conclude.

25 So there can be no unlawful

1 extension of the stop when the investigation  
2 is not completed at the time another  
3 reasonable suspicion had come up of more  
4 illegal activity at that point. So the  
5 State's position is that the stop is legal.

6 There's no extension of the stop and  
7 unlawful detention at that point. Therefore,  
8 anything that's found subsequently should be  
9 admitted.

10 THE COURT: I'm going to deny your  
11 Motion at this time but I don't mind, you  
12 know, if we review the evidence -- because  
13 both of y'all have a little different spin  
14 exactly what happened. I'll be glad to allow  
15 you to renew your Motion after we hear a  
16 little more. We don't have a jury. We do  
17 have a little more flexibility in that. But  
18 I'll -- you know, I'm going to deny your  
19 Motion at this time. But I'll review the,  
20 you know, the evidence and at the appropriate  
21 time I'll be glad to, you know, let you renew  
22 your Motion if we need to do that.

23 MR. SHARPE: Thank you, Your Honor.

24 THE COURT: Was there another  
25 Motion?

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1 MR. BRADLEY: Yes, Your Honor. If  
2 it pleases the Court there is another -- and  
3 I'd basically try to put it all in the same  
4 Motion.

5 THE COURT: Okay.

6 MR. BRADLEY: There was an incident  
7 report that we were given, and I have a copy  
8 of it. I think this one is probably more  
9 relevant pretrial. In the statement, the  
10 officer, Officer Gibson gives a summary of  
11 the stop. He gives a summary of the stop  
12 exactly as the video shows it with one  
13 exception. I can go ahead and bring this out  
14 now, Your Honor, because literally you're  
15 going to be the trier of the fact.

16 THE COURT: Okay.

17 MR. BRADLEY: On the bottom of his  
18 summary, he basically states that my client  
19 made an out-of-court statement, a confession  
20 to him, saying that what they had found in  
21 the car -- let me change that. Saying that  
22 the cocaine that they found in the car was  
23 his.

24 Your Honor, my problem with that, of  
25 course, you know, is a confession -- at the

1 time that he gave the confession, the officer  
2 indicated that they were already at the  
3 station, okay? So my thought there is, one,  
4 why wasn't -- if it's a confession to the  
5 ultimate, you know, issue in this case, why  
6 wasn't it written?

7 Why wasn't my client allowed to  
8 sign the confession?

9 Why wasn't it videotaped like every  
10 other confession is done? There was  
11 certainly that ability at the station.

12 If my client's going to give --  
13 excuse my language -- such damning evidence  
14 against him. He's basically saying 'It's  
15 mine. I'm taking the charge.' Well, if he  
16 does that orally, Your Honor, that has been  
17 by many courts looked at in sort of a -- it's  
18 looked at a lot harder because of the  
19 ability, Your Honor, for misinterpretation of  
20 words, et cetera.

21 Now, the reason I brought this out  
22 is that they just mentioned that when the  
23 drug dog apparently -- you know, the drug dog  
24 came to the car and my client said that the  
25 dog is going to hit on the car. So when

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1       you're looking at the video, Your Honor, and  
2       this is why I made a big issue about getting  
3       more time. Because when we look at the video  
4       you see that's absolutely not what he said.  
5       He said the drug dog would hit but it was  
6       taken out of context. The whole context was,  
7       *'Listen, I've seen these shows before, these*  
8       *TV shows. The dog always hits on a car when*  
9       *y'all march the drug dog around the car.'*  
10      The full video shows that. So his one  
11      statement in there saying my client said the  
12      dog was going to hit is not really -- it  
13      could be taken out of context. But on the  
14      video, it can't. You can see that.

15                   And on the bottom where he -- this  
16      is the only mention of his confession. It's  
17      nowhere else in any other discovery. It's  
18      just written as a separate note with two  
19      spaces underneath it saying "other  
20      statements."

21                   Mr. Brown said that it was his  
22      cocaine in the car. Well, Your Honor,  
23      actually the substance that was found wasn't  
24      even cocaine. It was actually heroine. And  
25      so, you know, our position is the State

1           should be able to prove their case without  
2           using a statement from my client, which, of  
3           course, was not recorded; which, of course,  
4           was not videotaped; which is nowhere else in  
5           anything, Your Honor. And we feel that that  
6           would be undue prejudice. So what we're  
7           asking Your Honor to do is basically keep  
8           that report out because the video is the  
9           exact same replica of the report. And the  
10          video is the best evidence. Plus the fact  
11          that that note on there that basically says  
12          he confessed, Your Honor, without any  
13          corroboration or anything like that, it's  
14          certainly unreliable.

15                   THE COURT:       But hasn't the trier  
16          of facts been made aware of the statement  
17          now?

18                   MR. BRADLEY:     Yes. The trier of  
19          fact would have been made aware of it anyway.  
20          So that's the reason why I said ---

21                   THE COURT:       And I think again,  
22          since this is non-jury, I mean, I think --  
23          I assume that y'all going to be putting the  
24          video in or ---

25                   SOLICITOR ROBINSON:   Well ---

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1 THE COURT: Are you not? Well, at  
2 some point, I mean, it's hard for me to make  
3 a ruling on that without me getting to the  
4 point. You know, I think I need to hear the  
5 testimony. Then I don't know if y'all -- I  
6 mean, if it's taken out of context, I would  
7 think that you would put the video in or  
8 something to show that, 'hey, this is taken  
9 out of context.' That's something then for  
10 me to weigh in my decision.

11 MR. BRADLEY: Yes, Your Honor.  
12 Just again -- and I agree with that. It's  
13 just that I wanted to bring your attention to  
14 that prior to starting. Because, again, that  
15 little part down there seems to be -- it's  
16 crucial to the case because it basically says  
17 'your client confessed.'

18 THE COURT: Uh-huh.

19 MR. BRADLEY: And there's nothing  
20 else that we have except that. That little  
21 statement that's written on that report.  
22 It's nowhere on the video. Nowhere on  
23 anything else. So, you know, again --  
24 (pause).

25 As well, Your Honor, in this case

1           you can see -- and I know that they -- that  
2           if someone's confessing, you write out a  
3           statement. They did in this case in that  
4           other circumstance. When a witness came,  
5           they took the witness' statement. They wrote  
6           it up. They had the witness sign the  
7           statement. And, again, that is the same  
8           thing that could have been done -- should  
9           have been done in this situation if that  
10          confession was reliable. So, of course, Your  
11          Honor, we have problems with that coming in  
12          or Your Honor even considering that in your  
13          opinion of his guilt or innocence when you  
14          weigh the facts, Your Honor.

15                        But I do understand, Your Honor,  
16          and, you know, if you feel the appropriate  
17          time to rule on that during the trial, then  
18          we'll take it up at that time.

19                        THE COURT:     What you're saying is  
20          they made a statement that your client  
21          confessed and you're saying that I should not  
22          consider that because they didn't do a  
23          written statement, basically; that they  
24          should or always take written statements.  
25          But doesn't that go more to the weight of

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1           whether I should consider that?

2                       MR. BRADLEY:       It goes to the  
3           weight of the evidence but it also goes to  
4           the prejudicial effect that that statement  
5           would have on my client.  And I think under  
6           404 we're allowed to keep out evidence that  
7           may be more prejudicial than probative.

8                       And in this case, the confession is  
9           uncorroborated, not signed or anything else,  
10          we think would certainly be prejudicial to  
11          our client because it goes to actually what  
12          the whole case is about, whether or not my  
13          client actually possessed that heroine in  
14          this case.

15                      THE COURT:       Right.  Well, I'm sure  
16          it's definitely prejudicial but I think --  
17          I'm not sure that it violates any of the  
18          rules.  You can educate me otherwise.  But I  
19          think it goes to the weight more than the  
20          actual basis for suppression.

21                      MR. BRADLEY:       Okay.

22                      THE COURT:       But, again, anything  
23          like this I'll be glad, like I said, since we  
24          do have flexibility, let y'all renew it at  
25          the appropriate time.

1 MR. BRADLEY: Yes, sir. Thank  
2 you.

3 THE COURT: Based on this, I'm not  
4 sure there's a basis really to suppress it.

5 MR. BRADLEY: Certainly, Your  
6 Honor. My argument there was, one, to  
7 suppress the entire report that he had and,  
8 two, in the alternative to suppress just that  
9 confession, that statement part at the end.  
10 So we'll just handle that in the trial, Your  
11 Honor.

12 THE COURT: All right.

13 MR. BRADLEY: And that would take  
14 care of the three issues that we were  
15 actually raising to suppress.

16 THE COURT: All right. Now, are  
17 there any additional pretrial Motions?

18 MR. BRADLEY: None, Your Honor.

19 THE COURT: We're ready to proceed  
20 then, I guess.

21 SOLICITOR HAMILTON: The State  
22 does have some issues that they would like to  
23 take up, Your Honor.

24 THE COURT: Okay.

25 SOLICITOR HAMILTON: We do want to

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1 get a waiver of jury trial before we proceed.

2 I don't know if you want to do that now.

3 THE COURT: Okay. Yes. All

4 right. Mr. Brown. Can you swear him?

5 (WHEREUPON DEFENDANT DULY SWORN)

6 THE COURT: All right. Mr. Brown,

7 I'm going to ask you some questions and this

8 has nothing to do with your testimony as it

9 relates to -- or has anything to do -- it

10 doesn't relate to the facts in this case. We

11 are here and I've been instructed by your

12 attorneys that you and your attorneys wish to

13 go forward without, you know, without a jury.

14 Now I want to make sure you understand your

15 rights.

16 First of all, you realize that one

17 of your constitutional rights is that you

18 have a right to have your case heard by a

19 jury. That is twelve people would hear all

20 the evidence presented and they could

21 determine whether you're innocent or guilty.

22 Do you understand that right?

23 DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: And they have to --

25 still the State's burden is the same. They

1 have to prove their case beyond a reasonable  
2 doubt as to each element of that charge. And  
3 then the jury would deliberate.

4 The jury would also be instructed  
5 that you have a right to remain silent, that  
6 you would -- if you did not testify, that  
7 cannot be used against you. They cannot  
8 consider that in any deliberations, you know.  
9 But other than that, everything is the same.  
10 You have a right to have twelve people make a  
11 decision for your case.

12 DEFENDANT: Yes, sir. I know  
13 that.

14 THE COURT: All right. Well,  
15 first of all, are you under the influence of  
16 alcohol, drugs or medication of any type  
17 today, which would make you impaired?

18 DEFENDANT: I am not; no, sir.

19 THE COURT: All right. Do you  
20 have any reason why -- any mental or health  
21 issues that would keep you from understanding  
22 what's going on?

23 DEFENDANT: No, I do not.

24 THE COURT: Have you had  
25 sufficient time to talk with your attorneys

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1 about your right to have a jury trial?

2 DEFENDANT: Yes, I have, Your  
3 Honor.

4 THE COURT: All right. Do you  
5 need any additional time to discuss this with  
6 them?

7 DEFENDANT: No, I -- (sidebar with  
8 counsel).

9 THE COURT: I'm asking do you need  
10 any more time to talk with your attorneys  
11 about that right.

12 DEFENDANT: No, sir, Your Honor.

13 THE COURT: All right. And has  
14 anybody -- do you wish to proceed without a  
15 jury?

16 DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: And you realize your  
18 rights and you're making that decision on  
19 your own?

20 DEFENDANT: Yes, I do, Your Honor.

21 THE COURT: And you realize that's  
22 your decision?

23 DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: You realize that's  
25 your decision?

1 DEFENDANT: Yes, I do.

2 THE COURT: Has anybody promised  
3 you anything to make this decision?

4 DEFENDANT: No.

5 THE COURT: Has anybody threatened  
6 you to make this decision?

7 DEFENDANT: No one.

8 THE COURT: And do you make it  
9 freely and voluntarily?

10 DEFENDANT: Yes, I do.

11 THE COURT: And based on every-  
12 thing, you wish to go forward with your case  
13 and you waive your right to a jury trial?

14 DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: All right. Anything  
16 further from the State?

17 SOLICITOR HAMILTON: Your Honor,  
18 if I may, I was just going to respond to  
19 their Motion regarding the statement, to  
20 clarify the State's position. It is normally  
21 ---

22 THE COURT: Okay. But anything  
23 else on his waiver ---

24 SOLICITOR ROBINSON: Oh, not  
25 regarding the jury trial.

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1 THE COURT: Okay. All right.

2 Then we will accept your waiver. I find that  
3 it's been knowingly, voluntarily and  
4 intelligently made with advice of competent  
5 counsel so that we'll proceed with this  
6 matter as a bench trial. Yes, Solicitor?

7 SOLICITOR ROBINSON: Thank you,  
8 sir. I would just clarify the State's  
9 position regarding the statement that defense  
10 counsel was making as to that Motion. Our  
11 position is, it would normally be the course  
12 that you would make the initial admissibility  
13 determination simply determining the  
14 statement is involuntary as to the  
15 constitutionality. Then it would be -- as  
16 you mentioned, it would be a weight issue for  
17 the jury.

18 Since you are the fact-finder, we  
19 would agree that during the testimony if you  
20 determine that the taking of the statement  
21 was involuntary in some way, that at that  
22 point could choose to exclude the content of  
23 the statement.

24 THE COURT: Right.

25 SOLICITOR ROBINSON: But otherwise

1 as to whether or not it should have been  
2 recorded or whatnot, that would go to whether  
3 you found the statement credible in and of  
4 itself.

5 THE COURT: Right. And I guess I  
6 didn't address it under *Jackson v.* -- I mean,  
7 the other issues with it. I didn't think  
8 that they kind of hit that area and that's  
9 why I didn't kind of respond that way.

10 SOLICITOR ROBINSON: Yeah. And I  
11 just would -- normally, sometimes we ask to  
12 do those even if the defense isn't raised  
13 just to be sure all the ---

14 THE COURT: Right.

15 SOLICITOR ROBINSON: --- areas are  
16 covered. We'd be comfortable going forward,  
17 as well.

18 THE COURT: Right. And, again,  
19 that's one of the things we do to make sure  
20 that there is no issue when the jury comes  
21 up. So, yes, we'll make sure we cover that  
22 as we go along.

23 SOLICITOR HAMILTON: And, Your  
24 Honor, we would request that anybody who is  
25 not -- just sequester witnesses who're not

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1 the Defendant and -- you know, the State  
2 would comply too.

3 THE COURT: All right. And,  
4 again, I don't see anybody else in the  
5 courtroom, other than your folks but we will  
6 have a sequestration Order.

7 Do y'all have any response to that?

8 MR. BRADLEY: Yeah. We have no  
9 problem with that, Your Honor. We have  
10 probably just one witness who's supposed to  
11 be here.

12 THE COURT: Okay.

13 MR. BRADLEY: Anyway, it's one of  
14 those where we might not even know who a  
15 witness is going to be.

16 THE COURT: That's fine. And make  
17 sure they're instructed they're not to  
18 discuss the case before the their testimony.

19 MR. BRADLEY: Certainly, Your  
20 Honor.

21 SOLICITOR HAMILTON: Thank you.  
22 And then the last thing that the State would  
23 ask is just whether the defense complied with  
24 *Brady*; you know, provided all necessary  
25 discovery.

1 THE COURT: All right. And your  
2 response on that?

3 MR. BRADLEY: Yes, Your Honor. We  
4 don't have any additional information, with  
5 the exception that I will disclose and I  
6 think I did tell the prosecution that one of  
7 the witnesses -- that I did speak with one of  
8 the witnesses. I didn't take any statements  
9 or anything like that. So that's pretty much  
10 it. There's nothing and I've been allowed to  
11 conduct my investigation.

12 THE COURT: Yeah. Okay. Any  
13 response to that?

14 SOLICITOR HAMILTON: No, Your  
15 Honor.

16 THE COURT: Okay. All right.  
17 Anything else?

18 SOLICITOR HAMILTON: Nothing from  
19 the State, Your Honor.

20 THE COURT: All right.. Please  
21 call your first witness. Oh, do y'all want  
22 to make a brief statement or anything?

23 SOLICITOR HAMILTON: The State  
24 waives opening.

25 THE COURT: All right.

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1 MR. BRADLEY: Your Honor, the Defendant  
2 would waive too at this time.

3 THE COURT: Okay.

4 MR. BRADLEY: I think all the  
5 evidence will come out in testimony.

6 THE COURT: All right. You may  
7 call your first witness.

8 SOLICITOR HAMILTON: Thank you,  
9 Your Honor. The State calls officer Randy  
10 Gibson.

11 (WITNESS TAKE STAND)

12 RANDY GIBSON, having been duly sworn to  
13 tell the truth, and nothing but the truth,  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR HAMILTON:

17 Q. Good morning, Mr. Gibson?

18 A. Good morning.

19 Q. Would you please state your full  
20 name for the court?

21 A. William R. Gibson, II.

22 Q. And what is your occupation?

23 A. I'm currently employed with York  
24 County Sheriff's Office as a deputy sheriff.

25 Q. And what type of work do you do in

1 your position?

2 A. I am currently a patrol deputy  
3 assigned to the Fort Mill district.

4 Q. What did do prior to taking this  
5 position?

6 A. For approximately nine years, I was  
7 assigned to the York County multi-  
8 jurisdictional highway interdiction team.

9 Q And can you state for the court what  
10 that job entails?

11 A. Primarily, we patrol the main  
12 thoroughfares throughout York County,  
13 primarily focused our attention on I-77,  
14 conducting criminal enforcement. Our primary  
15 goal for our unit was safety for the citizens  
16 of York County.

17 Q. Okay. And were you employed in that  
18 capacity, working for the drug enforcement  
19 unit the morning of February 18, 2015?

20 A. I was.

21 Q. Now, I would like to draw your  
22 attention to that morning. What were you  
23 doing around 10:50 in the morning?

24 A. I was stationary at the York  
25 County/Chester County line, monitoring the

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1 northbound flow of traffic within York  
2 County.

3 Q. Did you observe anything abnormal  
4 around that time?

5 A. I did.

6 Q. And what did you observe?

7 A. I observed a white-in-color Nissan  
8 Maxima come by, traveling behind -- initially  
9 it came by northbound and I noticed it was  
10 following too close to a tractor trailer.

11 Q. And what did you proceed to do when  
12 you saw that?

13 A. At that time, I pulled out and  
14 proceeded to catch up with the vehicle and  
15 initiate a traffic stop.

16 Q. Okay. Where did you initiate that  
17 traffic stop?

18 A. Mile marker 73, which Mt. Holly Road  
19 in Rock Hill, York County.

20 Q. York County?

21 A. (Affirmative nod).

22 Q. And could you please explain to the  
23 court what happened once you stopped that  
24 vehicle?

25 A. I approached the passenger's side of

1 the vehicle and made contact with the driver.  
2 As I was speaking with the driver, the  
3 Defendant, which is present in the courtroom  
4 today, Mr. Brown, he immediately started  
5 talking to me also. I think at some point in  
6 time he said this was a rental car. The  
7 driver never could produce a driver's license  
8 or any type of identification.

9 Q. Did she give you a name?

10 A. Subsequently she did. "Anita  
11 Trappier", I believe it was.

12 Q. Okay. So you spoke with the driver.

13 A. (Affirmative nod).

14 Q. You said she couldn't produce ---

15 A. She couldn't produce any type of  
16 identification as to who she was.

17 Q. Okay. So what happened next? Once  
18 you spoke with her, she didn't produce any  
19 identification. What did you proceed to do?

20 A. I eventually asked her to step from  
21 the vehicle and to the rear of it.

22 Q. And what did you proceed to do at  
23 that point?

24 A. I questioned the name that she'd  
25 given me, Anita Trappier, about did she have

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Testimony of W.R. Gibson - Direct Examination

1 any type of ID on her at all. Nothing. I  
2 asked Ms. -- we ended up getting in my  
3 vehicle due to the cold weather. So we ended  
4 up sitting -- she was on my front seat. And  
5 while I was inside trying to verify who she  
6 was on my computer and through dispatch, I  
7 was having conversation with her about where  
8 she was going, where they were going. How  
9 long they plan on being there, things of that  
10 nature.

11 Q. Did you ever identify who she was?

12 A. Her true identification didn't come  
13 about until we got to the Rock Hill police  
14 department.

15 Q. Okay. Did you eventually speak with  
16 the passenger?

17 A. I did.

18 Q. Okay. And who was that passenger?  
19 Did you identify him?

20 A. Mr. Calvin Brown.

21 Q. Okay. And did you speak to him ---

22 A. I did.

23 Q. --- about what was going on?

24 A. I did.

25 Q. Okay. What did he say when you

1 spoke with him?

2 A. He said they were heading to  
3 Morganton, North Carolina. I know he had a  
4 conversation with the constable that was  
5 riding with me that evening, as I was in my  
6 vehicle speaking with the female. I did ask  
7 -- based on my observation and getting the  
8 conflicting stories, and no luggage and  
9 saying that they were going to be somewhere  
10 overnight. And then it was a one-way travel,  
11 a rental car, air freshener, everything that  
12 painted the picture of criminal activity. I  
13 think he stated he had known her for a period  
14 of years. And then she said that it was a  
15 different amount of years that she had known  
16 him. So I just drew the conclusion that  
17 there was criminal activity present.

18 Q. Okay.

19 A. And I asked him could I search the  
20 vehicle.

21 Q. And did he consent to the search?

22 A. He denied consent.

23 Q. Okay. What did you proceed to do  
24 when he denied consent?

25 A. I explained to Mr. Brown that I had

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Testimony of W.R. Gibson - Direct Examination

1 a drug K-9 inside my vehicle. And I  
2 explained to him the procedure of, you know,  
3 'we're going to walk the K-9 around the  
4 vehicle.' At that time he made the comment  
5 that, 'look, well, the dog's going to alert.'

6 Q. So at the time he stated the dog  
7 would alert, what did you do?

8 A. I eventually walked back -- well, I  
9 asked Mr. Brown to step from the vehicle,  
10 which he did. He stepped back to the front  
11 of my vehicle with the state constable that I  
12 had with me. I deployed my K-9, Justice,  
13 from the vehicle, escorted him around the  
14 car, at which time he gave a positive alert  
15 to the passenger rear door area of the car.

16 Q. Okay. Let me ask you a few  
17 questions regarding your history as a K-9  
18 handler, or narcotics detection. How long  
19 have you worked as a K-9 handler?

20 A. I started back in 2007.

21 Q. Okay. And who is your K-9 partner  
22 or was your K-9 partner?

23 A. Justice.

24 Q. Okay. How old is Justice?

25 A. He is approximately ten years of

1 age. He's a rescue dog. When we adopted him  
2 at the York County Sheriff's Office, we don't  
3 know his true age. Based on veterinarian and  
4 up, you know, doing annual checks, he looks  
5 to be about ten, eleven years of age.

6 Q. Okay. And how long has he been in  
7 service?

8 A. Since 2007, we started training him.

9 Q. Okay. So around seven, eight years?

10 A. Correct.

11 Q. And what law enforcement functions  
12 does Justice, your K-9 partner, perform?

13 A. He's solely trained on the odor of  
14 illegal narcotics.

15 Q. And what kind of narcotics has he  
16 been trained to alert to?

17 A. Marijuana, crack, cocaine, heroin,  
18 methamphetamine and ecstasy; if that's six.

19 Q. And was the K-9/Justice deployed for  
20 the purpose of conducting a free air sniff on  
21 the incident date of February 18<sup>th</sup>, 2015?

22 A. He was.

23 Q. Okay. And had he performed  
24 narcotics detection prior to that date, your  
25 dog?

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1 A. Many.

2 Q. Many?

3 A. (Affirmative nod).

4 Q. Okay. And during those prior police  
5 sniffs as well as controlled sniffs conducted  
6 during training exercises, has he  
7 demonstrated reliable detection of narcotics?

8 A. Yes, ma'am.

9 Q. What training had Justice, your  
10 canine partner, received prior to the  
11 incident date of February 18<sup>th</sup>, 2015?

12 A. Well, he's certified through the  
13 South Carolina K-9 association. We go  
14 through a recert every year to recert our  
15 dogs. Plus, I train eight hours a month, but  
16 I break my training down to two four-hour  
17 days a month.

18 Q. So you receive training in addition  
19 to the dog receiving training at the same  
20 time?

21 A. I have received training.

22 Q. Okay. And have you and your K-9 --  
23 you said you have been certified by an  
24 organization. What is that organization  
25 again?

1           A.    It's the South Carolina Police K-9  
2 Association. I have a certificate over  
3 behind you there.

4           Q.    And how often is that certification  
5 required?

6           A.    Annually.

7           Q.    What breed is your K-9 partner,  
8 Justice?

9           A.    Labrador retriever.

10          Q.    Okay. And is this breed known for a  
11 huge sense of smell?

12          A.    Yes, ma'am.

13          Q.    And is the breed commonly used for  
14 narcotics detection?

15          A.    Labrador retrievers are commonly  
16 known for drug detection.

17                   SOLICITOR HAMILTON:    Your Honor,  
18 the State would have Officer Gibson declared  
19 an expert in canine narcotics detection.

20                   THE COURT:    Are there any  
21 questions or objections?

22                   MR. BRADLEY:   No objection on him  
23 being an expert on K-9 use.

24                   THE COURT:    All right. I'll ---

25                   MR. BRADLEY:   If it please the

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1 Court, Your Honor. There is a -- and I hate  
2 to interrupt, Your Honor. I saw two people  
3 just come in. And I know the person on this  
4 side. And I think that this may be one that  
5 I had on my witness list, Anita Trappier's  
6 uncle. But since you wanted the witnesses  
7 suppressed, I wanted to bring that to your  
8 attention.

9 THE COURT: All right. Let's take  
10 a second. Do you want to talk to him?

11 MR. BRADLEY: Yeah. I just want to  
12 make sure because I don't want him to sit in  
13 here during the -- I'm sorry about that. I'm  
14 sorry to interrupt.

15 THE COURT: Yeah. Run and do  
16 that.

17 (COURT AT EASE)

18 MR. BRADLEY: Thank you, Your Honor.

19 THE COURT: All right.

20 MR. BRADLEY: I'm sorry.

21 THE COURT: That's fine. So based  
22 on the -- I do find that he is -- based on  
23 the consent and the testimony, I do find that  
24 he is qualified, so qualified as a K-9  
25 narcotics detection canine handler.

1 SOLICITOR HAMILTON: Thank you,  
2 Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HAMILTON:

5 Q. You stated earlier that you talked  
6 with the Defendant about a K-9 search that  
7 day, February 18<sup>th</sup>, 2015. Did you have your  
8 K-9, Justice, with you at that time of the  
9 stop?

10 A. I did. He was on scene.

11 Q. Okay. Now, what did you do? You  
12 stated you asked him to get out of the  
13 vehicle. Did you direct your K-9 partner,  
14 Justice, to conduct the sniff?

15 A. Yeah. I put him on cue. He's got  
16 a toy that he's rewarded. And it's only  
17 associated with training with illegal  
18 narcotics. So when he sees this toy and I  
19 put him on cue to start searching, he  
20 immediately knows his job. So that's what I  
21 did.

22 I start at the front of the vehicle and  
23 I came down. I started -- I always present  
24 the seams of the car doors because that's the  
25 weakest part of a car that is going to emit

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1 any type of odor, generally. You know, I  
2 mean, window sills or anything like that. So  
3 I try to present areas of the car where air  
4 is going to be released.

