STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY

Court of General Sessions
The Honorable Robert E. Hood, Circuit Court Judge

Opinion No. 5489 (S.C. Ct. App. Filed May 31, 2017)

Appellate Case No: 2015-000390

THE STATE, ... PETITIONER,

v.

ERIC TERRELL SPEARS, ...RESPONDENT.

APPENDIX

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND

2012-GS-40-2824

State of South Carolina

vs.

Eric Spears

Columbia, South Carolina

February 17-19, 2015

Before the Honorable Robert Hood

APPEARANCES

For the State: Campbell, Walker, McDuffie

For the Defendant: Hawks, Ruffin

Reported by: Michael C. Watkins

Official Court Reporter

(Reported by Karen Ambroziak)

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THE COURT: Anything else, Mr. Hawks?

MR. HAWKS: No, Your Honor. However, I would ask what would happen if he showed up today, would he be arrested or allowed --

THE COURT: He would be taken into custody, yes.

MR. HAWKS: And would that happen anyway.

THE COURT: Yes.

MR. HAWKS: All right.

THE COURT: I find that a trial in absence is proper and that a bench warrant is proper. Mr. Spears has received notice of this trial, he has received a warning that his trial would proceed in his absence should he fail to appear, he's also received notice of his right to be present at this hearing. Was he actually physically here this morning, Mr. Hawks?

MR. HAWKS: Yes, Your Honor.

THE COURT: I'm not trying to put Mr. Hawks in a difficult situation, nor -- Mr. Hawks enjoys a very good representation with this Court and is being very candid and frank with the Court about his communications with Mr. Spears and his knowledge of this, and certainly Mr. Hawks has been on notice of this trial for some time for this week. I think we even talked about it last week, you know, what was the status of the case and where were we going. So I find that Mr. Hawks is certainly doing his duty and

obligation as an officer of the Court in regards to this situation. Okay. Let's bring up -- any voir dire from the State?

MS. CAMPBELL: Your usual voir dire.

THE COURT: Anything from the defense?

MR. HAWKS: None, Your Honor.

THE COURT: Okay. Let's bring up the jury panel.

(The jury panel entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen, and welcome back. This was a quick turn around. Let me give you a plan for what you're doing the rest of the day just so you know and you can make plans accordingly. We're going to spend about -- sometimes this takes about an hour, 45 minutes to an hour, just depends on how fast we move to select a jury in this case. If you actually get selected on my case and you're seated up here in the box, then once you're selected I'm going to give you about five minutes worth of information and then you're going to be excused for the day completely. So it is right around the lunch hour, you will be excused, you're free to go home, free to go to work, whatever you want to do and you'll report back tomorrow morning for the start of the case. While this is a very important case, I do not believe it to be a very lengthy case, but it is still important to all parties and all sides. And so you'll be done for the day. If you make

that I'm about to ask you is for you to tell the truth. Okay. That's the most important thing. And if this were a case that you were involved in regardless of what side you may be on, you would be sitting there with the assumption and the knowledge that these potential citizens who are going to make a decision in this case are going to answer the judge's questions truthfully, and I want you to err on the side of providing us more information as opposed to less information, does that make sense to you? Because accurate information is what all the attorneys need to make good decisions about who to put on the jury and who not to put on the jury. And so it's very important as I go through these questions with you, answer them accurately and honestly so that everybody can make good decisions in the jury selection process. All right. Ms. Campbell, if you will start by introducing everybody with you.

MS. CAMPBELL: May it please the Court? I'm Luck Campbell, I'm an assistant solicitor here in the 5th Judicial Circuit.

MS. WALKER: Hi. I'm Meghan Walker, assistant solicitor in the 5th Judicial Circuit.

THE COURT: Thank you, ladies. Is anybody related by blood or marriage or close personal friends with or have any connection to business, social, professional or otherwise with Ms. Campbell or Ms. Walker? Do you have any

introduce yourselves.

MR. HAWKS: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. HAWKS: My name is Lucas Hawks, I'm an assistant public defender here in the 5th Circuit.

MS. WALKER: I am Adam Ruffin, I'm also a Richland County assistant public defender.

THE COURT: Thank you, gentlemen. Is any anybody related by blood or marriage, close personal friends with or have any connection to Mr. Hawks or Mr. Ruffin? Have you ever been represented by them or on another side of a case from them, or do you have any connection to anyone at the 5th Circuit Public Defender's Office which encompasses Richland and Kershaw County? If so, please stand. All right. Thank you very much. The defendant in this case is Eric Terrell Spears. Is anybody related by blood or marriage, close personal friends with, have any connection to, business, social, professional or otherwise with Mr. Spears? If so, please stand. All right. The next thing that I'm going to do is read you a list of potential witnesses in this case. Now, I don't know that they will call all of these witnesses, but these are all of the potential witness that could be called in the case. If you think you know these people or if you're related by blood or marriage or close personal friends with or have any

participating in this case?

INVESTIGATOR GWYN: Involved in, no, sir.

THE COURT: Thank you. That's what I was trying to make clear so you understand that's what their position is.

MR. HAWKS: Your Honor, I failed to mention earlier that we may have a witness for this hearing, she was on scene, her name is, I believe, Tracy Jenkins. She has been subpoenaed, I spoke to her, she's supposed to be here at 2:00 but clearly I have trouble getting people here. But I do intend to call her if she shows up.

THE COURT: Do you have any identifying information for her so they can rap on her if they need to?

MR. HAWKS: I have a phone number, Judge.

THE COURT: Date of birth or anything like that?

MR. HAWKS: I don't have that.

THE COURT: Okay. All right. What else?

MR. HAWKS: We can start the motion to suppress, Your Honor.

THE COURT: Okay. All right. Do you want to start calling witnesses?

MR. HAWKS: Your Honor, it's the State's burden to prove that the search was lawful, so that would be them calling the witnesses.

THE COURT: You have to give me some foundation for the motion to suppress.

MR. HAWKS: In the form of witness testimony?

THE COURT: No. In the form of some kind of summary of where you're going.

MR. HAWKS: Okay. Judge, basically I think there are three or four issues with this search. One is the initial contact made by officers; two, the decision to Terry frisk Mr. Spears; and three, pulling -- actually pulling the alleged crack cocaine from the waistband. I believe that Mr. Spears was keyed on contact without reasonable suspicion, I believe that he was frisked without reasonable suspicion of a weapon, and I do not believe that the plain view doctrine would satisfy pulling out the substance.

THE COURT: All right. Ms. Campbell?

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Your Honor, I think we can take care of this with one witness. We would call Investigator Dennis Tracy.

THE COURT: Okay. Please come forward, Investigator Tracy.

The witness, DENNIS TRACY, was first duly sworn, and testified as follows:

THE COURT: Thank you. Have a seat in the witness stand for me.

THE CLERK: State your name for the record.

THE COURT: Dennis Tracy, T-R-A-C-Y.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Agent Tracy, where are you currently employed?

A I'm employed by the State Law Enforcement Division.

Q What do you do there, sir?

A I'm a narcotics investigator.

Q And how long have you actually been in law enforcement?

A This is my 19th year in law enforcement.

Q Can you tell the judge a little bit about your training and your experience in the field of narcotics?

A Yes, ma'am. I've been working narcotics since 2002. I've been working in the field of interdiction since about 2004, transportation interdiction and parcel interdiction, certified by law enforcement administration in transportation interdiction, which is anything related to buses, planes, trains, hotel, motel, anything that's not highway interdiction. I also teach for the DEA, teaching parcel interdiction. I've been involved in about roughly 2600 narcotics cases since I've been a narcotics agent.

Q Turning your attention back to March of 2012, where were your employed then?

A I was employed by the Lexington County Sheriff's

Department.

Q And were you part of a task force or a group of people that were working on some interdiction cases?

A Yes, ma'am. I was working with the -- I'm a task force officer with the Immigration and Customs Enforcement which is now Homeland Security. I am what is referred to as a Title 19 TFO which means I have authority to force certain codes of laws that falls under the jurisdiction of Immigration and Customs Enforcement.

Q I want to turn your attention specifically to March the 29th of 2012. Who all were you working with that day?

A We had agents from the Richland County Sheriff's Department, Immigrations Customs Enforcement, Drug Enforcement Administration. I'm pretty sure that's about it.

Q And that day, did y'all receive a tip which you chose to then go and kind of flesh out?

A From my --

MR. HAWKS: Objection, Your Honor, that calls for hearsay.

THE COURT: Overruled.

A From my understanding the DEA received a tip, they requested the assistance of Homeland Security, or I think it was ICE at that time so it was Immigrations Customs Enforcement, specifically asked for my assistance since I

was certified by interdiction. So we got together. We went over real quick rules of the road, for lack of a better term, about what they could and couldn't do or what steps we needed to make sure we didn't do to make a bad case, steps about not to impede the person's movement.

Q Not what to a person's movement?

A Not impeding the person's movement. This is basically based on consensual encounters.

Q And that was information y'all actually went over prior to getting there?

A Yes, ma'am.

Q And you were the one actually giving them the information to make sure that they understood it.

A Correct.

Q And the tip, what information did you have about a tip that you were following up on?

A From what I understand supposedly a black male subject was traveling from New York on what we refer to as the chinese bus lines, which are a low cost bus that comes out of New York, makes very few stops and comes straight to North Carolina/South Carolina. The buses are -- there's no positive ID required to get on these buses. There is also no security measures, no magnetometers, there's no security of any means. So these buses are commonly used by felons, by wanted subjects, by people

trafficking in narcotics and counterfeit goods. There's a whole slew of people using these buses because of the lack of security.

Q And that day where were your responding to?

A The buses pulled into Richland County in two locations, one over by the Dutch Square Mall, and another location just north of I-20 on Broad River Road.

Q And which location did you respond to that day?

A We were at both of them. Normally the buses don't come in right on top of each other, but they came in within ten minutes of each other. The first bus showed up at the Dutch Square location, we got information the second one was pulling off the interstate as well. So myself, Task Force Officer Brandon Finch and Special Agent Briton Lorenzen responded to the location north of I-20 on Broad River Road to meet that bus.

Q Is that near a landmark right there?

A I'm not sure of the hotel, it's right there kind of by the Dutch Fork --

Q The post office?

A Yes, ma'am.

Q So it's right near the Dutch Fork Post Office.

A Yes, ma'am.

Q And when you responded there that day, did you also meet up with Investigator Brian Gwyn with the Richland

County Sheriff's Department?

A Eventually.

Q When you first got there, tell the judge what, if anything, you observed.

A We saw a few have people getting off the bus and most of the people we observed didn't arise any suspicions, they were getting off the bus, they were being greeted by relatives or friends, they were making calls, they were getting in cabs. We did see two subjects get off the bus and they retrieved a large number of bags, I think it was four bags total from underneath the bus. And then they engaged in conversations with themselves, continued to look over toward us and then they proceeded to walk up the street toward the post office.

Q And you said there were two subjects. Were they both men, both women?

A It was a black male and a black female.

Q And you said they retrieved some luggage from the bus; is that correct?

A I believe it was four large bags.

Q And you mentioned that they were looking over at you. How were y'all dressed that day?

A We were in plain clothes.

Q But they kept looking at you?

A They did.

Q And why did that arouse your suspicions?
A Most of the other people didn't pay that much attention to us, they would look and go on with their business, but these two subjects continued to -- what appeared to us is that they kept looking at us and talking amongst themselves.
Q And everyone else was going out and greeting people that were there to meet them.
A Correct.
Q Or had gotten off the bus themselves.
A Yes, ma'am.
Q So y'all would be the only ones that hadn't gotten off the bus other than the people greeting the others.
A Yes, ma'am.
Q What did you observe next?
A The two subjects continued to walk up the street -- and forgive me, I'm not sure of the name of that street, but toward the post office.
Q Uh-huh.
A As they continued to walk up toward the post office. Myself, TWO Frank Finch and Special Agent Lorenzen walked up the street behind them. As we approached them I saw the female subject reach into her bag and pull out an unknown object, her arm movement was consistent --
MR. HAWKS: Objection, Your Honor. I have not been

provided any of this information.

THE COURT: Okay. What's your objection?

MR. HAWKS: Well, perhaps I could have advised my client differently if I knew that all this stuff was going to come out.

THE COURT: Okay. Overruled, so keep going.

A The female appeared to hand the male subject an unknown item. The male then -- his hands did not come above his waist so we figured it wasn't like a food object, it wasn't a piece of gum, it wasn't a piece of candy, so we figured it was either going to be in his hands or his waistband or his pockets. As they got closer to the post office they continued to look back at us. Once we got within 15 or 20 feet of them we asked them if we could speak with them, they stopped walking. We identified ourselves, made small talk with them about their travel itinerary, asked them how bus ride was, if they got any bad weather --

Q Let me stop you for a second. You mentioned that you walked up and as you got closer to them you asked them if you could talk to them?

A Yes, ma'am.

Q And at that point did they stop?

A They did.

Q And, in fact, did they start talking to y'all?

A They did.

Q At any point did y'all handcuff or arrest them at that point?

A No, ma'am.

Q Would they have been free to go if they didn't want to talk to you at that time?

A Yes, ma'am.

Q Okay. I'm sorry, continue.

A We then asked them if they had -- or we told them the bus lines, that we had had problems in the past with drugs and wanted subjects and counterfeit merchandise, and we asked them for ID. I noted that while I was speaking with the male subject he continued to put his hands underneath his shirt and I guess the motion would be like puff his shirt away from his waistband.

Q And that caught your attention?

A It did. I asked him to keep his hands where I could see them and not put his hands in his pockets because I didn't know what if he was reaching in his pockets. He did it a couple more times and I kept reminding him to cease putting his hands in his pockets because I wasn't -- for officer's safety regards I wasn't sure if he had anything in his pockets that could hurt us. Drugs and guns are commonly hand in hand, criminals often have designated weapons in their possession. So he continued

to get frustrated, or he continued to put his hands in his pockets or pulled his shirt out and I told him I was going to conduct a pat down of him so I could be sure he didn't have any weapons on him or anything that was going to hurt me.

Q Let me back up for a second. Prior to him -- the part about the shirt, had y'all had a conversation and you asked him certain questions about whether he had some illegal items --

A I did. I asked him -- he was -- I asked -- him. I engaged him in causal conversation about his trip, all of his answers were very forthcoming. When I asked him about any illegal weapons on him or on his property he hesitated for providing an answer no. That made me a little suspicious, because like I said, he'd been very forthcoming with all of his answers. And in my training and experience especially working interdiction, when people get confronted with an answer they don't want to tell you the truth on a lot of times they're going to hesitate. I conducted a pat down of the subject. When I got to his waistband on the right side on the front, there was a balled-up object, which to me felt consistent with previous seizures of crack cocaine. I removed the object from his waistband, at which time I could see the items inside were wrapped in a paper towel or a napkin. When I

opened that up it was consistent with crack cocaine and there was a small amount of marijuana. At that point the subject was detained and we called for TFO Dana Robinson to come to the location so that he could help us get this person processed.

Q And you mentioned while you were doing this search, you were doing it for weapons; is that correct?

A Well, I didn't know what he had in his waistband since he wanted to place his hands under his shirt out of my view, and for my safety I went ahead and conducted the pat-down.

Q And that's when it felt in your experience like --

A It felt like crack cocaine. It was rock like and you could feel it had jagged edges and it was in a ball form.

Q And it was only after you removed that item and it appeared to be crack cocaine?

A After the napkin was opened it looked like crack cocaine.

Q At that point you detained him.

A We did.

Q And called in Richland County.

A Yes.

Q Since this was taking place in Richland County.

A Yes, ma'am.

Q That day, was the item field tested?

A To the best of my knowledge it was, I didn't field test it.

Q That would be other officers.

A Yes, ma'am.

Q And then that item was turned over to, I believe, Investigator Robinson or Investigator Gwyn as far as them taking it into evidence.

A Yes, ma'am.

Q Were you present that day for any questioning of the defendant?

A No, ma'am.

Q So once you had found the crack cocaine basically your role had ended.

A Yes, ma'am.

Q And that's the extent of how these items were -- again but for his -- after he agreed to stop to talk to you, but for his movements around his waist at his t-shirt it was at that point that it triggered you being concerned for your safety.

A Correct.

Q And when you were actually searching him that day, you were searching for weapons for officer's safety.

A Yes, ma'am.

Q And the person that we don't have here in the courtroom, I'm going to show you what I haven't marked yet

but will in a second. Do you recognize that?

A Yes, ma'am.

Q Is that the person?

A That's the booking photo of the subject.

Q That you found the crack cocaine on.

A Yes, ma'am.

MS. CAMPBELL: Thank you, sir. I don't have anything further.

MR. HAWKS: Your Honor, may I have a minute to speak with my witness who just arrived?

THE COURT: Sure. Did she just sit in here through the whole testimony?

MS. WALKER: She did, Your Honor.

MR. HAWKS: I don't think she knew, Judge. I didn't know who she was at first.

MS. WALKER: If I may, Your Honor? I saw her walk in and I pointed her out and said, "I think one of your witnesses just got here," and she sat down and listened to the entire testimony.

THE COURT: Is that true?

MR. HAWKS: Yes, sir.

THE COURT: Well, why didn't you kick her out of the courtroom?

MR. HAWKS: I wasn't sure who she was at first. I have never met this woman, I don't know what she looks

like.

THE COURT: Ms. Walker said she just told you that that was the witness.

MR. HAWKS: She asked me if it was the witness.

MS. WALKER: I said, "I think your witness just walked in the courtroom," he turned around and waived to her and then she sat down.

THE COURT: You didn't think enough to say, "Hold on, let me figure out if it's my witness?"

MR. HAWKS: Apparently I didn't. Judge, I have clients come in all of the time and sit in the back of the courtroom, for all I know it's a different client who is here for court. I don't know what the woman looks like. I did assume it was her but I did not know.

MS. WALKER: And I didn't know either, Your Honor, that's why I pointed it out to Mr. Hawks.

THE COURT: Go out and talk to her for just a minute, just a minute.

(Break in proceedings.)

MR. HAWKS: I apologize, Judge.

THE COURT: Cross-examination.

MR. HAWKS: May it please the Court?

CROSS EXAMINATION

BY MR. HAWKS:

Q So what is your proper title?

A Special agent.
Q Do you mind if I just call you Tracy?
A You may.
Q Okay. Now, I'm assuming this is not the first incident report you've written.
A No, sir.
Q Okay. Ballpark number, hundreds?
A Hundreds.
Q Five hundred?
A I stated earlier I had been involved in 2600 narcotic cases, sir, so probably more than 2600.
Q And it's important to make sure that those are accurate, right?
A Yes, sir.
Q Because a situation like this might arise where three years have gone by almost and this is all I've got, so it's important for it to be accurate.
A Yes, sir.
Q And truthful, specific, contain all the -- everything that went on. Now, this is written on a Lexington County form but that's only because that's where you worked at the time, right?
A Yes, sir.
Q But you were acting under your federal authority, correct?

A Correct.
Q As a federal agent, correct?
A Correct.
Q And how many other officer agents were on the scene?
A Well, let's see, we had a special agent with the Homeland security, so that's one. Two DEA TFO's, that's three, and myself, so four total.
Q Okay. And how about Deputy Gwyn?
A He was working for the sheriff's department at that time.
Q Okay. Where was he?
A He responded -- I don't know if he was at the other location, but he wasn't there when we made the initial contact with the subjects.
Q So you were at the bus stop but Gwyn was not.
A Myself, TFO Finch, and Special Agent Lorenzen were the first to make contact with the two people that were walking from the bus stop.
Q So you didn't see Gwyn.
A Not originally.
Q And this bus stop, it is basically an Economy Inn parking lot.
A Well, bus stop is not a relative term, it's not really a -- it's a stop but there is not a sign, there's not any benches. It's basically a semiclosed down

business that they dump people off at.

MR. HAWKS: Judge, I just have a map for demonstration, it's printed from Google, Google Maps.

THE COURT: Do you have any objection to that map?

MS. CAMPBELL: I've never seen it, but again --

MR. HAWKS: It's printed straight from Google Maps, Judge.

MS. CAMPBELL: If the witness can identify it I have no problem.

THE COURT: Let him look at it and familiarize himself with it.

Q All right. But this is Broad River.

A Yes, sir.

THE COURT: Which one is Broad River for my -- the yellow one?

MR. HAWKS: The yellow one.

THE COURT: Can you see that, Agent Tracy?

THE WITNESS: I can.

MS. CAMPBELL: Okay. Thanks.

Q Okay. Now, I don't know if you know that that's the Economy Inn but it is labeled there, that's the Economy Inn. And the street you were talking about on direct, the one that they were walking on is Briargate.

A Okay.

Q Does that sound familiar?

A Yes, sir.

Q So does this look like it looked at the time?

A Yes, sir.

Q Okay. Now, the bus would have come in on Broad River.

A Yes, sir.

Q And the bus drops the people off at least back in this parking lot?

A I believe it pulls --

THE WITNESS: Can I step down from the witness stand?

THE COURT: As long as you keep your voice up.

THE WITNESS: I'll keep my voice up.

A Okay. If I remember correctly the bus pulls into here because it can pull around here a lot easier than it can whip into kind of anything here.

Q Okay.

A The bus pulls in here, the subjects all are standing here when they get off.

Q Okay. So although the bus pulls in here, the passengers are hanging out in this parking lot essentially.

A Yes.

Q All right. You can stay up here or go sit back down, whatever you would like to.

A Okay.

Q Now, there's businesses over here, basically businesses all down Briargate.

A I think the only thing down Briargate, unless I'm mistaken, is maybe like a car rental rim place. I don't remember a bunch of businesses right there.

Q And Briargate itself goes back into some neighborhoods, apartments.

A It goes into an apartment complex.

Q Okay.

A And there is a post office.

Q And although you don't list the location on your incident report, could you just give me a rough estimation of where on the map you encountered these two?

A The post office has from what I remember three -- like a three part driveway, and the middle of the three driveways, or the middle driveway of the three is where we contacted them.

Q So maybe in this area.

A Closer to where the curb is.

Q Okay.

A No, this way, sir.

Q This far down is what I'm asking.

A I think it's going to be closer down to this corner.

Q Okay.

A It was a good ways. It was a hoof because --

Q How many feet?

A From where?

Q From where they were let off.
A Several hundred, couple hundred. It's a ways, it's a hoof.
Q Okay.
A They're walking, we're walking behind them, we didn't run. However quickly we could walk a little faster than they did to make contact with them.
Q Okay. And so you did follow them in a sense.
A Yes.
Q Because they had turned their back and walked away.
A Yes.
Q Okay. Now, you don't mention a tip at all in your incident report.
A Correct.
Q And the tip as you remember it was simply a black male.
A Correct.
Q No other description.
A Correct.
Q No name given.
A No.
Q No clothing, age.
A No.
Q Height, weight, nothing of that sort of thing.
A As far as I know, no.

Q Okay. And in fact, the tip did not specify which of the two stations between the other station and this one?
A The reason I didn't put the tip in there is because the tip didn't come directly to me. Our bus interdiction efforts were completely independent of whatever tip may or may not have existed. We made contact with the individuals solely based on their activity, not based on a tip per say.
Q So your testimony is the tip didn't have anything to do with why you contacted these two.
A We are out there because of the tip, but the tip isn't specifically enough for me to say that's our subject based on the tip alone.
Q Now, when they get off the bus, does it appear they are together?
A Yes.
Q In a relationship?
A It looked like a boyfriend/girlfriend type of relationship.
Q And they did have a lot of bags, large suit cases.
A Yes.
Q And they had to pull those up from the side bus door, right?
A I'm assuming so.
Q But you saw that.

A They retrieved their bags. I can't say with any certainty whether they pulled them out from underneath the bus, the bus driver pulled them out from underneath the bus, but they had four bags that recovered from underneath the bus that were theirs.

Q Okay. And so are y'all in cars at this point?

A No, we're on foot.

Q On foot. How did y'all get there?

A In a vehicle.

Q Where was the vehicle?

A We came into the far side of the parking lot. Down closer to the bottom of the map. Yes, sir.

Q Okay. So your cars are over here.

A Yes.

Q And your walk up to --

A Correct.

Q And there's four of y'all?

A There's three of us.

Q Three. Okay. And are you wearing a suit?

A No, sir.

Q What kind of clothes?

A Plain clothes, just regular street clothing.

Q Khakis, polos?

A Sure.

Q And were you carrying your firearms outside the

waistband?

A No, sir.

Q You were carrying concealed?

A Concealed.

Q So no part of your firearm was exposed.

A Correct.

Q And do you carry a gun when you're not on duty?

A I do.

Q Concealed.

A Concealed.

Q Do you carry it on your belt?

A Yes.

Q You have to have a strong sturdy belt for that, right?

A Yes.

Q Because guns are heavy.

A Correct.

Q So obviously you can't testify for Finch, and I'm sorry, what's Baker's other name?

A Lorenzen.

Q Now, you can't say what they saw, but your report is describing what you saw at the bus stop.

A Correct.

Q So if they were paying excessive attention to you, do you think they knew that you were law enforcement?

A That would be my assumption.

Q And people do pay attention to law enforcement when they are there.

A Are you asking for my opinion in this matter? Because I'll give my opinion if that's what you want.

Q Yes, that's fine.

A People pay attention when they see law enforcement that is obvious. People see blue lights, they pay attention. People see a uniformed officer, they pay attention. People that are not in criminal activity don't normally look at a law enforcement officer in plain clothes.

Q Okay. But you're not sure they knew you were law enforcement.

A You just asked if that's how it appeared to me and that's how it appeared to me.

Q So you thought they knew you were law enforcement and they were paying excessive attention.

A Yes, sir.

Q Okay.

MR. HAWKS: Beg the Court's indulgence.

(Break in proceedings.)

Q Now, this stuff on direct -- and I apologize for interrupting you, just trying to create a record here, but I objected because that's the first I had heard of any of that stuff. In your report you simply describe them as

paying excessive attention and you don't mention the nervousness at all.

A Okay.

Q So you thought it was important that they were nervous but you didn't mention it in your report.

A Yes.

Q Okay. And you didn't contact them in the parking lot.

A No. We were well down that street before we contacted them.

Q Okay. And in your report it says that the male and female began walking away with their luggage, but you didn't say that they began walking as you described it sort of a hoof.

A No, sir, that's not what I said. What I said is was they began to walk away. We walked behind them, we didn't run after them, we had to walk quicker to catch them. So they walked at a normal pace, we had to walk at a faster than normal pace to catch them. We came up behind them at a faster rate of a walking speed to catch them to obviously shorten the distance from us to them.

Q Okay.

A They did not run away, they did not walk away. They had four pieces of luggage, they weren't going anywhere fast.

Q And so you just walked quickly in order to shorten the

gap.

A Yes.

Q So now in your report you don't mention anything about the female having an object.

A Correct.

Q Okay. You don't mention anything about the female giving that object to the male.

A Correct.

Q Okay. In fact, you don't mention them stopping or putting down their bags at all until you come up the speak with them.

A They didn't put down their bags at all until we came to speak with them.

Q Okay. So they're carrying bags and handing each other things.

A They were moving four bags and she was still able to get in the purse and transfer and object to him, yes.

Q She must have stopped to be able to do that.

A It's possible they stopped, but they didn't necessarily set their bags all the way down.

Q And did they know that you were behind them?

A They kept looking back at us, yes, sir.

Q Okay. So they knew that you were following them.

A Yes, sir.

Q And they continued to walk.

A Yes.
Q So can you describe to the Court how you announced yourself?
A I'm not sure of the exact words we used, it was something nonthreatening like, "Excuse us, do you mind if we have a word with you," something along those lines.
Q And would that have been when you're very close to them or while you're still far back?
A No. It was when we were close to them.
Q So you didn't say anything until you got --
A We were within -- if I had to estimate I'd say within eight to 10 feet, so it wasn't consistent with yelling a command to them. It was basically, "Do you mind if we talk to you for a second?"
Q Okay. And did you say you were federal agency?
A I presented my task force ID since we were contacting them under federal authority.
Q Okay. Is that a badge?
A Well, it's a credential card, it's an ID card basically.
Q Okay. And did you tell them you were a federal agent?
A I told them I was a task force officer with customs enforcement.
Q Okay. And you said in direct that you didn't ask them to stop, they just voluntarily stopped when you asked to

speak with them.

A Correct.

Q Okay. The purpose of that from your report and also from your direct testimony was to identify them for identification purposes.

A The reason we contacted them was to first of all identify them, and second of all to ascertain if they were involved in any criminal activity, specifically under our ICE authority it would be trafficking counterfeit goods. They have four large bags coming out of a known source area for counterfeit goods, we thought that might be something we wanted to take a look at.

Q Okay. I hate to ask you to step down again, but I'd like to talk to you about the motions Mr. Spears was making. Now, he was wearing a larger shirt?

A I refer to it as a baggy type shirt.

Q About how far down on his legs?

A A sweatshirt, so I would say maybe here.

Q It was a sweatshirt?

A I think it was a sweatshirt.

Q Was it hoody?

A I don't believe so.

Q Okay. Would you say that it was too big for a man of his size?

A No, not necessarily.

Q Okay. And when you first got up there and started to talk to him, was his shirt resting flat on his beltline at that time?

A I don't know if initially it was. I know that as I continued to talk to him it became -- I'm sorry -- it became something that drew my attention to the fact that he was intentionally putting his hands inside his shirt. I can't really do it with this shirt. But what he was doing --

THE WITNESS: And I don't know how I can do this, Your Honor, and how it's going to look with the transcriber.

A It was like he grabbed the inside of his shirt and rolled his hands in it so that it was tight and pulled away from his waistband.

Q And that would have actually made his shirt shorter.

A No. But it made his shirt come out from his waistband.

Q Okay.

A Yes. It made it slightly shorter, but not quite noticeable.

THE COURT: Do it again.

THE WITNESS: He took his hands and like put them inside shirt, grabbed the bottom of the shirt and then rolled it up so that it became tight on the outside.

THE COURT: The hands are underneath the shirt?

THE WITNESS: Hands are inside the shirt underneath it and basically doing that made the shirt plane out so you couldn't see -- if there was a bulge in his waistband you wouldn't have been able to see it.

THE COURT: Okay.

Q You can sit back down, I'm sorry. So when he's doing that, could you see his stomach or his undershirt?

A No.

Q So his shirt wasn't not pulled up.

A It was, not that high.

Q And he was wearing sweat pants?

A I'm not sure about the pants, sir.

Q Do you know if he had a belt on?

A Again, I'm not 100 percent sure on the belt either.

Q And there's really no description of him in your report as far as what he's wearing.

A Correct.

Q Now, on direct you said at some point you told him to stop making those movements.

A Yes, sir.

Q And did he comply?

A He would take his hands out briefly and then within a number of seconds he would go back to doing the same exact thing.

Q And when he gave you his ID card, did he retrieve it?

A He did.
Q Where did he retrieve it from?
A I'm not 100 percent sure, I believe in a back pocket.
Q It was in a wallet?
A I believe so.
Q Okay.
A I'm not 100 percent but I believe it was in a wallet.
Q Okay. And at this point you're really investigating drugs, counterfeit items, anything that might be trafficked on this bus --
A Correct.
Q -- that comes from New York.
A Correct.
Q You don't know how fast this bus runs.
A Daily.
Q Daily. So every day the bus comes from New York, Chinatown, New York.
A At least one.
Q Okay. When you advised Spears that you were going to pat him down, he didn't say anything?
A No, sir.
Q Right. All right. Let's talk about the pat down itself here. I've never patted somebody down before, so I'm guessing you kind of just go all over, sides, chest?
A You start where you're most likely to find a weapon,

down their back, waistband, pockets, down the legs.

Q Okay. And although you felt this hard ball object, did you continue to make sure there were no weapons in other places?

A I did.

Q So you finished the pat down?

A Yes, I did.

Q And you found no weapons.

A No.

Q And it's not really in the report, but could you -- right here?

A About right there, that's fair.

Q Okay. So not down in his crotch.

A No. It was as if -- if somebody were to -- and I'm not saying he had sweat pants, but if you had sweat pants and you just flip them over, maybe roll them over twice maybe and put something right there in the upper part of your waistband.

Q So it may have been even wrapped up in the pants.

A I'm saying that's what it was --

Q Right.

A -- I can't testify that he had sweat pants on. What I'm saying is -- it wasn't like sewn in the pants, it was placed there in his waistband where he figured it would stay there.

Q Okay. And you described it as hard -- I guess I didn't get the ball part from your report, but on direct it felt like a hard ball.

A It felt like maybe golf ball size but it had jagged edges so you could feel it. I've gotten plenty of crack out of a waistband before and that's what it felt like.

Q But it wasn't broken up smaller crack rocks or what they would call a cookie.

A It was not a cookie. It was more like if you took broken glass and put it in a bag and then made it into a ball -- if I recall correctly it was smaller pieces that had jagged edges which is what felt like crack to me.

Q Okay. And when you pulled the object out, was it also inside of his underpants or just the pants?

A I'm not 100 percent sure it was in his underpants or not.

Q And it was a napkin that was inside of a plastic bag, or it was inside of a plastic bag that was inside of a napkin?

A I think it -- if I can recall correctly I want to say crack, plastic bag, napkin.

Q So the napkin is on the outside.

A If I recall correctly.

MR. HAWKS: Beg the Court's indulgence.

(Break in proceedings.)

MR. HAWKS: I have nothing further for this witness, Judge.

MS. CAMPBELL: Just one.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q I show you an item of evidence. And you didn't actually log this into evidence yourself, did you?

A I did not.

Q But does that appear to be the crack cocaine?

A It's deteriorated, but that appears to be what it was like.

MS. CAMPBELL: Your Honor, may I approach? Thank you. I don't have anything further.

THE COURT: Anything else, Mr. Hawks?

MR. HAWKS: Nothing else, Judge.

THE COURT: Thank you very much. Any other witnesses, Ms. Campbell?

MS. CAMPBELL: Not on the search issue.

THE COURT: Any witnesses, Mr. Hawks?

