

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

V.

MARK LORENZO BLAKE, JR.,

RESPONDENT,

APPELLANT

APPELLATE CASE NO. 2016-001715

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT NO. 1 (DVD OF TRAFFIC STOP)
MOTION FOR A SPEEDY TRIAL FILED OCTOBER 7, 2015
MOTION FOR A SPEEDY TRIAL FILED NOVEMBER 10, 2015
MOTION FOR A SPEEDY TRIAL FILED JUNE 1, 2016**

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) CASE NO. 2012-GS-10-04707

THE STATE OF SOUTH)
CAROLINA,)
Plaintiff,) Transcript of Record
vs.)
MARK L. BLAKE, JUNIOR,) Date: August 8-9, 2016
Defendant.)

* * * * *

B E F O R E:
THE HONORABLE ROBIN B. STILWELL

* * * * *

Denise J. Lauder, RPR
Ninth Judicial Circuit

1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4

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9

10 REPRESENTING THE DEFENDANT MARK L. BLAKE, JUNIOR:

11

12 MARK L. BLAKE, JUNIOR

13 (PRO SE)

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18 ALSO PRESENT: JASON KING, PUBLIC DEFENDER

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1 (The following proceedings were held
2 August 8, 2016, at 11:52 a.m., Charleston County
3 General Sessions Court, in re State of South
4 Carolina v. Mark L. Blake, Junior.)

5 THE COURT: Take your seats, ladies and
6 gentlemen. We are calling to bar this morning the
7 case of State of South Carolina v. Mark Lorenzo
8 Blake, Junior. I believe that all interested
9 parties are here.

10 I'm under the impression that there are
11 some matters of law that we need to take up before
12 we begin the trial of this case; therefore, I will
13 defer to counsel and be happy to hear from you.

14 MR. KING: Your Honor, the first issue
15 I think we need to discuss is, Mr. Blake would like
16 to continue representing himself.

17 THE COURT: Okay. All right.

18 Mr. Blake, I'd be happy to hear from
19 you, sir.

20 MR. BLAKE: Yes, Your Honor. I want to
21 relieve counsel, and in the alternative to proceed
22 pro se pursuant to Faretta v. California.

23 THE COURT: And what is the basis for
24 your desire to relieve your counsel?

25 MR. BLAKE: Well, Your Honor, me and

1 Mr. King, we had a prior trial, and we just didn't
2 see eye to eye on a lot of issues. And it was --
3 basically, irreconcilable differences at this
4 point, a breakdown in client/attorney communication
5 and, furthermore, conflict of interest.

6 THE COURT: Okay. What's that
7 conflict?

8 MR. BLAKE: Well, the conflict is -- in
9 further part, based upon ground one, it's a
10 breakdown of attorney/client communication and
11 ineffective counsel. And defendant, furthermore,
12 lacks all trust and confidence in counsel based
13 upon defendant believes, by good faith, counsel did
14 not and is not representing defendant's cases to
15 their full potential, and both parties are,
16 therefore, a conflict of interest.

17 THE COURT: Okay. Mr. King, what is
18 your position with regard to the motion before the
19 Court?

20 MR. KING: Your Honor, I've advised him
21 that it is not a good idea to represent himself,
22 that he shouldn't do it, but he insists on it. I
23 believe he has a right to represent himself, as
24 long as he's given the appropriate warnings and
25 knowingly and voluntarily waives his right to

1 counsel.

2 THE COURT: Okay.

3 MR. KING: And I would be glad to help
4 him in any way as standby counsel.

5 THE COURT: During the pendency of this
6 trial, of this case, have you perceived any
7 competency issues, sir?

8 MR KING: I have not.

9 THE COURT: Okay. You can sit down,
10 Mr. King.

11 Mr. Blake, I ask you to raise your
12 right hand.

13 MARK LORENZO BLAKE, JUNIOR,
14 being first duly sworn, testified as follows:

15 THE DEFENDANT: I affirm.

16 EXAMINATION

17 BY THE COURT:

18 Q. Mr. Blake, you recognize that if you do
19 elect to represent yourself, that you assume
20 certain risks. When an attorney represents you,
21 you have access to his experience, his expertise,
22 and his education, and you have access to things
23 that you may not know intuitively.

24 An attorney can help you by advising
25 you of certain rights that you have, by advising

1 you of rules of law, rules of court, rules of
2 evidence; and, moreover, an attorney can assist you
3 in presenting defenses that you may not even be
4 aware of.

5 Now, certainly, you do have the right
6 under the Constitution to represent yourself as
7 well and you may elect to do so, but you have to
8 understand that you are assuming risks when you do
9 so because there may be things about which you
10 don't have experience, education, or knowledge. Do
11 you understand that?

12 A. Yes, sir. Yes, Your Honor.

13 Q. And are you willing to assume that
14 risk, sir?

15 A. Yes, sir.

16 Q. How far did you get in school, Mr.
17 Blake?

18 A. Tenth grade.

19 Q. Can you read and write?

20 A. Yes, sir.

21 Q. Okay. You appear to be very
22 intelligent to me, sir.

23 A. Thank you, Your Honor.

24 Q. Are you generally healthy today, both
25 physically and mentally?

1 A. Yes, Your Honor.

2 Q. And knowing the risks, you want to
3 proceed on your own?

4 A. Yes, sir.

5 Q. Okay. All right. Mr. Blake, I'm going
6 to grant your motion and allow you to proceed pro
7 se. I am going to appoint Mr. Blake (sic) as
8 standby counsel. Now, what that means is that he's
9 going to stay with you at counsel table and he'll
10 be available to you as a resource.

11 If you have questions about the
12 process, about the procedure, about the law, then
13 you can turn to him and you can ask him a question.
14 Okay?

15 A. Okay.

16 Q. Now, during the course of this case,
17 you will be representing yourself and there will be
18 certain processes, protocol, or procedures that you
19 must follow. I'll be patient with you. Okay. I
20 promise to you I will be patient with you because
21 my only concern in this case is that everybody gets
22 a fair trial.

23 I don't have a dog in the fight. I
24 just want to make sure that when everybody walks
25 out of this courtroom, there is no question but

1 that everyone received a fair trial.

2 Having said that, I'm going to be
3 patient with you, but I can't help you because I'm
4 not allowed to help you. Okay. That's what
5 Mr. King is for.

6 During the course of this trial, if you
7 have to pause and you have to ask him questions,
8 then please do so. Again, I will be patient with
9 you.

10 Don't get frustrated as the trial
11 progresses because you may try to do some things or
12 ask some questions that just aren't appropriate as
13 a matter of law or as a matter of the process.

14 A. Okay.

15 Q. And appropriate objections will be made
16 and I will rule on those objections. I don't want
17 you to think that by function of my rulings that I
18 have a bias or a prejudice one way or the other. I
19 am going to be following the rules of court and the
20 rules of evidence. Okay?

21 A. Okay.

22 Q. So, again, don't get frustrated. Take
23 the time that you need when you are -- when you're
24 proceeding in this case.

25 Now, when and if you elect to lodge

1 objections, understand that your objections must be
2 based on law or they must be based on rules of
3 court or rules of evidence. You can't object to
4 something simply because you don't like it.

5 So please, when you articulate your
6 motions, make sure that they're based on something
7 substantive and not just a general objection to
8 what is being said. Okay?

9 A. Yes, Your Honor.

10 Q. I don't for a second think, based on my
11 conversation with you right now, that you're going
12 to be disruptive. You seem to me to be very
13 intelligent and polite, and you also seem to know
14 what you're doing.

15 But I would just caution you: Don't be
16 disruptive. You're subject to the contempt powers
17 of the Court, and I don't anticipate having to hold
18 you in contempt of Court, but if you are
19 disruptive, it's really the only tool that I have.

20 A. Yes, Your Honor.

21 Q. Also, when you cross-examine witnesses,
22 which you certainly have the right to do, what I
23 find is that oftentimes pro se litigants, pro se
24 defendants, what they like to do, as opposed to
25 asking question, is to testify. Okay. I would

1 caution you to resist the temptation to testify.

2 If you want to testify, you will have
3 the opportunity to do so. Okay. And you can take
4 the stand, and you will be able to raise your right
5 hand and swear an oath and testify in front of the
6 jury if you want to, but during cross-examination
7 is not the time to do that. Okay?

8 A. Okay.

9 Q. You also understand that when you
10 represent yourself, that you may giving up your
11 right against self-incrimination, your right to
12 remain silent, because you will be talking in the
13 courtroom. And although some of those questions
14 and comments may not be testimonial, they still may
15 be conveying information from you to the jury. Do
16 you understand that?

17 A. Yes, Your Honor.

18 Q. And you're comfortable with that
19 proposition, sir?

20 A. Yes, Your Honor.

21 Q. Okay. At this point, do you have any
22 questions of me that you want to ask?

23 A. Well, since you granted my motion, it's
24 (inaudible) -- a writing material, and can you
25 please write a note or pass so I can have writing

1 material available for trial at all times?

2 Q. Sure. What do you need? A pen and
3 paper?

4 A. Yeah, a pen.

5 THE COURT: Okay. Mr. King, can you
6 provide them? If he can't, then I can have the
7 clerk provide them.

8 MR. KING: I can provide a legal pad
9 and a pen, Your Honor.

10 BY THE COURT:

11 Q. Is that sufficient, Mr. Blake?

12 A. Yes, sir. Can I -- you make a pass
13 that I can keep this at all times while I'm --
14 throughout trial?

15 Q. Yes. If you have a problem with that
16 pen or that pen stops working, let me know.

17 A. Okay. All right. But I need it in
18 writing to take downstairs so I can clarify that I
19 can write in here at all times.

20 THE COURT: No pen downstairs?

21 THE DEPUTY: (Shaking head)

22 BY THE COURT:

23 Q. I'll tell you what we'll do: When we
24 take breaks, if you need a few minutes to stay in
25 the courtroom and write, then I will give you the

1 opportunity to do that. Okay?

2 A. Okay. Thank you, Your Honor.

3 THE COURT: All right. Anything else?

4 Any other motions pretrial?

5 MS. LINDER: Judge, we would
6 respectfully request that witnesses be sequestered
7 throughout pretrial and trial of this case. The
8 exception to that would be our lead person, the
9 agent, which would be Corporal McAbee from Highway
10 Patrol.

11 And I believe that pretrial there is a
12 suppression hearing that we need to go forward
13 with, as far as the stop and search of the vehicle
14 is concerned.

15 THE COURT: Okay. Mr. Blake, do you
16 intend to call any witnesses, sir?

17 MR. B: No, Your Honor. I've got a
18 pretrial motion. It's regarding these cases. It's
19 not a suppression. I have an additional motion
20 that's suppression also, but I want to present this
21 motion before this Honorable Court.

22 THE COURT: Sure.

23 MR. BLAKE: All right.

24 THE COURT: Does the State still want a
25 motion for sequestration inasmuch as the defense is

1 calling no witnesses?

2 MS. LINDER: Your Honor, the State has
3 Subpoenaed Mr. Blake, the defendant's father in
4 this case.

5 THE COURT: Right.

6 MS. LINDER: In this case, Mr. Blake is
7 the operator; however, the owner of the vehicle is
8 his father. Throughout the -- throughout the
9 investigation, throughout the recordings, Mr. Blake
10 claims the car; and then once law enforcement
11 locates items, he then starts putting it on his
12 father and -- his father, being the owner of the
13 car.

14 His father is under Subpoena from the
15 State, and we would just request that he be
16 sequestered so as not to hear what's happening, all
17 of the specifics of the case, any potential
18 argument or avenue that Mr. -- the defendant,
19 Mr. Blake, may be going down as counsel during it,
20 and we just would respectfully request that he be
21 sequestered. And we're happy to have all of our
22 witnesses be sequestered, Judge.

23 THE COURT: Okay. Mr. Blake, do you
24 have a position regarding this sequestration?

25 MR. BLAKE: No, sir. I just want to

1 clarify for this Court, so me and my father don't
2 have any bad blood, when I was making that
3 statement to the arresting officer, I was letting
4 him know that my dad is the -- the car was in my
5 dad's name, but I'm the operator. I was not
6 putting nothing on my father. I was just
7 clarifying the situation.

8 THE COURT: Okay. Fine. Thank you,
9 Mr. Blake.

10 I will respectfully grant the order for
11 sequestration. Now, you have to police that
12 because I don't know who is being called as a
13 witness. Okay. So you-all have to both try the
14 case and police the order of sequestration. I
15 don't know who the witnesses are. Okay.

16 Okay. Additional motions?

17 MR. BLAKE: Yes.

18 THE COURT: Yes, sir.

19 MR. BLAKE: Your Honor, I want to --

20 (The proceedings were interrupted.)

21 THE COURT: All right. Say that again.
22 I'm sorry, the doors were clanging when you said
23 it.

24 MR. BLAKE: I want to bring forward
25 this motion to dismiss complaints.

1 THE COURT: Okay. I'll be happy to
2 hear you.

3 MR. BLAKE: Your Honor, I'm a defendant
4 that comes before this --

5 THE COURT REPORTER: Judge, I can't
6 hear him.

7 THE COURT: If you want to, just hold
8 it up so you can project your voice. The court
9 reporter is taking it all down. She needs to hear
10 you. Thank you.

11 MR. BLAKE: Your Honor, I, Mr. Blake,
12 come humbly before this Honorable Court for my
13 presentment of the motion to dismiss complaints:
14 Warrant Numbers M, as in military, 997495, unlawful
15 carrying of a firearm; Warrant Number M, as in
16 military, 997496, trafficking cocaine; Warrant
17 Number M, as in military, 997497, possession of a
18 stolen firearm.

19 For this motion, I, Mr. Blake, state
20 the following grounds in support of the facts: The
21 first ground, prosecution's abuse of docket control
22 and failure to comply with disposition of cases in
23 general sessions and deferring to case management,
24 pursuant to the provisions of the South Carolina
25 Constitution Article V, Section IV, paragraph E for

1 all case dispositions.

2 Memorandum of law and argument: In
3 pertinent part, Mr. Blake has been indicted by a
4 grand jury on the afore-listed cases since
5 August 7, 2012, which, furthermore, brings us to a
6 48-month unreasonable and deliberate case
7 dispositions by the prosecution for ill-motive
8 reasonings. See Exhibit A.

9 May I present my exhibit?

10 THE COURT: Yes, sir.

11 Pass it to Mr. King. And, Mr. King, if
12 you could bring it up.

13 MR. KING: May I approach?

14 THE COURT: Has the State had the
15 opportunity to see it?

16 MS. LINDER: He just gave me a copy.
17 Thanks, Judge.

18 THE COURT: Yes, sir.

19 MR. BLAKE: Based upon the prosecution
20 containing constructive knowledge or possession of
21 all Rule 6 Brady materials within these
22 afore-listed cases pursuant to Kyles v. Whitely,
23 since the incident date of 4/15/2012, and instead
24 of the prosecution carrying out case dispositions
25 in chronological order, but instead executed her

1 executive branch powers of docket control.

2 Pursuant to Statute 1-7-330,
3 Statute 1-1-110, to deliberately carry out case
4 dispositions in a precise and unorganized order, to
5 further continue the defendant's oppressive
6 pretrial incarceration on cases that the
7 prosecution clearly and unambiguously lost interest
8 in, based upon his deliberate negligence of case
9 dispositions.

10 Furthermore, pursuant to the provision
11 of South Carolina Constitution Article V,
12 Section IV, paragraph E, all case disposition
13 clearly states, any case, including non-track
14 cases, pending four or more years from the date of
15 indictment by the grand jury, shall be dismissed by
16 the chief judge for administrative purposes unless
17 the Solicitor can show good cause why it should not
18 be dismissed.

19 Conclusion: It is in evidence that the
20 prosecution had ample time and opportunity to bring
21 the afore-listed cases to resolvment (sic), but
22 based upon prosecution's disguised strategy with
23 defense stemmed from ill motives towards the
24 defendant.

25 Once again, see Exhibit A.

1 The prosecution deliberately neglected
2 three counts of 48-month-old cases to resolve one
3 36-month-old case that was a less serious offense;
4 therefore, the prosecution never had any real or
5 true intentions to resolve the afore-listed cases,
6 but instead her only true motives was to
7 furthermore chastise the defendant by hindering him
8 by incarceration and depriving him of life and
9 liberty on old frivolous cases to further delay the
10 defendant's oppressive pretrial incarceration,
11 based upon the defendant's bail had been revoked by
12 the State and, therefore, unable to make bail.

13 Furthermore, based on the prosecution's
14 misfeasance, malfeasant ethics, the prosecution
15 wouldn't be able to show good cause of a
16 four-year-old case disposition based upon
17 sufficient proof and acts of deliberate negligence
18 of case disposition resolved.

19 Wherefore, based on the afore-listed
20 cases, falls under the provision of South Carolina
21 Constitution Article V, Section IV, paragraph E. I
22 am, furthermore, entitled to this dismissal relief
23 and, furthermore, request the Honorable Court to
24 grant the motion to dismiss the Complaint pursuant
25 to the afore-mentioned laws and provisions as so

1 ordered.

2 THE COURT: Okay. Thank you,
3 Mr. Blake.

4 State, care to be heard?

5 MS. LINDER: Yes, Your Honor. May it
6 please the Court. With respect to what Mr. Blake
7 said, I believe it's important to really look at
8 the timeline that we are dealing with in this case.

9 Yes, this case in front of you is old.
10 The procedural history of this, Mr. Blake was
11 arrested in April of 2012 for trafficking and two
12 gun charges; and then he was arrested in February
13 of 2013 for multiple additional drug charges; then
14 he was arrested in April of 2013 for failure to
15 stop for a blue light and attempted murder.

16 At this point, the State moved, after
17 he had been charged with two statutorily violent
18 crimes, to revoke his bond. That hearing was done
19 back in April of 2013 in front of Judge Hughston.

20 Part of the issues that we were having
21 then is that there were four attorneys that
22 Mr. Blake had associated in the case at that time:
23 Carlton Elliot, Jason King, Jim Smiley, and
24 Mr. King. Oh, I apologize, five.

25 THE COURT: Mr. King counts twice.

1 MS. LINDER: Yes. Eduardo Curry.

2 So all of those people were associated
3 in different cases. At that point, we were trying
4 to figure out who represented Mr. Blake on what
5 charges. Mr. Smiley had him on the highway patrol,
6 Mr. King had him on the county cases, at that point
7 Mr. Elliot had gotten out of it, and then Mr. Curry
8 had him on the City of Charleston SLED cases.

9 We went back and forth a number of
10 times. And then it was in 2014, February of 2014
11 is when I did a motion in front of our, at that
12 time, chief administrative judge, Judge Young, to
13 try to get some sort of clarification of counsel.
14 I had e-mailed all of the attorneys, sent a global
15 offer trying to get this resolved.

16 And at that point, Judge Young said
17 that Mr. King was going to represent him on
18 everything. So at that point we were in 2014. So
19 in 2014, I had communications with Mr. King as far
20 as his client, Mr. Blake, is concerned as far as an
21 offer and things of that nature.

22 The e-mail that was passed up to you
23 was sent November of 2014. And that is when I'm
24 going back and forth because, although there were
25 multiple attorneys and then Judge Young had one

1 attorney, I had since in the interim received new
2 letters of representation from both Ashley Ameika
3 and Bill Runyon, getting the attorney total up to
4 six throughout this time.

5 So at this point, I had communications
6 with Mr. Runyon and Ms. Ameika about this case, and
7 I had asked that -- trying to get all the dates
8 here. I apologize, Your Honor.

9 I asked about him rejecting the offer.
10 He had Ashley Ameika and Bill Runyon. I then
11 scheduled it -- I had scheduled it -- e-mail was in
12 November of '14. I had scheduled it in
13 January 2015 with his new counsel, Bill Runyon and
14 Ashley Ameika, to put it on the plea docket for a
15 plea rejection.

16 At that point, one of the two of them
17 was unavailable, so they asked me to reschedule it.
18 I then rescheduled it with the new attorney with
19 the same original offer to give Mr. Blake the
20 opportunity to plead to a low offer. I scheduled
21 it the week of April 4th of 2015.

22 So here we're six months past this
23 e-mail. So, obviously, my intention six months
24 prior when I'm trying -- when there's new attorneys
25 and I'm trying to keep things going, it all kind of

1 moves around somewhat fluid.

2 So then it was scheduled in April of
3 2015, again, for Mr. Blake to have the opportunity
4 with the new counsel to reject the offer.

5 At that point, both Mr. Runyon and
6 Ms. Ameika filed a motion to be relieved. It was
7 kind of a hybrid motion. Mr. Blake wanted to fire
8 them; they wanted to be released. Mr. Blake had
9 sought legal action against them saying they were
10 not representing his interests. And he can speak
11 more to that at the appropriate time if you care
12 for him to.

13 We finally had a hearing in July of
14 2015 with Judge Hughston when it was a motion to be
15 relieved. We had asked him to hear it at that
16 time. He declined and said that's something our
17 chief administrative judge, Judge Harrington,
18 needed to hear.

19 So here we're at the summer of 2015,
20 we're at one year ago now. So later
21 Judge Harrington did relieve them. Mr. King was
22 back on the case. The offer had already been
23 rejected when Mr. King had the case. The offer was
24 rejected when Ms. Ameika and Mr. Runyon had the
25 case. That is the cause of so much of this delay

1 with Mr. Blake and his representation,
2 who's-on-first type of thing.

3 After Mr. King was again reappointed,
4 it was less than a year ago, then I was looking to
5 try the different cases. At that point, I was
6 looking at the attempted murder, which Mr. Blake
7 allegedly shot a City of Charleston police officer.

8 That City of Charleston police officer,
9 after leaving the force, was at home, did a bunch
10 of medical, and I'm happy to report that he
11 actually is back on duty and was hired by the ATF.

12 So he was at the ATF Academy in Glynco,
13 Georgia for a six-month period. He was not
14 graduating until it was much -- until it was later,
15 so it was that and then all of my other
16 out-of-state witnesses, most of who were hotel
17 guests for that case, that I said I need to start
18 looking at a different one. I need to get another
19 one ready. I don't want him languishing in jail.

20 At that point, I looked -- I reviewed
21 all of my cases. And in this case, the corporal
22 who is here now, actually traveled from the
23 upstate. All of the other cases were officers who
24 were in town or closer than Corporal McAbee in the
25 upstate, which is why we then moved forward so

1 we're having forward movement with these trials.

2 We tried the case in June. It was on
3 multiple dockets. The reason it wasn't reached for
4 so many dockets is Mr. King understandably had
5 other cases that were on trial dockets that he was
6 going forward on. He can't be in two places at
7 once. It was on at least two prior --

8 THE COURT: Other cases in other
9 jurisdictions?

10 MS. LINDER: Here.

11 THE COURT: Here.

12 MS. LINDER: Mr. King had other trials
13 that he had that he was going forward on, on the
14 same trial dockets that this was on. And they were
15 all in Charleston, but out of, you know, 10 or 20
16 on the list, Mr. King was in court on another one.
17 The State was prepared to go forward at those
18 times.

19 The case was finally reached in June of
20 2016, and it went forward for trial and the jury
21 found Mr. Blake guilty.

22 Your Honor, while it seems like a very
23 long explanation, I think it's important for the
24 Court to understand that most of this delay was due
25 to Mr. Blake switching and it being unclear about

1 representation. When it goes from Jim Smiley,
2 Carlton Elliot, Jason King, Eduardo Curry, I have a
3 rejection done and then the e-mail sent, and then I
4 have new counsel coming on board, the new counsel I
5 sent the same offer to for him to have the ability
6 to reject it with them, it had to be rescheduled
7 due to their ability to get to court and prior
8 obligations, plus at that time Mr. Blake had sought
9 legal action against them.

10 Again, back to when we heard that
11 verdict, it was Judge Hughston and Judge
12 Harrington, and here we are at less than a year
13 from when the representation was sorted out, and
14 this is two trials in.

15 And, again, I didn't call any initial
16 order I had proposed because I had somebody at ATF,
17 at the academy, I had out-of-state witnesses and
18 many other things. And it was the State's
19 attempt -- while there was such a delay with so
20 many other things not in the State's doing, that's
21 why we went forward with the other cases first,
22 Judge.

23 THE COURT: All right. Thank you.

24 Mr. Blake, you're welcome to respond.

25 MR. BLAKE: I just want to say, Your

1 Honor, I technically only fired one attorney. The
2 rest of the attorneys that I had prior, they
3 resigned on their own. And the fact of the matter
4 is, the Solicitor's whole presentation, her whole
5 deal was based on distraction.

6 It does not excuse the fact that she
7 deliberately neglected a 40-month-old case to
8 resolve a 36-month-old case, and therefore, I think
9 you should make her pay for her negligence amongst
10 these cases for this.

11 THE COURT: Okay. Thank you,
12 Mr. Blake.

13 Okay. Your motions are protected for
14 the record, Mr. Blake, and preserved for the
15 record. I respectfully deny the same. I do not
16 find that the State has abused its prosecutorial
17 discretion and I have heard no articulation of any
18 legal prejudice from the alleged delay. And on
19 those bases, I will deny your motion.

20 Any additional motions we need to take
21 up?

22 MR. BLAKE: Yes. I've got another
23 motion to dismiss, Your Honor, while I present my
24 other motion.

25 THE COURT: Sure.

1 MR. BLAKE: The other motion is to
2 dismiss Complaints, and this is Complaint Number
3 M997496, trafficking cocaine. Your Honor, I come
4 humbly before this honorable Court to present my
5 motion to dismiss the Complaints.

6 Pursuant to the statutes of 4453370
7 subsection E and, further, the cause of action in
8 the incident are both clarified and established
9 and, therefore, undisputable in reference to
10 trafficking cocaine were both found and seized from
11 the officer's vehicle and myself being searched
12 prior to the -- before drugs and weapons -- or for
13 drugs and weapons.

14 The officer never conducted a search of
15 the seat of the vehicle before placing me within
16 his vehicle. Based on the circumstances of the
17 afore stated facts in reference to this incident,
18 the State did not and will not properly demonstrate
19 constructive possession of trafficking cocaine,
20 which is the burden of proof, and therefore, the
21 aforelisted does not fit the criteria within the
22 State's statutes of 44-53-370 subsection E.
23 Wherefore, I respectfully request that this
24 honorable Court dismiss the trafficking of cocaine
25 Complaint Number M9979496, Docket Number

1 2012-G-S1004707.