5 Q. Okay. And where did you present the  
6 dog on that date?

7 A. Down the side of the car.

8 Q. Which side of the car?

9 A. Driver's side.

10 Q. Okay. And when you're presenting  
11 with a dog, you're not telling the dog to  
12 alert when you're presenting at that time;  
13 are you?

14 A. No, ma'am.

15 Q. So when you're presenting, you're  
16 asking him to sniff?

17 A. Right.

18 Q. And what are you looking for during  
19 this sniff for him to do?

20 A. Justice's alert to me is -- he is,  
21 what you would refer to as a passive alert K-  
22 9. He's been trained to sit when he alerts.  
23 And the reason we train them to do that, we  
24 don't want him scratching on peoples'  
25 vehicles and other peoples' property and

1 causing damage because we're ultimately  
2 responsible. So through the whole course of  
3 his training, when he sits and gives me that  
4 look, that's the indication that he is  
5 smelling the odor that he has been trained to  
6 recognize, to alert to.

7 Q. Okay. And on February 18, 2015,  
8 what was the final response from Justice?

9 A. It was a positive alert. He sat.

10 Q. To what part of the vehicle?

11 A. Right at -- like I said, at the back  
12 door area.

13 Q. Okay. Once you observed this alert,  
14 this behavioral change in Justice, what did  
15 you proceed to do?

16 A. I put the K-9 back in my vehicle. I  
17 believe I informed the individuals that I was  
18 going to conduct an interior search of the  
19 vehicle.

20 Q. And what did you ultimately find in  
21 your search of the vehicle?

22 A. What all I found?

23 Q. Well, what did you ultimately, yes,  
24 find?

25 A. There was a couple of jackets on the

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1 back seat. I believe one belonged to the  
2 female and one belonged to Mr. Brown. I  
3 actually pulled the jacket from the vehicle,  
4 asked Mr. Brown was this his jacket. And he  
5 replied, 'yes, that's my jacket.' Inside one  
6 of the jacket pockets was a -- looked like a  
7 little toothpick container that contained a  
8 powdery substance. And, also, a hard  
9 substance, which I recognized to be crack  
10 cocaine.

11 Q. In what jacket was that found in?

12 A. Mr. Brown's.

13 Q. Okay. Is that the male jacket?

14 A. The male jacket; correct.

15 Q. So you believed this substance that  
16 you found to be an illegal substance?

17 A. No doubt.

18 Q. On scene did the Defendant identify  
19 the nature of the substance found in his  
20 jacket pocket?

21 A. I'm sorry. Can you repeat the  
22 question?

23 Q. Yeah. While you were on scene, did  
24 the Defendant identify the nature of that  
25 substance that was ultimately found in his

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1 jacket pocket?

2 A. He did not.

3 Q. Okay. Who ultimately came to that  
4 conclusion of what the substance was?

5 A. I did.

6 Q. And what was your conclusion?

7 A. Cocaine.

8 Q. Okay. And what was that based on?

9 A. Observation, what it appeared to be  
10 at the time. To me, at that time, it looked  
11 like cocaine. And like I said, it had crack.  
12 There was a crack -- piece of a crack rock in  
13 there. And I know you've got to have cocaine  
14 to make crack.

15 Q. Let me hand you what's been marked  
16 State's Exhibit 1 for identification  
17 purposes. I want you to take a look at it.

18 A. Sure.

19 Q. Let me show the defense first.

20 MR. BRADLEY: (Upon review), no  
21 objection.

22 THE COURT: All right. So that's  
23 State's Exhibit 1.

24 SOLICITOR HAMILTON: State's  
25 Exhibit 1 for identification purposes, Your

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1 Honor.

2 THE COURT: Well, I believe he  
3 said no objection.

4 SOLICITOR HAMILTON: Okay. Yeah,  
5 we haven't -- we're going to ultimately admit  
6 this exhibit under the drug expert.

7 THE COURT: All right.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR HAMILTON:

10 Q. Could you please take a look at  
11 that? Do you recognize State's Exhibit 1?

12 A. (Upon review), I do.

13 Q. Okay. And what is that?

14 A. Heroin.

15 Q. Okay. Is that the bag that you  
16 recovered out of the Defendant's pocket on  
17 February 18<sup>th</sup>, 2015?

18 A. It is.

19 Q. Now, I'm going to skip forward and  
20 then I'm also going to go back later. But  
21 back at the police department were you able  
22 to determine how much heroin was actually in  
23 that bag?

24 A. Yes, ma'am.

25 Q. Could you state for the Court how

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1 much?

2 A. Approximately sixteen point five  
3 (16.5) grams.

4 Q. Okay. And once you determined the  
5 weight of the seized heroin, what did you  
6 ultimately do with it?

7 A. I sealed it inside one of our bags,  
8 in our evidence bags to be placed in the  
9 evidence drop, the York County evidence drop.

10 Q. And once you recovered that bag from  
11 that the Defendant on scene, what did you do  
12 with that bag? On scene?

13 A. On scene?

14 Q. Yes.

15 A. I just kept it in my possession.

16 Q. So it was continuously in your  
17 custody and control prior to you taking it to  
18 the station and putting it in a sealed bag?

19 A. Yeah. It was.

20 Q. And is this the envelope that you're  
21 holding in your hand, the envelope you  
22 secured the drugs in on the morning of  
23 February 18<sup>th</sup>, 2014?

24 A. The envelope inside of that. I  
25 didn't put it inside this envelope.

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1 Q. Yes.

2 A. I put it inside the envelope that's  
3 in here.

4 Q. Yes?

5 A. And I also put it in this little  
6 Ziploc bag and put my name on it.

7 Q. Okay. I'm going to ask you again,  
8 what was the condition of the envelope when  
9 it left your possession?

10 A. Sealed.

11 Q. It was sealed?

12 A. (Affirmative nod).

13 Q. What did you do with envelope once  
14 you sealed it?

15 A. I placed it in the evidence locker  
16 which is owned by the York County Sheriff's  
17 Office, but located at the Rock Hill Police  
18 Department.

19 Q. Okay. And is that a secured locker?

20 A. Yes.

21 Q. And is it locked? Anyone else can't  
22 access it?

23 A. Correct.

24 Q. Now, back on scene -- I said I was  
25 going to skip back. Back on the scene, did

1 you read the Defendant his *Miranda* rights?

2 A. I did.

3 Q. Okay. Now those are the rights that  
4 we hear, *you have the right to remain silent,*  
5 *anything you say* -- are those the rights that  
6 you read to him?

7 A. It is.

8 Q. And where on scene did you read him  
9 his rights, what location?

10 A. It was directly in front of my car  
11 at the back of theirs.

12 Q. Okay. Can you tell us a little bit  
13 about the environment, officers present  
14 during that?

15 A. It was myself, State Constable  
16 Janeski (phonetic), the defendant, and the  
17 female that I hadn't identified that was  
18 there. And the traffic was -- down on the  
19 south end it's usually moderate.

20 Q. And when you read these rights to  
21 him, was anyone threatening him?

22 A. No, ma'am.

23 Q. Did he state that he understood  
24 these rights?

25 A. Yes, ma'am.

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1 Q. And did you ultimately question him  
2 in regards to the brown powdered substance  
3 found in his jacket?

4 A. At the police department, yes,  
5 ma'am, I did.

6 Q. And when you were questioning him at  
7 the police department, was anyone threatening  
8 the Defendant?

9 A. No, ma'am. Let me add also, yes, on  
10 the scene I did -- when I removed this from  
11 the jacket, I did ask Mr. Brown what this was  
12 and he stated he didn't know what it was.

13 Q. Okay. So back at the station when  
14 you did speak to him and you took a statement  
15 from him, was the Defendant handcuffed?

16 A. No, ma'am.

17 Q. What other officers were present at  
18 that time?

19 A. I don't recall.

20 Q. Was it a bunch of officers in a  
21 room, around him?

22 A. There were several narcotic agents  
23 inside the office area.

24 Q. Okay. Tell us about that  
25 environment, when you took his statement.

1           Could you please explain to the Court the  
2           environment in which you took his statement?

3           A.    Well, the office is one big office  
4           with some adjoining offices.  One of them is  
5           the supervisor's office.  The other one's  
6           another like interview room.  And then we  
7           have another office with a desk that we also  
8           utilize as a interview room at times when we  
9           bring in more than one or two people.

10          Q.    So you were working around people?

11          A.    Yeah.  Yes, ma'am.

12          Q.    So they're not focused on you while  
13          you're taking the statement?

14          A.    Right.

15          Q.    Okay.  And when you took the  
16          statement, did he appear to be hurt or  
17          injured?

18          A.    No, ma'am.

19          Q.    And he was able to understand what  
20          was going on.  He was coherent?

21          A.    Yes, ma'am.

22                   MR. BRADLEY:  Objection, Your Honor.  
23           That requires him to know the state of my  
24           mind of my client, which he can't testify to.

25                   THE COURT:    All right.

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1 SOLICITOR HAMILTON: The State's  
2 just asking if he was under the influence.  
3 Did he appear to be under the influence based  
4 on his years in law enforcement.

5 MR. BRADLEY: Objection.

6 THE COURT: I'd ask you to  
7 rephrase your question.

8 SOLICITOR HAMILTON: Okay. I'll  
9 move on, Your Honor.

10 THE COURT: Okay.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR HAMILTON:

13 Q. What did you ultimately ask him?

14 A. I ultimately ask him was the cocaine  
15 his. And he replied, yes. And I asked him  
16 how much ---

17 MR. BRADLEY: Objection again, Your  
18 Honor. That objection is based on our  
19 pretrial motion.

20 THE COURT: Okay.

21 MR. BRADLEY: And I understand that.

22 THE COURT: I think it really goes  
23 to weight. I'll be glad to ---

24 MR. BRADLEY: Certainly. Thank  
25 you.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR HAMILTON:

3 Q. You can go ahead. You replied, yes.  
4 And then what else did he say?

5 A. Then he stated he paid a thousand  
6 dollars (\$1,000) for the substance, which I  
7 kept referring to as cocaine.

8 Q. But he never refers to it as  
9 cocaine?

10 A. He never referred to it as cocaine.

11 Q. And is a thousand dollars consistent  
12 with the amount someone would pay for this  
13 amount of heroin based on your experience in  
14 law enforcement?

15 A. Yeah.

16 Q. Do you see the person in the  
17 courtroom today that you seized that bag of  
18 heroin from and arrested the morning of  
19 February 18, 2015?

20 A. I do.

21 Q. Okay. Could you please point him  
22 out?

23 A. He's sitting right over there  
24 between the deputy and the defense attorney,  
25 in the white shirt with the greenish tie.

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1 SOLICITOR HAMILTON: Your Honor,  
2 the State would ask the record reflect that  
3 he did identify the Defendant, Mr. Calvin  
4 Brown.

5 THE COURT: All right, it so  
6 noted.

7 SOLICITOR HAMILTON: I beg the  
8 Court's indulgence, Your Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR HAMILTON:

11 Q. And when you were questioning the  
12 Defendant, did he appear to understand what  
13 was going on when you were questioning him  
14 and taking his statement?

15 A. Clearly.

16 Q. Clearly?

17 A. Yes, ma'am.

18 Q. And when you read him *Miranda* rights  
19 on scene, was that before or after you found  
20 the drugs?

21 A. After.

22 Q. Please answer any questions the  
23 Defense may have.

24 A. Yes, ma'am.

25 THE COURT: You may proceed.

1 MR. BRADLEY: Thank you, Your Honor.  
2 Your Honor would you prefer that I stand here  
3 or ---

4 THE COURT: Whatever you want to  
5 do, that's fine.

6 CROSS-EXAMINATION

7 BY MR. BRADLEY:

8 Q. Officer Gibson, just to -- just  
9 first to go over a couple of things that you  
10 just stated. You said that my client made a  
11 statement. Can you tell the Court exactly  
12 what that statement was that my client made?

13 A. About the heroin?

14 Q. Yes. About any type of ownership  
15 that he was expressing over the heroin or  
16 this cocaine or whatever it was.

17 A. He stated that the cocaine was his  
18 and that he had paid a thousand dollars for  
19 it.

20 Q. Okay. He said that the cocaine was  
21 his; is that correct?

22 A. Correct.

23 Q. And the substance in that bag was  
24 not cocaine; am I correct?

25 A. Correct. It tested positive for

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1 heroin.

2 Q. When he told you that, did you --  
3 why did you not have him sign a statement to  
4 that effect?

5 A. I just didn't.

6 Q. Okay. He's basically telling you  
7 that the huge amount of substance that was  
8 found is his. Is it not the policy that you  
9 all at least get a statement from a witness  
10 who's actually confessing?

11 A. Not to my knowledge, there's no  
12 policy on it.

13 Q. In your practice do you normally --  
14 if a witness comes in or has someone that's  
15 made a statement, do you normally either get  
16 it recorded, written? Do you have the  
17 officer involved? What is the procedure that  
18 you do?

19 A. We don't record it. We have had  
20 statements taken and we have statements taken  
21 orally.

22 Q. I'm sorry. I missed that last part.  
23 I'm sorry.

24 A. We have taken statements orally.  
25 And we have taken statements -- written

1 statements.

2 Q. Okay. Well, what do you do in order  
3 to make sure that it's not questioned when we  
4 come to court? Are there any safeguards that  
5 you all take, such as having another witness  
6 present to verify that that person actually  
7 said it?

8 A. Not in all instances, no.

9 Q. Okay. So sometimes you all just get  
10 -- how long have you been a police officer?

11 A. Approximately twenty-one years.

12 Q. Twenty-one years. And in those  
13 twenty-one years you all have never had a --  
14 or you don't see a need to have another  
15 officer there or have a client actually sign  
16 a statement, just to verify that that is  
17 actually the client's statement? You all  
18 just don't have any safeguards or procedures  
19 that are there for that; is that correct?

20 A. Not in every instance, no.

21 Q. Not in every instance. What do you  
22 normally do?

23 A. I'm sorry?

24 Q. What's your normal -- what's your  
25 normal MO? What's your normal modus

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1 operandi? Do you normally get a statement  
2 written? Do you normally take them into the  
3 interrogation room and have them videotaped?

4 A. We do not videotape them.

5 Q. Okay. You don't videotape any type  
6 of confessions that they might give. Do  
7 y'all have equipment there to videotape?

8 A. No.

9 Q. Okay. In your interrogation room,  
10 is there video cameras?

11 A. No, sir.

12 Q. Okay. Is there audio in the  
13 interrogation rooms?

14 A. No, sir.

15 Q. There's no audio either?

16 A. No, sir.

17 Q. Are there other officers available  
18 at the time?

19 A. Like I said earlier, there were  
20 several throughout the office.

21 Q. So there's nothing that would have  
22 stopped you from getting an officer to come  
23 in and say, 'Would you witness this? He's  
24 actually accepting responsibility for the  
25 substance.'

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1 A. No, sir.

2 Q. And why wouldn't you?

3 A. Maybe it was my mistake. Maybe I  
4 should have.

5 Q. You also stated a minute ago that  
6 the K-9 -- that my client said the K-9 would  
7 alert on the vehicle. Were you the one that  
8 was a part of that conversation?

9 A. Yes, sir. I was.

10 Q. So he actually told you that the K-9  
11 would alert on the vehicle?

12 A. He did.

13 Q. Was there any other conversation  
14 regarding that issue? Did he say anything  
15 else?

16 A. Not that I recall.

17 Q. Okay. So you don't remember any  
18 type conversations about K-9s possibly always  
19 hitting, false alerts or anything like that,  
20 that you may have had with Mr. Brown? No  
21 conversations like that?

22 A. He may have. I don't recall.

23 Q. He may have. But he may have said  
24 some other things as well regarding the K-9;  
25 is that what you're saying?

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1 A. He may have.

2 Q. At what point during this procedure,  
3 this stop, did you believe you had reasonable  
4 suspicion that another crime was being  
5 committed? And I say another crime, because  
6 you actually stopped her for following too  
7 closely, which is a traffic violation.  
8 You're still considering that to be, you  
9 know, criminal. So at what point after the  
10 stop did you consider there was reasonable  
11 suspicion for a drug dog to come on the  
12 scene, or to come out of the car because he  
13 was already on the scene?

14 A. The inconsistencies in the two  
15 parties travel itinerary.

16 Q. Okay. And tell me about that? What  
17 were the inconsistencies that actually  
18 alerted you that there may have been drugs in  
19 the car?

20 A. I believe she said they were heading  
21 to Asheville. How long they had known each  
22 other.

23 Q. Well, let's take them one by one.  
24 They were heading to Asheville. Why did you  
25 find that suspicious?

1           A.    Because he had said they were  
2           driving to Morganton.

3           Q.    But had he already told you that at  
4           the time?

5           A.    I believe so

6           Q.    So he first said -- he told you they  
7           were going to Morganton.  And then did you go  
8           back to the patrol car and ask her 'where  
9           y'all going?'

10          A.    I believe I had spoken with her  
11          first and then went back and got -- talk to  
12          Mr. Brown.  And then he stated they were  
13          traveling to Morganton.

14          Q.    Okay.  And what did she say they  
15          were traveling to Asheville, is that what you  
16          testified to?

17          A.    I believe Asheville came out at some  
18          point in time, yes, sir.

19          Q.    And how far apart is Asheville and  
20          Morganton?  Do you have any idea?

21          A.    I have no clue.

22          Q.    So at the time you thought that was  
23          suspicious, were you under the impression  
24          that Asheville was just a significant  
25          distance away from Morganton, which is where

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1           they stated they were going? Which is where  
2           he stated he was going?

3           A.    (No verbal response).

4           Q.    In other words, and I'll just give  
5           you an example. If I say I'm going to Rock  
6           Hill instead of going to York County -- do  
7           you understand where I'm going with this?

8           A.    No, sir.

9           Q.    Okay. Well, let me rephrase and try  
10          to make it clear.

11          A.    Okay.

12          Q.    Did you know at that time the  
13          distance between Asheville and Morganton?

14          A.    I believe I stated I do not.

15          Q.    Okay. Did you have any idea whether  
16          they were even in the same vicinity?

17          A.    Well, I know they're not in the same  
18          vicinity.

19          Q.    Okay. And how do you know that?

20          A.    One, Morganton, North Carolina.  
21          Asheville, North Carolina.

22          Q.    Could they be twenty miles apart?

23          A.    They could have been.

24          Q.    They could have been?

25          A.    (Affirmative nod).

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1 Q. Okay. So I've got to take my point  
2 up. You said that that was the thing that  
3 made you suspicious, that they gave two  
4 different places that they were going to.  
5 But you weren't even certain whether or not  
6 those two places were anywhere near each  
7 other or not; is that correct?

8 A. Correct.

9 Q. So the suspicion there was based on  
10 your knowledge of the fact that those weren't  
11 the same two places; is that correct?

12 A. Correct.

13 Q. Okay. And the second thing you said  
14 that actually made you suspicious was what  
15 again?

16 A. No luggages.

17 Q. Okay. No luggage. And what was  
18 their reason for not having luggage?

19 A. One said that -- I believe she  
20 stated they may stay overnight, they may come  
21 back. He's -- I believe he stated they were  
22 coming back.

23 Q. Okay. Did he also say that may have  
24 stayed overnight because of the dark or  
25 because they didn't want to drive on the

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1 road? Did he make any statement like that  
2 to you or you just don't recall?

3 A. I'm sorry?

4 Q. Did he make any statement to you  
5 that 'yeah we may stay overnight, simply  
6 because we may not have driven back on the  
7 road' or 'we would be back early that next  
8 morning'?

9 A. No. I don't recall.

10 Q. Okay. But you're not saying he did  
11 not. You just don't recall; that's correct?

12 A. Correct.

13 Q. Okay. And so if they were taking a  
14 trip there that day, to be coming back that  
15 day would no luggage, would that have been  
16 suspicious?

17 A. Repeat the question, please?

18 Q. I'm sorry. If you found out that  
19 they said that they were only going to North  
20 Carolina for that day and they were coming  
21 back that day and there was no luggage in the  
22 vehicle, would that have been suspicious to  
23 you as well?

24 A. No.

25 Q. Okay. If they said they were

1 staying overnight and coming back the next  
2 day, would that have been suspicious?

3 A. With no luggage, (affirmative nod).

4 Q. And why would that be? Why would  
5 you find that if someone's going that day and  
6 coming back that day or maybe the next  
7 morning, why would be considered suspicious  
8 that they didn't have any luggage?

9 A. Because out of the thousands and  
10 thousands of traffic stops that I've made  
11 over the twenty-one years most people that  
12 travel and are going to stay somewhere  
13 overnight at least take a tooth brush with  
14 them.

15 Q. So you're thinking that it's clearly  
16 abnormal to not at least have toothbrushes;  
17 is that correct?

18 A. They had no article of clothing,  
19 other than the jackets ---

20 Q. And so they did have jackets there;  
21 right?

22 A. Correct.

23 Q. Okay.

24 MR. BRADLEY: Beg the court's  
25 indulgence for one second.

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1 CROSS-EXAMINATION CONTINUED

2 BY MR. BRADLEY:

3 Q. You just testified about the luggage  
4 and about whether or not they may have had --  
5 you know, you would have found -- at least  
6 they should have taken a toothbrush with  
7 them, at this particular time when you're  
8 making this determination though, you hadn't  
9 searched the vehicle yet; is that correct?

10 A. No, sir.

11 Q. Okay. So how would you know whether  
12 or not they had a toothbrush in the back or  
13 in a coat pocket or anything like that?

14 A. I wouldn't have.

15 Q. So at that particular time you did  
16 not know whether or not they had any  
17 necessary supplies to stay overnight; is that  
18 correct?

19 A. Correct.

20 Q. And you did not know what was in the  
21 trunk at that time either; is that correct?

22 A. Correct.

23 Q. Okay. But you still thought it was  
24 suspicious that there were places in the  
25 vehicle that you, at that point did not look

1 to see whether or not there was anything  
2 there? Whether there was a toothbrush there  
3 or any overnight bag there. At that  
4 particular point you hadn't searched the  
5 vehicle so you really did not know whether  
6 they had at that time or not. Is that  
7 correct?

8 A. Do you mean prior to the K-9  
9 alerting to the vehicle?

10 Q. I am referring to the time that  
11 you're suspicious. Your K-9, you hadn't --  
12 I'm assuming you had suspicion before you  
13 brought the K-9 out; is that correct?

14 A. Correct.

15 Q. And -- you were suspicious?

16 A. (Affirmative nod).

17 Q. And you said the reason you were  
18 suspicious was because the itineraries were  
19 different and a second thing we're talking  
20 about now is that they didn't have luggage or  
21 at least have a toothbrush or necessities  
22 that would show an overnight trip?

23 A. Correct.

24 Q. And my question to you is you hadn't  
25 searched the vehicle yet, front or truck, so

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1 you did not know whether or not they had  
2 those things at that point; is that correct?

3 A. Correct.

4 Q. So is it fair to say at that point  
5 that maybe your suspicions were not  
6 justified?

7 A. No, they were justified.

8 Q. And they were justified because of  
9 the travel itineraries that was different,  
10 which you were not certain the vicinity and,  
11 secondly, whether or not they had anything,  
12 any luggage or any type of things they need  
13 for an overnight stay. And you're saying you  
14 didn't even check the vehicle yet for that.  
15 So both of those suspicions there, you still  
16 feel that they were actually justified?

17 A. Correct. And that along with the  
18 air freshener inside the rental car.

19 Q. Well, let's talk about the air  
20 freshener?

21 A. Yes, sir.

22 Q. What type of air freshener was in  
23 the car?

24 A. I believe it was a, uh, -- forest.  
25 tree referred to as.

1 Q. Where was it?

2 A. I believe it was hanging from the  
3 mirror.

4 Q. Is that not where most people put  
5 those type air fresheners?

6 A. In personally-owned vehicles or  
7 rental cars?

8 Q. In either/or?

9 A. Correct.

10 Q. Okay. And don't, when people get a  
11 rental car, don't they usually use that  
12 vehicle, unless there's any restrictions by  
13 the rental car company, they typically use  
14 that vehicle as they see fit until they take  
15 it back to the rental car company; is that  
16 correct?

17 A. Yes.

18 Q. It's their vehicle at the time.  
19 It's like a hotel room; is that correct? If  
20 you get a hotel room, that's your room. If  
21 you choose to spray air freshener in that  
22 room, you have the right to do that; is that  
23 correct?

24 A. You have that right; correct.

25 Q. Okay. So he did have a right to

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1 have a air freshener in the car; is that  
2 correct?

3 A. Correct.

4 Q. Okay. And that air freshener, what  
5 is it about that that made you suspicious?

6 A. Well, commonly in my training and  
7 experience with rental cars, they like --  
8 people like to personalize their car, a  
9 rental car, to make it look like it's  
10 personally owned.

11 Q. Okay.

12 A. Also, not to mention, to mask the  
13 odor of illegal narcotics that may be in the  
14 car.

15 Q. Certainly. So there's two reasons,  
16 there's two things that could have  
17 necessitated him having the air freshener is  
18 what you're testifying to. One, he may have  
19 wanted it for his own personal to him of the  
20 rental vehicle. But two, in your experience  
21 is it's been used to mask the scent of drugs.  
22 Mask the scent -- when you say mask the scent  
23 of drugs, what type of drugs are you talking  
24 about?

25 A. Heroin, cocaine, marijuana.

1 Q. Is there a distinct smell of heroin  
2 that you're aware of?

3 A. Heroin smells like heroin.

4 Q. Okay. What does it smell like? I  
5 mean, "heroin smells like heroin." I mean,  
6 does it have a -- what's the difference in  
7 the smell of heroin and the smell that's in  
8 this courtroom now?

9 A. Heroin smells like heroin. I don't  
10 smell heroin in this courtroom today, other  
11 than what's in front of me, but it's in a  
12 sealed bag.

13 Q. Okay. On the scene you thought that  
14 it was cocaine. Does cocaine have a distinct  
15 smell?

16 A. Cocaine smells like cocaine.

17 Q. Okay. So why weren't you able to  
18 determine, based on the smells, whether or  
19 not it was heroin or cocaine?

20 A. I don't believe I ever put the  
21 substance up to my nose.

22 Q. Okay. Would it not have been  
23 important to know what the substance was that  
24 you actually arrested him for?

25 A. Yes, sir.

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1 Q. Okay. And you thought it was  
2 cocaine; is that correct?

3 A. Correct.

4 Q. Why didn't you conduct a field  
5 sobriety -- I'm sorry -- a field test of the  
6 substance to determine what it was?

7 A. I don't believe at that time I had a  
8 field test kit in my vehicle for heroin.

9 Q. Okay. What were you doing out there  
10 that morning with the state constable?

11 A. Repeat the question, please.

12 Q. What was you all's job that day?  
13 What were you doing? Were you on patrol?  
14 Were you looking for a burglary suspect?  
15 What were you all doing there that day,  
16 parked stationary, the day that you all  
17 pulled my client over?

18 A. I was conducting criminal enforce-  
19 ment on I-77, which is what my duties -- what  
20 I was assigned to do.

21 Q. Okay. And what duties were you  
22 assigned to do at that time?

23 A. Conduct criminal enforcement.

24 Q. Okay. Does criminal enforcement  
25 include traffic stops as well?

1 A. High-volume traffic stops.

2 Q. Okay. What do you mean by high-  
3 volume traffic stops?

4 A. A lot of traffic stops. At that  
5 time I did not answer calls, domestics. My  
6 job was to conduct traffic stops on the  
7 interstate, provide safety for the citizens  
8 of York County.