MR. HAWKS: I'd like to call Traci Jenkins.

MS. CAMPBELL: Your Honor, we do not have a date of birth on her.

THE COURT: All right. Can you get her date of birth?

(Break in proceedings.)

MR. HAWKS: Yes. Judge, she is wavering a bit with

the 5th Amendment issue, and because we heard that she may have been the one who handed it to him, she may have a point. I was wondering if Your Honor could explain everything to her, advise her of her rights?

THE COURT: Yeah, sure. Did you get her date of birth?

MR. HAWKS: She does not want to give it to me.

THE COURT: Okay. She can give to it me. Is she under subpoena?

MR. HAWKS: She is, Your Honor.

THE COURT: Okay. Okay. Come on down. Right here. Right over here. What's your full name?

THE WITNESS: Traci Jenkins.

THE COURT: Spell Traci.

THE WITNESS: T-r-a-c-i.

THE COURT: And your last name?

THE WITNESS: Jenkins.

THE COURT: J-e-n-k-i-n-s?

THE WITNESS: Yes.

THE COURT: All right. Raise your right hand.

The witness, TRACI JENKINS, was first sworn and testified as follows:

EXAMINATION

BY THE COURT:

Q Okay. How old are you?

A Forty-one.
Q How far did you go in school?
A Two classes away from a bachelors, close to a bachelors.
Q So you graduated high school?
A Yeah, got an associates.
Q Are you married?
A Separated.
Q Any children?
A Two.
Q Do you live in Columbia?
A Yes.
Q Do you work?
A Not right now.
Q When you do work, what kind of work do you do?
A I was working in the warehouse and restaurant industry.
Q Okay. Who is the gentleman in the back?
A Oh, that's my cousin.
Q Your cousin?
A Yes.
Q Okay. All right. I have a few questions for you. Okay. I need to explain a few things to you. Okay.
A Okay.
Q Do you understand me okay?

A I can hear you.
Q Can you hear me?
A Uh-huh.
Q Do you understand what I've said to you so far?
A Uh-huh.
Q All right. You understand you're under subpoena to be here, right?
A Yeah, I guess, I never received one.
Q Okay. You never received one?
A No.
THE COURT: Okay. All right. Is there an issue with service, Mr. Hawks?
MR. HAWKS: It was left at her house.
Q All right. And you understand this is a criminal trial.
A Yeah.
Q Against Mr. Spears.
A Yeah.
Q You understand that, right?
A Yeah.
Q You have to say yes or no.
A Yes, sir.
Q That's okay. Are you little nervous?
A Yeah.
Q That's okay. Just take a deep breath. You're okay.

A Okay.
Q Now, Mr. Spears' attorneys want to call you as a witness about -- I don't even really know what they want, but they want to ask you some questions and they are allowed to ask you those questions if they want to. Okay. Now, what I need to make sure you understand is that you have constitutional rights that apply to you, do you understand what I mean by that?
A Yes.
Q Okay. And one of those constitutional rights that applies to you is called your right to remain silent. Okay.
A Okay.
Q That means if they want to ask you something incriminating then you would have the option or the right to say, "I don't want to answer that. I want to invoke my 5th Amendment right to remain silent."
A Okay.
Q Does that make sense to you?
A Yes.
Q I mean, you graduated high school.
A Yes.
Q You've moved towards a college degree, you understand what I'm saying.
A Yes.

Q That's not a foreign concept to you; is that right?
A Yes.
Q So I certainly don't want to put you in a situation where -- well, I don't want to say that. But you have a constitutional right to remain silent, does that make sense?
A Yes.
Q Now, you do not have a constitutional right to remain silent as to questions that do not incriminate you. Okay. For example, are you wearing a black jacket right now?
A Yes.
Q Okay. All right. Do you have glasses?
A Yes.
Q Okay. See, those are not incriminating questions. Does that make sense to you?
A Yes.
Q But if they were to ask you something -- and again, I've never seen you before, I don't know you, don't know anything about you, I'm not trying to make any speculation or make any negative statement towards you, does that make sense?
A Yes.
Q But if they were to ask you, you know, I'm going to say the most glaring one, "Was the crack cocaine yours?" Okay. If you admitted to that you would be admitting to a

felony punishable by extremely serious prison time. Does that make sense?

A Yes, it makes sense.

Q So you would have the right to say, "Judge, I want to invoke my 5th Amendment right to remain silent and not answer that question" and I would let you not answer that question. On questions that are not incriminating for instance, you know, is it cold outside, you know, you would have to answer that question. Does that make sense?

A Yes.

Q Okay. Now, they want to call you as a witness, and every person who is subject to be called as a witness, the other side is allowed to know their date of birth so that they can run a criminal history background check on that person to see if you have any convictions against you that could be used for impeachment purposes. Does that make sense?

A No. Explain that a little more.

Q Okay. So anytime a witness is called, okay, do you follow me?

A Yes.

Q This applies in every case. Anytime a witness is called then some witnesses have criminal histories. Now, just because you have a criminal history doesn't mean that they can ask you about that, there are rules for that. But

some criminal convictions -- let's use a simple one, fraudulent checks. So if you've got a conviction for fraudulent check before the other side would have the right to know that so that they could say, "Now, isn't it true, Ms. Jenkins, you've written bad checks before?" Does that make sense?

A Yes.

Q So in order to make that happen and to effectuate that, then we will need to have your date of birth so that they can run a criminal background check on you. Okay. Now, you don't have to state that on the record to me now, but I need you to give that to Mr. Hawks so he can turn it over to the State.

A Okay.

Q Can you do that for me?

A Yes. Do I have to be here? Do I have to be a witness?

Q You have to be subpoenaed.

A And even if I didn't receive the subpoena, I still have to be here?

THE COURT: Are you getting a subpoena brought up for here.

MR. HAWKS: I can do that.

THE WITNESS: Oh, there's something wrong.

Q Now, your 5th Amendment right to remain silent still

applies to you if they want to ask you an incriminating question, does that make sense?

A Yes.

Q So at this point you are not allowed to leave the building, do you understand that?

A Yes.

Q Now, supply Mr. Hawks with your date of birth. You don't have to do that on the record, you can go over to the table and give it to Mr. Hawks. That's good right there. Don't leave, stay right there.

THE WITNESS: Oh, I was going to sit down.

THE COURT: You can sit down on that front row.

MR. HAWKS: I have the subpoena right here, Judge.

THE COURT: Okay. Go ahead and serve it on her. Do you need to wait on Mr. Ruffin?

MR. HAWKS: No. I didn't know I had it in the file.

THE COURT: Do you wish to call her as a witness, Mr. Hawks?

MR. HAWKS: I do, Your Honor.

THE COURT: All right. Come on up here and have a seat on the witness stand.

THE CLERK: Is she still under oath, Judge?

THE COURT: She is still under oath. Do you understand that, Ms. Jenkins?

THE WITNESS: Yes.

THE COURT: Okay.

The witness, TRACI JENKINS, remained sworn and testified as follows:

DIRECT EXAMINATION

BY MR. HAWKS:

Q Ms. Jenkins.

A Yes.

Q Do you know why you're here today?

A Yes, sir.

Q So you know the incident that we're all talking about?

A Yes.

Q You may not remember the exact date.

A No.

Q But you do remember the incident.

A Yes.

Q Okay. Do you recognize any of the officers?

A No.

Q Okay. And you were traveling with Mr. Spears that day?

A Yes.

Q Y'all were coming from New York?

A Yes.

Q Okay. And when you got off the bus, do you remember if you had luggage?

A Yes.

Q Okay. Big luggage?
A Yes.
Q And then were you waiting for a ride?
A Yes.
Q Okay. Did the ride not show up?
A Yes, eventually.
Q How long did you wait?
A About -- I don't know.
Q Okay.
A She showed up after, I guess.
Q So the ride came but it was too late.
A Yes.
Q So did you decide to walk?
A Yes.
Q Okay. And where did you walk to?
A Just -- we was going towards Briargate.
Q To Briargate Apartments?
A Yes.
Q Okay. So you were walking down Briargate Circle.
A Yes.
Q And do you remember law enforcement contacting you?
A Yes, while we was walking.
Q Okay. What did they say?
A To be honest I can't -- I don't recall.
Q That's okay. Do you remember if they told you to

stop?

A Yes. I believe they did, yes.

Q Do you remember how many officers?

A No. There was a lot.

Q It was a lot?

A Yeah.

Q Can you guess?

A I guess about six or something like that.

Q And did you know, you know, if they were Richland County, or did you know what kind of officers they were?

A No.

Q Did they tell you they were federal agents?

A No.

Q Okay. Could you see their guns?

A I guess you could.

Q It's okay if you don't remember.

A I'm not good with like -- I guess you could have.

Q Okay. How long did this encounter last?

A From when they approached us or the whole process?

Q Just while they were talking about you.

A It wasn't long, it didn't seem like long.

Q Okay.

A Maybe about 20 minutes, I guess, or maybe not that long.

Q Okay.

A I'm not sure.
Q And did you feel like you were free to leave?
A No.
Q So you're didn't think you could walk away?
A No.
Q You thought you had to talk to them?
A Yeah. Because I think they told us to sit down or something.
Q Before Mr. Spears was arrested? It's okay if you don't remember.
A No, I don't remember. I remember sitting down.
Q Okay.
A He might have been arrested, he might have been standing up and I might have been sitting down.
Q And did the officers search you?
A Yes, they searched my stuff.
Q They searched your luggage?
A Yeah.
MR. HAWKS: Beg the Court's indulgence.
(Break in proceedings.)
Q When you saw the officers, how far away were they?
A Maybe like a half a block.
Q Okay. Did you see them at the bus stop?
A I think I saw one in the truck.
Q Okay.

A An a SUV.
Q But he's not one of the ones that talked to you?
A Yeah, he came down.
Q He did? Do you see him in the courtroom?
A I'm not good about -- well, I don't remember faces that good like that.
Q Okay.
A I'm just being honest.
Q When they did talk to you, how close were they?
A When they -- they was up in front of us.
Q Okay.

MR. HAWKS: Nothing further, Judge.

MS. WALKER: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. WALKER:

Q Good afternoon. Are you still in touch with Mr. Spears?
A No.
Q Y'all don't communicate anymore?
A No.
Q And how did you know him then?
A He was my boyfriend at the time.
Q Okay. But this whole incident it's hard for you to remember now.
A Yes.

Q It's been a long time.
A Yes, it's been a long time. My memories don't -- I'm like a spur of the moment, I can't remember that far.
Q So you don't remember if they asked you to sit down before or after he was arrested or anything of that nature?
A I think he was standing up in handcuffs and I was sitting down.

MS. WALKER: Thank you.

A I'm just not clear on the facts.
Q I think --
A It's been so long.
Q I understand. Thank you for being here.
A Okay.

MS. WALKER: No further questions.

MR. HAWKS: Very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. HAWKS:

Q How long have you and Mr. Spears been separated?
A Fourteen months.
Q Okay. So you've not been dating over a year.
A No, we separated. We married, we separated, we've been separated for 14 months. We got married.
Q And again, you remember being told to stop.
A Yes.
Q Okay.

A I remember being told to stop, that's why we stopped.

MS. WALKER: Your Honor, we just got a copy, this just came in. Judge, did you want to see this?

THE COURT: (Nods in the affirmative.)

MS. WALKER: May I approach?

(A bench conference was held.)

THE COURT: Anything else of this witness?

MR. HAWKS: No.

THE COURT: Ms. Walker?

MS. WALKER: Nothing, Your Honor.

THE COURT: Okay. Do you want her released from the subpoena or do you want her to stay under the subpoena?

MR. HAWKS: Stay under the subpoena, Your Honor.

THE COURT: Okay. Do you want to get some information from her? You know how to find her.

MR. HAWKS: I have that information.

THE COURT: All right. Ms. Jenkins, you are going to be released from -- you will be allowed to leave today but if you are called to come back up here by people who have subpoenaed you, the public defender's office, you must come. If you fail to come I will issue you a warrant for your arrest. They will put you into custody, put you in the county jail and you will sit there until you get called as a witness. Do you understand?

THE WITNESS: I understand.

THE COURT: Okay. He will call and let me know or something. Okay. All right. Anything else?

MR. HAWKS: No, Your Honor.

THE COURT: Anything else from the State?

MS. CAMPBELL: Not on this issue, Your Honor.

THE COURT: All right. Go ahead, Mr. Hawks.

MR. HAWKS: Okay. I apologize for my brief because I was only going on what I had at the time. I didn't know anything about this object being passed or really any description of what actually took place when they got off the bus. I actually thought Gwyn was an active participant in the case so a lot of my brief goes off that. If that's confusing, I apologize. Your Honor, as I state in the beginning, I do think there are some distinct separate issues here. One, the determination of whether or not a reasonable person would have felt free to leave in the same scenario considering all the circumstances, I think that's the first issue. And I don't think anyone would have felt free leave in that scenario. These people were going about their business. They get their luggage, they leave the bus station, they start walking toward a residential area, and the testimony is conflicting as to whether they were told to stop, but certainly they are hailed by the officers following them down the street at a quicker pace than they are walking. I think that right there would make any

reasonable person feel they are not free to leave. They are then asked questions about criminal activity. Mr. Spears is ordered not to make some movements with his hands. And we do have testimony that they were asked to stop and that Ms. Jenkins did not feel free to leave. I know the test is not whether the actual person felt free to leave but whether the person would feel free to leave, but I think that does go toward that subject. So if Your Honor would like need to keep going on the other issues or --

THE COURT: Well, do you want to respond one at a time or at the end?

MS. McDUFFIE: At the end, Judge.

MR. HAWKS: So keep going. Okay. And then we have the issue on the frisk itself. And, Your Honor, of course, I am arguing that they did not have reasonable suspicion when this contact occurred, all they had was nervousness and the two people looking at them at the bus stop. The officer was not able to testify whether or not they knew even they were law enforcement. So those two things alone and a tip that the officer said he did not consider, I don't think that comes anywhere close to reasonable suspicion. There is some case law in my brief about those -- well, not about looking at the officers, I couldn't find anything about that, but about the nervousness itself. I think all people are nervous when

they come in contact with law enforcement so it's not surprising these two would be whether or not that occurred. So Your Honor, not only am I arguing that they were seized when these officers came on them, but also that they did not have reasonably articulable suspicion at that time which would make it a lawful seizure. As for the Terry frisk, Your Honor, I don't think they were looking for guns. I think they were looking for drugs and they're trying to use this connection between guns and drugs to say that Mr. Spears must have been armed. But Your Honor, they didn't have reasonable suspicion about drugs at that point. They were asking him questions about counterfeit items, I don't think they were just asking him general questions at that time. So I don't think they had reasonable suspicion that he was committing a crime, or reasonable suspicions that he was armed. I don't think an armed individual would draw attention to the weapon especially if he was carrying it on his waistband. I mean, why would he draw attention to his waistband if he's carrying a weapon? And furthermore, Judge, there has been no testimony that if Mr. Spears was carrying a weapon he was carrying it unlawfully. They didn't know who he was at the time, they didn't know if he had a concealed weapons permit, they didn't know anything about it. So if all they had was a suspicion that he had a gun founded or unfounded it's not

clear that that would have been a crime.

THE COURT: I don't think you can ride a bus across seven or eight states and not commit a crime with a firearm in your possession.

MR. HAWKS: That could be true, Your Honor.

THE COURT: I understand where you're going with that. Okay. Keep going.

MR. HAWKS: And then the actual seizure of the item I think is possibly the most important. On my cross-examination he says he pats him down, he feels the hard ball object, he continues to pat him town. That to me means he knew it wasn't a weapon right then and there and he didn't feel a weapon anywhere else on Mr. Spears's body. Instead of ending the frisk he goes back and retrieves the hard ball object. Now, it's not a gun, that much is clear, he testified to that, he didn't think it was a gun. We know it's not a gun. A hard ball object, I'm not sure how that could be a gun or any sort of weapon. And Your Honor, I know the plain field doctrine. If the officer readily believes that it's contraband then that's plain field. I don't think that's what we have here, Judge. He feels a hard ball object, knows it isn't a weapon, continues to search and goes back, pulls it out, he finds a hard rocky like ball wrapped in a napkin wrapped in plastic. He removes those two things and finally discovers that it is,

in fact, crack. And at that point he had gone well beyond the Terry frisk. He knows that he doesn't have weapons. This is a search for drugs without reasonable suspicion for drugs masked with a Terry frisk of weapons. I do have some case law whenever we get to that point.

THE COURT: All right.

MS. McDUFFIE: Thank you, Your Honor. May it please the Court? Your Honor, first in terms of I believe his initial argument was the stop. Your Honor, by all accounts the encounter was consensual. There is no credible testimony that this encounter was anything but consensual. Officers are allowed to walk up to an individual and begin to talk to them, they don't need reasonable suspicion and they don't need probable cause and citizens are free to talk to the police if they choose to or not talk to the police. And in this case they chose to speak with the police and there is no evidence on the contrary on that matter, Your Honor.

THE COURT: Hold on. Are you in agreement that the tip is out?

MS. McDUFFIE: Yes, Your Honor. I agree that the tip had nothing to do with why he was stopped.

THE COURT: I just wanted to make sure. That was my impression of Agent Tracy's testimony is that they were -- while they may have been there because of the tip, the tip

was not a factor in why they took the steps they took. Does the State agree with that position?

MS. McDUFFIE: We do, Your Honor. Your Honor, when he approached the defendant in this case it was consensual. He asked the defendant for identification, he then proceeded to ask him about trafficking in counterfeit goods, Your Honor, and that's what their main focus was. And it was because the defendant's behavior and because he kept reaching for his waistband after being told on multiple occasions to stop putting his hands there, that officers became in fear for their safety and believed that he had a weapon because of his repeated grabbing his waistband or the motion that the officer described earlier. And, Your Honor, we believe that that gives justification for a Terry frisk in this case. Your Honor, the Terry frisk the officer testified to was done for weapons. During the Terry frisk for weapons he felt a hard rock-like object which he immediately was able to identify as crack cocaine, which he told Your Honor based on his at that point ten plus years of training, Your Honor, he believed it to be crack. Under State v. Smith, Your Honor, 329-SC-550, under the plain field doctrine, he knew that that item was contraband, he knew it was crack cocaine, and he did seize the crack cocaine at that time and continued to frisk for weapons, Your Honor, because he did have

reasonable suspicion and he did believe that this defendant could be armed and for his safety and based on his reasonable suspicious he did frisk the individual for weapons as well, Your Honor. Your Honor, there is no evidence to indicate that the search was anything but lawful, and we would rely on State v. Smith and State v. Taylor, 401 South Carolina 104. Further, Your Honor, I'd like to point out that the defense in their brief does not cite a single South Carolina case to support their position that this was anything but a lawful stop.

THE COURT: Go ahead.

MR. HAWKS: I'd first like to respond to Smith. I believe the defendant in that case said it's my reefer, referring to marijuana, so that would explain why it was immediately apparent. And State v. Taylor, wow, that is just a questionable case. But I think I could distinguish that, too. Because the officer in that case said he thought there could have been a weapon inside the tennis ball. That's not what we have here. The officer testified -- well, I'm not sure he said exactly he knew it wasn't a weapon, but he did not testify that he thought it was a weapon. In fact, he kept patting the man down to make sure that he didn't have weapons. So I think Taylor is just not appropriate to discuss here.

THE COURT: All right. Which ones do you want to

discuss?

MR. HAWKS: Your Honor, I would point you to State v. Abrams. I do have some other copies. May I approach, Your Honor?

THE COURT: Yes, sir.

MR. HAWKS: In that case, Judge, the officer felt what he thought was a tube instrument about the size of a shotgun shell. He said it should have been a shotgun shell or he thought it was an instrument that could have transported contraband. But he knew again in that case that he did not have weapons, he knew the item was not a weapon. Even if it was a shotgun shell it could not be used as a weapon against the officer. So I think that that case is much more similar to this case where the officer knows it's not a weapon, still pulls it out and we've got crack cocaine.

THE COURT: So what do you do with the fact that the officer testified that based upon his experience he knew it was crack cocaine? Was he supposed to leave what he believes to be drugs in the community so he is supposed to -- I guess under your theory he is supposed to seize them but not arrest him?

MR. HAWKS: Well, I don't think he knew right away, Judge. He said he felt a hard ball object, he pulled it out, pulled out the wrapper and said it was crack. He said

it was similar or consistent, he didn't say -- I mean, there's a case that says if an officer says, "I immediately knew it was contraband," that works. That's not what he said here, Judge. He felt a hard ball object, he kept searching, then later he pulls it out, unwraps it and discovers -- that's when he determines for sure that --

THE COURT: He says, "I don't know what he had in his waistband. He wasn't compliant. It was for officer's safety. It was rock like, ball formed with jagged edges, and in my experience it felt like crack cocaine."

MR. HAWKS: I don't think that's the same as being immediately apparent that it is crack.

THE COURT: All right. What else?

MR. HAWKS: Your Honor, what you just said about him not being sure, I think that also is telling here. The standard is reasonable suspicion or reasonably articulable specific things about this defendant that would say that he is armed. He said he wasn't sure what he had. And, Your Honor, this is after a pre -- I mean, she said 20 minutes, I don't know how accurate that is, but they asked him for ID, he complies. They asked him if he has anything illegal, maybe he hesitates but he still says no. They start asking him about other things not related to drugs, the counterfeit items, he says no to that. If this is for identification purposes, they're saying officers are

allowed to approach anyone on the street to ID them and ask questions.

THE COURT: Well, I think the US Supreme Court has said that.

MR. HAWKS: Yes, sir, and I agree with that.

THE COURT: That's just some theory somebody is throwing out.

MR. HAWKS: And I agree with that. But I think this encounter went much past that.

THE COURT: What about this Abrams case?

MS. McDUFFIE: Your Honor, in that case, it was a -- I believe it ended up being a plastic bottle, you couldn't immediately feel that it was contraband. That is completely distinguishable from this case. In this case the officer immediately -- he testified once he felt the object he immediately knew it to be crack cocaine. This wasn't in some sort of constrainer that could have contained contraband. Based on the nature and what he felt on the object he plainly felt, which is the law in this state, that it was contraband and he seized it as a result of that, whereas in the Abrams cases the officer testified he didn't know what it was. It could have been a tool to contain contraband or even in that case he testified it could have been a shotgun shell which would not be contraband and would not be illegal, and I think it's very

distinguishable from this case, Your Honor.

THE COURT: So what is the officer's reasonable articulable suspicion for the Terry frisk?

MS. McDUFFIE: Your Honor, I think his reasonable articulable suspicion, just as he testified, is that they approached him, they began to ask him questions. The defendant was very forthcoming -- or the defendant was very forthcoming in his answers to the question. When the officer asked him if he had any weapons on him, I believe he said illegal weapons, the defendant hesitated. That gave him pause because he had been so forthcoming in his other answers. And then, Your Honor, when he kept reaching for his waistband the officers told him not to reach for his waistband anymore, I believe, Your Honor, that's reasonable articulable suspicion to believe someone is armed, just as the deputies in this courthouse everyday, Your Honor, when people are reaching for their waistband or put their hands in the pockets tell them not to do that as it is reasonable to believe that they could be reaching for a weapon, Your Honor, and I believe that's exactly what the officers did in this case.

THE COURT: He didn't testify that he asked him do you have any illegal weapons. I think the question is do you have anything illegal on you, not illegal weapons.

MS. McDUFFIE: Your Honor -- I'm sorry. If I misheard

the testimony I apologize for that.

THE COURT: And that's when Agent Tracy says the hesitation occurred. What does Taylor have to do with this case, Ms. McDuffie? That's where I'm not following. I mean, in Taylor they get some kind of tip, the guy flees, they take him down and while their patting him down a ball falls out and it has a slit in it and they can see something inside of it.

MS. McDUFFIE: Your Honor --

THE COURT: I don't understand the relation between the two.

MS. McDUFFIE: We don't rely on Taylor for the plain field of the drugs, Your Honor. I'm relying on Taylor for more of the -- I think in this case we have much more reasonable suspicion than the officers articulated in Taylor and I believe that that's --

THE COURT: What is the reasonable suspicion? They were nervous in the movements with the hands?

MS. McDUFFIE: Your Honor, that they were nervous, they kept looking back at them. The officer testified that he was aware that these buses come in every day, the relationship between illegal goods, drugs and things of that nature, Your Honor. They come in off of the buses -- the other people that left the area weren't acting suspicious. They go in their cars, vehicles and this

defendant was walking towards the location that there was nothing in that direction, Your Honor, which the officer believed to be unusual as well. He said the individuals kept looking back and watching what the officers were doing. They observed them pass something back and forth between the two of them, they couldn't tell what the object was if it was anything at that point but believed that to be odd as well, Your Honor. When they approached this defendant, they believed him to be armed based on his answer -- or his delayed response to the answer, and also his grabbing under the waistband trying to draw officer's attention away from what he was concealing in his waistband. Your Honor, I believe that that's reasonable articulable suspicion. And, Your Honor, he also testified that that was based on his -- he went through his extensive training in his at that point in time 10 years in narcotics alone, Your Honor, and the connection between the drugs and the weapons as well, Your Honor.

THE COURT: I mean, why in your analysis of Smith, Mr. Hawks, does it matter what the defendant said from a search perspective and whether or not the defendant confessed to it being his reefer? I mean, if you were making that legal argument on behalf of Mr. Smith you would have said the moment they felt it it was illegal, then his statement is irrelevant.

MR. HAWKS: I think, Your Honor -- and this is from my co-counsel -- he patted something down. He patted Mr. Smith down, didn't know what it was, they hadn't asked him --

THE COURT: No. It says, "And based on his experience he knew it was some type of narcotics," which is basically verbatim what we have today. And then he says to him, "What's this, your reefer?" And the defendant replied, "Yeah man, that's my reefer," then he they arrested him.

MR. HAWKS: Well, I think the difference in this case is that he did not immediately know that it was narcotics.

THE COURT: Ms. McDuffie, what's the evidence that criminal activity is afoot? I mean, for a Terry stop one issue is officer's safety, but the other issue is the officer has to believe that criminal activity is afoot.

MS. McDUFFIE: Your Honor, I think we're talking about two different things between a Terry stop and a Terry frisk. I don't think they were alleging that this was a Terry stop. I believe that they approached these individuals based on the conduct that they observed and they encountered them just as they were allowed to encounter any citizen and these individuals were allowed to walk away -- or stop and talk to the officers which they did in this case. So, Your Honor, I don't think that we have a Terry stop situation.

THE COURT: Where you would have to prove criminal activity is afoot.

MS. McDUFFIE: Correct, Your Honor.

THE COURT: Because under your theory they approached them and the consent to a manner and they are free to leave, so then the issue becomes officer's safety on the frisk.

MS. McDUFFIE: Yes, Your Honor.

THE COURT: Do you want to respond to that, Mr. Hawks?

MR. HAWKS: I would argue that a frisk is a seizure if they are patting him down. He told Spears he was going to pat him down.

THE COURT: Right.

MR. HAWKS: I mean, how are you free to leave at that point? They still don't have reasonable suspicion. And I'm sorry, going back to Smith --

THE COURT: Which one?

MR. HAWKS: Smith.

THE COURT: Okay.

MR. HAWKS: It says in this case the incriminating character of the evidence seized was immediately apparent with the experience and the contact with the object and Smith's response to Russell's question.

THE COURT: In smith it also says, "In assessing whether someone is armed and dangerous the officer need not

be absolutely certain that the individual is armed, the issue is whether a reasonably prudent man in the circumstances would be warranted and would believe that his safety and that of others was in danger."

MR. HAWKS: Yes, Your Honor. And I don't think it's reasonable to think that someone who is continuously drawing attention to an area is carrying a gun in that area, I just don't think it's reasonable. And when they patted him down at that point they knew he didn't have a weapon. And, Your Honor, I think it's important that apparently he's doing this over and over and they never thought their safety was in jeopardy until they wanted to frisk him. I think what really happened was they weren't getting the answers that they wanted and then decided to go about it through the Terry frisk which is why he says, "I'm not sure what he had. I'm not sure if it was a weapon. I'm not sure he had if anything at all."

THE COURT: All right. Anything else from the State?

MS. McDUFFIE: No, Your Honor.

THE COURT: Anything else, Mr. Hawks?

MR. HAWKS: No, Your Honor.

THE COURT: All right. Everybody be ready to go tomorrow morning at 9:30. I'm going to spend a little time on this this afternoon and then I'll rule on the record in the morning. But just for the sake of everybody being

prepared, have everything ready to go at 9:30.

MR. HAWKS: Thank you, Judge.

THE COURT: Thank you.

MS. CAMPBELL: Your Honor, before we --

THE COURT: Do you want this on the record?

MS. CAMPBELL: Yes, just briefly if you don't mind.

THE COURT: Sorry, go ahead.

MS. CAMPBELL: There is also after he was arrested he was advised of his Miranda rights, he did make multiple statements admitting to the drugs. I don't know if you want to take that or they are conceding that, I just want to make sure the record is preserved on that issue.

MR. HAWKS: We talked about this, Judge. We're just not sure why it's relevant since trafficking simply requires the possession of X amount of drugs, so I don't know why any of this is relevant at all.

THE COURT: That's not the question right now. The question right now is do you want to challenge them pursuant to Jackson versus Denno?

MR. HAWKS: No, Your Honor.

MS. CAMPBELL: Okay.

THE COURT: So you're going to waive his right to challenge those statements under Jackson versus Denno?

MR. HAWKS: If we're clear about which statements we're talking about, the ones after Miranda.

MS. CAMPBELL: The ones after Miranda.

THE COURT: The ones after Miranda.

MR. HAWKS: Just to be clear, we're only waiving the voluntariness objection.

MS. CAMPBELL: He gave me a list of motions and one was for Rule 5 and the other was for a suppression motion of the drugs. So at this point we intend on offering all the statements, so if you have an objection to any of them it's something we need to take up pretrial. I understand you aren't objecting on the voluntariness issue, if there is some issue I need to be aware of.

MR. RUFFIN: Your Honor, the specific statements that I'm thinking of -- I see. Spears was asked had he been arrested before and he responded probably for the same thing, we would object to that as propensity evidence.

MS. CAMPBELL: If we could take them in the order they came up --

MR. RUFFIN: Okay.

MS. CAMPBELL: -- then we may be able to agree that some should be redacted.

MR. RUFFIN: Okay.

MS. CAMPBELL: The first thing that he was questioned about, they asked Spears if he knew what the substance was, he said he didn't know. When they said you don't know what it is his response was, "Just because it is on me doesn't

mean I know what it is."

MR. RUFFIN: No objection to that, Your Honor.

THE COURT: Okay.

MS. CAMPBELL: Then the next statement he says if he had been arrested before it is probably for the same thing, we would agree that that should not come in.

THE COURT: Arrested before and the answer to that question is out.

MR. RUFFIN: Cool. Sounds good.

MS. CAMPBELL: And then once he was transported to headquarters he then engaged the officer in a conversation. He had stated that he felt he had been set up, that he had been on the bus many times and never seen the cops before.

MR. RUFFIN: No objection to that.

MS. CAMPBELL: He wouldn't have been there, he would have seen the cops first.

MR. RUFFIN: No objection to that.

THE COURT: Are all these post Miranda?

MS. CAMPBELL: All post Miranda.

THE COURT: Okay.

MS. CAMPBELL: He stated he wouldn't have been there if he had seen the cops first. Again, they asked him about what he had been arrested for, they could not go into that. He told them he did ten years federal time for the same thing, trafficking, they could not go into that. And then

they asked him why started back up doing it after ten years, we just limit that to why did you do this and his answer was stupidity.

MR. RUFFIN: We're okay with that. I'm okay with that.

MS. CAMPBELL: He then stated that he would -- was unemployed and was moving down here to start a restaurant. He was then asked if he was selling crack to start his business. Spears informed them the crack wasn't even his and he was bringing it down here for somebody.

MR. RUFFIN: Those are the statements that we would object to on relevance. What Mr. Hawks was talking about is that intending to distribute is not an element of trafficking, all they have to show is that he possessed more than 10 grams. So we would object to those statements based on relevance. I think it's somewhat confusing the issues to the jury thinking that there is a -- does he have to be selling it or does he not have to be selling it. He doesn't have to be selling it, he only has to be in possession of more than 10 grams, that's all the State has to prove.

MS. CAMPBELL: That may be one way to prove trafficking, there are multiple ways we can prove trafficking crack cocaine for the purpose of --

THE COURT: What about that?

MR. RUFFIN: I mean, Your Honor, I think that that's true, there's more than one way.

THE COURT: I think there's like four or five in the statute.

MR. RUFFIN: I agree.

THE COURT: I didn't write it for the record, but it's pretty broad.

MR. RUFFIN: I'll just stand on my previous objection.

MS. CAMPBELL: And it continues --

THE COURT: Okay. Those statements will be relevant.

MS. CAMPBELL: And then he also said that crack cocaine --

THE COURT: Hold on. They go directly to an element of the crime. Go ahead.

MS. CAMPBELL: Thank you, Your Honor. He said that crack in South Carolina is at a set rate but in New York it's cheaper. He then said someone here in South Carolina pays him $2,200 to bring the crack from New York and the only reason he did it was because of his bills.

THE COURT: Anything irrelevant?

MR. RUFFIN: We would have the same objection, Your Honor.

THE COURT: Okay. All right. That motion will be overruled. I deem it to be relevant. Again, it goes directly to an element of the crime that the State is

required to prove.

MS. CAMPBELL: Then, Your Honor, he goes through a series of questions which we agree would not be because he asked basically about his bail and the officer said he wasn't sure how much it would be. He then asked if he knew how much his bail was when he was arrested in Virginia. The officer hold him that he didn't know, the defendant told him it was in excess of a million dollars and stated $20,000 in cash and three vehicles from him. He then asked him how much crack he had at the time and Spears said maybe an ounce. I think all of that would not come in.

THE COURT: Which witness is putting this in?

MS. CAMPBELL: Investigator Gwyn.

THE COURT: Are you okay with that not coming in?