2 Thank you, Your Honor.

3 THE COURT: Okay. Thanks.

4 Ms. Linder.

5 MS. LINDER: Your Honor, briefly. The
6 State respectfully requests that you deny the
7 defense's motion. I believe a lot of things that
8 he's saying potentially could be jury issues. I
9 also think that the testimony will show some
10 different light as to what Mr. Blake is
11 representing to the Court.

12 First of all, he says that he was
13 removed from the car. There will be testimony from
14 the trooper that he observed Mr. Blake shove an
15 unknown item underneath his rear end on the
16 driver's seat of the vehicle.

17 When Mr. Blake was asked out of that
18 vehicle, we have a second deputy who was on scene
19 who witnessed Mr. Blake get out of the vehicle and
20 the ounce of cocaine sitting on the seat where he
21 was.

22 Further, the trooper goes back before
23 collecting the evidence and sees the item on
24 Mr. Blake's seat at the same location the deputy
25 witnessed it.

1 As far as his comment about searching
2 the seat prior. Trooper -- or Corporal McAbee will
3 be testifying that at the beginning of his shift he
4 searches his vehicle. He searches his vehicle for
5 drugs, contraband, he inspects it. As he does
6 every other time, he did that also in this case.

7 In this case, there was nothing in that
8 seat, and then Mr. Blake was placed in the car
9 after locating drugs in his vehicle where he was
10 sitting. And then as you will see, Your Honor, on
11 the dash cam, Mr. Blake is moving around, shifting
12 around, and then after they arrived at the jail,
13 Mr. Blake was taken out, and there was additional
14 drugs found in the front seat of the trooper's
15 cruiser at the jail. So there were drugs found in
16 two places, both are where Mr. Blake was sitting.

17 Also, it's the State's position that it
18 is an actual possession case not a constructive
19 possession case, so I don't believe that needs to
20 be addressed.

21 So, Your Honor, I respectfully request
22 that -- any of this I think will come out in
23 testimony and I ask you to deny the motion.

24 THE COURT: Okay.

25 Mr. Blake, would you like to respond,

1 sir?

2 MR. BLAKE: Yes, Your Honor. There
3 were never any additional -- no separate drug
4 charges sanctioned to support the facts that the
5 officer received drugs allegedly from my vehicle.
6 And furthermore, like I said, these facts are
7 undisputable.

8 The State can't demonstrate any type of
9 possession. I mean, you name it, it's lack of
10 burden of proof. It comes down to conjecture.
11 Conjecture is -- it is not -- this does not
12 clarify -- support what she is saying.

13 THE COURT: Okay. Thank you,
14 Mr. Blake. You're right about that, and conjecture
15 and speculation are not sufficient to convict a
16 defendant. There is no question about that, we
17 agree. Most of the issues that you brought up are
18 actually jury issues and matters of fact to be
19 determined by the jury, not to be determined by me
20 because I haven't seen any evidence.

21 So, you know, whether, in fact, they
22 can prove it or not remains to be seen, but I can
23 assure you that it will be very clear through my
24 charge and throughout the trial that the State has
25 the burden of proving its case beyond a reasonable

1 doubt, including all of the component elements of
2 the charges. And the jury will ultimately
3 determine what the facts are in the case.

4 With regard to the evidence, I presume
5 that immediately after this we're going to have a
6 suppression hearing, and I will hear evidence to
7 determine whether, in fact, the search was
8 reasonable and conformed to constitutional
9 requirements.

10 So on that basis, sir, I will
11 respectfully deny your motion. The same certainly
12 is preserved for the record.

13 MR. BLAKE: Okay.

14 THE COURT: Yes, sir?

15 MR. BLAKE: I want to present a motion
16 to suppress evidence.

17 THE COURT: Okay. All right. If you
18 would like, sir, I would be happy to hear the
19 motion and then we can hear some testimony on that
20 so that I can make a determination. okay?

21 MR. BLAKE: Okay. All right. This is
22 a motion to suppress evidence.

23 THE COURT: Yes, sir.

24 MR. BLAKE: Do you need for me to
25 recite the warrant numbers?

1 THE COURT: You don't need to. I have
2 all three Indictments in front of me and I
3 recognize that they apply to all the indictments.

4 MR. BLAKE: Okay. All right.. Your
5 Honor, I, the defendant, comes before this
6 honorable Court for my presentment of the motion to
7 suppress evidence in reference to Warrant
8 Numbers -- based on grounds supporting facts
9 pursuant to the exclusionary rule.

10 Miranda. A defendant may move to
11 suppress illegally seized evidence when it is
12 determined by the courts that a Fourth Amendment
13 violation pursuant to the United States
14 Constitution has occurred and evidence is illegally
15 obtained.

16 Here the Fruit of the Poisonous Tree
17 Doctrine quotes that where evidence would not have
18 come to light but for the illegal actions of the
19 police and evidence has been obtained by
20 exploitation of that illegality, the evidence must
21 be excluded.

22 Okay. For the first ground, faulty
23 initiation of a traffic stop. Violation of a motor
24 vehicle code provides an officer with reasonable
25 suspicion to initiate the traffic stop. A traffic

1 stop supported by a reasonable suspicion of a
2 traffic violation remains valid until the purpose
3 of the traffic stop has been fulfilled.

4 In carrying out a traffic stop, a law
5 enforcement officer may request a driver's license
6 and vehicle registration, run a computer check and
7 issue a citation. Any further detention for
8 questioning exceeds the scope of the stop and
9 therefore is illegal.

10 The purpose of the traffic stop was
11 accomplished except for the issuance of the traffic
12 citation pursuant to State v. Tindall.

13 For the second ground, unreasonable and
14 excessive delay of temporary detention. An
15 investigative detention must be temporary and last
16 no longer than necessary to effectuate the purpose
17 of the stop. Once the purpose of the stop is
18 fulfilled, the continued detention of the car and
19 the occupants amounts to a second detention.

20 The officer may not extend the duration
21 of the traffic stop in order to question the
22 motorists on unrelated matters unless he possesses
23 reasonable suspicion that warrants any additional
24 seizures of the motorist.

25 The State of South Carolina must do

1 more than simply label a behavior as suspicious to
2 make it so. The State must be able to either
3 articulate why a particular behavior is suspicious
4 or logically demonstrate, giving the surrounding
5 circumstances, that the behavior is likely to be
6 indicative of some more sinister activity than may
7 appear at first glance without ambiguously making
8 innocent circumstances appear suspicious.

9 However, inarticable (sic) hunches or
10 generalized suspicion is -- are insufficient
11 pursuant to Ybarra v. Illinois and United States v.
12 Foster.

13 Ground three, invalid probable cause
14 and involuntary consent search. Law enforcement
15 officials may not initiate the waiver of an
16 individual's right to consent to a search and
17 seizure by fabricating probable cause by creating
18 exigency and subsequently using fabricated exigency
19 to justify the waiver of individual consent to
20 search, pursuant to United States v. Driver, United
21 States v. Aldeco.

22 Therefore, the fifth element
23 post-traffic stop consent search of the chronology
24 of a traffic stop is invalid based upon
25 insufficient probable cause.

1 Conclusion: The numerous aspects of
2 this incident already failed to meet minimum
3 international standards safeguarding the fairness
4 of legal proceedings and the totality of the
5 accumulation of evidence. Bungling, malpractice,
6 and poor ethics can be observed throughout the said
7 incident and all the foregoing reasons cited above.

8 Therefore, the defendant moves and
9 requests the honorable Court to, one, suppress and
10 bar from use as evidence in the trial of this cause
11 any and all items seized, observations, or
12 statements made by the defendant that resulted from
13 the illegal search; two, suppress and bar from use
14 in the trial of this cause any and all testimony
15 relating to any and all items seized, observations,
16 and statements made by the defendant which resulted
17 from this illegal search and as is so ordered.

18 As to the issue before this honorable
19 Court, the defendant saith nothing further.

20 THE COURT: Okay. Thank you, Mr.
21 Blake. I agree with your recitation of the law. I
22 think that's accurate. So it's incumbent upon me
23 now to hear testimony about whether, in fact, the
24 search was reasonable.

25 So, Ms. Linder, if you'd like to call a

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1 witness to the stand, I would be happy to hear
2 testimony.

3 MS. LINDER: Yes, Your Honor. The
4 State calls Corporal McAbee.

5 Your Honor, may I approach the Court
6 Reporter to get a sticker?

7 THE COURT: Sure.

8 EARL DEAN MCABEE,

9 being first duly sworn, testified as follows:

10 THE CLERK: For the record, if you
11 could state your first and last name and spell out
12 your last name, please.

13 THE WITNESS: Dean McAbee. The last
14 name is M-C-A-B-E-E.

15 DIRECT EXAMINATION

16 BY MS. LINDER:

17 Q. Good afternoon, Corporal McAbee. How
18 are you doing?

19 A. Good.

20 Q. What was your occupation back in April
21 of 2012?

22 A. I was a state trooper with the South
23 Carolina Department of Public Safety.

24 Q. How long have you been with Highway
25 Patrol?

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1 A. Fourteen years now.

2 Q. And did you have the occasion to become
3 involved in a lawful traffic stop that was done
4 with the defendant on April 15th of 2012?

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

6 Q. And how were you brought into the case
7 and what happened? Where were you?

8 A. I was actually on I-526 headed towards
9 West Ashley here in Charleston County.

10 Q. And about what time was this?

11 A. This stop occurred around 4:00 a.m. in
12 the morning.

13 Q. Do you remember what day of the week?

14 A. It was Saturday night, early Sunday
15 morning, I do recall.

16 Q. And can you please tell the Court what
17 did the defendant do? What did he do in his
18 vehicle to where you first initiated the traffic
19 stop?

20 A. I was travelling towards West Ashley
21 from I-26. I noticed a vehicle approaching me at a
22 high rate of speed. I was in what we call the
23 number two lane, far right-hand lane. The vehicle
24 was approaching me in the number one lane, the left
25 lane. I then observed the vehicle speeding by

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1 radar and performed a traffic stop.

2 Q. What was the speed limit in that area?

3 A. The speed limit in that particular area
4 was 60 miles per hour.

5 Q. And with your radar, how fast was the
6 defendant going?

7 A. 82.

8 Q. And for math sake, how much over the
9 speed limit is that?

10 A. He was approximately 22 over that
11 limit.

12 Q. And did you notice any other traffic
13 infractions aside from the defendant speeding that
14 evening?

15 A. Once I initiated the traffic stop, the
16 blue lights were activated, I did. I noticed a
17 couple of other things that the defendant did
18 wrong.

19 Q. And what were those?

20 A. He was driving across the divider line
21 of the center lane, back and forth from the one
22 lane to the two lane, and I also observed the
23 defendant throwing something out the sunroof.

24 Q. And did the defendant eventually stop?

25 A. He did eventually stop on the right

1 shoulder in the emergency lane.

2 Q. And when you pulled over, where did you
3 pull over?

4 A. Directly behind the defendant's
5 vehicle.

6 Q. And is your car equipped with audio and
7 video capability?

8 A. Yes, ma'am, it is.

9 Q. And can you kind of describe those
10 capabilities of your camera and microphone of your
11 cruiser and yourself?

12 A. Right. The video camera is set to
13 activate upon activation of the blue lights, and
14 which in this case it did. But not only that, it
15 actually backed up for 30 seconds and it showed any
16 recording -- not audio, but it actually showed the
17 recording of anything that transpired prior to the
18 blue light activating back up to 30 seconds.

19 Q. And did your camera and microphone
20 record back on April 15, 2012?

21 A. Yes, ma'am, it did.

22 MS. LINDER: Your Honor, may I approach
23 the witness?

24 THE COURT: Yes, ma'am.

25 BY MS. LINDER:

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1 Q. At this time I show you what has been
2 marked as State's 1 for ID purposes. Do you
3 recognize this?

4 A. Yes, ma'am. That's the actual video
5 that I presented.

6 Q. And how do you recognize it?

7 A. Well, not only have I watched it, but
8 I've also initialed that video as well.

9 Q. So you've initialed this disk. And is
10 this disk a fair and accurate representation of
11 what happened that night back on April 15th or
12 morning of 2012?

13 A. Yes, ma'am, it does.

14 MS. LINDER: Your Honor, I would ask to
15 admit this disk into evidence for the purposes of
16 this hearing and I'll publish it shortly.

17 THE COURT: Okay. Mr. Blake, any
18 objection, sir, for publishing that, and admission
19 for purposes of the hearing, not for evidentiary
20 purposes?

21 MR. BLAKE: Okay.

22 THE COURT: You're good?

23 MR. BLAKE: Proceed.

24 THE COURT: Okay. Good. Same as
25 admitted.

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1 (STATE EXH. 1 in evidence.)

2 BY MS. LINDER:

3 Q. So after initiating the traffic stop,
4 can you explain to the Court what happened? What
5 happened when you initiated the stop? When you
6 approached, what did you observe?

7 A. When I actually approached the vehicle,
8 or as I was actually stopping the vehicle, I
9 noticed an arm coming out of the window and you
10 could tell that Mr. Blake was actually disposing of
11 something at that point in time.

12 And then after the traffic stop, we
13 were on the shoulder, on the right-hand shoulder in
14 the emergency lane, I approached the vehicle. I
15 walked up and talked with Mr. Blake and asked him
16 for his license, registration, and insurance at
17 that time.

18 Q. Was he forthright in giving it all to
19 you?

20 A. He did not. He apologized and asked me
21 if I was doing okay tonight. He was over friendly
22 I thought there for a minute. He was reaching out
23 to shake my hand, which we don't do. I noticed
24 that he was breathing heavily, what we say; you
25 could see the actual heartbeat in the chest. He

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1 was -- he seemed to be very nervous at that point
2 in time.

3 Q. All right. And did you notice anything
4 on the seat of his car?

5 A. On the passenger side, he did have a
6 box of food sitting on the passenger side, but not
7 only that, I noticed that there was a clear
8 glassine portion of a baggie laying inside the car
9 that I questioned Mr. Blake about as well.

10 Q. And with your training and experience,
11 what does that corner-cut clear plastic baggie
12 indicate to you?

13 A. Usually that somebody's had some kind
14 of narcotics in it. And like I said, not only
15 that, but it heightened my awareness for the fact
16 that he had his hand out the window, appeared to be
17 disposing something through the sunroof, and then
18 seeing that baggie sort of pretty much confirmed to
19 me what I was speculating he was doing as he was
20 preparing to stop his vehicle.

21 Q. Did you notice any odor about his
22 person?

23 A. I did, I could smell the alcohol. I
24 asked him if he'd had anything to drink before I
25 ever went any further with him, and he denied the

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1 consumption of alcohol at that time.

2 Q. But you could smell something?

3 A. I could smell it.

4 Q. And when you're at the passenger side
5 talking with Mr. Blake, the initial part of the
6 stop when you're trying to get the basic
7 information, license, registration, insurance, did
8 Mr. Blake do anything with his door?

9 A. He did. He opened up his door and he
10 threw another item out the left-hand side of the
11 vehicle and then closed his door back.

12 Q. All right. So did you end up going
13 back to your cruiser to check some of the
14 information on Mr. Blake?

15 A. I did. I returned to my cruiser right
16 after that there, and on my way back I went to see
17 what it was that he had actually threw out the
18 driver's side door.

19 Q. And when you went back to -- what were
20 you running of Mr. Blake?

21 A. I actually had the dispatch center -- I
22 had already given the tag number of the vehicle.
23 And when we do that, they just tell us if the
24 plates are clear, if it's stolen or anything of
25 that nature. And then I went back to the patrol

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1 vehicle once I obtained his license, in which he
2 didn't want to hand to me. He wanted to lay it on
3 the seat for me to reach into the vehicle to
4 obtain.

5 And once I got that license, I went
6 back and ran his driver's license as well through
7 the dispatch center. And we do that to make sure
8 that, one, the license are clear and valid and not
9 suspended for anything, and also whether -- they'll
10 let us know if any hits come back on an individual
11 being wanted for anything.

12 Q. And did you ever go back up to that
13 car?

14 A. I did.

15 Q. Why?

16 A. After I sat there for a few minutes and
17 watched Mr. Blake and watched what he was doing
18 inside the vehicle, he was actually getting out of
19 the driver's seat all the way over into the
20 passenger side of the vehicle, and you could tell
21 that he was doing something either under the seat
22 or in the passenger floorboard at that time.

23 And so I had already seen the fact of
24 what he had done out the sunroof and seeing the
25 baggie laying in the floor. At that point in time,

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1 I got out and reapproached the vehicle again.

2 Q. And when you reapproached the vehicle,
3 are you using just your naked eyes or do you have
4 any assistance of light?

5 A. I had a flashlight with me at that
6 time, and I think the video actually shows the
7 flashlight on as I walked up to the vehicle.

8 Q. And what did you observe when you
9 walked up to the vehicle?

10 A. Mr. Blake was actually leaned over to
11 the passenger side floorboard where the front seat
12 is, and when I walked up and put the flashlight in
13 the window, he actually jumped from the passenger
14 side, threw something under his buttocks, and sat
15 back in the driver's seat again.

16 Q. And why did this -- did this raise
17 any -- any suspicion to you or any concern for you?

18 A. It did. It took the stop to a
19 different level because I didn't know what he had
20 actually pitched under him at the angle I was in,
21 but I could tell it was something that he had in
22 his hand and he threw it under his buttocks and sat
23 down on it.

24 And, again, I didn't allude to the fact
25 or ask him any questions about that at that

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1 particular time because I didn't want to heighten
2 his awareness or anything that I observed
3 something, because he was still sitting in the
4 driver's seat of the motor vehicle and the last
5 thing I want to do is be standing beside an
6 individual take off on me.

7 So I proceeded back to the car as if I
8 did not observe anything, and that's when I called
9 for an additional unit.

10 Q. So, at this point, he had been
11 speeding, 82 in a 60?

12 A. Yes, ma'am.

13 Q. And smelled of alcohol?

14 A. Right.

15 Q. Were you intending to arrest him for
16 DUI?

17 A. Once the process would have went
18 further, he would have probably been given the
19 opportunity to give a sobriety test, but based off
20 the totality of all the traffic stop and everything
21 that occurred, that did not happen, but he was
22 charged with DUI.

23 Q. You had mentioned that you called for
24 backup. What happened when backup came, and is
25 that something you normally do?

1 A. Well, the case is kind of unique, I
2 guess, in its own sense because I called for backup
3 from Charleston City because I was actually in the
4 city limits of Charleston, but a Charleston County
5 Sheriff's Deputy actually pulled up on me. And I
6 thought maybe they had dispatched him out, and I
7 asked him and he said no.

8 Well, since he was there and he was an
9 officer and he's with the county, I said, okay, let
10 me tell you what I got and I'll cancel the city,
11 and which I told him what had transpired up to that
12 point and that I was going to ask Mr. Blake out of
13 the vehicle. So he was going to stand by waiting
14 at that time, but the city officer did arrive on
15 the scene as well.

16 Q. And the time between you smelling the
17 alcohol and seeing Mr. Blake shove something under
18 his buttocks, I believe you said it moved it to a
19 different level. From that time to the deputy
20 arriving on scene, was that an hour?

21 A. It definitely wasn't an hour. The
22 whole stop wasn't an hour, but I would say within
23 the deputy getting there and him getting out of the
24 vehicle, just a rough guesstimate, was maybe
25 15 minutes from the stop until the deputy arrived.

1 Q. And when the deputy arrived, can you
2 explain the approach to the vehicle at that point,
3 the approach to Mr. Blake's vehicle?

4 A. Yes. Once the deputy arrived and I
5 explained to him what was going on and what all I
6 had observed at that point and that I was going to
7 ask Mr. Blake out of the vehicle, I actually did a
8 passenger approach. I always do it as a trooper.

9 I mean, we're on the interstate a lot,
10 and not only that, but being out here we see a lot
11 of wrecks, so I always do a passenger-side approach
12 regardless. But the deputy, you know, he chose to
13 do a driver's side approach.

14 So I went to the passenger side and
15 just leaned over and told Mr. Blake I wanted him to
16 step out of the vehicle, and the deputy went to the
17 driver's side.

18 Q. And was Mr. Blake pulled out of the
19 vehicle?

20 A. No. He was asked out of the vehicle,
21 and he got out on his own accord.

22 Q. And what was observed when Mr. Blake
23 got out of the vehicle?

24 A. Once he got out of the vehicle, the
25 deputy had observed it, but you could actually see

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1 it from the passenger side that the baggie was
2 laying on the seat. So he came back to the back of
3 the vehicle where the deputy was at. The deputy
4 went back up there and observed the package again.

5 At that time, I told him to stand there
6 with him. As I was walking by, the deputy
7 confirmed, yes, that he's got narcotics, what
8 appears to be narcotics on the driver's seat.

9 Q. And was this a teeny, little bag?

10 A. No, ma'am, this was a pretty good-sized
11 bag. I mean, I guess in law enforcement, or for
12 the purpose of court, it's what we usually refer to
13 as an eight ball of cocaine or something; you know,
14 a pretty good-sized bag of cocaine.

15 Q. But the chemist does all the lab work?

16 A. They do all the lab work, confirmed
17 the -- what the substance is.

18 Q. All right. And then after seeing the
19 drugs on the seat, is that when you put Mr. Blake
20 in custody?

21 A. I did. I came back and told him to put
22 his hands behind his back at that time; I was
23 placing him under arrest.

24 Q. And what were you placing him under
25 arrest for at that time?

SUPPRESSION HEARING - DEAN MCABEE - DIRECT EXAM BY MS. LINDER

1 A. The narcotics, as well as the DUI.
2 Like I said, once he was placed -- got into the
3 patrol car, the closer I was to him, the more I
4 could smell the alcohol.

5 Q. As a result of placing him under arrest
6 for DUI and narcotics violation, what do you do
7 with the vehicle on the side of the road?

8 A. We actually had the vehicle -- we
9 inventoried the vehicle and then we have it towed.

10 Q. And what did you -- at that point he's
11 under arrest; you are about to get the vehicle
12 towed; you see drugs in plain view. Is that when
13 you search the vehicle?

14 A. It is. I had the deputy stand by to
15 wait with him, and that's when I went back to the
16 vehicle a second time. I opened up the passenger
17 door and I looked to see where he was when he was
18 leaning over the seat and why he was leaning under
19 the seat for.

20 I didn't know if he was trying to hide
21 stuff under there and that's one piece that he
22 didn't get under the seat, but threw it under his
23 buttocks. I figured there was something else. And
24 as I opened up the door and leaned forward, that's
25 when I seen the butt of the weapon.

1 Q. All right. And was Mr. Blake charged
2 with any weapons violations?

3 A. Yes, ma'am, he was.

4 Q. And did you ever find -- did you ever
5 find more drugs associated with Mr. Blake at all
6 this early morning aside from his vehicle?

7 A. I did. Once we arrived at the
8 Charleston County detention center in my patrol car
9 seat.

10 Q. And do you inspect that seat before
11 your shift?

12 A. We inspect that seat, our equipment and
13 everything prior to each shift. Not only that, if
14 we do happen to arrest anybody, once we take them
15 out of the vehicle, we always do a search, a search
16 of our vehicle to make sure that they didn't place
17 or leave anything, not only of value but any type
18 of evidence that they may try to leave in the
19 vehicle as well because that does happen.

20 Q. And was Mr. Blake sitting in the back
21 or the front of your car?

22 A. He was sitting in the front seat. The
23 troopers -- we all carry people in the front seat.

24 Q. And was your front seat clear before
25 Mr. Blake got in it?

SUPPRESSION HEARING - DEAN MCABEE - DIRECT EXAM BY MS. LINDER

1 A. It was. There was nothing in it.

2 Q. And did anyone sit in that seat aside
3 from Mr. Blake by the time you put him in and he
4 got to jail?

5 A. No, he was the only one.

6 Q. And when you got him out at jail, what
7 did you observe in that seat?

8 A. Again, I noticed a large amount of
9 powder substance in my front seat right at the
10 crease where Mr. Blake was sitting, but not only
11 that it was down the side of the seat as well where
12 it had spilled over to the right side.

13 MS. LINDER: All right. Beg the
14 Court's indulgence?

15 BY MS. LINDER:

16 Q. Did you end up doing a Datamaster on
17 Mr. Blake that night?

18 A. Yes.

19 Q. What did he end up blowing?

20 A. His Datamaster, as I recall, was a -- I
21 think it was a 1.4. I think it's in my report.

22 MS. LINDER: Your Honor, at this time I
23 would request to play part of the video that shows
24 the stop, if the Court would like, or we can go
25 with Corporal McAbee's testimony.

SUPPRESSION HEARING - DEAN MCABEE - DIRECT EXAM BY MS. LINDER

1 THE COURT: Mr. Blake, do you need to
2 present any portion of the video to make the points
3 that you want to make to the Court?

4 MR. BLAKE: Yes. Yes, Your Honor, I
5 would.

6 THE COURT: Okay. Well, then let's go
7 ahead and play it.

8 MR. BLAKE: All right.

9 MS. LINDER: And, Your Honor, the video
10 is about an hour and 10, or an hour and 15 minutes
11 long. I'm going to start it from the beginning and
12 then I was intending to stop it after Mr. Blake was
13 in custody.

14 THE COURT: Okay. How long is that?

15 MS. LINDER: That's about 20 minutes.

16 THE COURT: 20 minutes? Okay.

17 Do you need to see that, Mr. Blake?

18 MR. BLAKE: Yes. Yes, Your Honor.

19 THE COURT: And is that the same
20 portion as well that you need to see?

21 MR. BLAKE: Yes.

22 THE COURT: Okay. All right. Well,
23 let's do that. Go ahead and cue it up. This is
24 what I want to do: I want to take a very short
25 break, and I think probably what we need to do is

SUPPRESSION HEARING - DEAN MCABEE - DIRECT EXAM BY MS. LINDER

1 tell that jury 2:00. Okay?

2 So I'm going to take a very, very short
3 break and then come back in and we'll watch the
4 video. Okay?

5 (A recess transpired.)

6 THE COURT: Mrs. Linder, you may
7 proceed.

8 MS. LINDER: Judge, just very quickly
9 before I hit play. During the brief recess I
10 talked to Mr. Blake and also Mr. King. As far as
11 scheduling of the trial is concerned, Highway
12 Patrol and how they handle their evidence, they
13 actually have their evidence custodian bring it
14 down to us.