9 Q. Okay. Well, you're a member of the  
10 drug suppression team; right? Or the drug  
11 enforcement unit; is that correct?

12 A. I'm sorry?

13 Q. Are you a member of the drug  
14 enforcement unit with York?

15 A. Yes, sir, I was.

16 Q. Okay. So as a member of the drug  
17 enforcement unit it's your job not to be  
18 looking out for signs of illegal drugs? Is  
19 that not what you were doing there that day?

20 A. That, among other things.

21 Q. Okay. So you were -- I mean, you  
22 know, you had a K-9 unit in the back of the  
23 car. My question is, is it -- was your job  
24 that day to be seeking out drug enforcement  
25 or to be doing traffic, where you're just

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1 particularly concerned with traffic?

2 A. My primarily job was protect the  
3 citizens of York County and try to prevent  
4 accidents occurring within York County on the  
5 interstate.

6 Q. Okay. And what alerted you to this  
7 car that you pulled over?

8 A. They were following too close.

9 Q. They were following too close. Can  
10 you explain to the Court what following too  
11 close in your opinion is?

12 A. Well, the rule of thumb for every  
13 ten miles an hour one car length. So if  
14 you're traveling approximately two car  
15 lengths at sixty or seventy miles an hour,  
16 that's too close.

17 Q. Okay. Did you know how fast that  
18 vehicle was going?

19 A. I didn't have an accurate radar  
20 speed. No, I did not.

21 Q. Okay. So you did not know whether  
22 my client was actually going sixty-five or  
23 not; is that correct?

24 A. That vehicle was doing at least  
25 sixty.

1 Q. And how would you know that if you  
2 were stationary?

3 A. Just based on observation of the  
4 vehicle traveling.

5 Q. It was doing at least sixty. And  
6 the speed limit on that road was what?

7 A. In that particular area, it's  
8 seventy.

9 Q. It's seventy and the car was doing  
10 sixty. Okay. How close was this vehicle to  
11 the truck which you claim it was following  
12 too closely?

13 A. It appeared to be no more than two  
14 car lengths behind the tractor trailer.

15 Q. So the car was actually about two  
16 car lengths behind the tractor trailer?

17 A. Yes, sir.

18 Q. And, again, your rule of thumb as  
19 far as following too close is that cars need  
20 to be at least two lengths back behind the  
21 next vehicle; is that correct?

22 A. No, sir. I said for every ten miles  
23 one car length. That's the general rule.

24 Q. Okay. So the car -- the general  
25 rule is one -- now, I'm sorry. I'm just not

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1 up on this following too closely, in the area  
2 of following too closely?

3 A. Okay.

4 Q. What I'm trying to determine is what  
5 alerted you that that car was actually  
6 following too closely to that semi/truck.  
7 And you may have already answered it but I'm  
8 just trying to make sure that I can  
9 understand what made you make that stop?

10 A. Well, at ten miles an hour one car  
11 length, at sixty miles an hour, it should  
12 have been at least six car lengths. When it  
13 came by, it was not. It didn't appear to be  
14 six car lengths.

15 Q. It didn't appear -- and you've also  
16 admitted already that you were not running  
17 radar at the time. Your radar didn't  
18 indicate how fast that car was going; is that  
19 correct?

20 A. Correct.

21 Q. And so all of these things, the  
22 distance between the truck and the vehicle,  
23 the speed of the vehicle, all these things  
24 that is needed to determine whether someone's  
25 following too closely, what you're telling me

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1 is all of that was made just based on what  
2 you saw at the time; is that correct?

3 A. Correct.

4 MR. BRADLEY: I'm going to beg the  
5 Court's indulgence for just one second, Your  
6 Honor. I may just ask you if you will allow  
7 us to take a five-minute break. I just need  
8 to confer with co-counsel on a major issue.  
9 If you would -- if it's okay?

10 THE COURT: We've been going for  
11 about an hour or an hour and a half. So  
12 we'll take a brief break.

13 MR. BRADLEY: Yes, sir.

14 SOLICITOR HAMILTON: Is he done?

15 THE COURT: No.

16 MR. BRADLEY: I'm not. I'm not  
17 done.

18 THE COURT: The defendant will be  
19 in custody at this time. All right. We'll  
20 take a five-minute break.

21 (DEFENDANT INTO CUSTODY)

22 SOLICITOR HAMILTON: Thank you,  
23 Your Honor.

24 (BRIEF RECESS)

25 MR. BRADLEY: Thank you for the

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1 Court's indulgence.

2 (OFF RECORD DISCUSSION)

3 CROSS-EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Officer Gibson, I just wanted to ask  
6 you. Do you recall whether or not your car  
7 had audio capability?

8 THE COURT: Go ahead.

9 MR. BRADLEY: I was just going to  
10 ask him -- it's not a big deal.

11 THE COURT: Okay.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. BRADLEY:

14 Q. Did you have video, audio and video  
15 equipment in your cruiser at the time?

16 A. I did.

17 Q. Okay. Did you record the incident  
18 regarding the stop where Mr. Brown was  
19 arrested?

20 A. I did.

21 Q. Okay. I would show you this and  
22 show you what it's labeled.

23 MR. BRADLEY: May I approach?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION CONTINUED

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1 BY MR. BRADLEY:

2 Q. You're probably not going to be able  
3 to identify that but ---

4 A. Yeah, that's not our disk.

5 Q. Exactly. But did you give a disk to  
6 the prosecutor's office?

7 A. Yes, sir. There was one made  
8 available.

9 Q. And you gave them a disk of the  
10 stop; is that correct?

11 A. I did.

12 Q. And you would be able to look at the  
13 video and tell us whether or not this disk is  
14 an actual depiction of the stop; is that  
15 correct?

16 A. Correct.

17 Q. Okay.

18 MR. BRADLEY: At this time I'm going  
19 to ask Your Honor to allow us to play the  
20 video.

21 THE COURT: How long is it?

22 SOLICITOR HAMILTON: Are we  
23 watching the whole video?

24 MR. BRADLEY: No.

25 THE COURT: I understand. I'm

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1 going to move, just so -- I just want to make  
2 sure that I see.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Mr. Gibson, we're going to show you  
6 a part of the video that -- and I'm going to  
7 ask you some questions about it to  
8 authenticate whether or not it's actually the  
9 video that you actually took in your car?

10 A. Yes, sir.

11 Q. (Video playing) -- Officer Gibson,  
12 at that particular time when you pulled out,  
13 you say that that vehicle that you pulled  
14 over was traveling too close to the truck at  
15 that particular time ---

16 A. It appeared to be; yes, sir.

17 Q. --- when it passed you?

18 A. It appeared, yeah.

19 Q. It did appear that it was traveling  
20 too close, okay. And is there anywhere --  
21 can we run that part slower -- (video  
22 playing). Can you identify for me which  
23 vehicle -- and we'll stop it right there --  
24 (video playing/paused/resumed).

25 A. Can I make a statement?

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1 Q. Let's stop it. Okay.

2 A. The vehicle actually was in lane  
3 one. As soon as he came by, he shifted over.

4 Q. Okay. Let me make sure I'm  
5 understanding this. The vehicle, which you  
6 say he -- but it was actually she that was  
7 driving the vehicle; right?

8 A. Right.

9 Q. So they were in the right lane?

10 A. I believe they were in the number  
11 one lane when they came ---

12 Q. Is the number one lane the right  
13 lane? I'm not sure?

14 A. The number one lane is the left  
15 lane, the fast lane.

16 Q. So they were in the fast lane?

17 A. Correct.

18 Q. Okay. And you just said that they  
19 switched lanes?

20 A. As soon as they went by, I believe  
21 she shifted over behind the truck.

22 Q. Okay. And is that when you  
23 determined they were following too close?

24 A. Correct.

25 Q. Okay. So when they actually changed

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1 lanes to go back over into the right lane ---

2 A. Correct.

3 Q. --- is when you're saying. Is that  
4 depicted on this video? Would you be able to  
5 point it out on this video?

6 A. What do you mean?

7 Q. Would you be able to show on -- does  
8 your video depict that? Would it show that?

9 A. It would depict it following too  
10 closely. I think I actually zoom in on the  
11 car behind the tractor-trailer.

12 Q. Okay. So if we keep going, we'll be  
13 able to see that?

14 A. Correct.

15 Q. Okay -- (video playing/paused).  
16 So at this time they're not traveling too  
17 closely?

18 A. I believe they are.

19 Q. (Video playing) -- is this the point  
20 at which they're following too close to the  
21 truck?

22 A. Yes, sir.

23 Q. Okay. And you can tell, you said  
24 based on the speed and the distance between  
25 cars whether or not they're traveling too

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1 close; is that correct?

2 A. Yes, sir. Correct.

3 Q. Okay. So in other words what I'm  
4 asking you is, you see that times/date on the  
5 video?

6 A. Yes, sir.

7 Q. That means that you actually zoomed  
8 in; is that correct?

9 A. I believe so; yes, sir.

10 Q. Okay. So you were not even this  
11 close to that vehicle at the time; is that  
12 correct?

13 A. (No verbal response).

14 Q. Your video actually is zooming in  
15 and to look closer; is that correct?

16 A. Correct.

17 Q. Okay. So you were able to tell that  
18 they were following too closely from a  
19 distance that was actually farther than this  
20 video is depicting; is that right?

21 A. Correct.

22 Q. And you said that they actually --  
23 you said a minute ago that they were  
24 following too closely when they switched back  
25 over to the right lane?

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1 A. I believe so.

2 Q. Is that right?

3 A. Correct.

4 Q. Okay. Because now you're telling me  
5 they're following too closely in the left  
6 lane?

7 A. Correct.

8 Q. Okay. And your testimony is when  
9 they switched back over to the right lane?

10 A. I believe so.

11 Q. Is that right?

12 A. Correct.

13 Q. And so now you're telling me they're  
14 following too closely in the left lane?

15 A. Correct.

16 Q. Okay. And your testimony is when  
17 they switch back over to the right lane,  
18 they're actually following too closely too?

19 A. Correct.

20 Q. So you're saying they were following  
21 too closely in two instances; is that right?

22 A. Correct.

23 Q. Okay.

24 Q. Continuing -- (video playing). This  
25 is how far you actually are right now; is

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1 that right?

2 A. That's the -- yeah.

3 Q. That's the appropriate distance.

4 A. (Affirmative nod).

5 Q. From that distance how were you able  
6 to tell how many car lengths that that  
7 vehicle is by the truck?

8 A. I could tell that vehicle was too  
9 close to the tractor trailer.

10 Q. And tell me how do you decipher that  
11 from so far away?

12 A. Just on my observation.

13 Q. And your training is basically in  
14 drug enforcement; is that right?

15 A. Solely in drug enforcement?

16 Q. Not solely. But the main purpose --  
17 your main duty -- one of your main duties  
18 besides the broad aspect of public safety is  
19 drug enforcement?

20 A. Correct.

21 Q. Is that correct?

22 A. Yes, sir.

23 Q. And traveling too close to vehicles  
24 does that any in any way indicate that a  
25 vehicle may contain contraband?

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1 A. No, sir.

2 Q. Okay.

3 MR. BRADLEY: Can we go a little  
4 further -- (video playing until officer is  
5 calling out license plate number), stop it  
6 right there. At this particular point in the  
7 video, it's just -- is that car still  
8 following too closely?

9 A. Yes, sir, in my opinion.

10 Q. Okay. Does it not appear to be  
11 almost a truck length in between those two?

12 A. Are you saying that that car's a  
13 truck -- what kind of truck?

14 Q. I'm saying does it not look like  
15 that first truck is ahead of that truck in  
16 the right lane?

17 A. Maybe, maybe not. I can't really  
18 tell.

19 Q. Maybe, maybe not. But it's clear  
20 that that car is behind that truck. Is that  
21 -- I'm talking about the truck in the right  
22 lane.

23 A. Well, that would put that truck  
24 ahead of that truck. I'm not clear.

25 Q. In fact, what I'm saying is there's

1 a truck that the car's following; is that  
2 correct?

3 A. (No response).

4 Q. You see the truck that the white  
5 car's following ---

6 A. I see the suspect car behind the  
7 tractor trailer.

8 Q. Yes, sir.

9 A. And what I believe the vehicle was  
10 committing a traffic violation.

11 Q. Okay. At that time, but what I'm  
12 asking you is based on this view right here,  
13 does it not look like there is about a --  
14 almost a semi-truck distance between that car  
15 in the back and that truck in front of it?

16 A. No, sir.

17 Q. It does not look like that to you,  
18 okay. (Video playing), stop it. Officer  
19 Gibson at this time, is this when you  
20 initiated the lights to make a traffic stop?

21 A. Yes, sir.

22 Q. Okay. And at this particular time,  
23 tell me what your reason for making the stop  
24 is at this particular time?

25 A. I believe we stated earlier they

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1           were following too closely to the tractor  
2           trailer.

3           Q.   That's correct. Okay. Now, at  
4           this particular time it is that it was still  
5           following too closely in your opinion?

6           A.   Right now?

7           Q.   Yes, sir?

8           A.   Probably not.

9           Q.   Probably not?

10          A.   Because they decreased their speed  
11          with the lights and sirens.

12          Q.   Okay. Because you just turned the  
13          lights on just now, just before the video  
14          stopped. And that's why I was asking at that  
15          particular point when you cut the lights on,  
16          were they committing a traffic violation? Or  
17          in your opinion a traffic violation had  
18          already been committed?

19          A.   It had already occurred. It appears  
20          that they were starting to increase their  
21          distance, I guess with the mere fact that I  
22          was behind them.

23          Q.   That they saw you behind them?

24          A.   Correct.

25          Q.   Okay. And there was another officer

1 in the car with you? Was there another  
2 officer in the car with you?

3 A. Yes, sir.

4 Q. Okay. And who was that officer?

5 A. State Constable Dan Janeski.

6 Q. Okay. And he's not an employee of  
7 York County is he?

8 A. No, sir.

9 Q. And State constables, basically they  
10 -- can you explain to me what their jobs are?

11 A. They play various roles throughout  
12 the State. They work functions. They go to  
13 Myrtle Beach and work Bike Week. They can go  
14 and assist other agencies when in need of  
15 help.

16 Q. Typically, what do they do when  
17 they're working with you?

18 A. Solely, they're backup officers.

19 Q. Just backup officers. Does he have  
20 any authority to make arrest or anything like  
21 that?

22 A. Yeah. He's empowered to make  
23 arrests through the South Carolina Law  
24 Enforcement Division.

25 Q. Okay. We can carry on -- (video

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1 playing). Can we stop it there, (video  
2 paused). Officer Gibson, what did you just  
3 -- how did you introduce yourself to them?

4 A. Officer Gibson with the highway  
5 interdiction team.

6 Q. Highway interdiction team. And what  
7 does that highway interdiction team stand  
8 for?

9 A. Basically conducting criminal  
10 enforcement or trying to interdict things  
11 that are being carried from one place to the  
12 other.

13 Q. Okay.

14 A. Whether it be illegal guns,  
15 fugitives ---

16 Q. Sure.

17 A. --- dead bodies.

18 Q. And you all were making this stop at  
19 this particular point the only suspicion you  
20 had was the fact that she was actually  
21 driving too close to the truck; is that  
22 correct?

23 A. And the length of time it took her  
24 to stop.

25 Q. And the length of time it took her

1 to stop?

2 A. Yeah.

3 Q. Okay. Did you cite her for  
4 following too closely?

5 A. I did not.

6 Q. Okay. Did you cite her for failure  
7 to stop for a blue light or police command?

8 A. I did not.

9 Q. Okay. We can go on with the next --  
10 (video playing). Now -- right now, Officer  
11 Gibson, is the driver still in the car?

12 A. I haven't seen her get out.

13 Q. Okay. And he actually -- the  
14 Defendant, from what I just heard, he was  
15 engaged in a conversation with you.

16 A. (Affirmative nod).

17 Q. I heard him say something about  
18 North Carolina. Did he tell you exactly  
19 where he was going at that time?

20 A. I didn't really understand. I did  
21 hear North Carolina.

22 Q. Okay. You asked him where he was  
23 going and he made a response to say -- I  
24 thought we heard him say Morganton, North  
25 Carolina. Did you hear that as well?

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1           A.    You'd have to back it up.  I did  
2           hear North Carolina.

3           Q.    Could you back it up just a little  
4           bit?  Just a teeny bit -- (video replayed).  
5           Now, wasn't the driver actually sitting in  
6           the vehicle listening to him as he just said  
7           Morganton, North Carolina?

8           A.    Yes, sir.

9           Q.    Okay -- (video playing) -- stop it.  
10          At this particular point -- I'm sorry.  Can  
11          you explain what she was just explaining to  
12          you?

13          A.    I really couldn't understand her.

14          Q.    You didn't.

15          A.    Can you repeat that?

16          Q.    Do you recall anything that she may  
17          have said to you at that time?

18          A.    About the license?

19          Q.    Yes, about the license or anything  
20          else that you were asking.

21          A.    I believe she said she had one but  
22          she couldn't produce it.

23          Q.    Okay.  So at this particular time  
24          what you're trying to figure out is who she  
25          is and whether or not she's a licensed

1 driver; is that correct?

2 A. Yeah. And if she was supposed to be  
3 driving the rental vehicle.

4 Q. Okay -- (video playing) -- pause it.  
5 At this particular point is there any  
6 indication of suspicious behavior that you  
7 saw?

8 A. From?

9 Q. And -- I'll withdraw that question.  
10 Was there any type of inconsistencies between  
11 what she was saying and what he told you,  
12 where he told you they were going?

13 A. Other than Asheville, no.

14 Q. And other than the Asheville thing,  
15 there wasn't any other inconsistencies; is  
16 that right? They both said North Carolina,  
17 basically Morganton/Asheville, North  
18 Carolina. And at this point is there any  
19 suspicion on your behalf that there may be  
20 illegal contraband in the vehicle?

21 A. At this point, no, sir.

22 Q. And as we go on, is there going to  
23 be a point where you think that there is some  
24 contraband in the vehicle?

25 A. Yes, sir.

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1 Q. Okay. And could you tell me at  
2 which point that is when you believe that  
3 there was some contraband in the vehicle?

4 A. Well inconsistency in their travel  
5 itinerary. Like I said no luggage, rental  
6 car. The person driving ---

7 Q. And I'm going to interrupt but we  
8 just -- we took -- they just told you the  
9 itinerary, both of them did; is that correct?

10 A. Right.

11 Q. The fact, the driver even told you  
12 his itinerary -- I'm sorry, the passenger,  
13 Mr. Brown, told you where they were going; is  
14 that correct?

15 A. Yes, sir.

16 Q. And you just said that up to this  
17 point there wasn't any inconsistencies; is  
18 that correct?

19 A. Other than the Asheville, the --  
20 where they were going.

21 Q. Okay. Other than that, yes?

22 A. Correct.

23 Q. And so further up, you said there  
24 was going to be a point where things become  
25 inconsistent and you get reasonable suspicion

1 to bring K-9 out; is that right?

2 A. Yes, sir.

3 Q. And can you tell me at what point  
4 that is? I'll forward the video there so we  
5 can look at it.

6 A. Probably after the point where I go  
7 up there and speak with him about how long he  
8 had known her, which was inconsistent with  
9 how long she said she had known him.

10 Q. Okay.

11 A. The fact that she was -- I believed  
12 at that point in time she was lying about who  
13 she was. Most people lie -- when they're  
14 lying, they're hiding something. So I'm ---

15 Q. So it was those things ---

16 A. I'm building my suspicion -- they're  
17 building my suspicion with what they're  
18 telling me.

19 Q. Okay. And the things that they were  
20 saying is the thing that actually gave you a  
21 reasonable suspicion to bring the K-9 out;  
22 right?

23 A. Yes. All the "humms", the "uh's",  
24 the overly friendliness that she was  
25 displaying. Those are things that ---

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1 Q. Overly friendliness; is that what  
2 you said?

3 A. Yeah. She was a little more  
4 friendly than a normal traffic stop folks  
5 would be.

6 Q. And could that have been because she  
7 didn't have a license?

8 A. I don't know why it could have been.

9 Q. Well, what would lead you to believe  
10 that there may be drugs in the car, some type  
11 of drugs because we have a drug dog come out?

12 A. Well, at this point in time, I  
13 didn't know there were drugs in the car.

14 Q. Okay. And you did not -- you didn't  
15 know there were drugs in the car until you  
16 actually searched the car.

17 A. Right.

18 Q. But my question becomes at what  
19 point in time did you develop a reasonable  
20 suspicion to say we need to check this car  
21 for there may be some contraband in the car?

22 A. I think ---

23 SOLICITOR HAMILTON: Your Honor,  
24 objection. This has been asked and answered.

25 THE COURT: Let's move on.

1 CROSS EXAMINATION CONTINUED

2 BY MR. BRADLEY:

3 Q. (Video playing) -- Officer Gibson,  
4 at this particular point -- Officer Gibson,  
5 you and Mr. Brown had a conversation about  
6 the drug dog; is that correct? About the K-  
7 9?

8 A. It was pretty lengthy. Yeah, we  
9 did.

10 Q. It was pretty lengthy?

11 A. Seemed to be on this part.

12 Q. Okay. And I am -- you actually, I  
13 think, in your report basically said that Mr.  
14 Brown stated the K-9 would alert to the  
15 vehicle; is that correct?

16 A. Yes, sir.

17 Q. Do you recall that?

18 A. Yes.

19 Q. All right. Well, wasn't there  
20 initial conversations and wasn't there some  
21 sort of context that was in?

22 A. 'The dog always alerts.' I think I  
23 heard him say that.

24 Q. Okay.

25 A. 'The dog's going to alert. The dog

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1           *always alerts.'*

2           Q.    Okay.  When you're saying here that  
3           he said that the dog would alert on the  
4           vehicle, is that pretty much the context in  
5           which it was given?

6                       SOLICITOR HAMILTON:    Objection,  
7           Your Honor.  I think he's already answered  
8           this question.

9                       MR. BRADLEY:        No, I ---

10                      THE COURT:        I'm going to let him  
11           go.  I mean ---

12                                       CROSS-EXAMINATION CONTINUED

13                       BY MR. BRADLEY:

14           Q.    And I'm trying to make this as clear  
15           as I can.  He didn't just say the dog is  
16           going to alert as if there is contraband in  
17           the car; did he?

18           A.    I don't know; did he?

19           Q.    From what you just saw?

20           A.    (No verbal response).

21           Q.    That conversation?  Did that  
22           conversation seem like, *'hey, the dog is*  
23           *going to hit because I have contraband in the*  
24           *car'?*

25           A.    There was heroin found inside his

1 jacket.

2 Q. That's after the fact.

3 A. And he made the comment ---

4 Q. At this particular point. At this  
5 particular point we haven't found anything.  
6 What you're doing is asking him questions  
7 about the stop and whether there's some  
8 contraband in his vehicle. Right? And the  
9 K-9 hit. And then he replied to you. And in  
10 his reply I'm asking you, in what context was  
11 he talking about the K-9 dog? Was he ---

12 SOLICITOR HAMILTON: Objection,  
13 Your Honor. He doesn't know what context.  
14 This is a subjective ---

15 THE COURT: I'm going to let him  
16 ask the question. Overruled.

17 CROSS-EXAMINATION CONTINUED

18 BY MR. BRADLEY:

19 Q. What I'm saying is that conversation  
20 right there, you asked -- you said that he  
21 said the K-9 would alert. And I'm saying did  
22 you take that as saying there is contraband  
23 in this vehicle because my client said the K-  
24 9 would alert?

25 A. No, I didn't take it like that.

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1 Q. Okay. Exactly. And how did you  
2 understand what he was saying? What was your  
3 understanding of what he was saying in that  
4 conversation?

5 A. That there may possibly be drugs in  
6 the car.

7 Q. Okay. And how did you get that?  
8 Where did you come up with that from?

9 A. Based on him saying the dog is going  
10 to alert.

11 Q. Okay.

12 A. Because I ---

13 Q. Did you not hear him also talk about  
14 the dog may alert because he's seen several  
15 times where that has happened before. Did  
16 you hear anything like that on the video?

17 A. I don't recall hearing it.

18 Q. Okay. Did you recall hearing him  
19 say something about he knows the procedures.  
20 And every time you walk the dog around it  
21 usually always gives a positive alert. Do  
22 you recall hearing that just now on the  
23 video?

24 A. I heard broken -- I heard a lot of  
25 stuttering. You know, um's and uh's. But I

1 don't recall exactly what all was said.

2 Q. Okay. Did you find any other  
3 contraband during that search?

4 A. Other than this heroin?

5 Q. Uh-huh, (affirmative nod).

6 A. I believe there was a small amount  
7 of crack found.

8 Q. Okay. Did you find any kind of  
9 paraphernalia when you found that?

10 A. I believe there were some crack  
11 pipes found.

12 Q. Did you take those into evidence?

13 A. No, sir. I don't believe I did.

14 Q. Okay. Can you explain why not?

15 A. They were crack pipes that had been  
16 burnt and used.

17 Q. And you found crack at the scene; is  
18 that correct?

19 A. I did find crack at the scene.

20 Q. Okay. And did you not think that  
21 those pipes would be somehow relevant to  
22 maybe whose DNA would be on them or who those  
23 pipes actually belonged to?

24 A. I did not.

25 Q. You did not. Okay. And what did

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1 you do with the pipes when you found them?

2 A. I believe them on -- in front of my  
3 camera maybe.

4 Q. Okay. You put them in front of the  
5 camera. And ultimately what did you do with  
6 them?

7 A. I believe I put them back in the  
8 car.

9 Q. So these pipes had burnt -- was  
10 there residue in them? In your opinion, was  
11 there drug residue inside?

12 A. I didn't do a test on them out there  
13 on the scene, no. They appeared to be burnt.

14 Q. They appeared to be burnt.  
15 Indicating someone had used them for probably  
16 using drugs; is that correct?

17 A. Yes, sir. That would be accurate to  
18 say.

19 Q. Did you get a -- and I don't know if  
20 you would notice or if anybody else would  
21 notice, but have you all ever been successful  
22 at getting fingerprints off of things like  
23 crack pipes or pipes like that, like you saw?

24 A. I don't have any idea.

25 Q. In other words, would you have been

1           able to identify whether or not Mr. Brown or  
2           the young lady driving the vehicle had used  
3           that pipe?

4           A.    I don't know, other than maybe doing  
5           a DNA.

6           Q.    And you didn't do a DNA because you  
7           put them back in the car; is that correct?

8           A.    Correct.

9           Q.    Are you familiar with whether or not  
10          any of the evidence was fingerprinted that  
11          you got?

12          A.    I'm unaware.

13          Q.    You're unaware of it? Okay. If I  
14          was to mention to you that there was a  
15          fingerprint analysis done, would that be out  
16          of the ordinary?

17                   SOLICITOR HAMILTON:    Objection,  
18                   Your Honor. He has no idea if there were  
19                   fingerprints performed on.

20                   THE COURT:           Well, I mean, he can  
21                   ask it, you know.

22                   MR. BRADLEY:    He doesn't know.

23                                   CROSS-EXAMINATION CONTINUED

24                   BY MR. BRADLEY:

25                   Q.    Would it be out the ordinary?

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1           A.    That you all only do conduct  
2 fingerprints on stuff, the evidence that's  
3 found, particularly if there's drugs found in  
4 a car?