MR. RUFFIN: Yes, Your Honor.

THE COURT: Okay.

MS. CAMPBELL: We'll go over that too to make sure.

MR. RUFFIN: I think that's all the statements.

THE COURT: Okay. So basically anything about being arrested before or federal time or bail in Virginia, all that kind of stuff, where everybody agrees is to stay away from all that.

MS. CAMPBELL: We agree.

THE COURT: And, Ms. Campbell, if you would just -- or whoever is putting Investigator Gwyn up just go over it

with him one more time so that's clear. Anything else?

MR. RUFFIN: Nothing from us, Your Honor.

MS. CAMPBELL: That's the only thing.

THE COURT: All right. 9:30.

(Whereupon, the proceedings were adjourned and Resumed at 9:45 a.m. on February 18, 2015.)

THE COURT: We have one juror, juror number one, who called in sick with a stomach bug. Any objection to seating the alternate?

MR. HAWKS: No, Your Honor.

THE COURT: Did she talk to you, Ms. Pat?

THE CLERK: She talked to Sheila.

THE COURT: She talked to Sheila.

THE CLERK: Yes, sir.

THE COURT: Okay. All right. So that will be juror number 18, Ms. Bellamy, who gets seated in the place of juror number one, Ms. Cox, who has called in sick this morning and spoken to Ms. Sheila at the clerk of court's office and confirmed that she has a stomach bug. Okay. On the defendant's motion to suppress, that motion is going to be denied. I'm going to go through my reasoning for doing so. I'm starting off with the fact that based upon Investigator's Tracy's experience, he has 19 years in law enforcement, he's been in narcotics since 2002 which would put him in narcotics for approximately ten years at the

time of the stop. He has been in interdiction since 2004, which would put him at eight years of experience with interdiction at the time of the stop. He's been certified by the DEA in interdiction cases involving buses, trains, planes and other things of that nature. He has worked over 2600 narcotic cases. He teaches interdiction for the DEA, and even though at the time he was employed by the Lexington County Sheriff's Department he was assigned to what at that point in time was known as ICE or Immigrations Custom Enforcement, I believe the name has changed or they have been joined in Homeland Security as a task force officer. Now, the only justification for patting down the defendant is a reasonable belief that his safety or the safety of others was in danger. Law enforcement has pointed to specific and articulable facts which warranted a search of the defendant's person. Number one, the defendant was observed getting off a bus that was known by law enforcement to be used commonly by criminals. Number two, the defendant paid close attention to law enforcement officers even though they were plain clothed and their guns were out of sight. Number three, law enforcement began to follow the defendant and the female subject, which we have now learned to be his girlfriend/wife at some point in time. Number four, the defendant and the girlfriend were nervous. Investigator Tracy observed the defendant take an

object from the girlfriend in a suspicious manner while they were walking away. Law enforcement initiated a conversation with the defendant, and defendant and the female subject willingly stopped and spoke with law enforcement. Law enforcement notified the defendant that they were law enforcement. Law enforcement never told the defendant he was not free to leave. The defendant was originally forthcoming with information in answering the questions to law enforcement, then when questioned about having something illegal on his person he was hesitant. Defendant continuously rolled up his shirt at his waist and put his hands at his shirt. Defendant was told multiple times to stop doing this by law enforcement and he refused compliance with the order to remove his hands from his shirt. Based upon these observations law enforcement had reasonable belief that based upon specific and articulable facts that the defendant was armed and thus justified a frisk. Now, moving on to the discovery of the actual narcotics. Upon patting down the outer layers of the defendant's clothes in a search for weapons, Investigator Tracy felt an object that he immediately believed to be contraband, specifically Special Agent Tracy testified that he felt a ball form with jagged ends that in his experience felt like crack cocaine. Because the incriminating character of the object was immediately apparent to

Investigator Tracy during the pat down for weapons, the pat down was proper under the plain field test. In the words of Investigator Tracy from the witness stand he has gotten plenty of crack cocaine from a waistband before and that is what it felt like at that time. I'm going to deny the defendant's motion to suppress and you'll need to renew that at the appropriate time during the trial. Anything else before we get started?

MR. HAWKS: Your Honor, I have a couple of things. Number one, I forgot to do this yesterday, I would like to make my motion Defense's Exhibit Number 1 and make it a part of the record.

THE COURT: Okay.

MR. HAWKS: So I'm just going to hand the same motion up to the court reporter. Court's Exhibit, excuse me.

THE COURT: That's fine.

(The motion was marked as Court's 1.)

MR. HAWKS: Also, Your Honor, I would like to renew my objection to the testimony from Special Agent Tracy that we had not heard before, and I would move for a mistrial at this time. Your Honor, I would like to point the Court toward State v. Gibson, it's 334SC526, I believe, that site might be wrong. Your Honor, I'm going to read something from that. The overriding theme of the Brady case is the emphasis of the Supreme Court has placed on the

prosecutor's responsibility for fair play. In close cases the proving prosecutor will resolve doubtful questions in favor of disclosure, this is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative of a sovereign whose interest in criminal prosecution is not that it shall win the case but justice should be done. And it will attempt to preserve the criminal trial as distinct from the prosecutor's private deliberations as the chosen form for ascertaining the truth about criminal accusations." Your Honor, I believe the case law in this area makes clear that not only should the prosecution turn over discussions that they've had with law enforcement prior to trial, but that also even if they haven't had those discussions they have a duty to have them and then turn them over. That was simply not done in this case. I believe Ms. Campbell said yesterday when we were talking about sequestering the witnesses she wanted to make sure that she could talk to her witnesses, so I'm guessing she spoke to them at some point before trial. I doubt she would put a witness on the stand that she had not spoken to, so I believe that is all stuff that needs to be turned over. I don't think any of these officers should be allowed to testify, I'm referring to Lorenzen, Robinson and Finch specifically. We have nothing about what they saw, any reports they may have made, any

discussions they may have had with the solicitor's office. Quite frankly, Judge, I have no idea what they're going to say on the stand. That makes it impossible for us to prepare cross examination and it does not secure my client's due process right to a fair trial. When we went through discovery and prepared for this case, Judge, it seems that Gwyn was on the scene, that he took an active part in this investigation and now we're told on day one of trial that he wasn't even there, he wasn't even on the scene. So, Your Honor, I think this rises to a manifest necessity for a mistrial. I don't believe it is possible in any way for Mr. Spears to receive a fair trial.

THE COURT: Who wants to respond?

MS. CAMPBELL: I'll be glad to respond, Your Honor. In Gibson they talked about how that it was a Brady violation and prosecutorial misconduct actually not to turn over exculpatory evidence, we would agree with that. Whereas in addition to that, Your Honor, as far as any testimony yesterday, I have not spoken to that witness prior to putting him on the stand, and quite frankly neither has Ms. Walker talked to him at that point. Your Honor, we have turned over all the discovery material in the case that had been reviewed. As far as anything being exculpatory that came out yesterday, I fail to see what could have been exculpatory that came out on behalf of the

defendant. In addition to that, Your Honor, the officers or witnesses are not exclusive to the State but also available for the defense attorney as they've done in many other cases to speak to as well about what was done and what was seen in this case. In the Gibson case specifically they did not turn over the fact that one of the main key witnesses in the case could not have seen what she claimed to have seen and that fact was discovered beforehand, I believe that's what was not turned over.

THE COURT: You're talking about in this case or --

MS. CAMPBELL: In Gibson.

THE COURT: Okay.

MS. CAMPBELL: That was a Brady violation which we would agree with. I'm not aware of any exculpatory information that was not turned over to the defense. And in fact, my understanding is the defense had an opportunity to examine the one officer from the preliminary hearing, Richland County Investigator Gwyn, as well as the other officers I'm sure would have been available to speak to him if he had so chosen. I was not aware of anything exculpatory that needed to be turned over and I still fail to see what exculpatory evidence was not turned over. In response to their I have a duty to talk to the officers beforehand, I don't know that that's necessarily true. I don't know that anything that he alleges is any different

from what was in the report would be considered exculpatory in any manner.

MR. HAWKS: Your Honor, just a brief response. It's not only exculpatory evidence, it is evidence that could be used to impeach the witnesses. Gwyn not being at the scene could be used to impeach his prelim testimony where he says that he is at the scene, and this is from Gibson. The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching.

THE COURT: So what came out yesterday that was impeachment material?

MR. HAWKS: Well, the fact that they weren't even acting on this tip which is direct contradiction to the discovery.

MS. CAMPBELL: The only thing about the tip is is that wasn't part of the --

THE COURT: They had a tip. They didn't say that a tip didn't exist, they just said that the tip wasn't their basis.

MS. CAMPBELL: The basis of the search.

MR. HAWKS: But according to Gwyn's report and his testimony at the preliminary hearing, it was.

THE COURT: I don't understand how you've been harmed.

MR. HAWKS: Well, Your Honor, we can't prepare. I can't prepare for anything Finch says, anything Ms.

Lorenzen says, anything -- and I don't know what Gwyn is going to say on the stand, I have no idea because it can't be what he said in the prelim and in his report because apparently that didn't stop --

THE COURT: Did Finch and Lorenzen not do reports?

MS. CAMPBELL: They did no reports.

THE COURT: Are they testifying?

MS. CAMPBELL: They are testifying and they are testifying substantially to the same thing that --

THE COURT: What is the substance of their testimony?

MS. CAMPBELL: That they were with Agent Tracy, that one of them was standing on one side and the other as they approached the people, that they also observed them walking away from the scene in the same manner. And I'm sorry, Your Honor, I didn't talk to them until yesterday, and then at that point they told them what they observed, one was able to see better than the other and exchanged -- one was not able to see the exchange but heard Dennis Tracy mention something about it. At that point that they observed basically what he testified to yesterday. There is no substantial difference between anything they're going to testify to that he testified to.

MR. HAWKS: So if she talked to them yesterday, where is that? Why don't we get that? I don't understand.

THE COURT: I don't understand why you can't go talk

to them.

MS. CAMPBELL: They're available, and were yesterday.

THE COURT: I mean, tell me one thing that she just said that is favorable to the accused?

MR. RUFFIN: I'm not sure that it's favorable, Judge.

THE COURT: Well, that's the whole purpose behind Brady is that they're intentionally keeping information that is favorable to the accused away from you.

MR. HAWKS: Well, I think I could have been able to better prepare my pretrial motions, specifically the suppression motion, if I actually knew what happened.

THE COURT: So did you ever call Investigator Tracy or Investigator Gwyn or any of the other witnesses?

MS. WALKER: No, I did not.

THE COURT: Why not?

MR. HAWKS: Because I assumed that the State had turned over everything that they had. I assumed that Deputy Gwyn when he testified at the prelim under oath, that that's what happened.

THE COURT: So what's the big thing about Gwyn's prelim testimony?

MS. CAMPBELL: We received it yesterday, Your Honor, from the defense --

THE COURT: A transcript?

MS. CAMPBELL: -- we reviewed it and I'll be able to

hand it up to the Court.

THE COURT: A transcript?

MS. CAMPBELL: It is an audio disc.

THE COURT: What's the big deal about Gwyn's prelim?

MR. HAWKS: All I can point to is some examples. And this is not a transcript, this is my own just typing up what was on the disc. He says -- I think the solicitor asked, "And the reason that y'all targeted Mr. Spears is just suspicion? He looked suspicious?" And Deputy Gwyn, "He fit the description that was given. And y'all were acting on anonymous tip. It was an anonymous tip." In his report he says it's a confidential informant.

MS. CAMPBELL: This is all information he had.

MR. HAWKS: "And y'all were doing surveillance fairly close by when y'all approached him?" Answer from Gwyn, "Right." The whole time he was acting like he is there, that he is on the scene and now we hear from Tracy that he is not.

MS. CAMPBELL: He is on the scene, he's just not one of the three that approaches them initially. He actually shows up right as -- I mean, it's in this report that Tracy -- it's clear in Tracy' report that the three of them approached, the three of them confronted them. He refers to the three people, that's in his report I can hand up. And then Brian Gwyn just summarizes what Tracy did along

with what he did after it was turned over to Richland County once the arrest was made. To say he wasn't at the scene was a mischaracterization, I don't understand that.

MR. HAWKS: I'm not saying he wasn't anywhere in the general vicinity. This is the defense attorney. "When you -- when y'all approached him for his ID," and he doesn't correct that that didn't happen, he says, "right." He admits that he wasn't the one that patted him down, but he doesn't say, "No, defense attorney, I didn't come until later."

THE COURT: I don't understand what the issue is.

MR. HAWKS: I don't see how --

THE COURT: I mean, you can cross examine him on all that until you're blue in the face. You know all this, you're aware of all this, you've had the opportunity to cross examine at the preliminary hearing, you have all the reports. I mean, I just don't understand -- I'm not saying it's not proper cross examination but I just don't understand how the defendant has been prejudiced or that anybody is keeping anything that is exculpatory or impeachment away from the defense.

MR. HAWKS: The only issue in this case is the search, everybody knows that. And I prepared my entire motion, all of my arguments based on what was given to me, then Tracy gets on the stand and everything changes. They saw a hand

to hand exchange.

THE COURT: Well, I'm going to tell you, Mr. Hawks, I mean, that's why it's a trial.

MR. HAWKS: Right.

THE COURT: Because things change. I mean, if I had a dollars for every time a federal judge ruined my suppression motion because the judge herself questioned the witnesses and is completely fixed the entire State's case and their suppression motion on testimony I had never heard before in my entire life I could retire. But I don't know -- the only thing that changed in my understanding is that he said they were nervous and he said there was this hand to hand transaction. How are either one of those things favorable to your client?

MR. HAWKS: I'm not saying these are exculpatory evidence. I am saying that my client cannot get a fair trial because his attorneys for three years prepared on what we were given and now at trial we have to start all over.

THE COURT: You don't have to start all over, you just have to deal with the punches as they come. You have to deal with the testimony -- no one who knew what Ms. Jenkins was going to say yesterday, I'm not even sure you knew what she was going to say, right? I mean, let's be candid.

MR. HAWKS: I had talked to her before, Your Honor.

THE COURT: She was called as a witness and no one in the room knew what she was going to say. I mean, I understand she's a defense witness and not a prosecution witness so there is different standards, I means, that's why it's a trial. That's why there's inherent risk in a trial is because you don't ever know what somebody is going to get on the witness stand, put their hand on the Bible and what they're going to say. It may be completely different than what they said before. That's why you have cross-examination. Your motions are all denied. It's not grounds for a mistrial, I do not find that there is a discovery violation or there's any kind of Brady violation. I haven't found that anybody has intentionally withheld anything that was favorable to the accused or impeachable evidence in reference to the defense. All right. Anything else?

MS. CAMPBELL: Your Honor, the only thing I believe that he addressed yesterday that he didn't put in his report that he was nervous. Actually how he describes it in his report, it's described as a black male subject appeared to be paying excessive attention to law enforcement presence around the bus stop location. So the terminology is a little bit different perhaps but that reference was in there.

THE COURT: All right. Bring them in.

trial do not read, watch or listen to any news reports about the case. You must not consider anything you may have heard or read about the case outside the courtroom whether before or during the trial. Once the case is submitted to you, you must discuss it only in the jury room and only with your fellow jurors. The attorneys and the parties in this case have been advised that they are not to talk to you at all, so if you see someone in the hallway and they do not even say hello, they are not being unfriendly, they are just following my instructions. And it is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments and I have told you what the law is in this case. It is your responsibility to determine the guilt or the innocence of the defendant, and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I instruct you during and at the close of the trial. All right. Is the State ready to proceed?

MS. CAMPBELL: The State is ready, Your Honor.

THE COURT: Okay.

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Good morning. On March 29, 2012, officers responding to a tip went to a motel on Broad

River, which was a place where a bus that traveled from New York State typically dropped off its passengers. Once they got there they observed a man and a woman with some luggage walking away from the area. They kept looking at them, the officers, they were nervous, and at that point they became focused on them. They walked up to the man and the woman, they started to have a conversation with them. The man kept putting his hands towards his waistband, pulling his shirt away as if trying to keep it from going flat to expose something that might be on his waistband. And the officers at that point concerned for their safety lawfully conducted a pat down search, and when they didn't find the gun, what they did find was a ball size rock of crack cocaine in the man's waistband, in the very area he had been attempting to conceal. The man who was in possession of the crack cocaine who was trafficking in crack cocaine, who had come here on a bus from New York State bringing back crack cocaine here to South Carolina was Eric Spears, and we are here today for his trial. My name is Luck Campbell, I'm an assistant solicitor here in the Fifth Judicial Circuit, and I will be one of the two prosecutors along with Meghan Walker who is seated at the table, who will be presenting the evidence in this case from different officers. And as the Judge has already told you, there's one indictment upon which you must listen to the evidence,

determine what the facts are and apply the law, and that indictment is for trafficking crack cocaine. And as the Judge has told you, the indictment itself is not evidence in this case, but the indictment is important because it serves a two-fold purpose. Number one, it puts the defendant on notice on what the State intends to prove against him. And very importantly in that same manner it puts the State on notice as to what the elements of trafficking in crack cocaine are, what the evidence is that we must prove to you before you can render a verdict that speaks the truth. Now, the Judge will tell you, and this is very important, the burden of proof is on the State of South Carolina who represent the citizens of this community, the burden of proof is on us to prove this defendant guilty beyond a reasonable doubt. That is the highest level of proof in any courtroom in this nation just as it should be. And I submit, ladies and gentlemen, in this courtroom with this evidence, that is a burden the State welcomes, because it's not only proof beyond a reasonable doubt, it goes further than that. All we must prove is to make you feel like you are firmly convinced of this defendant's guilt, and I submit this evidence goes beyond that. Now, the indictment, trafficking, and the Judge has already read to you the definition, what is trafficking in crack cocaine? Why is it different from say

possession with intent to distribute? Very simply, ladies and gentlemen, there's an inference, and the Judge will tell you, the amount of crack cocaine that was found on this man that day, that alone is enough to make it trafficking because it was over ten grams. It's called trafficking in crack cocaine ten to 28 grams. That amount was such that over 50, some 60 people could get high off the amount of crack cocaine that was brought into our state that day, and that's why this is trafficking and not one of the other drug charges. And very simply, the trafficking statute reads like this: A person who knowingly sales, manufacturers, delivers, purchases or brings in this state or who provides financial assistance or otherwise aids, abets, attempts or conspirers to sell, manufacture, deliver or purchase or bring into this state either in actual or constructive possession or attempts to become in actual or constructive possession is guilty of trafficking in crack cocaine when that amount is over 10 grams. In this case, ladies and gentlemen, you will hear from the analyst who will tell you that the amount of crack cocaine conservatively was well over 11 grams. On March 29th agents had received a tip, and when I'm talking about agents you're going to hear about people from the DEA, it was a task force made up of Homeland Security, DEA agents, Richland County Sheriff's Department and other agents were

also on the scene that day. And they went to this area on Broad River Road somewhere around noon or shortly before that because they had received a tip that there would be a man coming on a bus and they were familiar with these bus lines from New York State and that he would have crack cocaine on him and he was bringing it into our state and that was the extent of what that man told them. But they responded to that area because as police officers they have the right to follow up on that. They can't base a stop on that alone but they have a right to followup to see what they observed, and once they got to the motel on Broad River Road they saw people getting off the bus. Many people were milling out in the parking lot area, greeting loved ones, their wives were there to pick them up. Two people stood out to them because these two people went to the bus and got their luggage out from the bus and at that point they looked at them. And even though these officers were plain clothes, they were the only people there that day that didn't exit off the bus or weren't greeting people there that day. Immediately these two people, one of which was Eric Spears, the other was his wife or girlfriend, kept looking at them. At that point they started to leave the area on foot. They kept looking back. They were nervous. At that point Agent Tracy, who is now with SLED who was assigned to this task force along with two other officers

assigned to the task force DEA agents, ICE, started to go behind them to follow them, and their purpose was and they couldn't unlawfully detain them, but they could initiate a conversation. And as they approached them they walked up to them and asked them if they would speak to them and they started asking questions. And at first Mr. Spears was forthright, but when they got to the question when they asked him if he had anything illegal on him, he hesitated, he said no. They asked him if he had counterfeit goods on him and he said no. And as agents kept talking to him, he kept going to his waistband with his hands, Agent Tracy asked him on more than one occasion to please not put his hands around his waistband or his pockets, the same thing the deputies in this courtroom do all the time. Because in his experience as a narcotics agent, he had been in narcotics for over ten years, this is what people did, and he kept puffing the shirt out as if trying to make it conceal something. At that point Agent Tracy based on the totality of the circumstances lawfully then conducted what is known as a pat down search, which police officers can do to ensure their safety if the situation warrants it. And during the course of the pat down he didn't find any weapons and he starts -- and he explains to you what areas you go to when you go do the pat down, but as he did he felt a rock on the waistband area. And in his experience

as a narcotics agent, a trained narcotics agent, he even trains other people, he knew that to be crack cocaine. And when he removed the rock item from the waistband, he opened it up and there, in fact, was a golf-sized ball of crack cocaine, it was field tested there at the scene positive, and it was later tested further by other chemists. You will hear how the defendant was then taken into custody, he was arrested for trafficking because of the amount, because he was bringing it in this state. And remember when you hear those definitions about the trafficking we don't have to prove he did all of those things, we only have to prove he did any one of those things. But in this case he did more, he possessed it, he brought it into this state. What was his intent? The amount alone is not for personal use. You will hear how the defendant was Mirandized. He was told what his rights were there at the scene by another investigator from the Richland County Sheriff's Department assigned to the same task force. Once he was advised of his rights he was asked, "Do you know what was on you? Do you know what you had in your possession?" His immediate was, "No. But just because something is on me doesn't mean I knew what it was." You'll hear how he is transported back to Region Four Headquarters by Investigator Gwyn who was doing paperwork, and by that point the defendant initiated a conversation with agent Gwyn. He started

really complaining, told him, "Hey, I feel like I got setup. I've been on that bus before, there never have been any cops there. If I had known the cops were going to be there I wouldn't have been there," statements of that nature. When Agent Gwyn asked him, "Why did you do this?" His response was "Stupidity." He went further than that in answering the officer about the crack cocaine. He stated that he was unemployed and was trying to move down here from New York where he was from to start a restaurant, that somebody had paid him $2,200 to bring the crack cocaine in here. It wasn't even his, he was bringing it in for somebody else. Started talking about how the rates and amounts of crack cocaine were different for crack cocaine, it was cheaper up there. He said the only reason he did it was because he had to pay bills. Those were his statements as you will hear. Now, once you have heard all of the evidence in this case -- and this case is very specific, it's not going to be a lot of witnesses, you're going to hear from the witnesses that were out there that day who participated in this. But once you hear from everybody; the officers who founded the crack cocaine, the officers who Mirandized him and talked to him as he eventually admitted to knowing about the crack cocaine, that it was his and in his possession. All the State asks is one thing, and the Judge will tell you this, once you've heard

all of the evidence and heard again from us, Ms. Walker will address you, you will be asked to go back to your jury room and reach your verdict. The word verdict comes from a Latin phrase, veredicto, and very simply it means to speak the truth. All we ask is that you hold Eric Spears responsible for his choices, his actions when he chose to bring crack cocaine into our state. Thank you.

THE COURT: Thank you, Ms. Campbell. Mr. Ruffin?

MR. RUFFIN: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. RUFFIN: Good morning, ladies and gentlemen. My name is Adam Ruffin and I represent Mr. Spears, along with Lucas Hawks who is seated there in the middle, and Robert Corning. You know, when our country was being founded Thomas Jefferson said, "I consider a trial by jury to be the only anchor ever yet imagined by man by which a government is held to the principles of its constitution." It has been said that the American Trial Jury is the last roadblock against tyranny and government oppression. You have a very, very important responsibility today. You know, this is -- the 13 of you are the most powerful people in this courtroom right now. You're more powerful than me, you're more power than these prosecutors, you even have more power than Judge Hood, and that's because you and you

alone get to decide the question, guilty or not guilty. And your right to serve on this jury, your responsibility to serve on this jury is so important and so crucial to our system of justice that it's mentioned throughout our nation's constitution, and it's also in our state constitution. It's one of the greatest hallmarks of American citizenship, and I would submit to you that your right to serve on this jury is even more important than your right to vote in elections. You know, when you go to the polls to vote in a ballot box in a presidential election, your vote might be one in a hundred-million. When you go back in your jury room to deliberate, your vote is one in 12. That is significant power, it's a significant responsibility and it's one that you should not take lightly. Probably with one or two exceptions, basically every witness that's going to testify in this case is a government agent, they're law enforcement officers. And as they're testifying I want y'all to listen, I want you to ask yourselves is what this person is saying, does it make sense? Is what they're saying consistent with their own statements and with the other witness's statements? Do I trust this person? Can I believe this person? All we're asking you to do is listen. Now, at the end of this trial after you've heard all of the testimony you will be asked to go back to your jury room to

deliberate. You'll be asked to go back to your jury room to vote, you'll either vote guilty or you'll vote not guilty. And you may not all vote the same way, you may not all agree on what the answer is in this case, and that's okay. One of the great things about our system is that if you are in the minority you do not have to be swayed to move from the minority. Because each and every one of you as individuals holds an absolute power and an absolute right to vote however you want when you get in that jury room. And if even a single one of you is determined to vote not guilty, you do not have to abandon your principles, you do not have to be swayed by your other jurors. Today, you know, I cannot -- I just cannot overstate the importance of your responsibility today. You know, as an attorney people ask me, family and friends. How to get out of jury duty. You know, people don't want to serve on juries. That blows my mind. Because you have been called upon today by your country to engage in one of the most sacred activities you will ever engage in as an American. Today you are an active participant in our system of justice, in our system of self-governance. Today y'all as individuals and as a group have an opportunity, you have a responsibility to hold the government to their burden, to hold the gunshot to the principles of our great constitution. You stand today as the final safeguard of

liberty, and I trust that you will exercise that responsibility with the utmost care. Thank you.

THE COURT: Thank you very much, Mr. Ruffin. You may call your first witness.

MS. CAMPBELL: May it please the Court? The State calls Dennis Tracy.

THE COURT: All right. Investigator Tracy, please come forward.

The witness, DENNIS TRACY, was first duly sworn, and testified as follows:

THE CLERK: Please have a seat in the witness stand, state your full name for the record and please spell your last name.

THE COURT: Dennis Tracy, T-R-A-C-Y.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Agent Tracy, where are you currently employed?

A South Carolina Law Enforcement Division.

Q What do you do there, sir?

A Narcotics agent assigned to the interdiction unit.

Q And you talk faster than I do.

A I'm sorry.

Q And as part of the interdiction unit, what does that mean for somebody like me that doesn't understand those terms?

A Interdiction is a law enforcement effort to stop the flow of narcotics into our neighborhoods by nontraditional means. People using common carrier parcel systems; Fed Ex, UPS, DHL, people coming in airplanes, buses, trains anything except cars, or just people walking across the border, I assume. But basically if there's a way to get in here we're tasked with trying to solve that problem.

Q So basically you focus on the flow of drugs from other areas into our state.

A Yes, ma'am.

Q And you're trying to help deter that.

A Yes, ma'am.

Q You mentioned that you're on a task force, is that what you call it?

A I have a four person team and we partner with local agencies when we have operations.

Q And is the four person team now, are those all from SLED?

A They are.

Q I want to turn your attention back to March of 2012. Where were your working back then?

A I was employed by the Lexington County Sheriff's Department.

Q And how long have you been in law enforcement total now?

A This is my 19th year of law enforcement.

Q And when did you actually start working in the narcotics area at the Lexington County Sheriff's Department?

A I started in narcotics in 2002.

Q So by 2012 you had over ten years experience?

A Yes, ma'am.

Q Back in 2012 in March, where were you assigned?

A The Lexington County Sheriff's Department as a narcotic's investigator. I was also assigned as a task force officer to, at that time which was Immigrations Customs Enforcement, which has been renamed to Homeland Security.

Q Slowdown a little bit. What was it?

A Immigrations Customers Enforcement.

Q Is that what commonly is referred to -- or used to be referred to as ICE?

A It is.

Q What is it referred to now today?

A Homeland Security Investigations.

Q And these were people that were all part of this task force, or this was the task force?

A It's a different group now, but back then it was --

Q And I'm sorry, I'm focusing on 2012.

A There were people that were working from Immigrations

Custom Enforcement and DEA together.

Q And DEA, what does that mean?

A Drug Enforcement Administration.

Q And was it common for the task force to also have local representatives that were affiliated with it?

A It was.

Q And typically, how would y'all decide how to act on certain situations?

A We would focus on one mode of transportation whether it be Amtrak train, work Greyhound, work the chinese bus lines or whatever we decide for the day.

Q Before I forget this, do you also actively participate in actually teaching other officers about this area, narcotics investigations and things of that nature?

A I teach specifically parcel interdiction, but I've been teaching for the DEA since 2007.

Q I want to turn your attention to the morning of March 29th of 2012. Had y'all received some information that you were acting on that day?

A It was my understanding that a tip had been received.

Q And that tip did not come directly to you, did it?

A No, ma'am.

Q But to other agents.

A Correct.

Q And was that information shared with you?

A Yes, it was.
Q And when we talk about a tip, what are we talking about?
A I believe somebody whether it had been -- I don't know whether the source was an informant or some source of information -- called law enforcement and provided some sort of information as to an individual traveling to the state from the New York with narcotics.
Q And as a result of that tip, what did you do?
A We got together and targeted the Oriental Bus Lines or the Chinese Bus Lines is how we refer to them that dropped off in Richland County.
Q And when you say these oriental or chinese bus lines, what is this?
A Most people are familiar with Greyhound. Greyhound is an established company, it has established companies, it has established stations, tickets everything is very formalized. There's another set of bus lines that are unmarked that operate out of Chinatown and they come down the Eastern Seaboard to big cities. So you could be in Chinatown and get on a bus that goes to Columbia, South Carolina, it might stop at two or three other cities but the destination is where it's going to go. They're relatively inexpensive and from a law enforcement standpoint the problem with these bus lines is there's no

security measures. Everybody here is familiar with TSA, there's no TSA at this bus line. You can walk straight there, buy a ticket for $20 or $30 and get right on the bus. There's no positive ID checks, there's no anatomics, there's no security measures in place. So we have found in law enforcement that these bus lines are exploited by all types of criminals, whether they be wanted subjects, whether they be a kidnapper, whether they be somebody trafficking in counterfeit merchandise. We found them to be a well known group of people that have tried to get from New York to our state.

Q That day, did you know where the dropoff point was for that bus line?

A We knew of a drop off point for these buses at the Dutch Square Mall right there by the McDonald's. Normally they come in somewhere between 11:00, 12:00, 1:00, they're not really on a set schedule. The like Greyhound is usually on time, these things leave at a specific time, however long it takes down is how these buses operate.

Q And do they have their own station when they come to Columbia?

A There's no real station. They drop off in a parking lot or a closed business or whatever the case may be, they might stop at McDonald's and drop everybody off. There's not like a station for these bus lines.

Q That day you mentioned that one of the dropoff points was near Dutch Square Mall or the McDonald's right next to it?

A Yes, ma'am.

Q Was there an additional dropoff place?

A There was. We got notified that another bus had come off the interstate at Broad River and had pulled into a hotel parking lot right just north of I-20 on Broad River Road, it might have been a Comfort Inn, I'm not 100 percent sure, but I think it might have been an Old Comfort Inn.

Q Based on that information, did that you proceed to that dropoff point?

A I did.

Q The one at the motel, whatever it was?

A Yes, at the motel.

Q And once you got there what, if anything, did you observe?

A The bus had begun the process of disembarking passengers. We noted that most of the passengers, their travel patterns were consistent, they had either somebody coming to pick them up, they were getting into a cab to get to their destination, they were on a cell phone telling somebody that hadn't to showed up. We did see a couple of people that stuck out that didn't appear to get

on a cell phone, and we did notice that two people did proceed to -- we figured -- or what we felt is they were paying an excessive amount of attention to us.

Q When you say excessive amount of attention to us, who is us?

A Us as law enforcement.

Q And who was with you that day?

A Myself, a DEA task force officer named Frank Finch, a special agent from -- a homeland security named Briton Lorenzen.

Q So you were actually with two other people initially when you got there that day?

A Yes.

Q And when you say they were paying excessive attention, what were they doing?

A Well, everybody has some enate curiosity, everybody has a level of curiosity about law enforcement, but that's when law enforcement is obvious. I've been in law enforcement 19 years, I still panic when I see blue lights on the side of the interstate because I figure I'm going to get pulled over for speeding. Everybody pays attention to marked cars, everybody pays attention to officers in uniform, however, we were in plain clothes. So 99 percent of the people out there don't pay attention to people in plain clothes, they're not looking for law enforcement in

plain completes. So in our experience if somebody is paying attention to us, there's a reason for that, and commonly we see that people that are looking for us are engaged in some form of illegal activity.

Q So when y'all were out there, did you announce with the crowd that you were with law enforcement?

A No, ma'am.

Q Did you flash your badge?

A No, ma'am.

Q Did you show them your gun?

A No, ma'am.

Q And, in fact, were your badge and your gun concealed?

A They were.

Q But these people kept looking at y'all.

A Correct.

Q What were they doing as you observed them initially?

A They were retrieving their baggage from the underside of the bus and talking amongst themselves.

Q What did you observe them to do as they kept looking at you or paying attention to y'all? Where did they go?

A After a few minutes they took their property and began walking up the side street toward the post office, and I think it's Briarcliff or Briargate Circle, they proceeded to walk up to the road.

Q And they were on foot?

A They were.
Q And what did y'all do once you saw them leaving the area on foot?
A We decided to make contact with them and have a -- engage in a conversation.
Q And were you there at that point to arrest them?
A No, ma'am.
Q Were you going to detain them in any way?
A No, ma'am.
Q And, in fact, what was the purpose of you approaching them at that point?
A To engage them in a consensual encounter and talk with them and see if there was anything suspicious about their stories or their actions.
Q And how did you approach them?
A Well, they were walking up the street, we walked behind them, we have didn't run but we had to walk at a brisker pace than they did to catch up to them. As we were walking behind them we observed the female remove something, an unknown object from her purse, she handed it to the male subject who was walking next to her. We did not see the male subject move his hands lower than his waist so we discredited that she handed him a piece of gum or piece of candy or anything like that. So we knew that whatever he (sic) had handed her (sic) had either been put

into his pockets or his waistband.