15 So they are in town now. They came
16 down from Columbia. I'd really like to get them --
17 they're just chain witnesses. I would like to get
18 them done today so they don't have to drive back
19 when we come back tomorrow.

20 I mentioned it to Mr. Blake and
21 Mr. King that, of course, if you would like to
22 stipulate to two of those chains, we will have them
23 around; otherwise, I would request that we may have
24 to go to 5:30 or 6:00 in order to get them in
25 today.

SUPPRESSION HEARING - DEAN MCABEE - DIRECT EXAM BY MS. LINDER

1 THE COURT: Okay.

2 MS. LINDER: And I told Mr. Blake and
3 Mr. King that over the break.

4 THE COURT: All I will tell you is that
5 I suspect that you could probably do it more
6 quickly than that, and I would ask you to be
7 surgical in your questioning.

8 MS. LINDER: Yes, Judge.

9 (Whereupon, video was played in open
10 court.)

11 MS. LINDER: And, Your Honor, I don't
12 know if -- at this point we have four minutes left
13 until backup arrives. I don't know if Your Honor
14 wants us to fast-forward and if Mr. Blake would be
15 okay with fast-forwarding to the point where the
16 deputy arrived.

17 THE COURT: Do you want to do that?

18 MR. BLAKE: Yes, Your Honor.

19 THE COURT: All right. Let's do that.

20 (Whereupon, video was played in open
21 court.)

22 MS. LINDER: Your Honor, I just
23 confirmed with Mr. Blake and he said it was okay to
24 stop at that point. I believe the dash cam video
25 and Corporal McAbee's testimony is all the State is

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 going to present at this time. Thank you, Judge.

2 Mr. Blake, do you have any questions
3 that you would like to ask?

4 MR. BLAKE: Questions that I want to
5 ask him?

6 THE COURT: Yes, sir.

7 MR. BLAKE: Oh, yes, definitely.

8 CROSS-EXAMINATION

9 BY MR. BLAKE:

10 Q. Officer McAbee, you state in the
11 incident report, page 1, line 1 through 2, that you
12 conducted a traffic stop amongst myself allegedly
13 for a speeding violation, dated April 15, 2012,
14 correct?

15 THE COURT: I will let him ask that
16 question. I think that's appropriate. I think
17 what the Solicitor is anticipating is a little
18 testimony, so that's okay.

19 You can answer it, Officer.

20 THE WITNESS: I did stop you for
21 speeding, Mr. Blake; that's correct.

22 BY MR. BLAKE:

23 Q. All right. Did you ever citation me
24 for speeding citation?

25 A. No, sir; I did not.

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 Q. Okay. If the alleged speeding
2 violation were your true intentions and motives for
3 conducting a traffic stop amongst myself, then why
4 did you initiate and -- later on, a
5 self-incriminating interrogation amongst myself
6 relating to marijuana?

7 A. You're going to have to ask that in a
8 different format. I don't understand the question.

9 Q. Okay. You said you stopped me for
10 speeding; right?

11 A. Yes, sir.

12 Q. All right. If that was your true
13 intention and the real motive for stopping me, then
14 why did you initiate later on a self-incriminating
15 interrogation amongst the both of us about
16 marijuana?

17 MS. LINDER: Judge, I think it's a
18 compound question. I also think he's making
19 improper comments about what occurred.

20 THE COURT: That's okay. The officer
21 can answer.

22 THE WITNESS: Well, the initial traffic
23 stop was actually for speeding. Any time you make
24 a traffic stop, it can actually go above and beyond
25 what the original stop was for, and in this case it

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 did.

2 BY MR. BLAKE:

3 Q. Okay. But then that's not a -- why did
4 you relate to marijuana? Of all things you could
5 think of, you just came to the conclusion that, you
6 know, a black man, 4:00 in the morning, had to have
7 been drugs on -- it had to have been drugs. It
8 couldn't have been trash.

9 A. It could have been --

10 Q. Why did you come to the conclusion of
11 marijuana?

12 A. You know, at 4:00 in the morning, I
13 really don't know what your ethnic background was
14 as far as being stopped. As far as your hand out
15 the window, that is a common practice that I've
16 seen in 22 years of my service of what people are
17 doing is trying to destroy evidence. Something was
18 flying back on my windshield and it appeared to be
19 marijuana.

20 Q. Appeared to be marijuana?

21 A. That's correct.

22 Q. You never, ever state this within the
23 incident.

24 A. I asked you -- I asked you as soon as I
25 walked up to the car --

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 Q. You did not state --

2 MS. LINDER: Objection, Your Honor;
3 argumentative.

4 THE COURT: Yeah.

5 MR. BLAKE: Okay.

6 THE COURT: Mr. Blake, you've been
7 doing well, but when he begins to answer, you can't
8 argue with him. You've got to accept his answers
9 as he gives them to you. Okay?

10 MR. BLAKE: Sorry, Your Honor.

11 THE WITNESS: So if I may answer, as
12 far as the marijuana goes, I did question you about
13 the marijuana, if you were throwing marijuana out
14 the sunroof. I did allege marijuana.

15 MR. BLAKE: Okay. I want -- better
16 give me some time, Your Honor, because I don't want
17 to ask him the wrong thing and then she's going to
18 object and you're going to have to instruct me
19 again. Okay?

20 BY MR. BLAKE:

21 Q. Okay. You approached my vehicle. At
22 any time did you smell burnt marijuana?

23 A. I did not smell marijuana.

24 Q. Okay.

25 A. I didn't say it was a joint. It was in

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 a package, so it wouldn't have been burnt.

2 Q. Okay. At any time did you smell
3 unburnt marijuana?

4 A. I did not.

5 Q. Okay. That's argumentative, so I'm not
6 gonna present that.

7 Okay. Let's talk about the -- let's
8 talk about this probable cause, that you gave a
9 suspicion of it being marijuana. You stated in the
10 incident report, page 4, lines 1 through 6, that
11 you witnessed me throw out something from my
12 vehicle amongst before the traffic stop, that I
13 confirmed to be a chicken bone from the chicken
14 meal I was eating prior to the stop that fell
15 between my seats as I was pulling over, and you
16 later identified it to be an alleged plastic bag;
17 correct?

18 A. I can say on the -- I can say on this
19 stand what came out of the sunroof was not a
20 chicken bone.

21 Q. No. We're talking about when I opened
22 my driver door and you said that at that point I
23 told you what I threw out, and then you stated
24 frequently within this incident that you saw a bag
25 on the ground.

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 A. That is true.

2 Q. That's correct?

3 A. Never did I see a chicken bone on the
4 side of the road.

5 Q. Okay. Okay. Did you seize this
6 plastic baggie?

7 A. I did not.

8 Q. As a highly-trained police officer, as
9 potential evidence, may I ask why did you not seize
10 the baggie?

11 A. It had been blown away by the time that
12 had occurred, and the piece that I saw had nothing
13 in it.

14 Q. But it supports the probable cause;
15 does it not?

16 A. Of the traffic stop? No, sir, it
17 don't.

18 Q. It supports your suspicion of
19 additional activity within the posted traffic stop;
20 right?

21 A. Your demeanor in itself heightened my
22 awareness to that.

23 Q. Okay.

24 A. And what I saw laying in the vehicle.

25 Q. Okay. So you can't present any proof

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 before this Court that this alleged bag ever
2 existed, correct?

3 A. You are not charged with anything in
4 that bag, Mr. Blake.

5 Q. Okay. That's a yes or no. Can you
6 prove physically that the bag ever existed?

7 A. I don't have that bag, no, I don't.

8 Q. Moving forward. You state, based on
9 your incident report, page 4, line 7 through 9,
10 that after obtaining my driver's credentials, you
11 then returned back to the police cruiser to run my
12 information and as the witness was making
13 suspicious movements; correct?

14 A. That's true.

15 Q. And based upon these suspicious
16 movements, you returned back to my vehicle, as
17 stated in your incident report, pages 4, lines 10
18 through 11, and later you witnessed me put
19 something under my seat and sat on it; correct?

20 A. Under your butt and sat on it; that's
21 correct.

22 Q. Was it under my seat or was it under my
23 butt --

24 A. Under your butt.

25 Q. -- because the incident report says

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 under the seat. Did you write the incident report?

2 A. I did.

3 Q. Okay. So you're, furthermore,
4 contradicting yourself at this point because you
5 said it was under my seat and not under my butt.

6 A. It was under your butt.

7 Q. Okay. Okay. If you allegedly
8 witnessed me put something under my seat or under
9 my butt and I sat on it, or whatever your
10 contradiction is, why didn't you ever arise to the
11 alleged act during the course of the act?

12 A. As previously stated, to the fact that
13 you were still sitting in your vehicle with your
14 engine running, and I didn't know whether it was a
15 weapon or drugs or what it was that you threw under
16 there.

17 Q. Okay. So you're saying that the fact
18 because I gave you all my information, I'm going to
19 take you on a high-speed -- I mean, you can just go
20 straight to my house and --

21 MS. LINDER: Objection, Your Honor,
22 argumentative.

23 THE COURT: Okay. Mr. Blake.

24 THE WITNESS: Sorry about that.

25 THE COURT: I understand the point that

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 you're making. I understand the point that you're
2 making.

3 MR. BLAKE: I have a lot of, you know,
4 frustration built up in accordance with --

5 THE COURT: And I appreciate that. And
6 just to tell you as well, and this -- a lot of the
7 questions that you're asking are actually good
8 questions, and they're good questions for the jury
9 ultimately because they go to credibility.

10 MR. BLAKE: Yes.

11 THE COURT: But for the purpose of this
12 hearing, obviously, it's a suppression and a
13 probable cause. And when you ask a question, I
14 usually know what type of point that you're making.
15 Okay?

16 MR. BLAKE: Okay.

17 THE COURT: I've done this long enough
18 where I understand the issues that are being
19 presented. Okay?

20 MR. BLAKE: Okay. I'll try to limit it
21 down and get to the point and get to the baby of
22 the situation.

23 THE COURT: Sure.

24 BY MR. BLAKE:

25 Q. All right. Trooper McAbee, after

1 pulling me out the vehicle and backup arrives, you
2 informed the deputy that I'm making suspicious
3 movements within my vehicle and that -- alleged
4 suspicious activities that you witnessed being
5 conducted in my vehicle. Okay. You then asked him
6 to assist you on getting me out of my vehicle at
7 this point; correct?

8 A. That's true.

9 Q. Okay. At that point, and after that,
10 you-all -- both of you-all or three of you-all,
11 you-all got me out my vehicle and you were standing
12 at the passenger side --

13 A. That's correct.

14 Q. -- and the deputy came and got me from
15 the driver's side. Okay. I complied. I walked to
16 the rear of the vehicle and the deputy conducts a
17 visual scan search amongst my vehicle; correct?

18 A. Not at that time, he did not.

19 Q. So you didn't witness within the
20 incident or -- or what we just saw that he didn't
21 conduct a visual scan amongst my vehicle?

22 A. Not at the time you were exited, no.
23 After you had exited and walked to the back of your
24 vehicle --

25 Q. That's what I'm saying. After I

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 exited, he conducted a visual scan search; correct?

2 A. Upon the second approach, he did look
3 inside your vehicle; that's true.

4 Q. Okay. At this point, you walk around
5 from my passenger side to my driver's side, open up
6 my door.

7 A. I do.

8 Q. I believe that was you?

9 A. Yeah, after I patted you down. I
10 stopped where you were at initially.

11 Q. Okay. Patted me down; right?

12 A. That's true.

13 Q. And then did you not go and make a
14 reapproachment (sic) to my driver's door?

15 A. I did.

16 Q. Okay. And after that you conducted a
17 visual scan?

18 A. I did.

19 Q. Amongst my vehicle; right?

20 A. I did.

21 Q. Okay. At that point, where exactly did
22 you locate this alleged crack paraphernalia, crack
23 cocaine, cocaine, these numerous drugs within these
24 incident reports? Where exactly did you locate
25 this --these drugs in my vehicle?

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 A. Right in the center of your driver's
2 seat where you were sitting.

3 Q. The center of my driver's seat?

4 A. That's correct.

5 Q. Okay. Did I authorize or give you an
6 approval to search my vehicle?

7 A. I did not ask for permission, nor did I
8 need it. And the purpose of it is, once you exited
9 out, when I was actually on the passenger side I
10 could see the object laying on it in plain view.

11 Q. Hold on. Hold on. Hold on. Time out.
12 You said you could see the object laying in plain
13 view after the fact that the initial deputy -- he
14 did a -- he conducted a visual scan. He never
15 confirms in this video that he's telling you or
16 give you confirmation that drugs are in my vehicle.
17 I never gave him permission anyway to search my
18 vehicle. I don't know who authorized him to search
19 my vehicle. I don't know if it was you; it
20 definitely wasn't me.

21 MS. LINDER: Your Honor -- Judge,
22 again, objection; argumentative.

23 THE COURT: All right. I duly note the
24 objection. I will let you go on, Mr. Blake.

25 MR. BLAKE: Okay.

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 THE COURT: But, again, I will tell
2 you, Ms. Linder is right. You're kind of getting
3 into testimony. I'll let you argue that. I mean,
4 I'm not going to limit you from saying what you
5 want to say.

6 MR. BLAKE: Okay. I'm just making the
7 point, Judge, that it wasn't voluntary.

8 THE COURT: I got you. I understand
9 exactly what you're saying. I understand exactly
10 what you're saying.

11 BY MR. BLAKE:

12 Q. At this point, you conducted a visual
13 scan and you said you saw drugs inside the middle
14 console; am I correct?

15 A. Not the middle console.

16 Q. You said it was on my driver's seat?

17 A. On the driver's seat, that's correct.

18 Q. Okay. And after you observed this
19 substance that -- apparently, you know, from what
20 it looks on the video, that you didn't obtain it or
21 seize it at that point.

22 A. That's correct.

23 Q. Okay. You closed my door and then
24 looks as if you were trying to -- you put me under
25 arrest; correct?

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 A. I think I told you when I put the cuffs
2 on you that the bag in the vehicle is what you were
3 under arrest for.

4 Q. And what was that again?

5 A. For the drugs that were on your
6 driver's seat.

7 Q. No. What specifically did you say you
8 arrested me for?

9 A. The drugs that were on your driver's
10 seat.

11 Q. Okay. Well, I got in the video you
12 said crack cocaine.

13 A. You asked me a second time -- you asked
14 me the first time --

15 Q. Yeah.

16 A. -- I told you, you were under arrest
17 for the drugs on your seat. You asked me again
18 when we were walking to the car, and I said what
19 appeared to be crack cocaine on your driver's seat.
20 At that time, I had not physically obtained the
21 drugs from your car at that time.

22 Q. I mean, you say on my seat, but I do
23 not -- I cannot imagine a picture where that's on
24 my seat in plain view. I just cannot -- you say in
25 the seat --

SUPPRESSION HEARING - DEAN MCABEE - CROSS EXAM BY MR. BLAKE

1 A. Where you threw it when I walked back
2 up, in your seat.

3 MR. BLAKE: For the record, my last
4 question, Your Honor. Everything else is really
5 argumentative at that point.

6 BY MR. BLAKE:

7 Q. Did I or did I not give you or the
8 deputy consent to search my vehicle?

9 A. You did not; I did not ask.

10 Q. Why did you not ask?

11 A. Already had drugs in plain view.

12 Q. You had drugs in plain view that the
13 deputy walked past and didn't see either?

14 A. You asked and I answered.

15 MR. BLAKE: Your Honor, I rest my case.

16 THE COURT: Okay. Thank you.

17 Anything further from the State with
18 regard to the search and seizure?

19 MS. LINDER: Judge, no.

20 THE COURT: Okay. All right.

21 Mr. Blake, any --

22 Officer, you may stand down. Thank you
23 very much. I appreciate it.

24 Mr. Blake, any argument that you would
25 like to make, sir?

1 MR. BLAKE: In regards to his testimony
2 provided?

3 THE COURT: In regard to the
4 admissibility of evidence that was seized and the
5 reasonableness of the search and probable cause for
6 the stop.

7 MR. BLAKE: Okay, Your Honor.

8 Like I said, I believe -- like I said
9 in ground one, the faulty initiation of the traffic
10 stop and the proceeded scope of the stop, and I
11 believe it was an unreasonable and excessive delay
12 and a temporary detention, and I believe it to be
13 invalid probable cause and involuntary consent.

14 As you just heard, Trooper McAbee said
15 he never asked me for permission prior to searching
16 my vehicle because he allegedly found the probable
17 cause that he never ever received of me.

18 So, therefore, it's reasonable to
19 believe that the probable cause was fabricated at
20 this point, because he does not seize it, and prior
21 to the other deputy who conducted the visual scan,
22 he does not seize it either.

23 I mean, why are you going to stall to
24 make an arrest if the deputy allegedly initially
25 saw it and -- before the trooper did and then, all

1 a sudden, the trooper conducts the visual scan and
2 conveniently finds drugs laying in plain view of my
3 vehicle?

4 So it's reason to believe that he
5 fabricated a probable cause and altered any items
6 in my vehicle at that point and further put me in
7 detention to carry out and justify his initially
8 ill-motive arrest.

9 THE COURT: All right. Thank you, Mr.
10 Blake. I appreciate it.

11 Ms. Linder, would you like to respond
12 to anything?

13 MS. LINDER: Just briefly, Your Honor.
14 As you heard from Corporal McAbee and also watched
15 the video, Judge, this was a routine stop that
16 night. He was speeding, 82 in a 60. It was done
17 via radar. This is kind of a textbook thing. It's
18 22 over. It's not two over and it's not one over.
19 This is 22 over. This was an arrestable amount
20 over.

21 And, Judge, as far as that routine stop
22 for speeding, it changed. That's what it is.
23 That's what it comes down to; the scope of the stop
24 was expanded. Absolutely. The scope was a
25 speeding ticket and it all changed..

1 It changed, as you heard in testimony,
2 that upon the officer's approach, he smelled
3 alcohol about the defendant. The defendant
4 commented as you saw in the dash cam video that he
5 was coming from the club.

6 The officer saw a baggie in the
7 corner -- I believe he said corner -- plastic
8 baggie in the front driver's seat, and then he
9 opened the door and threw it outside, which raised
10 suspicions of the law enforcement.

11 He also went back to run his driver's
12 license, which is routine. He sees such
13 exaggerated movement almost in the passenger seat
14 that he went back up, and that's when he shined his
15 flashlight. And you heard him testify, he saw
16 Mr. Blake jump back in his seat and put something
17 under his rear.

18 Judge, as far as the video is concerned
19 time-wise, the first approach was at a minute and
20 43 seconds; he had asked for the registration and
21 insurance, and that was at two minutes and 39
22 seconds; 3:10, that's when Mr. Blake opened that
23 door and threw something out. Things changed.

24 Upon the approach at 1:43, things
25 changed with the smell of alcohol. At 4:47,

1 Corporal McAbee went back and requested a driver's
2 license check. At 5:18, Corporal McAbee gets out
3 and goes back up to the defendant's vehicle. He
4 had yet to receive confirmation or any information
5 from dispatch as far as the driver's license, and
6 he went up there because he saw Mr. Blake's
7 movement in the passenger seat.

8 When he went up there, he was at the
9 car at 5 minutes and 35 seconds, that movement was
10 still happening, that's when the shove happened.
11 Corporal McAbee is still asking for registration
12 and insurance. Any traffic stop, license,
13 registration, and insurance. License, registration
14 and insurance. He asked him over and over again.

15 I would argue that the scope is
16 absolutely expanded. Even if it hasn't, Mr. Blake
17 hasn't complied with the basic three things that
18 law enforcement needs to do strictly a speeding
19 stop.

20 Finally, insurance was given to him by
21 Mr. Blake at seven minutes and 44 seconds. That's
22 when Corporal McAbee sat back in his car and was
23 able to contact dispatch for information that
24 Mr. Blake finally furnished to him.

25 Backup arrived, and it was eight

1 minutes later. The scope had expanded. There is
2 plenty of probable cause to extend it at that point
3 and there was no prolonged delay.

4 Judge, I would also say that either way
5 at this point, Corporal McAbee is going to arrest
6 Mr. Blake for driving under the influence, so he
7 would have to wait there for a tow truck anyway.
8 You're not just going to leave a car on the side of
9 the road, so they would have sat there anyway. All
10 that then was discovery due to an inventory search
11 that would be done prior.

12 Mr. Blake was asking questions. I
13 think he got the point across as far as not a
14 consent search, and Corporal McAbee responded that
15 this is not a consent case. He's not consenting to
16 get his car searched. He was asked out of the
17 vehicle due to DUI and for officer safety, not for
18 the reasons him shoving something under his rear.

19 As he got out of the vehicle -- it was
20 going to be towed, it was going to be searched
21 because of that DUI. As he gets out of that
22 vehicle, it's in plain view. It's in plain view
23 for a trooper who is on the passenger side looking
24 through the car, what he testified to.

25 It's also then the deputy who sees it

1 and the trooper then walks back around to the
2 driver's side and gets in and sees it there.

3 All the questions about marijuana,
4 Judge, I just don't think that really goes
5 anywhere. He's not charged with marijuana. He
6 said it was a corner-cut baggie, that that wasn't
7 the initial search. That also was not the reason
8 for the basis for why anything was examined.

9 Your Honor, for those reasons, I
10 respectfully request that the stop and search be
11 found sufficient and we proceed to trial.

12 THE COURT: Okay. Mr. Blake, do you
13 care to respond?

14 MR. BLAKE: Yes. I've got to say, her
15 whole argument is null and void. DUI happened
16 after the whole incident occurred. It's -- I mean,
17 at this point, Your Honor, we have to ask
18 ourselves, what physically can be proven amongst
19 what this officer allegedly suspected and saw?
20 Nothing can be proven. So at this point we would
21 be doing nothing more but entertaining a frivolous
22 case at this point.

23 THE COURT: Thank you.

24 MR. BLAKE: Thank you, Your Honor.

25 THE COURT: I appreciate it.

1 Okay. We look at it in two prongs.
2 First question is whether there was probable cause
3 to have initiated the stop. I find that there was
4 probable cause for initiation of the stop because
5 of the excessive speed, which was not only
6 testified to but supported with the radar
7 surveillance.

8 MR. BLAKE: Your Honor, that cannot
9 be -- I'm sorry, but that cannot be proven that I
10 was speeding. He does not have any type of radar
11 documents that show forth that I was speeding.

12 THE COURT: And there's a question --
13 there's going to be a question throughout the trial
14 of credibility and whether the officer's testimony
15 can be believed or not. And, ultimately, I will
16 charge the jury that it's up to them to determine
17 whether his testimony is believable or not. Okay.
18 And that goes to whether the State can prove the
19 case beyond a reasonable doubt.

20 With regard to the motion for
21 suppression of the evidence, I find that the State
22 has met its threshold burden of establishing that
23 there was probable cause for the stop.

24 Now, understand when I rule on this
25 motion I'm not taking a position as to whether it

1 was a good stop or a bad stop. Okay. All I'm
2 determining is whether it met constitutional
3 requirements. And you can talk to the jury about
4 whether it was a good stop or a bad stop and talk
5 to the jury about whether it was ill-conceived and
6 nefarious by the officer. You can do that. Okay.

7 And I'm -- I just want to let you know
8 that I'm not arguing with you on that point. I
9 don't take a position on that point. Okay.

10 MR. BLAKE: Okay. I got another
11 question. As we're going to proceed on my
12 cross-examination, I respectfully request when I'm
13 cross-examining the State's witnesses, I'm not
14 showing any mercy, and I don't need any objections
15 and stuff like that because my whole thing is based
16 on, at this point, its presentation.

17 And just like I said, I'm not holding
18 anything back. And, you know, we are all adults in
19 this courtroom and everybody should be able at this
20 point to answer the questions that I ask, whether
21 they feel like it's based on making them look bad
22 or -- you know, it's about getting to the facts of
23 this case.

24 THE COURT: Yes, sir. And I agree with
25 you. It's -- this is bare knuckles. And I will

1 let you ask what you want, restrained only by the
2 Rules of Court. Okay.

3 MR. BLAKE: Yes, Your Honor.

4 THE COURT: So there may be an
5 objection if, for instance, you begin to testify
6 and then ask a question.

7 MR. BLAKE: Okay.

8 THE COURT: There may be some other
9 objections. Generally speaking, I am not going to
10 try to control or constrain your temperament
11 unless, again, you just get out of control, which I
12 don't anticipate that you will.

13 MR. BLAKE: No. I'm going to give this
14 courtroom the respect it deserves.

15 THE COURT: Okay. Well, I appreciate
16 that. And I don't mind theatrics to a point, you
17 know, just be respectful to the Court and be
18 respectful of the witness as well. Even if you
19 disagree with the witness, you need to be
20 respectful of the witness. Okay?

21 MR. BLAKE: Okay, Your Honor.

22 THE COURT: Now, you can -- when you
23 argue ultimately to the jury, you know, you can say
24 that his testimony is without credibility and you
25 can say that there's no way that it could be

1 believed. You can go so far as saying he's a liar
2 if you want to. That's okay. But when you're
3 having an interchange with the witnesses, be
4 respectful. Okay?

5 MR. BLAKE: Yes, Your Honor.

6 THE COURT: Okay. And I will instruct
7 the witnesses to be respectful to you too.

8 MR. BLAKE: Yes, Your Honor.

9 THE COURT: It's a two-way street.

10 MR. BLAKE: Thank you. Thank you, Your
11 Honor.

12 THE COURT: Now, let me finish my
13 ruling and get it on the record so you'll have it
14 on the record. Okay?

15 MR. BLAKE: Okay.

16 THE COURT: With respect to the search,
17 I have to consider it given the totality of the
18 circumstances. And given the totality of the
19 circumstances, which included exception of speed,
20 the testimony, whether the jury finds it credible
21 or not, of throwing something out of the car could
22 be seen -- perceived contraband in plain view,
23 seeing -- be it allegations of you dropping
24 something out of the car, regardless of what it may
25 have been, given the totality of the circumstances,

1 I find that there was probable cause to effect the
2 search and I do find it falls under the exigent
3 circumstances of an automobile exclusion. So I'll
4 find that at a threshold, it is admissible.

5 Again, Mr. Blake, I'm not making a
6 ruling that it's believable or that his testimony
7 should be credible to the jury. I just find that
8 it's admissible. Okay. And you-all can flesh all
9 that out with the jury.