5           A.    Yeah.  There's fingerprints taken.

6           Q.    And you're just not aware in this  
7 case whether there was or not?

8           A.    I am not.

9           Q.    Okay.  Were there also cellphones  
10 found at the scene?

11          A.    I believe there were several found.

12          Q.    I'm sorry?

13          A.    Several.  Two or more.

14          Q.    Okay.  And did you conduct an  
15 investigation into who those cellphones  
16 belonged to?  Who was the owner of the  
17 cellphones?

18          A.    I believe Mr. Brown was the owner of  
19 maybe two of them.

20          Q.    Okay.  And the other two you just  
21 don't know?

22          A.    I don't recall.

23          Q.    You don't recall?

24          A.    I do not.

25                MR. BRADLEY:  May I approach, Your

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1 Honor?

2 THE COURT: Yes.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Mr. Gibson, I'm going to give you a  
6 photograph that was provided to me in  
7 discovery. Do you recall the contents of  
8 what's in that photograph?

9 A. Yes, sir.

10 Q. Okay. Is that an accurate depiction  
11 of what you found in the vehicle from the  
12 search?

13 A. Yes, sir.

14 Q. With the exception of, I guess, the  
15 heroin.

16 A. Correct.

17 Q. Can you tell the Court what's  
18 actually in that picture?

19 A. It appears to be four cellphones,  
20 maybe one, two, three pipes used to smoke  
21 maybe crack. Push -- maybe two push rods and  
22 a Newport cigarette box and a phone charger  
23 attached to one of the phones.

24 Q. Okay. And I just would like to ask  
25 you in that video I want to show you -- I

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1 want to actually show you in here.

2 A. Yeah.

3 Q. I'm pointing to the wired object  
4 that's right beside the crack pipe. What is  
5 that, in your opinion?

6 A. It appears that may be a push rod.

7 Q. Okay. And what's a push rod?

8 A. I believe that's where they, someone  
9 that would use crack would push the crack up  
10 into the pipe before they actually light it  
11 to smoke it. That's my little bit of  
12 understanding.

13 Q. Okay. Is that clearly evidence of  
14 drug use?

15 A. Clearly, yes, sir.

16 Q. Thank you.

17 MR. BRADLEY: Your Honor, I'd like  
18 to move this -- putting it as an exhibit if  
19 there's no objection by the prosecution?

20 (SO MARKED DEFENDANT'S EXHIBIT 1)

21 THE COURT: Any objection?

22 SOLICITOR HAMILTON: No objection,  
23 Your Honor.

24 THE COURT: All right.

25 Defendant's Exhibit 1 in without objection.

1 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

2 THE COURT: Can you hand that to  
3 me?

4 MR. BRADLEY: Oh, I'm sorry, Your  
5 Honor. I apologize -- (tendering to court).

6 THE COURT:

7 MR. BRADLEY: Yes, sir.

8 CROSS-EXAMINATION CONTINUED

9 BY MR. BRADLEY:

10 Q. If this was the scene, Officer,  
11 where that was the only thing that was found,  
12 would you have arrested the occupants of the  
13 vehicle?

14 A. More than likely not.

15 Q. You would not have. Okay. And why  
16 not?

17 A. There was nothing to test in those  
18 pipes.

19 Q. Okay.

20 A. The pipes were burnt.

21 Q. Okay. Is that not clearly consider-  
22 ed to be drug paraphernalia?

23 A. Oh, clearly paraphernalia.

24 Q. Is it fair to say that you all are  
25 more interested in drug traffickers than

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1 users?

2 A. Yes, sir.

3 Q. Okay. So, at that particularly time  
4 the evidence that showed use, you decided to  
5 put back in the car; is that correct?

6 A. Yes, sir.

7 Q. Okay. And the evidence that could  
8 have possibly showed that someone may have  
9 been dealing drugs as opposed to using it is  
10 the evidence that you're actually proceeding  
11 on today; is that correct?

12 A. That's correct.

13 Q. Okay.

14 MR. BRADLEY: I beg the Court's  
15 indulgence.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. BRADLEY:

18 Q. Just a couple more questions. The  
19 codefendant, although I won't call her a  
20 codefendant because she's actually not. The  
21 lady who was driving the car, did she in any  
22 way give you any indication that she may have  
23 been on drugs or using drugs?

24 A. On the scene?

25 Q. On the scene or during any time you

1 encountered her on this day?

2 A. No, sir.

3 Q. Okay. So you were suspicious at all  
4 that she was under the influence of anything?

5 A. No, sir.

6 Q. Do you know whether or not -- I  
7 think you basically wrote in your narrative  
8 that my client basically said it's his and he  
9 paid a thousand dollars for it. Do you know  
10 of any other statements in this case? Did  
11 anyone else make a statement in this case?

12 A. No, sir. Not that I can recall.

13 Q. Were you later on informed that  
14 someone may have come in and given a  
15 statement, the codefendant, maybe?

16 A. I was just recently made aware, yes,  
17 sir.

18 Q. Okay. So you are aware there was  
19 another statement?

20 A. Yes, sir.

21 Q. Okay. Can you explain that, what  
22 your awareness to that is?

23 SOLICITOR HAMILTON: Objection,  
24 Your Honor. He has no knowledge about the  
25 statement.

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1 MR. BRADLEY: Well, he just said he  
2 knew that there was another statement, Your  
3 Honor.

4 THE COURT: Another statement.  
5 What's your question?

6 MR. BRADLEY: My question is going  
7 to be that -- whether or not there was a  
8 statement by the codefendant? Was he aware  
9 of it and what the substance of that said?  
10 And if he doesn't know ---

11 THE COURT: Well, I'm not sure he  
12 can testify to the substance.

13 MR. BRADLEY: Certainly. If he  
14 doesn't know ---

15 THE COURT: I mean, I don't think  
16 he can anyway ---

17 MR. BRADLEY: Certainly.

18 THE COURT: Yeah.

19 MR. BRADLEY: And I would withdraw  
20 that question.

21 CROSS-EXAMINATION CONTINUED

22 BY MR. BRADLEY:

23 Q. But I will ask this. You said you  
24 were made aware that there was another  
25 statement in this case?

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1           A.   Yeah.  I made aware there was a  
2           statement, yes, sir.

3           Q.   Okay.  Who made you aware of that?

4           A.   The prosecutor and the other  
5           officer.

6           Q.   Okay.  What did they tell you?

7           A.   Because I asked the other officer --  
8           I didn't know she ---

9                    SOLICITOR HAMILTON:     Objection,  
10           Your Honor.  That is hearsay.

11                   THE COURT:     Again, I don't want to  
12           get into hearsay.

13                   MR. BRADLEY:  No further questions  
14           for this witness.  Thank you, Your Honor.

15                   THE COURT:     All right.  Any  
16           redirect?

17                   SOLICITOR HAMILTON:     Yes, Your  
18           Honor.  Just briefly.

19                                   REDIRECT EXAMINATION

20                   BY MS. HAMILTON:

21                   Q.   I know this has been very long so  
22           I'm going to try to go back as far as I can  
23           based on your memory.  But one of those  
24           questions that the Defense did ask you is,  
25           that the Defendant stated the cocaine was

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1 his. And he said cocaine. But on your  
2 direct you stated he never said cocaine out  
3 of his mouth. Do you recall what he said?  
4 What you asked him and what he said when  
5 questioning him in his statement?

6 A. At the Rock Hill Police Department?

7 Q. Yes.

8 A. He said the cocaine was his and that  
9 he had purchased the cocaine for a thousand  
10 dollars.

11 Q. Did he ever identify it as cocaine?

12 A. Yes.

13 Q. Or were you the one who identified  
14 it as cocaine?

15 A. Well, I identified it as cocaine.

16 Q. So he never said "that's my  
17 cocaine"?

18 MR. BRADLEY: Your Honor, he just  
19 answered yes when she asked him did he  
20 identify his cocaine. So she's asking it a  
21 different way now.

22 SOLICITOR HAMILTON: I don't think  
23 he's understanding what I'm saying.

24 THE COURT: Rephrase your  
25 question.

1 SOLICITOR HAMILTON: That's what  
2 I'm trying to do, Your Honor.

3 REDIRECT EXAMINATION

4 BY SOLICITOR HAMILTON:

5 Q. When you asked him what these drugs  
6 were, did he respond as to what the identity  
7 of the drugs were?

8 A. I asked him was the cocaine his?  
9 And he said "yes." And I said "just be  
10 straight up, how much did you pay for it?"

11 Q. What was his response?

12 A. He said a thousand dollars.

13 Q. So he did not say the "cocaine is  
14 mine"?

15 A. Correct.

16 Q. Okay. Thank you. I just wanted to  
17 clarify that. And we were watching the video  
18 -- or actually, let me go back to the  
19 statement. He was asking about other  
20 officers being on scene and why couldn't you  
21 bring another officer in on this questioning.  
22 In your opinion, bringing multiple officers  
23 in front of this defendant and watching over  
24 him, could that come across as intimidating?

25 A. Yes, ma'am, it could.

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1 Q. So you try to keep it intimate?

2 A. Correct.

3 Q. Okay. Now, going to the scene.

4 They made a lot of -- a big deal about the  
5 statement that the Defendant said about the  
6 dog alerting. Remember that?

7 A. Yes, ma'am.

8 Q. What did the Defendant say when you  
9 asked him, when you explained about the dog?  
10 What did he say?

11 A. *'Well, the dog's going to alert.'*

12 Q. The dog's going to alert?

13 A. *'The dog always alerts. The dog's  
14 going to alert.'* *'The dog always is going to  
15 alert'* is what I heard him say.

16 Q. And does Justice always alert when  
17 you're ---

18 A. No. He don't always alert.

19 Q. He doesn't always alert. Dogs don't  
20 always alert?

21 A. Correct.

22 Q. Okay. And when he made that state-  
23 ment about the alert, what in your mind was  
24 going on at that point?

25 A. Can you ---

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1 Q. When he said the dog will alert,  
2 what, in your mind, was going on at that  
3 point? What did you think you would find in  
4 that vehicle?

5 A. Well, based on the totality of the  
6 whole traffic stop, I always suspected that  
7 there was criminal activity present. So when  
8 he said that, that kind of lead me to believe  
9 there's possibly illegal drugs in the car.  
10 Of course, I'm thinking like a reasonable  
11 person, why would he say the dog's going to  
12 alert?

13 SOLICITOR HAMILTON: I beg the  
14 Court's indulgence. No further questions.

15 THE COURT: All right. I've been  
16 advised that we're under a tornado watch at  
17 this moment, so let's take a break.

18 (WITNESS STEPS DOWN)

19 SOLICITOR HAMILTON: Your Honor, I  
20 assume Trooper Gibson can be excused. May he  
21 be excused, Your Honor?

22 THE COURT: Yes. Do y'all have  
23 any objection to him being excused?

24 MR. BRADLEY: Oh, no objection, Your  
25 Honor.

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1

(COURT IN RECESS)

2

(DEFENDANT PRESENT)

3

THE COURT: You may call your next  
4 witness.

5

SOLICITOR HAMILTON: Thank you, Your  
6 Honor. The State would call Patrick  
7 Patterson.

8

(WITNESS TAKES STAND)

9

THE COURT: All right. You may  
10 proceed.

11

SOLICITOR HAMILTON: Thank you, Your  
12 Honor.

13

PATRICK PATTERSON, having been duly sworn  
14 to tell the truth, and nothing but the truth,  
15 testified as follows:

16

DIRECT EXAMINATION

17

BY MS. HAMILTON:

18

Q. Would you please state your full  
19 name for the record?

20

A. Patrick Patterson.

21

Q. And Mr. Patterson, what is your  
22 occupation?

23

A. Evidence control technician with the  
24 York County Sheriff's Office.

25

Q. And what are your duties as an

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1 evidence control technician?

2 A. We take possession of evidence that  
3 the officers drop off either at our secure  
4 location here at Moss Justice or one of our  
5 other two secure locations at Rock Hill PD or  
6 Fort Mill PD. We transport items here. We  
7 secure it here, enter it, log it in, and  
8 store it in a secure location until such time  
9 as needed to leave our possession for testing  
10 or court.

11 Q. Let me show you what's been marked  
12 for identification purposes as State's  
13 Exhibit 1. And would you please take a look  
14 at this exhibit and tell me if you've seen  
15 this before?

16 A. I have. I see that I took  
17 possession of this item on February the 24<sup>th</sup>,  
18 2015 from our location in Rock Hill PD, our  
19 evidence drop.

20 Q. And how did this exhibit come into  
21 your possession? Who submitted it?

22 A. It was submitted by Deputy Gibson.

23 Q. And when you first received this  
24 bag, did it appear to have been tampered with  
25 in any way?

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1           A.    Yes, ma'am.  We check every bag we  
2    get for ---

3           Q.    Was it tampered with?

4           A.    Not at all.  Not at all.

5           Q.    Was it completely sealed when it  
6    came into your possession?

7           A.    The seal was intact and initialed by  
8    Deputy Gibson.

9           Q.    And was this signed when it came  
10   into your possession?

11          A.    Yes, ma'am.

12          Q.    Do you sign this?

13          A.    Yes.  I was -- before I took  
14   possession of it, I signed it.

15          Q.    And while this evidence was with  
16   you, did anybody else have any access to  
17   this?

18          A.    No.  Not until it was in our  
19   evidence room here.

20          Q.    Okay.  And what did you do with the  
21   evidence once you took it into your  
22   possession?

23          A.    I transported it here to our  
24   location, our evidence room.

25          Q.    Is that a secure location?

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1 A. Yes, ma'am.

2 Q. When you logged this evidence out to  
3 the next person, was that evidence bag still  
4 sealed?

5 A. Yes, ma'am.

6 Q. And untampered with?

7 A. Yes, ma'am.

8 Q. And did you sign that bag after it  
9 left your possession?

10 A. After it left my possession, it  
11 returned to my possession. Yes, I did.

12 Q. And if you'd please answer any  
13 questions the Defense may have.

14 MR. SHARPE: We have no questions.

15 THE COURT: Thank you. You may  
16 step down.

17 (WITNESS STEPS DOWN)

18 SOLICITOR HAMILTON: Your Honor,  
19 the State would request Mr. Patterson be  
20 excused.

21 THE COURT: Any objection?

22 MR. SHARPE: No objection.

23 THE COURT: All right. Thank you,  
24 Mr. Patterson.

25 SOLICITOR HAMILTON: The State would

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1 call the last witness Cynthia Mitchum.

2 (WITNESS TAKES STAND)

3 SOLICITOR HAMILTON: May it please the  
4 Court?

5 THE COURT: Yes, you may proceed.

6 CYNTHIA MITCHUM, Having been duly sworn  
7 to tell the truth, and nothing but the truth,  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR HAMILTON:

11 Q. Will you please state your full name  
12 for the record?

13 A. Ms. Cynthia Mitchum.

14 Q. Ms. Mitchum what is your occupation?

15 A. I work as the drug chemist in the  
16 drug department in the York County Sheriff's  
17 Office.

18 Q. And where do you work?

19 A. In the basement of the sheriff's  
20 office.

21 Q. And what do you call that, where you  
22 work?

23 A. The drug analysis laboratory.

24 Q. What are your duties in the drug  
25 lab?

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1           A. I receive evidence and then I'll  
2 analyze the evidence for controlled and non-  
3 controlled substances.

4           Q. And how long have you worked there?

5           A. I've been at the sheriff's office  
6 almost sixteen years.

7           Q. And what education or training to  
8 qualify you to be able to identify illegal  
9 drugs, prescription drugs, and controlled  
10 substances have you had?

11          A. I have a bachelor of science degree  
12 in chemistry that I received from Winthrop  
13 University. Prior to working at the  
14 sheriff's office, I worked with the South  
15 Carolina Law Enforcement Division, commonly  
16 known as SLED, in Columbia for seven and a  
17 half years. And then I've been through  
18 training for instrumentation and analysis.

19          Q. And have you ever been qualified in  
20 court as an expert in drug identification and  
21 analysis?

22          A. Yes, I have.

23          Q. How many times?

24          A. In excess of two hundred times.

25                 SOLICITOR HAMILTON:     Your Honor,

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1 the State would move to offer Ms. Mitchum as  
2 an expert in analysis and identification of  
3 controlled substances.

4 THE COURT: All right. Any  
5 objection?

6 MR. SHARPE: Your Honor, I just  
7 want to ask a couple voir dire ---

8 THE COURT: Yes.

9 VOIR DIRE CROSS-EXAMINATION

10 BY MR. SHARPE:

11 Q. Ms. Mitcham, I'm Pat Sharpe. It's  
12 nice to meet you this morning.

13 A. Nice to meet you.

14 Q. Well . Just briefly, I've got your  
15 CV and I see that you have several trainings  
16 listed. I just wanted to check on each of  
17 these, when these trainings occurred or how  
18 recent they were?

19 A. Okay.

20 Q. The first one it says -- do you have  
21 a copy of this?

22 A. No, I do not.

23 Q. Let me see if I can get you ---

24 MR. SHARPE: May I approach, Your  
25 Honor?

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1 THE COURT: Yes, sir.

2 VOIR DIRE CROSS-EXAMINATION

3 BY MR. SHARPE:

4 Q. Do you recognize that?

5 A. Yes, I do.

6 Q. Okay. Down at the bottom with the  
7 training, I'm just going to go through and  
8 just get you to tell me when the last time  
9 you had training.

10 A. Okay.

11 Q. So the first one, the training in  
12 forensic chemistry at SLED?

13 A. That was years -- let's see, I  
14 started in 1993 to 2000 was when I was at  
15 SLED.

16 Q. Okay. So these were trainings that  
17 occurred while you were employed there?

18 A. Agilent Technologies, I have had  
19 some training since I've actually worked here  
20 at the sheriff's office. I think that was a  
21 couple of years ago.

22 Q. Okay. And what about -- so then  
23 these other two, the training through the  
24 Department of Justice and DEA?

25 A. DEA was while I was at SLED.

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1 Q. While at SLED?

2 A. Yes. Uh-huh.

3 Q. And then -- well, okay. Well, the  
4 last one's just saying that you are  
5 certified?

6 A. Right, that's a yearly certifica-  
7 tion.

8 Q. But you said that's a yearly thing  
9 so they come out every year?

10 A. Correct.

11 Q. Who does that certification?

12 A. DHEC does the state and Department  
13 of -- the DEA does the federal.

14 Q. Okay.

15 MR. SHARPE: Okay. No further  
16 questions. No objection, Your Honor. Thank  
17 you, Your Honor.

18 THE COURT: Tell me exactly what  
19 your phrase was? Analysis and identification  
20 of ---

21 SOLICITOR HAMILTON: ---  
22 controlled substances and prescription drugs.

23 THE COURT: All right. And then  
24 she's so qualified. And based on the  
25 consent, I will qualify her as an expert in

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1 that field.

2 MR. SHARPE: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HAMILTON:

5 Q. Ms. Mitchum, I'm going to show you  
6 what's been marked for identification  
7 purposes as exhibit -- State's Exhibit Number  
8 1. Did you come in contact with this exhibit  
9 before?

10 A. Yes, I did.

11 Q. When did you have contact with this?

12 A. On March 2<sup>nd</sup> of 2015, I received it  
13 from Patrick Patterson.

14 Q. And when you first received this bag  
15 from Mr. Patterson did it appear to have been  
16 tampered with in any way?

17 A. No, it did not. I know this because  
18 I have my initials on this inner bag, the  
19 date and my initials and "OK." So it was not  
20 tampered with. So I checked to make sure all  
21 the seals were intact.

22 Q. You would have noted it if it was?

23 A. Correct.

24 Q. And was it completely sealed?

25 A. Yes, it was.

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1 Q. And was it signed?

2 A. Yes.

3 Q. And while the evidence was with you  
4 at the drug lab, did any other person have  
5 access to it?

6 A. No.

7 Q. What was contained in that bag when  
8 you received it?

9 A. That was a Ziploc that has a plastic  
10 bag in it with a powdered substance.

11 Q. The evidence bag still had another  
12 bag inside of it that contained a suspected  
13 illegal substance?

14 A. Correct.

15 Q. And did you analyze the substance in  
16 the bag?

17 A. Yes, I did.

18 Q. And what did you find it to be?

19 A. This is item number one, which is  
20 State's Exhibit Number 1 in this case, was a  
21 powdered substance and it was found to be  
22 heroin, which is a controlled I substance,  
23 weighing 16.37 grams.

24 Q. Okay. And what test did you run to  
25 determine this?

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1           A. I ran a chemical test and an  
2 instrumental test.

3           Q. And how well-regarded and respected  
4 is this type -- these types of tests in the  
5 scientific community in terms of publications  
6 and peer reviews?

7           A. They're the ones that's typically  
8 used in all the drug labs.

9           Q. How many times have you performed  
10 this type of test?

11          A. We get about two thousand items of  
12 evidence in a year, so over twenty-three  
13 years in excess of five thousand, maybe ten  
14 thousand times.

15          Q. And how reliable have you found this  
16 test to be in your own experience?

17          A. Very reliable.

18          Q. And are quality control measures  
19 associated with this type of test to help  
20 ensure that there's no contamination from  
21 substances or evidence tested?

22          A. Yes, there is.

23          Q. And it's not inconsistent with what  
24 you know about scientific principals and  
25 procedures?

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1 A. Yes.

2 Q. Now, you stated you determined the  
3 amount of heroin in the bag to be -- what was  
4 the weight?

5 A. 16.37 grams.

6 Q. And let's say that it was cocaine  
7 instead of heroine. Would that test that you  
8 just explained to me show positive for  
9 cocaine?

10 A. Yes, it would.

11 Q. And did you detect any cocaine in  
12 this?

13 A. I did not find any cocaine.

14 Q. Did you make a written report of  
15 your findings?

16 A. I did.

17 Q. And do you have a copy of that with  
18 you today?

19 A. I do.

20 SOLICITOR HAMILTON: (Tenders  
21 document to be marked as exhibit).

22 (SO MARKED AS STATE'S EXHIBIT 2)

23 COURT REPORTER: State's Exhibit 2  
24 for identification.

25 SOLICITOR HAMILTON: Your Honor,

1 the State's going to mark this as State's  
2 Exhibit 2 for identification purposes and, of  
3 course, show the Defense.

4 MR. SHARPE: May I see it please?

5 THE COURT: Is there no objection?

6 MR. SHARPE: No objection, Your  
7 Honor.

8 THE COURT: All right. It's in  
9 without objection.

10 (SO ENTERED AS STATE'S EXHIBIT 2)

11 THE COURT: There's one that we --  
12 there's one that we had, the report, State's  
13 Exhibit 1?

14 SOLICITOR HAMILTON: It's not in  
15 yet, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY MS. HAMILTON:

18 Q. Let me just hand you what is marked  
19 first for identification purposes as Exhibit  
20 Number 2. Now, after you ran this test, what  
21 did you do with the evidence?

22 A. Once I ran the evidence, I put it  
23 back in an outside Ziploc bag or a heat-  
24 sealed bag and sealed that shut and kept it  
25 in my custody until I could return it back to

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1 evidence.

2 Q. And was the bag completely sealed up  
3 when you returned it?

4 A. Yes, it was.

5 Q. And on your drug report, what was  
6 the date on your drug report when you ran  
7 this test and came to the conclusion?

8 A. Let's see, the final drug report,  
9 the date of the report was April 17<sup>th</sup> of 2015.

10 SOLICITOR HAMILTON: Your Honor,  
11 the State would move to admit, Exhibit 1,  
12 which is the bag which contains the drugs in  
13 question in this case.

14 And move to admit Exhibit Number 2,  
15 which is the report.

16 THE COURT: I think both of them  
17 are in without objection.

18 MR. BRADLEY: No objection.

19 SOLICITOR HAMILTON: We would so  
20 move this into evidence.

21 THE COURT: Yes. It is so moved.

22 (SO ENTERED AS STATE'S EXHIBIT 1)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR HAMILTON:

25 Q. If there was one more illegal

1 substance in the powder, would you have  
2 noted that on your report?

3 A. Yes. On the report it would have  
4 had like -- say if it was heroin and cocaine  
5 or heroin and anything, it would have been  
6 heroin, control I; cocaine, control II; or  
7 any other substance that would be controlled.  
8 They would both be listed in the Results line  
9 of the report.

10 Q. Please answer any questions that  
11 Defense may have.

12 A. Okay.

13 MR. SHARPE: Thank you. May it  
14 please the Court?

15 CROSS-EXAMINATION

16 BY MR. SHARPE:

17 Q. Now, on this report it doesn't state  
18 what amount of material you used to test?

19 A. That is correct.

20 Q. What amount did you use to test?

21 A. We don't record the amount. We do  
22 our weight after we have done the testing.  
23 So this is actually weight after we've taken  
24 our portion to do our spot tests and  
25 instrumental tests.

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1 Q. Well, I mean, a ballpark figure, I  
2 mean, what's the weight you usually use to  
3 test?

4 A. Depending on how many spot tests I  
5 do and everything, maybe .02 gram.

6 Q. Okay.

7 A. So it's a very small amount that we  
8 would use.

9 Q. Right. So -- and this bag had 16  
10 grams, .02 would be around like a .001  
11 percent of the bag; right?

12 A. Right.

13 Q. Like a thousand percent?

14 A. Uh-huh, (affirmative nod).

15 Q. Now, I've recently spoke to  
16 laboratory expert at Richland County  
17 Sheriff's Department. And they were under  
18 the opinion that if there was sixteen grams  
19 of the substance and let's say twelve grams  
20 of if were heroin, the other four were  
21 cocaine, they're of the opinion that it would  
22 be reasonable to not test any of the cocaine,  
23 that you could only test the heroin. Do you  
24 agree with that?

25 A. No, I wouldn't. It would be a

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1 mixture because it's a powder substance. So  
2 it's just a mixture in there. So we would  
3 report out that we saw heroin and cocaine if  
4 they both existed. But I did not see any  
5 cocaine in this particular instance.

6 Q. Right. Right. Well, what I'm  
7 asking is, is though is that it would be  
8 reasonable that when you're testing only a  
9 hundredth percent of the substance, that it  
10 would be reasonable for you to only extrude  
11 some heroin as opposed to cocaine that could  
12 possibly be mixed in there as well?

13 A. No, I don't think so because it's a  
14 very good mixture, so -- (pause).

15 Q. Okay. What happens to the material  
16 that was tested?

17 A. It is consumed in analysis because  
18 it is a spot test and ---

19 Q. So it's destroyed in the testing?

20 A. Yeah. It's no longer there.

21 Q. Which is why y'all use such a small  
22 amount?

23 A. Correct.

24 MR. SHARPE: I beg the Court's  
25 indulgence. Nothing further, Your Honor.

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1 THE COURT: All right.

2 SOLICITOR HAMILTON: The State  
3 would ask for her to be excused.

4 THE COURT: All right. Any  
5 objection to this witness being excused?

6 MR. SHARPE: No objection.

7 THE COURT: All right. You may  
8 step down. Thank you.

9 (WITNESS STEPS DOWN)

10 SOLICITOR HAMILTON: Your Honor,  
11 the State would rest at this time.

12 THE COURT: Okay.

13 MR. SHARPE: Your Honor, at this  
14 time the Defense would renew all the  
15 objections, pretrial motions.

16 THE COURT: Okay. And I think the  
17 main one that I carefully looked at was the  
18 reason for the stop. And he -- when he  
19 pulled out -- I don't think there's any  
20 question though before he turned on his blue  
21 light, I think he could definitely determine  
22 that that was following too close. And  
23 before that, I guess that's not necessarily  
24 -- wouldn't matter. But at the time before  
25 he turned on his blue light, that car did

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1 look like it was almost underneath the van --  
2 I mean, under the big tractor-trailer truck.