Q Could you tell what the item was?

A We could not tell what the item was.

Q And at that point did they have their bags with them?

A They had their bags.

Q And she was able to retrieve it from her purse.

A Yes.

Q Or what appeared to be her purse.

A Yes, ma'am.

Q Did y'all make contact with them?

A We did.

Q And what happened then?

A When we got about maybe eight to ten feet behind them we asked them if we could talk to them for a minute. We identified ourselves as law enforcement and engaged them in causal conversation, engaged them in just common questions; where are you coming from? How was the trip? How long did it take? Things like that. Where are you coming from? Asked them for identification. Mr. Spears presented a New York ID. He was very forthcoming in his information in the line of questions we were asking him. When I asked him certain questions he started rearranging his clothing to try to remove his clothing away from his body. I asked him for safety reasons to not do that since his hands were out of my view. I believe I asked him

three times to cease putting his hands inside his shirt, and I could probably show you what he was doing with his shirt.

Q Let me back up a minute. You said that you had asked him a series of questions and initially he was forthcoming?

A Yes.

Q At some point was he less forthcoming about information?

A He was.

Q And what was that, sir?

A After our simple questions I asked him if he had any illegal items on him or his property and he hesitated and after a few seconds he said no. In my training and expertise, especially narcotics, when people hesitate there's a reason they hesitate, they're usually trying to convince themselves of what they're going to be telling me. And at that point I figured he was not telling me a truthful statement.

Q Okay. You've mentioned he was doing something with his clothing.

A Yes, ma'am.

Q Can you stand up and show the jury --

MS. CAMPBELL: With the Court's permission.

Q -- and show the jury exactly what he was doing that you recall?

A He had a baggy shirt on and what he did was he put his hands -- sorry -- his t-shirt was baggier than mine. But he would take his hands inside it and grab the inside and keep it tight to keep it away from his waistband. It was longer than this, it was easier for him to do it. But he would just make it tight so you couldn't see anything that would have been on his waistband.

Q At that point, is that when you asked him to cease --

A I did.

Q -- to stop doing that?

A I did.

Q And why was that?

A For my own safety. I didn't know what he had. I didn't know if he was concealing a weapon in his waistband, I didn't know what he had in his waistband but I didn't want him to do that because hands are what can hurt you from a law enforcement perspective. If I have can't see your hands that's a concern for me, it's an officer safety concern.

Q Take the stand. You mentioned that you asked him at least on a couple of occasions --

A Yes.

Q -- not to do that at some point. Did your concern for your safety make you act?

A It did.

Q And what at that point were you able legally to do?
A At that point I advised Mr. Spears that I was going to conduct a pat down of his waistband to make sure he didn't have any weapons.
Q And did you, in fact, do that?
A I did.
Q And when you say you conducted a pat down, what is that?
A A pat down is basically a police term that we are using our hands to feel the waistband or any part of the body. But in this instance I went for his waistband to see if he anything that felt consistent with a weapon, the butt of a gun, the heal of a knife, anything like that.
Q And when you do a pat down, you do it pretty much the same way every time?
A Yes.
Q Are there certain areas you focus on where weapons can typically be concealed?
A In an interdiction environment I'm only worried about places they can get to quickly, somewhere around their waistband, in their pockets. I'm not going to feel up on his shoulders because his hands are down there, I'm worried about what's around his waistband, what's in his pockets and legs. I mean, somebody could have something in a sock or ankle holster or something like that. Those

are the main parts I do. Waist area, pockets are the first things we're going to check in a pat down.

Q And as you were doing the pat down, where did you start?

A His waist.

Q And when you were patting down his waist, what, if, anything, did you do?

A On the right front of his waist, maybe like right above where his pocket would have been, there was a small hard object about the size of a golf ball, maybe slightly bigger than a golf ball that had jagged edges. In my training and expertise it was consistent with what -- how crack cocaine is normally trafficked, or normally concealed, what it would feel like if it was concealed.

Q So in your training it felt like crack cocaine?

A It did.

Q And at that point did you remove the -- at some point did you remove the object front his waist after completing the pat down?

A I did.

Q And what did you find when you removed the object?

A When I removed the object there was a small ball shaped item that was wrapped in a napkin. I opened up the napkin, inside the napkin was a clear bag that contained numerous off-white rock like items that were consistent

with crack cocaine.

Q At that point what did you do?

A Mr. Spears was detained at that point and we turned him over to Richland County for further investigation.

Q And when you say you turned him over to Richland County, Investigator Gwyn with the sheriff's department?

A Investigator Gwyn and Investigator Robinson were both responding to the scene or involved in this operation.

Q So at some point they showed up as well?

A Yes.

Q At that point was your involvement with this -- did you do any field testing?

A I did not conduct any field testing.

Q Did you advise him of his rights or were you there for any of his questioning?

A I was not for his questioning and I did not ask him any questions beyond that point.

Q I want to show you a few items.

MR. HAWKS: Without objection, Your Honor.

MS. CAMPBELL: I need get them marked, but I want to show you just to make sure you've seen all this before.

MR. HAWKS: Yes, Your Honor.

MS. CAMPBELL: I'd like to get these marked.

(State's 1-4 marked for ID.)

BY MS. CAMPBELL:

Q I want to show you first items one and two. Do you recognize those?

A I do.

Q And what are those items, sir?

A Item number one appears to be crack cocaine in a bag, an evidence bag.

Q Okay. And item number two?

A It looks like a napkin, consistent with the napkin that the crack cocaine was located on Mr. Spears.

MS. CAMPBELL: Your Honor, at this time we'd offer State's Exhibits 1 and 2 into evidence.

MR. HAWKS: Objection, Your Honor, to all my previous objections. And also, we never received any chain for this. I would object on a chain basis as well.

THE COURT: Okay. Ladies and gentlemen, let's take a little break. Return to your jury room, do not discuss the case, keep an open mind, we'll be back in just a few minutes.

(The jury left the courtroom.)

THE COURT: All right. What's the chain issue?

MS. CAMPBELL: Your Honor, we will be -- and this is subject -- I'm sorry, he said no objection when I showed him this stuff.

THE COURT: Okay.

discuss your testimony with anybody.

THE WITNESS: I'll stay here.

THE COURT: All right. Everybody stretch your legs.

(A short break was taken and the jury returned to the Courtroom.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: Okay. Welcome back, ladies and gentlemen. So State's Exhibit Number 1 is for identification only purposes, State's Exhibit Number 2 is admitted over defense's previous objection. And State's Exhibit Number 3 is admitted without objection.

MS. CAMPBELL: And Number Four?

THE COURT: And State's Exhibit 4?

MR. HAWKS: No objection.

THE COURT: Very well.

(State's 2, 3 and 4 were received into evidence.)

BY MS. CAMPBELL:

Q State's Exhibit 1 and 2, those items were turned over to, I believe, Investigator Gwyn at the sheriff's department?

A They were.

Q And during the time that you had the crack cocaine in your possession, did you alter it or change it in any way?

A No, ma'am.

Q Did you tamper with it?

A No, ma'am.

Q And during the time, did anyone else have the opportunity to alter it or tamper with it in any way?

A No, ma'am.

Q The person you stopped that day, I'm going to show you State's Exhibit No. 4. Do you recognize that?

A I do.

Q And who is this, sir?

A That is Mr. Spears.

Q And is that the person that you stopped back on March 29, 2012?

A It is.

Q You also mentioned this area.

MS. CAMPBELL: Your Honor, may the witness step down?

THE COURT: Just keep your voice up please, special agent.

Q Can you come over so the court reporter can hear you better? State's Exhibit Number 3. You can use this. You mentioned that the area was on Broad River near I-20; is that correct?

A Yes, ma'am.

Q And can you see where I-20 is on this map?

A You can. I-20 would be right here.

Q So this is the main part right here that says I-20 on it, I guess. Anyway, where is the motel parking lot you're

referring to where the bus stopped?

A The motel parking lot is right here. The bus pulls in off of Broad right here, turns around in this big parking lot and drops passengers off.

Q Right in that area where you are pointing.

A Yes, ma'am.

Q And that's actually on what road?

A Briargate Circle.

Q What's this main gate right here?

A This is Broad River Road.

Q And then you mentioned Briargate Circle. Where is this?

A Briargate Circle is this road right here.

Q And once these individuals you observed got their luggage, where did they head?

A They proceeded up this direction up Briargate Road -- or up Briargate Circle --

Q From this direction?

A From that way towards the post office.

Q Where is the post office on that diagram?

A The post office is this big white square right here.

Q And where did you actually make contact with them approximately?

A Right in between these two driveways right here.

Q Right in this area?

A Yes, ma'am.
Q In front of the post office.
A I guess it's actually the side of the post office.
Q Side of the post office. Okay. At that point that is where you actually had the conversation with him?
A Yes, ma'am.
Q As well as did the pat down search.
A Yes, ma'am.
Q That day you also mentioned that the bus also went to another area of town.
A Yes, ma'am.
Q And what area of town -- was there an actual separate --
A The separate bus would have been way off the map down in Dutch Square. Dutch Square is probably a half mile or three quarters of a mile from that location.
Q On this side.
A Down Broad River Road on that side of I-20.
Q Okay. You can take the stand. Thank you, sir.
A You're welcome.
Q State's Exhibit Number 1. Has its shape changed a little bit since the testing was done?
A It has.
Q And how has that changed?
A Oversimplifying this, crack cocaine is basically

cocaine and baking soda, it's not going to hold its shape for two years. It's also not going to hold its shape if it's excessively handled like in the testing process. So the sharp ends and things that I referred to in my initial testimony, they're not as noticeable in this because it's deteriorated and broken down over two years.

Q And again, the person you stopped is the person that's seen in State's Exhibit Number 4.

A Yes, ma'am.

MS. CAMPBELL: Your Honor, may the record reflect he has identified the defendant?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Thank you.

THE COURT: Cross-examination?

MR. HAWKS: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. HAWKS:

Q Good morning, Special Agent Tracy.

A Good morning, sir.

Q I don't know if you mentioned this this morning, but I believe yesterday you said you've done 2,600 cases, drug cases?

A Yes, sir.

Q Something along these lines. And how many of them did you submit an incident report?

A All of them.

Q All of them. Okay. So you've done over 2,000 incident reports.

A Yes, sir.

Q Okay. And you did one in this case.

A I did a supplemental report in this case.

Q Okay. And you submitted that to the State --

A I did.

Q -- as part of discovery.

A Yes, sir.

Q And it looks like you actually did it the same day.

A Yes, sir.

Q So everything was fresh in your memory at that time.

A Yes, sir.

Q And this incident we're talking about, March 29, 2012, almost three years ago.

A Yes, sir.

Q Okay. So back then, three years ago, you had a much better -- well, I shouldn't say that, but it was much fresher in your memory since it just happened.

A That's a fair statement.

Q And that's why you do this incident report right away.

A Correct.

Q And you want that incident report to be accurate.
A Yes, sir.
Q Truthful.
A Yes, sir.
Q Complete.
A Yes, sir.
Q Because someday this days might go to trial.
A Yes sir.
Q Which it has. And you want to be able to remember what happened.
A Correct.
Q And you want the defense to be able to provide their client with a defense, or at least a way to assess what happened on that day.
A If your asking me if I want the defense to have a defense, no. I want to solve the case that the defense doesn't have a defense to, but I prepare a report and it obviously goes to you in discovery.
Q Okay. And on direct you mentioned one of your goals was stopping the flow of drugs in South Carolina.
A Yes.
Q At this time specifically in Lexington and Richland counties.
A Yes.
Q And you've not been able to do that, right?

A We're trying.

Q Okay. Let's talk about this tip. I know you didn't receive the tip. On direct the tip was talked about as an individual, but, in fact, it was for a black male.

A It was.

Q Okay. And it wasn't for crack, it was just generic for narcotics.

A I'm not -- I didn't receive the tip, I just know it was a narcotics tip.

Q Okay. And it wasn't for two people, it was for one black male.

A As far as I remember.

Q And that other dropoff point you mentioned farther than that, that is also in Richland County?

A It is.

Q And so I know y'all weren't specifically looking for a black male when you approached Mr. Spears, but the reason you went to these two bus stations was because of that tip for a black male.

A We went to the bus stations to conduct an interdiction effort. My reason for stopping Mr. Spears was completely independent of the tip, it was based solely on his actions.

Q All right. But the law enforcement presence at both those stops was because of the tip.

A There were people there in response to the tip as well, yes.
Q Okay. And the motel that you're referring to is actually an Economy Inn that's closed down?
A I just saw that, yes, sir, Economy Inn.
Q And it's not everything operational.
A I don't believe so.
Q And you said on direct that they were paying excessive attention to you, these two.
A Yes.
Q And your -- you think that because you're law enforcement, you think that's why they were paying attention to you?
A Yes, sir.
Q And you think that's what made them suspicious.
A Yes.
Q But you were in plain clothes.
A I was.
Q And there were no squad cars around.
A No, sir, there were not.
Q Couldn't see your badges.
A No, sir, it was not.
Q Couldn't see your guns.
A No.
Q So you don't know they knew that you were law

enforcement.

A My opinion was that that's why they were paying us an excessive amount of attention.

Q Okay. And this stuff you went into on direct about not talking on the cell phones, not being greeted by families, none of that stuff is in your report.

A No, sir.

Q Okay. And I think you mentioned that they were nervous, they appeared nervous?

A Hence them paying an excessive amount of attention to law enforcement.

Q But you didn't mention that nervousness in your report.

A No.

Q We don't have to look at the map since you've already showed them, but you've stopped them in front of the post office. Or not stopped them, I'm sorry, you've made contact with them.

A Yes, sir.

Q And about how many feet would you say that is away from where they got off the bus? 500?

A About, that's fair.

Q And you walked at a brisk pace you said.

A Well, we didn't want to run at them because it would have been -- this whole thing is based off consensual

encounters and us running after somebody is more a show of force so we didn't want to run after them.

Q Okay.

A We obviously had to walk faster than they did or else we never would have caught them.

Q So you were chasing them but not running.

A No, sir, not chasing them. Just following them to make contact with them.

Q Okay. You were following them.

A Yes, sir.

Q And then on direct you said you saw a female -- the female removing an object.

A The motion was consistent with removing an object from her purse and handing it to the male.

Q And that's not in your report.

A No, sir.

Q Okay.

A Can I explain my answer?

Q I just wanted to know if it was in your report.

THE COURT: Yes.

A I've taken an oath to give the truth and nothing but the truth, but the way you're asking the question is not allowing me to give a truthful answer to that. No, it's not in my report. The reason it is not in my report is my report is based on facts. I can't say with fact that she

100 percent gave him an object, they might have shaken hands, they might have done something else. So that's not in my report because it was an observation consistent with her handing him something. The nervousness is an objective thing, I can't write it's nervous. I wrote the actions they did that made me think that they were acting nervous. So if you can ask me the questions that I can give a full answer to it would be helpful to everyone involved.

THE COURT: Mr. Hawks gets to asks the questions, Investigator Tracy.

MR. HAWKS: Thank you, Your Honor.

THE WITNESS: I'm sorry.

BY MR. HAWKS:

Q But it is a reason -- her giving him -- what you saw, that was a reason for them to think that they were suspicious.

A If in fact she handed him something it would have been a suspicious, yes.

Q Now, let's get to the point where you're actually speaking with them. In your report it mentions asking Mr. Spears about illegal items.

A Yes.

Q And on direct you mentioned asking him common questions such as how his travels were, how he was doing,

things like that.
A Yes.
Q But that's not in your report.
A It is not.
Q And in your report you mention that you did ask him to refrain from making those movements at some time.
A Yes, sir, I did.
Q And on direct you said that you asked you guessed about three times.
A Yes, sir.
Q But only once is it mentioned in the report.
A Yes, sir.
Q And your reason for frisking Mr. Spears was your safety and the safety of the officers around you.
A Correct.
Q But the whole time he was making those movements you didn't feel that your safety was threatened at that time?
A Well, the first time I thought it just might have been his nervousness, but as he continued to do it my nervousness and my concern for officer's safety kind of increased.
Q You didn't notice a bulge around his waistband that would be consistent with a gun.
A I couldn't.
Q Okay. Would it make sense for Mr. Spears to draw

attention to a gun if he was trying to conceal it from you?
A I can't speak to what was going on in Mr. Spear's mind. My opinion would be that he would probably think the butt of a gun would be more obvious had he not tried to pull his shirt away from his waistband, but I'm speculating.
Q Okay. And when you did that pat down of Mr. Spears you knew that that hard object, the ball object was not a gun.
A Correct.
Q And, in fact, that object was inside of a clear bag inside of a napkin inside of Mr. Spears' pants.
A Yes.
Q And it might have been also inside of his underpants?
A I can't say for certain if it was in his underpants or not, sir.
Q Okay. But you were able to feel that it was crack cocaine.
A It was consistent with crack cocaine. In my training and experience I've recovered bundles or bags of crack cocaine from waistbands and pockets before and it was consistent with the feeling of a bag of crack cocaine.
Q And during that frisk, once you felt the hard ball object, you didn't pull it out right then, you continued to frisk.

A I wanted to make sure -- my safety concern was still there, I wanted to make sure he did not have any weapons on him.

MR. HAWKS: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Break in proceedings.)

MR. HAWKS: Thank you, Special Agent Tracy. I don't have any further questions.

THE COURT: Thank you.

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Just a few questions.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sir, he asked you about whether or not you saw the bulge in his waistband and you said you were not able to. Can you explain that to the jury?

A Due to the actions of pulling his shirt away from his waistband I couldn't tell if anything was or was not in his waistband.

Q He also asked you about things that were in your report --

A Yes, ma'am.

Q -- specifically he was the one using the word nervous.

A Yes, ma'am.

Q And in fact, in your report do you describe the reason they caught your attention up here where it's highlighted.
A If I have may read it?
Q Uh-huh.
A "TFA Tracy observed a black male subject and female subject who appeared to be paying excessive attention to law enforcement presence around the bus stop location."
Q So you didn't use the word nervous but you're describing the behavior.
A Yes, ma'am.
Q He then asked you about whether or not you put in specifically about talking to them about some initial questioning.
A Yes, ma'am.
Q And, in fact, do you refer to a conversation?
A "The subject's engaged in a conversation with law enforcement."
Q And that was you.
A Yes.
Q So you did mention the conversation.
A I did.
Q And then he said you didn't put in about repeatedly asking him or going to his shirt repeatedly. Is that in fact in your statement?
A "TFO Tracy asked Spears to retrain from reaching into

his pockets for officer's safety reasons."
Q I'm sorry, I didn't highlight the part right before that. In conjunction with that, can you refer to the whole sentence?
A "Spears would repeatedly stretch his shirt down or place hands under his shirt around the waistband or pocket area. TFO Tracy asked Spears to refrain from reaching into his pockets for officer safety concerns.
Q So that was in your report.
A It was.
MS. CAMPBELL: Thank you, Your Honor.
MR. HAWKS: Just briefly, Your Honor.

RECROSS EXAMINATION

BY MR. HAWKS:
Q Special Agent Tracy, my question to you on cross was whether or not you asked him to stop repeatedly was in the report, not whether or not he was making those motions.
A I believe I asked him to stop three times. I did put in my report he was asked to stop but I did not write the words three times after it.
MR. HAWKS: Thank you.
THE COURT: Anything else?
MR. HAWKS: No, Your Honor.
THE COURT: Okay. Have a nice day. Thank you. Call your next witness.

MS. WALKER: Your Honor, the State calls Investigator Briton Lorenzen.

MR. RUFFIN: Your Honor, at this time the defense would move for renewing of its original objection based on our conversations earlier.

THE COURT: Okay. Noted for the record and my ruling is the same.

The witness, BRITON LORENZEN, was first duly sworn and testified as follows:

THE CLERK: Thank you. Please have a seat in the witness stand, state your full name for the record, spell your last name.

THE WITNESS: Briton Baker Lorenzen.

THE CLERK: Spell your last name.

THE WITNESS: L-o-r-e-n-z-e-n.

DIRECT EXAMINATION

BY MS. WALKER:

Q Good morning. Where are you currently employed?

A I work for Homeland Security Investigation.

Q And how long have you been there?

A I've been here since 2009.

Q With Homeland Security?

A I've been with the Department of Homeland Security since 2004, I was formerly a secret service agent.

Q And can you tell the jury a little bit about what you

do for the Department of Homeland Security?
A Our main objective for investigations are electric property rights which are counterfeit goods, any crime with narcotics, or child exploitation as well.
Q And is that what you were doing for Homeland Security back in 2012?
A Yes. I was working a case with the DEA.
Q I want to take your attention back to March of 2012, specifically March 29, 2012. Did you become involved in a narcotics investigation here in Richland County?
A Yes, I did.
Q And how did you become involved?
A I was contacted by my counterpart at DEA regarding a bus interdiction that we needed to conduct in regard to the case that we were working. Upon the notification from DEA, myself, Dennis Tracy and Frank Finch conducted surveillance at a location, I believe it was a hotel parking lot area off of Broad River and the I-20 area, at which time we saw a bus drive into the parking lot. The bus we were told was supposed to have two of our targets that we were investigating in the DEA case.
Q Well, let me slow you down just for a moment. When you -- was it uncommon for you guys to get tips regarding different issues that may come up as a part of y'all's investigations?

A No, it was not uncommon.
Q And acting on those tips, was it common for y'all to set up surveillance in order for you to discover the accuracy of those tips?
A Yes.
Q And is that what y'all did in this situation?
A Yes.
Q And once you guys got to that hotel parking lot, what did y'all do?
A We conducted surveillance waiting for the chartered bus to pull into the parking lot.
Q And how does that -- how does that surveillance work? Where are you situated and what, if anything, are you looking for?
A We were looking for a chartered bus unmarked like -- I say unmarked, it wasn't a Greyhound chartered bus, it was another chartered bus to pull into the parking lot. We typically sit in and around the area where we can see the bus pull in and see the people walk off the bus.
Q And while y'all were conducting this surveillance what did you observe?
A We observed several people walking off the bus. Some of the people were getting into cars, other people were getting into taxi cabs, some people were making telephone calls. We also saw two people walk off the bus and start

walking down the parking lot into the road area with their suit cases, and they continued -- they started looking back at us.

Q And was that significant to you in your training?

A It was. They kept on looking at us as if they knew that we were law enforcement at the time.

Q You have on a badge lapel pin now. Were you identified that way during this surveillance?

A I actually had on my badge, which is a larger version of this, and my gun, my sidearm, which was visible at the time.

Q Both of those things were visible.

A Yes. Both the gun and the badge were visible.

Q And how far away were you from them during this -- during, I guess, the initial surveillance?

A I can't say approximately, but we were in view of them and we could see them as they walked off the bus and away from us.

Q At some point did you approach the subjects getting off the buses?

A Yes. Myself, Dennis Tracy and Frank Finch approached the individuals.

Q And what about the two individuals that y'all actually approached stood out to you compared to the ones that y'all did not approach?

A Neither one of them were getting into a car or making a call for someone to come pick them up, they weren't getting into a taxi cab. They kept on looking back at us as if they were trying to walk away from us so I think hoping that possibly we would avoid speaking to them.

Q And what did you do?

A Dennis Tracy made contact with Mr. Spears and stopped, identified ourselves and stopped and spoke with him.

Q And can you -- what was the nature of that conversation?

A It was just a basic identification of a person; where have you been, where are you coming from, what's your name, do you have any information.

Q And initially, was the male subject forthcoming?

A He was a little hesitant to speak, a little hesitant to give us -- he actually provided a New York ID but pretty hesitant.

Q And at some point did this progress into where the other investigator actually did a pat down of the subject?

A Yes. Mr. Tracy conducted a pat down of Mr. Spears, because he had asked him to stop fumbling around with his waist area, with his shirt. Mr. Spears kept on putting his hands kind of under his shirt and fumbling around with his shirt.

Q And was that concerning to law enforcement?
A It was, because a lot of times we don't know what can be found in the waistband. A lot of weapons can be found in the waistband.
Q And upon conducting the pat down search what, if anything, did you observe the defendant to have on him?
A I observed the defendant had a napkin that looked like a ball that Mr. Tracy had pulled out from the waistband area.
Q And at that point in which the napkin and the ball are pulled out, what happened?
A Mr. Tracy, Agent Tracy arrested Mr. Spears and a Richland County deputy was on scene at that time as well.
Q At that time.

MS. WALKER: Your Honor, beg the Court's indulgence.

(Break in proceedings.)

MS. WALKER: Thank you. I don't have any further questions.

MR. RUFFIN: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. RUFFIN:

Q You said that your badge and gun were visible?
A Yes, sir.

Q What about TFO Finch, was his badge and gun visual, do you remember?
A I can't recall.
Q Do you remember if Tracy's badge or gun were visible?
A I can't recall.
Q Okay. But yours were.
A Yes.
Q You said that there were two targets that you were looking for on this bus.
A Yes.
Q Who were they?
A Oh --
Q Can you tell me what were the targets?
A They were two targets in one of the cases that we were working with the DEA.
Q Did you have names?
A Yes, I did.
Q Can you tell me the names?
A Tyrone Richardson and Eric Bradley.
Q Okay. Did you find those individuals?
A They were found on -- another bus came after this bus and they were located by DEA agents after we had already encountered Mr. Spears and the girlfriend.
Q Okay. And those two individuals that you were -- the other targets that were on the other bus, were you

expecting them to be carrying counterfeit goods or narcotics or what? Did you have any information?

A I didn't receive the tip so I don't know the full information. I was just told by my DEA counterpart that we were going to go out and conduct surveillance and try to intercept this bus.

Q And as far as you were concerned you were at that location of looking for these two other people.

A Yes. And it was the beginning of the investigation as well so we didn't know who else may be involved.

Q But you didn't know anything about a tip that there may be a black male with narcotics.

A Well, I -- Tyrone Richardson and Eric Bradley are both black males.

Q Okay. And nobody -- you'd never heard the name Eric Spears before.

A No, sir.

Q So how many tips did y'all have, do you know?

A I didn't receive the tips --

Q So --

A -- again, my DEA counterpart did.

Q He told your about the tips?

A He told me about this tip because it was concerning that day with the individuals.

Q And when you say this tip, you're referring to a tip

of the two individuals that were on the other bus.
A Yes.
Q Is that right? You never heard anything about a tip for a black male carrying narcotics.
A I don't know the correct verbiage for the tip because I didn't take a tip and I can't testify for the DEA agent.
MR. RUFFIN: No further questions.
MS. WALKER: I don't have any questions, Your Honor.
THE COURT: Have a good day. Call your next witness.
MS. WALKER: Your Honor, the State calls Brian Gwyn.
The witness, BRIAN GWYN, was first duly sworn and testified as follows:
THE CLERK: Thank you. Please have a seat in the witness stand, state your full name for the record, and spell your last name.
THE COURT: Brian Gwyn, G-w-y-n.

DIRECT EXAMINATION

BY MS. WALKER:
Q Investigator Gwyn, can you tell me where you are currently employed?
A I'm currently employed with the Lexington County Sheriff's Department.
Q And before that where were you employed?
A The Richland County Sheriff's Department.
Q And how long were you at the Richland County Sheriff's

Department?

A With the Richland County Sheriff's Department for ten years in investigations.

Q And you've since transferred your employment to Lexington County.

A I did.

Q Back in 2012 when you were at the Richland County Sheriff's Department, what division were you in?

A At this time I was assigned to the narcotics.

Q And can you tell this jury a little bit about what the narcotics division of the Richland County Sheriff's Department does?

A In narcotics in Richland County we were assigned tips for specific locations concerning drug complaints, or we will initiate our own cases by virtue of just traffic stops or going through informants or -- confidential informants.

Q And in March of 2012, how long had you been at the narcotics division?

A At that point I want to say I was with narcotics about a year-and-a-half when we received this information.

Q And did you become aware of a tip involving the case in which we're here for this week?

A I was.

Q And can you tell me the content of this tip?

A It was a very vague tip. One of the other agents for the -- that was actually assigned to the DEA task force stated that a black male was supposedly coming in from New York bringing narcotics on a bus line.

Q The tip you had was a black male from New York.

A That's correct.

Q Is it uncommon for multiple agencies to, I guess, receive multiple tips regarding narcotics information and then share that information?

A No, not at all.

Q Is that actually useful in the narcotics investigations?

A It is.

Q Approximately how many tips were coming in about this particular bus stop?

A Just in general?

Q Around this -- that led you to be at this bus stop on March 29th of 2012?

A We received -- when I say we, Richland County narcotic's agents received this one tip.

Q And other agencies received others.

A I'm assuming they could have, yes. It's not uncommon for everybody to get the same tip or multiple tips involving certain locations.

Q How did multiple agencies become involved in being at

this bus stop at said time?
A From my standpoint we have TFO's that are assigned their --
Q When you say TFO's --
A Task force officers. I know Frank Finch is a Lexington County Deputy but he is a TFO assigned to with the DEA. Ron Robinson is a Richland narcotics agents assigned to a -- he is a TFO with the DEA, as well.
Q And taking these tips into consideration, did you respond to a location here in Richland County?
A We did.
Q What location was that?
A It was two different locations that these possibly could come -- the buses could come to, we responded to the Briargate Circle, the Economy Inn.
Q Are you trying to intercept these drugs before they actually infiltrate the community?
A Absolutely.
Q And tell me what, if anything, you observed once you got to this location.
A I actually set up on the surveillance looking for the bus to come in. We received information that another bus arrived at the McDonald's, so I left from the Economy Inn and went to the McDonald's. So I was kind of between both locations at that time.

Q And once you got to this location what did you observe?

A This location is when I observed Agents Tracy, Lorenzen and Frank Finch engaged with the defendant and a female.

Q And what did you do once you observed that?

A They were in possession of the crack cocaine, I took possession of Eric Spears.

Q At some point did you also take possession of the crack cocaine?

A I did.

Q I want to show you what's been marked as State's Exhibit Number 1 and State's Exhibit Number 2. And ask if you recognize those?

A I do.

Q And are these the items you came in possession of that day?

A Yes. Those are the items I got from Agent Tracy.

Q And what was your purpose of taking custody of the defendant in this case?

A Because it became a Richland County case. They were assisting with the surveillance and the actions that we came in contact with Eric Spears, or the defendant, and at that point with it being a Richland County case I took possession of the case.

Q And what made this case a Richland County case?
A Because it was in Richland County.
Q The drugs were.
A Yes.
Q As was the defendant.
A Yes.
Q And once you took custody of the defendant, tell me what happened next.
A Well, any time we get narcotics we do a field test, we have what we call a NIC swab and we will test the narcotics with that specifically for cocaine base. Once you test the narcotic if it is positive for cocaine base, the NIC swab or item will turn blue.
Q Are you saying NIC swab?
A NIC, N-i-c. I can't break it down, but it is a -- just a swab with a chemical on it and when it comes in contact with cocaine base it turns blue.
Q When you say cocaine base, is that another term for crack?
A Yes, crack is cocaine base.
Q Okay. And did that happen in this case?
A It did.
Q And once the swab turned blue, what did you do?
A I field tested it and placed the defendant under arrest for trafficking crack cocaine.

Q At that point once you placed him under arrest, did you advise him of his rights?
A I did.
Q Are those typically called Miranda's?
A I do. And I always do it from a card I will possess in my wallet.
Q And what did you say?
A Would you like me to read it to you?
Q Yes, please.
A The same card, and obviously I've had for quite some time, it's kind of tore up. It says suspects rights to a Miranda warning. It says, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned. If you cannot afford to hire an attorney one will be appointed to represent you before any further question if you wish. You can decide at anytime to exercise these rights and not answer questions or make any statements. Do you understand these rights I've explained to you? With these rights in mind, do you wish to talk to me now?"
Q And you did that really quickly here. Did you do it slower when on the scene so he could understand?
A Right. I read each one and I make sure they

understand. I do the same thing when I do a handwritten Miranda warning, certain words to make sure that they understand what they've been advised of.

Q And did the defendant in this case appear to understand you?

A He specifically told me he understood his rights.

Q And I want to take you over some of the conversation that you had with him. Did you ask him what the substance was that you had taken off of him?

A I did.

Q And what was his response there?

A He said he didn't know. I asked him if he didn't know and he said, "Just because it's on me doesn't mean I know what it is."

Q "Just because it's on me doesn't mean I know what it is."

A That's correct.

Q Did you talk to him about y'all or law enforcement being present at that location?

A We did. When I was speaking with him, at this point he was somewhat standoffish. He stated he felt he had been set up, he had been to that bus stop before and never seen law enforcement, and that if he'd seen us he wouldn't have been there.

Q So he had made that trip before but this was the first

time he had seen law enforcement.
A It was very clear that he had made it multiple times.
Q Did he indicate to you what he would have done had he known law enforcement would have been there?
A He made it quite clear he would not have been there had he seen law enforcement prior to.
Q Did you ask him why he was trafficking drugs into our community?
A When I asked him, you know, why he was doing this, he said because of stupidity. He did it, it was stupidity, but he had to do it to make money.
Q Did it to do what?
A To make money.
Q And how did that he come about making money from this drug transportation?
A The defendant during this conversation told me that he was paid $2,200 by an individual to bring crack cocaine to South Carolina. He would obviously not tell me who paid him that money, but apparently crack cocaine is cheaper in New York. His comments to me were that South Carolina crack is at a set rate but it's cheaper in New York so obviously you're going to make a profit once you bring it doing here.
Q And where were y'all when y'all were having this conversation.

A At that point we had relocated to region four substation which is on Beatty Road.

Q And so this was after you had advised him that he had the right to remain silent and not speak to you?

A That's right.

Q And he waived that right?