10 MR. BLAKE: Thank you, Your Honor.

11 THE COURT: Yes, sir. All right. Any
12 other matters we need to take up pretrial?

13 MS. LINDER: Judge, I don't think there
14 are any other motions that we have to take up
15 pretrial. I just -- with Mr. Blake's comments
16 about no mercy to witnesses, Judge, yes, I objected
17 some in the pretrial motions. There were many
18 things I feel like I could have objected to that I
19 did not.

20 THE COURT: I understand.

21 MS. LINDER: I myself am trying to
22 practice some restraint without objecting to
23 everything I think is objectionable; however, you
24 know, I will be objecting if Mr. Blake does not ask
25 questions in the form they are supposed to be asked

1 and if he does not abide by the Rules of the Court.

2 THE COURT: Yes. I think Mr. Blake
3 understands that. We -- everybody is going to work
4 as hard as they can to protect their interests, but
5 we're going to play by the Rules; right?

6 MR. BLAKE: Correct, Your Honor.

7 THE COURT: Okay. Good enough.

8 Anything additional?

9 Okay. Good enough. We will reconvene
10 at 2:30. I believe the jury is coming in then.

11 Mr. King, you may want to discuss with
12 Mr. Blake jury selection, the manner in which we
13 will proceed. Does anybody have voir dire they've
14 not given the Court?

15 MS. LINDER: I do. May I approach?

16 THE COURT: Okay. All right. If
17 there's nothing else, we'll be in recess until
18 2:30.

19 MR. BLAKE: Your Honor?

20 THE COURT: Yes, sir.

21 MR. BLAKE: I would like to submit
22 this, Defendant's voir dire.

23 THE COURT: Sure. You can bring it up.
24 Thank you.

25 MR. BLAKE: Yes.

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1 THE COURT: Okay. Good. All right.
2 We will be in recess until 2:30.

3 (A luncheon recess transpired.)

4 (STATE EXH. 1, CD, was marked for
5 identification.)

6 (STATE EXH. 2, Gun, was marked for
7 identification.)

8 (STATE EXH. 3, Cartridge, was marked
9 for identification.)

10 (STATE EXH. 4, Drugs, was marked for
11 identification.)

12 (STATE EXH. 5, Scale, was marked for
13 identification.)

14 (STATE EXH. 6, Copy of lab report, was
15 marked for identification.)

16 (Jury panel in, 2:32 p.m.)

17 THE COURT: Ladies and gentlemen,
18 downstairs you went through the qualification
19 process, and when you went through the
20 qualification process, you took an oath to tell the
21 truth. Well, that oath continues here in this
22 courtroom as we go through the selection process
23 for a jury.

24 Now, the selection process for a jury
25 is very similar to the qualification process in

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1 that questions will be posed to you and you will
2 answer those questions. Now, the distinction is in
3 qualification, it bears upon your general
4 qualifications to serve as jurors in the State of
5 South Carolina and in the County of Charleston.

6 The questions that are posed to you in
7 the courtroom bear specifically upon the case
8 that's being called to bar and bear upon whether
9 it's suitable for you to serve as a juror in this
10 particular case.

11 Now, as I go through the questions, you
12 will do exactly as you did downstairs, and that is
13 if you answer to any of the questions that I pose,
14 or in the affirmative, what I'd like for you to do
15 is stand up and state your name, your juror number,
16 your name, your juror number, and then give me any
17 appropriate response.

18 Now, when I ask for your name and juror
19 number, it's because everything that we do in court
20 is being taken down by a court reporter. So I may
21 see you and I may know who you are and you may know
22 who you are, but the record doesn't know who you
23 are. Okay. So it's important that you state your
24 name and juror number so that it's very clear for
25 the record who is responding to what question.

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1 Now, ladies and gentlemen, this
2 afternoon we are going to call to bar the case of
3 the State v. Mark Lorenzo Blake, Junior.

4 Now, I'm going to read the allegations
5 of the indictment to you, but there's something
6 that I need to tell you before I do that that's
7 very important. And that is that in every criminal
8 proceeding in the United States of America, in the
9 State of South Carolina, in the County of
10 Charleston, the defendant is presumed innocent
11 until proven guilty beyond a reasonable doubt.

12 Now, the State has the burden of
13 proving each and every element of each offense
14 beyond a reasonable doubt. Now, as we sit in this
15 courtroom now, the defendant, Mr. Blake, is
16 presumed innocent. Now, that's not just a
17 technical matter. That's the cornerstone of our
18 criminal justice system.

19 So as we sit here, imagine that Mr.
20 Blake is wearing a cloak and it's a cloak of
21 innocence, and that cloak will not be taken off of
22 him until 12 jurors are satisfied that the State
23 has met its burden of proving each and every
24 element of the offenses beyond a reasonable doubt.

25 Now, the reason I tell you that is

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1 because I'm going to read to you the allegations on
2 the indictments. And I don't want you to think
3 that just because I'm reading the allegations on
4 the indictment that I'm telling you that these are
5 the facts of this case. I'm not.

6 It's important that I, at a threshold,
7 tell you what the case is about so that you can
8 intelligently answer the questions that are posed
9 to you in jury selection.

10 So, ladies and gentlemen, when I read
11 to you the allegations on the indictment, I want to
12 make sure that you understand that these are simply
13 allegations. These are the charging papers that
14 the State has brought. And by reading them to you,
15 I'm not suggesting that they are true or not true.
16 I'm simply reading the allegations.

17 Ladies and gentlemen, in this case --
18 the first case up is going to be the State v. Mark
19 Lorenzo Blake, Junior, unlawful carrying of a
20 firearm, and that is Indictment Number
21 2012-GS-10-4704.

22 And, ladies and gentlemen, in that
23 indictment, the State would allege that the
24 defendant did in Charleston County, on or about
25 April 5, 2012, unlawfully carry a handgun in

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1 contravention of the law.

2 Ladies and gentlemen, the next
3 indictment that you will consider is the State v.
4 Mark Lorenzo Blake, Junior, Indictment
5 Number 2012-GS-10-4709, indictment for possession
6 of a stolen firearm.

7 And in that indictment, ladies and
8 gentlemen, the State would allege that the
9 defendant did in Charleston County, on or about
10 April 15, 2012, unlawfully have in his possession
11 an allegedly stolen firearm, specifically a Glock.

12 Ladies and gentlemen, the next
13 Indictment is 2012-GS-10-4707, and that is the
14 State v. Mark Lorenzo Blake, Junior, an indictment
15 for trafficking in cocaine. And in that
16 indictment, ladies and gentlemen, the State would
17 allege that the defendant did in Charleston, South
18 Carolina, on or about April 15, 2012, unlawfully
19 and knowingly did sell, manufacture, cultivate,
20 deliver, purchase or bring into the state, or did
21 provide financial assistance or otherwise aid,
22 abet, or attempt or conspire to sell, manufacture,
23 cultivate, deliver, purchase, or bring into the
24 state, or did possess or attempt to possess a
25 controlled substance or a controlled substance

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1 analogue. Specifically, in this case, the
2 allegation relates to cocaine. That's a mouthful,
3 isn't it?

4 So, ladies and gentlemen, those are the
5 three -- the three charges that are before the
6 Court today. I tell you again, I don't make any
7 assertions to you about the facts in this case. I
8 simply read those allegations so that you could
9 answer these questions with some basis of
10 knowledge.

11 So, ladies and gentlemen, the first
12 question that I would have for you is, is there
13 anyone among you who has any personal knowledge,
14 any predisposition or any bias with regard to the
15 allegations in this case?

16 JURY PANEL: (None)

17 THE COURT: All right. Let the record
18 reflect there's no affirmative response.

19 Ladies and gentlemen, in this case
20 Mr. Blake will be representing himself; however, I
21 have appointed standby counsel and the standby
22 counsel is Mr. Jason King of the Charleston County
23 Public Defender's Office. And so I will ask you,
24 is there anyone among you that has a personal,
25 professional, or family relationship to Mr. Blake?

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1 JURY PANEL: (None)

2 THE COURT: Is there anyone among you
3 who has any personal, professional, or family
4 relationship to Mr. King or anyone in the
5 Charleston County Public Defender's Office?

6 JURY PANEL: (None)

7 THE COURT: Ladies and gentlemen, this
8 is being prosecuted by the Ninth Circuit
9 Solicitor's Office and Ms. Stephanie Linder, an
10 associate prosecutor -- Assistant Prosecutor with
11 the Charleston County Solicitor's Office is
12 prosecuting the case on behalf of the State.

13 Ladies and gentlemen, is there anyone
14 amongst us who has a personal or professional
15 relationship with Ms. Linder or with anyone
16 employed with the Ninth Circuit Solicitor's Office?

17 JURY PANEL: (None)

18 THE COURT: All right. Let the record
19 reflect no affirmative response.

20 Ladies and gentlemen, I'm going to read
21 for you a list of potential witnesses in this case.
22 Now, these may or may not be all of the witnesses;
23 it may be inclusive and there may be other ones
24 that may be called as well.

25 However, as I stand here, these are the

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1 witnesses that have been provided to me. Again, I
2 will read out these names and I will ask you the
3 very same question about whether you know them or
4 whether you have any type of relationship with
5 them.

6 So the following are proposed
7 witnesses: Trooper Earl McAbee, Deputy Chavez,
8 Deputy Gilbert Baldwin, Investigator Jason Riley,
9 William Smith, Douglas Robinson, Amy Stephens,
10 Selena Kinard, K. V. Welch, J. D. James, P. Odom,
11 R. Frick, Kimberly Mears, Mark Blake, Senior, Kevin
12 Sherbine, and Kenny Barfield.

13 Anyone among you have any personal,
14 professional, or family relationship with any of
15 those proposed witnesses?

16 JURY PANEL: (None)

17 THE COURT: All right. Let the record
18 reflect no affirmative response.

19 Ladies and gentlemen, is there anyone
20 among you who is currently or who has previously
21 been employed by law enforcement?

22 JURY PANEL: (None)

23 THE COURT: Ladies and gentlemen, is
24 there anyone among you who has a close personal
25 friend or close family member who is employed by

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1 law enforcement?

2 Yes, ma'am.

3 JUROR NUMBER 176: 176 is my jury
4 number. My brother-in-law is chief of police on
5 Sullivan's Island.

6 THE COURT: Given that fact, ma'am, do
7 you think that you could still be a fair and
8 impartial juror in the trial of this case?

9 JUROR NUMBER 176: Yes.

10 THE COURT: Okay. Thank you for
11 telling me. I appreciate it.

12 Yes, sir.

13 JUROR NUMBER 156: I'm Paul Grizzle,
14 156. We're close friends with the local magistrate
15 here in Charleston County.

16 THE COURT: Okay. I don't think that
17 quite qualifies as law enforcement, at least we --
18 he doesn't think so. But you can be fair and
19 impartial?

20 JUROR NUMBER 156: Yes, sir.

21 THE COURT: Okay. Thank you very much.

22 Yes, ma'am.

23 JUROR NUMBER 70: 70, Ruthie Christy.
24 My daughter is an attorney in the public defender's
25 office in Columbia and I am close friends with

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1 Judge Richard E. Fields.

2 THE COURT: Do you think that given
3 that fact -- and I don't think either of those are
4 law enforcement necessarily either, but it's good
5 information. Do you think you can still be fair
6 and impartial in this case, ma'am?

7 JUROR NUMBER 70: Yes.

8 THE COURT: Okay. Thank you very much.

9 Is there anyone among you who has a
10 close family member or friend who's currently
11 employed by law enforcement?

12 JURY PANEL: (None)

13 THE COURT: All right. Is there anyone
14 among you who has any close personal friends or
15 family members who are employed in the Ninth
16 Circuit Solicitor's Office?

17 JURY PANEL: (None)

18 THE COURT: Is there anyone among you
19 who is a member of, or a contributor to, an
20 organization which advocates for criminal
21 prosecution or victim's rights? And by example, I
22 mean organizations like MADD, Mothers Against Drunk
23 Driving, SADD, Students Against Drunk Driving, or
24 any other like organizations, again, that advocates
25 for criminal prosecution or advocates for victim's

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1 rights?

2 JURY PANEL: (None)

3 THE COURT: Ladies and gentlemen, is
4 there anyone among you who has any particular
5 opinion or feeling regarding the crimes trafficking
6 cocaine, unlawful carrying of a firearm or
7 possession of a stolen firearm that would cause you
8 to be biased or subjective in this case?

9 JURY PANEL: (None)

10 THE COURT: Ladies and gentlemen, is
11 there anyone among you who has been or has a close
12 friend or family member who has been the victim of
13 a violent crime?

14 JURY PANEL: (None)

15 THE COURT: Ladies and gentlemen, is
16 there anyone among you who has been prosecuted by
17 the Ninth Circuit Solicitor's Office?

18 JURY PANEL: (None)

19 THE COURT: Is there anyone among you
20 who has ever been represented by Mr. King or anyone
21 in the Charleston County Public Defender's Office?

22 JURY PANEL: (None)

23 THE COURT: Ladies and gentlemen, is
24 there anyone among you who has ever been or has a
25 close family member or friend who has been

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1 incarcerated or accused of a crime?

2 JURY PANEL: (None)

3 THE COURT: Ladies and gentlemen, is
4 there anyone among you who believes that drugs in
5 our society should be legalized?

6 JURY PANEL: (None)

7 THE COURT: All right. Counsel,
8 Mr. Blake, those are all the questions that I have
9 of voir dire. Do you have any additional
10 questions?

11 MS. LINDER: Nothing from the State.

12 MR. BLAKE: Nothing further, Your
13 Honor.

14 THE COURT: Good enough.

15 Okay. All right. Ladies and
16 gentlemen, we will proceed now to selection of the
17 jury. Now, if -- Counsel, Mr. Blake, my
18 understanding of the law is that each party gets
19 five strikes a piece in these indictments; am I
20 correct?

21 MR. BLAKE: Correct.

22 MS. LINDER: Yes, Judge.

23 THE COURT: So, ladies and gentlemen,
24 the way this will proceed is that you appear on a
25 random strike list; that is, when you came in this

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1 afternoon, the Clerk of Court prepared a random
2 strike list that includes all of your names. The
3 parties will have the opportunity to exercise
4 strikes or peremptory challenges from that strike
5 list.

6 So what will happen is the Clerk of
7 Court will call out your name. When she calls out
8 your name, I'll ask you to stand up. Stand up
9 right where you are. You don't have to say
10 anything or do anything other than stand up.

11 The parties will then have the
12 opportunity to exercise peremptory challenges or
13 strikes. The law grants great latitude to the
14 parties to exercise strikes, which means that you
15 can be stricken for just about any reason.

16 So I would ask you don't take anything
17 from the strike, that is don't be elated and don't
18 be offended because you will never know why you may
19 have been stricken in this case.

20 However, what you're going to hear --
21 what you're going to hear from either party, if you
22 hear from either party, please seat the juror or
23 please swear the juror, then you will have been
24 selected. If you hear that from both parties, then
25 you will have been selected for this jury. So what

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1 I would ask you to do is gather up all your
2 belongings and come and have a seat in the jury
3 box.

4 If you hear from either party, please
5 strike the juror or please excuse the juror from
6 the trial of this case, then you will have been
7 stricken as a juror in this case and you can just
8 sit back down and we will try to get you on a jury
9 later this week.

10 So, again, we are going to have -- we
11 will go in order. So the prosecution will make a
12 strike and the defense will make a strike. Each
13 party gets five strikes.

14 And, Counsel, would you like
15 alternates, and if so, how many?

16 MS. LINDER: Your Honor, we would like
17 two alternates.

18 THE COURT: Mr. Blake, do you agree
19 with that?

20 MR. BLAKE: I don't mind, Your Honor.

21 THE COURT: Okay. Good enough. Then
22 each party can get two strikes on the alternates or
23 two alternates. Okay. And it's two collectively.
24 All right.

25 All right. Having said that, ladies

JURY SELECTION

1 and gentlemen, we will proceed to jury strikes.

2 Madam Clerk, you may call the names.

3 THE CLERK: Okay. Juror Number 154,

4 Michelle Griffin.

5 What you say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the

8 defense?

9 MR. BLAKE: 150?

10 THE CLERK: 154, Michelle Griffin.

11 MR. BLAKE: Please admit this juror.

12 THE CLERK: Sorry?

13 MR. BLAKE: Please seat this juror.

14 THE CLERK: Okay. Thank you.

15 Ma'am, please have a seat in the jury
16 box. You've been selected as a juror in the trial
17 of this case.

18 Juror Number 303, Stacey Runey.

19 What say you for the State?

20 MS. LINDER: Please present this juror.

21 THE CLERK: What say you for the

22 defense?

23 MR. BLAKE: Strike.

24 THE CLERK: Ma'am, please have a seat.

25 You have been struck from this jury in the trial of

JURY SELECTION

1 this case.

2 Juror Number 176, Carol Hitchins.

3 What say you for the State?

4 MS. LINDER: Please present this juror.

5 THE CLERK: What say you for the
6 defense?

7 MR. BLAKE: Strike.

8 THE CLERK: Ma'am, have a seat. You
9 have been struck from the trial in this case.

10 Juror Number 257, Imad Mohtassem.

11 What say you for the State?

12 MS. LINDER: Beg the Court's
13 indulgence?

14 Please present this juror.

15 THE CLERK: What say you for the
16 defense?

17 MR. BLAKE: Please seat this juror.

18 THE CLERK: Please have a seat in the
19 jury box. You have been selected as a juror in the
20 trial of this case.

21 Juror Number 220, Lanette Laboard.

22 What say you for the State?

23 MS. LINDER: Please excuse this juror.

24 THE CLERK: Ma'am, you may have a seat.
25 You've been excused in the trial of this case.

JURY SELECTION

1 Juror Number 156, Paul Grizzle.

2 What say you for the State?

3 MS. LINDER: Please excuse this juror.

4 THE CLERK: Sir, please have a seat.

5 You have been excused as a juror from the trial of
6 this case.

7 Juror Number 103, Belinda Duncan.

8 What say you for the State?

9 MS. LINDER: Beg the Court's
10 indulgence?

11 Please present this juror.

12 THE CLERK: What say you for the
13 defense?

14 MR. BLAKE: Beg the Court's indulgence?

15 Please seat this juror.

16 THE CLERK: Ma'am, please have a seat
17 in the jury box. You have been selected as a juror
18 in the trial of this case.

19 Juror Number 353, June Stovall.

20 What say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the
23 defense?

24 MR. BLAKE: I strike.

25 THE CLERK: Ma'am, please have a seat.

JURY SELECTION

1 You have been excused from the trial of this case.

2 Defendant has now used three of your
3 five strikes.

4 Juror Number 157, Maria Guerry.

5 What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the
8 defense?

9 MR. BLAKE: Present.

10 THE CLERK: Please have a seat in the
11 jury box. You have been selected as a juror in the
12 trial of this case.

13 Juror Number 206, Talha Khan.

14 What say you for the State?

15 MS. LINDER: Please present this juror.

16 THE CLERK: What say you for the
17 defense?

18 MR. BLAKE: Court's indulgence?

19 Seat the juror.

20 THE CLERK: Sir, Please have a seat in
21 the jury box. You have been selected as a juror in
22 the trial of this case.

23 Juror Number 348, Troy Stephens.

24 What say you for the State?

25 MS. LINDER: Beg the Court's

JURY SELECTION

1 indulgence?

2 Please excuse this juror.

3 THE CLERK: Sir, please have a seat.

4 You have been excused from the trial of this case.

5 And the State has now used three of
6 their five strikes.

7 Juror Number 121, Mark Flynn.

8 What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the
11 defense?

12 MR. BLAKE: Court's indulgence?

13 Please admit.

14 THE CLERK: Sir, please have a seat in
15 the jury box. You have been selected as a juror in
16 the trial of this case.

17 Juror Number 347, Dora Stephens.

18 What say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What say you for the
21 defense?

22 MR. BLAKE: Please strike.

23 THE CLERK: Ma'am, please return to
24 your seat. You have been excused as a juror in the
25 trial of this case.

JURY SELECTION

1 The defense now has one remaining
2 strike.

3 Juror Number 107, Sunilke
4 Elanayarvthalakkurissy.

5 THE CLERK: What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the
8 defendant?

9 MR. BLAKE: Beg the Court's indulgence?
10 Please seat the juror.

11 THE CLERK: Please have a seat in the
12 jury box. You have been selected as a juror in the
13 trial of this case.

14 Juror Number 147, Desmonta Goodwin.
15 What say you for the State?

16 MS. LINDER: Excuse this juror.

17 THE CLERK: Sir, please have a seat.
18 You have been excused as a juror in the trial of
19 this case.

20 And the State now has one remaining
21 strike.

22 Juror Number 174, Kimeta Heyward.
23 What say you for the State?

24 MS. LINDER: Please excuse this juror.

25 THE CLERK: Please have a seat. You

JURY SELECTION

1 have been excused from the trial of this case.

2 Juror Number 70, Ruthie Christy.

3 Any challenges from the State?

4 MS. LINDER: Beg the Court's
5 indulgence?

6 Judge, I'd like to strike for cause. I
7 can approach if you'd like.

8 THE COURT: Sure.

9 (Bench conference.)

10 THE COURT: She is available.

11 THE CLERK: What say you for the
12 defense?

13 MR. BLAKE: Seat this juror.

14 THE CLERK: Ma'am, please have a seat
15 in the jury box. You have been selected as a juror
16 in the trial of this case.

17 Juror Number 190, Tracy James.

18 Any challenges from the State?

19 MS. LINDER: No challenges.

20 THE CLERK: What say you for the
21 defendant?

22 MR. BLAKE: Court's indulgence?

23 Seat the juror.

24 THE CLERK: Sir, please have a seat in
25 the jury box. You have been selected as a juror in

JURY SELECTION

1 the trial of this case.

2 Juror Number 175, Darius Hill.

3 Any challenges from the State?

4 MS. LINDER: None from the State.

5 THE CLERK: What say you for the
6 defense?

7 MR. BLAKE: Challenge to seat the
8 juror.

9 THE CLERK: Sir, please have a seat in
10 the jury box. You have been selected as a juror in
11 the trial of this case.

12 Juror Number 248; Joan Mccloud.

13 Any challenges from the State?

14 MS. LINDER: No, Your -- no.

15 THE CLERK: What say you for the
16 defense?

17 MR. BLAKE: Court's indulgence?
18 Seat the juror.

19 THE CLERK: Please have a seat in the
20 jury box. You have been selected as a juror in the
21 trial of this case.

22 Juror Number 316, Alan Seim.

23 Any challenges from the State?

24 MS. LINDER: No challenges.

25 THE CLERK: What say you for the

JURY SELECTION

1 defense?

2 MR. BLAKE: Seat this juror.

3 THE CLERK: Okay. Please have a seat
4 in the jury box. You have been selected as a juror
5 in the trial of this case.

6 For the first alternate, Juror
7 Number 125, Dennis Foster.

8 What say you for the State?

9 MS. LINDER: Please present the juror.

10 THE CLERK: What say you for the
11 defense?

12 MR. BLAKE: Court's indulgence?

13 Strike this juror.

14 THE CLERK: Please return to your seat.
15 You have been excused as a juror in the trial of
16 this case.

17 Juror Number 173, Christine Henderson.

18 What say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What say you for the
21 defense?

22 MR. BLAKE: Seat the juror.

23 THE CLERK: Ma'am, please have a seat
24 in the jury box. You have been selected as a juror
25 in the trial of this case.

JURY SELECTION

1 Juror Number 64, Rogelio Cavazos.

2 What say you for the State?

3 MS. LINDER: Please present this juror.

4 THE CLERK: What say you for the
5 defense?

6 MR. BLAKE: Seat the juror.

7 THE CLERK: Sir, please have a seat in
8 the jury box. You have been selected as a juror in
9 the trial of this case.

10 THE COURT: All right. Counsel,
11 Mr. Blake, any matters of law or issues to take up
12 with regard to the selection or qualifications of
13 this jury?

14 MS. LINDER: None from the State.

15 MR. BLAKE: Yes. Yes, we have a matter
16 of law.

17 THE COURT: Okay. All right. What I
18 will ask you to do, please, is take the jury and --
19 take them to the jury room, if you would please.

20 Ladies and gentlemen, I don't have any
21 secrets. I need to take up a matter of law and I
22 can't do it in front of you. Okay. So you go back
23 to the jury room and when we have resolved it, you
24 can come back. And I also need to remove all of
25 the remaining jurors as well as we take up this

1 matter.

2 (All jurors out, 3:28 p.m.)

3 THE COURT: Make sure they know I want
4 them to just wait outside. Okay?

5 All right. Mr. Blake, I presume you
6 have a Batson challenge, sir?

7 MR. BLAKE: Okay. Your Honor, I do, a
8 matter of law. The reason I believe that --
9 Juror 220 is a black female, Juror 147, Mr. Goodwin
10 is a black male, 174 is a black female. They
11 were --

12 THE COURT: Okay. All right. Any
13 argument you need to make?

14 MR. BLAKE: Fact of the matter that she
15 struck three black jurors, potential jurors, and
16 the reason we believe racial profile motive.

17 THE COURT: Okay. Thank you,
18 Mr. Blake.

19 State now must articulate a gender
20 neutral reason why those jurors were stricken. So,
21 Mr. Blake, you and I will hear what the State has
22 to say.

23 MR. BLAKE: Okay.

24 MS. LINDER: Judge, when you go through
25 the State's strikes, we struck Juror 220, as

1 Mr. Blake says, black female, and that individual
2 has two criminal convictions on her record. That
3 is our reason for striking.

4 He also brought up, 174, who's a black
5 female. She had multiple items on her --
6 convictions also on her record. So those two were
7 struck.

8 I also would like to point out, Judge,
9 that we struck 156, which is a white female, for
10 convictions. We also struck 348, who is a white
11 male, for convictions. We struck anyone and
12 everyone who had prior convictions and a prior
13 criminal history. So those are my reasons for
14 those.

15 As far as Juror Number 147, there are
16 two reasons that he was struck. First of all, he
17 was struck because he was unemployed. Aside from
18 being unemployed -- the other reason aside from
19 that is his previous employment was in the food and
20 beverage industry, and we know Mr. Blake to have
21 worked in the food and beverage industry through
22 temp services and items such as that. So those are
23 the two reasons for 147.