3 So, you know, I believe there is  
4 just beyond the threshold there. So, I'm  
5 going to deny your Motions.

6 I've looked at all the Motions but  
7 that's the only one that I thought I needed  
8 to carefully watch. But the other three are  
9 denied. The other two are denied as well.

10 MR. SHARPE: All right. Thank you,  
11 Your Honor.

12 MR. BRADLEY: Your Honor, at this  
13 time, since the State's rested, we would be  
14 making a Motion for a directed verdict at  
15 this time. Do you want to hear that now?

16 THE COURT: Yes, sir. I'll be  
17 glad to hear from you.

18 MR. BRADLEY: Okay. Your Honor,  
19 you've heard the evidence, Your Honor. Our  
20 directed verdict Motion is based on several  
21 things. And the first of which being the  
22 State has to prove knowledge -- they have to  
23 prove possession first. If my guy is the  
24 person who actually rented the vehicle and if  
25 my guy's the actual one that's responsible

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1 for the vehicle, of course, anything in the  
2 vehicle he would be in constructive  
3 possession of, with the exception of what  
4 would be on the young lady's person.

5 Your Honor, in this case though, the  
6 problem that I don't think the State has  
7 overcome is putting up a witness that's  
8 showing any knowledge of intent, knowledge  
9 that my guy knew that that substance was in  
10 the car.

11 And even the biggest thing, when you  
12 talk about knowledge is, Your Honor, you have  
13 to have knowledge of what the substance is  
14 that you're possessing. And everything from  
15 the witnesses, all the witnesses here, with  
16 the exception of the last two, certainly  
17 Officer Gibson, you know, he himself didn't  
18 even know what the substance was that my  
19 client had at the time or they claim my  
20 client had at that time. It was called  
21 cocaine.

22 There were no field sobriety tests  
23 -- I'm sorry. I keep saying sobriety. But  
24 there were no field tests done to determine  
25 what it actually was. Your Honor, the only

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1 thing that they have against my client really  
2 is the fact that my client, that the officer  
3 said that my client said that it was his  
4 cocaine. The officer used the word cocaine  
5 and he asked my client and my client  
6 answered.

7 Your Honor, you can see how that can  
8 be pretty ambiguous in this case because  
9 number one, the officer himself could have  
10 tested it. He could have figured out what  
11 the substance was. He did not do that.

12 Number two, with my client saying  
13 the cocaine is his he didn't confess to any  
14 heroin at all. He didn't say the heroin was  
15 his. He never even made a statement that --  
16 and if it was a true confession he would say,  
17 'well, it's not my cocaine because that's not  
18 what it is, it's heroin.'

19 And, you know, there's nothing like  
20 that that's been put up by the State. The  
21 only thing State's put up is the officer gave  
22 a reason why he made the stop and why he had  
23 a reasonable suspicion to search the car,  
24 which really leads to the young lady who did  
25 not have a license and the inconsistencies

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1 that he sort of created.

2 Well, Your Honor, on the cross-  
3 examination you just heard, I asked him  
4 about, just about each of those things that  
5 he said that led him to a reasonable  
6 suspicion. And he basically answered that  
7 well, you know, there are certain times and  
8 this is not the case, you know. I said,  
9 'well, what's suspicious about the fact that  
10 their itinerary was different?'

11 What's suspicious about the fact  
12 that she says Asheville versus Morganton,  
13 when they're really in the same vicinity; you  
14 know?

15 What is suspicious about the fact  
16 that they don't have any kind of clothes in  
17 the car? Well, it was a one-day trip, you  
18 know. So, you know, that's just explained to  
19 him once again. I mean, my client said the  
20 lady that was driving the car said it.

21 'We're just going and we're just coming back'  
22 and that's it. (Lights go out in the  
23 courtroom) -- whoa! Was I that powerful?

24 THE COURT: State's computers  
25 didn't go down.

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1 (OFF RECORD DISCUSSION REGARDING POWER OUTAGE)

2 THE COURT: We don't have to have  
3 lights -- unless, Deb (court reporter), are  
4 you okay?

5 COURT REPORTER: Yes, sir, converted to  
6 battery backup.

7 THE COURT: Then let's keep going.

8 MR. BRADLEY: And, Your Honor, I'm  
9 reading here from a -- this is a case, a case  
10 from the Fourth Circuit which is *State v.*  
11 *Burgess*, Your Honor, were there were similar  
12 facts. And, you know, in the court's  
13 dissent, you know, "we share the Fourth  
14 Circuit's concern regarding the State's  
15 inclination toward using whatever facts  
16 present no matter how innocent or indicative  
17 of suspicious activity."

18 The State must do more than simply  
19 label a behavior as suspicious to make it so.  
20 The State must be able to either articulate  
21 why a particular behavior is suspicious or  
22 logically demonstrate, given the surrounding  
23 circumstances, that the behavior is likely to  
24 be indicative of some more sinister activity  
25 than may appear at a glance.

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1           And, Your Honor, you know, I see the  
2           judge's Opinion. In this case that's pretty  
3           much what our directed verdict Motion is. In  
4           this case all of the things that Officer  
5           Gibson said were suspicious when I actually  
6           asked him in the context of this stop was it  
7           suspicious and had the suspicion arose at  
8           that time, he said, no.

9           You know, as well, 'When you first pulled  
10          her over, did she get out of the car and did  
11          she look like she was in some way, you know,  
12          intoxicated, under the influence? Did you  
13          have reason to believe there was contraband  
14          in the car after speaking with her?'

15          'At those particular times, no.'

16          You know, just the fact that they were  
17          making a trip that was in the same vicinity  
18          does not in and of itself mean that that is  
19          an inconsistency which would lead to a search  
20          of a vehicle for drugs.

21          This was a traffic stop. I don't think  
22          that he's articulated anything -- he didn't  
23          see anything in the car to indicate -- he  
24          didn't say he saw a cigar or anything in the  
25          car, in the front or the back of the vehicle,

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1 to believe that there was contraband. He did  
2 not say he smelled marijuana in the car,  
3 which is usually the typical -- in my fifteen  
4 years, that's the one that is mostly given  
5 for a search of the vehicle because you can't  
6 contest what the officer said he smelled.  
7 If he says he smelled it, he smells it.

8 But in this particular case, you know, he  
9 says, you know that heroin smells like heroin  
10 and cocaine smells cocaine. But he didn't  
11 articulate any reason to believe that there  
12 was any illegal contraband in there that  
13 would relate to any kind of drugs.

14 The only thing he articulated was that  
15 there were some inconsistencies in stories;  
16 which you're going to find that in every  
17 case, as Your Honor knows as well.

18 There needed to be a red flag. A red  
19 flag is just not somebody driving without a  
20 driver's license. I don't think that that  
21 indicates whether or not you're carrying  
22 drugs in the car and gives you a reasonable  
23 suspicion to search the car for drugs, Your  
24 Honor. And I don't think that they've proven  
25 that this officer had any reasonable

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1 suspicion that there was contraband in the  
2 car.

3 He have may have had a reason to believe  
4 that they were not traveling where they were  
5 traveling. I don't know. But I did not hear  
6 anything out of his mouth that would indicate  
7 that there was any kind of knowledge,  
8 presence, plain view, any conversations that  
9 he heard that would indicate anything of drug  
10 use.

11 I see a traffic stop and I would not call  
12 it pretextual because I don't know Officer  
13 Gibson and I thought he was -- he said what  
14 he said and I thought he was being as honest  
15 as he could be. But I also know that his job  
16 is to be a -- he was a drug enforcer. And  
17 the stop was made not for the fact they were  
18 following too closely, even though he had  
19 that cause to make that stop. It went down  
20 because they were conducting a drug stop. It  
21 turned from a traffic stop into a drug stop.  
22 It's crystal clear because there was nothing  
23 else to give any other indication when he  
24 said, 'I'm going to bring the drug dog out.'  
25 No one said, 'yeah, there's contraband in the

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1 car.'

2 You heard what my client said. He said,  
3 'yeah, the dogs, they hit on the car. You  
4 know, I've seen this before.' That's not any  
5 indication that there are drugs in the car at  
6 all.

7 I don't see where this officer had any  
8 reasonable suspicion to believe there was any  
9 drugs in the car. I think he certainly has  
10 suspicion that this driver may not have been  
11 who she was. At that time, he could have  
12 ascertained who she was by actually taking  
13 her to jail.

14 But, Your Honor, we would ask, based on  
15 that ground, that Your Honor would dismiss  
16 the charges against my client at this time.  
17 Thank you, Your Honor.

18 THE COURT: Solicitor?

19 SOLICITOR HAMILTON: Okay. Your  
20 Honor, I'm just going to go through the  
21 elements as to why I believe -- and I believe  
22 the rest was kind of the suppression motion.  
23 But I'm going to try to go through this as I  
24 can.

25 Viewing that in the light most favorable

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1 to the State, you know, the elements have  
2 been met and our opinion that the knowledge  
3 element -- I have two cases that I want to  
4 hand up, Your Honor.

5 THE COURT: Thank you.

6 SOLICITOR HAMILTON: In these  
7 cases, that's not an element. In one of the  
8 cases, *U.S. v Ollie* states that "as long as  
9 you find that the Government has proven  
10 beyond a reasonable doubt that the defendant  
11 knew that he or she were in possession with  
12 intent to distribute some substance that  
13 contained an illegal..." -- that was illegal  
14 under the US drug laws -- "you do not have to  
15 find that a particular defendant knew the  
16 precise nature of the chemical or..." -- sorry,  
17 Your Honor -- "the precise nature or chemical  
18 name of the specific control substance. The  
19 law does not require that a defendant knew  
20 the chemical name of the substance, so long  
21 as the defendant knew the substance was  
22 illegal under the US drug laws."

23 Of course, we do have to prove what the  
24 substance ultimately is. But in this case  
25 we did prove that he had knowledge of a

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1 substance when we had -- the officer  
2 testified that he said he knew the dog would  
3 alert. "The dog will alert." He obviously  
4 knew there was something illegal in that  
5 vehicle that the dog would alert to.

6 Additionally, as presented it was  
7 consistent that a thousand dollars would be  
8 what someone would pay for heroin. So he  
9 obviously paid the right amount for the  
10 drugs, the particular substance that he  
11 actually had in his possession.

12 Initially he stated that it was his.  
13 The drug was his. That's knowledge of the  
14 presence of those drugs.

15 Additionally, looking at the *Barbosa* case  
16 that I handed up, they will --- (interruption  
17 by noise from holding cell).

18 (OFF RECORD DISCUSSION)

19 THE COURT: All right. You may  
20 proceed. He (Mr. Bradley) got interrupted,  
21 so it's only fair that you should be as well.  
22 You may proceed.

23 SOLICITOR HAMILTON: In *Barbosa*  
24 the court looked at the knowledge of the  
25 particular substance to be a sentencing

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1 factor, as is weight a sentencing factor.

2 In our law we do have different sections  
3 as to controlled substances. Under each  
4 section it states the controlled substance  
5 and it states the amount and it states the  
6 sentencing with each.

7 I believe based on these cases, based  
8 on *Barbosa*, that is a sentencing factor.  
9 The drug, the particular drug and the weight  
10 of the particular drug as a sentencing  
11 factor. The knowledge would go to the  
12 illegal substance. And we have proven, we  
13 believe, that he had knowledge that he was in  
14 possession of an illegal substance based on  
15 his behavior stating the dog would alert.

16 Dogs alert to illegal substances and  
17 that's what was in that vehicle and  
18 ultimately found in this case. So he does  
19 not have to know the particular name,  
20 chemical name. That does not need to be  
21 proven. If that is what they are arguing,  
22 the fact it's needed, then every Defendant  
23 pulled over would say, 'oh, I thought I was  
24 in possession of marijuana' and avoid these  
25 extreme sentences that are for heroin. Or

1 he can say its cocaine and avoid heroin  
2 sentences. It's not the legislative intent,  
3 we believe. We believe based on those cases  
4 that I handed up and that is what was  
5 intended with the way that this statute was  
6 written.

7 As I said before, the State fully  
8 intends to prove that this controlled  
9 substance was in fact heroin. We believe  
10 that's an element. And that was proven with  
11 Ms. Mitchum who was on the stand, who did  
12 state an amount of the substance; which was,  
13 I believe, sixteen -- around 16 grams of  
14 heroin. So we have put evidence in the  
15 record that this was, in fact, heroin, the  
16 amount of the heroin.

17 We've shown that he was in  
18 possession. He stated that the jacket was  
19 his. He identified the jacket as his. The  
20 drugs that he found in the jacket and him  
21 saying that those were his drugs and the  
22 amount he paid for them.

23 So, Your Honor, we believe viewing  
24 all of this evidence in the light most  
25 favorable to the State, that the directed

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1 verdict should not be granted.

2 THE COURT: All right. Anything  
3 in response?

4 MR. BRADLEY: Your Honor, I just  
5 would like to say this and not to -- I don't  
6 want to beat a dead horse. But one thing I  
7 have learned in drug cases, too, is that in  
8 certain cases, particularly when somebody's  
9 facing twenty -- facing a huge amount of  
10 time. We don't have to prove liability. The  
11 State has to prove their burden(s) beyond a  
12 reasonable. "Beyond a reasonable doubt" is  
13 pretty high, which is one of the reasons why  
14 we were actually talking about that  
15 statement, whether or not that statement that  
16 was written in there was going to be placed  
17 -- was going to be given a lot of weight.

18 In this case, Your Honor, again,  
19 it's not a specific liability crime. There  
20 are elements. The knowledge, the knowledge  
21 element goes to the intent. He did not know  
22 what it was. I think we clearly understood  
23 that. But then the officer didn't know  
24 either. And I just ask Your Honor, if Your  
25 Honor would focus on that and focus on what

1 was available to him to find these things out  
2 and how these things could have been cured.

3 And we haven't heard from the  
4 witness stand yet. So I would just ask if  
5 Your Honor would direct a verdict in favor of  
6 the Defendant.

7 THE COURT: Well, I believe --  
8 this is the directed verdict stage.

9 MR. BRADLEY: Yes, Your Honor.

10 THE COURT: So I think in light of  
11 the standard that I have to apply that the  
12 evidence must be viewed in the light most  
13 favorable to the State as the moving party, I  
14 think they've got -- I think that it would  
15 be appropriate for your Motion to be denied.

16 Anything else at this point?

17 Do y'all plan to present a defense?  
18 Do you have some witnesses?

19 MR. BRADLEY: Yes, sir. We do plan  
20 to present a defense, Your Honor. So I would  
21 ask now, are we going to break?

22 THE COURT: Yeah. Because I think  
23 we need to break for lunch.

24 MR. BRADLEY: Ours is one witness  
25 and possibly the Defendant, which would take

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1 us beyond ---

2 THE COURT: Right. So I think we  
3 need to -- let's break until 1:45.

4 MR. BRADLEY: That'd be great.

5 THE COURT: All right.

6 (OFF RECORD DISCUSSION)

7 THE COURT: All right. So let's  
8 resume back at 1:45. And your client is in  
9 custody.

10 MR. BRADLEY: Yeah. I understand.

11 SOLICITOR HAMILTON: Thank you,  
12 Your Honor.

13 MR. BRADLEY: Thank you, Your Honor.

14 (LUNCH RECESS)

15 (DEFENDANT PRESENT)

16 THE COURT: Do y'all need a  
17 minute?

18 MR. BRADLEY: I think we're ready,  
19 Your Honor.

20 THE COURT: All right. All right.  
21 I believe the Defendant -- is the State  
22 ready?

23 SOLICITOR HAMILTON: Yes, Your  
24 Honor.

25 THE COURT: Okay. And Defendant,

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1 are y'all ready?

2 MR. BRADLEY: We're prepared, Your  
3 Honor.

4 THE COURT: All right.

5 MR. BRADLEY: The defense calls  
6 Monique Trappier. I think she's outside,  
7 Your Honor.

8 THE COURT: All right.

9 SOLICITOR ROBINSON: Your Honor,  
10 can we approach?

11 THE COURT: Yes.

12 (OFF RECORD BENCH CONFERENCE)

13 (WITNESS TAKES STAND)

14 (WITNESS DULY SWORN)

15 THE COURT: Would you please state  
16 your name?

17 WITNESS: My name is Monique  
18 Trappier.

19 THE COURT: All right. I'm going  
20 to ask you some preliminary questions based  
21 on discussion with counsel. You've been  
22 called to testify in this case in the State  
23 versus Calvin Brown, okay?

24 WITNESS: Yes, sir.

25 THE COURT: Now, I want to -- at

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1           this point do you realize you're just a --  
2           you're a witness in this case and I've not  
3           seen your statement. I understand that based  
4           on a prior statement that there may be some  
5           things in there that you may be testifying or  
6           that people expect you to testify that would  
7           incriminate yourself. I want to make sure  
8           that you understand your rights before you go  
9           forward, okay?

10                       WITNESS:       Okay.       ^

11                       THE COURT:     Like I say, you're a  
12           witness in this case and I want to advise you  
13           that you have a right to invoke the  
14           protections given to you by the Fifth  
15           Amendment. That means that no person shall  
16           be compelled to be a witness against him or  
17           herself. Now, what this means is that you  
18           cannot be required to be a witness against  
19           yourself. And you have a right to remain  
20           silent if certain matters may incriminate  
21           yourself. You have the right to refuse to  
22           answer any questions asked of you which you  
23           think gives reasonable cause to believe that  
24           the answer might intend to incriminate you.  
25           In other words, you know, may indicate that

1 you have committed some crime. If you wish  
2 to exercise this right when asked a question,  
3 then you have to indicate that you refuse to  
4 answer the question because it may  
5 incriminate.

6 I also advise that you are not the  
7 final decision maker on whether you have to  
8 answer a question or not. That's for the  
9 Court to determine if it's obviously on your  
10 part it's justified. So you understand you  
11 have a right to remain silent in any matters  
12 that may incriminate you?

13 WITNESS: Yes, sir. I do.

14 THE COURT: Okay. Do you have any  
15 questions whatsoever about that and do you  
16 need any further explanation of that right?

17 WITNESS: No.

18 THE COURT: Okay. And you realize  
19 that admission of any crime -- again, I don't  
20 know the nature of your testimony, could  
21 subject you to being charged with a crime?

22 WITNESS: Yes, sir.

23 THE COURT: That you have not  
24 already been charged with. Do you understand  
25 that?

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1

2

WITNESS: Yes, Your Honor.

3

4

THE COURT: And based on that, you  
still wish to proceed as a witness?

5

WITNESS: Yes, sir.

6

7

THE COURT: All right. Anything  
further from the State as far as that issue?

8

9

SOLICITOR HAMILTON: No, Your  
Honor. Thank you.

10

11

THE COURT: Anything further from  
the Defense?

12

MR. BRADLEY: No, sir.

13

14

THE COURT: All right. All right.  
You may proceed.

15

16

MR. BRADLEY: Thank you, Your Honor.  
If it pleases the Court?

17

THE COURT: Certainly.

18

19

MONIQUE TRAPPIER, having been duly sworn  
to tell the truth, and noting but the truth,  
testified as follows:

20

21

DIRECT EXAMINATION

22

BY MR. BRADLEY:

23

24

Q. Would you state your full name for  
the record, please, ma'am?

25

A. My full name is Monique Teresa

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1 Trappier.

2 Q. Ms. Trappier, do you know the  
3 Defendant, who is sitting at the table beside  
4 -- the young man in the gray?

5 A. Yes, sir, I do.

6 Q. How do you know him?

7 A. We've been friends for a while.

8 Q. I'm sorry?

9 A. We've been friends for a long time.

10 Q. You've been friends for a long time.  
11 Did there come a time when you two were  
12 pulled over by an officer while y'all were in  
13 the car together?

14 A. Yes, sir.

15 Q. Okay. And do you remember that date  
16 pretty well?

17 A. Yes, sir, I do.

18 Q. Okay. I want to ask you a couple of  
19 questions about that. The first question was  
20 do you recall why you were pulled over?

21 A. Yes, sir. I was -- we were pulled  
22 over for following too closely.

23 Q. For following too closely to what?

24 A. To, I guess a vehicle.

25 Q. Another vehicle or truck?

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1 A. A truck. There were trucks on the  
2 road. There was only trucks.

3 Q. When you were pulled over was it  
4 explained to you why you were pulled over?

5 A. Yeah, the officer said that that's  
6 the reason why he pulled me because I was  
7 following too closely.

8 Q. You were following too closely?

9 A. Yes, sir. That's right.

10 Q. Okay. And did that -- when he  
11 pulled you over, did that result in you being  
12 arrested or were you allowed to go home?

13 A. No, I was not allowed to go home. I  
14 wasn't arrested for following too closely but  
15 I was arrested.

16 Q. Okay. You were arrested. Can you  
17 explain to the Court why you were arrested?

18 A. The officer placed me under arrest  
19 because he said that I had given him false  
20 information.

21 Q. And what type false information did  
22 the officer say you gave him?

23 A. Well, at that time -- he didn't say  
24 then, but after we got to the, down to the  
25 station, I guess, you know, he asked my name.

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1 I gave him a name that wasn't my true name.

2 Q. Okay. So you gave -- you did, on  
3 the scene, give him a name that was not true  
4 name?

5 A. Right. It's an alias. It was an  
6 alias.

7 Q. Okay. And why did you do that?

8 A. Well, basically, I was -- that's  
9 what I usually do. And I kind of knew I was  
10 -- I was driving under suspension.

11 Q. So basically you said that's what  
12 you normally do. When you say that, explain  
13 what that means?

14 A. You know, I really don't get pulled  
15 over and drive under suspension. But at that  
16 time that I was being pulled over, I had  
17 already decided that I was going to give him  
18 the alias instead of the real name.

19 Q. And, again, I guess you'd done this  
20 before?

21 A. Not really. Once or twice.

22 Q. So you have done it before?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

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1 Q. Okay. And you gave a false name  
2 because you knew your license was ---

3 A. Suspended.}

4 Q. --- it was suspended?

5 A. Yes, sir.

6 Q. Do you actually have a license?

7 A. Yeah.

8 Q. Okay. But it was suspended at that  
9 time?

10 A. Yes, sir.

11 Q. Okay. Are you aware that an illegal  
12 substance was found in the car that day?

13 A. Yes, I am.

14 Q. Okay. Are you aware of what that  
15 substance was?

16 A. Yes. It was the cocaine/heroin  
17 mixture.

18 Q. It was cocaine heroin. Was it  
19 cocaine and heroin or ---

20 A. Yes, it was. It was cocaine and  
21 heroin.

22 Q. Okay. And, also are you aware that  
23 there was other evidence found at the scene  
24 that day?

25 A. Uh-huh. Yes.

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1 Q. Okay. What other evidence are you  
2 aware of that was found that day?

3 A. They found a piece of crack cocaine.  
4 And, also, my pipes were found too. So there  
5 were paraphernalia. A few of my pipes as  
6 well as my telephones. That's all that was  
7 found that day.

8 Q. Okay. If I may, I'm going to refer  
9 to what ---

10 MR. BRADLEY: Your Honor, may I  
11 approach?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. BRADLEY:

15 Q. -- to what's been marked as State's  
16 Exhibit -- I'm sorry. It's Defendant's 1.  
17 Take a look at this picture.

18 MR. BRADLEY: Your Honor, I think  
19 this is the one you've already seen.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. BRADLEY:

22 Q. Okay. Take a look at that picture  
23 and tell me do you recall the contents, those  
24 contents being in the vehicle you was  
25 driving?

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1           A. Well, yeah. That's my cigarette  
2 pack. And those are the pipes and those are  
3 my three phones. And, of course, there's Mr.  
4 ---

5           Q. Okay. Hold that up and show the  
6 Court which phones were yours.

7           A. What, I show the judge?

8           Q. Show the Judge which phones were  
9 yours?

10          A. Okay. Well, this is mine. This is  
11 mine. And also this is mine.

12          Q. So are you pointing to the first  
13 three from the left.

14          A. Yeah. This is my phone. This one's  
15 also mine and so is this one.

16          Q. Okay. Were all those three phones  
17 operative at the time? Did they work?

18          A. Yes.

19          Q. They did work? Why did you have  
20 three cellphones?

21          A. Well, I use one for apps and one for  
22 games and one for the internet.

23          Q. You pay three phone bills?

24          A. Yes.

25          Q. Are those pretty big or are they ---

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1           A.    They're ten dollars (\$10).    Prepaid  
2           pretty much.    Ten dollars (\$10), buy a card.  
3           Put the minutes on it, and use it up.

4           Q.    Are you employed?

5           A.    Not currently I'm not.

6           Q.    At that time?    How could you afford  
7           to pay for three telephones?

8           A.    Well, I pretty much get money the  
9           best way I know how.    I mean, I do what I  
10          have to do to support my habit and to support  
11          myself.

12          Q.    Well, let's talk about the habit.  
13          What habit do you have?

14          A.    Well, I've been using drugs for --  
15          if it's okay to say that.    I've been using  
16          drugs for a long time.

17          Q.    Well, this is a Court of law.    And  
18          Your Honor will tell you if you're getting  
19          out of range.

20          A.    Okay.

21          Q.    Where we're here to do is get the  
22          truth.

23          A.    Okay.

24          Q.    You know, you say a long time.    Is  
25          that three years?    Is that thirty years?

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1 A. I have a son that's twenty-two years  
2 old so it's been close to twenty years.

3 Q. So you've been using drugs for  
4 twenty years. What type drugs have you been  
5 using for twenty years?

6 A. The first thing I started out using  
7 cocaine. And then that kind of like  
8 escalated to other things such as heroin and  
9 a little weed here and there. But my choice  
10 drug is heroin/cocaine.

11 Q. Do you recall around what time you  
12 may have gotten hooked on heroin?

13 A. It's been a long time. I was around  
14 maybe -- it's been some years. Like, I want  
15 to say maybe twenty-five, twenty-six.

16 Q. Do you remember around when you  
17 first got hooked on heroin?-

18 A. Yeah.

19 Q. Was there some event that happened  
20 in your life that made you wound up doing it  
21 or ---

22 Q. Well, yeah. Cocaine was originally  
23 my drug of choice. And -- I'm just very  
24 emotional about it. I was going through AA  
25 -- (emotional) -- sorry. I was going through

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1 a phase in my life where I had lost a lot.  
2 When -- well, when I was using cocaine, it  
3 wasn't just enough for me.

4 Q. I'm sorry.

5 A. It wasn't enough for me. It wasn't  
6 enough for me. I'm sorry. It just wasn't  
7 enough for me. I was married. At one time  
8 my children -- my husband got arrested and he  
9 was all that I really knew. He was all that  
10 I depended on. And when he left, I didn't  
11 know what to do, I then would resort to  
12 drugs. I'm sorry.

13 MR. BRADLEY: May I approach, Your  
14 Honor.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. BRADLEY:

18 Q. You okay?

19 A. I'm sorry. So, I apologize. But I  
20 went through a lot in my life, which  
21 escalated, you know, from the cocaine to the  
22 heroin because the cocaine at that time  
23 wasn't enough. You know, it just wasn't  
24 enough for me; that was basically it.

25 Q. Have you ever been to a drug rehab

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1 or any type of drug dependency program to  
2 help ---

3 A. Yes, I have. I have been to the  
4 Chrysalis Center in Florence. I get a little  
5 medical there for -- to try to get clean off  
6 of drugs.