A That's correct. He actually disengaged the conversation, he stated he knew his rights and at that point did not want to talk. He never asked for an attorney, however while we were doing paperwork he engaged in a conversation at the office.

Q He initiated the conversation again to you?

A That's correct.

Q I want to show you what has been marked as State's Exhibit Number 4 and ask you if you recognize this?

A I do.

Q How do you recognize this?

A This is the individual we had custody of, this is Eric Spears.

Q Is this the individual who told you he was paid $2,200 to bring crack from New York to Columbia?

A That's correct.

MS. WALKER: Your Honor, may the record reflect that he has identified the defendant?

THE COURT: All right.

Q I also want to show you what's been marked as State's Exhibit Number -- oh, I'm sorry. It hasn't been marked.

(Break in proceedings.)

MR. HAWKS: Your Honor, I would just object for discovery reasons, I have never seen those ID's before. There is nothing in the reports about that.

MS. WALKER: Your Honor, these are --

THE COURT: Y'all approach.

(A bench conference was held.)

THE COURT: Objection overruled.

BY MS. WALKER:

Q I'll show you State's Exhibit Number 5 and ask you if you recognize these?

A I do.

Q And how do you recognize these?

A Those were identifications that the defendant had on his person.

MS. WALKER: Your Honor, at this point the State seeks to move Exhibit 5 in evidence.

THE COURT: Over the defense's objection, admitted.

MR. HAWKS: Your Honor, I have another objection to relevance.

THE COURT: All right. Overruled.

(The ID's were received as State's 5.)

BY MS. WALKER:

Q And in terms of the amount of crack cocaine that was seized from the defendant that day, approximately how many people could get high off of this amount of crack cocaine?

A Probably about 50 to 60.

Q And how do you come to that calculation?

A It's based on the -- how it's sold. Generally it's in the form of .2 grams or $20, my math skills are not the best.

Q Neither are mine. And when you took possession of that crack cocaine, was it tampered with in any way?

A No, it was not.

Q And what do you do with that?

A I submitted it into evidence once we finished testing with it and packaged it.

Q And was it properly sealed and packaged when you submitted it into evidence?

A Yes.

Q And tamper proof at that point.

A Yes.

Q Thank you.

MS. WALKER: I don't have any further questions?

THE COURT: Cross?

MR. HAWKS: May it please the Court, Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. HAWKS:

Q It's still Deputy Gwyn, right?

A Yes.

Q All right. And what do you do over in Lexington?

A I'm currently assigned to the parole division.

Q Okay. So not narcotics specifically.

A No.

Q Okay. I want to go back to something you just talked about because it's fresh in my mind. You said .2 is about $20.

A Roughly.

Q And when you say .2, you mean .2 grams.

A Correct.

Q And so a gram then would be $100.

A Correct.

Q And 10 grams would be 1,000?

A Correct.

Q And Mr. Spears allegedly had field weight 13.2 grams.

A That's what field weight it tested to, yes, sir.

Q Okay. I'm not going to do the math on that, but somewhere around $1,300.

A Are you asking me or are you telling me?

Q Yes. Just assume everything I said is a question.

A Okay.

Q So 13.2 would be around $1,300 street value.

A Correct.
Q Now, let's go back to the beginning. Who did this tip come from, the tip that you heard?
A I received a tip from Agent Robertson.
Q Okay. And he was on the scene with Tracy and Lorenzen?
A Initially, no. He showed up either shortly thereafter I did or about the same time.
Q Okay. So he's not one of the agents that questioned Mr. Spears.
A You're talking about initially?
Q Yeah.
A No.
Q Okay. And you don't know anything about this tip that she was talking about about two specific males.
A No, not to my knowledge.
Q And if you could, just tell the jury again what tip you heard.
A The tip I heard from Agent Robertson was a black male was coming in on the chinese bus line from New York bringing narcotics.
Q And you never told Joanna McDuffie of the solicitor's office that it was for heroin?
A On this particular case?
Q Yes.

A Not to my knowledge.
Q Okay. And you never told her that the bus would be coming to the Economy Inn.
A It did come to the Economy Inn.
Q But the tip was just for a bus from New York, not a specific stop.
A Generally bus lines come to one of two places, the McDonald's or the Economy Inn.
Q Okay. But you didn't tell the solicitor's office that this tip was for a specific stop.
A I can't recall.
Q Okay. And this field test you're talking about, do you have that with you?
A You're talking about the swab itself?
Q Yeah.
A No, I do not.
Q Is there any sort of record created for those?
A As far as --
Q The results or how it tested --
A It's basically just for us to basically know for the most part for the fact that it is what we think it is, which pretty much helps solidify the fact that they were arrested for possession of crack cocaine.
Q Okay. So that kind of stuff is never turned over to the State, the results of that test or the test itself.

A From the mixed swab? No. Because it's submitted to the lab for actual testing itself.

Q Deputy Gwyn, you were in the courtroom when I was asking Special Agent Tracy about incident reports.

A Correct.

Q So I don't have to go through that again about how important they are and all of that stuff.

A Correct.

Q And you submitted an incident report in this case.

A I did.

Q And a supplemental report?

A I don't think I did a supplemental, it's all on one initial report itself.

Q Okay. And you have your report because you were reading it on direct.

A Correct.

Q Okay. I'd like you to go to -- do you see the third line in the middle where it says "while at the drop off point?"

A Correct.

Q Okay. Could you read from there up to the three words "agents approached spears?"

A It says, "While at the drop off point agents noticed Spears acting nervous and watching the agents. Spears and his girlfriend" -- which I put NFI in there -- "had

several large suit cases with them.
Q And then "agents approached Spears."
A Correct.
Q So it doesn't mention in there these two people walked 500 feet away before the agents approached them.
A No.
Q Okay. And that NFI, does that mean you didn't know who the woman was?
A I did not get her information, I did not.
Q And she was never a suspect in this case.
A No, because the tip was specific in nature.
Q Okay. That it was a black male.
A Correct.
Q But it didn't say anything about a black male with a female.
A It did not.
Q Okay. All right. And you testified in the preliminary hearing for this matter.
A Correct.
Q And that was under oath.
A Correct.
MR. HAWKS: Beg the Court's indulgence.
(Break in proceedings.)
Q And in that hearing you testified that as we were talking with him it was noticed that he was wearing an

oversized shirt.

A Correct.

Q You said we.

A Correct.

Q But you weren't talking to him.

A No.

Q Okay. And at the prelim, I'm not sure if it's the solicitor or the defense attorney at the time, somebody asked you if Mr. Spears had been ID'd before he was frisked or afterwards.

A Can you direct me where you're talking about?

Q Yeah. Do you have the same thing that I have?

A I have the notes that you gave me, yes.

Q Okay. I'm sorry, I have to find it. Okay. It's towards the end. The defense attorney says, "At that point had he provided you with his ID," and that point is referring to the frisk. And what was your answer?

A Give me just one second to read where you're talking about. "Correct. That's correct."

Q Okay. And you talked about the surveillance. Were you conducting surveillance at this location?

A I had, yes.

Q Before Mr. Spears got there?

A Correct.

Q But you left before you ever saw Spears?

A That's correct.
Q Okay. But in your incident report it says, "Spears was acting nervous and watching the agents. Spears and his girlfriend had several large suit cases." You didn't see any of that.
A That's the information I was given by the agents on the scene, yes.
Q Okay. I'm sorry to flip flop back and forth here. Now, the solicitor at the prelim asked you if you had ever heard of this person before, and he asked you what was the reason that y'all had targeted Mr. Spears.
A Correct.
Q And what was your answer? It's on the top.
A What was your question again? I'm sorry.
Q The solicitor at the time asked you you had never heard of this person before, the reason that you targeted Mr. Spears was just suspicion, he looked suspicious. And your answer was what?
A I think the question was wasn't you zeroing in on him because he was acting nervous and I said "that's correct."
Q Okay. You never said that he fit the description that was given?
A You have to direct me to where --
Q Top of the second page.
A Top of the second page. I did, that's correct.

Q And then just a few more sentences down in that same block of text you're saying so we approached him.
A That's correct.
Q But you never approached Mr. Spears.
A Not until after he was taken into custody by Agent Tracy.
Q And did you submit the warrant affidavit in this case?
A I did.
Q And you didn't mention the tip on the warrant?
A I did not. Well, I'd have to read the warrant.
Q That's okay.

MR. HAWKS: Beg the Court's indulgence.

(Break in proceedings.)

BY MR. HAWKS:

Q And then the description you said Mr. Spears fit was a black male.
A Coming in from New York running narcotics.
Q Okay.

MR. HAWKS: I have nothing further.

MS. WALKER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. WALKER:

Q Mr. Hawks asked you a lot of questions about the preliminary hearing.
A Correct.

Q What are preliminary hearings?
A It's basically a fact-finding hearing to make sure there is probable cause to make the arrest.
Q Is there -- who all was at a preliminary hearing?
A Just the defendant, a public defenders office and attorney, solicitors and myself.
Q Is there is judge there?
A There is a judge there, yes.
Q During these preliminary hearings, does every officer come to testify or just the lead case agent?
A Just the lead agent.
Q And when you're testifying at these preliminary hearings, are you relaying information to defense attorneys based upon the collective information you have at that point?
A That's correct.
Q So things that everyone involved in the investigation saw.
A Yes.
Q And is that what you did in this case?
A It is.
Q And at preliminary hearings, what happens at the end of a preliminary hearing?
A We notify them whether it was enough probable cause to bound a case over for a trial.

Q And because of the way this particular case unfolded, did you become the lead investigator?
A I did.
Q And once you become the lead investigator, do you rely on information from other investigators in order to help you determine whether or not to make an arrest?
A Absolutely, it's not uncommon at all.
Q And is that what you did in this case?
A I did.
Q Including the two officers we've already heard from.
A That's correct.
Q And do you relay the information that you have from those officers in your report?
A I do, and I did.
Q As the lead investigator?
A Yes.
Q Thank you.

MS. WALKER: I don't have any further questions?

MR. HAWKS: I don't have anything else.

THE COURT: Attorneys approach.

(A bench conference was held.)

THE COURT: I was trying to figure out where we are with lunch and the number of witnesses trying to be cognizant of your time. It's 12:15, if you'll be back in your jury room at 1:30 we will be ready to go. Do not

The witness, TARA KINNEY, was first duly sworn and testified as follows:

THE CLERK: Thank you. Please have a seat in the witness stand and state your full name for the record.

THE COURT: My name is Tara Kinney.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Ms. Kinney, where are you employed?

A With the Richland County Sheriff's Department.

Q And what do you do there?

A I work in their forensic laboratory in the drug identification section.

Q And when working in the drug identification section, what does your job entail?

A We test all of the substances that are submitted by the officers that they suspect may contain some kind of a controlled substance.

Q Can you tell this jury a little bit about your education and training in that field?

A Sure. I have a Bachelor's Degree in Forensic Chemistry from Eastern Washington University. I did a short internship with the Washington State Patrol Crime Laboratory doing a research project on methods of methamphetamine manufacturing that was subsequently published. I attended the drug enforcement administration

special human research laboratory training. I've also attended numerous continuing education courses in instrumental analysis, various scientific conferences and seminars. I'm also certified to respond to methamphetamine laboratories, clandestine laboratories which requires a special Hazmat certification.

Q Have you been qualified before as an expert in the area of drug analysis?

A Yes.

Q And approximately how many times have you been qualified?

A Twelve times. And I've testified in magistrate, civil, general sessions and federal.

MS. CAMPBELL: Your Honor, at this time we would offer her as an expert in drug analysis.

THE COURT: Voir dire?

MR. HAWKS: No, Your Honor, and no objection.

THE COURT: All right. Ladies and gentlemen, normally a person cannot give opinion testimony. Normally when a person testifies, that person must testify as to what they saw, heard, did or sensed by smell or something of that nature. However, there is an exception under the rules when someone is qualified because of education or experience, that person is permitted to give their opinion in certain areas if the Court qualifies them that way.

This witness will be qualified in the area of drug analysis, Ms. Kinney will. She will be allowed to give opinion testimony in that area. That does not mean that you have to accept her opinion, but it is evidence for you to use in any way that you see fit and give it the weight and the credibility that you believe is appropriate.

MS. CAMPBELL: Thank you, Your Honor.

Q I want to turn your attention to the case involving Eric Spears as the defendant. Did you receive a quantity of what ended up being crack cocaine in this case?

A I did.

Q And I'm going to show you State's Exhibit Number 1 and just ask you to look at that.

A (Complies.)

Q Does that appear to be the drugs that were forwarded to you?

A Yes. This appears to be the item that I received in this case.

Q And who actually forwarded those items to you?

A I received this item from our evidence and property room from our custodian, Dale Blackmon.

Q Dale Blackmon?

A Yes.

Q And you note that in your report. And do you have a report in this case?

A Yes.

Q And you note that in your report and that's to ensure the chain of custody as we call it.

A Yes.

Q And when you received this amount of what ended up being crack cocaine, was it packaged properly when you received it prior to your testing it?

A Yes.

Q Can you tell the jury exactly what steps you went through in order to test that item?

A Sure. When we received the item the first thing we do is weigh the item to determine how much is there. We report a net weight, which means we remove all of the outer packaging so the weight that's reflected in our report is the weight of just the substance itself, it doesn't include any of the packaging. From there we do a presumptive test. This is a color test which is just to give us an indication of what we might be working with. There are a lot of things that present as a white powder or white rock like substance so it kind of points us in the right direction as far as our next steps in the analysis. After we do the presumptive test we take a small sample and run it on our instrument.

THE COURT: Ms. Campbell --

(Whereupon, there was a bench conference.)

THE COURT: I'm sorry, I just don't know everybody.

MS. CAMPBELL: No problem.

THE COURT: I apologize, Ms. Kinney.

A That's okay. We run an instrumental analysis and that's a confirmation technique. In our laboratory we use a gas chromatograph mass spectrometer, it's called a GCMS for short. And that gives us a molecular confirmation of the identity of the substance.

Q And when you did the testing in this case, can you share with this jury what your results were?

A Sure. In this case I received one item. It was a clear Ziploc bag containing a plastic bag containing a white rock like substance. My testing determined that that substance was cocaine base, or crack cocaine with a net weight of 11.43 grams.

Q 11.43 grams?

A Yes.

Q Was just the total weight of just the substance itself.

A Yes.

Q And you mentioned it was a cocaine base crack cocaine?

A Yes.

Q And what's the difference between crack cocaine and cocaine?

A Cocaine in its powder form as we typically think of

it its salt form versus its base form. Cocaine in its salt form, it has different properties than the cocaine in its base form. For example, cocaine in its salt form is soluble or will dissolve in water. Cocaine base, or crack cocaine, will not dissolve in water. And that's one of the properties that we use in our analysis to determine the difference between a salt and base form.

Q Okay. And in this case the substance was tested positive for was crack cocaine itself?

A Yes.

Q And the amount was 11.43 grams?

A That's correct.

Q And if an item such as this had tested -- are you familiar with the process known as field testing?

A Yes.

Q And is that again what you refer to as a presumptive test for the presence of crack cocaine?

A Correct. The field test that the officers do is similar to the presumptive test that we do in the laboratory.

Q And is it unusual for that field test to weigh more than the 11.43 grams you did in your testing?

A When they take a field weight of the item they are typically not using a scale or a balance that's been calibrated. They also include the outer packaging in the

weight, they don't remove it from the packaging when they're weighing it. So typically the field weight will weigh a little bit more than what our laboratory final weight is for those reasons.

Q And as long as the chain of custody is complete and not tampered with, that doesn't mean anybody took any of the cocaine.

A Correct.

Q And in this case the condition of State's Exhibit 1 has become crumbled a little bit, is that unusual over time for the crack cocaine to I don't want to say disintegrate but to deteriorate a little bit?

A No, that's not uncommon. Sometimes when they submit it it will be one solid substance, and in the course of our analysis we'll break it up into smaller chunks to remove a sample or to get a representative sample of the quantity.

Q And finally in your dealings with crack cocaine and crack cocaine on the street, is it unusual for say a dealer or someone to bring in an amount of crack cocaine and then later cut it with other agents to make it into a larger quantity?

A We typically see substances that are not pure. They typically are adulterated or diluted with other things, that's not uncommon.

Q And a person can take an amount and cut it again and again depending on what they want as far as the end quantity.

A Sure. They can add whatever they want to it.

Q And crack cocaine, how is it exactly made?

A Cocaine originates from the cocoa plant and they do an extraction of the leaves from the cocoa plant.

Q Okay. And then in order to make it into a material that can be -- how is crack cocaine ingested typically by humans?

A Crack cocaine is typically administered --

Q Okay. That's good --

A -- by smoking. That's one of the reasons that they convert it from cocaine in its salt or powder form to cocaine base so that it's smokeable.

Q And in order to make it into that rock like substance we're talking about, they actually cook it in a certain way with another substance; is that correct?

A Yes.

Q And typically what assistance do they mix it with to make bigger amounts?

A In order to convert or to cut it?

Q Can you explain both?

A Sure. In order to convert cocaine salt to cocaine base they will typically add baking soda, which also can

be used to cut the final product. But they use a number of other things to cut the final product as well; caffeine, lidocaine, benzocaine just to name a few.

Q And when you talk about cutting it, is that to make it into a larger quantity?

A Sure, they're just adding bulk.

Q Thank you.

MS. CAMPBELL: I don't have anything further.

MR. HAWKS: May it please the Court?

THE COURT: Yes, sir.

MR. HAWKS: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HAWKS:

Q Good afternoon, Ms. Kinney.

A Hello.

Q It's good to see you again. I'm not going to ask too many questions. Does your lab test for purity?

A No.

Q So when you say that there are 11.43 grams of crack, you are not saying there are 11.43 grams of cocaine.

A I don't have the data in front of me and we don't do a quantitation which would determine how much of that 11.43 grams was actually cocaine. It very well could have been cut with other things.

Q But it would have to be cut with something to become

crack.

A Not necessarily.

Q Okay. So what is pure crack? Is there such a thing?

A Yes.

Q Could you explain that?

A It's crack cocaine that has not been adulterated or diluted with other assistances.

Q And how is that made?

A By converting cocaine powder to cocaine base or directly from the processing of the cocoa leaves. You actually get it in cocaine base form and then they'll turn it into the salt form.

Q Are other ingredients used to do that to make it crack?

A From cocaine salt?

Q Yeah, or base.

A I'm not sure I understand your question.

Q Okay. You can't just use cocaine to make crack is what I'm getting at.

A Correct.

Q You need other ingredients.

A Yes.

Q So there must be other ingredients in this 11.43 grams.

A When you add other things to convert the cocaine from

its salt to base form, those other things aren't necessarily ending up in the final product, they're used to convert it from one thing to another.

Q Okay. So that 11.43 doesn't necessarily have to contain adulterants.

A Not necessarily.

Q And you don't know if the crack in this case contained any adulterants.

A Not at this time, no.

Q Okay. But it is not your testimony that that 11.43 is all cocaine.

A I can't say that it was pure or not, we don't do quantization.

MR. HAWKS: Beg the Court's indulgence.

(Break in proceedings.)

MR. HAWKS: Nothing further, Judge.

THE COURT: Redirect?

MS. CAMPBELL: Just one question.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q But that 11.43 grams, that's considered crack cocaine.

A We did identify -- I did identify crack cocaine in that substance.

MS. CAMPBELL: Thank you.

THE COURT: Recross?

MR. HAWKS: No, Your Honor.

THE COURT: Thank you, Ms. Kinney. Have a nice day. Call your next witness.

MS. CAMPBELL: State calls Frank Finch.

The witness, FRANK FINCH, was first duly sworn and testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand and state your full name for the record.

THE COURT: My name is Frank Finch, F-i-n-c-h.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sir, where are you employed?

A The Lexington County Sheriff's Department.

Q What do you do there?

A I'm a narcotics agent currently assigned to the drug enforcement administration task force.

Q Slow down a little bit. The drug enforcement administration task force?

A Yes, ma'am.

Q It's also known as DEA?

A Yes, ma'am.

Q And as parts of that task force, what do your duties include?

A We go outside our home counties, it's a 19 area county we're responsible for, and investigate drug

complaints, whether it be somebody trotting down the roadway, whether it be somebody selling out of a house, anything that can possibly be prosecuted on a federal level, or assist the locals with something that they need that they're not capable of handling.

Q I'm going to turn your attention back to March 29th of 2012. Were you working that day?

A I was.

Q And did y'all -- did you become aware of a tip that had been forwarded to law enforcement --

A Yes, ma'am.

Q -- about some drugs from New York?

A Yes, ma'am.

Q And specifically do you remember the specifics of the tips as was told to you?

A The information was relayed to those of us working. It was supposed to be a black male traveling on the chinese bus line traveling in from New York to Columbia bringing in heroin.

Q And that tip was also distributed to other agents that were working that day as well?

A Yes, ma'am.

Q And if the tip had been spread around as narcotics from New York, is that unusual for it to be translated that way?

A No, ma'am, it's not.
Q That day, where did y'all initially respond after getting the tip information?
A We were stationary at Broad River, there's like an old gas station near I-20, we had some agents there. I was stationed with some other agents at a location where we knew the bus line dropped off passengers near the McDonald's.
Q That's near Dutch Square.
A Yes, ma'am.
Q Okay.
A We were sitting there, we saw a bus come off the interstate and take a right back towards Harbison State Forest area.
Q Which is the opposite direction.
A Yes, ma'am, opposite where we had people initially staged. And we saw the bus turn into a motel there.
Q And what did you do?
A Myself, Agent Tracy and Special Agent Lorenzen went over to where that bus was at.
Q And what was the purpose of y'all going there that day?
A We were going to observe passengers and just to make contact with people coming off the bus, just a general bus interdiction, how are you doing, where are you coming

from, just a general conversation.
Q At some point did someone catch y'all's attention?
A Yes, ma'am.
Q And who was that?
A That would be the defendant here.
Q And why did he catch your attention?
A When we pulled up we got out of our vehicles. The people that were there were kind of milling around like people normally do that get off the buses. They looked over at us, they kind of saw that we weren't just off the bus or we weren't there to pick anybody up. The defendant and his girlfriend saw us and began walking away, walking towards the post office, where there is really nothing there except the post office and I believe some apartments.
Q Did they have anything with them when they were leaving the area?
A They had some luggage with them.
Q And you said that they actually looked at y'all; is that correct?
A Yes, ma'am. As they were walking away they kept looking behind them, kind of looking anxious. Most people were just kind of milling around waiting someone to pick them up, get in their car or on a cell phone to call a ride, whereas these people were literally walking away.

Q Were you dressed in a uniform that day or plain clothes?

A No, ma'am, plain clothes.

Q When you say plain clothes, what kind of clothing are we talking about?

A Typically blue jeans and a collared shirt of some type.

Q That day did you have your badge and your gun with you?

A I had my badge and gun with me, yes, ma'am.

Q And were you doing anything to hide those things?

A No, ma'am.

Q But how far away were you from when they observed you?

A They were probably at a minimum 20 yards or so.

Q And were you trying to show anyone your gun or your badge?

A No, ma'am. It's kind of like I'm wearing it today except maybe a little more exposed if the weather is nice.

Q Once you saw the people walking away, did you make a decision to follow then?

A At that point we decided to go at least speak to those people because of their actions, and because of the tip that said it was a black male riding the bus with heroin.

Q And while you were following them at that point were

you planning on arresting them?

A We had no charges on them.

Q Were you planning on detaining them at that point?

A No, ma'am.

Q Did you observe any interaction between the male and the female as they were walking away?

A At some point as they were walking away they were walking close together, it appeared that the female possibly passed something to the male.

Q Could you see if for sure she did?

A You couldn't see, we were kind of back aways.

Q And eventually did y'all catch up with them?

A Yes, we did.

Q And who actually spoke to the two people that day?

A Well, in most law enforcement interactions, especially people who have been working together as long as myself and Agent Tracy has and Special Agent Lorenzen, you have a contact and recover. You have a person who does all the talking so the person he's talking to is not trying to answer three questions at one time, and in this case Agent Tracy was the one who was the contact and I was the cover off to the side.

Q So you were standing over to the side.

A Yes, ma'am.

Q But you were leaving him to do all the talking.

A He was doing all the talking.
Q And was there a conversation between the two of them?
A Yes.
Q And at some point did you notice anything that the male was doing?
A During the conversation he began pulling at his shirt kind of like you have a nervous twitch which drew our attention to the shirt. We are taught the eyes won't kill you but the hands will.
Q Specifically what did it appear he was doing with his shirt?
A Keeping his shirt off his body, pulling it out.
Q And did that set off an alarm for you?
A Yes, ma'am, it did.
Q Were you aware that Agent Tracy asked him on a couple of occasions at least not to do that?
A Yes, ma'am.
Q Did he continue to do it?
A He continued to do it.
Q And at some point did Agent Tracy initiate what's called a pat down?
A He did based on the subject's reactions and response to pulling his shirt up, or out rather.
Q And were you there for the pat down or nearby?
A Yes, ma'am.

Q And were any weapons recovered --

A No, ma'am.

Q -- from the defendant? However, was anything else found on the defendant?

A There was a bag of crack cocaine located on him.

Q And was that from his waistband area?

A Yes, ma'am.

Q At that point once the drugs were taken off his person, was he then detained?

A He was.

Q And was he turned over to another agency?

A He was turned over to the Richland County Sheriff's Department, in this case it was with Mr. Brian Gwyn.

Q Brian Gwyn?

A Yes, ma'am.

Q Were you there when he was Mirandized and questioned?

A No, ma'am, I was not.

Q So at that point, was that the extent of your involvement?

A Yes, ma'am.

Q The person that y'all followed and ultimately talked to, that Agent Tracy talked to, do you see him in State's Exhibit Number 4?

A Yes, ma'am.

Q And is that the person that you found the drugs on

that day?

A Yes, ma'am.

Q Or that Agent Tracy found the drugs on. Thank you.

MS. CAMPBELL: I don't have anything further.

THE COURT: Cross?

MR. RUFFIN: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. RUFFIN:

Q Agent Finch, Special Agent Finch, is that --

A Not special agent, I'm a task force. You can call me whatever.

Q You said that Mr. Spears fit the description that y'all had been given.

A I didn't say he fit the description.

Q That was one of the reasons that you followed him, right?

A One of the reasons we followed him was the description we had been given was a black male coming from New York, we had a black male coming off the Chinese bus line.

Q Correct.

A And he also, him and his girlfriend kept looking back at us.

Q As they were walking away.

A As they were walking away where everybody else was just kind of milling around.
Q And you were following him, correct?
A No, initially we weren't. Initially we were looking at the passengers that just got off.
Q Right.
A As we were canvassing that area and as we're looking then they start looking back, which is suspicious in nature.
Q And that's when y'all started to follow them.
A Then we began walking towards them, yes.
Q Okay. So you were looking for a black male getting off a bus.
A Yes.
Q Did you see any other black males get off of that bus?
A I can't recall if there's any other black males on the bus.
Q Did you talk to any males that got off the bus?
A Once we got through we had some people at the other bus, we talked to some people off that one.
Q Off of the other bus.
A Yes.
Q Okay. Now, the tip that you got did not say that the black male was with a female.
A The tip was real general in nature, it said black

male coming from New York with heroin.

Q Okay.

A On the Chinese bus line.

Q Got you.

MR. RUFFIN: I don't have any further questions, Your Honor.

THE COURT: Redirect?

MS. CAMPBELL: No, sir.

THE COURT: Have a good day. Thank you, Agent Finch. Call your next witness.

MS. WALKER: Your Honor, the State calls Dayle Blackmon.

The witness, DAYLE BLACKMON, was first duly sworn and testified as follows:

THE CLERK: Have a seat in the witness stand and state your full name for the record.

THE COURT: Dayle Blackmon.

DIRECT EXAMINATION

BY MS. WALKER:

Q Good afternoon. Where are you currently employed?

A Richland County Sheriff's Department.

Q And what do you do at the sheriff's department.

A I am currently the asset forfeiture specialist.

Q Back in 2012 what did you do?

A I was the evidence custodian.

Q When you say evidence custodian, will you tell the jury what the evidence custodian does?
A I was the supervisor over the evidence room, and at that time I had I believe three people working for me. We have take in evidence, we sign evidence out to the officers, to the solicitor's office or whoever may need it at that time.
Q When you take in evidence, are there certain procedures that you follow when you take evidence in?
A Yes, ma'am.
Q What are those procedures?
A They will bring the evidence to us, we log it in, we assign it a number and we have a label that we put on it to keep track of it on our system. We file it in a certain area of the evidence room. Then if someone comes to log it out, then we have to scan it, we use a bar code scanner that will scan these numbers and we sign it out to whoever is picking it up.
Q And in order to accept evidence into the evidence room, are there certain packaging requirements that that evidence must meet?
A Yes, ma'am.
Q What are those requirements?
A They have to be sealed, initialed and dated by the person that is entering these into evidence.

Q And what is the purpose of that?
A So that no one can tamper with it.
Q And while the evidence is in the evidence room, is it tampered with in any way?
A No, ma'am.
Q Is it removed from the packaging or does it remained sealed?
A It remains sealed.
Q And once the evidence is turned over it is still sealed?
A Yes.
Q I want to show you what's been marked as State's Exhibit Number 1 and ask you if you recognize this?
A Yes, ma'am.
Q And how do you recognize that?
A This is one of our evidence property bags, and this is what we -- this is the bar code that we put on them. And this one has been logged out and then logged back in, resealed from the lab.
Q And when it was logged out, to whom was it logged out to?
A Tara Kinney.
Q Is she an analyst?
A Yes, ma'am, in the lab.
Q But while it was in your possession or before it was

actually in your possession it was sealed and packaged.
A Yeah. It was sealed in the bag that's inside there.
Q The smaller plastic bag?
A Yes.
MS. WALKER: Your Honor, at this point the State seeks to move Exhibit Number 1 into evidence.
MR. HAWKS: Objection, Your Honor, based on all my prior suppression motions.
THE COURT: Other than chain.
MR. HAWKS: Other than chain.
THE COURT: All right. My ruling on that is the same. State's Number 1 is admitted over defense objections.
(The cocaine was received as State's 1.)
MS. WALKER: Thank you, Your Honor. Your Honor, I have no further questions.
THE COURT: Cross?
MR. HAWKS: I have nothing from this witness.
THE COURT: Have a nice day. Thank you, ma'am. All right. Call your next witness.
MS. WALKER: Your Honor, at this time the State rests.
THE COURT: All right. Ladies and gentlemen, the State has rested its case, that is the evidence that you will hear from them in their case in chief. At this point in time I have a matter of law which I must discuss outside of your presence. If you will please return to your jury

in the middle of it or something like that, but we'll try to make it all the way through my charge on the law before we take a break. All right. Thank you. Ms. Walker?