24 And as far as the other two black
25 individuals that Mr. Blake mentioned, that's all

1 due to prior convictions. And, like I said, Judge,
2 we also struck two white people due to prior
3 convictions. Anyone who had a prior history, we
4 struck. Thank you, Judge.

5 THE COURT: Okay. Mr. Blake, anything
6 you need to put on the record?

7 MR. BLAKE: Yes. I just want to say
8 that just because people have prior records --
9 nobody's perfect. Doesn't mean that they can't be
10 fair in this trial.

11 THE COURT: I agree with that,
12 Mr. Blake. There's no question about it, but what
13 I have to determine is whether there are gender
14 neutral -- excuse me, race neutral reasons for the
15 strikes. Over and beyond that, either you or the
16 State has the discretion to strike for any reason
17 that they can that they like.

18 A prior record could be some concern to
19 the State and it was clearly articulated on the
20 record that those were the reasons. I do find that
21 there were -- they were gender and race neutral
22 reasons for exercising peremptory challenges;
23 therefore, I will deny the motion.

24 Anything further?

25 MR. BLAKE: Nothing further.

1 THE COURT: Okay. I was interested in
2 hearing the reasons too, Mr. Blake.

3 All right. Could you bring these
4 jurors back in, please.

5 (All jurors in, 3:33 p.m.)

6 THE COURT: Okay. All right. Ladies
7 and gentlemen, I brought you back in to tell you
8 that you could leave.

9 Wait. Wait. Hold on two seconds.

10 I've got some additional instructions
11 for you that could be helpful to you. I don't
12 know. I just wanted to tell you that I extend my
13 condolences to you. I know that you were outside
14 hoping that we would do that again and you might
15 get on this jury, and I'm sorry that you didn't,
16 but you might get another chance before the week is
17 out. Okay.

18 If I don't see you again this week,
19 thank you for your service. I appreciate it. Even
20 if you don't sit on a jury, it's a very valuable
21 service, because the consequence of you being here,
22 many cases will resolve. So your service is very
23 important regardless of whether you preside on a
24 jury or not. So thank you for that.

25 If I don't see you, have a great

1 weekend. Have a great rest of the year. Call back
2 tonight after 1800, I guess 6:00, and you will get
3 further instructions from the Clerk of Court.

4 Now you are released. Have a great
5 day.

6 (Jury panel released.)

7 THE COURT: You can bring the rest of
8 them in.

9 (Jury in, 3:35 p.m.)

10 THE COURT: We are going to proceed. I
11 will give the opening charge and then we'll go
12 straight into opening statements. Okay. Opening
13 statements, of course, are just an introduction of
14 yourselves and your theory of the case. So we're
15 not going to argue the case on the opening
16 statements. I will not let either of you do that.
17 Okay.

18 As a matter of fact, I don't really
19 want you to go beyond five minutes total. Okay.
20 Because I don't want to get into a lot of the facts
21 of the case, the evidence will flesh that out, and
22 then I will give you the opportunity to argue in
23 full.

24 Also one of the reasons I'm doing that
25 is, Mr. Blake, you have not elected to waive your

1 constitutional rights, as far as I know, quite yet.
2 You are on very precarious ground when you get in
3 front of the jury and you begin to talk. Okay.
4 You may make factual representations that
5 ultimately hurt you.

6 So I would tell you to be very careful
7 about what you say, because it is a fine line
8 between argument and testimony. And if I determine
9 what you tell the jury is testimonial, then it may
10 be -- it may be that I allow the State to
11 cross-examine you because I will deem that as a
12 waiver of your citizen privileges. Okay.

13 I don't want to do that and that's why
14 I'm telling you now to be careful. All right?

15 MR. BLAKE: Okay.

16 THE COURT: Any questions?

17 MR. BLAKE: No, Your Honor.

18 THE COURT: Okay. Bring them in.

19 (Jury in, 3:37 p.m.)

20 THE COURT: All right. Ladies and
21 gentlemen, take your seats.

22 All right. Ladies and gentlemen,
23 congratulations. You made the cut and I look
24 forward to working with you this week.

25 Now, I can't tell you on the front end

COURT'S OPENING REMARKS

1 how long this case will take because I don't know
2 really any more about the case than you do, but I
3 do anticipate that it will not go for the remainder
4 of the week. As I sit here right now, I'm thinking
5 that it will probably resolve by Wednesday, if not
6 sooner.

7 If that changes, I will let you know.
8 Right now that's just an educated guess and that's
9 the best I can do for you right now. As we go
10 forward in the trial, I will try to keep you
11 updated and let you know what I know so that you
12 will have some idea of where we're headed and what
13 your obligations will be.

14 I find that when I start a jury trial,
15 it's very helpful for me to let the jury know,
16 first of all, what your role is as jurors, what
17 your job is, and then also to give you some idea of
18 the process that we will follow so you will know,
19 again, what comes next and what the end game is.

20 So before I get started with the
21 process, let me restate for you one more time that
22 in this case, just as in every criminal case in the
23 United States of America, the defendant, Mr. Blake,
24 is presumed innocent until he has been proven
25 guilty beyond a reasonable doubt.

COURT'S OPENING REMARKS

1 The State has the burden of proving
2 each and every element of each offense beyond a
3 reasonable doubt. Until such time as the jury, 12
4 deliberating jurors, determine that the State has
5 met it's burden of proof, Mr. Blake retains his
6 presumption of innocence.

7 So, ladies and gentlemen, the way this
8 trial will start is, after I give you a short
9 opening statement, then we will go to opening
10 statements from the parties.

11 Now, each party will have the
12 opportunity to introduce themselves and very
13 briefly a theory of the case. Now, opening
14 statements are intended to be very brief and not go
15 into significant detail of the -- about the case or
16 argue the case. The evidence is what fleshes out
17 the case ultimately, and the evidence is what you
18 will consider.

19 Understand that an opening statement
20 from both parties are not evidence. That's simply
21 introduction and advocacy from the parties and are
22 not to be considered evidence by you.

23 After each party has had the
24 opportunity to present opening statements, then the
25 State will have the opportunity to present its

COURT'S OPENING REMARKS

1 case. Now, the State goes first because, as I
2 said, the State has the burden of proof.

3 So ordinarily what will happen is the
4 State will call to the stand a witness, and that
5 witness will take the oath of a witness and will
6 present his or her testimony.

7 Now, that testimony is evidence. And
8 by and through that testimony there may be other
9 evidence that is presented, evidence in the form of
10 perhaps documents, audiotapes, videotapes, actual
11 objects that could be presented into the record.
12 And those may all be presented by and through the
13 introduction of evidence and testimony from the
14 witnesses.

15 The reason I'm being a little bit coy
16 in not telling you is because I don't know. I
17 haven't seen the witnesses testifying and I don't
18 know what the evidence will be, so we'll be seeing
19 it for the first time together. But just
20 understand that evidence can take several forms and
21 it will be introduced during the trial of the case.

22 Now, after the State has asked all of
23 the questions that it may have of a witness and
24 introduced all the evidence, then the defense has
25 the opportunity to cross-examine that witness.

COURT'S OPENING REMARKS

1 And, again, the defense will ask questions, witness
2 will respond, and once the defense has exhausted
3 its questions, then that witness will be excused
4 and the State will call its next witness and we
5 will follow the same process.

6 After the State has called all of its
7 witnesses and introduced all of its evidence, then
8 the defense has the opportunity, if he elects to do
9 so, to present evidence as well. And if the
10 defense elects to introduce evidence, then it will
11 be the same process: Calling the witness to the
12 stand, the witness takes the stand, the defense
13 conducts direct examination and then the State has
14 the opportunity to cross-examine that witness.

15 After you have heard all of the
16 evidence that this defense may elect to introduce,
17 then the defense will rest and we will go to
18 closing arguments.

19 Now, closing arguments are like opening
20 statements in that it's not evidence to be
21 considered by you. You will have already heard al
22 of the evidence in this case at that point. What
23 the sides will be doing is commenting on the
24 evidence in an attempt to persuade you to their
25 respective positions to advocate for their

COURT'S OPENING REMARKS

1 respective sides.

2 After the parties have had the
3 opportunity to give closing arguments, then I will
4 give you a closing charge on the law. Now, the
5 reason I wait until the very end to give you a
6 closing charge on the law is because, as I said, I
7 have not seen the evidence either, so it's
8 important that I see the evidence before I can give
9 you the specific law that relates to the evidence
10 that's been presented in this case. So I will wait
11 until the very end, and I will give you a charge on
12 the law.

13 Now, after I give you a charge on the
14 law, then I will ask you to retire to your jury
15 room and you will begin your deliberations. Now,
16 understand you won't begin your deliberations until
17 I tell you specifically to begin your
18 deliberations. And if you have to ask, are we
19 supposed to deliberate yet, the answer is no,
20 because the signal I'll send you is very clear and
21 it'll be after everything is over at the very end.

22 Now, ladies and gentlemen, at the risk
23 of insulting your intelligence, I'm going to tell
24 you why that's important. Okay. You can't really
25 make an intelligent decision about anything unless

COURT'S OPENING REMARKS

1 and until you have heard all of the facts that bear
2 upon the issue to be determined, until you've heard
3 all of the evidence that's relevant to the matter
4 to be determined. So it's important that you wait
5 until the very end and hear everything.

6 You know in your own personal
7 experience that at some point in your life somebody
8 has come to you, your brother, your sister, your
9 children, your parents, your friends, and they told
10 you a story. And when you hear that story, you
11 think, wow, I am convinced. And then you hear the
12 other side of the story and the picture changes and
13 the perspective changes.

14 Well, a trial is the same way. It's
15 important that you hear everything before you make
16 a determination on the case.

17 During the course of the trial, we will
18 be taking regular, routine breaks. I'm a
19 middle-aged man and I have to take breaks about
20 every hour to every hour and-a-half, so I intend to
21 take breaks every hour and-a-half. Okay.

22 When we take breaks, don't discuss the
23 case. And when I say, don't discuss the case, that
24 means don't discuss the witnesses, what they said,
25 whether they were believable or not, what you think

COURT'S OPENING REMARKS

1 about the evidence. That means don't discuss the
2 case. Talk about something else. Talk about the
3 NFL that's about to kick off and your favorite
4 teams and Tom Brady being suspended, but don't talk
5 about the case. Okay.

6 If during the course of this trial for
7 any reason you need to take a break, even if we
8 have come back on the record after five minutes,
9 just raise your hand, get the bailiff's attention
10 or get my attention and we will take a break,
11 because you all are the 14 most important people in
12 this courtroom. And I would much rather you be
13 listening to the evidence that's being presented
14 than thinking, boy, I really need to take a break
15 because of this or that and I'm having a hard time
16 concentrating. You just let me know and we'll take
17 a break and then we'll come back when you're ready
18 to come back into the courtroom.

19 Ladies and gentlemen, now let me tell
20 you what your role is in this case. You are the
21 judges of the facts. You have the sole and
22 exclusive jurisdiction and authority to determine
23 what the facts are in this case.

24 You determine what the facts are from
25 the evidence that's presented at trial. You will

COURT'S OPENING REMARKS

1 determine what's believable and what's not
2 believable. You will determine what is important
3 and what's not important. You will determine what
4 has value and what doesn't have value. And you
5 will determine that based on the evidence that's
6 presented at trial.

7 Now, you will take that evidence,
8 determine the facts, and then you will apply the
9 law to those facts as I give it to you. Now, as
10 distinguished from you as the judge of the facts,
11 I'm the judge of the law, which means that you must
12 accept the law as I give it to you. And I will
13 give you the law at the end of the case.

14 Now, also, my rôle during this case is
15 to make sure that we are following the law and that
16 we are following the Rules of Evidence and
17 appropriate procedures.

18 So imagine, if you will, I'm the umpire
19 behind the plate calling balls and strikes. I
20 don't have any stake in the outcome of this trial
21 and I have no concern in this trial other than this
22 being a fair trial for the State and the defense,
23 and, by extension, for you because you're going to
24 donate and give up some of your time for this
25 trial, and it's important that we get it right.

COURT'S OPENING REMARKS

1 So when, and if, during the course of
2 this trial you hear either party object or make a
3 motion, then it's incumbent upon me to rule upon
4 that motion. So when I rule on that motion, there
5 are only two sides. I have to pick a side.

6 But don't think from that, that I have
7 a bias or prejudice or preference for either side
8 because I truly don't. I am simply making an
9 objective determination based on my understanding
10 of the law and the Rules of court. So don't think
11 that I have a bias or a prejudice because I
12 clearly, clearly do not.

13 All right. Ladies and gentlemen, we
14 are going to begin with opening statements today.
15 Before we begin with opening statements, we will
16 take a break, obviously, before we get to the end
17 of the day, but right now there are several
18 witnesses that we want to get on the record today,
19 so we may go a little bit after 5:00.

20 Generally speaking, I like to do a
21 normal business day, 9:00 to 5:00. I will probably
22 end up starting at 9:30 so you can avoid some
23 traffic issues, and I can too. And -- and we will
24 probably try to end every day at about 5:00. That
25 always depends on where we stand in the

STATE'S OPENING STATEMENT

1 introduction of evidence. Okay.

2 Before we start the presentation of
3 evidence and opening statements, the Clerk of Court
4 is going to swear you in. Now, you have already
5 taken an oath downstairs to tell the truth, but
6 this is different. This is an oath where you swear
7 to truly invariably try this case in accordance
8 with the evidence that is presented and in
9 accordance with the law as I give it to you.

10 So, Madam Clerk, you may administer the
11 oath.

12 THE JURY,
13 being first duly sworn, testified as follows:

14 THE COURT: All right. Ms. Linder.

15 MS. LINDER: Thank you, Your Honor.
16 May it please the Court.

17 THE COURT: Yes, ma'am.

18 MS. LINDER: Good afternoon, ladies and
19 gentlemen of the jury. South Carolina has a lot of
20 laws out there about guns and about drugs, and
21 that's pretty much why we are here today. In South
22 Carolina it's illegal to possess drugs. It's also
23 illegal to possess a certain weight of drugs.
24 Trafficking is when you possess a weight of ten
25 grams or more of drugs.

STATE'S OPENING STATEMENT

1 It's -- as far as guns are concerned,
2 if you have a firearm, you cannot just store it
3 wherever you feel like. You cannot place it
4 wherever you feel like in your vehicle and about
5 your person. There are a lot of laws out there on
6 the books for safety.

7 You also are not allowed to possess
8 firearms that have previously been reported as
9 stolen, i.e. you are not the rightful owner.

10 Those are the main reasons why we are
11 here today, and I concur with the Judge; I think we
12 will be done by Wednesday, if not tomorrow.

13 I just want to kind of talk to you
14 because that is why we are here. We are here today
15 because this defendant, Mark Blake, has been
16 charged with trafficking cocaine, with unlawful
17 possession of a stolen pistol, and with unlawful
18 carrying of a pistol. Those are the three charges
19 we are here for today.

20 Now, back on April 5th, 2012,
21 Corporal McAbee with the South Carolina Highway
22 Patrol was on his -- doing his routine. He was
23 doing his job. He was travelling along 526 about
24 4:00 in the morning, and at that time Mr. Blake
25 went zooming by at 82 in a 60 right past the

STATE'S OPENING STATEMENT

1 trooper. He clocked out at 82, and so he initiated
2 a traffic stop for speeding.

3 And as the blue lights went on, as the
4 sirens go on, Corporal McAbee's cruiser was
5 equipped with a dash cam, so you will see all of
6 that.

7 As he pulled over, the defendant pulled
8 his vehicle over, the trooper pulled his vehicle
9 over and the trooper went about his typical traffic
10 stop. He approached, license, registration,
11 insurance. Those are the three things, license,
12 registration, insurance, every time he asks for
13 them.

14 As he did that, though, he can't ignore
15 all of his training. He can't ignore all of his
16 experience. So as he's asking for these standard
17 items for speeding, he's taking notes. He's
18 observing different behaviors. He's observing
19 different smells. He's observing different things
20 that are happening.

21 He proceeds with the traffic stop. He
22 gets the license, goes back, and he starts calling
23 in to dispatch to make sure the license is good,
24 all that.

25 Well, because of the defendant's

STATE'S OPENING STATEMENT

1 choices earlier that evening, because of the
2 defendant's choices in the vehicle when
3 Corporal McAbee stopped him and approached him and
4 was talking to him, backup was called to the scene.
5 Backup was called to the scene and ultimately the
6 defendant was asked out of the vehicle.

7 The defendant was asked out of the
8 vehicle, and when he got out of the vehicle, on his
9 seat were drugs. He was placed under arrest for
10 drugs and DUI.

11 Then that routine comes back in. Got
12 to call for a tow service, can't leave the car on
13 the shoulder of the interstate. So through all
14 that a search of the vehicle was done. In that
15 search of the vehicle, there was a firearm.
16 Underneath the --

17 MR. BLAKE: I respectfully reject their
18 introduction based upon the grounds of DUI was done
19 prior -- I mean, after the whole incident occurred
20 and that that's not what transpired, this whole
21 situation. That's null and void and I respectfully
22 request to instruct the jury to disregard it.

23 THE COURT: Mr. Blake brings up a
24 point. Okay. And I've already told you this and
25 I'm just going to restate it for you. Okay.

STATE'S OPENING STATEMENT

1 Opening statements are not evidence. It's not
2 evidence to be presented by you. If either side --
3 either side being equal. I'm not pointing out
4 anybody.

5 If either side makes a representation
6 to you in opening statements and understand that
7 that statement, if it is to be taken as true, must
8 be supported by evidence. Okay.

9 All right. You may proceed.

10 MS. LINDER: Thank you, Judge.

11 Mr. Blake was charged with drugs and a DUI. His
12 car was then searched by law enforcement. When
13 they searched his car, they found a firearm by the
14 front passenger seat and a digital scale. That
15 firearm was reported stolen out of Charleston
16 County, and as I said, it was under the passenger
17 seat.

18 Corporal McAbee continued paperwork,
19 brought this individual to the jail for booking for
20 those arrests, and at that point, when he got the
21 defendant out of the vehicle, he observed on the
22 seat, that he had checked before placing him in
23 there, additional drugs.

24 Ultimately, the defendant in this case
25 is charged with trafficking cocaine in excess of

DEFENDANT'S OPENING STATEMENT

1 ten grams, unlawful possession of a stolen pistol,
2 and unlawful carrying of a pistol. And I ask that
3 you pay close attention to everything that happens
4 in this trial and you come back with a verdict of
5 guilty on all three counts. Thank you.

6 THE COURT: Mr. Blake.

7 MR. BLAKE: How are you-all doing? My
8 name is Mark Blake and all of -- each and every one
9 of you, your appearance here is very much
10 appreciated by myself. I'm not going to take up
11 too much of your time because I'm not here to paint
12 a picture to any of you. I'm here to provide and
13 prove facts, what can be -- what is factual and
14 what can be proven. And what remains, a
15 conjectured theory or delusional theory, or a myth,
16 or a fairytale, or whatever you want to call it.

17 I'm just ready to take you through this
18 whole situation. Very traumatizing to myself. I
19 hope none of you ever encounter this incident
20 because there are -- you know, there's great cops
21 out there and there's bad cops out there and -- I
22 mean, it's good people and bad people, bottom line.

23 And we expect the justice system to
24 hold up righteously. Sometimes they also make poor
25 choices. And we're here today -- and I'm here to

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1 prove to you that some poor choices was made during
2 the course of the traffic stop. The whole incident
3 was staged.

4 Thank you for your time and appreciate
5 it.

6 THE COURT: Thank you, sir.

7 All right. Call your first witness.

8 MS. LINDER: The State calls
9 Corporal McAbee.

10 DEAN MCABEE

11 being first duly sworn, testified as follows:

12 THE CLERK: Please have a seat. And
13 for the record, if you could state your first and
14 last name and spell out your last name, please.

15 THE WITNESS: Dean McAbee, last name is
16 M-C-A-B-E-E.

17 DIRECT EXAMINATION

18 BY MS. LINDER:

19 Q. Good afternoon, Corporal McAbee. Can
20 you please tell the jury what is your occupation?

21 A. I'm actually a state trooper with the
22 South Carolina Department of Public Safety.

23 Q. And what is your title?

24 A. I'm actually a corporal, which is a
25 shift supervisor with patrol.

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1 Q. And how long have you been with Highway
2 Patrol?

3 A. I have been with Highway Patrol now
4 14 years.

5 Q. And did you work in law enforcement
6 prior to working with Highway Patrol?

7 A. I did. I also worked for a sheriff's
8 office in the upstate, Cherokee County Sheriff's
9 Office as well.

10 Q. Were you working back on April 15,
11 2012?

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

13 Q. And were you involved in this case, the
14 State v. Mark Blake, back on that date?

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

16 Q. How were you first brought into this
17 case?

18 A. I was actually patrolling I-526 when I
19 clocked Mr. Blake for speeding.

20 Q. And what area of I-526 were you?

21 A. We were westbound, so we passed the
22 Leeds Avenue exit and the Westmoreland Bridge I
23 believe it is. It goes over the water. I
24 actually -- and just before the Paul Cantrell exit.

25 Q. And is that area of Charleston known as

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1 anything?

2 A. It's West Ashley area of Charleston
3 County.

4 Q. You said he was speeding. Can you
5 explain to the jury how you were driving that day?

6 A. I can. I was actually westbound on
7 I-526 as well. I observed the vehicle coming up
8 behind me, that appeared to be at a high rate of
9 speed, and which I verified by radar.

10 In our cruisers we have a radar that
11 has dual band antennas in it, if that makes sense
12 to you, where we can clock people from the front
13 and the back. We can clock people in the opposite
14 direction in front or behind us once they've passed
15 us, and we can just as well clock the people in the
16 same direction, in which was done in this case.

17 Q. And what was the speed limit in that
18 area?

19 A. The speed limit was 60 miles per hour.

20 Q. And were you driving a marked car?

21 A. I was actually in an unmarked Dodge
22 Charger.

23 Q. And when you were driving along, can
24 you explain to the jury specifically in this case
25 what happened with the speed of yourself and with

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1 the speed of the defendant?

2 A. Basically, like I said, when we use a
3 radar and we're not just pacing somebody, which
4 means we're travelling behind them, our radar unit
5 is given a control speed as well as a target speed.
6 So what I do on that particular case is we try --
7 we have to verify that we're not -- that the speeds
8 are not combined.

9 So I actually increased my speed and I
10 decreased my speed to verify that the target speed
11 is remaining constant, which was at 82 miles per
12 hour, but I'm also verifying that the patrol speed
13 is the actual speed that I'm seeing on my
14 speedometer too, plus or minus one mile per hour.

15 Q. When you get a car before your shift,
16 is it your car or do you just get a random car
17 before each shift?

18 A. No, the car I drive is the car that is
19 assigned to me through the State that I keep to
20 myself.

21 Q. And when you start your shift -- what
22 shift were you on that night?

23 A. I was actually on night shift, which
24 runs from 6:00 p.m. to 6:00 a.m. in the morning.

25 Q. And do you typically inspect your car

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1 before you get your shift started?

2 A. We do. We have to do an inspection of
3 our car. Not only that, but we have to check that
4 the console of our vehicle was inspected as well.

5 Q. And was there anything in your car that
6 was not supposed to be there?

7 A. No, ma'am, nothing was in the car that
8 should not have been there.

9 Q. Any drugs in your passenger seat?

10 A. No, ma'am, no drugs.

11 Q. In your car, in this Charger, do you
12 have audio and video capabilities?

13 A. Yes, ma'am, I do.

14 Q. Can you explain that to the jury?

15 A. Our -- all of our patrol cars, the
16 Highway Patrol speaking in general, are all
17 equipped with video cameras. Those video cameras
18 are activated -- you can do it two ways. You can
19 manually activate it or it's activated by the blue
20 lights. So, in this case, when I activated the
21 blue lights, the camera activated itself.

22 It also backs up for 30 seconds, and
23 you'll see 30 seconds of driving prior to the
24 actual traffic stop. So anything I've done or
25 anything that happens in that 30 seconds is going

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1 to back up and capture on that video as well.

2 Q. And is the sound there for that
3 30-second backup?

4 A. It is. No. The sound?

5 Q. The sound.

6 A. No, ma'am. I thought you said -- there
7 is no sound on that 30 seconds, no, ma'am.

8 Q. All right. So can you explain
9 specifically what you observed in the speed, the
10 lanes, for the traffic infractions that the
11 defendant did?

12 A. I can. Actually, you'll see -- once
13 the defendant's clocked and I'm traveling at the
14 posted speed limit at that particular time, you'll
15 see him actually come, you know, right past my
16 patrol car in the left -- what we call the left
17 lane, number one lane. He passes by me..

18 One he passes by me, I activate my blue
19 lights. I move over into the left lane behind him.
20 He slows down and he actually gets his blinker on.
21 He starts to move to the right-hand lane, and
22 during that period of time I see the hand come out
23 the top of the sunroof and I actually start seeing
24 material fly back toward my patrol car.

25 I also observed him driving back over

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1 the lines, almost back completely into the number
2 one lane, and then he actually pulled his vehicle
3 over to the right, and then finally ended up in the
4 emergency lane on the right shoulder.

5 Q. And did you activate your blue light
6 and siren in this case?

7 A. I activated the blue light. The siren
8 was not activated in this case.

9 Q. And did the defendant immediately pull
10 over?

11 A. Not immediately. Like I said, he
12 continued on down the roadway for a short distance.
13 And, like I said, you could see him weave back and
14 forth in between the lanes and then eventually pull
15 over to the right shoulder.

16 Q. And what did you do after he pulled
17 over?

18 A. I had actually called in the traffic
19 stop to our dispatch center to let them know what I
20 had stopped, the vehicle description, make, model
21 and the tag number on the vehicle as well.

22 Q. And where did you pull over?

23 A. Directly behind the defendant.

24 Q. So after you pulled over and called in
25 to dispatch the plate and other information, did

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1 you approach the car?

2 A. Yes, ma'am, I did. I did a passenger
3 side approach on the vehicle.

4 Q. Why did you do a passenger side
5 approach?

6 A. Well, being out on the interstate all
7 the time and working wrecks, you see a lot of
8 wrecks happen afterwards. So I think the safest
9 thing for us to do -- a lot of times we put
10 ourselves away from harm's way and move to the
11 other side, so I did a passenger side approach.