7 Q. Okay. And were you clean at the  
8 time you were released from there?

9 A. Yeah, I was.

10 Q. And how long did you stay clean?

11 A. Three years after that. And then  
12 went back out on the streets and I kind of,  
13 like, let a lot of the things that happened  
14 in my life, I kind of like used that as an  
15 excuse to use drugs; which was wrong at the  
16 time, but I did it anyway.

17 Q. So even after you, when you got out  
18 of the rehabilitation center, you started  
19 pretty much doing what you were doing prior  
20 to going into rehab?

21 A. Yeah. Well, yeah, I was ---

22 Q. So rehab did not work for you?

23 A. It worked but only for a small time,  
24 amount of time. I mean, it didn't last.

25 Q. Okay. And have you now cured your

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1 drug addiction?

2 A. Yes-and-no. I've have still been  
3 indulging in drug use. You know, an  
4 addiction is a very powerful thing and so I  
5 have not completely stopped using drugs, you  
6 know.

7 Q. Okay. And I'll ask you this  
8 question. Are you under the influence of any  
9 drugs or anything right now that would  
10 prohibit you from giving truthful testimony  
11 to this court today?

12 A. No. Right now, no.

13 Q. Okay. Were you yesterday?

14 A. No, not yesterday either.

15 Q. Okay, were you the day before  
16 yesterday?

17 A. No, sir.

18 Q. Okay. So at least three days you've  
19 gone and have not had any drugs; is that  
20 correct?

21 A. Yes. That's correct.

22 Q. Okay. On the day that you all were  
23 pulled over, I think Officer Gibson pulled a  
24 substance out the back seat of the car.

25 A. Uh-huh.

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1 Q. Do you recall that?

2 A. Yes, I do.

3 Q. Okay. And I think he called it  
4 cocaine at that time.

5 A. Yes, he did.

6 Q. Do you recall that?

7 A. Yeah. He did, cocaine.

8 Q. Do you know who that heroin, which  
9 was referred to as cocaine back at that time,  
10 whose drugs was that?

11 A. It was mine.

12 Q. It was yours?

13 A. Yes, it was.

14 Q. Okay. And why would the Court  
15 believe that that was yours?

16 A. Well, I mean, it's mine. I use  
17 drugs, you know, that's -- it was mine. I  
18 put it there. I mean, to be honest, it  
19 belonged to me. So, I mean, it was like why  
20 would they believe -- but I was there. I put  
21 it there. I know who it belonged to.

22 Q. Well, you said you put it there but,  
23 you know, that's kind of convenient at the  
24 last moment. So my question is -- I want to  
25 go back.

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1 A. Uh-huh.

2 Q. When did you get a chance to put  
3 that -- he rented the car. Not you.

4 A. Well, I put it in the night before.  
5 You know, it was the night before. It was  
6 just the day we left. It was actually the  
7 night before. I really did put it in the  
8 wrong jacket pocket, but ---

9 Q. The wrong jacket pocket?

10 A. Yeah.

11 Q. Now, explain that to the Judge.

12 A. Well, both our jackets were in the  
13 car and I put it in there. But -- I think I  
14 was really high at the time. I was under the  
15 influence. Usually, I just don't stick my  
16 stuff in someone else's stuff. I really just  
17 keep all my stuff together.

18 Q. Uh-huh.

19 A. But this particular night, I had put  
20 it -- just went and stuck it in the car and  
21 went back about my business.

22 Q. So in what city did this occur?

23 A. In Georgetown County.

24 Q. So you were in Georgetown County.

25 Did you buy the drugs in Georgetown County?

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1 A. Yeah.

2 Q. You bought the drugs in Georgetown  
3 County?

4 A. Yes, sir.

5 Q. Okay. And when you bought the drugs  
6 you somehow got it in his coat pocket. Can  
7 you explain to the Judge how did that happen?

8 A. Well, like I said, the night before  
9 I had put it in there. But I was kind of  
10 high. I was under the influence. But  
11 usually, like I said, I don't stick it stick  
12 it in my stuff in other peoples' things. But  
13 I believe at that time I was high. But I  
14 have stuck in the coat. Both of the coats  
15 are in the back seat. And that's basically  
16 what I done. You know, it was not  
17 intentionally just to put it in the coat it  
18 didn't belong to. It was just really an  
19 honest misstate.

20 Q. If a male coat was in the back seat,  
21 where was the male at that time?

22 A. Well, he wasn't inside the car. He  
23 was -- I believe he might have been at a card  
24 game. He wasn't inside the car. We had not  
25 been in the car that night.

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1 Q. So are we talking about the same car  
2 that you all were stopped in?

3 A. Yeah.

4 Q. How did you get control of that  
5 vehicle?

6 A. Well, it was his -- he rented the  
7 vehicle.

8 Q. Uh-huh.

9 A. You know, I knew we were going on a  
10 trip. And like I said, I believe he was at a  
11 card game or whatever that night before. And  
12 so when he did call me for us to leave, and I  
13 got back to the house, I offered to drive.  
14 You know, because I believe he had been up  
15 most of the night, probably playing cards or  
16 whatever, had a card party or whatever and so  
17 I offered to drive because I knew he was  
18 tired.

19 Q. So this is the next morning you  
20 offered to drive the car?

21 A. Right.

22 Q. What I'm trying to go back to is  
23 when you bought the drugs?

24 A. Yes.

25 Q. Was the Defendant with you when you

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1 purchased the drugs?

2 A. Oh, no. No. Oh, no. No.

3 Q. Okay. The Defendant was not with  
4 you?

5 A. No, sir.

6 Q. You purchased the drugs yourself?

7 A. Yes, sir.

8 Q. Was anyone else with you?

9 A. No.

10 Q. Okay. After you purchased the  
11 drugs, what did you do?

12 A. Well, I went back to my house. I  
13 used some. And I put it in a bag and got,  
14 stuck it in the car. Got what I needed out  
15 ---

16 Q. You stuck it in the car?

17 A. Yeah. I got what I needed out and  
18 put the rest in the car.

19 Q. And you put it in the car, why? Why  
20 didn't you keep it in the house?

21 A. No, I always. I knew we were  
22 leaving and traveling the next morning. And  
23 I was taking my stuff with me. I'm sorry,  
24 but it's the truth, you know. I had every  
25 intention of traveling with my stuff.

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1 Q. So what you're explaining to the  
2 Court is you were planning on taking that  
3 with you the next day on the trip?

4 A. That's right.

5 Q. That's correct. Okay. When the  
6 officer pulled it out he asked whose it was?

7 A. Yes.

8 Q. And did you alert the officer that  
9 it was yours?

10 A. No, I didn't.

11 Q. You did not?

12 A. No, I didn't.

13 Q. In fact, you didn't say anything to  
14 the officer about it being yours; is that  
15 correct?

16 A. That's correct.

17 Q. Okay. Did he subsequently take you  
18 to the station and question you about it?

19 A. Yes, he did.

20 Q. Okay. What did he ask you?

21 A. He just asked me what it was, what  
22 was it. 'What is this?'

23 Q. Okay.

24 A. You know, he didn't really ask me as  
25 to ownership or who it belonged to. He just

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1 basically held it up and said 'what is it?'

2 Q. Okay. And what was your response to  
3 that?

4 A. I told him it was cocaine.

5 Q. You told him it was cocaine. Did  
6 there come a time, and you were -- actually,  
7 were you released from jail anytime soon?

8 A. Yeah. I was put in jail that day  
9 and the following morning.

10 Q. Okay. And what were you charged  
11 with?

12 A. They charged me with giving false  
13 information to police. And they also charged  
14 me with driving under suspension.

15 Q. Driving under suspension?

16 A. Uh-huh.

17 Q. But you didn't get charged for the  
18 driving too closely; is that correct?

19 A. No, that kind of puzzled me. But,  
20 no, I didn't get a charge, a ticket or a  
21 charge with following too closely to no  
22 truck.

23 Q. And you were not charged with the  
24 package that was found in the vehicle?

25 A. No.

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1 Q. And I'm talking about the fact that  
2 it was called cocaine and ultimately it is  
3 heroin?

4 A. No.

5 Q. Okay. Have you ever gotten a call  
6 from anyone in York County about that heroin,  
7 about those drugs that were in the car at  
8 that time after you bonded out of jail?

9 A. No, I didn't.

10 Q. So you had no call from anyone?

11 A. No.

12 Q. Did you get a call from an attorney  
13 right after you got out, inquiring about this  
14 case, inquiring about whether or not this was  
15 your drugs?

16 A. No, I didn't.

17 Q. You did not.

18 A. No.

19 Q. Okay. Do you recall coming back to  
20 York County to talk with law enforcement?

21 A. Yes, I did. Yes, I do recall that.

22 Q. Do you recall when that was?

23 A. That was in February -- I mean, I'm  
24 sorry. It was at the end of the year.

25 Q. It was some time toward the end of

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1 the year?

2 A. Yeah.

3 Q. Okay. But was it around -- was it  
4 later in September?

5 A. Yes.

6 Q. Okay. Was it maybe somewhere around  
7 between October and December?

8 A. October and November, yeah.  
9 November.

10 Q. But you just don't recall the  
11 particular date.

12 A. November. It was in November.

13 Q. It was in November?

14 A. Yes.

15 Q. Okay. And why did you come up --  
16 did they call you to come up to York?

17 A. No. No one called me to come here.

18 Q. No one called?

19 A. No.

20 Q. Okay. Why did you decide to come up  
21 here?

22 A. Well, a couple of things. One of my  
23 first reasons because I had -- for most of  
24 the year, since the stop and since Mr. Brown  
25 had actually taken ownership of that, I felt

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1 guilty a little bit because they, in fact,  
2 were my drugs. And I really didn't want him  
3 to go own -- to really go -- to get in  
4 trouble by something that wasn't his. I felt  
5 kind of scared at first that some serious  
6 stuff was happening here, was going to happen  
7 to him. And that's really not right. And  
8 it's not fair to him. Because in the first  
9 place, he lied to protect me in the first  
10 place. So I felt pretty bad.

11 Q. Well, you know, if -- you've said  
12 the reason is because he lied to protect you.  
13 Why didn't you try to clear it up that day?

14 A. Well, I had been going through -- I  
15 really didn't know the seriousness of it, of  
16 the actual charge. But for most of the time  
17 through the year, I had been getting high off  
18 and on and not really looking at what would  
19 happen or what the outcome would be. I  
20 really wasn't paying attention to -- you  
21 know, it's like I woke up one morning and I  
22 was like, you know what, this is not -- I  
23 can't do this.

24 Q. Now, let me just ask you directly.  
25 Did somebody call you up or talk with you and

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1 tell you to come into court and take this  
2 charge?

3 A. No. Nobody knew what I was trying  
4 to do. No one had an idea. This was  
5 something that I had decided on, pondering  
6 and thought out, and nobody had to call me to  
7 come and do this. It was only right.

8 Q. Did Mr. Brown call you and talk with  
9 you about these charges?

10 A. No. He actually didn't have a clue  
11 that I was here. You know, that I'd come.  
12 He found out, of course, but he really didn't  
13 know. When I came and made that confession  
14 and signed that statement, he had no clue.

15 Q. Okay. You said made a confession  
16 and signed a statement. Are you indicating  
17 that when you came up here you actually wrote  
18 out a confession?

19 A. No. I didn't write out a confession  
20 out. But, you know, I spoke with an officer  
21 who -- I signed it.

22 Q. Okay. Do you recall the name of the  
23 officer?

24 A. Her name, I don't remember. Her  
25 name was Jan, Ganning (phonetic) or something

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1 like that.

2 Q. I am going to show you a document  
3 (SO MARKED AS DEFENDANT'S EXHIBIT 2)

4 COURT REPORTER: Defendant's  
5 Exhibit Number 2 for identification. Two  
6 pages.

7 MR. BRADLEY: Your Honor, do you  
8 need a copy of this while we're going over  
9 testimony?

10 THE COURT: No, sir.

11 MR. BRADLEY: I'll present that.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. BRADLEY:

14 Q. I'm going to show you a copy of that  
15 document. I want you to take your time and  
16 look over that document. And then I'm going  
17 to ask you a couple of questions.

18 SOLICITOR HAMILTON: Your Honor, I  
19 object to her reading from the statement.  
20 She can testify based on her memory and he  
21 can impeach her with that statement. She has  
22 -- otherwise, we would object.

23 THE COURT: All right.

24 MR. BRADLEY: I believe it was  
25 November 6<sup>th</sup>. It was to refresh the witness's

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1 recollection. She certainly can read her own  
2 statement.

3 THE COURT: If she can't remember  
4 what she said then she can use it to reflect.  
5 I mean, if she is being asked what she  
6 remembers what she said, she ---

7 MR. BRADLEY: Well, I mean, she  
8 didn't even remember the name of the officer,  
9 which is actually on the statement.

10 THE COURT: Well, ask her and see  
11 if she knows?

12 MR. BRADLEY: I'm sorry.

13 THE COURT: Ask her and see.

14 MR. BRADLEY: I did. I asked her  
15 just now did she remember the name of the  
16 officer ---

17 THE COURT: No, I'm talking about  
18 does she remembers what she said.

19 MR. BRADLEY: Sure. Sure.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. BRADLEY:

22 Q. Do you recall the substance of your  
23 meeting with whoever you met with that day?

24 A. Yes.

25 Q. You do recall that substance?

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1 A. Yes.

2 Q. Okay. I'll take that document back.  
3 Can you explain to the Court what you told  
4 law enforcement that day?

5 A. I told -- I spoke with -- actually,  
6 when I came in, I spoke with the district  
7 attorney, I guess.

8 Q. Do you recall which district  
9 attorney you spoke with?

10 A. This young lady right here.

11 Q. Well, there are two young ladies  
12 here, which one you spoke with?

13 A. The one in the -- the blonde.

14 Q. Okay. You had a conversation with  
15 the Solicitor?

16 A. Yes, I did.

17 Q. Okay. And what was that  
18 conversation about?

19 A. Well, when I came here I had went  
20 and told her -- I spoke with someone else who  
21 was at the desk. And I explained to them  
22 that I was here and I needed to speak to  
23 someone regarding a case.

24 Q. Okay.

25 A. And that young lady, in fact, told

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1 us that we had to come back in a few minutes  
2 or whatever. And, so, I came back and this  
3 young lady here is the one that I spoke to  
4 first.

5 Q. Okay. And what was said during that  
6 conversation?

7 A. I had told her the reason that I was  
8 here, to make a confession, and the reasons  
9 why I came. And I just needed to know what I  
10 needed to do and who I need to speak with in  
11 regards to the case. And she asked me in  
12 regards to who. And I had explained to her  
13 that it was Mr. Brown's case and that I was  
14 also involved in the case.

15 Q. Okay. Did she take a confession  
16 from you?

17 A. No, she didn't.

18 Q. Okay. Well, how did you get to the  
19 confession?

20 A. Well, she got on the telephone and  
21 called someone and she had -- or over and  
22 over again she'd said that this was over her  
23 head and this was nothing she could do. But  
24 that if she got on the telephone and spoke  
25 with someone and whom that person was, I

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1           guess, well, turned out to be the district --  
2           the drug enforcement people. And those were  
3           the people, I guess, that she directed me to  
4           talk to. Because her words were that this  
5           was over her head. This was nothing she  
6           could do about this.

7           Q.    Okay. Prior to this meeting with  
8           the Solicitor and the police officer, had you  
9           ever met me before?

10          A.    No, I have never.

11          Q.    Had you ever talked with me before?

12          A.    No, sir.

13          Q.    Had any discussions with me before?

14          A.    Yeah. Well, we spoke -- before  
15          then?

16          Q.    Before you actually went in ---

17          A.    Oh, no. no.

18          Q.    --- November?

19          A.    No. No. No. I didn't even know --  
20          didn't know who the lawyer was.

21          Q.    Okay. Can you tell the Court what  
22          you told the officer that you were confessing  
23          to?

24          A.    I spoke with the officer after some  
25          time. We went, I guess, in a room or

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1           whatever. I guess it was an interrogation  
2           room or whatever the kind of room it was.  
3           And I spoke with her and I told her, 'Well,  
4           ma'am, I'm here to make a confession. I  
5           would like to make a confession. I don't  
6           know whether it's going to be a formal  
7           confession or whatever. I don't know  
8           anything about it. I'm giving a confession.'  
9           And at some time she went and got a computer  
10          or whatever and came back with a computer and  
11          asked me, after going to do some paperwork or  
12          whatever, was I ready to make a confession.  
13          And what was I here to confess about. And I  
14          told her that I'm here to take ownership of  
15          some drugs that one of my friends was charged  
16          with that doesn't belong to him.

17                Q. Okay.

18                A. And at that time she went to typing  
19                on her, like a little laptop, like what she  
20                (court reporter) is doing.

21                Q. Okay.

22                A. And she asked me -- that she's going  
23                to ask me what took place during the stop.

24                Q. Okay.

25                A. Which led up to I guess why I was

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1 coming to make the confession. And I had to  
2 explain to her that I really had wanted to  
3 make a confession because, you know, it was  
4 really on my conscience about -- I just  
5 couldn't go on much longer.

6 Q. So what was the substance of your  
7 confession?

8 A. I told them that I had indeed put  
9 the drugs in the pocket, that it was mine.  
10 I'd also told them what type of drugs it was.  
11 How much I spent for it. What happened on  
12 the day of the arrest. And those were pretty  
13 much the questions that she asked me.

14 Q. Okay. Did Mr. Brown know that those  
15 drugs were in that jacket pocket?

16 A. No, he did not know.

17 Q. And how do you know he didn't know?

18 A. Because I'm the one put it there.

19 Q. Well, did you may have been the one  
20 that put it there, but if he grabbed that  
21 jacket any time after that ---

22 A. No. He didn't touch the jacket.

23 Q. --- if he put his hands in his  
24 pocket then he would have known?

25 A. He would have known. And I probably

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1 would have been cussed out or something like  
2 that. But he didn't use the jacket at all.  
3 It actually -- we really didn't have a need  
4 for the jacket then. We were inside the  
5 vehicle, you know. So, no, he didn't have  
6 any idea that the drugs were there until they  
7 were actually pulled out of the pocket.

8 Q. The officer pulled out -- and I  
9 showed you a picture just now that I think  
10 it's some crack -- some pipes that are in  
11 there?

12 A. Yes, sir.

13 Q. Okay. Whose pipes are those?

14 A. They would be mine.

15 Q. Okay. And if those pipes were  
16 actually tested for residue, what type  
17 residue would come out of those pipes?

18 A. Oh, wow. You'd get cocaine, you'd  
19 get some crack. You'd get a little heroin.  
20 You'd get -- I use those pipes for two or  
21 three different things, you know. One for my  
22 cocaine, one for my crack. I mean, you know,  
23 I use them for whatever I need to use it for.

24 Q. Do you sell dope?

25 A. No, I'm not a drug seller. I've

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1       been an addict a long time. I've never sold  
2       drugs. I just pretty much like to maintain  
3       what I have just without having to go on the  
4       street over and over and over again and  
5       subject myself to things that ---

6               Q.    Okay. You mean go on the street  
7       over and over again, do you buy from one ---

8               A.    Yeah. I just buy from one person.

9               Q.    Where did you get a thousand dollars  
10       to buy this?

11              A.    Well, a woman who's an addict, such  
12       as I am, I've been in the streets a long  
13       time, sir. And I have done a lot of things  
14       not to be proud of that I've done to get my  
15       drugs. I have done unearthly things  
16       sometimes, but I support my habit. You know,  
17       I don't try to rob and steal from anybody,  
18       but, you know, I've prostituted at times.  
19       I've done things -- I mean, this is not --  
20       I'm not trying to be proud -- I'm not trying  
21       to make it sound like that's the right thing  
22       to do or that's the good thing to do but I've  
23       done some bad things to get my drugs.

24              Q.    Why aren't you actively seeking some  
25       help for your drug addiction?

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1           A.    You know, I have this really bad --  
2           another bad habit about myself. I feel like  
3           I can pretty much overcome things, overcome  
4           my habit. It's a false way of thinking, it's  
5           not a good way of thinking. Sometimes I'm  
6           just superwoman, that I can just overcome  
7           this. You know, I don't need the help. But  
8           in actuality, I do.

9           Q.    Has anyone offered you any help in  
10          the last year to try to get you into a rehab  
11          program?

12          A.    Well, yes. Yes.

13          Q.    Okay. Who did?

14          A.    Well, my mom has. My sister, she's  
15          always on me about going and getting some  
16          help. And -- I'm sorry.

17          Q.    Were you finished with your answer?

18          A.    No, sir. And this -- Ms. -- I don't  
19          even know what her name is.

20          Q.    Who are you speaking of?

21          A.    This young lady.

22          Q.    The Solicitor?

23          A.    Yeah. The Solicitor. Even she  
24          offered to help me.

25          Q.    When did she offer to help you?

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1 A. The day I came in.

2 Q. I'm sorry?

3 A. The day I came in.

4 Q. So the day you went in to make a  
5 confession, they offered you help?

6 A. Yeah.

7 Q. And did you accept that help?

8 A. At first, (affirmative nod).

9 Q. You did?

10 A. At first I did. But then I -- but  
11 there was some other issues at home, and  
12 which I couldn't do it.

13 Q. You couldn't do it or you didn't  
14 want to do it?

15 A. I just didn't want to do it, at  
16 first.

17 Q. You didn't want to do it?

18 A. (No verbal response)

19 Q. Do you recall, did they have you  
20 sign your confession? The document that you  
21 -- did they give you a document to sign when  
22 you were there?

23 A. Yes, sir. They did.

24 Q. Okay. And you signed that document  
25 acknowledging that it was your signature?

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1 A. Yes, sir.

2 Q. Okay.

3 MR. BRADLEY: Your Honor, at this  
4 time I'd like to move to introduce the  
5 statement into evidence that Ms. Trappier  
6 actually signed.

7 SOLICITOR HAMILTON: The State  
8 would object, Your Honor. I believe the  
9 testimony is on the record that is the  
10 substance of that statement. The statement  
11 is not necessary.

12 MR. BRADLEY: All right. Well,  
13 the statement's -- we haven't gotten her to  
14 read the entire testimony. Your Honor, it's  
15 a statement that was taken at that time so  
16 it's clearly relevant to what she told the  
17 officers at that time.

18 THE COURT: I'm going to accept  
19 it. I'm going to let it in. Just like I  
20 said ---

21 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

22 MR. BRADLEY: Thank you, Your Honor.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. BRADLEY:

25 Q. Ms. Trappier, I guess people are

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1 going to find it hard that you just had a  
2 come-to-Jesus and just decided to come in  
3 here to just spill your guts and tell them  
4 the truth. Do you know what the penalties  
5 are for what you had?

6 A. No. I know what he's been faced  
7 with and that that -- I mean, I really don't  
8 care what the penalties are.

9 Q. Well, I'm asking do you know what  
10 you would be faced with?

11 A. Yeah. I guess I would be faced with  
12 time or whatever I have to do to. It was  
13 still mine but I feel like I was wrong. It  
14 belonged to me so whatever happens, and that  
15 -- you know, sometimes they say that you  
16 suffer consequences by the choices that you  
17 make in life. And sometimes my choices got  
18 to make for -- so whatever consequences that  
19 are behind me, I'm willing to take it.

20 Q. Do you recall the date you gave that  
21 statement? You say it was around November.  
22 Is that correct?

23 A. Yes, sir. Uh-huh.

24 Q. Okay. It is now February, am I  
25 correct? Have you been charged yet?

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1           A. No, sir. I have issues with that  
2 because no one called me. No one tried to  
3 get in touch with me. I didn't know what was  
4 going on until -- about it. So I didn't know  
5 what to think, but I haven't been charged.

6           Q. You haven't been charged?

7           A. No, sir.

8           Q. Has any officers visited you about  
9 this charge?

10          A. No, sir.

11          Q. Okay. Any other agencies visit you  
12 about this charge?

13          A. No, sir.

14          Q. Do you have kids?

15          A. Yes, sir, I do.

16          Q. Do you know that if you are  
17 convicted of this charge that you may lose  
18 custody of your kids?

19          A. Yes, I do.

20          Q. You do? And in spite of that you're  
21 still willing to come in and actually testify  
22 that that is your drugs and you're telling  
23 the truth?

24          A. Yes, sir.

25                 MR. BRADLEY: No further questions

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1 for this witness at this time, Your  
2 Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Please answer any questions the  
6 prosecutor may have of you?

7 A. Yes, sir.

8 CROSS-EXAMINATION

9 BY MS. HAMILTON:

10 Q. Hey, Ms. Trappier, how are you?

11 A. Yes, ma'am.

12 Q. Do you need a second to get your  
13 composure?

14 A. Please.

15 Q. (Pause) -- are you ready?

16 A. Yes, ma'am.

17 Q. Okay. I just want to understand how  
18 do you know the Defendant? How long have you  
19 known him, time period?

20 A. It's been a few years.

21 Q. How many, four years?

22 A. Yeah, about -- for years, yes.

23 Q. So not eight years?

24 A. We know each other for a long time.  
25 But we've been friends for about four years.

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1 Q. Four years, okay. And do you live  
2 with him?

3 A. No, I don't.

4 Q. Did you live with him then?

5 A. I lived with him at one time. He's  
6 the type of person that will take anybody in  
7 and I -- at a couple of points of time in my  
8 life that I needed a place to stay. I had a  
9 place to rest my head. I had been maybe up  
10 or high for a week or two or whatever and  
11 really needed to someplace to sleep or  
12 something like that, but couldn't go home or  
13 whatever.

14 Q. Okay. You were on hard times but  
15 you paid a thousand dollars for these drugs,  
16 yet you needed a place to stay?

17 A. Well, that was two years ago. You  
18 know, that was during the time -- that wasn't  
19 recently. I really don't really have a  
20 problem with a place to stay because I have a  
21 mama that loves me. I have sisters that love  
22 me, I have family members and friends that  
23 really love me.

24 Q. Okay. All right. Now, on February  
25 18<sup>th</sup> of 2015 ---

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1 A. Uh-huh.

2 Q. --- you stated that you were with  
3 him. Did y'all live together at that time?  
4 Y'all were staying together?

5 A. No.

6 Q. You said that y'all were staying  
7 together that night?

8 A. Well, he'd been to a party. I live  
9 in the country. He lives in the city. But  
10 we have spent time together. He's my friend.

11 Q. Now, you stated you were -- I  
12 remember you stating you were so high that  
13 you put the drugs in the wrong pocket. But  
14 where were your crack pipes?

15 A. My crack pipes were with my  
16 cigarette pack.

17 Q. Where was that located?

18 A. It was in the back seat.

19 Q. Okay. Was it in your pocket?

20 A. It probably was in my pocket or on  
21 the side of the door, whichever one they  
22 found it. They found a ---

23 Q. Was it in your jacket pocket?

24 A. No, I don't think ---

25 Q. The crack pipes weren't in your

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1 jacket pocket?

2 A. The crack pipes were in the  
3 cigarette box. And the cigarette box was in  
4 the back, in the back seat as well.

5 Q. Okay. Where the jackets were?

6 A. Yes.

7 Q. Okay. And it was laying in the back  
8 seat, not in the jacket?

9 A. At that point in time, maybe it  
10 could have been in my coat pocket but it  
11 could have fallen out because, you know, I'll  
12 reach back there and grab them, grab my  
13 jacket to get out and go to whatever, in the  
14 store or whatever, to get gas or whatever.  
15 But they indeed were in the back seat as much  
16 as I can ---

17 Q. I'm just trying to figure out how  
18 you were so high at the time that you  
19 couldn't figure out where to put the drugs  
20 and whose jacket was whose, but you managed  
21 to put the crack pipes in your jacket?