MS. WALKER: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. WALKER: Good afternoon. Well, it's been a long day, but before I actually start talking about the facts of the case and I have something I want to get to, I want to thank you for the time and service that you've had over the past two days with being selected for this jury and sitting attentively and patiently and listening to the evidence that was presented here this morning and this afternoon. I know when you were driving here Tuesday morning trying to figure out exactly what jury service was going to entail you didn't know if you would get selected for a jury, and if you did get selected for a jury what type of jury would that be. Would it be a civil jury or a criminal jury? Would there be drugs involved or a car accident? And as you guys were anticipating the type of case that you would be listening to, Ms. Campbell and I were preparing this case and trying to figure out what type of defense we need to prepare for. Because sometimes when we go to trial in these courtrooms the defense is that, "It wasn't me. You have the wrong guy, I'm not the one who did it," or some

other misunderstanding of that nature. But in this case with these facts when the drugs are found in your pants and you acknowledge bringing them down here from New York for a couple thousand dollars, it's very hard to come up with what type of defense we should be anticipating and fighting in this. As Mr. Ruffin opened this morning I still had no idea what the defense was because we've talked about the founding fathers, we have talked about the 12 of you having to keep the country from falling into the hands of tyrants and into utter tyranny. We talked about presidential elections and voting and jury rooms, but the one thing that Mr. Ruffin absolutely refused to acknowledge in any way are the facts of this case. And I get why he did it. If I was sitting on that other side that would be an attractive defense too. Because it's not helpful in this case to talk about the facts when your client admits guilt, when he has the drugs on him and there are multiple people who can come in here and testify to his guilt, then by all means just don't talk about the facts. As they began to question witnesses in their cross-examination of witnesses there was a theme that kept recurring in their questions. You had a tip, you had a tip about the black male, you stopped this black male when he got off of the bus. And the tip was the black male came from New York. So don't talk about the case, but then suddenly accuse people over here of acting

in a racist way. Ladies and gentlemen, if those were the facts of this case, they were out stopping every young black male or every black male that say saw getting off from that bus from New York I would have been the first person to stand up in this courtroom and fight against that. That's not what happened. Because unfortunately for these defense attorneys and unfortunately for their defendant, sometimes a tip is accurate. Sometimes there really is a black male on a bus from New York bringing his poison into our community and that's what happened in this case. There are certain laws that the Judge is going to tell you about. The same laws that make you the judges of the facts of this case make Judge Hood the Judge of the law in this case and what is appropriate to discuss to the jury and what is not appropriate to discuss. He's going to talk to you about the types of evidence that are generally presented during a trial; direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or the value to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of

the circumstances must be consistent with each other, and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portrayed the defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some combination of the two. Direct evidence directly proves the existence of the fact, it does not require deduction. We don't to deduce that the drugs are his, we don't have to guess at that, they were in his pockets and he admitted to bringing them down here for money. We have don't have to deduce as to what his intentions were. "We were going to give them to a guy for a couple thousand dollars." We don't have to guess at a lot of things in this case because the defendant told Investigator Gwyn those things. What we do have to do is prove to you that the defendant possessed over 10 grams of crack cocaine, and we have to prove that to you beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolutely certainly, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your

consideration of the evidence you are firmly convinced, firmly convinced that the defendant is guilty of the crime charged you must find him guilty. If on the other hand you think there's a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. And in order to determine whether or not what the officers testified to, whether the defendant actually had the crack in his pants, you have to look at each and every officer and judge his or her credibility, and in doing that you're going to look at the credibility of the witnesses, the demeanor on the witness stand. Was the witness forthright or hesitant? Was the witness's testimony consistent? Was it corroborated? Was it corroborated? Did we tell you he had crack and then provide a chain of custody and show you the crack cocaine? Did all of the officers come in and not say exactly the same thing? Because if they had said exactly the same thing then everybody in this courtroom should be suspicious of that, that those people had gotten together and colluded a story. There were slight differences. "I didn't have my gun but other officers had their gun." Everybody was consistent about seeing a gun and do this number so that way you don't see that bulge in his pockets. What did you hear? How did you perceive the tip you got? They didn't all have the exact same wording because the exact same wording is

suspicious. But they all had there was someone coming in from New York, a black male coming in from New York with drugs on him, and low and behold that's exactly what they found. In order to prove to you that the substance that was found was actually crack cocaine, he brought in a witness that was Tara Kinney and she was qualified as an expert. And before we went further with the questions, I think Ms. Campbell was questioning her, the Judge stopped and told y'all about an expert witness, and that unlike me or Ms. Campbell or other people in this courtroom, we can't just come up here and testify to our opinions because we're not experts in anything. But because of her training and education and background, Tara Kinney is. Expert witness testimony. The Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions, an exception to this rule exists for expert witnesses. A witness who by education and experience has become an expert by some art, science profession or calling may state an opinion as to relevant and material matter in which the witness claims to be an expert. And they also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight you think it serves. If you decide that the opinion of an expert witness is not based on sufficient education or experience, or if you

conclude that the reasons given in support of the opinion are not sound disregard that. But in this case we have given you our expert. There's not really any contradiction or disagreement about whether or not this substance is crack cocaine. And finally the charge in this case is trafficking in crack cocaine. A person who knowingly sales, manufactures, delivers, purchases or brings into this state or provides financial assistance or otherwise aids, abets, attempts or conspirers to sell, manufacture or deliver or purchase or bring into this state, or is knowingly in actual or constructive possession, or who knowingly attempts to come in actual or constructive possession of ten grams or more of cocaine base or crack base. In this case we have a person who is delivering by bringing into this state a quantity of crack cocaine. This element is met. The other three elements of the offense of trafficking crack cocaine that the substance involved was, in fact, crack cocaine. No reasonable person is going to get up here and argue to you that it wasn't crack cocaine. That the defendant had possession of that crack cocaine, either actual possession or constructive possession. In this case we have actual possession. It was in his pants, he acknowledged that it was his and that he was bringing it into the state. And that there were 10 grams or more of crack cocaine. I think that's where a lot of those

questions that Mr. Hawks was asking -- that Mr. Hawks was asking were, "What was the mixture? Did you separate it? Did you figure out what percent of it was being cut and which of it was pure crack cocaine?" There were a lot of questions asked and in this state it doesn't matter. Once you have this final product, the weight of a controlled substance referenced in this article is the weight of the substance in the pure form or any compound or mixture thereof. So once we have this final product that this defendant was bringing into our community and we weigh that, this 11 -- or over 11 grams is the weight that matters. It is not about deciphering who cut it with what weight and what percentage they used to cut it. Those are the laws that apply in this case and Judge Hood is going to go over those laws with you as well. The witnesses that we brought forward in this case had direct evidence and direct testimony about what happened that day, they were law enforcement witnesses who went to the scene because of a tip. You had multiple agencies involved in trying to stop the people coming down from New York, they call them the chinese bus lines, and bringing in drugs and other illegal goods into our communities. I think it was the Department of Homeland Security was involved, the DEA and the Richland County Sheriff's Department. They were sharing these tips back and forth, and that once they observed a person, a

black male get off of the bus they didn't just go up and start stopping and frisking every black male that got off that bus or every person that got off that bus, they observed, they used their training, they did what every reasonable and responsible citizen wants them to do, talk to people, find out what's going on. When someone starts acting suspiciously and they start reaching for stuff, don't just pull out a gun and start shooting them, pat them down to make sure that you're safe and that they're safe too. Once they did that Investigator Dennis Tracy told you he felt a bulge that he knew from his experience and training -- I think he said he's done over 2,000 drug cases -- that that substance was going to end up being crack cocaine, and lo and behold it was. They just keep wanting to attack the officers, "Well, why did you do it this way? Why did you start talking to them? Why did you pat them down? Why didn't you go into his pants once you felt that hard substance?" I guess Mr. Hawks would have them feel what they believed to be crack cocaine and then just let it go and poison 60 people or so with that amount -- that that amount of drugs could actually serve. This is a case in which officers did things by the book. Mr. Hawks asked questions ad nauseam about a preliminary hearing. Investigator Gwyn said there was a preliminary hearing, he testified about the things that they did at

that hearing, and that the Judge bound that over to another court for trial and here we are. Because every defendant no matter the charge how serious or how insignificant one person may believe it to be is entitled to confront or to have his attorneys confront the witnesses against him and that's what we've done here today. As Mr. Ruffin said we are practicing the greatest legal system in the world right here in this courtroom, it guarantees the right to be treated fairly and the right to a fair trial. What it does not guarantee is a pass because defense attorneys want to insinuate racism or inject race into the case where there is none. What it does not guarantee is, "It's a drug case, no one is dead, who cares?" It does not guarantee that he gets a free pass for that. What this guarantees is that this defendant is held to the same standard that every other person in this community is held to. And instead of going to school or having a job in order to better himself and provide a better life for his family and a better life for his community, this defendant chose to not only conduct illegal activity in his own town of Jamaica Queens in New York, but to bring it back into our community, too. Now, if you don't believe that we've met this burden, if you don't believe that we have proven this defendant's guilt, if you don't believe that that 11 grams of crack cocaine came from this defendant as was testified to, if you

believe that for some reason all of these law enforcement officers have gotten together and conspired to frame this guy for 11 grams of crack cocaine, let him go. That is not only your right but it's your duty as jurors. But on the other hand, if you believe the credible admissible evidence that has been brought before you, that on March 29th of 2012 this defendant had those drugs on him that tested to be 11 grams, then hold him accountable for his actions and find him guilty of trafficking in crack cocaine. Thank you very much.

THE COURT: Thank you, Ms. Walker. Mr. Hawks?

MR. HAWKS: If it pleases the Court, Your Honor?

THE COURT: Yes, sir.

MR. HAWKS: Good afternoon, ladies and gentlemen. I don't believe these guys, I think y'all have figured that out by now. I don't believe their story, I'm not sure if y'all do either. But the reason that I am so meticulous when questioning these officers is because this case is three years old, it happened three years ago and they only took four pages worth of notes to bring this case in front of you. And those notes are inconsistent, they do not match up with each other. Deputy Gwyn even testified at a hearing and his testimony didn't make sense. He acted like he was there, then he gets up in court and tells you that he wasn't here. I don't know which it was. That sort of

thing is reasonable doubt, not believing what the officers say. You don't have to not believe everything they say, but if you don't believe some of it, that is reasonable doubt. All this stuff about insinuating racism, I have no idea what she's talking about. My point with the tip is that it's generic, it's bland. How many black people ride the China bus to Columbia? There's two buses every day. How many black people got off that bus? And they only talked to Mr. Spears as he walks away? Where's that big map they had? They see him at the bus stop up here. He's acting nervous, he is paying excessive attention. Well, why didn't they question him right then and there? He gets 500 feet away to the post office, now all of the sudden he is suspicious. I don't buy it.

MS. WALKER: Objection, Your Honor. Mr. Hawks is repeatedly stating his opinion as to the credibility of the witnesses.

THE COURT: Overruled.

MR. HAWKS: Thank you, Your Honor. Sorry about that. One of the reasons they said they were suspicious is because they kept looking back. Well, I don't know about you guys, but I think I would be looking back if three federal agents were chasing me down the street. Now, they don't want to say the word chase or follow, did you notice that? They want to say that we were just wanting to talk

with them. "We were walking at a quicker pace so we could shorten the distance." You didn't need to shorten the distance, they could have talked to them at the bus stop, chose not to. And what about all this stuff that Mr. Spears supposedly said? I'm not sure I buy that either. Let's talk about these numbers. Someone paid him $2,200 to bring 11 grams of crack to Columbia to sell it for 1,000? That doesn't make any sense. How is this guy that's spending $2,200 supposed to make any money? I don't believe it. And what else does he say? "If I would have saw the cops there I wouldn't have been there." Well, how would he have accomplished that? Just poof, he's gone? He was already on the bus. It doesn't make any sense. There is no written confession, none of this stuff is in writing. There's no videotape of this session, no audio recording, nothing. We're just supposed to believe that they said these things because they are police officers, that's the only reason, but you don't have to. You don't have to believe it just because they're law enforcement. This stuff about poisoning people and all this stuff she said to inflame your passions, I don't understand it. If 60 people were to use that crack, it would have been by their own choice. No one would have forced them. Now, I want to talk about my partner's opening because I found it very impressive and I found everything he said to be extremely

important for a jury to hear. Y'all have an awesome power here today. You can find him not guilty, you can, that is you're right that each individual one of you have. It doesn't matter what they say, it doesn't matter what Judge Hood says, you have a choice, guilty or not guilty. And I hope you include all of the things that we talked about in that choice. Not just whether or not Mr. Spears supposedly had crack in his waistband, that the officers somehow felt through his pants, through the plastic bag, through the napkin and he just knew it was crack right then and there. I don't buy that, I don't know if y'all buy it either. While they're questioning him he's not giving him the answers they want. "Do you have any drugs? Do you have any counterfeit items?" Yeah, maybe he hesitates, I don't know, I wasn't there, but he says no. They're not getting the answers they want. So what do they do? They frisk him for their own safety, that's what they're saying. But they didn't have any safety concerns throughout the entire discussion until the end because they weren't getting the answers that they wanted. So they decided they would do it their own way, frisk him, didn't find a weapon, they found a hard ball. I just don't buy it. This word, the word trafficking. I don't know about you guys but when I first started working here I did not know what trafficking was. I assumed that trafficking was a lot of drugs. Apparently

it's a very small amount of drugs. That's trafficking? Can y'all see that? That's smaller than a golf ball. Trafficking. And yeah, I understand that the law says, that purity doesn't matter and that as long as it's one substance that's been compounded and the weight is fine. But we don't know how much of that is actually cocaine, we're never going to know. The analyst can't testify to it, I can't testify to it, we have no idea. And these officers -- and I'm sure they're fine people, I'm not attacking their character as individuals, what I'm attacking is their ability to investigate a case. Four pieces of paper, that's what I have. How much stuff was missing from those notes? I'd say a lot. And I don't know why they didn't want you to hear that stuff, and I think all that stuff adds up to reasonable doubt. Do y'all know for sure that they pulled that crack from Eric Spears? I don't. And no, you don't have to know for absolute certainty. I think you ought to know more than you know now, though. Ms. Walker mentioned something else. There's no victims in this case except the 60 people that are going to poison themselves, I guess. But you don't see any victims here. You don't see any drug dealers here watching concerned about what the State is doing. They don't care, they're still out there dealing drugs. At the beginning of the trial Judge Hood, he explained to you how important

this case was to both sides, to the Judge, to the Court, to this part of the State. But I think it's really only important to one person, Mr. Spears. They're going home at the end of the day. Mr. Ruffin is going home, Judge Hood is going home, everybody is going home. I don't know what's going to happen to Mr. Spears, but it's not good, that's for sure. For three years this case sat, now all of the sudden it's important to the State. "We've got to convict this guy." I don't buy that either. The reason we continue to talk about the tip, continue to talk about how this man was approached was because it just doesn't make sense. You get off a bus and you get your luggage, you're with your girlfriend, wife, whoever it was, you start walking away. They kept saying that we don't know where he was walking, towards the post office, there was neighborhoods back there, apartment complex, residential neighborhoods, did it ever cross their mind that he was walking home or walking to where he was going to stay? He had all of that big luggage, I'm pretty sure that's where he was going. What about that luggage? Didn't find any drugs in there. They didn't talk about searching the luggage. I don't even know if they told you the woman's name or whether they searched her or searched her bags. Ladies and gentlemen, I know I didn't have a ton to work with. Okay. That much is clear. They're saying that he

had crack on him. But what I want you to do when you go back there is just think about all the things that don't add up and don't make sense. Think about why they didn't tell you about some of that stuff. Give Mr. Spears a chance. Each one of you has a decision to make, and you could make it however you please. Do not let them sway you, do not let your other jurors sway you "do not vote not guilty." If you think what they did was wrong then vote not guilty. Maybe then the next time when they're trying to investigate this kind of thing they'll do a more complete job, they won't harass a man as he is walking away with his luggage. That's what I want you to think about. I hope when you do that you'll realize there is a reasonable doubt in this case, and I hope you find him not guilty. Thank you.

THE COURT: All right. Thank you, Mr. Hawks. All right, ladies and gentlemen, I am now going to instruct you on the law in South Carolina as it pertains to this case. All right. The indictment has charged the defendant with trafficking in cocaine between ten and 28 grams. I remind you that the fact that the defendant was arrested, charged and indicted in this case is not evidence in this case, and it cannot be considered by you as evidence of guilt, nor does it create any presumption of innocence or inference of guilt. This document, that being the indictment, is simply

the formal written instrument which contains the charge made against the defendant. It is the formal document by which this case is brought into this Court. Now, I remind you that during this trial you and I have certain duties to perform. As the trial Judge it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence that was offered during this trial. You are to consider only the competent evidence that is before you. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case and any stipulations of counsel. I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any ideas what the law is or what the law ought to be and it does not agree with what I tell you the law is, you must abandon this idea because you are sworn to accept the law and apply the law exactly as I state it to you. In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge cannot state, comment on or make any statement to a trial jury about the facts in a case. Since you are the sole judge of the facts, you are not to infer from

anything that I have said during this trial in ruling upon the admissibility of evidence or otherwise, or anything that I say now during the course of this instruction to you that I have any opinion about the facts of this case. The law does not allow me to have an opinion about the facts in this case, this is a matter solely for you to determine. As jurors it is your duty to determine the effect, the value, the weight and the truth of the evidence presented during this trial. Now, the defendant has pled not guilty to this indictment, and that plea puts the burden of proof on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of law that a defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberation, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based upon evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant

which remains with the defendant until it has been stripped from the defendant by evidence that satisfies you of the defendant's guilt beyond a reasonable doubt. The presumption of innocence is not a mere illegal theory, it is not just a legal phrase, it is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt. Now, the State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as a juror in a civil case where you were told that it is only necessary to prove that a fact is more likely true than not true such as by the greater weight or the preponderance of the evidence. In criminal cases the State's proof must be more powerful than that, it must be proof beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based upon your consideration of the evidence you are firmly convinced that the defendant is guilty, you must find the defendant guilty. If on the other hand you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not

guilty. As I told you in the beginning, there are two types of evidence which are generally presented during a trial, direct and circumstantial. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or the value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct. You should weigh all of the evidence in this case. After weighing all of the evidence if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. Now, you must determine the credibility of the witnesses who have testified in this case. Credibility is just a big word for believability. It becomes your duty as a juror to analyze and to evaluate the evidence and to determine which evidence convinces you of its truth. In determining the believability of the witnesses who have testified in this

case, you may believe one witness over several witnesses or several witnesses over one. You may believe a part of a witness's testimony and reject another part of the witness's testimony. You may believe the testimony of a witness entirely or reject the testimony of a witness entirely. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and the manner or demeanor of a witness while on the stand. Now, the evidence from which you are to decide what the facts are consists of the sworn testimony of the witnesses both on direct and cross-examination, the exhibits that have been received into evidence. Some things are not evidence and you may not consider them. Number one, the arguments and the statements by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements or closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them are different from what the lawyers have stated, your memory controls. The questions and the objections by the lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the Rules of Evidence. You should not be influenced by my ruling on any objection

during the course of this trial. Also, anything that you may have seen or heard when court was not in session is not in evidence. You are to decide this case solely on the evidence received in this courtroom at this trial. Now, under the law of this state a defendant may be tried even if the defendant does not attend the trial, but the fact that the defendant is not present may not be considered against the defendant in any manner whatsoever. I also instruct you and emphasize that the fact that the defendant did not testify in this case is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has a constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have told you from the beginning, is upon the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt. Now, in order to establish criminal liability criminal intent is required.

For example, the mental state required to be proven by the State might be purpose, intent, knowledge, recklessness or negligence, criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances that surround the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what that person had in mind, so the law says that criminal intent may be inferred from the circumstances that are shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed. Criminal intent can arise from an action or a failure to act. It may arise from negligence, recklessness or an indifference to duty, or to consequences that is considered by the law to be the equivalent of criminal intent. Now, the Rules of Evidence ordinarily do not permit witnesses to

testify to opinions or conclusions. An exception to this rule exists for witnesses that we call expert witnesses. This is a witness who by education and experience has become an expert in some art, science, profession or calling. That person may state an opinion as to relevant material matter in which the witness claims to be an expert. It may also state the reasons for their opinion. You should consider any expert opinion received in evidence in this case, and like any other evidence give it the weight that you believe it deserves. If you believe that the opinion of an expert witness is not based upon sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by the other evidence, you may disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further you are not required to accept an expert's opinion even though it is not contradicted. I'm now going to move on to the charge that Mr. Spears is charged with. The defendant is charged with trafficking in crack cocaine between ten and 28 grams. The State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into this state, provided financial

assistance or otherwise aided, abetted, attempted or conspired to sell, manufacture, cultivate, deliver, purchase or bring into this state, was knowingly in actual or constructive possession, or knowingly attempted to become in actual or constructive possession of crack cocaine. The State must also prove beyond a reasonable doubt that the amount of crack cocaine was 10 grams or more but less than 28 grams. The weight of any controlled substance is the weight of the substance in pure form or any compound or mixture thereof. Now, to prove possession -- so I'm going to define the word possession for you now. To prove possession, the State must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the crack cocaine. Possession may either -- may be either actual or constructive. Actual possession means that the crack cocaine was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control, or the right to exercise dominion and control over either the crack cocaine itself or the property on which the crack cocaine was found. Mere presence at the scene where the drugs were found is not enough to prove possession. The defendant's knowledge and possession may be inferred when a substance is found on property under the defendant's control.

However, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight you decide it should have. Two or more people may have joint possession of a drug. I'm almost done. Let me say something to you about your deliberations. Deliberation is defined as a careful consideration weighing up with a view to a decision. The genius of our jury system is that it allows 12 good men and women from 12 totally different backgrounds, life experiences and perspectives to consider the evidence, talk about it and ultimately reach a verdict. We call them deliberations for a reason. You are to consider the evidence in this case carefully and deliberately and discuss it in a calm, thorough and courteous manner. Remember, you are not a partisan or an advocate for either side favoring one side or the other. You are a judge. You are the judge of the facts. Your sole interest is to find the truth from the evidence you have heard in this courtroom. Listen to the views of your fellow jurors. Consider other people's points and their points of view, and talk through and discuss the evidence. And remember, if you are doing something deliberately, you are not in a big hurry, and you should not be in a hurry here. This case is very important to both sides, this is their only day in court. When you retire to your jury

room, you should discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have impartially considered all the evidence, discussed it with each other and listened to the views of each other. Do not be afraid to change your opinion if the discussion persuades you you should, but do not come to a decision simply because other jurors think it's right. It is important that you attempt to reach a unanimous verdict but only if each of you can do so after having made your own decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict. In other words, do not change your opinion solely for the sake of reaching a verdict. Okay. All right. So just a few more things. I'm going to give you some instructions and then I'm going to give you this verdict form. The first thing, your verdict must be unanimous, that means all 12 of you must agree. The second thing, you all have to be in the room to deliberate. So if somebody needs to go smoke or somebody needs to go call home and say I'm going to be an hour late or 30 minutes late then deliberations have to stop unless all 12 are present physically inside the room, otherwise you're not allowed to deliberate. Next thing, even now as I'm about to release you here in the next couple of minutes you're

not allowed to deliberate. Okay. I have one more matter that I have to take up with the attorneys. Your sign, madam forelady, that you can deliberate is when the evidence comes back in the room. Okay. So I'm finished with all the legal matters with the attorneys and they all have a chance to go through and make sure the right evidence goes back, then one of the bailiffs will bring you the evidence in the case. Once that evidence enters your room you may then begin deliberating, until then you're still not allowed to talk about the case. You can talk about whether or not it's going to snow tonight, but you can't talk about the case until the evidence comes in the room. Okay. Now, one other thing, there is at no point in time where I ever need to know the count. Okay. So when I first started doing this I didn't know to say that and jurors would all the time send me out a note, "Our count is X to X." Your count is your count and I do not need to know and it. Okay. That is for you to decide and for you all to deal with in your jury room. There is no point in time where you ever need to tell me specifically what the count is. Okay. Now, this is your verdict form. Okay. It's very simple. All the parties have reviewed it and what it says is, "We, the jury, by unanimous consent find the defendant as to the charge of trafficking crack cocaine ten to 28 grams, not guilty or guilty." Okay. Madam

Forelady, you'll check whatever box applies, date and it sign it. There is no significance in the order in which I put guilty and not guilty, I have to put one first and I have to put one second. So don't read anything into the order of it, I'm just forced to do one first. And this is your verdict form and you will take this with you. And at this point you will retire to your jury room, so do not discuss the case until you see the evidence come into the room. Thank you very much.

(The jury left the courtroom.)

THE COURT: All right. Any objection to the charge other than those previously stated?

MS. WALKER: None, Your Honor.

MR. HAWKS: None from the defense.

THE COURT: All right. Check the documents. Make sure what's supposed to go back goes back.

(The jury began deliberations.)

THE COURT: All right. It's my understanding that we have a verdict.

(The jury returned to the courtroom with a Verdict.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: Thank you, Mr. Hollis. Madam Forelady, has the jury reached a verdict?

THE FOREPERSON: Yes, Your Honor. We have come to a

unanimous decision.

THE COURT: Okay. You can hand it to Mr. Hollis. Thank you, ma'am. All right. I find that the verdict is in its proper form. It reads, "We, the jury, by unanimous consent find the defendant, Eric Spears, as to the charge of trafficking crack cocaine ten to 28 grams on 2012-GS-40-2824, guilty. Dated February 18th of 2015, signed Ms. Benson, foreperson. Ms. Benson, is this your verdict and the verdict of your jury?

THE FOREPERSON: Yes, it is.

THE COURT: Is it unanimous?

THE FOREPERSON: Yes, it is.

THE COURT: Does anybody request polling?

MR. HAWKS: Yes, please, Your Honor.

THE COURT: All right. Ladies and gentlemen, the clerk is going to ask you two questions, is this your verdict, and is this still your verdict, and when your number is called out, if you will please stand.

THE CLERK: Number 303, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Number 228, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

Spears for the purposes of sentencing. Does the State have anything they wish introduce?

MS. CAMPBELL: Yes, Your Honor, I have two Court's Exhibits, 4 and 5. Those would be his prior convictions which would be enhancements, Your Honor. He does have additional prior convictions, Your Honor, starting -- most of them are in New York. It started in 1986, I believe he was convicted of rape, and Ms. Walker can read you the rest of them.

MS. WALKER: Give me one moment, Your Honor. Your Honor, these are out of Virginia. In 2009 he has an unauthorized use of a vehicle and an obstruction of justice. Then the New York cases that Ms. Campbell just referenced start his New York rap sheet. He has a burglary third degree out of New York as well from 1988. He has an additional burglary in the third degree. He has an escape. He has -- while he was in prison, Your Honor, he was charged and convicted of knowingly possessing dangerous contraband, promoting prison contraband, criminal sale of contraband, there are three counts of that. And once he got out, Your Honor, he then had criminal possession of a stolen credit card in '96. He had criminal possession of property in the 5th degree. Going to 1997 he had more property crimes including petty larceny, it looks like in '98 he started with the drug dealing. There was criminal

sale of marijuana, there were two counts of that. Aggregate unlicensed operation of a motor vehicle. In 2003, criminal possession of stolen property. In 2004 grand larceny, unauthorized use of a vehicle. Those are all out of Brooklyn, Your Honor. And that's the extent of his prior record. I'm sorry, no, it's not. He has a possession with intent to distribute cocaine out of New York as well. And those are both included -- those charges are included in the Court's Exhibits that we had marked, certified copies of those charges.

THE COURT: I'm not finding the CDR code that's on here at all, it is -- I found it now.

MS. WALKER: Thank you.

THE COURT: All right. Mr. Hawks?

MR. HAWKS: Your Honor, before I mitigate, I wanted to renew all my prior objections and ask for a retrial based on them.

THE COURT: Okay. That motion is denied, your motions are protected for the record.

MR. HAWKS: Thank you, Your Honor. I don't have a ton to say, Judge. I would like you to take into account the fact that it was barely over the ten gram threshold, and I hope you don't count against him his presence here. Obviously he was scared, he knew that he was probably going to be convicted and he was probably going to go to jail for

25 years and it didn't seem like he had much confidence in his attorneys, so I would just ask for you to show some mercy. Twenty-five years is a lot for possessing a substance. No one was hurt here. I just ask you to take all of those things into account.

THE COURT: Thank you, Mr. Hawks.

MR. HAWKS: Oh, and one more thing, Your Honor, he was on bond for three years without incident.

MS. WALKER: He was arrested --

MS. CAMPBELL: He was arrested at least once during that time period.

MR. HAWKS: I was unaware of that.

MS. CAMPBELL: That was before you got him.

MS. WALKER: He was arrested several times.

THE COURT: So what's the second conviction that makes this a third offense? That's my question. There is a July 31st 2014. Excuse me, there's a December 22nd, 2004 conviction for possession with intent to distribute cocaine, that's in the Eastern District of Virginia out of the Richmond -- so that's in federal court. So that's one.

MS. WALKER: There should be -- you should have another one up here.

THE COURT: The other one is out of New York?

MS. WALKER: Yes, Your Honor.

THE COURT: Okay. It says this is from 1991.

MS. CAMPBELL: Yes.

THE COURT: I thought there was a ten year rule.

MS. WALKER: There has to be one within ten years, Your Honor, and then the other ones can be from whenever.

THE COURT: Okay. That's what I wanted to look at. I'm not saying anybody is right or wrong --

MS. WALKER: As long as --

THE COURT: -- I know they changed that a few years ago and I wanted to look at it. Okay. So I have reviewed 44-53-370, which is controlling on the second or subsequent offense and find that he does fit into the third offense category, I just wanted to double check that for my own edification. Okay. Anything further, Mr. Hawks?

MR. HAWKS: No, Your Honor.

THE COURT: And from Ms. Walker or Ms. Campbell?

MS. WALKER: Nothing, Your Honor.

MS. CAMPBELL: No, sir.

THE COURT: All right. I will sentence him and seal the sentence pursuant to the rules of trial in absence. Thank you very much.

MS. CAMPBELL: Thank you, Your Honor.

(End of trial proceedings.)

(SENTENCING HEARING ON 2/19/15)

MS. WALKER: Good afternoon, Your Honor. The State calls Eric Spears. May it please the Court, Your Honor?

THE COURT: Go ahead.

MS. WALKER: Eric Spears was tried and convicted Tuesday and Wednesday of this week for trafficking crack cocaine third degree. He failed to appear.

THE COURT: Third offense.

MS. WALKER: I'm sorry, third offense, I apologize. He failed to appear for his trial and was sentenced yesterday and the sentence was sealed. We are here today for sentencing. He was apprehended last night.

THE COURT: All right. Mr. Hawks, anything for the record?

MR. HAWKS: No, Your Honor, unless my client wishes to speak.

THE DEFENDANT: No.

THE COURT: All right. Mr. Spears, if you'd like to address me, you may, that's your choice. You don't have to, you're not required to, but if you would like to you may. Is there anything you'd like to tell me?

THE DEFENDANT: No, Your Honor.

THE COURT: I'm opening -- for the record I'm opening the sealed sentence that I sealed yesterday. All right. How much time is he supposed to be given credit for, do you

know, Mr. Hawks?

MR. HAWKS: Your Honor, he bonded out after about three days.

THE COURT: Okay. So there was no significant --

MR. HAWKS: No, Your Honor.

THE COURT: -- time but no significant pretrial incarceration. All right. On indictment 2012-GS-40-2824, the sentence of the Court is that Eric Spears be committed to the State Department of Corrections for 30 years and pay a fine of $50,000, credit for time served. Have a good day.

MR. HAWKS: Thank you, Your Honor.

(End of trial proceedings.)

The State of South Carolina

Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
1701 Main Street
Post Office Box 192
Columbia, South Carolina 29201

Phone: (803) 576-1800
Fax: (803) 576-1718

Daniel R. Goldberg
Deputy Solicitor

STATE OF SOUTH CAROLINA,

VS.

IN THE COURT OF GENERAL SESSIONS

ERIC SPEARS,
Defendant

NOTICE FOR COURT

You are hereby notified that your case(s) has (have) been scheduled for a trial in Richland County General Sessions Court on 9 FEB. 4. 2015 at 9:00 A.M. You will receive no other notice. If you fail to appear on this date, a bench warrant will be issued for your arrest. You must contact your attorney as soon as possible regarding this notice.

Defendant's Signature

Dana Oaten for Luck Campbell
Solicitor's Signature

1/28/15
Date

EXHIBIT
Court 1

The State of South Carolina

Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR'S OFFICE
Fifth Judicial Circuit
1701 Main Street
Post Office Box 192
Columbia, South Carolina 29201

Phone: (803) 576-1800
Fax: (803) 576-1718

Daniel R. Goldberg
Deputy Solicitor

Brett Perry
Deputy Solicitor

CHANGE OF ADDRESS

NAME: Eric Spicers

OLD ADDRESS: Jamaica New York 11434

NEW ADDRESS: Columbia SC 29212

TELEPHONE NUMBER: (HOME): _____ **(WORK):** _____

SS#: _____ **DATE OF BIRTH** _____

RACE: BK **SEX:** MALE

DEFENSE ATTORNEY: _____

ASOL #: 42 **DATE:** _____

CASE #: 2129 8FO
M98674

DEFENDANT'S SIGNATURE: _____

RECEIVED BY: _____ **DATE:** 1-28-15

The State of South Carolina

Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
1701 Main Street
Columbia, South Carolina 29201

Phone: (803)576-1800
Fax: (803) 576-1718

Daniel R. Goldberg
Deputy Solicitor

January 28, 2015

EXHIBIT
Court 2

Eric Spears

Columbia, SC 29210

RE: Charges: Simple Possession of Marijuana and Trafficking in Crack Cocaine
Warrant Numbers: 21298FO and M986774
Indictment Numbers: 2012GS4005222 and 2012GS4002824

Dear Mr. Spears:

Please take notice that you are required to be in courtroom 3-A of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina on Monday, February 17, 2015 at 9:00 a.m. If your trial does not go during the week of February 17, 2015, then it will be called for trial during the week of February 23, 2015, or during the week of March 2, 2015, or during the week of March 16, 2015, or during the week of March 23, 2015. Also have your attorney present with you in the courtroom on Monday, February 17, 2015.

SHOULD YOU FAIL TO APPEAR AT THE ABOVE TIME, A BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST AND YOU WILL BE TRIED IN YOUR ABSENCE.

Please be prepared to dispose of your case.

Should you have any questions concerning the above matters, please contact your defense attorney.

Sincerely,

Dan Johnson
Solicitor
Fifth Judicial Circuit

DJ/tby
NOTE: This case will be handled by Assistant Solicitor Luck Campbell.
Cc: Lucas Hawks, Esquire

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WITNESSES

(S) B Gwyn – Richland County Sheriff

ARREST WARRANT NUMBER

M986774

ACTION OF GRAND JURY

TRUE BILL

Jill Koenig
Foreperson of Grand Jury
Date: JUL 18 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4002824

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM. 2012

42

THE STATE
vs.

Eric Terrell Spears

Indictment for
TRAFFICKING CRACK COCAINE 10-28 g, 3rd & Sub

SC Code: 44-53-0375(C)(1)(c)
CDR Code: 0450

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.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

2012

At a Court of General Sessions, convened on July 18, the Grand Jurors of Richland County present upon their oath:

TRAFFICKING CRACK COCAINE
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

That Eric Terrell Spears did in Richland County on or about the March 29, 2012, ~~knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt~~ or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Crack Cocaine in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(1), S. C. 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.

DAN JOHNSON, SOLICITOR

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ARREST WARRANT

M-986774

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Richland Bond Court

THE STATE 1203844829-R4

against

Eric Terrell Spears

Address:

Jamaica, NY 11434-

Phone: SSN:

Sex: M Race: B Height: 5 6 Weight: 180

DL State: DL #:

DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: B Gwyn - 1287

Offense: Trafficking in Crack Cocaine

Offense Code: 0450

Code/Ordinance Sec: 44-53-0375(C)(1)(

This warrant is CERTIFIED FOR SERVICE in the

[ ] County/ [ ] Municipality of

. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Eric Terrell Spears on 03/29/2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland Bond Court)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 CCCA 518

Personally appeared before me the affiant B Gwyn who being duly sworn deposes and says that defendant Eric Terrell Spears did within this county and state on or about 03/29/2012 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland Bond Court) in the following particulars:

DESCRIPTION OF OFFENSE Trafficking in Crack Cocaine

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 3/29/12 while at 1300 Blk of Briargate Cr in the Dutch Fork Magisterial District of Richland County, it is believed that the defendant did commit the crime of Trafficking Crack Cocaine because he did have in his dominion and control a hard ball of white rock like substance that did field test positive for cocaine. The def. was approached identification purposes. During the interaction the def. kept moving his waist band area. The def. was patted down for officer's safety at which time felt a hard ball object in his waist band. Estimated field weight is 13 grams. Affiant and others are witness to prove same.