12 Q. When you approached the vehicle, what
13 did you ask for from the defendant?

14 A. I asked him for his license,
15 registration, and insurance.

16 Q. And is that typical?

17 A. Yes, ma'am, that's what we always
18 request from the driver.

19 Q. When you request this information, are
20 you doing anything else or observing anything else?

21 A. Oh, yeah. I mean, I'm standing there
22 so I'm looking into the car as well.

23 Q. And how many people were in that
24 vehicle?

25 A. Just one.

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1 Q. And do you see that driver and that
2 sole occupant here in the courtroom?

3 A. Yes, ma'am.

4 Q. And can you please say what clothing
5 he's wearing?

6 A. Sitting at the head of the defense
7 counsel's table there wearing the dark suit with
8 the brown shirt and brown tie with the facial hair.

9 MS. LINDER: And, Your Honor, I would
10 ask that the record reflect that the corporal
11 identified the defendant, Mark Blake, Junior as the
12 person back from April 15th of 2012.

13 THE COURT: Yes, ma'am. So noted.
14 BY MS. LINDER:

15 Q. When you asked for that license,
16 registration, and insurance, did he immediately
17 hand it all to you?

18 A. No, ma'am, he did not.

19 Q. What happened?

20 A. He was pretty apologetic at that time,
21 that he was sorry. He actually told me who he was.
22 There again, I told him -- I asked for his license,
23 registration, and insurance a second time. He then
24 lays his actual driver's license on the passenger
25 seat.

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1 Q. Did that make you, in your training and
2 experience, think anything or heighten anything?

3 A. It did. I also observed Mr. Blake,
4 like I said, having labored breathing, you know,
5 breathing real heavy, also, like, the heartbeat
6 itself, but not only that, reaching for my hand a
7 couple times as if he wanted to shake my hand.

8 I would not reach into the vehicle. I
9 did not reach into the vehicle to retrieve the
10 license either.

11 Q. When you asked for it, did he give you
12 all three of those items?

13 A. He gave me -- he eventually gave me the
14 license and the registration to the -- driver's
15 license and registration to the vehicle.

16 Q. When you're at the passenger side, do
17 you observe anything in the passenger front seat?

18 A. I did. I mean, I observed a box, a
19 little Styrofoam box that you would use for food
20 that was sitting in the passenger seat and also a
21 little corner piece of a glassine baggie.

22 Q. And with your training and experience,
23 what does that foreign piece of a glassine bag
24 indicate to you?

25 A. Like I said, the fact that the hand

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1 come out the window and all those materials was
2 flying back towards my vehicle, that's usually a
3 cutout that you see that I assumed was associated
4 with some kind of narcotic. And I actually alluded
5 to the fact that you have marijuana because that's
6 what it appeared to me to be.

7 Q. And when you were up the first time at
8 the passenger side, did you see the defendant do
9 anything with his door?

10 A. He did. He actually opened up his door
11 and threw that piece of plastic out into the
12 roadway.

13 Q. Did you end up going back to your car
14 to try to run the license and everything?

15 A. I did. I went back to the vehicle and
16 I had the dispatcher run his driver's license by
17 number.

18 Q. And when you went back to your vehicle
19 that time, did you have all three pieces of that
20 information?

21 A. I did not. I still had not obtained
22 the actual insurance information at that time.

23 Q. And after calling in to dispatch, did
24 you observe anything about the defendant or the
25 defendant's vehicle?

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1 A. I did. As I was sitting there
2 watching, waiting on the information to come back,
3 I noticed the defendant doing a lot of moving
4 inside the vehicle, actually almost getting from
5 the driver's side all the way over to the passenger
6 side as if he was doing something, you know, in
7 that area of the front seat on the passenger side.

8 Q. What did you do after that?

9 A. After that -- after I saw the movement,
10 I reapproached the vehicle again.

11 Q. And what side? Are you still on the
12 passenger side?

13 A. Yes, ma'am; I went back to the
14 passenger side a second time.

15 Q. When you reapproached the vehicle, can
16 you describe to the jury where the defendant was
17 and his reaction?

18 A. When I reapproached the vehicle again I
19 had my flashlight on. When I got to the vehicle,
20 the defendant was actually still leaned over
21 towards the front seat of the passenger side, and I
22 went back up again and asked for the license,
23 registration, and insurance.

24 At that time it was like I spooked him.
25 He jumped from the passenger side back to the

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1 driver's side. At that time he pushed something
2 under his buttocks onto the seat and sat on it.

3 Q. So after all that happened and you
4 asked for the insurance, did you go back to your
5 car?

6 A. I did. I returned back to my car a
7 second time.

8 Q. On the two approaches to the vehicle,
9 did you smell anything?

10 A. I did. I actually questioned the
11 defendant if he'd had any alcohol to drink that
12 night because sitting there at the window I could
13 smell the odor of alcoholic beverage coming from
14 the vehicle.

15 Q. When you went back to your vehicle, did
16 you call for anything additional?

17 A. I did. I went and requested our
18 dispatch to notify Charleston County Dispatch
19 Center and I requested that they send a city unit
20 out. You will probably hear on the video I said
21 for a 1039, and that code is for a vehicle search.

22 Q. And why would you request backup?

23 A. Because of officer safety. One, it's
24 not safe to search a vehicle by yourself out there
25 alone, so in our policy -- officer request, we have

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1 an additional officer there before we actually
2 search a motor vehicle.

3 Q. And after backup arrived, what did you
4 do?

5 A. The county actually had a deputy arrive
6 on the scene probably before our dispatcher even
7 had time to make contact with the dispatch center.
8 So I just told our dispatcher to cancel the city,
9 that I had a deputy out with me, but the city
10 actually arrived on the scene about the time the
11 deputy did as well.

12 Q. And when you had the backup on scene,
13 what did you do?

14 A. Well, I explained to him what all had
15 occurred prior to his arrival and what all I had
16 observed, and at that point in time, we both
17 approached the vehicle.

18 Q. And did you approach the vehicle with
19 guns drawn?

20 A. No, ma'am.

21 Q. Did you approach the vehicle screaming
22 at him?

23 A. No, we did not.

24 Q. When you approached the vehicle, did
25 you physically pull him out of the car?

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1 A. No, we did not. I went actually to the
2 passenger side. The deputy approached the driver's
3 side, which I saw was putting him inside the
4 roadway, and I asked him from the passenger side to
5 exit the vehicle and step to the back.

6 Q. And did the defendant comply? Did he
7 exit the vehicle?

8 A. He did. The deputy was over there on
9 that side. He actually exited on his own and the
10 deputy basically led him back to the back of the
11 vehicle which he was driving.

12 Q. Did you observe anything in the car as
13 the defendant got out of the driver's seat?

14 A. You know, when he actually got out of
15 the seat, you know, my concern was to see what it
16 was that he threw under. So, basically, from the
17 passenger side with my light I could see, you know,
18 the objects laying on the seat. So then I went
19 back to the back of the vehicle again where the
20 defendant was.

21 Q. And with your training and experience,
22 what did those items appear to be?

23 A. The more I was looking at it, it was
24 either crack or powdered cocaine or crack cocaine.
25 From what I could tell, It was a white

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1 powdery-looking substance.

2 Q. Did you ever go around to the driver's
3 side to look at what was on the seat?

4 A. I did. I actually came back around to
5 the rear of the vehicle. At that point in time I
6 patted the defendant down to make sure that he
7 didn't have any weapons or anything on him at that
8 time, and then I was going to walk from there to
9 the passenger side.

10 The deputy had already approached the
11 passenger side, looked inside the vehicle and saw
12 the actual packet of cocaine laying on the front
13 seat as well.

14 So as I walking back past the deputy to
15 approach on the driver's side, you know, he sort of
16 said, yeah, it's laying on the front seat, because
17 that's where he actually pitched it to.

18 MR. BLAKE: Objection, Your Honor. I'm
19 sorry about that.

20 THE COURT: Okay. What's the basis of
21 your objection?

22 MR. BLAKE: Judge, he cannot -- that's
23 basically hearsay. He can't speak for the
24 deputy --

25 THE COURT: Okay.

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1 MR. BLAKE: -- at this point.

2 THE COURT: Okay. Do you intend to
3 call the other witness?

4 MS. LINDER: Yes, Judge.

5 THE COURT: Okay. Then I'll sustain
6 the objection.

7 BY MS. LINDER:

8 Q. At what point did you place the
9 defendant under arrest and for what charges?

10 A. Once I actually saw the drugs was on
11 the seat, I come back and told him at that point in
12 time that he was under arrest. And he said, for
13 what reason? I said, the drugs laying on your
14 front seat.

15 Q. And was he also placed under arrest for
16 DUI?

17 A. He was placed under arrest for DUI as
18 well.

19 MR. BLAKE: Judge, I object to that
20 again. She keeps introducing this DUI situation,
21 and time after time I have to say I never agreed to
22 none of this to be evidence. We never negotiated
23 or discussed that.

24 And once again -- I'd ask you once
25 again to instruct the jury to null and void that,

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1 and please instruct Ms. Linder of her awareness,
2 that it's the second attempt.

3 THE COURT: All right. This is what
4 I'm going to do. I will grant your motion. Okay.
5 And I will sustain.

6 Ladies and gentlemen, there's a
7 question about the DUI, but that's not an issue in
8 this case. The only reason it was introduced by
9 the State was to set the foundation about why the
10 stop happened, and that's the only relevance that
11 it could possibly have.

12 But understand that this defendant is
13 not on trial for DUI and there's no evidence in
14 this record that he was accused of the same or that
15 he was ever adjudicated, either guilty or not
16 guilty. So please disregard the reference to the
17 DUI.

18 Ms. Linder, you may proceed.

19 BY MS. LINDER:

20 Q. After placing the defendant under
21 arrest, did you search the vehicle?

22 A. Yes, ma'am, we did.

23 Q. And why did you search that vehicle?

24 A. Based on the fact that the corner of
25 the baggie that was initially laying in the car

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1 that he disposed of out the driver's side, the
2 package of dope that was laying on the driver's
3 seat, and the fact that he was leaning over into
4 the passenger compartment under the passenger seat.

5 Q. And after you placed him under arrest,
6 did you do anything to your camera?

7 A. Once he was placed in cuffs and taken
8 back to the patrol car, our camera -- we always
9 leave the camera on the defendant so the actual
10 camera switches from the front to the rear so that
11 it's actually recording the defendant.

12 Q. And can you explain to the jury what
13 you did during the search and what you located
14 during the search?

15 A. Anytime we do a tow, we do a -- we're
16 checking the vehicle too to make sure if there's
17 anything of value in there, that it's notated or
18 documented or something to that effect. And during
19 that time I opened up the door where the defendant
20 had been leaning over to look, and I actually saw
21 the actual butt of the weapon protruding from
22 underneath the passenger -- front of the passenger
23 seat.

24 Q. Did you handle that firearm with your
25 bare hand?

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1 A. No, I did not. I actually asked the
2 deputy for a pair of his gloves.

3 Q. And where the gun was located, is that
4 the same place where you saw the defendant
5 reaching?

6 A. It is.

7 Q. And is that the same place where the
8 defendant looked startled? Spooked, I believe --

9 A. It is. When I walked back up to the
10 vehicle, that's the area which he was entertaining.

11 Q. In the State of South Carolina without
12 a concealed weapons permit, are you allowed to
13 carry a gun on the passenger floorboard or
14 underneath the passenger seat of a car?

15 A. No, ma'am, you're not.

16 Q. Does the defendant have a concealed
17 weapons permit?

18 A. No, ma'am, he does not.

19 Q. Is there anything unusual you noticed
20 about the condition of the gun?

21 A. Once the gun was retrieved -- of
22 course, with the South Carolina Highway Patrol, we
23 all carry Glocks as well, and there are several
24 places for a serial number to be located on Glock.
25 And we noticed that the one that was on the bottom

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1 portion of the barrel had actually been removed
2 from it.

3 Q. And did you collect any other evidence
4 from inside the defendant's car?

5 A. I did. I actually collected a set of
6 digital scales that had white powder residue on it,
7 and I also collected a bottle -- a red and white
8 bottle that had a white powder substance inside of
9 it as well.

10 Q. And where was that scale?

11 A. It was actually on the driver's side
12 floorboard just at the base of the seat.

13 Q. And what is a digital scale used for in
14 your training and experience?

15 A. Well, basically, what I've already
16 seen, measuring out the narcotics.

17 Q. And where was that bottle full of white
18 powder?

19 A. The same location.

20 Q. When you locate a gun during a search,
21 what is your procedure? How do you handle it?

22 A. Well, we try to preserve it for the
23 purposes of it being printed. So again, you know,
24 I actually took it with gloves on. I actually take
25 all the ammunition out of it. We remove the actual

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1 clip that holds the extra bullets in it and we
2 clear the chamber to make sure that nothing is in
3 there that could discharge.

4 Q. And do you typically call in a firearm
5 to dispatch?

6 A. Normally, we do. and we did in this
7 case as well.

8 Q. And is there anything interesting about
9 that gun?

10 A. One of the serial numbers located was
11 on the barrel, and we actually ran it through our
12 dispatch center, and it came back stolen.

13 Q. What county was it stolen out of?

14 A. It actually came back stolen out of
15 Charleston County.

16 Q. What did you end up doing with the gun,
17 the scale, the pill bottle, and the bag of drugs?

18 A. All of that evidence was bagged and
19 sent to our evidence location, which is actually
20 located in Columbia.

21 Q. On scene, where did you put it?

22 A. On scene it's all bagged up and it's
23 actually secured in my trunk. I have a little
24 container in the back that's inside my trunk with,
25 and I actually secure everything in my trunk.

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1 MS. LINDER: Your Honor, may I approach
2 the witness?

3 THE COURT: Yes, ma'am, you may.

4 BY MS. LINDER:

5 Q. At this time I hand you what's been
6 marked for identification purposes as State's
7 Exhibit 2 and State's Exhibit 3. If you can please
8 look at those. Do you recognize them?

9 A. I do. State's Exhibit 2 is the actual
10 Glock that was located in the vehicle that night.
11 And the other bag, Exhibit 3, is the actual clip
12 with the rounds of ammunition that was located in
13 the weapon.

14 Q. And do those appear substantially in
15 the same condition as they were when you collected
16 them back on April 15, 2012?

17 A. Yes, they do.

18 MS. LINDER: Your Honor, at this time I
19 would seek to admit State's Exhibit 2 and State's
20 Exhibit 3 into evidence.

21 THE COURT: Objection, sir?

22 MR. BLAKE: Yes, I want to object to --
23 exclusionary rule..

24 THE COURT: Okay. All right. You're
25 preserved on the record with respect to that. And

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1 I presume that goes back to the pretrial motions
2 that you had made, sir?

3 MR. BLAKE: Correct, Your Honor.

4 THE COURT: Okay. Good enough. In
5 keeping with the prior rulings of the Court, I
6 respectfully deny your motion and overruling your
7 objection.

8 The same is submitted as State's
9 Exhibit Number 1, is that correct, ma'am?

10 MS. LINDER: Judge, it's Number 2 and
11 Number 3.

12 THE COURT: State's Exhibit Number 2
13 and 3 in evidence.

14 MS. LINDER: Thank you.

15 (STATE EXH. 2 in evidence.)

16 (STATE EXH. 3 in evidence.)

17 BY MS. LINDER:

18 Q. All right. If you can explain the best
19 you can -- if you can explain, the best you can to
20 the jury, where is the serial number typically on a
21 Glock?

22 A. Just at the base of the barrel here on
23 the bottom. There is always a little silver plate
24 on the bottom of a Glock that actually has the
25 serial number on it. And there's also another one

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1 when the chamber is closed on top of the barrel,
2 that's another location for the serial number.

3 Q. And that silver plate that you're
4 talking about -- that silver plate that you're
5 talking about, is it here on this Glock?

6 A. No, ma'am, it's been removed from that
7 Glock.

8 Q. And can you explain to the jury what
9 this is, State's Exhibit Number 3?

10 A. That's the actual clip that had the
11 rounds of ammunition. It was inside the weapon the
12 night it was retrieved from the vehicle.

13 Q. And you said you handled all this with
14 gloves. Did you -- are you aware, were these items
15 ever further tested for fingerprints?

16 A. They were tested for prints.

17 Q. What was the result of that?

18 A. There were no prints located on the
19 weapon.

20 Q. So none of the defendant's prints?

21 A. No, ma'am, none of the defendant's
22 prints were found on the weapon.

23 Q. Any prints at all? Were any prints at
24 all lifted?

25 A. None. Not even any prints from the

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1 owner that actually had reported it being stolen.

2 No prints at all was lifted off the weapon.

3 Q. So zero prints were lifted from anyone?

4 A. That's correct, no prints at all.

5 Q. At this time, I'm going to approach and

6 hand you what's been marked as State's Exhibit 5

7 for ID purposes. If you can look at this please.

8 Do you recognize it?

9 A. I do.

10 Q. How do you recognize it?

11 A. This is the actual scale that I had

12 located and packaged for evidence. It was located

13 in the vehicle.

14 Q. And does it appear in substantially the

15 same condition as it was the night you collected

16 it?

17 A. Yes, ma'am, it does.

18 MS. LINDER: Your Honor, at this time

19 the State would seek to admit State's Exhibit 5

20 into evidence.

21 MR. BLAKE: Objection, Your Honor,

22 exclusionary rule.

23 THE COURT: All right, sir. You are

24 protected on the record in that regard. I

25 respectfully overrule the objection. The same is

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1 submitted into evidence as State's Exhibit
2 Number 5.

3 MS. LINDER: Thank you.

4 (STATE EXH. 5 in evidence.)

5 BY MS. LINDER:

6 Q. So this digital scale, State's
7 Exhibit 5, did you handle this with gloves?

8 A. I think at that point in time I had
9 already retrieved the weapon. That was the first
10 thing I located, and that was handled as well with
11 the same gloves on.

12 Q. And after submitting for further
13 testing, did any fingerprints at all come back off
14 of the digital scales?

15 A. No; I didn't get anything back with
16 fingerprints at all.

17 Q. At this time I approach, I'm going to
18 hand you what's been marked as State's Exhibit 4
19 for ID purposes. Could you please look at that
20 exhibit? Do you recognize it?

21 A. I do.

22 Q. How do you recognize it?

23 A. It's got the red and white bottle in
24 there that I was -- that I talked about earlier
25 that had white powder in it, and also it looks

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1 like -- put this all together -- two different bags
2 of the substance in here that were believed to be
3 cocaine and crack cocaine.

4 Q. And do they appear to be in
5 substantially the same condition as they were when
6 you first collected them?

7 A. They do.

8 Q. So after the defendant is arrested, how
9 are you planning to get his vehicle off the
10 shoulder?

11 A. We actually called for a tow service.
12 We give the driver or the owner or -- in this case
13 he's the sole occupant of the vehicle, an
14 opportunity to provide us with their service of
15 choice, and which he did not have one. So we
16 called one off of our rotation list.

17 Q. And when you were waiting on the tow
18 truck to come, where were you located?

19 A. At that particular time, I was sitting
20 in the front seat of the patrol car.

21 Q. What did you do when the tow truck
22 arrived on scene?

23 A. Basically, I left the patrol vehicle,
24 approached the tow truck driver, and I actually
25 retrieved his phone that he wanted from the

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1 vehicle.

2 MS. LINDER: Your Honor, at this time
3 the State would seek --

4 BY MS. LINDER:

5 Q. I would ask you to look at State's
6 Exhibit 1. Do you recognize it?

7 A. I do. It's the in-car video from the
8 incident in question.

9 Q. How do you recognize that specific
10 disk?

11 A. Not only did I write State v. Mark
12 Blake, Junior on it, but my initials and where I
13 viewed the video as well.

14 Q. And does this video fairly and
15 accurately represent what occurred back on
16 April 15, 2012.

17 A. Yes, ma'am, it does.

18 MS. LINDER: Your Honor, at this time
19 the State would seek to admit State's Exhibit 1
20 into evidence.

21 THE COURT: Mr. Blake, any objection?

22 MR. BLAKE: Objection, Your Honor.

23 THE COURT: What is your objection,
24 sir?

25 MR. BLAKE: (Inaudible) --

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1 exclusionary rule.

2 THE COURT: She couldn't understand
3 you.

4 MR. BLAKE: Fruit of the poisonous
5 tree, exclusionary rule.

6 THE COURT: Okay. I deny your
7 objection, overrule your objection, and the same
8 shall be admitted into evidence as the State's next
9 exhibit.

10 (STATE EXH. 1 in evidence.)

11 MS. LINDER: Thank you, Judge. And for
12 the Court to be aware, I'm going to play just I
13 believe two or three excerpts from the video, but
14 the jury will have this entire video back there.
15 They are welcome to watch it in its entirety.

16 (Video played in open court.)

17 MR. BLAKE: Your Honor, I object.

18 THE COURT: Stop it.

19 (Video stopped)

20 THE COURT: Yes, sir.

21 MR. BLAKE: I object to this
22 introduction between the troopers and the deputy's
23 rendezvous based on bolstering from the trooper and
24 hearsay evidence.

25 MS. LINDER: And, Judge, I would say

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1 that any of this could have been taken up pretrial;
2 however, this has been admitted into evidence at
3 this point.

4 THE COURT: I will respectfully
5 overrule the objection. The tape in its entirety
6 has been introduced.

7 MR. BLAKE: Okay.

8 (Video played in open court.)

9 BY MS. LINDER:

10 Q. Corporal McAbee, is there more to this
11 video that we didn't necessary see it all of?

12 A. Basically, I was sitting in the vehicle
13 prior to the tow truck arriving and then the ride
14 to the jail. That's about it.

15 Q. And the jury will have this entire
16 video back there so they can watch everything, but
17 I just wanted to ask you a couple of follow-up
18 questions. After you moved the camera to the face
19 of the car, can you explain kind of the difference
20 in volume of sound that we're hearing? About
21 hearing outside noise and inside noise of the car?

22 A. Right. Well, what it is, is the --
23 when I actually exit the vehicle, that's when the
24 sound is loud because you're picking up all the
25 outside noise, the vehicles going by, the trucks

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1 and the cars and the engines, versus sitting inside
2 the car where the doors are actually closed and the
3 windows are up. It's a little bit more quiet. We
4 wear a body mic that we use that when we're outside
5 of the vehicle, it transmits back to the vehicle.

6 Q. And can you talk about the sensitivity
7 of the body mic that you wear as law enforcement?

8 A. It's pretty sensitive. I mean, if you
9 walk across the grass and you've got it activated,
10 you'll actually hear it. If you go back and listen
11 to the video, you can almost, basically -- this
12 time of year, you can actually hear the grass
13 rustling under your feet. It's that sensitive.

14 That mic is very sensitive because it's
15 wanting to hear basically what I'm saying and
16 whoever is around me, what they're saying. So
17 therefore, it almost overrides the little body mic
18 that we have inside the car, which is displayed
19 above the defendant's head.

20 Q. And when you arrest somebody -- you
21 arrested the defendant in this case -- is there a
22 certain way that you put their hands when you
23 arrest them and put them in cuffs?

24 A. We do. Usually their hands -- their
25 palms go palm to palm just about every time and the

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1 cuffs go on.

2 Q. And did the defendant keep his hands
3 this way the whole time?

4 A. No. He actually got really fidgety
5 inside the vehicle at some point in time and
6 actually got them twisted up. And he even said
7 that they were too tight at some point in time.

8 Q. Can be you explain what type of clear
9 bags you placed evidence into such as the State's
10 Exhibit 4 for identification purposes? Can you
11 explain that type of bag to the jury?

12 A. State Exhibit 4, that's the cocaine; is
13 that correct.

14 Q. Yes.

15 A. It's the best bag?

16 Q. Yes.

17 A. Anytime we seize drugs and it's going
18 to go to a laboratory for an exam, those best bags
19 are brown in color, and they've actually got
20 numbers on them that's a control number that are
21 used for those bags. And they also have all the
22 forms that we need. It has the chain of custody of
23 what we expect the drugs to be and what kind of
24 testing we want done, and it stays with that case
25 throughout.

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1 So it was placed in one of those bags,
2 and then it was sent to State Law Enforcement to do
3 some -- well, actually it goes to our evidence and
4 then it goes to State Law Enforcement Division.

5 Q. And aside from the drugs that were on
6 the defendant's vehicle seat, did you collect any
7 other white powdered substance from your vehicle?

8 A. I did. Once we arrived at the
9 Charleston County Detention Center and I had exited
10 out of my vehicle -- at the detention center we
11 have to secure our weapons. And you have a box you
12 can put them in at the jail or you can secure them
13 in your vehicle.

14 So I secured mine in my vehicle; that
15 way if I leave in a hurry, at least it will be in
16 my car and not in the jail. And I did that and I
17 proceeded around to get Mr. Blake out of the
18 vehicle.

19 Q. And what did you observe when you got
20 him out of the vehicle?

21 A. Once I got him out of the vehicle, I
22 observed a pretty large amount of the powder
23 cocaine in the bottom of my seat as well as over
24 the side of my seat on the passenger door side of
25 my seat, sort of in between the door and the seat

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1 itself.

2 Q. Was that powder there before you put
3 him in the car?

4 A. No, it was not. You could actually see
5 when I turned the camera around, I'm actually
6 inside the car, I would have noticed if there was
7 anything inside the seat. Not only that, if I'm
8 going to place the defendant in the vehicle, he
9 would have saw -- he would have alluded to it as
10 well.

11 Q. There is a point in the video -- and I
12 would like to know through your training and
13 experience -- where there is a lot of leaning up
14 and turning and things like that when you're
15 talking to the tow truck driver. In your training
16 and experience, what is that?

17 A. Well, obviously, at that point in time,
18 after going actually into the powder in my seat and
19 watching the video, when I exited the vehicle to
20 talk to the tow truck driver and to get Mr. Blake's
21 cell phone he had requested, all of the movement
22 that was taking place at that point in time, he was
23 removing the cocaine either from inside his
24 clothing or it was inside his cavities or some
25 sort -- someplace he had the narcotics stashed.

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1 And he had removed it from his person and actually
2 tried to stuff it within my car seat.

3 Q. Is that common in your 20-plus years of
4 law enforcement experience for individuals to try
5 to conceal narcotics?

6 A. It is. And that's why we're required
7 to check -- after we arrest anybody, we're to check
8 in the vicinity in which they're at or in our
9 patrol car to make sure there's no contraband of
10 any kind, of any type that was actually left in our
11 patrol vehicle.