22 A. Well, ma'am, I had already stated  
23 earlier that the night before, you know, I  
24 had been getting high for a couple of days.  
25 And the night before, I went inside the car.

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1 and I stuck the jacket -- it was dark. It  
2 was like 11:00, 12:00 at night. I just  
3 opened the car door and stuck it in a pocket.  
4 I really didn't intend to stick it in his  
5 jacket pocket, but I had put it inside the  
6 pocket.

7 Q. Let me try to keep on track. So you  
8 put the drugs in the jacket pocket.

9 A. Uh-huh, (affirmative nod).

10 Q. You stated it was in a bag, that you  
11 put it in?

12 A. Uh-huh.

13 Q. So that it was in like a plastic  
14 bag. When you put it in the pocket, it was  
15 just in a plain plastic bag, right?

16 A. Uh-huh.

17 Q. Was it wrapped?

18 A. It was wrapped.

19 Q. Were you aware that the drugs were  
20 actually not found in a bag? They were found  
21 in a toothpick container?

22 A. Well, I think that the toothpick  
23 container contained the crack and stuff like  
24 that. So the toothpick container might have  
25 contained that or whatever, but they still

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1 were wrapped in plastic. The cocaine was in  
2 plastic.

3 Q. Within the toothpick container?

4 A. Okay. But it was still in plastic.

5 Q. All right. And going back to the  
6 scene, I think I addressed -- oh, I do want  
7 to talk about something that you had said on  
8 direct examination about the phones. Now, on  
9 scene you told officers two of those phones  
10 were yours, not three?

11 A. Well, ---

12 Q. There were three?

13 A. But pretty much -- if I told the  
14 officer there were two of them, actually you  
15 can see there were more than two phones. And  
16 so the ones that I claim are three, the three  
17 phones. The one phone was already in the car  
18 because I already only used this one and this  
19 one. That one, I think the battery had been  
20 dead that night before. So, you know,  
21 actually when he held the phones up, he  
22 didn't hold up all three of those phones.  
23 You know, he only held up one phone.

24 Q. You said you normally give a fake  
25 name, so it's pretty normal for you to lie?

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1 A. Well, yeah. I have lied.

2 Q. Okay. And so you lied on the scene  
3 that night also about your name?

4 A. Excuse me?

5 Q. You lied on scene about your name?

6 A. About my name. Well, actually, I  
7 told -- yeah. I have a lot of aliases: Lisa  
8 Trappier, Anita Trappier, Teresa Trappier.  
9 You know, they're -- I never change my last  
10 name.

11 Q. Yeah?

12 A. I mean, not that that's the right  
13 thing. But I always use my aliases. You  
14 know, I've done that -- especially if I know  
15 I'm driving and at that point in time. I  
16 just don't go around and give people my  
17 false, you know, a false name. But for at  
18 that time, I knew that I was driving. I knew  
19 that I was driving and I didn't have my  
20 licenses. It was under suspension. So, you  
21 know, the ---

22 Q. Let me ask you something.

23 A. Yes.

24 Q. So on scene you also gave him a  
25 birth date of [REDACTED]?

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1 A. Uh-huh.

2 Q. But your real birth date is [REDACTED],  
3 [REDACTED] correct?

4 A. Yes, it is. Yes.

5 Q. Okay. So you lied about your name.  
6 You lied about your birth date?

7 A. Right.

8 Q. So at the beginning of the traffic  
9 stop you've already lied to the officers  
10 twice, right at the beginning of it.

11 A. Well, he didn't really know that I  
12 had lied because first of all, he didn't --  
13 the officer to me that morning, they didn't  
14 really find out what my real name was until  
15 after we got to the police station. So it  
16 wasn't like he knew I was lying.

17 He -- it was, to me, his job to find out  
18 who I was. I mean, even if I told him I'm  
19 'Nita Trappier, which is what I told him,  
20 that name, that is a name that he could look  
21 up on any NCIC and find out that that's a  
22 true name.

23 Q. I do want to ask you. You have  
24 some, a few crimes of dishonesty in the past.

25 A. Uh-huh.

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1 Q. Giving false information?

2 A. Yeah.

3 Q. 7/15.

4 A. Yeah.

5 Q. Shoplifting. Do you remember that,  
6 2015?

7 A. Yeah. I remember.

8 Q. Financial transaction card 2008?

9 A. Yeah.

10 Q. And giving false information to  
11 police, 2015?

12 A. Yeah.

13 Q. So ---

14 A. Did you see the credit card charges  
15 in there, too?

16 Q. I'm just -- so are you telling the  
17 truth today?

18 A. Well, I told the truth already.

19 Q. Okay.

20 A. When I told the officer what my real  
21 name was, that was the truth.

22 Q. Okay. Are you and Calvin still  
23 friends?

24 A. He's kind of upset with me but,  
25 yeah. I'd like to say he's my friend still.

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1 Q. Have you spoken to him lately?

2 A. Yeah, I speak to him all the time.

3 Q. Okay. So you are friends?

4 A. We are friends.

5 Q. Okay. Pretty close friends?

6 A. I don't know what he would say but I  
7 would say that he's a dear person to me, you  
8 know, for whatever reasons that I'm going to  
9 say that. I feel that, yes, he truly is  
10 truly a dear friend.

11 Q. Okay. And such a good friend that  
12 you would try to take a charge to protect  
13 him?

14 A. He did for me.

15 Q. Oh, he did for you.

16 A. Took a charge for me.

17 Q. So all of these things you're saying  
18 that you possessed these drugs?

19 A. Yeah. They're mine.

20 Q. You knowingly possessed heroin;  
21 right?

22 A. And cocaine.

23 Q. And cocaine?

24 A. Uh-huh.

25 Q. Okay.

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1 A. And crack too.

2 Q. There was only heroin in this case.  
3 So -- no cocaine. But you knowingly  
4 possessed them on February 18<sup>th</sup>, 2015 ---

5 A. Uh-huh.

6 Q. --- knowingly possessed heroin in  
7 excess of fourteen grams?

8 A. Uh-huh.

9 Q. You did say yes on the record;  
10 correct?

11 A. "Yes." I'm saying yes on the  
12 record.

13 Q. Okay. Now, how did you get to court  
14 today?

15 A. How did I get to court?

16 Q. Yeah. Did you ---

17 A. Well, yesterday we broke down. I  
18 caught a ride.

19 Q. We who? Who is we?

20 A. Me and I don't know where he is. I  
21 can't even see him. But Doug. Doug is in  
22 the courtroom somewhere, I think. I thought  
23 he was.

24 Q. So you were with him?

25 A. Excuse me?

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1 Q. You and just the other guy in the  
2 courtroom?

3 A. No. Kelly, as well.

4 Q. Okay. You rode to court today ---

5 A. Yesterday.

6 Q. Who did you ride with today?

7 A. Today I rode with Calvin, I rode  
8 with Doug, Uncle Perry.

9 Q. So you have enough contact and are  
10 good enough friends with him that you're  
11 hanging out with him the day of trial?

12 A. Well, let me say this if I can just  
13 -- If I can say this. Okay. I don't have a  
14 vehicle, okay? I don't have a vehicle.  
15 Truly, the only way that I would have been  
16 able to get here because I don't have access  
17 to a vehicle and it's his court date and I  
18 want to be here for his court because I am  
19 truly a co-defendant too. That's the only  
20 natural thing that I thought would do.  
21 I just wasn't to me, didn't seem like a  
22 problem. Just ask for a ride here.

23 Q. I do want to ask you about the  
24 statement that we had discussed. Now, are  
25 you aware -- surely you're aware that the

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1 statement you gave was November 6; right?

2 A. Yeah. It was on the 6<sup>th</sup> of November.

3 Q. Are you aware that on November 2<sup>nd</sup>  
4 was when the Defendant, the defense attorney  
5 was notified that the offer was being revoked  
6 and we were moving forward with trial.

7 That's really close to that date. I'm just

8 ---

9 A. Listen, I don't understand what your  
10 question is.

11 Q. I'm asking did he call you? Did Mr.  
12 Brown call you and tell you to go in and give  
13 this statement ---

14 A. No.

15 Q. --- now that his offer off the table  
16 and moving forward to trial?

17 A. I believe we spoke that morning,  
18 right? And I believe that morning I did tell  
19 you that he has no clue that I'm here. I  
20 think I said that to you about four or five  
21 times.

22 Q. It just happened to correspond with  
23 that date?

24 A. I don't have any clue about the date  
25 you're talking about. I'm talking about the

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1 date that I came up.

2 Q. This is nine months later ---

3 A. Uh-huh.

4 Q. --- you decide you now want to take  
5 the charge and it just happens to correspond  
6 to the same week that Mr. Brown's offer is  
7 revoked?

8 A. Well, sweetheart, like again, I'm  
9 going to say I don't have any idea what --  
10 what revocation -- what your business is with  
11 him. I'm saying when I came in I explained  
12 to you that more than one, twice, I think  
13 three or four times -- with a witness -- that  
14 he had no idea that I was here. And that  
15 kind of upset me that day too. I think you  
16 even said ---

17 Q. You can't go into anything that I  
18 had said.

19 A. Okay. Well, I don't know why not  
20 because there are a lot of things that you  
21 said that I have issues with. But when I  
22 came in I did say to you more than once ---

23 Q. Yeah, I ---

24 A. Do you remember that, me saying  
25 that?

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1 Q. I'm bringing out the fact that this  
2 just corresponds so closely to this. That's  
3 all I wanted to bring out. I have a few more  
4 questions.

5 A. Oh, okay. Okay. Yes, ma'am.

6 Q. So you said you paid a thousand  
7 dollars (\$1,000) to buy these drugs. That is  
8 a lot money ---

9 A. Yeah, it is.

10 Q. --- for someone who doesn't work?

11 A. Well, like I said earlier, I'm not  
12 proud of the things that I've done to  
13 maintain -- to support my habit. I have done  
14 what would be necessary for me to get my  
15 drugs. I don't really look to anybody to  
16 support my habit. I try to support my habit.  
17 Like I said, I know that it's not right -- it  
18 may not be the right thing to say. It may  
19 not even ---

20 Q. Well, I just -- okay. I just was  
21 trying to figure out the thousand dollars.  
22 So you have stated you are guilty of this  
23 charge. Are you willing to plead today  
24 guilty to these charges right now?

25 A. Yes, ma'am. If I have to, yes, I

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1 am.

2 Q. If we bring an indictment in here  
3 you'd be willing to plead guilty to this  
4 charge right now and face twenty-five years?

5 A. Yes.

6 Q. Okay.

7 SOLICITOR HAMILTON: I beg the  
8 Court's indulgence, Your Honor. One more  
9 question.

10 CROSS-EXAMINATION CONTINUED

11 BY SOLICITOR HAMILTON:

12 Q. Sixteen grams of heroin was found on  
13 scene. That's a lot for a user; isn't it?

14 A. Not really. Because there are  
15 people that I know that have a thousand  
16 dollar a week habit, a thousand dollars or  
17 better. There are people that are using  
18 heroin especially in different mixtures,  
19 different type release every day, especially  
20 where I'm from. A thousand dollars is  
21 nothing where I'm from to buy -- that I have  
22 seen people actually go and spend money. And  
23 I have myself. I mean, so to me that's not  
24 really a lot because, you know, I've seen  
25 other people that spend way more than that in

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1 a week's time.

2 Q. That are unemployed?

3 A. That are unemployed because they ---

4 Q. That's it. That's it.

5 A. Oh, okay.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. BRADLEY:

9 Q. Ma'am, one two questions. You may  
10 have already testified to this. If it's been  
11 asked and answered, I'll withdraw. In that  
12 bag you keep saying there was a -- I think  
13 you said it in your ---

14 A. Statement?

15 Q. --- document that we admitted ---

16 A. Uh-huh.

17 Q. --- that it was heroin and cocaine.

18 A. It was cocaine and heroin.

19 Q. Well, the lab report came back as  
20 sixteen grams of heroin?

21 A. Well, I don't know if it did that.  
22 But I usually mix my -- I usually, like I  
23 said in my statement I usually mix my stuff  
24 together.

25 Q. How much cocaine did you put in

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1 that? Were you the one that mixed it?

2 A. Yeah. I always mix my stuff, yeah.

3 Q. Okay. How much cocaine did you put  
4 in it?

5 A. It probably was maybe like four  
6 grams or maybe -- probably four, a little  
7 less than four.

8 Q. So a quarter of that bag would have  
9 been ---

10 A. Yeah. It wasn't a whole lot now,  
11 but it was enough. It was mixed.

12 Q. And why do you?

13 A. Well, because when I do that it just  
14 -- I don't shoot my drugs, okay? I smoke my  
15 drugs.

16 Q. Okay.

17 A. You understand?

18 Q. (No verbal response).

19 A. And I mix it together. I put a  
20 mixture of it together, whether it be the  
21 crack, the heroin and the cocaine, and on top  
22 of one pipe. But I don't intravenously -- I  
23 don't use needles. I smoke. You know, I  
24 smoke and get high.

25 Q. Okay.

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1           A.    So that's where my pipes come in at.  
2           And that's why I mix it because it's very  
3           strong.

4           Q.    You were read your *Miranda* rights  
5           when you were arrested that day; correct?

6           A.    Yes, sir.

7           Q.    Okay. Did they ever place you under  
8           oath and have you give any statement that  
9           day?

10          A.    No, they didn't.

11          Q.    Okay. So you did not tell the  
12          officer that it was yours?

13          A.    No.

14          Q.    You gave him a false name; is that  
15          correct?

16          A.    Yes, sir.

17          Q.    And you may have told some things  
18          that may have not been true that day; is that  
19          correct?

20          A.    Yes, sir.

21          Q.    Were you ever placed under oath that  
22          day when you said those things?

23          A.    No, sir.

24          Q.    Okay. When you actually went in the  
25          station to give your confession, were you

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1 placed under oath that day?

2 A. No, sir.

3 Q. Were you read your *Miranda* rights  
4 that day?

5 A. Yes, sir.

6 Q. Were you told or anywhere written on  
7 a form that you -- you could commit perjury  
8 if what you're saying in there is not  
9 correct?

10 A. Yes, sir.

11 Q. Were you told that or was it written  
12 on a form?

13 A. No, no. It was written on a form.

14 Q. Okay. So they didn't warn you that  
15 you were committing perjury if you weren't  
16 telling them the truth?

17 A. Yes, sir.

18 Q. Okay. And so you told the truth; is  
19 that correct?

20 A. Yes, I did.

21 MR. BRADLEY: No further questions,  
22 Your Honor.

23 THE COURT: All right. Thank you.  
24 You may step down.

25 (WITNESS STEPS DOWN)

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1 MR. BRADLEY: Your Honor, at this  
2 time, we would have one more witness, which I  
3 would be our client. But we -- if we might  
4 discuss with him whether or not he's going to  
5 take the stand. Could we just have five  
6 minutes just to discuss it with him now.

7 THE COURT: All right. Y'all  
8 discuss it with him and then we'll take a --  
9 I guess based on y'all's prediction that it  
10 was lunchtime, is it about lunchtime yet?

11 MR. BRADLEY: Yeah.

12 THE COURT: Isn't that what y'all  
13 said, we'd be through by lunch.

14 MR. BRADLEY: Yes, sir.

15 THE COURT: Late lunch. All  
16 right. Y'all take a few minutes to discuss  
17 with him about that. And then I'll come back  
18 on the record and discuss it with him as  
19 well.

20 MR. BRADLEY: Thank you, Your Honor.

21 THE COURT: Okay. Five minutes.

22 (BRIEF RECESS)

23 THE COURT: All Right. Are we  
24 ready to proceed?

25 MR. BRADLEY: We're ready to

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1 proceed, Your Honor.

2 THE COURT: All right. And my  
3 indication is your client wishing to testify.  
4 Is that the indication? And I'll go through  
5 the questions.

6 All right. Mr. Brown, you are  
7 already under oath. You were placed under  
8 oath earlier, okay? I'm going through some  
9 questions of you to make sure you understand.

10 All right. First of all, it's your  
11 constitutional right that you have a right to  
12 remain silent. Nobody can force you to  
13 testify, okay? And I, as the trier of fact,  
14 if you don't testify, I'm not in any way to  
15 consider that against you. But that is not  
16 to be considered because the State still  
17 would have the burden to prove you guilty  
18 beyond a reasonable doubt on each element of  
19 these charges, okay?

20 So do you understand that right?

21 DEFENDANT: Yes, sir, I do, Your  
22 Honor.

23 THE COURT: Have you had  
24 sufficient time to talk with your attorney  
25 about whether you wish to testify or not to

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1 testify?

2 DEFENDANT: Yes, I have.

3 THE COURT: Do you need any more  
4 time to talk with him about that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do we need to take a  
7 break or ---

8 DEFENDANT: Five minutes, yes,  
9 sir. Thanks a lot.

10 THE COURT: Well, before we -- I  
11 guess everybody's aware of what any charges  
12 are if there are any impeachable charges?

13 SOLICITOR HAMILTON: There are,  
14 Your Honor.

15 THE COURT: Okay. And you're  
16 aware of that. Y'all want me to go through  
17 that. Let's kind of go through some stuff  
18 and then y'all -- before y'all talk, that way  
19 we have the evidence, okay. The impeachable  
20 charges are what?

21 SOLICITOR HAMILTON: He has giving  
22 false information to police from 2007, Your  
23 Honor.

24 THE COURT: All right. And that's  
25 the only one?

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1 SOLICITOR HAMILTON: Yes, Your  
2 Honor.

3 THE COURT: Okay. All right. And  
4 do you realize that that fact can be used  
5 against you if you were to testify?

6 DEFENDANT: Yes, sir.

7 THE COURT: It's an impeachable  
8 charge. All right. So you want to have  
9 another few minutes? All right. We'll take  
10 four minutes.

11 MR. BRADLEY: That's fine, Your  
12 Honor. Thank you.

13 THE COURT: When you are ready,  
14 let me know.

15 MR. BRADLEY: I appreciate that,  
16 Your Honor.

17 (BRIEF RECESS)

18 THE COURT: All right. So you've  
19 had sufficient time to discuss your rights?  
20 Again, we're back on the record. You're  
21 under oath and you realize that we're here to  
22 talk about your right to testify and whether  
23 to do that.

24 So you've had sufficient time to  
25 talk with your attorneys about whether you

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1 should testify or not; is that correct?

2 DEFENDANT: Yes, I have, Your  
3 Honor.

4 THE COURT: And you don't need any  
5 more time to do that?

6 DEFENDANT: No, I don't, Your  
7 Honor.

8 THE COURT: And you realize that  
9 this right to testify or not to testify is  
10 totally up to you. It is not your attorney's  
11 decision but it's your decision after you've  
12 had advice from your attorney?

13 DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: All right. Are you  
15 under the influence of any alcohol, drugs or  
16 medication this afternoon?

17 DEFENDANT: No, I'm not.

18 THE COURT: Anything to keep you  
19 from understanding what's going on?

20 DEFENDANT: No, sir, Your Honor.

21 THE COURT: All right. And has  
22 anybody promised you anything to make this  
23 decision?

24 DEFENDANT: No, sir, Your Honor.

25 THE COURT: Anybody threatened you

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1 to make this decision?

2 DEFENDANT: No, sir, Your Honor.

3 THE COURT: You're making this  
4 decision on your own free will?

5 DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: All right. Anything  
7 that I've discussed with you, do you have  
8 questions or need further explanation?

9 DEFENDANT: No, sir, Your Honor.

10 THE COURT: All right. And do you  
11 wish to testify?

12 DEFENDANT: No, sir, Your Honor.  
13 I elect to stand.

14 THE COURT: Okay. All right.  
15 That's fine. And like I said, that cannot be  
16 used against you. All right.

17 MR. BRADLEY: Your Honor, at this  
18 particular time the Defense would rests its  
19 case.

20 THE COURT: All right.

21 MR. SHARPE: And, Your Honor, at  
22 this time we'd also renew any of our  
23 objections and motions that were ---

24 THE COURT: All right. And I  
25 think at this pint I'm going to deny those

1 motions based on what was previously stated.

2 Okay.

3 SOLICITOR HAMILTON: Your Honor,  
4 the State has two rebuttal witness.

5 THE COURT: Did I hear you say two  
6 short rebuttal witnesses?

7 SOLICITOR HAMILTON: Two rebuttal  
8 witnesses.

9 THE COURT: Two short rebuttal?

10 SOLICITOR HAMILTON: Very short,  
11 actually.

12 THE COURT: Just making sure that  
13 adjective was in there.

14 SOLICITOR HAMILTON: Yes, yes.

15 THE COURT: All right.

16 MR. BRADLEY: Okay. Do we have  
17 notice of those people?

18 SOLICITOR HAMILTON: We did not  
19 need to notify you of who they were. Oh,  
20 it's Gibson. Trooper Gibson -- or Officer  
21 Gibson who testified earlier. And it is  
22 Officer Gander who is the one who took the  
23 statement that they have admitted into  
24 evidence.

25 THE COURT: All right. Any

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1                   comments or ---

2                   MR. BRADLEY:        No, sir.

3                   THE COURT:        All right. Okay. You  
4 may proceed.

5                   SOLICITOR HAMILTON:   Thank you,  
6 Your Honor.

7                   The State calls Randy Gibson.

8                                   (WITNESS TAKES STAND)

9                   THE COURT:        Mr. Gibson, I would  
10 just remind you, you were already placed  
11 under oath earlier today.

12                   WITNESS: Yes, Your Honor.

13                   SOLICITOR HAMILTON:   May it please  
14 the Court, Your Honor.

15                   THE COURT:        Yes.

16                   RANDY GIBSON, having been previously  
17 sworn, testified as follows:

18                                   DIRECT EXAMINATION

19                   BY SOLICITOR HAMILTON:

20                   Q.   Officer Gibson, would you please  
21 state your full name for the record again?

22                   A.   William R. Gibson, II.

23                   Q.   Just a little while ago we heard  
24 from a witness, a defense in this case, a  
25 Monique Trappier. Do you remember her?

1 A. Yes, ma'am. She was the driver.

2 Q. She was the driver on February 18<sup>th</sup>,  
3 2015?

4 A. Correct.

5 Q. In court she stated that you took a  
6 statement from her. Do you remember ever  
7 taking a statement from her?

8 A. I don't recall taking a statement.

9 Q. Did you ever hold up a bag of  
10 cocaine and ask her what it was?

11 A. No, ma'am.

12 MR. BRADLEY: Your Honor, I object  
13 on that based on facts assumed and were not  
14 in evidence. I don't remember her testifying  
15 that he took a statement from her.

16 SOLICITOR HAMILTON: Your Honor,  
17 she did testify that back at the station he  
18 took a statement from her, holding up the bag  
19 of cocaine asking her, 'is this cocaine?'  
20 She stated, 'yes, I paid a thousand dollars  
21 for it.'

22 THE COURT: I think ---

23 MR. BRADLEY: So we're talking about  
24 an oral statement. We're not talking about  
25 the written statement.

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1 THE COURT: That's what I took it  
2 as ---

3 SOLICITOR HAMILTON: Thank you,  
4 Your Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. BRADLEY:

7 Q. And if she saying that statement,  
8 did occur and you did ask her if it was her  
9 cocaine, would you have taken out charges if  
10 she said yes, against her?

11 A. Most definitely.

12 MR. BRADLEY: Objection.  
13 Speculation, Your Honor. That's not facts  
14 that are in evidence and that's not relevant,  
15 Your Honor.

16 THE COURT: All right. I'll take  
17 it for what it's worth, but I think it's  
18 appropriate.

19 MR. BRADLEY: Certainly.

20 SOLICITOR HAMILTON: That is it,  
21 Your Honor.

22 THE COURT: All right. Thank you.  
23 Any cross-examination?

24 MR. BRADLEY: Nothing, Your Honor.

25 THE COURT: All right. Thank you.

1           You may step down.

2                   SOLICITOR HAMILTON:       We would ask  
3           that he be excused.   Hopefully for good.

4                               (WITNESS STEPS DOWN)

5                   SOLICITOR HAMILTON:       Our next  
6           witness is Officer Robin Gander.

7                               (WITNESS TAKES STAND)

8                               (WITNESS DULY SWORN)

9                   SOLICITOR HAMILTON:       May it please  
10          the Court, Your Honor.

11                   THE COURT:       Yes, You may proceed

12                   ROBIN GANDER, having been duly sworn to  
13          tell the truth, and nothing but the truth,  
14          testified as follows:

15                               DIRECT EXAMINATION

16                   BY SOLICITOR HAMILTON:

17                   Q.   Officer Gander, could you please  
18          state your full name for the record?

19                   A.   Robin Gander.

20                   Q.   And what is your occupation?

21                   A.   A police officer with the City of  
22          Rock Hill.  I'm assigned to the York County  
23          multijurisdictional drug unit.

24                   Q.   Now, I wanted to draw your attention  
25          to November 6, 2015.  Do you remember taking

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1 a statement from a Monique Trappier that day?

2 A. I do.

3 Q. Now, when you did take that

4 statement, do you remember what she said?

5 What she came down there -- the purpose of

6 her coming down to you to give a statement

7 was?

8 A. She wanted to talk about a traffic

9 stop she was involved in regarding some drugs

10 that were found, with regard to that traffic

11 stop.

12 Q. And can you explain to me what her

13 demeanor was?

14 A. She seemed very coached in a way,

15 like she wanted to be there to talk about

16 just that one statement and that was it.

17 Q. And the statement that she gave,

18 what made you believe that it was coached?

19 A. It was extremely well thought out.

20 She didn't change at all. Most people,

21 they'll go through and like think back. But

22 she was very precise with her answers.

23 Q. And did the answers resemble the

24 report from Officer Gibson?

25 A. Almost to a T.

1 Q. Please answer any questions the  
2 Defense may have.

3 THE COURT: All right.

4 CROSS-EXAMINATION

5 BY MR. BRADLEY:

6 Q. Officer Gander?

7 A. Yes.

8 Q. You just testified that, you know,  
9 that Ms. Trappier -- and I don't know if I'm  
10 getting her name right -- but Ms. Trappier  
11 the person who was driving, you said she  
12 appeared to be coached; is that correct?

13 A. Yes, sir.

14 Q. Okay. And the basis of her being  
15 coached was that she had -- she gave detail  
16 that was similar to the report that Officer  
17 Gibson had taken?

18 A. Almost as if she had read the report  
19 and was told to come in.

20 Q. Okay. Looking at -- and you've read  
21 this report; is that right? You're familiar  
22 with what this report is; is that right?

23 A. I'm familiar with it, but I haven't  
24 read it to a full ---

25 Q. Well, if you haven't read it to a

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1 full, how would you know that it's actually  
2 almost verbatim with the report?

3 A. After seeing her statement that she  
4 gave and then afterwards, before she gave her  
5 statement, that's when I -- because seeing  
6 the report and in speaking with Officer  
7 Gibson in regards to the incident.

8 Q. Okay. And Officer Gibson's report  
9 never mentions heroin, does it?

10 A. No.

11 Q. Did she mention heroin when she  
12 talked to you?

13 A. She did.

14 Q. Okay. That's something that was not  
15 consistent in the report; is that correct?

16 A. Correct.

17 Q. Okay. Did she also tell you that it  
18 was her cocaine/heroin, as opposed to Mr.  
19 Brown's?

20 A. That's what the report states, her  
21 statement states, (affirmative nod).

22 Q. Okay. That's what her statement  
23 says, so that's what she would have said that  
24 day; because you took down the statement; am  
25 I correct?