Signature of Affiant

B Gwyn

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland Bond Court)

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-

Affiant's Telephone (803)576-3000

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ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 3/29/2012 defendant Eric Terrell Spears did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland Bond Court) as set forth below:

DESCRIPTION OF OFFENSE: Trafficking in Crack Cocaine

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me)
on 03/29/2012)
(L.S.))
Signature of Issuing Judge)
M Howard)
Judge Code: 7150)

Judge's Address 201 John Mark Dial Drive
Columbia, SC 29209-

Judge's Telephone

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL

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STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Eric Terrell Spears)
AKA:)
Race: BLACK Sex: Age: 45)
DOB: SS#:)
Address: Dr.)
City,State,Zip: Columbia, SC 29210)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4002824
A/W#: M986774
Date of Offense: 3/29/2012
S.C. Code § : 44-53-0375(C)(1)(c)
CDR Code #: 0452

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Trafficking in Crack Cocaine (3rd offense)
in violation of § 44-53-0375(C)(1)(c) of the S.C. Code of Laws, bearing CDR Code # 0452
☐ NON-VIOLENT ☑ VIOLENT ☑SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: M. Walker Campbell, Luck 78494 SC Bar# Defendant Attorney for Defendant 100632 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a definite term of 30 years or ☐ under the Youthful Offender Act not to exceed ____ years and to pay a fine of $50,000 provided that upon the service of ____ days/months/years and/or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for ____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ____ plus 20% fee: ____ $ ____
Payment Terms: ____
☐ Set by SCDPPPS ____
Recipient: ____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (If paid in installments)		$
TOTAL		$

PTUP ____
____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ____
May serve W/E begining ____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ____ beginning ____
$ ____ paid to Public Defender Fund
Other: ____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Jeanette W. McBride
Court Reporter: Smallwood
Presiding Judge: Pethood
Judge Code: 2164
Sentence Date: 2-18-15

SCCA/217 (03/2011)

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."

March 9th, 2016

LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE, RESPONDENT,

V.

ERIC TERRELL SPEARS, APPELLANT

APPELLATE CASE NO. 2015-000390

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Spears' motion to suppress the drugs based on a Fourth Amendment violation because there was not sufficient probable cause to conduct an investigative stop of Appellant?

STATEMENT OF THE CASE

On July 18, 201, the Richland County Grand Jury indicted Eric T. Spears on the charge of trafficking crack cocaine more than ten grams and less than twenty-eight grams. On February 17-18, 2015, a trial was held before the Honorable Robert Hood and a jury in Spears' absence. R. 3, ll. 1 – R. 7, ll. 16. Spears was represented by Lucas Hawks and Adam Ruffin. R. 1; R. 10, ll. 1 – 7. The state was represented by Luck Campbell and Meghan Walker. R. 1; R. 9, ll 15 – 21. The jury returned a verdict of guilty as indicted. R. 227, ll. 2 – 10. Judge Hood issued the sentence and sealed it pursuant to the rules of trial in absence. R. 231, ll. 18 – 21.

On February 19, 2015, Spears appeared before Judge Hood for sentencing. Judge Hood opened the sealed sentence and sentenced Spears to thirty years for a trafficking crack cocaine third offense. R. 232, ll. 1 – R. 233, ll. 12. Spears' attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

On March 29, 2012, Agent Dennis Tracy, who was with the Lexington County Sheriff's Office and also with the Immigration Customs Enforcement Task Force later known as Homeland Security, went to the designated drop off point of one of the buses of the Chinese Bus Line. This Chinese Bus Line operated out of New York and was frequented by criminals because there was no security, no ID checks, and was inexpensive. R. 108, ll. 14 – R. 113, ll. 19.

Two other agents went with him: Briton Lorenzen of Homeland Security and Frank Finch, who was a narcotics agent with the Lexington Sheriff but was assigned to the Drug Enforcement Administration (DEA) Task Force. Their job was to deter the flow of drugs from other areas into South Carolina. R. 142, ll. 15 – R. 143, ll. 21; R. 183, ll. 9 – Tr. 185, ll. 20; R. 109, ll. 1 – 11. The men went to the point where the bus would stop. It was not a real bus station but a drop off in a parking lot of an old Comfort Inn on Broad River in Columbia just north of I-20. R. 113, ll. 12 – R. 114, ll. 16.

The law enforcement agents went to the bus acting on a tip that a DEA agent had received and conveyed to the agents. Agent Tracy did not know the source of the tip as to whether it was an informant or some other source. R. 111, ll. 17 – R. 112, ll. 8. Agent Dennis said the tip was that one black male was traveling from New York to South Carolina with narcotics. R. 112, ll. 4 – 12; R. 132, ll. 1 – 12.

Agent Lorenzen testified that he was contacted by his counterpart at DEA to conduct a bus interdiction[1] related to the DEA case they were investigating. He did not receive the tip himself. Two targets involved in their DEA case were supposed to be aboard the Chinese

[1] Interdiction was defined by agent Dennis as a law enforcement effort to stop the flow of narcotics into Columbia neighborhoods by nontraditional means. R. 109, ll. 1 – 7.

bus. The names of the targets were Tyrone Richardson and Eric Bradley who were both black males. Agent Lorenzen had never heard the name of Eric Spears. R. 143, ll. 9 – R. 144, ll. 25; R. 149, ll. 1 -24.

On March 29, 2012, the three agents went to the drop off point on Broad River Road where the bus had parked. People were disembarking from the bus. Most of the passengers were getting into a cab or calling on their cell phones or had someone there picking them up. Two people were not on a cell phone and did not have someone getting them. These two people were paying an "excessive" amount of attention to the agents as law enforcement. However, the agents were in plain clothes and Agent Dennis believed that people "don't pay attention to people in plain clothes unless they are engaged in illegal activity. Agent Dennis had his gun and badge concealed, but the two people continued to look at them. R. 114, ll. 1 – Tr. 116, ll. 15. However, in contrast, Agent Briton Lorenzen and Agent Frank Finch both testified at trial that both their guns and badges were visible during this encounter. R. 144, ll. 20 – R. 145, ll. 13; R. 187, ll. 1 – 12.

The two people, a man and woman, retrieved their baggage from the bus and proceeded to walk up the street to the road. The agents decided to make contact with the two people. They had no plan to arrest them or detain them. The agents' purpose was to "engage them in a consensual encounter and see if there was anything suspicious about their stories or their actions." R. 116, ll. 16 – R. 117, ll. 14.

Before the encounter as the agents were following the man and woman, they observed the woman remove an unknown object from her purse and hand it to the man. They could not tell what the object was. The agents did not see the man lower his hands below his waist. R. 117, ll.15 – R. 118, ll. 11.

When the agents were about eight to ten feet behind the couple, the agents asked them if they could talk to the couple for a minute. The agents identified themselves as law enforcement. They asked the couple casual questions such as where they were coming from. When the agents asked for identification, the man handed them a New York identification. Agent Dennis described the man as very forthcoming in his conversation and answers. The man started rearranging his clothing as though to pull it away from his body. Agent Dennis asked him not to do that for safety reasons as the man's hands were out of view when he did. When Agent Dennis asked the man if he had any illegal items on him or his property, the man hesitated and then said no. Agent Dennis believed that when people hesitate, they are not telling the truth. R. 118, ll. 12 – R. 119, ll. 18.

The man continued to pull at his shirt so it was not possible to see anything that might have been in his waistband. Agent Dennis became concerned for his own safety as he thought the man might have a weapon in his waistband. After the man did not stop pulling at his shirt, Agent Dennis told the man that he was going to perform a pat down of his waistband to endure that the man did not have a weapon. When Agent Dennis did the pat down of the man's waist, Agent Dennis felt a small hard object about the size of a golf ball with jagged edges. That feel was consistent with crack cocaine that Agent Dennis, in his experience, had felt before. Spears was detained at that point and turned over to Investigator Brian Gwyn with the Richland County Sheriff's Office. Investigator Gwyn was on the scene at that point. R. 120, ll. 1- R. 123, ll. 10.

When Investigator Gwyn arrived at the scene, he saw Agents Tracy, Lorenzen and Finch with Spears and a woman. The agents already had the crack cocaine and Investigator Gwyn took possession of Spears and the crack. Investigator Gwyn performed a field test on

the drugs and determined it was cocaine base or crack. He arrested Spears then for trafficking crack cocaine. R. 150, ll. 11 – 24; R. 154, ll. 1 – R. 155, ll. 25.

Investigator Gwyn read the Miranda rights to Spears as soon as he arrested him. Spears told the investigator that he understood his rights. Investigator Gwyn then asked Spears questions but he seemed "standoffish" at first. Spears said he felt he had been set up. When asked why he did this, Spears responded: "Stupidity." Then Spears related that he was paid $2200 by an individual to bring the crack cocaine into South Carolina because crack was cheaper in New York. R. 156, ll. 1 – R. 158, ll. 23.

Investigator Gwyn then admitted that after Spears was advised of his right to remain silent, Spears said he did not want to talk. He never asked for an attorney. However, while Investigator Gwyn was doing paperwork, Spears initiated conversation. Investigator Gwyn then identified Spears from a photograph the state produced that was part of the identification Spears had on his person. R.159, ll. 1 – R. 160, ll. 17.

In a pretrial motion, defense counsel moved to suppress the drugs on three grounds. He argued that Spears was targeted on the initial contact without reasonable suspicion. Spears was frisked without reasonable suspicion of a weapon, and the plain view doctrine did not satisfy pulling the drugs from Spears' waistband. R. 11, ll. 17 – R. 12, ll. 22. The state called Agent Dennis Tracy to testify in the pretrial suppression hearing. R. 13, ll. 1 – Tr. 45, ll. 15.

Agent Dennis told of the tip which he did not put in his report because he did not receive the tip directly. The information he had was simply a black male with no other description. The agents were there at the scene due to the tip, but he admitted that the tip was not specific enough for him to identify the subject as their target. He could not identify

the subject as the target based on the tip alone. The agents made contact with the individuals "solely based on their activity" and not based on the tip per se. R. 31, ll. 12 – R. 32, ll. 13. Agent Dennis also admitted that he did not mention in his report that the individuals paying excessive attention to the agents appeared to be nervous. However, he admitted that he thought it was important that the individuals were nervous. R. 34, ll. 20 – R. 36, ll. 6. Agent Dennis also did not mention in his report that the woman gave an object from her purse to the man. R. 37, ll. 1 – 8.

The defense called Traci Jenkins to testify at the pretrial hearing. She was the woman with Spears at the bus stop, and was married to Spears. R. 54, ll. 1 – 25; R. 59, ll. 17 – 25. She remembered the incident. She did not feel free to leave during the twenty minute encounter. She thought they had to talk to the agents. They stopped because they were told to stop. R. 55, ll.1 – R. 60, ll. 1.

In his argument following the testimony at the pretrial hearing, defense counsel argued that the agents did not have reasonable suspicion to stop Spears and the woman on the initial contact. All they had was the two people looking at them at the bus stop and nervousness. No reasonable person would have felt free to leave in these circumstances when the agents were following them and then started asking them questions about criminal activity. R. 61, ll. 6 – R. 65, ll. 5.

The judge denied the motion to suppress. His basis for the initial stop as being valid was that the defendant was seen getting off a bus that was known by law enforcement to be used by criminals. The defendant paid close attention to the agents or officers even though they were in plain clothes and their guns were out of sight. [See above where two officers/agents had guns and badges visible.] The agents began to follow the defendant and

his wife who were nervous. Agent Dennis saw the woman hand an object to the defendant. The defendant and his wife willingly stopped and talked to the agents. The law enforcement agents never told the defendant that he was not free to leave. R. 83, ll. 15 – R. 86, ll. 8.

At the Jackson v. Denno[2] hearing, defense counsel objected to the admission of the statements by Spears that he was bringing the crack into the state for someone else and that he was paid $2200 to do so. Counsel's objections were based on the grounds that these statements were not relevant and not needed because the statute on trafficking was based on the amount. R. 77, ll. 8 – R. 81, ll. 22. The judge overruled the objections, and deemed the statements relevant. He ruled that the statements went to an element of the crime. R. 81, ll. – R. 82, ll. 1. Counsel did not object when the statements were admitted into evidence. R. 156, ll. 1 – R. 159, ll. 22.

Tara Kinney, who worked in the Richland County Sheriff's Office in the forensic laboratory, tested the drugs found in Spears' case. She determined that it was crack cocaine with a net weight of 11.43 grams. R. 172, ll. 1 – 17; R. 176, ll. 4 – 22.

When the drugs were admitted into evidence as State's Exhibit One, defense counsel objected based on all of his prior suppression motions. The judge admitted the drugs. R. 196, ll. 5 – 12.

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[2] Jackson v. Denno, 378 U.S. 368 (1964).

ARGUMENT

The trial court erred in denying Appellant Spears' motion to suppress the drugs based on a Fourth Amendment violation because there was not sufficient probable cause to conduct an investigative stop of Appellant.

The Fourth Amendment protects the right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures. U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including seizures that only involve a brief detention. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014) citing State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Mendenhall, 446 U.S. 544 (1980). Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. Terry v. Ohio, 392 U.S. 1, 27 (1968). The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences, "reasonably warrant" the intrusion. Id. at 21, 27. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862(2014).

The South Carolina Supreme Court wrote in State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013), citing United States v. Perrin, 45 F.3d 869. 871 (4th Cir. 2008) that the required reasonable suspicion can arise from am anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip. The Fourth Circuit held in United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) that courts must look at the cumulative information available to the officer...and not find a stop unjustified based merely on a piecemeal refutation of each individual fact and inference.

In State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct. App. 2000), the Court of Appeals held that the uncorroborated anonymous tip did not provide officer with reasonable suspicion to stop the defendant's automobile. In Green's case, the police received a dispatch call that a black male by the name of Alonzo Green was leaving Bayside Manor with a large sum of money and narcotics driving a gray four door Maxima. The officer saw a gray Maxima drive by and stopped it based solely on the anonymous tip. The Court of Appeals said that was not enough.

"To justify a brief stop [or] detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity." State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991). The term "reasonable suspicion" requires a particularized and objective basis that would lead one to suspect another of criminal activity. See United States v. Cortez, 449 U.S. 411 (1981); see State v. Woodruff, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001). In determining whether reasonable suspicion exists, the whole picture must be considered. See United States v. Sokolow, 490 U.S. 1 (1989). The burden is on the State to articulate facts sufficient to support reasonable suspicion. See State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000); see also State v. Pichardo, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005).

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. United States v. Calandra, 414 U.S. 338 (1974). The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. See Wong Sun v. United States, 371 U.S. 471, 484 (1963); see also State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding evidence is not admissible under the "fruit of the

poisonous tree" doctrine when the police exploit an unlawful search to seize evidence that would not have otherwise come to light).

"The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" United States v. Mendenhall, 446 U.S. 544, 553–54 (1980) (quoting United States v. Martinez–Fuerte, 428 U.S. 543, 554 (1976).)

The law enforcement agents lacked probable cause and reasonable suspicion to stop and detain Spears. The trial judge erred in denying Spears' motion to suppress the drugs based on the lack of reasonable suspicion for the stop. Spears' mere presence on the Chinese bus did not mean that he was a criminal. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).

The agents who stopped Spears did not know the source of the tip but only that it came from their DEA counterpart. Therefore, they had no knowledge if the tip was reliable, and had no information about the reliability of the source. Agent Dennis knew only that the tip contained only the description of a black male. The tip did not say there would be a man and woman. Agent Lorenzen knew the targets of the tip were two black males and had their names of Tyrone Richardson and Eric Bradley. R. 149, ll. 3 – 17. Therefore, the totality of the circumstances did not support the reasonable suspicion of the anonymous tip.

Because the agents had the names of the targets from the tip, once they learned Spears' name from his identification and saw that it did not match the targets' names, the investigative stop should have ceased. Spears should have been released at that point. This situation is similar to the case of State v. Tindal, 388 S.C. 518, 698 S.E.2d 203 (2010).

In Tindal, id., the Supreme Court held that in carrying out a routine traffic stop, a law enforcement officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. Any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has reasonable suspicion of a serious crime.

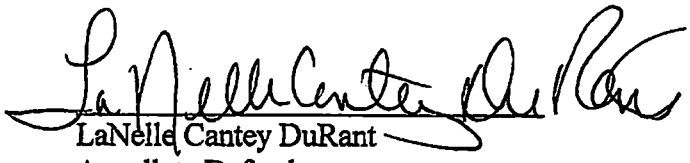
In Spears' case, the law enforcement agents exceeded the scope of the investigative stop once they checked Spears' identification and learned he was not the man they were looking for.

The trial judge relied on the nervousness of Spears as cause for suspicion. However, Agents Lorenzen and Finch said their guns and badge were not hidden. This would cause a reasonable person to observe and act nervous. Any reasonable person would act nervous if he were being followed by three men with guns.

CONCLUSION

Based on the above, Appellant's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



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Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of March, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 10, 2016

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE, RESPONDENT,

V.

ERIC TERRELL SPEARS, APPELLANT

APPELLATE CASE NO. 2015-000390

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of March, 2016.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
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THE STATE,

Respondent,

vs.

ERIC TERRELL SPEARS,

Appellant.

Appellate Case No. 2015-000390

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion to suppress the crack cocaine because law enforcement engaged Appellant in a consensual street encounter, not an investigative stop.

STATEMENT OF THE CASE

Appellant Spears was indicted for trafficking between ten and twenty-eight grams of crack cocaine. Spears was convicted as charged by a jury following trial on February 17-18, 2015. Spears did not attend his trial. The presiding judge, the Honorable Robert E. Hood, placed the sentence under seal. On February 19, 2015, Spears was brought before Judge Hood and the sentence was unsealed. Judge Hood sentenced Spears to thirty years imprisonment for third offense trafficking cocaine.

STATEMENT OF FACTS

Spears smuggled crack cocaine to Columbia from New York City as a bus passenger. When Spears acted suspicious during a voluntary street encounter, law enforcement conducted a Terry[1] frisk. In Spears' waistband was a package of crack cocaine.

The trial court conducted a suppression motion just prior to trial. The State's witness for the suppression motion was Special Agent Dennis Tracy who was employed with the Lexington County Sheriff's Office and is a task officer with Immigration and Customs Enforcement (ICE), renamed Homeland Security by the time of trial. On March 29, 2012, Agent Tracy and two other officers were at a drop-off point for what he termed a Chinese bus line. ICE was assisting the Drug Enforcement Agency (DEA) with a tip they received. The

DEA asked for Agent Tracy's assistance because he was certified for interdiction. ROA. pp. 12-15. Agent Tracy explained to the jury about what an interdiction unit does as follows:

> Interdiction is a law enforcement effort to stop the flow of narcotics into our neighborhoods by nontraditional means. People using common carrier parcel systems; Fed Ex, UPS, DHL, people coming in airplanes, buses, trains, anything except cars, or just people walking across the border, I assume.

ROA. p. 109, lines 1-7. Agent Tracy has been in law enforcement for nineteen years and worked in narcotics for ten years. ROA. p. 110, lines 1-5.

The Chinese bus line is a low-budget bus line operating out of the Chinatown neighborhood of Manhattan that comes straight to North and South Carolina with few stops. No identification or security is required to travel on the buses, so the bus line is "commonly used by felons, by wanted subjects, by people trafficking narcotics and counterfeit goods. There's a whole slew of people using these buses because of the lack of security." ROA. pp. 15-16 (direct quote, p. 15, line 24 – p. 16, line 3).

Agent Tracy explained to the jury the bus line does not have a real station, but instead drops off its customers at a parking lot or closed business. They were aware of a drop-off point at Dutch Square Mall and another location they went to, the hotel parking lot by Broad River Road near Interstate 20. ROA. p. 113-114.

Agent Tracy and two other officers were positioned at the Broad River Road drop-off point. ROA. p. 16. Agent Tracy testified about what he observed when the bus arrived:

> We saw a few people getting off the bus and most of the people we observed didn't arise any suspicions, they were

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[1] See Terry v. Ohio, 392 U.S. 1, 26 (1968).

> getting off the bus, they were being greeted by relatives or friends, they were making calls, they were getting in cabs. We did see two subjects get off the bus and they retrieved a large number of bags, I think it was four bags total from underneath the bus. And then they engaged in conversations with themselves, continued to look over toward us and then they proceeded to walk up the street toward the post office.

ROA. p. 17, lines 5-14. The two people, a black male and a black female, turned out to be Spears and his girlfriend.

Agent Tracy explained why their attention raised the officers' suspicions: "Most of the other people didn't pay that much attention to us, they would look and go on with their business, but these two subjects continued to – what appeared to us is that they kept looking at us and talking amongst themselves." ROA. p. 18, lines 2-6.

The officers decided to make contact with Spears and his girlfriend. Later on cross-examination, Agent Tracy explained the following:

> The reason we contacted them was to first of all identify them, and second of all to ascertain if they were involved in any criminal activity, specifically under our ICE authority it would be trafficking counterfeit goods. They have four large bags coming out of a known source area for counterfeit goods, we thought that might be something we wanted to take a look at.

ROA. p. 39, lines 6-12.

The two subjects walked up the street, towards the post office, and the officers walked behind them. Special Agent Tracy saw the female reach into her bag and pull out an unknown object, then appear to hand the unknown item to the male. The male never brought his hands above his waist so the officers expected the object would be in his hands, his waistband, or his pockets. As the two subjects walked, they continued to look back at the

officers. As the officers were fifteen to twenty feet away from the subjects, the officers asked to speak with them and they stopped walking. The officers identified themselves, made small talk, and asked about their travels. ROA. pp. 18-19.

Special Agent Tracy agreed Spears and his girlfriend would have been free to leave if they chose not to talk to law enforcement. ROA. p. 20, lines 2-7. He explained what happened next:

> We then asked them if they had – or we told them the bus lines, that we had had problems in the past with drugs and wanted subjects and counterfeit merchandise, and we asked them for ID. I noted that while I was speaking with the male subject he continued to put his hands underneath his shirt and I guess the motion would be like puff his shirt away from his waistband.

ROA. p. 20, lines 9-15. On cross-examination, Agent Tracy described the shirt as a baggy type of sweatshirt. ROA. p. 39. Agent Tracy noted that in casual conversation, Spears answers "were very forthcoming." ROA. p. 21, lines 10-12. However, when he asked Spears if he had any weapons on him or his possessions, Spears hesitated before answering "no." ROA. p. 21, lines 12-14. Agent Tracy became suspicious because his training and experience taught him people hesitate when they are confronted with a question they do not want to answer truthfully. ROA. p. 21, lines 16-20.

Agent Tracy asked Spears to keep his hands where he could see them because Spears started pulling his shirt and moving his hands around his waistband and pocket. However, Spears continued to do the same thing a couple more times and became frustrated when Agent Tracy asked him to stop. Noting, "Drugs and guns are commonly hand in hand, criminals often have designated weapons in their possession," Agent Tracy decided to pat

down Spears to ensure he did not have any weapons. ROA. p. 20, line 17 - p. 21, line 5 (direct quote, p. 20, lines 23-25).

Before the jury, Agent Tracy explained the following:

> I didn't know what he had. I didn't know if he was concealing a weapon in his waistband, I didn't know what he had in his waistband but I didn't want him to [pull at his shirt and waistband] because hands are what can hurt you from a law enforcement perspective. If I . . . can't see your hands that's a concern for me, it's an officer safety concern.

ROA. p. 120, lines 13-19.

When he conducted the pat down, Agent Tracy found a balled-up object in the waistband that felt consistent with crack cocaine. Agent Tracy removed the object, which was wrapped in a napkin. Opening up the napkin, Agent Tracy saw what looked like crack cocaine and also a little marijuana. At that point, the officers detained Spears. ROA. pp. 21-22. On cross-examination, Agent Tracy explained "I've gotten plenty of crack out of a waistband before and that's what it felt like." ROA. p. 44, lines 5-6.

During trial, Agent Tracy explained his actions were not based on the tip, but solely on Spears' actions. ROA. p. 132.

Spears called his quondam girlfriend, Tracy Jenkins, as a witness at the suppression hearing. She testified she did not feel she was free to leave, but was hazy on the specific timing of events. She explained she was told to sit down, but that seemed to occur after Spears was already in handcuffs. ROA. pp. 54-59.

The trial court denied the motion to suppress. ROA. pp. 83-86. Agent Tracy was the State's first witness at trial and testified consistent with his in camera testimony. The second

witness was one of the other two officers with Agent Tracy, Investigator Briton Lorenzen, with Homeland Security. He was the officer who was actually notified about the tip by the DEA. He, Agent Tracy, and Deputy Frank Finch conducted surveillance at the hotel parking lot by Broad River Road. As it turned out, the two targets that were the subject of the tip were not on the bus, but were on another bus that went to the other drop-off point by Dutch Square Mall. ROA. pp. 143-144; p. 149. But while watching the passengers come off the bus and go about their business, he observed two passengers paying close attention to the officers. The officers were all in plain clothes, but Investigator Lorenzen's gun and badge were visible. ROA. pp. 143-145. Investigator Lorenzen explained a lot of weapons can be found in a waistband. ROA. p. 147.

Investigator Brian Gwyn, now with the Lexington County Sheriff's Department, was with the Richland County Sheriff's Department at the time of the arrest. He was also involved with acting on the tip of a black male travelling on the bus from New York carrying narcotics. Investigator Gwyn was monitoring both drop-off points; he initially went to the Broad River location to help set up surveillance and then went to the other drop-off point by Dutch Square Mall when informed that another bus arrived at that location. When he returned, he found the three officers with Spears. He received the seized rocks from Agent Tracy and the rocks field-tested positive for crack cocaine, so they arrested Spears. Investigator Gwyn took over the case as a Richland County case. ROA. pp. 154-155. Investigator Gwyn testified Spears made several statements. Spears claimed to not know what the rocks were, explaining "Just because it's on me doesn't mean I know what it is." ROA. p. 157. Spears complained he felt he was set up because he never saw law

enforcement on the bus line before. Spears admitted he was paid $2,000 to transport the contraband because it was not worth as much in New York. ROA. pp. 157-158.

Deputy Frank Finch from the Lexington County Sheriff's Department was part of the DEA task force, and as part of his task force duties, was at the Broad River location with Special Agent Tracy and Investigator Lorenzen. He testified consistently with the other two officers involved in the arrest. He explained that as Spears and his girlfriend walked away from the station and the officers followed them, they kept looking back: "As they were walking away they kept looking behind them, kind of looking anxious. Most people were just kind of milling around waiting someone to pick them up, get in their car or on a cell phone to call a ride, whereas these people were literally waking away." ROA. p. 186, lines 21-25. Deputy Finch noted Spears kept pulling at his shirt even after Agent Tracy asked him twice to stop. This drew their attention to Spears' shirt because, Deputy Finch explained, "We are taught the eyes won't kill you but the hands will." ROA. p. 189, lines 6-19. Therefore, Agent Tracy conducted the pat down search. ROA. p. 189.

The forensic chemist testified the substance seized was 11.43 grams of crack cocaine. ROA. p. 176.

ARGUMENT

The trial court properly denied Appellant's motion to suppress the crack cocaine because law enforcement engaged Appellant in a consensual street encounter, not an investigative stop.

Spears argues the law enforcement officers lacked reasonable suspicion to "stop" him and his girlfriend. However, reasonable suspicion was unnecessary because law enforcement engaged in a consensual street encounter in which Spears was free to leave. Spears' subsequent actions created a reasonable belief Spears may be armed with a deadly weapon, necessitating a Terry frisk. Agent Tracy felt an object during the frisk Agent Tracy immediately recognized was crack cocaine; therefore law enforcement lawfully seized the contraband under the plain feel doctrine. Thus, the trial court properly denied Spears' motion to suppress because the Fourth Amendment was not violated in this case.

Spears mistakes his interaction with law enforcement as an investigative stop; however, it was merely a consensual street encounter. Under the Fourth Amendment, in order to arrest a person without a warrant, a law enforcement officer must have probable cause that the person committed a crime. Terry v. Ohio, 392 U.S. 1, 26 (1968). In order to stop a person and require a response to questioning, the Fourth Amendment further demands a law enforcement officer have a "reasonable suspicion" the person was engaged in misconduct. Terry, 392 U.S. at 27. When a law enforcement officer "accosts an individual and restrains his freedom to walk away, [the officer] has 'seized' that person." Id. at 16.

However, "not all personal intercourse between policemen and citizens involves 'seizures' of persons." Id. at 19, n.16. "Only when the officer, by means of physical force or

show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Id. "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." Florida v. Royer, 460 U.S. 491, 497 (1983). "[E]ven when police officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to see identification, and request to search his or her luggage – as long as the police do not convey a message that compliance with their request is required." Florida v. Bostick, 501 U.S. 429, 434-35 (1991) (citations omitted).

"Moreover, characterizing every street encounter between a citizen and the police as a 'seizure,' while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices." United States v. Mendenhall, 446 U.S. 544, 554 (1980). The Mendenhall court noted the need for police questioning for effective enforcement: "Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. In short the security of all would be diminished." Id. (citation and quotation marks omitted).

In order to determine whether an incident is a seizure or a consensual street encounter, the trial court must determine whether, under the totality of circumstances, "a reasonable person would have believed that he was free to leave." Id. ("Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave,

would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.").

Although the officers were at the bus stop originally because of the tip, the officers were legally allowed to be there regardless of whether they received a tip. Moreover, the bus stop is a known area for drug and counterfeit trafficking due to the Chinese bus line. Spears and his girlfriend raised the officers' suspicions through their actions. But even if Spears did not raise officers' suspicions, the officers were still allowed to approach Spears and his girlfriend to engage in conversation. The Fourth Amendment does not prohibit the officers from a consensual street encounter.

The facts of Mendenhall are instructive. In Mendenhall, the U.S. Supreme Court found no seizure occurred during a consensual encounter between law enforcement and Mendenhall in the concourse of the airport: the agents were in plain clothes and did not display their weapons, they approached the defendant and identified themselves as federal agents, and they requested to see the defendant's identification and plane ticket. Id. at 555.

In the instant case, the police followed Spears and his girlfriend on a public street for a brief time before asking him to stop. Further, as in Mendenhall, more than one officer approached Spears and his girlfriend, the officers were dressed in plain clothes, and the officers asked to see identification. Demonstrating that Spears voluntarily spoke with the officers, Agent Tracy observed that Spears was "very forthcoming" during the conversation and in his answers to the officers' questions. There is no evidence the officers displayed their weapons or used language or tone in a way that would compel Spears to answer their

questions. Until officer safety made the frisk necessary, the officers did not physically touch Spears. The officers never told Spears he could not leave, nor did they put him in handcuffs. If Spears and his girlfriend decided to walk away from the officers prior to the frisk, they would have been free to do so.

Similarly, the U.S. Supreme Court concluded a consensual encounter only became a seizure when the officers kept a defendant's plane ticket and identification, told him they suspected him of transporting narcotics, and asked him to accompany him to a room where they searched his luggage. Royer, 460 U.S. at 494 (1983). However, the Court agreed the Fourth Amendment was not invoked and thus, no seizure occurred when the officers approached and questioned the defendant and asked to see his identification and plane ticket. Id. at 501; see Id. at 523, n.3 (Rehnquist, J., dissenting) ("I also agree with the plurality's intimation that when the detectives first approached and questioned Royer, no seizure occurred and thus the constitutional safeguards of the Fourth Amendment were not invoked.").

In the instant case, no evidence suggests a seizure during the encounter between the officers and Spears until the need for a Terry frisk arose. The officers merely approached Spears and his girlfriend and asked them questions. Like in Mendenhall and Royer, the Court has held this type of encounter to be permissible and not invoke the safeguards of the Fourth Amendment.

Spears contends once the officers realized Spears' name did not match the targets' names, the questioning should have ceased. (See Brief of Appellant, p.14). Spears relies on State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010), as the basis of this argument. (See

Brief of Appellant, p. 14-15). However, Tindall is a case regarding a routine traffic stop, whereas the instant case is a consensual street encounter. Tindall is therefore inapplicable. Mendenhall, 446 U.S. at 556-57 ("Moreover, stopping or diverting an automobile in transit, with the attendant opportunity for a visual inspection of areas of the passenger compartment not otherwise observable, is materially more intrusive than a question put to a passing pedestrian, and the fact that the former amounts to a seizure tells very little about the constitutional status of the latter.").

Spears challenges the "stop" rather than the frisk. However, for the sake of a thorough analysis, it bears noting Spears persistence in fiddling with his waistband, despite Agent Tracy's admonitions, led Agent Tracy to justifiably perform a pat down frisk due to valid concerns Spears was armed and dangerous.

The need for police to conduct a frisk or patdown is greater than just the governmental interest in investigating crime. Terry, 392 U.S. at 23. The more important purpose of allowing frisks is to protect the life of police officers. Id. ("[T]here is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him."). Since police officers are all too often killed in the line of duty by armed criminals, "[c]ertainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." Id.

This Court has explained even when a Terry stop is proper, the police "must have a reasonable belief the defendant is armed and dangerous" before they may frisk a defendant. State v. Fowler, 322 S.C. 263, 267, 471 S.E.2d 706, 708 (Ct.App. 1996), citing Ybarra v.

Illinois, 444 U.S. 85, 100 S.Ct. 338 (1979). "In other words, a reasonable person in the position of the officer must believe the frisk was necessary to preserve the officer's safety." Fowler, 322 S.C. at 267, citing Terry, 392 U.S. at 27. Further, "[i]n assessing whether a suspect is armed and dangerous, the officer need not be absolutely certain the individual is armed." State v. Blassingame, 338 S.C. 240, 249, 525 S.E.2d 535, 540 (Ct. App. 1999) (citing Terry); State v. Smith, 329 S.C. 550, 495 S.E.2d 798 (Ct. App. 1998). "The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Blassingame.

In the instant case, Agent Tracy had a reasonable belief Spears was armed and dangerous. When Agent Tracy asked Spears if he had any weapons on him, Spears hesitated before answering "no." This raised suspicion for Agent Tracy because his training and experience taught him that hesitation often infers lying. More importantly, Apellant began pulling his shirt and moving his hands around his waistband and pocket. Agent Tracy asked Spears twice to keep his hands where he could see them because he continued to pull at his shirt and touch his waistband and pocket. After the second time, Agent Tracy decided to pat the Spears down for the safety of himself and the other officers.