12 Q. And with your 20-plus years of
13 experience, is it common for individuals to try to
14 conceal narcotics in their buttocks region?

15 A. It's very common actually.

16 Q. Did you ever field test the substance
17 that you collected and submit into evidence?

18 A. I did not field test it. I sealed them
19 up and sent them in for testing.

20 Q. And where do those go for testing?

21 A. Like I said, we actually sent all of
22 our evidence to our evidence custodian in Columbia.
23 It goes there. It's got to be there within
24 72 hours, and then it eventually ends up at SLED
25 where a chemist actually tests the substance to see

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1 what it is.

2 Q. Did the evidence in this case, the gun,
3 which includes the cartridge -- the cartridges and
4 the magazine, the scale, and all of the other white
5 powder substances, did all of that remain in your
6 sole care, custody, and control until you dropped
7 it off at your post, into evidence for Highway
8 Patrol?

9 A. It did. Like I said, once it was
10 actually seized from the scene, it was actually
11 secured in my trunk during the time that I was at
12 the detention center. And then once we leave from
13 there, then we take it to our post office, which is
14 in Charleston, and it is actually secured there
15 into evidence.

16 Q. And did the defendant indicate to you
17 about who owned the vehicle?

18 A. He stated initially that it was his,
19 but then he went on to say that it was his
20 father's.

21 Q. Are you aware if his father was in
22 town?

23 A. There was a conversation between he and
24 I later on, and that his father was in Atlanta.

25 MS. LINDER: Beg the Court's

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1 indulgence?

2 I have no further questions of this
3 witness. If you can please answer any questions
4 that the defendant may have.

5 THE WITNESS: Yes, ma'am.

6 MR. BLAKE: Your Honor, may I approach?

7 THE COURT: Sure.

8 Let me ask you all before we get
9 started with cross-examination, do any of you need
10 to take a break?

11 You do? When we take a break, don't
12 discuss the case. When you are ready, let the
13 bailiff know and we'll come back in and we'll
14 resume. Okay. Don't be shy telling me you need a
15 break. Okay. Chance are somebody else does too.
16 You-all are a team. You have to do everything
17 together.

18 (Jury out, 5:02 p.m.)

19 THE COURT: Mr. Blake, before you go,
20 Ms. Linder, I know you have some witnesses that you
21 want to get in today, but it's 5:00 and we probably
22 won't start again with cross-examination until 10
23 after 5:00. I'm not going to make a jury stay any
24 longer than 6:00. Okay.

25 And that's not because I don't want to

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1 stay. It's because I'm responsible for all of
2 these people. And the jury came in today and they
3 didn't anticipate that they were going to be here
4 late, and they may have child care needs and all of
5 those things. I'll stay late, but only after I
6 have advised them one morning that we are going to
7 stay late and make arrangements. So I'm not going
8 to go any later than 6:00.

9 So I'm not going to rush Mr. Blake
10 through cross-examination and I'm not going to rush
11 you through direct examination either. So you need
12 to kind of determine do you want to let your
13 witnesses go now or do you want to get them in?

14 MS. LINDER: Judge, we have let some of
15 them go, the Columbia people, since they're already
16 here or staying; if we get to them, we get to them.
17 But we have changed the order to try to get through
18 those, if there is the ability. But I definitely
19 understand with the time consideration for the jury
20 and everything like that.

21 THE COURT: And if all of your
22 remaining witnesses are local, in any event, then I
23 may conclude after cross-examination.

24 MS. LINDER: Right. We have two people
25 that are here from Columbia, but everybody else is

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1 local.

2 THE COURT: That's what I'm saying. We
3 may not get to the Columbia people.

4 MS. LINDER: Right.

5 THE COURT: And so you might need to
6 just decide whether you want to risk it or whether
7 you want to send them on the road.

8 MS. LINDER: Judge, I understand.
9 Frankly, traffic leaving here when you leave at
10 5:10 or 5:45 is about the same going up 26. So if
11 they're fine just sitting here for an hour, then --
12 we've checked it out. My investigator has spoken
13 to them.

14 THE COURT: Okay. All right.

15 MS. LINDER: Judge, I would like to
16 bring up a matter of law. Earlier the defendant
17 objected talking about DUI situation, and I think
18 that, as a matter of law, there needs to be a
19 correction stated to the jury.

20 I was not afforded the opportunity to
21 respond to his speaking objection and I believe
22 that I should be. I believe it is very important,
23 especially in today's climate, that this was not a
24 pretextual stop. It was not.

25 The DUI arrest, frankly, I wasn't going

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1 into all the details. He blew a .14 and he has
2 pled guilty to it, and I have witnesses who can
3 testify to all of that if need be.

4 I wasn't trying to go that far, but I
5 think it is part of the stop and it absolutely is
6 part of the arrest and part of why the scope gets
7 expanded. I think that goes to the corporal's
8 reasonable suspicion and I think all of that is
9 very important for them to know it's not just a
10 baggie out of a window and he sat on something and
11 then, all of a sudden, it's go time.

12 It was smelling of alcohol. There
13 was -- you see swerving on the road, the hour of
14 night. He -- the defendant says that he was at the
15 Blue Magic club beforehand, all of that goes in
16 there. I think with res gestae the case comes in.

17 I think that I was intentionally
18 limiting my questions as to how they related to his
19 reasonable suspicion, the smell of alcohol, which
20 was not objected to when those questions were
21 asked, to the swerving of the vehicle, which was
22 not objected to, and I think it also goes to the
23 extension of the stop, which was not objected to as
24 far as that's concerned.

25 The jury watched the video plus heard

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1 testimony about all of that. I think it's
2 inconsistent to let them hear all that and then
3 kind of backtrack that they're not supposed to
4 think anything of it, because it is part of that.
5 I think they could be confused by Your Honor's
6 ruling.

7 A lot of --

8 MR. BLAKE: Your Honor, they aren't
9 confused.

10 MS. LINDER: A lot of this comes down
11 to as we've seen in pretrial and the defendant's
12 opening, a lot of this is going to come down to the
13 credibility of the witness. And I believe it
14 undercuts the witness to not be able to fully
15 explain the extension of the stop and the reasons
16 for arrest.

17 Furthermore, the DUI arrest is a large
18 reason of -- that's another reason of why the
19 vehicle was searched. That car is getting
20 searched. You're getting arrested for DUI. You're
21 certainly not driving away in it. The vehicle was
22 going to get searched prior to tow. And I think
23 that's good for them to understand that it's not --
24 the car just couldn't go home and no one is ever
25 going to look at it. That's not how it works.

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1 That's what I was trying to get out
2 with, what's the policy when you make a DUI arrest
3 or when you make a DUI and drug arrest, because
4 that's what was done in this case. I think all of
5 that is very important for them to understand, and
6 I just think it's important that the jury fully
7 understands that I intentionally did not go into
8 more details. I did not talk about the Datamaster.
9 I did not go into any of that.

10 Because you're right, we're not here
11 for the DUI that he frankly already pled to. We
12 are not here for that, but it is a vital part of
13 the stop in this case and of the search.

14 Thank you, Judge.

15 MR. BLAKE: Your Honor, my objection
16 was limited to minimum words as possible. She
17 basically is disrespecting your ruling and that's
18 really unprofessional by Ms. Linder. And we
19 already established this, but for the record, I
20 guess I'm going to have to go into this. The DUI
21 situation --

22 THE COURT: You don't have to. You're
23 okay. You're okay. I have already -- the
24 objection has been made and I sustained the
25 objection. Ms. Linder is only putting that on the

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1 record so that it will be part of the record.

2 If I had given her earlier the
3 opportunity to articulate that position, and she
4 were to come back and begin rearguing, then that
5 would be improper, and we'd have discussions about
6 that. But she deserves the right to put that
7 objection on the record, just like I've let you put
8 a lot of things on the record as well. And just
9 like I'm being with patient you, I'll be patient
10 with her too.

11 MR. BLAKE: Okay. Thank you, Your
12 Honor.

13 THE COURT: But with respect to the
14 ruling, I understand exactly why you want to get
15 that in. I understand it's important to set the
16 stage for why the arrest was made. It's important
17 for probable cause.

18 The -- when I look at it from a 403
19 analysis, it may be admissible. It may be
20 admissible, and I think that's subject to question,
21 but under 403 analysis --

22 MR. BLAKE: Exactly. Exactly.
23 Exactly.

24 THE COURT: -- its prejudicial effect
25 outweighs its probative value. And also, you were

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1 very careful about it. You were very careful about
2 it, and that suggests that you knew that it was
3 very close and that's why you were being so careful
4 about it.

5 But the problem I have with it was the
6 fact that there was a recitation into the record
7 that there was an arrest for a DUI. Well, in
8 normal parlance, a common person is going to think
9 that that amounts to an objection or at least there
10 is the potential for the common juror to think that
11 that amounts to a conviction.

12 Now, I think, and I will be very candid
13 with everyone in this Courtroom, the State has a
14 pretty good case. You don't need to push the
15 envelope. When I make rulings like that, I'm doing
16 that to protect the record. Okay.

17 So understand we're keeping this record
18 clean and I would suggest to you that if you want
19 to maintain any conviction that you may have, that
20 you not push the envelope evidentiary. Okay?

21 MS. LINDER: Okay.

22 THE COURT: I'm going to take a short
23 break. I'm going to take a short break and we'll
24 come back in. And again, we are going to -- we are
25 going to push until about 6:00, but I'm not going

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1 to go any later than that. Okay.

2 (A recess transpired.)

3 THE COURT: Okay. Ladies and gentlemen
4 of the jury, before we resume testimony in this
5 case, I need to advise you that I have received a
6 note from one of the jurors, from Juror Number 70,
7 Ruthie Christy, and I will make this a Court's
8 Exhibit. I will read it for you:

9 August 8, 2016, to the Judge: I,
10 Ruthie Christy, would like to be excused from this
11 case because several years ago my ex-brother-in-law
12 was stopped by an officer in Atlanta. And because
13 he had never been to jail before, when he was
14 stopped and the officer was walking to his car, he
15 shot himself in the head and died. This has never
16 been an issue for me, but now it's bringing back
17 memories that I don't care to rehearse. Thanking
18 you in advance, I am Ruthie Christy.

19 So given that fact, ladies and
20 gentlemen, I think I'm going to excuse her as a
21 juror in the case.

22 MS. LINDER: I definitely understand.
23 I'm sorry she ever had to go through that.

24 MR. BLAKE: Me too, Your Honor. And
25 I'm sorry that such a tragedy happened over a

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1 traffic stop, like a tragedy happened over my
2 traffic stop.

3 THE COURT: Okay. Fine. So I'm going
4 to excuse her from the trial of this case. If you
5 want to bring her out individually and I will
6 excuse her.

7 As a matter of fact, if you don't have
8 any objection, I will just excuse her informally
9 from the back so she doesn't have to come in the
10 courtroom and be conspicuous.

11 MS. LINDER: There's no objection from
12 the State.

13 MR. BLAKE: No objection.

14 THE COURT: Okay. I'll be right back.

15 (A recess transpired, Juror Number 73
16 was excused from the trial of the case.)

17 THE COURT: Okay. Are we ready for the
18 jury?

19 MS. LINDER: Yes, Judge.

20 THE COURT: Okay. You can bring them
21 in.

22 (Jury in, 5:22 p.m.)

23 THE BAILIFF: All jurors are present.

24 THE COURT: All right. Ladies and
25 gentlemen, two things to tell you. First of all, I

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1 excused Ms. Christy for a personal issue, so you're
2 down to one. The other -- and Ms. Christy was one
3 of the deliberating jurors.

4 So now, Ms. Henderson, you are part of
5 the deliberating jurors.

6 Now, I have talked to the parties and
7 we are going to stop at 6:00 tonight. Now, I hope
8 that we can get all the way through
9 cross-examination, but I'm sensitive to the fact
10 that you didn't know coming today that you might be
11 beyond 6:00. You may have family issues, child
12 care issues.

13 As we go along, if we go over into
14 Wednesday, then I will try to tell you at the
15 beginning of the day if we're going to stay after
16 normal business hours. But at 6:00 o'clock,
17 regardless of where we stand, I will send you all
18 home so you'll know what to expect.

19 Okay. Mr. Blake, you may begin your
20 cross-examination, sir.

21 MR. BLAKE: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. BLAKE:

25 Q. Okay. Officer McAbee, you stated in

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1 the incident report, page 1, lines 1 through 2;
2 that you conducted a traffic stop amongst myself
3 allegedly for a speeding violation dated April 15,
4 2012, 0400 hours; correct?

5 A. Yes, sir.

6 Q. Okay. Did you ever citation, give a
7 speeding citation?

8 A. No, sir.

9 Q. Okay. If this is an alleged speeding
10 violation where your true and intentional motives
11 were conducting this stop amongst myself, then why
12 did you initiate and later on a self-incriminating
13 non-interrogation amongst myself related to
14 marijuana?

15 A. I don't understand your question.

16 Q. Okay. If you stopped me -- you said
17 you stopped me for speeding. Okay. Why did you
18 then later on interrogation amongst myself
19 regarding the marijuana?

20 A. Because, like I stated in the prior
21 testimony, the fact that I saw the arm come out the
22 window and the material flying back to the front of
23 my patrol car, and also I noticed the corner baggie
24 that was on the floorboard.

25 Q. Okay. So just had to be marijuana,

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1 just got to be marijuana, can't be nothing else?

2 A. It appeared to me to be marijuana;
3 that's correct.

4 Q. Okay. Because you allegedly observed a
5 baggie on the floor of my vehicle that could have
6 been no more than trash, but yet you come to the
7 conclusion that it had to be in connection with
8 marijuana. And, once again, why is that?

9 A. Well, Mr. Blake, it was removed from
10 the vehicle and threw out, so I will never know.

11 Q. Okay. You stated you witnessed me
12 throw out something from my vehicle, that could
13 have been nothing more than trash. To make you
14 come to the conclusion of it being marijuana during
15 the course, was this action conducted amongst the
16 stop?

17 A. I don't understand your question.

18 Q. Okay. You're saying you witnessed me
19 throw out something from my vehicle; correct?

20 A. That's correct.

21 Q. Okay. To make you come to the
22 conclusion of it being marijuana; correct?

23 A. I said it appeared to be marijuana;
24 that's correct.

25 Q. Okay. At what point and what time was

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 this conducted that you saw this alleged incident?

2 A. When you were weaving back and forth in
3 the roadway prior to stopping.

4 Q. Okay. The blue lights were on at that
5 point in time?

6 A. I'm sorry?

7 Q. The blue lights -- your blue lights
8 were on that point?

9 A. That's correct. Yes, sir.

10 Q. Okay. You stated you witnessed me
11 throw out something from the vehicle that could
12 have been nothing more than trash to make you come
13 to the collusion of being marijuana during the
14 course of the action itself.

15 Sorry, you already answered that
16 question.

17 Okay. When you approached my vehicle,
18 at any time did it smell like burnt marijuana?

19 A. I never smelled burning marijuana. I
20 did not.

21 Q. Okay. Did it smell like unburnt
22 marijuana?

23 A. No, it did not.

24 Q. Okay. Did it smell like any alcohol?

25 A. It did.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 Q. Okay. So why didn't you ever raise
2 this issue before me within this incident?

3 A. I did. That's --

4 Q. Okay. Go ahead. You did?

5 A. I asked you if you had anything to
6 drink that night. Yes, I did.

7 Q. Okay. But you didn't say nothing that
8 talks about my alcohol.

9 A. I asked you if you had been drinking
10 that night.

11 Q. That doesn't confirm --

12 A. The odor of alcohol, yes, sir, it does.

13 Q. Okay. We're moving forward.

14 Okay. If you initiated a stop amongst
15 myself for allegedly speeding, yet you never
16 sanctioned me a speeding citation, then after
17 approached my vehicle to discover the vehicle you
18 pulled over containing an alleged black male, then
19 after allegedly spotting a piece of plastic on the
20 floor of my vehicle that came to a conjecture to
21 you that it had to be drugs related, but yet
22 without sufficient and substantial proof. My
23 question to you is now, what do you now sum up the
24 stuff to be?

25 MS. LINDER: Your Honor, I would object

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1 for improper comments during that question by
2 Defendant.

3 THE COURT: Ladies and gentlemen, I
4 will caution you again, and I've said this to you a
5 number of times, the parties' questions aren't
6 evidence. The answers are evidence. So if there
7 is any suggestion or any evidence presented in the
8 question, you disregard that. The answer is what
9 is relevant to your consideration.

10 Mr. Blake, I ask you to restate your
11 question please, sir.

12 BY MR. BLAKE:

13 Q. Did you -- were you aware that I was
14 black prior to the incident?

15 A. No, I was not.

16 Q. Okay. Just seems as though once you
17 discovered that I was a black male, your whole --
18 just your whole thing changed from speeding to now
19 it's related to this marijuana. It ain't about
20 speeding no more. It's you're a black male and I
21 found alleged trash in your car and now it's gotta
22 be related to marijuana. And my car never smelled
23 like no burnt marijuana. So what at this point do
24 you sum this traffic stop up to be?

25 A. Initially, it started out as a traffic

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 stop for speeding. Now --

2 Q. We're talking about --

3 A. Let me finish.

4 Q. We already -- we clarified it:
5 Speeding.

6 THE WITNESS: Your Honor, he asked a
7 question. If he would like, I will answer it.

8 THE COURT: You may answer.

9 THE WITNESS: Without interpretation,
10 please.

11 The traffic stop started out as a
12 speeding traffic stop, as I stated. Just because
13 it started out as a traffic stop for speeding
14 doesn't meant that's where it's going to stand.
15 Your race had nothing to do with it. The totality
16 of the circumstances, of everything you did to
17 heighten my awareness of the traffic stop changed
18 the totality of the traffic stop to a higher
19 standard.

20 BY MR. BLAKE:

21 Q. The totality. All right.

22 Moving forward. You stated in your
23 incident report, page 4, line 6, that you witnessed
24 me throw out something from my vehicle on the
25 course of this traffic stop that I confirmed to be

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1 a chicken bone from the chicken that I was eating
2 prior to the stop that fell between my seat as I
3 was pulling over. And you later identified it to
4 be the alleged plastic bag; correct?

5 A. I'm looking through the actual --
6 everything you just stated is not in my incident
7 report.

8 Q. Page 4, line 1 through 6.

9 A. That you confirmed it to be a chicken
10 bone?

11 Q. I did.

12 A. It's in my statement? I don't see it.

13 Q. Page 4. It's in your incident report.
14 1 through 6 clearly states --

15 THE COURT: Mr. Blake, just speak up a
16 little bit so that the Court Reporter can take it
17 down.

18 BY MR. BLAKE:

19 Q. Okay. You asked about doing something
20 again --

21 MS. LINDER: Objection, Your Honor. I
22 would ask that if he'd like to refresh
23 Corporal McAbee's recollection, he's welcome to
24 show him that report and perhaps that would help
25 Corporal McAbee, if indeed he did say something

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1 like that or write something like that.

2 THE COURT: Mr. Blake, you can show him
3 the report and show him what you're talking about,
4 okay? And ask him about --

5 MR. BLAKE: Okay. May I approach?

6 THE COURT: Sure. Yes, sir.

7 MR. BLAKE: All right.

8 BY MR. BLAKE:

9 Q. Statements 1 through 6, right there.

10 A. One through 6?

11 Q. Yeah.

12 A. Okay. It says, I'm not doing anything,
13 and then he opened the door and threw something
14 out. This reporting trooper asked what he just
15 threw out and he stated again a chicken bone.

16 This reporting trooper asked if the
17 address on the license was the address or did he
18 live with his father. And he stated, no, no, no,
19 that's where I live.

20 The reported trooper advised me --
21 advised Mr. Blake he would be back with him in just
22 a minute and walked around to see what he had
23 thrown out. It was -- it was the clear bag, not a
24 chicken bone.

25 Q. Okay.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. So I did not confirm a chicken bone.

2 Q. No. I'm asking you did you confirm it
3 to be a bag.

4 A. It was the piece of baggie.

5 Q. Yeah. That's -- that's -- that's what
6 my question was.

7 All right. Did you seize the alleged
8 plastic bag?

9 A. No, I did not.

10 Q. A highly-trained police officer, as
11 potential evidence, I ask, why did you not seize
12 this plastic bag?

13 A. At the time there was nothing in it,
14 for one; two, it had been placed into the roadway,
15 which I was not going to proceed out into, and I
16 did not see any reason to actually try to retrieve
17 something that had blew down the road that had
18 nothing in it at that point in time.

19 Q. Okay. So you can't physically prove
20 for this Court that this alleged bag existed;
21 correct?

22 A. I didn't bring up the bag, Mr. Blake,
23 so I don't have the bag.

24 Q. That's a yes or no.

25 A. The bag, no, I can't.

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1 Q. Okay. Thank you.

2 Okay. Moving forward. You stated in
3 the incident report, page 4, 7 through 9, that
4 after obtaining all of my driving credentials, you
5 then returned back to the police cruiser to run my
6 information. Then after witnessing me making
7 alleged suspicious movement; correct?

8 MS. LINDER: Objection. I would ask
9 there is a question, not the defendant reading from
10 the police officer's report.

11 THE COURT: Okay. All right. Ask the
12 question. I don't -- I think the objection is to
13 the preface in the question and putting commentary
14 in it. Just ask the question that you have. Okay?

15 MR. BLAKE: Okay. All right. Sorry,
16 Your Honor.

17 THE COURT: That's Okay.

18 BY MR. BLAKE:

19 Q. Okay. You stated that after you
20 obtained my driving credentials -- which was a
21 packet that I gave you; correct?

22 A. I'm sorry?

23 Q. You obtained all of my driving
24 credentials, my license in the packet that I gave
25 you, right? Correct?

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1 A. The license and your registration card.

2 Q. Okay. Well, it came packed -- it came
3 in a packet. Do you remember that?

4 A. No, it was a license -- single piece of
5 paper and a driver's license.

6 Q. Okay. All right. You returned back to
7 your cruiser and run my information; correct?

8 A. I did.

9 Q. Okay. Then after you were witnessing
10 me making suspicious movements within the time that
11 you obtained all my driving credentials; right?

12 A. That's correct, yes.

13 Q. Okay. Based on this alleged suspicious
14 movements, you returned back to my vehicle as
15 stated in the incident report --

16 MR. BLAKE: Or can I still use the
17 incident report?

18 THE COURT: Yes, sir.

19 MR. BLAKE: Okay.

20 BY MR. BLAKE:

21 Q. You returned back to my vehicle because
22 you saw me making suspicious movements; correct?

23 A. That's correct, yes.

24 Q. Okay. And allegedly witnessing me put
25 something under my seat that I sat on; correct?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. No, sir, that's not correct.

2 Q. Okay. I'm sorry, that's what's stated
3 in the incident report. All right. What at that
4 point did you witness me do? What action did you
5 witness me do when you approached my vehicle?

6 A. What's in the incident report, that I
7 saw you throw something onto the driver's seat and
8 sit on it.

9 Q. Yeah.

10 A. Onto the driver's seat and sit on it.

11 Q. Onto.

12 A. Yeah, not under.

13 Q. Well, onto, under. Okay.

14 So you're saying yes or no?

15 A. Yes, you threw something and sat on it,
16 not under. You threw it onto the seat and sat on
17 it.

18 Q. Onto the seat. Demonstrating that
19 would be underneath --

20 A. Where you sit.

21 Q. -- where I'm sitting at, my buttocks
22 area.

23 A. Right.

24 Q. Okay. Well, let me see. Discrepancy
25 must be because you state that you witness me

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 jump -- as a matter of fact, let me ask you this:

2 What was on my passenger seat?

3 A. A box of food.

4 Q. Okay.

5 A. A box that had food in it.

6 Q. Okay. You reported to the officer that
7 you saw me move from my driver's side, like my
8 whole body, and shifted over to my passenger side;
9 correct?

10 A. No. I said you were leaned over into
11 the passenger side from the driver's side, as if
12 you were doing something under the passenger seat.

13 Q. I will proceed.

14 All right. If you allegedly witnessed
15 me put something under my seat and distinctly sat
16 on it or whatever you witnessed, why didn't you
17 ever arise to that act, during the course that?

18 A. Well, very simple. The fact that you
19 were still sitting in the motor vehicle with the
20 engine running and the keys in the ignition. There
21 again, I didn't want to heighten the awareness of
22 what I had observed to you for the main purpose of
23 you fleeing from the scene or taking off in the
24 vehicle or just you and I -- or it being a weapon.
25 So I called for backup at that point in time.

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1 Q. So you're saying that you thought that
2 I would actually pursue to pull off after giving
3 you all my driving credentials which you never gave
4 back to me?

5 A. It's a possibility, yes, sir.

6 Q. And moving forward in your incident
7 report, page 4, line 12 and 13, you both
8 contradicted, you reapproached me amongst myself
9 because I apparently never provided you with proof
10 of insurance; correct?

11 A. That's correct..

12 Q. Okay. So you are saying you
13 contradicted the reapproachment?

14 A. I didn't say anything about
15 contradicting anything.

16 Q. Yeah. You said correct?

17 A. You asked me if I reapproached and
18 asked for any --

19 Q. No. No. No.

20 Ladies and gentlemen, he just
21 contradicted his statement. I asked him if he
22 contradicted his -- my exact question is, after
23 moving forward, incident report page -- lines 12
24 and 13, you're saying both contradicted and
25 justified your reapproachment amongst myself

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1 because I apparently never provided you with proof
2 of insurance, and you said correct.

3 A. You did not provide with me with proof
4 of insurance, correct.

5 Q. Okay. At that point, what was I able
6 to produce in order to make you return back to your
7 vehicle? Did I produce any form of insurance?

8 A. The only thing you had was a piece of
9 paper that had the insurance agent's name on it of
10 when the insurance was actually taken out. And I
11 asked you specifically if that policy was for six
12 months or a year.

13 Q. Okay. So that would be just sufficient
14 as proof of insurance, wouldn't it?

15 A. No, sir, it would not.

16 Q. Okay. Why -- at that point, why you
17 just didn't cancel the whole thing, cancel the
18 whole -- tell me to get out of my car right then
19 and there if I didn't give you sufficient proof of
20 me having insurance, and why didn't you issue me a
21 ticket for it?

22 A. Because the vehicle was not registered
23 to you; it was registered to your father. In order
24 to be cited for operating uninsured, it has to be
25 registered to you, not your father.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 Q. And why -- did you ever sanction my
2 father with a ticket for lack of proof of
3 insurance?