1 A. Correct. Uh-huh.

2 Q. Okay. Is that anywhere, as far as  
3 you know, in Officer Gibson's report?

4 A. No. Not that I'm aware of.

5 Q. Okay. Can you tell me what else to  
6 you seemed to be verbatim with Officer  
7 Gibson's report that was in her confession?

8 A. What's stated in her statement is  
9 what she told me. That's what I typed down.

10 Q. Okay. And so you're saying that the  
11 statement that she gave is very close or  
12 almost verbatim as the report that Officer  
13 Gibson actually wrote out; is that correct?

14 A. It's close to it, yeah.

15 Q. Okay. No further questions. Thank  
16 you.

17 THE COURT: All right. Any  
18 redirect?

19 SOLICITOR HAMILTON: None, Your  
20 Honor.

21 THE COURT: All right. Thank you,  
22 you may step down.

23 (WITNESS STEPS DOWN)

24 THE COURT: All right. Anything  
25 further from the State?

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1 SOLICITOR HAMILTON: Nothing  
2 further.

3 THE COURT: All right.  
4 Do y'all want to have -- make closing  
5 remarks? Or I guess -- any Motions, I'll be  
6 glad to hear from you.

7 MR. BRADLEY: Thank you, Your  
8 Honor. If it please the Court, the Defendant  
9 would move at this point for an acquittal  
10 based on some of the evidence that we've  
11 actually put up just now. I think that what  
12 Your Honor has to see is that there's no way  
13 beyond a reasonable doubt that a fact finder  
14 would be able to determine from there that my  
15 client was actually the one in possession of  
16 those drugs, Your Honor. We would just ask  
17 for a motion to acquittal. We would also  
18 renew again our Motion for suppression, as  
19 well as our motion for directed verdict.

20 THE COURT: Okay. And I'm  
21 assuming you're saying by based on the  
22 statement of your last witness. But I guess  
23 as the fact finder I have to determine and  
24 weigh the credibility of the witness.

25 MR. BRADLEY: Yeah. Weigh the

1                   credibility, Your Honor.

2                   THE COURT:     So I'm going to deny  
3                   your Motions and, as indicated, the previous  
4                   Motions on the previous basis as well.

5                   Do y'all want to make any closing  
6                   remarks? I'll be glad to hear from you.

7                   SOLICITOR HAMILTON:     We would like  
8                   to just briefly, Your Honor.

9                   THE COURT:     Okay. All right.

10                   (OFF RECORD DISCUSSION)

11                   MR. BRADLEY: Thank you, Your Honor.  
12                   I'd like to thank the court for some time  
13                   today. We did take up a little bit of time,  
14                   a lot of time as a matter of fact.

15                   I was used to standing over here  
16                   just now because the witnesses were there,  
17                   but I'll stand over here.

18                   Your Honor, this is a case where I  
19                   think it's pretty straightforward. This was  
20                   not a traffic stop. This was clearly a drug  
21                   stop. We have actually given evidence that  
22                   we thought that it was constitutional  
23                   violations and we talked about that, such as  
24                   extending the stop, in the Motion to  
25                   suppress. But I think, Your Honor, it is.

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1 probably contingent on Your Honor to listen  
2 to the witnesses and judge the credibility of  
3 the witnesses.

4 Your Honor, we've had witnesses  
5 here. We had Officer Gibson. And certainly  
6 I don't have any reason to believe that  
7 Officer Gibson would not come in here and  
8 would not tell the story exactly as it  
9 happened.

10 Certainly, there were, as you saw  
11 inconsistencies between what he said and what  
12 was on that video. As far as where they were  
13 making their trip to was very consistent. As  
14 far as them only planning to stay a short  
15 period of time. She didn't testify that they  
16 were going to stay a week. She said that day  
17 or possibly the next day as well as I think  
18 the State Constable, who was speaking with my  
19 client also said the same thing. My client  
20 told him the same thing standing on the side  
21 of the car, Your Honor. It was going to be  
22 an overnight trip. And it may have been  
23 Officer Gibson who told that. But said it  
24 was going to be overnight. I mean that day  
25 but 'we may wind up staying overnight'

1           because they didn't want to come back because  
2           of how late it was or driving on the road,  
3           Your Honor.

4                       Your Honor, we also have in this  
5           case where the traffic stop for following too  
6           closely, which Your Honor said is justified,  
7           that's fine and I turned into -- instead of a  
8           traffic stop it turned into finding out who  
9           this young lady was. And the police went  
10          through procedures that they were supposed to  
11          go through and even indicated that they were  
12          going to -- they were still trying figure out  
13          who this young lady was. Well, at the time,  
14          my client was sitting in the passenger's seat  
15          of the car. He remained in the passenger's  
16          seat of the car, Your Honor. He didn't have  
17          that jacket on his body. As a matter of  
18          fact, he didn't put that jacket on his body  
19          until after they had already found the drugs  
20          that they say they took out of that pocket.  
21          Your Honor, if he had put the coat on earlier  
22          and put his hand in there and, you know,  
23          tried to hide it or anything like that, you  
24          know, I could probably understand the State  
25          would be much more interested in prosecuting

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1 my client as opposed to the person who  
2 actually took the stand and said it was their  
3 drugs, Your Honor. She clearly stated in her  
4 testimony that it was her drugs. There is --  
5 it is uncontradicted.

6 I mean, the only other contradiction  
7 that we have is my client who says 'the  
8 cocaine's mine', from what they're saying.  
9 Of course, Your Honor, I've already laid out  
10 to you that the reason why that is  
11 unreliable, it is an out-of-court statement.  
12 It certainly is. It is a statement against  
13 his interest, which would be an exception to  
14 that.

15 But more importantly, Your Honor,  
16 it's a statement that's actually  
17 uncorroborated because it's not cocaine  
18 there. Your Honor, they've put up no proof  
19 that my client's ever used any drugs. And  
20 there is no proof that my client actually has  
21 been convicted of even selling any drugs.

22 The young lady who took the stand,  
23 Your Honor, I think she was very open about  
24 her drug use. You know, if you look at her  
25 demeanor, she clearly looks like someone who

1 has either had a drug problem before or  
2 continues to have one.

3 When you look at the videotape that  
4 we saw, Your Honor, she actually got out of  
5 the vehicle and came back to the police car.  
6 And you can see how rattled she was. And,  
7 you know, she even got to being nervous at a  
8 certain time.

9 Mr. Brown never was that way. He  
10 told the truth. Matter of fact, the only way  
11 the officers figured out who she really was  
12 is my client actually gave the real name. My  
13 client told them what her name was.

14 And so, again, Your Honor, I see  
15 everything here that points to a young man  
16 who may have been in the car with a known  
17 person with him that may have used drugs.  
18 But as Your Honor knows, mere presence where  
19 drugs are found or mere association with a  
20 person who used drugs does not constitute  
21 possession or knowledge or intent to have  
22 those drugs, to sell those drugs and to  
23 dispose of them. My client would have to  
24 have the authority to be able to dispose of  
25 those drugs, Your Honor; to be able to go

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1 control those drugs, Your Honor. And he  
2 could not have had that if he had not known  
3 those drugs were there.

4 The only evidence of knowledge that  
5 we have, Your Honor, is the testimony from  
6 this young lady who basically said 'I put it  
7 in there. He did not know it was in there.  
8 I did it.'

9 That is very extreme. In my fifteen  
10 years I've never had a witness come into  
11 court and actually confess, opening herself  
12 up for a sentence that Your Honor knows what  
13 the sentence would be if she's actually  
14 charged and if she's actually convicted. I  
15 find very few people would do that.

16 But we also, Your Honor, the purpose  
17 of the justice system, as Your Honor knows  
18 and I don't have to tell you is, is to get at  
19 the truth. And there have been times when  
20 we've had people who have come in and we've  
21 made confessions. And people just, for  
22 whatever the reason is, they decide 'I can't  
23 live with this anymore.' They teach us this  
24 in law school. Appeal to the conscience of a  
25 person. And once you appeal to that person's

1 conscience, they tell the truth.

2 I can't tell you whether there was  
3 any conversation between my client and the  
4 young lady who took the stand. I can't tell  
5 you whether there was that conversation. I  
6 never asked.

7 But I certainly can tell you this,  
8 Your Honor, some people do have this change  
9 of conscience where someone -- they see that  
10 something bad is going to happen. And they  
11 know that they were the one who actually set  
12 that in motion and actually caused that to  
13 happen. It was their substance. And so she  
14 had a change of heart. She decided to come  
15 in, take the witness stand, open herself up  
16 to cross-examination, Your Honor. And she  
17 explained to you exactly what happened on  
18 that day.

19 Your Honor, I think that when you  
20 look at that and you take that evidence and  
21 you also have to take a standard we have in  
22 this case. And I don't have to tell you.  
23 You've probably -- you know it a lot better  
24 than I have. You've been doing this a lot  
25 longer than I've been practicing law. You've

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1       been practicing. The beyond a reasonable  
2       doubt standard doesn't go higher or lower  
3       because it's a bench trial or because it's a  
4       jury trial. The standard is still pretty  
5       high. And beyond a reasonable doubt pretty  
6       much means that there is no other reasonable  
7       reason that this could have happened. He had  
8       to -- there was no doubt in my mind that  
9       those drugs did not belong to Mr. Brown.  
10       That is exactly what Your Honor has to  
11       decide. Circumstantial evidence can be used.  
12       But I can tell you, you have direct evidence  
13       when you have a confession that is actually  
14       into evidence and that person taking that  
15       stand and actually confessing, Your Honor,  
16       that those drugs belonged to her and that she  
17       actually put those drugs in that vehicle.

18               The prosecution doesn't know whether  
19       it happened. The prosecution has their  
20       theories based on what they may think is  
21       evidence. I've learned in my years that  
22       sometimes the truth is stranger than fiction.  
23       And some of the stories my clients tell me  
24       when they come in that office, you know, and  
25       they're telling me it's true, I find hard to

1 believe. But later on, come to find out,  
2 hey, you know, it happened that way. And in  
3 this particular case, Your Honor, I think  
4 based on the evidence -- again, Officer  
5 Gibson he told what he did. He told what he  
6 did on the scene. He had nothing to do with  
7 the fact that the young lady came in later on  
8 and actually gave a statement. So, you know,  
9 with his testimony, what he said, I  
10 understand. I do.

11 We've reached different conclusions  
12 as to whether or not my client was actually  
13 following too closely or whether or not the  
14 search was extended beyond a reasonable  
15 point. But other than that, Officer Gibson,  
16 clearly being an officer going about his  
17 duties the exact way he's supposed to go  
18 about it with one exception. In our minds  
19 this was a pre-textual stop. It was  
20 certainly not a traffic stop. It was done  
21 because when he zeros in the on car you can  
22 see a Florida license tag on there, which  
23 usually tells you to zero in on someone who  
24 is not from here. And certainly, that gives  
25 us some reason to believe as well.

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1                   And then the conversation shifting  
2                   from her license to, 'Where are you going.  
3                   Is there contraband in the car? Why wouldn't  
4                   you have, you know, luggage in the car?' And  
5                   I think Officer Gibson said I would at least  
6                   have a tooth brush if I was going overnight.  
7                   But at that particular time, he didn't even  
8                   know what was in the car. He has the beauty  
9                   of it now. But at that particular time, he  
10                  had no idea. So, you know, if his reasonable  
11                  suspicions led him to do that, Your Honor,  
12                  his reasonable suspicions led him to search  
13                  that car with the drug dog, fine. The drug  
14                  dog did hit.

15                  But the question is this case is not  
16                  whether or not it was contraband found. It  
17                  was whether or not my client possessed that  
18                  contraband and whether my client had the  
19                  knowledge and the intent sufficient to prove  
20                  beyond a reasonable doubt that he possessed  
21                  and he had control and dominion over it, Your  
22                  Honor, and that he intended to do that.

23                  We feel that the evidence here is  
24                  pretty clear, Your Honor, that the drugs  
25                  belonged to someone else and that my client

1 did not have knowledge of the drugs.

2 I also understand in the law, Your  
3 Honor, as I used to write it sometimes when I  
4 was in the House of Representatives that, you  
5 know, there's certain inferences that we  
6 make. You know, we certainly -- sometimes we  
7 call a drug crime a violent crime, even  
8 though there may not be any violence  
9 associated with it. Well, the State wants to  
10 infer certain things such as knowledge on him  
11 because it's his coat. The mere fact that  
12 it's his coat means that he knew it was in  
13 there. Well, Your Honor, I would suggest to  
14 you I can sit my coat on this chair and leave  
15 and I know in here there will be no problems.  
16 But in other venues, such as a club, such as  
17 somewhere else, I can sit it in there and I  
18 come back and my wallet's gone because  
19 somebody's already been in that coat pocket.  
20 I very rarely see where someone may put  
21 someone put something in that coat pocket.  
22 But, I have had and have seen situations  
23 where defendants in a hasty time where they  
24 would just stick something under the seat,  
25 stick it underneath something in the back.

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1           She testified that she actually put  
2           it in that coat pocket the night prior to  
3           that. They got in the car early that  
4           morning. They drove, which is totally  
5           consistent, and they were pulled over at  
6           about ten something in the morning. Again,  
7           totally consistent.

8           This was the night she got the  
9           drugs. The next morning they got in the car  
10          and they were driving to Morganton. That's  
11          pretty much uncontradicted. There's no one  
12          here that's taken the stand and can take the  
13          stand and say that Ms. Trappier did not get  
14          those drugs and put those drugs there.

15          And then there's no one else that  
16          can come in here on any direct evidence and  
17          say that those drugs were my client's. They  
18          didn't find my client's fingerprints on the  
19          cover. And from my understanding, they  
20          didn't run an analysis to try to do that.  
21          They did not take the crack pipes and try to  
22          fingerprint the crack pipes or even figure  
23          out what type of drugs were in those crack  
24          pipes. To me, that's certainly  
25          paraphernalia. And when you find crack on

1 the scene, which they did, and you find crack  
2 pipes in the car, I don't see where he put  
3 the pipes away from the crack because clearly  
4 that's paraphernalia and that's evidence of a  
5 crime. But in this case, that's what  
6 happened.

7 And we heard Officer Gibson say  
8 'we're interested in drug traffickers, not  
9 the users but the drug traffickers.' Well,  
10 in this case, clearly, it could have been a  
11 user.

12 Sixteen ounces (sic), you saw what  
13 it is, I think, Your Honor. It's in  
14 evidence. So you'll see how much that is. A  
15 thousand dollars is what she paid for it from  
16 what she said. Some users at certain times  
17 have more money than others. They're able to  
18 do that. They may do some things that would  
19 enable them to be in a position to get a  
20 thousand dollars worth of drugs. I've seen it  
21 all in my practice. I have a little bit of  
22 some of that in my family too. So I  
23 understand some of the drug use and the drug  
24 users in the way that they go about doing  
25 things. I didn't see any inconsistent with

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1 her that would lead me to believe that she in  
2 any way would come into this court and tell  
3 Your Honor a story that would subject her to  
4 twenty-five years if her conscience did not  
5 tell her that this is the truth.

6 So, Your Honor, again, in closing,  
7 we've seen her statement. We've heard her  
8 take the stand. She actually did take the  
9 stand. She told the story the way it was  
10 supposed to be told. The officer did. The  
11 chain of custody is not so much at issue with  
12 us at all. What they found not really an  
13 issue at all. They found a substance they  
14 thought could have been crack or could have  
15 been heroin. But one of my problems with  
16 that too, and I'll just bring this out to  
17 Your Honor is, I've seen in my position as a  
18 defense attorney crack and heroin. And I  
19 cannot say they look exactly the same. In  
20 certain situations, I've seen heroin look  
21 different from crack cocaine ---

22 SOLICITOR HAMILTON: Object, Your  
23 Honor, this is his testimony and ---

24 MR. BRADLEY: Well, it's closing so  
25 it's not even in evidence. I'm just arguing

1 my case. And this is actually -- look, this  
2 is actually what the issue was in the case is  
3 whether or not when he pulled it out as a  
4 drug enforcement officer of twenty-one years,  
5 he didn't know whether it was cocaine or  
6 whether it was heroin. That's fine.

7 There's certainly things available  
8 even to find that out, which is the field  
9 sobriety test -- I'm sorry -- field test  
10 outside there or then when he get to the  
11 station have it tested, because at this  
12 stage if it proved not to be contraband, then  
13 you've arrested this young man for nothing.  
14 Not Ms. Trappier because she's got a driving  
15 under suspension, false information to the  
16 police department, no license. And the only  
17 thing they've got this young man is actually  
18 that substance, Your Honor.

19 So, in closing, I would just ask  
20 Your Honor to weigh the evidence. You judge  
21 the credibility of the witnesses, as we trust  
22 you will, Your Honor. That's why we chose a  
23 bench trial. We feel Your Honor will be able  
24 to look at the evidence and determine from  
25 the evidence what's there and whether or not

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1 the State has proven their case beyond a  
2 reasonable doubt.

3 The only witness up there that can  
4 prove it beyond a reasonable doubt -- the  
5 only person who knows it is my client and Ms.  
6 Trappier.

7 Officer Gibson doesn't know because  
8 he wasn't with them prior to that. And so he  
9 doesn't know whether or not she put this in  
10 there. He doesn't know. The only thing he  
11 knows is it was in his coat. And that's what  
12 he's testified to. Certainly, there was  
13 certainly more testimony that Officer Gibson  
14 saying it's in that coat that is relevant in  
15 this case, Your Honor.

16 We've put up the witnesses, Your  
17 Honor. And we trust that Your Honor will  
18 weigh the evidence. And I feel when we weigh  
19 the evidence, I don't think it's even close.  
20 I think that clearly from the testimony  
21 that's given from the facts from what you,  
22 Your Honor saw, there is nothing that would  
23 say that this is my client's cocaine/heroin  
24 that was in that bag, with the exception of  
25 it being found in his coat. And it's found

1 in his coat, Your Honor, again, it was  
2 explained why it was like that, Your Honor.  
3 If he said what the officer said he said that  
4 it's my cocaine and I paid a thousand dollars  
5 for it. He said it. But the truth of the  
6 matter is it was not cocaine.

7 So, again, we would move to suppress  
8 that statement. Our suppression is renewed.  
9 But the bottom line is even with that, you  
10 can see how and Ms. Trappier testified, he  
11 was trying to take up for her because if he  
12 had said that, he probably figured it had to  
13 be hers, because he knew she had a history of  
14 drug use.

15 Your Honor, we will close on that.  
16 I would just ask that Your Honor would just  
17 weigh the evidence and do what's fair in the  
18 eyes of the Court.

19 Your Honor, I would hate for the  
20 young man to basically lose his life off of  
21 one that's this close when we have somebody  
22 who's come in here and basically testified  
23 that it's theirs. And that's not our call.  
24 We leave it in the hands of the Court. And  
25 we respectfully accept the decision the Court

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1           lays down. Thank you, Your Honor. Thank  
2           you, Your Honor.

3                       THE COURT: Thank you, Mr.  
4           Bradley. Solicitor?

5                       SOLICITOR HAMILTON: Thank you,  
6           Your Honor. Of course, the State would ask  
7           that you find the Defendant guilty in this  
8           case.

9                       We have -- what is at issue here is  
10          we have already proven, based on the  
11          testimony by Cynthia Mitchum, this is, in  
12          fact, heroin. No other drug was found. It  
13          was in fact heroin only. No cocaine.  
14          Additionally, she did testify that the amount  
15          of the drugs was 16.37 grams of heroin. That  
16          proves the weight is over 14 grams, which is  
17          another element of the crime. So both of  
18          that heroin and over 14 grams are included in  
19          Cynthia Mitchum's testimony. This is 2.37  
20          grams over the minimum level of 14 grams.

21                      So what's really our concern in this  
22          case is going to be the knowledge and the  
23          confession, which he has spoken on in his  
24          closing argument. As he stated, he can't be  
25          convicted for mere presence. And in this

1 case, that's not what we have. We have way  
2 more than mere presence. We're not inferring  
3 knowledge because he stated we're inferring.  
4 There is a confession. He stated the drugs  
5 were his.

6 Additionally, he stated he knew the  
7 dog would alert before he knew drugs were  
8 supposed in the car.

9 If we go with Monique Trappier's  
10 statement, he had no idea the drugs were in  
11 the jacket. But yet before they even search  
12 that jacket, he's saying the dog will alert  
13 to illegal substances in that vehicle.

14 Your Honor, the drugs are found in  
15 his jacket. Prior to the drugs being found,  
16 he admits that is his jacket. Additionally,  
17 he gives, as I stated earlier the statement  
18 saying those were his drugs. He paid a  
19 thousand dollars (\$1,000) for it. Also, it  
20 has been stated on the stand that a thousand  
21 dollars is consistent with the price paid for  
22 heroin. Heroin and cocaine are separate  
23 things and they also are priced differently.  
24 The thousand dollars is consistent with what  
25 was found.

## State of South Carolina v. Calvin R. Brown

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Case No. 15-GS-46-02347

Bench Trial of February 24, 2016

Closing Argument by Solicitor

1 Knowledge it is an illegal  
2 substance. He stated he paid a thousand  
3 dollars for it. He's not going to pay a  
4 thousand dollars for something that is not an  
5 illegal substance. He's not going to pay a  
6 thousand dollars for baking soda. So we  
7 believe there is knowledge that this is an  
8 illegal substance and he stated he paid a  
9 thousand dollars for it and said it was his  
10 drugs.

11 Additionally, her claim on the  
12 stand, which the State would say her  
13 credibility is completely at issue based on  
14 all the inconsistencies. I think here  
15 testimony -- I could go on and on about it,  
16 but I want to be as brief as possible because  
17 you have heard it minutes ago. Her claim to  
18 the drugs does not absolve him of  
19 responsibility. If we look at this, it could  
20 possibly be a conspiracy of them transporting  
21 these drugs down to wherever they were going.  
22 I'm not quite sure exactly where they stated  
23 they were going. That's another  
24 inconsistency. But they can both possess  
25 these drugs. And we believe in this case

State of South Carolina v. Calvin R. Brown  
Case No. 15-GS-46-02347  
Bench Trial of February 24, 2016  
Closing Argument by Solicitor

1           they both did possess these drugs. He  
2           admitted to possessing the drugs as we had  
3           stated before.

4                     Monique Trappier, she does not have  
5           the means to pay a thousand dollars for  
6           drugs. She is unemployed. She stated that  
7           on the stand. But yet she has a thousand  
8           dollar a week habit. Where does that money  
9           come from?

10                    The Defendant has a rented car,  
11           those aren't cheap. He's driving this rented  
12           car. That would be consistent with him  
13           having the means to pay a thousand dollars  
14           for the drugs and which he claims he did pay  
15           a thousand dollars for it.

16                    Also, the confession that was given  
17           by Ms. Trappier that was brought up on the  
18           stand by the Defense, that confession is just  
19           interesting how it corresponds with the date  
20           that I emailed the Defense attorney that the  
21           defendant's offer is revoked and we're moving  
22           forward with trial. That was on November 2<sup>nd</sup>.  
23           She happens to show up at our office November  
24           6<sup>th</sup> and give this statement, a statement that  
25           is wholly consistent with the incident

1 report, other than the fact that she is  
2 saying that those drugs are hers. This is  
3 nine months later, Your Honor. If, in fact,  
4 she felt so bad she could have done it before  
5 then. But it comes down to when the offer is  
6 revoked. Days later she comes in.

7 Additionally, she said he's done  
8 many things for her. He's given her many  
9 things. She said on the stand. She makes  
10 the statement this statement today is payment  
11 back to him for all the things that he has  
12 done for her. If, in fact, the Defendant  
13 know -- I'm sorry, Your Honor. We believe  
14 that based on all of these facts and  
15 circumstances that there was knowledge of the  
16 -- he knew that he had these drugs, this  
17 illegal substance and that he was actually in  
18 possession of these drugs, Your Honor. And  
19 we'd ask you find him guilty on these  
20 charges.

21 THE COURT: All right. May I see  
22 the exhibits, please?

23 COURT REPORTER: Yes, sir.

24 THE COURT: All right. I'm going  
25 to take a few minutes. I'm going to -- we're



## State of South Carolina v. Calvin R. Brown

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Case No. 15-GS-46-02347

Bench Trial of February 24, 2016

Ruling of The Court - Verdict

1 THE COURT: Well, and I think -- I  
2 mean ---

3 MR. SHARPE: --- notwithstanding  
4 the verdict/decision.

5 THE COURT: Right. And I think  
6 you're protected. Your motions and your  
7 objections have been raised, renewed and I  
8 respectfully deny those as well.

9 MR. SHARPE: Thank you, sir.

10 THE COURT: All right. Are we  
11 ready to proceed with sentencing?

12 SOLICITOR HAMILTON: We are, Your  
13 Honor.

14 THE COURT: I mean, tell me if I'm  
15 wrong. Is there anything for me to decide at  
16 this point?

17 MR. SHARPE: I don't really think  
18 there is, Your Honor.

19 THE COURT: In looking at this  
20 statute it's pretty -- and it's a mandatory  
21 minimum on fine and jail time. But I'll be  
22 glad to hear any -- unless you can tell me  
23 otherwise.

24 MR. SHARPE: Your Honor, I think  
25 it's pretty much done at this point.

1           THE COURT:     All right.  Anything from  
2           the State?

3                         SOLICITOR HAMILTON:     Nothing, Your  
4           Honor, unless you want to hear his record,  
5           but I don't ---

6                         THE COURT:     No, that's all right.  
7           Mr. Brown, the sentence of the court on  
8           indictment 2015-GS-46-2347, trafficking of  
9           heroin more than fourteen (14) grams but less  
10          than twenty-eight (28) grams, the sentence of  
11          the Court is twenty-five (25) years and a  
12          fine of two hundred thousand dollars  
13          (\$200,000).

14                                 (BENCH TRIAL CONCLUDED)

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**WITNESSES**

DEU

Witnessing Officer: T. Hager

**ARREST WARRANT NUMBER**

2015-GS-46-02347

**ACTION OF GRAND JURY**

**TRUE BILL**

*Shirley Sanders*

Foreperson of Grand Jury

Date: 8/20/15

**VERDICT**

2/24/16 - Bench Trial

*Guilty*

*Shirley Sanders*

Foreperson of Grand Jury

Date: 2/24/16

*Hon Perry H Graves*

DOCKET NO. 2015-GS-46-02347

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**AUGUST 20, TERM 2015**

**THE STATE**

**VS.**

**KALVIN ROPEL BROWN**

**INDICTMENT FOR**

**TRAFFICKING IN HEROIN**

SC Code: § 44-53-370(e)

CDR Code: 0287

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

**Defendant**

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

**Defendant**

**Witness:**

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

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on August 20, 2015, the Grand Jurors of York County present upon their oath:

**TRAFFICKING IN HEROIN**

The defendant, Calvin Ropel Brown, did on or about February 18, 2015, in York County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, 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 fourteen (14) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely Heroin, as described in Section 44-53-190 or 44-53-210, or fourteen (14) grams or more of any mixture containing any of these. All in violation of 44-53-370(e), *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
MARINA B. HAMILTON  
ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



---

Taylor D. Gilliam  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of July, 2017.

**RECEIVED**  
JUL 20 2017  
SC Court of Appeals