Spears's failure to abide by Agent Tracy's request to keep his hands where he could see them, combined with the movements by Spears with his shirt, waistband, and pocket, would cause a reasonable person in Agent Tracy's position to believe the frisk was necessary to preserve the officers' safety. Fowler. Also, Agent Tracy recounted the specific facts which led Agent Tracy to believe Spears may be armed and dangerous. Id. Thus, the frisk was lawful and did not violate the Fourth Amendment.

Further, Agent Tracy lawfully seized the contraband found in Spears' waistline because upon feeling the item, he immediately recognized, based on his experience and training, the item was crack cocaine.[2] The crack cocaine was admissible under the plain feel doctrine of Minnesota v. Dickerson, 508 U.S. 366 (1993). In Dickerson, the Court held that a police officer may seize non-threatening contraband detected through the officer's sense of touch during a Terry frisk if the officer is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent from its tactile impression, and the officer has a lawful right of access to the object. 508 U.S. at 373-75. The plain feel doctrine is only applicable where the officer conducting the frisk feels an object whose mass or contour makes its criminal character immediately apparent. Id. at 375. In the instant case, Agent Tracy lawfully seized the crack cocaine under the plain-feel doctrine since Agent Tracy was lawfully in the position to detect the presence of contraband, the incriminating nature of the contraband was immediately apparent to Agent Tracy, and he rightfully accessed the object during the Terry frisk.

In the instant case, law enforcement did not take any actions which violated the Fourth Amendment. The record shows the police engaged Spears in a consensual street encounter, conducted a lawful Terry frisk, and recovered the contraband properly through the plain feel doctrine. A trial court's ruling regarding a motion to suppress will be upheld when it is supported by any evidence. State v. Moore, 415 S.C. 245, 781 S.E.2d 897 (2016) (quoting State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013)). Thus, this Court

[2] Note Spears does not challenge the seizure of the contraband on the grounds it exceeded the scope of a permissible Terry frisk.

should affirm the trial court's denial of Spears' motion to suppress because the trial court's findings are abundantly supported by evidence.

CONCLUSION

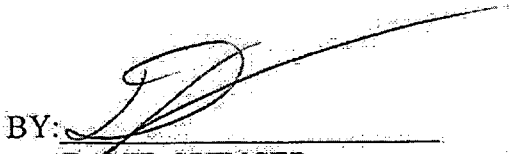
For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 18, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Robin E. Hood, Circuit Court Judge

THE STATE,

Respondent,

vs.

ERIC TERRELL SPEARS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Lanelle C. Durant, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 18TH day of March, 2016.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Eric Terrell Spears, Appellant.

Appellate Case No. 2015-000390

Appeal From Richland County
Robert E. Hood, Circuit Court Judge

Opinion No. 5489
Heard February 13, 2017 – Filed May 31, 2017

REVERSED

Appellate Defender LaNelle Cantey DuRant, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant Deputy Attorney General David A. Spencer, and Solicitor Daniel Edward Johnson, all of Columbia, for Respondent.

KONDUROS, J.: Eric Terrell Spears appeals his conviction and sentence for trafficking crack cocaine between ten and twenty-eight grams. He argues the trial court erred by denying his motion to suppress drug evidence because he was seized within the meaning of the Fourth Amendment and law enforcement lacked a reasonable suspicion he was involved in criminal activity. We reverse.

FACTS/PROCEDURAL BACKGROUND

On March 29, 2012, agents of the Drug Enforcement Agency (DEA) working with the Lexington County Sheriff's Office received a tip that one or two black males being investigated by the DEA were traveling from New York City to South Carolina on the "Chinese bus lines." These bus lines depart from Chinatown and are owned and operated by Chinese Americans and Chinese Canadians. According to the DEA agents, the buses are often patronized by wanted subjects and people trafficking in narcotics and counterfeit goods because the bus lines are inexpensive, do not require identification, and have no security measures. On that day, two of these buses were scheduled to arrive at different locations in Richland County. Agents Dennis Tracy, Briton Lorenzen, and Frank Finch were dispatched to one of the bus stops. They were dressed in plain clothes, and Lorenzen's and Finch's badges and guns were visible. The agents arrived at the bus stop as passengers were exiting the bus.

Amongst the passengers disembarking, the agents observed Spears and Traci Williams, a female, exit the bus and retrieve four large bags. Unlike the other passengers, Spears and Williams appeared nervous and kept looking at the agents and talking amongst themselves. Spears and Williams left the bus stop on foot, and the agents followed them. As they walked, Spears and Williams continued to look back at the agents, and Williams appeared to hand something to Spears. After following Spears and Williams for several hundred feet, the agents walked at a fast pace to catch up with them. The agents identified themselves and asked to speak with Spears and Williams. Solely based on Williams and Spears's activity, not the tip, the agents made contact with Spears and Williams to identify them and ascertain whether they were involved in criminal activity. The agents asked to speak with Spears and Williams and asked them questions such as where they had traveled from and where they were going. Agent Tracy then told Spears and Williams there had been problems in the past with wanted subjects, drugs, and counterfeit merchandise on the bus line and asked them for their identification. After Spears gave Agent Tracy his identification, Agent Tracy asked Spears if he had any illegal weapons or items on him or in his property. Spears hesitated before saying "no," making Agent Tracy suspicious because until that point, Spears had been very forthcoming.

Around the time Agent Tracy asked Spears about illegal items, Spears began to put his hands underneath his shirt and make what Agent Tracy described as a "puffing" motion, pushing the shirt away from his waistband and body. Agent Tracy asked Spears not to do this because he needed to see Spears's hands for safety purposes. Spears stopped momentarily but then repeated the motion. After asking Spears not

to do this three times, Agent Tracy told Spears he was going to search him for weapons. While patting Spears down, Agent Tracy felt a rocky, ball-like object that felt consistent with crack cocaine. After completing the search, Agent Tracy removed the object from Spears's waistband. The object was wrapped in a napkin and inside a plastic bag. Agent Tracy removed the object from the plastic bag and the napkin, saw it was consistent with crack cocaine, and arrested Spears.

Prior to trial, Spears moved to suppress the drug evidence, arguing he was seized by the agents because a reasonable person would not have felt free to leave and the agents did not have reasonable suspicion to stop Spears and Williams.[1] The State contended the encounter between Spears, Williams, and the agents was consensual and therefore, the agents did not need reasonable suspicion.

The trial court denied Spears's motion to suppress the drugs. The trial court concluded the agents engaged Spears in a consensual encounter, finding Spears and Williams willingly stopped and talked with the agents, the agents told Spears and Williams they were law enforcement, and the agents did not tell Spears he was not free to leave.[2] At trial, Spears was convicted of trafficking cocaine between ten and twenty-eight grams and received a thirty-year sentence.

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[1] Spears also argued the agents did not have reasonable suspicion he was armed, the plain-feel doctrine did not apply, and Agent Tracy exceeded the scope of the frisk. On appeal, Spears only challenges the search.

[2] During the hearing on Spears's motion to suppress, the trial court heard arguments on whether Spears was seized or engaged by the agents in a consensual encounter. The trial court asked, "[W]hat's the evidence that criminal activity is afoot? [F]or a Terry stop one issue is [an] officer's safety, but the other issue is the officer has to believe that criminal activity is afoot." When denying Spears's motion to suppress, the trial court did not explicitly rule the agents engaged Spears in a consensual encounter, finding only that the agents "pointed to specific and articulable facts [that] warranted a search of [Spears]'s person." However, when listing the facts it found warranted the search, the trial court stated the agents "initiated a conversation with [Spears] and [he] and [Williams] willingly stopped and spoke with law enforcement. The agents notified [Spears] that they were law enforcement. [The agents] never told [Spears] he was not free to leave." Thus, based on the record, we conclude the trial court implicitly ruled this was a consensual encounter. *See State v. McLaughlin*, 307 S.C. 19, 23, 413 S.E.2d 819, 821 (1992) (finding the record supported the trial court's implicit ruling that appellant's rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), were voluntarily waived).

STANDARD OF REVIEW

"On appeals from a motion to suppress based on Fourth Amendment grounds, this [c]ourt applies a deferential standard of review and will reverse if there is clear error." *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) (quoting *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010)). "The 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently." *State v. Pichardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). "Rather, appellate courts must affirm if there is any evidence to support the trial court's ruling." *State v. Moore*, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016), *cert. denied*, 136 S. Ct. 2473 (2016).

LAW/ANALYSIS

I. Seizure

Spears argues the trial court erred by denying his motion to suppress because he was seized under the Fourth Amendment. We agree.

"The Fourth Amendment prohibits unreasonable searches and seizures." *State v. Anderson*, 415 S.C. 441, 447, 783 S.E.2d 51, 54 (2016) (citing U.S. Const. amend. IV).. "The security and protection of persons and property provided by the Fourth Amendment are fundamental values." *State v. Gamble*, 405 S.C. 409, 420, 747 S.E.2d 784, 789 (2013). "A person has been seized within the meaning of the Fourth Amendment at the point in time when, in light of all the circumstances surrounding an incident, a reasonable person would have believed that he was not free to leave." *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014) (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)); *see also United States v. Sullivan*, 138 F.3d 126, 132 (4th Cir. 1998) ("The test . . . [to] determin[e] whether a person has been seized for purposes of the Fourth Amendment is whether, under the totality of the circumstances surrounding the encounter, a reasonable person in the suspect's position 'would have felt free to decline the officers' requests or otherwise terminate the encounter.'" (quoting *Florida v. Bostick*, 501 U.S. 429, 438 (1991))).

"[T]he nature of the reasonableness inquiry is highly fact-specific." *State v. Brannon*, 379 S.C. 487, 499, 666 S.E.2d 272, 278 (Ct. App. 2008).

> Although no single factor dictates whether a seizure has occurred, courts have identified certain probative factors, including the time and place of the encounter, the number of officers present and whether they were uniformed, the length of the detention, whether the officer moved the person to a different location or isolated him from others, whether the officer informed the person he was free to leave, whether the officer indicated to the person that he was suspected of a crime, and whether the officer retained the person's documents or exhibited threatening behavior or physical contact.

State v. Williams, 351 S.C. 591, 600, 571 S.E.2d 703, 708 (Ct. App. 2002). "Not all personal encounters between police officers and citizens implicate the Fourth Amendment." *State v. Blassingame*, 338 S.C. 240, 249, 525 S.E.2d 535, 540 (Ct. App. 1999). "So long as the person approached and questioned remains free to disregard the officer's questions and walk away, no intrusion upon the person's liberty or privacy has taken place and, therefore, no constitutional justification for the encounter is necessary." *State v. Rodriquez*, 323 S.C. 484, 491, 476 S.E.2d 161, 165 (Ct. App. 1996).

"Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when [the agents] 'seized'" Spears. *Terry v. Ohio*, 392 U.S. 1, 16 (1968). Here, the trial court identified the following factors as evidence Spears and the agents were engaged in a consensual encounter: Spears and Williams willingly stopped and talked with the agents, the agents told Spears and Williams they were law enforcement, and the agents did not tell Spears he was not free to leave. But, this is not the totality of the circumstances. Several of the factors identified in *Williams* as probative of whether a seizure has occurred are present in this case: Spears and Williams were approached by three agents, two of whom had their guns visible; the agents waited to engage Spears and Williams until they were alone; the agents did not inform Spears and Williams they were free to leave; Agent Tracy indicated Spears was suspected of a crime by following Spears, telling him the bus lines were known for illegal activity, and asking him if he had any illegal weapons or items on his person or in his property; and the agents exhibited threatening behavior by following Spears and Williams for several hundred feet before the agents increased their pace to catch up with Spears and Williams.

All but one of the *Williams* factors present in this case were manifest at the time the agents increased their speed to make contact with Spears and request to question him. However, the final *Williams* factor occurred when Agent Tracy asked Spears if he possessed any illegal weapons or items on him or in his property. Although Spears was arguably seized the moment the agents made contact with him, at the latest, Spears was seized when Agent Tracy asked Spears if he had any illegal weapons or items on him or in his property. *See Blassingame*, 338 S.C. at 249, 525 S.E.2d at 540 (finding a stop occurred for *Terry* purposes when the officer questioned appellant about a carjacking in the area and the place from which appellant was walking).

The fact the agents increased their speed to catch up with Spears and Williams after following them for several hundred feet is particularly significant. A consensual encounter between a law enforcement officer and a person is predicated on the person being able to "disregard the officer's questions and *walk away*." *Rodriguez*, 323 S.C. at 491, 476 S.E.2d at 165 (emphasis added). Before the agents made contact with Spears, he had walked several hundred feet without the agents engaging him, indicating he was free to continue walking. By increasing their speed to catch up with Spears, the agents indicated to Spears he was no longer free to continue walking away. This is especially true considering that when the agents stopped Spears, they asked for his identification and whether he was engaged in illegal activity. Thus, in light of all the circumstances surrounding this incident, we conclude a reasonable person in Spears's position would not have felt free to walk away, and Spears was seized within the meaning of the Fourth Amendment.

II. Reasonable Suspicion

Spears argues the agents lacked reasonable suspicion to stop him. We agree.[3]

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[3] The trial court did not determine whether the agents had reasonable suspicion to stop Spears because it concluded Spears and the agents were involved in a consensual encounter. "Given our standard of review, the normal procedural course would be to remand this case to the [trial] court" to determine whether the agents had reasonable suspicion to stop Spears. *State v. Hewins*, 409 S.C. 93, 113, 760 S.E.2d 814, 824 (2014) (citing *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) ("On appeals from a motion to suppress based on Fourth Amendment grounds, this [c]ourt applies a deferential standard of review and will reverse if there is clear error. However, this deference does not bar this [c]ourt from conducting its own review of the record to determine whether the trial

Because Spears was seized within the meaning of the Fourth Amendment, we must determine whether the agents had reasonable suspicion, or "an objective, specific basis for suspecting [Spears] of criminal activity." *Robinson*, 407 S.C. at 182, 754 S.E.2d at 868-69 (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

"Pursuant to *Terry*, a police officer with a reasonable suspicion based on articulable facts that a person is involved in criminal activity may stop, briefly detain, and question that person for investigative purposes, without treading upon his Fourth Amendment rights." *Anderson*, 415 S.C. at 447, 783 S.E.2d at 54. "[L]ooking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity." *Robinson*, 407 S.C. at 182, 754 S.E.2d at 868.

"Reasonable suspicion 'is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act." *State v. Provet*, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting *United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004)). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." *State v. Willard*, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); *see also Robinson*, 407 S.C. at 182, 754 S.E.2d at 868 ("Reasonable suspicion is something more than an 'inchoate and unparticularized suspicion' or hunch." (quoting *Terry*, 392 U.S. at 27)). It is "a particularized and objective basis for suspecting legal wrongdoing." *Anderson*, 415 S.C. at 447, 783 S.E.2d at 54 (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). "Reasonableness is measured in objective terms by examining the

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[court]'s decision is supported by the evidence." (citation omitted)). However, like in *Hewins*, in the interest of judicial economy, we have decided to address the merits of this issue as the parties fully argued it during the suppression hearing, in their briefs, and at oral argument. *See Hewins*, 409 S.C. at 113, 760 S.E.2d at 824 (addressing the merits of Hewins's motion to suppress in the interest of judicial economy instead of remanding to the circuit court for a hearing); *see also State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) ("Given our finding that the show-up used in this case was unduly suggestive, we must determine whether a remand is necessary or whether, under the unique facts of this case, the matter of reliability may be determined by this Court. We find a remand unnecessary. . . . [U]nder the facts of this case, the identification is unreliable as a matter of law and therefore a remand would serve no useful purpose.").

totality of the circumstances. As a result, the nature of the reasonableness inquiry is highly fact-specific." *State v. Pichardo*, 367 S.C. 84, 101, 623 S.E.2d 840, 849 (Ct. App. 2005).

"Although never dispositive . . . being in a high crime area can be a consideration in our analysis of the totality of the circumstances." *Anderson*, 415 S.C. at 447, 783 S.E.2d at 55. Moreover, "[w]hile nervous behavior is a pertinent factor in determining reasonable suspicion . . . the single element of nervousness [should not be parlayed by law enforcement] into a myriad of factors supporting reasonable suspicion." *Moore*, 415 S.C. at 254-55, 781 S.E.2d at 902 (footnote omitted). "The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences, 'reasonably warrant' the intrusion." *Robinson*, 401 S.C. at 182, 754 S.E.2d at 869 (quoting *Terry*, 392 U.S. at 21, 27).

Our supreme court's recent consideration of reasonable suspicion during a street encounter in *Anderson* is instructive. In *Anderson*, officers were executing a search warrant at a home where they had observed drug activity. 415 S.C. at 444, 783 S.E.2d at 53. During previous surveillance of the home, the police department learned the footpath outside the home was also used to transport drugs. *Id.* However, the footpath was not included in the warrant. *Id.* While executing the warrant, officers were stationed at both ends of the footpath with instructions to "secure and detain any person found on the footpath." *Id.* During the execution of the warrant, Donald Anderson and a woman were on the footpath but stepped off the path "in a quick manner" after observing the officers. *Id.* at 444-45, 783 S.E.2d at 53. One of the officers ran towards Anderson with his gun drawn, telling Anderson to stop and get on the ground. *Id.* Anderson cooperated and was handcuffed and searched. *Id.* The officer found crack cocaine in one of Anderson's front pockets. *Id.* The supreme court held the drugs should have been suppressed "because the officer did not have reasonable suspicion that Anderson was involved in criminal activity to justify an investigative stop." *Id.* at 446-47, 449, 783 S.E.2d at 54. The court found Anderson's presence in a high crime area carried little weight because the police were in the area for the express purpose of executing a search warrant that did not include the footpath. *Id.* at 448, 783 S.E.2d at 55. The court also noted Anderson did not flee the property involved nor did the police recognize Anderson as a suspect related to the drug crimes the police were investigating. *Id.* The court stated,

> Certainly being in a high crime area does not provide police officers carte blanche to stop any person they meet

> on the street. We acknowledge we are dealing with the totality of the circumstances. Nevertheless, even considering the situs with the fact that Anderson stepped off the footpath after seeing the police, we find the circumstances here fail to support the finding of reasonable suspicion.

Id.

At the time Spears was seized, the agents had observed Spears and Williams, get off a bus known by the agents to be patronized by criminals, retrieve four large bags, and appear nervous while paying close attention to the agents.[4] This evidence is insufficient to support a conclusion the agents had a "particularized and objective basis for suspecting legal wrongdoing." *Anderson*, 415 S.C. at 447, 783 S.E.2d at 54 (quoting *Arvizu*, 534 U.S. at 273).

Indisputably, Spears was a passenger on a bus sometimes patronized by criminals, which is an articulable fact. *See Anderson*, 415 S.C. at 447, 783 S.E.2d at 55 ("Although never dispositive . . . being in a high crime area can be a consideration in our analysis of the totality of the circumstances."). But, like in *Anderson*, this fact carries little weight here. First, like the appellant in *Anderson*, Spears did not flee from the bus or the agents, not even when they increased their speed to stop him. Second, Spears and Williams's possession of four large bags is unparticularized given they were travelers from New York and presumably amongst many other passengers with luggage. Furthermore, luggage size is of no consequence here when the agents were interested in all types of illegal items, which are of varying size and do not all require luggage to transport. Finally, "[w]hile nervousness is a pertinent factor in determining reasonable suspicion," *Moore*, 415 S.C. at 254, 781 S.E.2d at 902, Spears was pursued by three agents—two of whom had their guns visible—for several hundred feet before those agents increased their speed to catch up with him. In this situation, some nervousness is to be expected. *Compare with Moore*, 415 S.C. at 254, 781 S.E.2d at 902 ("General nervousness will almost invariably be present in a traffic stop."). Also,

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[4] All of the agents testified they were too far behind Spears and Williams to see what Williams handed to Spears or even if she handed something to Spears. Agent Tracy testified he did not include this in his report because he could not identify the object and stated that "for all he knew," Williams and Spears had "shaken hands," which he did not consider a fact. Therefore, neither will we consider this as an articulable fact.

unlike in *Anderson*, Spears at no point exhibited evasive conduct and was forthcoming with the agents until they questioned him about illegal items, but by that point, Spears had already been seized.

We recognize the agents were entitled to "make reasonable inferences regarding the criminality of [the] situation in light of [their] experience." *Robinson*, 407 S.C. at 182, 754 S.E.2d at 868. Still, reasonable suspicion requires more than a hunch. *Willard*, 374 S.C. at 134, 647 S.E.2d at 255 ("Reasonable suspicion is more than a general hunch but less than what is required for probable cause."); *see also Robinson*, 407 S.C. at 182, 754 S.E.2d at 868 ("Reasonable suspicion is something more than an 'inchoate and unparticularized suspicion' or hunch." (quoting *Terry*, 392 U.S. at 27)). Here, the agents suspected Spears of criminal activity for getting off a bus used by criminals, having four large bags, and acting nervous. Based on the totality of the circumstances, we cannot conclude the agents' belief Spears was involved in criminal activity amounted to anything more than a hunch, which is insufficient under the Fourth Amendment. Thus, the agents seized Spears without reasonable suspicion in violation of the Fourth Amendment. Therefore, the trial court erred by denying Spears's motion to suppress.

CONCLUSION

The trial court erred by finding the agents engaged Spears in a consensual encounter because under the totality of the circumstances, a reasonable person in Spears's position would not have felt free to leave. The trial court further erred by denying Spears's motion to suppress the drug evidence because under the totality of the circumstances, the agents did not have a reasonable suspicion Spears was involved in criminal activity. Accordingly, Spears's conviction and sentence are

REVERSED.

SHORT, J., concurs.

WILLIAMS, J., dissenting.

WILLIAMS, J.: I respectfully dissent. One of the guiding principles shaping our state's Fourth Amendment jurisprudence is that, in a fact-based Fourth Amendment challenge, an appellate court is restricted by the "any evidence" standard of review. "A [circuit] court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error." *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013).

Importantly, "clear error" means that the appellate court may not reverse the circuit court's findings of fact merely because it would have decided the case differently than the circuit court. *See State v. Pichardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). In my view, a faithful adherence to the "any evidence" standard of review will prevent any misconception that we have substituted our own findings in place of those of the circuit court. Therefore, in light of the evidence presented at trial and the circuit court's findings, I believe our standard of review requires an affirmance.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

vs.

ERIC TERRELL SPEARS,

Appellant.

Appellate Case No. 2015-000390

STATE'S PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, the Petitioner State now requests a rehearing on the following points that this Court may have overlooked or misapprehended:

I.

This Court reversed the conviction and sentence for Appellant Spears on the basis that he was seized without reasonable suspicion because he would not feel free to leave when law enforcement walked briskly to catch up with him and speak with Appellant and his companion as they walked away from the bus stop and because officers asked him if he carried any illegal weapons on his person or luggage.

The State respectfully submits that this Court overlooked clear Fourth Amendment precedent and the standard of review in finding Spears was seized when agents made contact

with him or alternatively when he was asked whether or not he carried any weapons. "South Carolina appellate courts review Fourth Amendment determinations under a clear error standard." State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013). "When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011).

The State is especially concerned with the proposition that merely asking a person if they are carrying a weapon will turn a consensual encounter into a seizure. For officer safety, this is problematic. Additionally, the opinion inhibits good, fair, community policing in response to the infiltration of dangerous controlled substances in our community. See United States v. Mendenhall, 446 U.S. 544, 561-62 (1980) ("The public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit. Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. . . . And many drugs . . . may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.").

Law enforcement may approach an individual on a public street and ask questions without implicating Fourth Amendment protections. Florida v. Bostick, 501 U.S. 429, 434 (1991). "Without such an ability law enforcement officials would be neutralized to the point of being ineffective." Unites States v. Weaver, 282 F.3d 302, 309 (1st Cir. 2002).

Our United States Supreme Court observed, "[C]haracterizing every street encounter between a citizen and the police as a 'seizure,' while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of

legitimate law enforcement practices." Mendenhall, 446 U.S. at 554 (1980). The Mendenhall court noted the need for police questioning for effective enforcement: "Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. In short the security of all would be diminished." Id. (citation and quotation marks omitted).

When a law enforcement officer "accosts an individual and restrains his freedom to walk away, [the officer] has 'seized' that person." Terry v. Ohio, 392 U.S. 1, 66 (1968). However, "not all personal intercourse between policemen and citizens involves 'seizures' of persons." Id. at 19, n.16. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Id. "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." Florida v. Royer, 460 U.S. 491, 497 (1983). "[E]ven when police officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to see identification, and request to search his or her luggage – as long as the police do not convey a message that compliance with their request is required." Bostick, 501 U.S. at 434-35 (1991) (citations omitted).

"While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response." INS v. Delgado, 466 U.S. 210, 216 (1984) (concluding "police questioning by itself,

is unlikely to result in a Fourth Amendment violation."); see O'Malley v. City of Flint, 652 F.3d 662, 669 (6th Cir. 2011) (finding the officer approaching defendant, stating he was a police officer, and indicating he wanted to talk to O'Malley, was clearly a consensual encounter, officer "did not use language or a tone of voice compelling compliance").

"[A] person is seized within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Mendenhall, 446 U.S. at 554.

This Court relied on State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002), which posited a list of non-exhaustive factors to consider whether a reasonable person would consider themselves free to leave during a street encounter with law enforcement. While in the instant case the majority viewed these factors as indicative of a seizure, reasonable minds could differ and find the encounter was consensual when examining the Williams factors:

(1) Time and place of encounter: The encounter took place during daylight in a public setting, near a post-office building. Accordingly, the encounter took place in a setting that was not inherently coercive. Further, Spears and his companion were pedestrians who could have walked away from the encounter. Unites States v. Weaver, 282 F.3d 302, 311-12 (1st Cir. 2002) (noting Weaver, as a pedestrian, could have walked away from the encounter; pedestrian encounters "are much less restrictive of an individual's movements" than situations occurring during a traffic stop).

(2) Number of officers present: Three officers approached Spears and his girlfriend. In other words, Spears and his companion were outnumbered three to two. See United States v. Tavolacci, 895 F.2d 1423 (D.C. Cir. 1990) (noting "the presence of two officers does not itself

transform a contact into a seizure, citing United States v. Carrasquillo, 877 F.2d 73, 75 (D.C. Cir. 1989); United States v. Palen, 793 F.2d 853 (7th Cir. 1986); and United States v. Viegas, 639 F.2d 42 (1st Circ. 1981) ("all involving two officers")). Notably, the officers did not position themselves to prevent Spears or his companion from walking away. Commonwealth v. Depeiza, 868 N.E.2d 90 (Mass. 2007) (finding officers positioned on either side of the defendant did not block defendant's path or otherwise restrict his freedom of movement).

(3) Whether the officers were uniformed: The officers were in plain clothes. The officers badges were visible, but they did not flash their badges. Officers did not use their badges to obtain compliance with their requests.

(4) Length of detention: The encounter was brief before it became apparent that Spears was hiding something in his waistband, which officers reasonably feared might be a weapon.

(5) Move to a different location or isolate: Law enforcement did not take any action to isolate Spears or move him to a different location. The encounter occurred as Spears and his companion walked towards apartments and occurred out in the open.

(6) Law enforcement did not inform Spears he was free to leave. Of course, this factor alone is not dispositive. See United States v. Ringold, 335 F.3d 1168 (10th Cir. 2003).

(7) Whether law enforcement indicated the person was a suspect in a crime: Law enforcement advised Spears of problems such as drug trafficking on the so-called Chinese bus lines, but did not directly accuse Spears of violating any law. See United States v. Ringold, 335 F.3d 1168 (10th Cir. 2003) (finding no seizure when the officer advised Ringold that he had heard of transportation of drugs and weapons on the interstate and asked Ringold if he had

anything like that); United States v. Tavolacci, 895 F.2d 1423, 1425 (D.C. Cir. 1990) (Tavolacci asked what the questioning was about and the officer advised Tavolacci he was with the drug interdiction unit investigating narcotics before asking for Tavolacci's ID again).

(8) Whether law enforcement retained person's documents: Law enforcement asked for identification, and he produced his New York identification, but the record fails to indicated that they kept his identification. Any retention of the identification was not accompanied by any other action compounding any sense of restraint. Further, Spears was free to refuse showing identification, unlike a motorist in a traffic stop. See United States v. Ford, 548 F.3d 1, 6 (1st Cir. 2008) (finding while retaining the license was an important consideration, declining to elevate it above other factors and noting that Ford was on foot on a public street, differing the case from airport cases, where citizens need documentation to move from place to place); United States v. Weaver, 282 F.3d 302, 313 (4th Cir. 2002) (finding retaining pedestrian's identification differs from officers retaining a driver's license during a traffic stop; unlike a traffic stop, an individual is free to refuse when asked for identification); Tavolacci at 1425-26 (finding retention of papers may transform an interview into a seizure where it is prolonged or accompanied by some other act compounding an impression of restraint).

(9) Finally, officers did not exhibit threatening behavior or contact. While two officers may have been carrying visible weapons, all indications were the weapons were holstered and officers did not display or draw the weapons. When asked if she could see the officers' guns, Spears' companion responded, "I guess you could." R. p. 56. This indicates that the holstered weapons did not make much of an impression. Further, at a minimum, reasonable minds may differ on the significance that officers quickened their pace to reach Spears and his

companion. The officers did not run or exhibit any threatening behavior as they approached. The manner of approaching Spears and the companion was simply appropriate. Officer Tracy testified that as they were closer to Spears and his companion, they said "something nonthreatening like, 'Excuse us, do you mind if we have a word with you.'" R. p. 14, lines 4-6. This is representative of the professional, respectful manner law enforcement undertook in the encounter. Officer Tracy testified that beforehand, the officers met and discussed "steps about not to impede the person's movement." R. p. 15, lines4-8. Officer Tracy described catching up to Spears and his companion as follows: "They're walking, we're walking behind them, we didn't run. However quickly we could walk **a little faster than they did** to make contact with them." R. p 31. Officer Tracy explained to the jury that "us running after somebody is more of a show of force so we didn't want to run after them." R. p. 134, line 24 – p. 135, line 2. He denied defense counsel's suggestion they were chasing Spears. Tr. p. 135, lines 6-8. The trial court could reasonably conclude that merely walking more briskly, "a little faster," did not signal to a reasonable person that they were not free to walk away.

On the last point, courts have found more dramatic approaches to not turn an encounter into a seizure. See United States v. Ford, 548 F.3d 1, 5 (1st Cir. 2008) (finding non-threatening that officers drove their vehicle the wrong way on a one way street to approach Ford, a pedestrian, and speak with him); O'Malley, at 669 (finding when officer parked his vehicle behind O'Malley's vehicle in the driveway as O'Malley walked towards his house. O'Malley not only reasonably thought he was free to leave, but was walking away; officer's subsequent approach and statement to O'Malley that he was an officer and wanted to talk to him was likewise consensual, fact O'Malley stopped to speak with the officer did not by itself transform

the encounter into a seizure); Tavolacci, at 1425 (finding the presence of officers in the doorway of a train roomette who questioned Tavolacci and asked for his ticket and identification did not defeat the "free to leave test."); Delgado, at 218-19 (finding factory workers were not seized during INS surveys where INS agents were placed near the exits of the factory sites; "the mere possibility that they would be questioned if they sought to leave the buildings should not have resulted in any reasonable apprehension by any of them that they would be seized or detained in any meaningful way."); DePeiza, (finding no seizure occurred when officers passed Depeiza a second time, called out to him, asked questions, and then both got out of patrol vehicle. Seizure only occurred when officers first attempted to frisk DePeiza).

In Ringold, two officers observed a vehicle on the highway and after it exited the highway, they turned the vehicle around and observed it at a gas station. The officers parked their patrol car, each bought a soft drink, and approached the vehicle, beginning a conversation with Ringold. Ringold's passenger had already gone into the convenience store. The conversation started as casual conversation about weather and travel plans. Then the officer told Ringold that he heard reports of illegal drugs or weapons being transported from Los Angeles to Philadelphia (Ringold's professed destination) and asked if Ringold was carrying any of those things. Id. at 1170-71.

The Tenth Circuit rejected the argument likening the encounter to a traffic stop, noting the defendants themselves chose to leave the highway and voluntarily stopped their vehicle at the highway station. The court also rejected the Ringold's claim that he would not feel free to decline the officer's questioning because Ringold was encircled between them, the gas pump, and Ringold's vehicle, noting "nothing prevented Ringold from simply entering his vehicle and

driving away." Id. at 1173.

Finally, the court rejected Ringold's claim that the encounter became an investigative detention because the officer asked Ringold potentially incriminating questions about drugs and weapons, opining "what matters instead is 'the manner' in which such questions were posed." Id. (citations omitted). The court noted that "even the latter questions were not worded or delivered in such a manner as to indicate that compliance with any officer directives (or even inquiries) was required." Id.

In the instant case, Spears and his companion chose to walk from the bus stop towards the apartments. Further, like Ringold, while the officers asked potentially incriminating questions, they asked the questions in a polite manner. Finally, because Spears was free to walk away, just like the defendants in Ford, O'Malley, and Ringold, the street encounter only turned into a seizure when the officers necessarily performed a Terry frisk.

WHEREFORE, Petitioner/Respondent requests this Court to grant the petition for rehearing and affirm the conviction and sentence.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER/RESPONDENT

June 15, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No: 2015-000390

THE STATE,

Respondent,

v.

ERIC TERRELL SPEARS,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record LaNelle C. DuRant, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 15th day of June, 2017.

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The South Carolina Court of Appeals

The State, Respondent,

v.

Eric Terrell Spears, Appellant.

Appellate Case No. 2015-000390

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

I would grant the petition for rehearing.

_____ J.

Columbia, South Carolina

FILED
August 18, 2017

cc:
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Alan McCrory Wilson, Esquire
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Daniel Edward Johnson, Esquire
The Honorable Robert E. Hood