4 A. No, sir, because your father wasn't
5 driving that night. I didn't stop your father.

6 Q. Okay. So what do you do in a case --
7 what do you do in a case like that when somebody
8 doesn't have proof of insurance and it's not their
9 vehicle?

10 A. Basically, the same thing I did to you,
11 nothing.

12 Q. Well, I beg to differ because I got
13 pulled over and it wasn't my vehicle.

14 MS. LINDER: Judge, I would object as
15 being argumentative.

16 THE COURT: That's sustained. You can
17 testify later if you want to, but you can't testify
18 now.

19 MR. BLAKE: Okay.

20 BY MR. BLAKE:

21 Q. Moving forward. Incident report
22 page 4, line 14 and 15, after, you returned back to
23 your vehicle to check the status of information;
24 correct?

25 A. Mine's not numbered. If you can show

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 me yours, I would like to know where you're at on
2 the form.

3 Q. I will just let you have mine so we
4 don't have to keep going back and forth. I'm
5 trying to be as accurate as possible with these
6 questions, and I'm not trying -- not trying to
7 contradict anything, misunderstand anything, so I
8 will give you mine. You can turn to page 4.

9 Page 4, lines 14 and 15, returned back
10 to your vehicle, checked the status of the
11 information -- my information; correct?

12 A. Yes.

13 Q. Okay. I'm going to ask you at this
14 point why -- what did the report came back from the
15 dispatcher?

16 A. That your driver's license was clear.

17 Q. Okay. And now I'm going to ask you, at
18 this point, why didn't you just write me a citation
19 based on the fulfillment of the stop was
20 technically met at this point for speeding?

21 A. Because at this point in time, based
22 off of the totality of the traffic stop, the
23 situation had changed.

24 Q. All right. So you continued detention,
25 as stated in the incident report, page 4, line 16,

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 because you allegedly watched me make suspicious
2 movements within my vehicle; correct?

3 A. I don't see anything in my report where
4 it says that I continued detention.

5 Q. Well, at that point it would be a
6 continuing detention because it's no longer a
7 speeding -- a speeding issue. It's basically an
8 investigatory stop, from my understanding and my
9 knowledge, and it would bleed into a second
10 detention at that point based on the traffic stop
11 was met.

12 MS. LINDER: Your Honor, I'm going to
13 object based on Mr. Blake ignoring the previous
14 ruling of the Court.

15 THE COURT: I think you're making a
16 legal argument. Just ask questions.

17 MR. BLAKE: Your Honor, it's hard for
18 me to deal with this witness because it seems like
19 I've got to school him on the incident, procedures.
20 I've got to be a cop. I've got to be the
21 defendant. It's just hard. I'm sorry, Your Honor.

22 THE COURT: I'll let you ask the
23 questions and I'll give you some latitude as well.
24 Okay. Some of it's appropriate and some stuff's
25 not. Remember, I told you don't get frustrated.

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1 Okay.

2 MR. BLAKE: Okay.

3 BY MR. BLAKE:

4 Q. Okay. Never mind the continued
5 detention because you denied it. All right. But
6 you did witness me making suspicious movements and
7 that's why it led to the traffic stop being longer
8 than what it was supposed to be; correct?

9 A. I don't think it was any longer than it
10 was supposed to be. I mean, you know --

11 Q. You radioed for backup assistance;
12 correct?

13 A. Yes.

14 Q. Okay. Backup assistance then arrives;
15 correct?

16 A. It did, yes, sir.

17 Q. Okay. And then after the other officer
18 of your -- hold on. I'm sorry.

19 Then after -- you informed the other
20 officer of your conjecture of my suspicious
21 activity; correct?

22 A. I did.

23 Q. Okay. Then after backup officer
24 approached my vehicle and instructed me to exit my
25 vehicle -- or was it you?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. That was me.

2 Q. Okay. Then after exiting my vehicle, I
3 was instructed to walk to the rear of my vehicle,
4 then asked questions -- questioned, weapons and
5 drugs were in my vehicle; correct?

6 A. You were.

7 Q. Okay. And what were my response to the
8 question of any drugs or weapons being contained in
9 my vehicle?

10 A. I'm sorry, can you restate that?

11 Q. What was -- when you asked me if any
12 drugs were in my vehicle, what was the response I
13 gave you?

14 A. I asked you if there's anything in the
15 vehicle that shouldn't be, any guns, anything like
16 that, and you stated no.

17 Q. Okay. And were any drugs or weapons
18 seized amongst the pat down of myself?

19 A. No, sir, there was not.

20 Q. Officer McAbee, you stated on page 4,
21 lines 23 through 24 -- are you good?

22 A. Got it.

23 Q. Okay. While I was instructed to exit
24 my vehicle, you then observed a clear baggie that
25 appeared to be cocaine; correct?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. That's right, on the driver's side
2 seat.

3 Q. Conveniently lying on my driver's side
4 seat, correct? In plain view?

5 A. That's correct, yes, sir.

6 Q. Okay. And where did this clear
7 baggie -- hold on. Okay.

8 And was this clear baggie that appeared
9 to be cocaine lying on my driver's seat ever seized
10 from my vehicle?

11 A. When?

12 Q. I said, was it ever seized from my
13 vehicle?

14 A. Yes, it was.

15 Q. Okay. And can you describe briefly
16 what -- a brief description on how it was packaged
17 and how it looked.

18 A. It was in just a regular clear
19 cellophane baggie. It appeared to be a rock-like
20 looking substance, whitish yellow in color.

21 Q. Okay. After you allegedly observed the
22 clear baggie that appeared to be cocaine that you
23 conveniently found on my driver's seat prior to the
24 deputy conducting the same exact visual scan
25 amongst my vehicle; correct?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. Ask that question again.

2 Q. Okay. The deputy conducted a visual
3 scan search as unrequested (sic) by myself.

4 A. That was requested by you?

5 Q. That was unrequested by me.

6 A. Okay.

7 Q. Without my consent. He conducted a
8 visual scan search of my vehicle; correct?

9 A. He did look inside your vehicle.

10 Q. Okay. And after he came back to --
11 walked back to the rear of my vehicle, what did he
12 come back with, or did he come back with anything?

13 A. He didn't come back with anything.

14 Q. Okay. He came back empty-handed?

15 A. That's correct, yes, sir.

16 Q. Okay. So you state that prior to you
17 conducting the search, same visual scan search the
18 initial deputy did, you confirmed that the deputy
19 told you that it was drugs on my seat; correct?

20 A. That's correct. I had already seen it
21 from the passenger side when you exited the vehicle
22 and I walked to the back and patted you down. He
23 walked back to the front of vehicle, as we saw on
24 video, looked inside your vehicle.

25 As I started to go to the driver's

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1 side, which I had already observed, he confirmed it
2 was on your driver's seat.

3 Q. Okay. If he confirmed that it was on
4 my driver's seat at that point, why may I ask your
5 conjecture, why he never seized it?

6 A. It wasn't his stop.

7 Q. Okay. Why -- may I ask you, based on
8 he observed this evidence, why he didn't -- never
9 provided an incident report?

10 A. Again, it wasn't his case. It wasn't
11 his stop; it was mine.

12 Q. Okay. Is it not standard procedure to
13 -- when an officer observes and reports anything he
14 sees regarding any incident occurring, whether it
15 be an arrest or a house stop or anything of that
16 nature, it's not --

17 A. No, sir, that's not --

18 Q. That's not procedure?

19 A. No, sir, that would be incorrect.

20 Q. So if observing a report is not
21 standard procedure?

22 A. You're talking about -- you mean
23 observing? I don't understand what you're saying
24 there. As far as him writing a report?

25 Q. Yes.

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1 A. Writing a report is not his
2 responsibility.

3 Q. Okay.

4 A. Because he didn't do the traffic stop
5 or make the charges.

6 Q. And then after the deputy's initial
7 visual scan search amongst my vehicle, you then
8 came back to my vehicle, my driver door -- I'm
9 sorry. No, you never came back to my driver door.

10 A. Yes, I did.

11 Q. The first time -- no, it was the first
12 time you came to my driver door -- you opened my
13 driver door; correct?

14 A. I think that's correct. I think I did
15 open the door.

16 Q. You've got to think on that? I thought
17 you said you're the one that found drugs. What is
18 there to think about?

19 MS. LINDER: Objection, Your Honor;
20 argumentative. And I don't believe there's a
21 question in there.

22 THE COURT: I'll overrule it. I'll let
23 him ask the question.

24 BY MR. BLAKE:

25 Q. Okay. You did. That's a fact. All

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 right.

2 You conducted the same visual scan
3 search to conveniently find drugs on my pass -- no,
4 I'm sorry, on my driver's side, right? Correct?

5 A. Yes, sir.

6 Q. Okay. What did you do after the visual
7 scan was fulfilled to make an arrest?

8 A. I came back and placed you under
9 arrest.

10 Q. Okay. Closed my door; correct?

11 A. No. I think the door stayed open.

12 Q. You opened my door and made the arrest.
13 Okay.

14 I have to ask because I don't know.
15 I'm trying to get these facts out because there's a
16 lot of discrepancies in the case.

17 After -- after the deputy did an
18 initial scan of my vehicle and come back
19 empty-handed and he observed the drugs on my seat,
20 just as well as you did, why didn't he then put me
21 under arrest?

22 I was then at that point -- drugs were
23 found in my vehicle. I was then at that point --
24 there was no more reason to just let me linger
25 around like that. So from my conjecture, why did

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 you think he did not put me under arrest?

2 A. I think that's already been asked and
3 answered once.

4 Q. Because it's not his case?

5 A. Yes, sir, that's correct.

6 Q. Just -- okay.

7 A. Yes, sir.

8 Q. Oh, okay. What charge did you cite
9 that you was placing me under arrest for?

10 A. At the back of the vehicle, the drugs
11 that were on your driver's seat.

12 Q. At the back of my vehicle?

13 A. At the back of your vehicle, when you
14 asked what you were being arrested for.

15 Q. Oh, okay. Yeah.

16 A. Yes, sir.

17 Q. What was that?

18 A. The drugs on your driver's seat.

19 Q. Okay. When I asked you again what was
20 I being under arrest for, the second time what did
21 you say?

22 A. I said crack cocaine.

23 Q. Okay. Now we're getting somewhere.

24 Did you ever charge me with cocaine?

25 A. You were charged with possession of

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1 cocaine.

2 Q. Said -- say what? No?

3 A. You were charged with possession of
4 cocaine.

5 Q. I was charged with possession of
6 cocaine. I was not charged -- never charged with
7 possession of cocaine.

8 A. Exactly --

9 Q. He lied to you all again. I was
10 charged with trafficking cocaine and everybody is
11 denying I got charged --

12 MS. LINDER: Your Honor, I would object
13 to improper commenting to the jury.

14 THE COURT: Mr. Blake, you get to
15 argue --

16 MR. BLAKE: I am going to argue. And I
17 have to thank you, Your Honor. I'm going to argue
18 because this man lied just now and said I had
19 possession of cocaine.

20 Ladies and gentlemen --

21 THE COURT: Mr. Blake, listen to me.
22 You'll get to argue. Okay?

23 MR. BLAKE: Okay. Okay.

24 THE COURT: But right now you're asking
25 questions. So what you'll do is, you'll ask

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1 questions and then when you argue, you can comment
2 on the responses and the interjector. Okay. But
3 right now you're establishing the record through
4 questions. Okay?

5 MR. BLAKE: Your Honor, I appreciate
6 you being patient with me. This is a very
7 difficult -- when a person can just say yeah and no
8 and they just got to say something that was -- you
9 know, yeah, yeah, no, no. Okay?

10 THE COURT: Well, Let's do this,
11 Mr. Blake. I don't think you're going to finish by
12 6:00. So we let's go ahead --

13 MR. BLAKE: I'll speed it up, Your
14 Honor.

15 THE COURT: Well, you're not going to
16 finish by 6:00 anyway, because you have five
17 minutes.

18 MR. BLAKE: All right.

19 THE COURT: So I'm not stopping you for
20 good. I'm just saying we're going to take a break
21 and we'll come back tomorrow and you'll resume
22 cross-examination. Okay?

23 MR. BLAKE: Okay.

24 THE COURT: All right. So go ahead and
25 sit down for now. Okay?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 MR. BLAKE: Okay.

2 THE COURT: And you mark where you were
3 and we'll pick back up tomorrow. Okay? Because I
4 don't want -- I don't want you to hurry up. I want
5 you to have the time that you need. All right.

6 MR. BLAKE: Can I just ask one more
7 question?

8 THE COURT: Why don't you just save it
9 for tomorrow.

10 MR. BLAKE: It's just a simple
11 question.

12 THE COURT: Ask it.

13 MR. BLAKE: Okay.

14 BY MR. BLAKE:

15 Q. If you charged me with cocaine,
16 possession of cocaine, and why do I have a
17 trafficking cocaine charge?

18 A. Well, that was your actual charge. I
19 was differentiating between the actual substance of
20 what we were discussing.

21 THE COURT: Okay. You can follow up on
22 that tomorrow, Mr. Blake.

23 MR. BLAKE: All right.

24 THE COURT: All right. Ladies and
25 gentlemen, we are going to recess for the evening.

1 When I -- earlier -- earlier, I told you don't
2 discuss the case. That applies to each of you
3 among yourselves, but it implies importantly as
4 well to discussions that you may have with people
5 who aren't on the jury.

6 When you go home tonight, I am certain
7 that if your spouses or significant others are like
8 mine, he or she is going to ask you, hey, what
9 happened? And you're going to want to answer that
10 question, but don't answer that question as
11 innocuous as it may be.

12 I mean, you can say I'm on a jury, and
13 that's fine, and I'm on a jury of this type of
14 case, but don't discuss it in any greater detail.
15 What happens invariably is you get another
16 question, and then you respond to that question.

17 And what you find is that you're
18 commenting on what you saw and the evidence that
19 you saw and you're making really qualitative
20 decisions about the evidence that you saw. And
21 that's problematic in and of itself, but it's even
22 more problematic when you're discussing it with
23 somebody who is not on the jury.

24 So what I would suggest to you is just
25 keep your powder dry. Okay. You will have a

1 chance to discuss this case during deliberations.
2 And after it's over, as well, you can discuss it
3 with whomever you like, but please don't discuss
4 the case with anyone amongst yourselves until I
5 give you the go-ahead to do so.

6 So I'll see you back here tomorrow at
7 9:30. I'm having you back at 9:30 because we'll
8 come in a little early and we'll try to get out of
9 the way any administrative issues that we have so
10 that we can start promptly at 9:30.

11 Please be on time, not only in
12 consideration for me and the parties but for each
13 other, because if one of you doesn't show up, then
14 the other 12 will have to wait on you. And you
15 will probably get nasty glares from the others when
16 you come in late. So be respectful of each other
17 and be on time.

18 All right. Thank you and have a great
19 evening.

20 (Jury out, 6:03 p.m.)

21 THE COURT: All right. Officer McAbee,
22 I suspect you know this, but I will restate it for
23 the record. You are still under oath as a witness
24 in this trial; therefore, you can't discuss your
25 testimony with anyone. Again, just like the jury,

1 don't discuss it, don't think about it. You just
2 come back at it fresh and ready tomorrow morning.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Good enough.

5 All right. I'm going to be here in the
6 morning. I will probably be here as early as 8:30,
7 if not sooner. So if you need me for anything, I
8 want you to let me know, okay, so that we can take
9 care of it before the jury gets here. Okay. I
10 want to start with cross-examination as promptly as
11 we can at 9:30. Okay.

12 MS. LINDER: Yes, Judge.

13 THE COURT: Thank you. You-all have a
14 great evening.

15 (These proceedings were recessed at
16 6:04 p.m., to be continued at a later date and
17 time.)

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1 (The following proceedings were had
2 August 9, 2016, 10:14 a.m., Charleston County
3 General Sessions Court, in re State v. Blake.)

4 THE COURT: Ready for the jury?

5 You may retake the stand.

6 You can bring the jury in.

7 THE BAILIFF: Yes, sir.

8 (Jury in, 10:15 a.m.)

9 THE COURT: All right. Morning, ladies
10 and gentlemen. I hope you're all doing well today.
11 Sorry we're starting a little bit late, but some of
12 you may have been stuck in 26 traffic this morning
13 as well. I know I was coming from the Air Force
14 base and was in a standstill for an hour-and-a-half
15 on 26. And Ms. Denise, our court reporter, was
16 coming from Summerville and she was in it probably
17 for about two hours. So we're starting a little
18 bit late, and for that I apologize.

19 Just to give you some indication of
20 where we're headed, we are going to continue the
21 cross-examination of Officer McAbee. And then it
22 is my expectation that the State will call
23 somewhere between six, seven witnesses. That's
24 just -- that -- don't hold the State to that.
25 That's just what I think, somewhere around six to

1 seven.

2 Now, most of those should be fairly
3 short, I believe. So we hope that the State will
4 rest today, perhaps even as early as before lunch,
5 although I think that may be a little optimistic.

6 I don't know at this point whether
7 Mr. Blake intends to put any evidence into the
8 record. That's certainly within his discretion; he
9 doesn't have to. I anticipate right now, based on
10 what he's told me, that he will not; however,
11 having said that, it's up to him and he'll be able
12 to make that decision at the appropriate time.

13 After we hear all of the evidence,
14 whatever it may be, then we will go to argument and
15 charge. And I hope we can do that this afternoon.

16 Generally speaking, ladies and
17 gentlemen, what I will do is gauge where we are.
18 If we are beyond 3:00, then we'll make a collective
19 decision about whether we go to argument and charge
20 because that takes a little bit of time. And once
21 you get the case, you have the case and you will
22 stay until you come to a resolution.

23 So imagine, if you will, the argument
24 and charge at 3:00. That takes some time, then you
25 get the case. You may take ten minutes; you may

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 take ten hours. Okay. So we'll gauge whether we
2 argue and charge based on when we finish the
3 evidence. Okay.

4 If we're past 4:00, I will not argue
5 and charge today. We'll come back tomorrow morning
6 and do it. If we're at about 3:00, then we'll have
7 a discussion and I'll let you decide. Okay. If
8 it's before 3:00, then we'll plow forward. Okay.
9 All right. Good enough.

10 Mr. Blake, your witness, sir.

11 DEAN MCABEE,

12 being previously duly sworn, testified as follows:

13 CONTINUING CROSS-EXAMINATION

14 BY MR. BLAKE:

15 Q. All right. We established that a
16 traffic stop was conducted; correct?

17 A. Yes, that's correct; a traffic stop was
18 conducted.

19 Q. Okay. DUI-initiated traffic stop?

20 A. Sorry?

21 Q. Was the traffic stop initiated from a
22 DUI?

23 A. This traffic stop was initiated based
24 off speeding.

25 Q. Okay. So, no. It's yes or no. Yes or

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 no, I can't recall, things of that nature. Okay.

2 Was this traffic stop initiated based
3 on obstruction of justice?

4 A. No.

5 Q. Can you tell the jury what obstruction
6 of justice means?

7 A. I'm not sure what you're asking with
8 that question. I don't understand what you're
9 asking.

10 Q. For ones who don't know what
11 constructive -- obstruction of justice means, can
12 you state what it means?

13 A. That would be if I would allow you to
14 actually violate the law and not do anything about
15 it.

16 Q. Which consists of --

17 A. It could be a --

18 Q. -- destroying evidence, right?
19 Correct?

20 A. Not necessarily.

21 Q. Okay. It was for speeding; correct?

22 A. That's correct.

23 Q. Okay. Did you sanction me for
24 obstruction of justice?

25 A. No, I did not.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 Q. Okay. Why not?

2 A. You didn't obstruct justice because you
3 didn't interfere with my duties whatsoever.

4 Q. I thought you said you witnessed me
5 throw evidence out, it was potential drug evidence.

6 A. That's not an obstruction of justice.
7 I did not allow you to do something.

8 Q. Okay. So you couldn't prove that I
9 threw out marijuana or any other drugs from my
10 vehicle; correct?

11 A. I can testify based off of my
12 experience of what you'd done. You disposed of
13 drugs out of the window; yes, I can.

14 Q. I'm going to say, no, because you can't
15 prove it.

16 Okay. Did my vehicle smell like
17 marijuana at the time of the stop?

18 A. I think I answered that question
19 yesterday as well.

20 Q. Okay. I'm going to say, no. I've got
21 to reestablish this for the ones who may have
22 forgotten.

23 MR. BLAKE: But, Your Honor, if he's
24 going to continue to be difficult, this is going to
25 be all day.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 THE COURT: You may proceed, sir.

2 BY MR. BLAKE:

3 Q. Okay. Why did my vehicle -- okay.

4 What did my vehicle smell like amongst the course
5 of the stop?

6 A. I'm sorry?

7 Q. What did my vehicle smell like during
8 the course of the stop?

9 A. Like I said, when I walked up to the
10 vehicle, I smelled the odor of an alcoholic
11 beverage.

12 Q. Okay. You acknowledged that my car
13 smelled like alcohol?

14 A. Yes, sir, I did.

15 Q. Okay. And how did you acknowledge it?

16 A. I smelled it.

17 Q. That's not what you asked. You asked
18 me, if I'm wrong, that --if I've been drinking;
19 correct? That's how you acknowledged it; correct?

20 A. No. I observed it from the smell and
21 then I asked you.

22 Q. If I was drinking; right?

23 A. That's correct.

24 Q. Okay. Okay. Could that acknowledgment
25 be misunderstood as a question?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. I'm not understanding what you're
2 asking there.

3 Q. If you acknowledge if I was drinking at
4 that point, could that be misunderstood as a
5 question and not what you were actually saying?

6 A. I don't think it was a misunderstanding
7 because I think my question to you was, have you
8 been drinking tonight?

9 Q. Had I been drinking, that's what --

10 A. That is a question.

11 Q. Yeah, it is a question.

12 Okay. So you're saying you didn't
13 properly then acknowledge that my car smelled like
14 alcohol; correct?

15 A. I think I've already established that I
16 smelled an odor of alcohol; that's correct.

17 Q. No. No, you didn't establish that
18 within your report, so I'm going to say no.

19 A. Would you point that out to me?

20 MR. BLAKE: Your Honor, I'm not here to
21 baby him. He's had adequate time to look over the
22 material. I'm not going to baby him. I'm going to
23 move forward.

24 THE COURT: If he wants to refer to the
25 report, then he can. Okay.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 MR. BLAKE: I'm not going to show it to
2 him.

3 THE COURT: Well, you don't have to,
4 but if he wants to refer to it and refresh his
5 memory, then he's welcome to do that as well.

6 MR. BLAKE: Okay. I'll let you find
7 it. We'll be all day with this.

8 THE WITNESS: But it does state in my
9 report that you were actually advised and charged
10 for DUI if you ask.

11 BY MR. BLAKE:

12 Q. A what?

13 A. That you were actually -- it says in my
14 report that you were actually charged for the DUI.

15 MR. BLAKE: I'm going to -- I'm going
16 to move for a mistrial at this point.

17 THE COURT: All right. I'll
18 respectfully deny your motion. I think you asked
19 him specifically about the DUI in your
20 cross-examination.

21 MR. BLAKE: I did, Your Honor, but that
22 was not the question. The question was
23 specifically, okay, so you're saying that you
24 didn't properly acknowledge that my car smelled
25 like alcohol; correct?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 That was my question.

2 THE WITNESS: Yes, sir.

3 MR. BLAKE: But he took it upon himself
4 to bring that up.

5 THE COURT: I understand. I
6 understand. And you asked him that specific
7 question previously in your cross-examination,
8 which I noted as you asked the question,
9 notwithstanding the ruling that I had made
10 yesterday.

11 MR. BLAKE: Okay.

12 THE COURT: Mr. Blake, it's simple.
13 You can't have your cake and eat it too. If you
14 ask questions about it --

15 MR. BLAKE: But, Your Honor, it's yes
16 or no.

17 THE COURT: I understand. I
18 understand. And what -- I want to make you
19 understood this too, and I have to tell lawyers
20 this all the time: I can't instruct the witnesses
21 to simply answer yes or no. You have to be content
22 with the response that you get. All witnesses
23 aren't going to answer the questions exactly and
24 precisely the way you want them to.

25 MR. BLAKE: Okay.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 THE COURT: You kind of have to take
2 your witness as you find them. And if he's being
3 obtuse and he's not answering the questions, then
4 the jury is watching all of this. The jury is a
5 smart group of people. They see the dynamic and
6 they see what's happening. Okay. I don't take a
7 position on what's happening. That's up to them to
8 determine. Okay.

9 MR. BLAKE: Okay. We're moving
10 forward.

11 BY MR. BLAKE:

12 Q. If you're saying my car smelled like
13 alcohol, why didn't you immediately terminate the
14 stop and place me under arrest for DUI?

15 A. Well, it's like I said, the whole
16 traffic stop started out as a speeding stop and it
17 escalated from there.

18 Q. I'm going to say you don't recall.

19 Moving forward. You stated then after
20 you spotted something on my passenger seat;
21 correct?

22 A. No, I didn't say I spotted anything in
23 your passenger seat other than the piece of plastic
24 that was in the car when I walked up to it.

25 Q. Where was it at?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. It was actually on the floorboard.

2 Q. Did you ask me to give you this baggie?

3 A. No. I asked you what it was and you
4 proceeded to throw it out the door.

5 Q. That's no.

6 Moving forward. Did you witness me
7 dispose of this baggie?

8 A. I did.

9 Q. Okay. I'll help you out since I'm such
10 a generous man. Page 4, line 1 to 2, states --
11 what is does it state, 1 to 2, page 4?

12 A. Lines 1 and 2?

13 Q. Yeah, correct.

14 A. Okay. This says, he stated I am sorry.
15 I am not doing anything, and he then opened the
16 door and threw something out.

17 Q. Okay. Is that acknowledging that you
18 witnessed me throw out a plastic bag?

19 A. I already testified that I witnessed
20 that, yes.

21 Q. Okay. So that's, no, because your
22 testimony says it's something. You didn't describe
23 just now that you witnessed me throw out a bag. So
24 that's, no.

25 Moving forward. And that's a strike

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 against you too, just for the record, for lying.

2 All right. Okay. Did I provide you
3 with all the driving information you requested?

4 A. I think I previously testified you gave
5 me a license, registration, and no insurance card
6 and I reapproached for the insurance card.

7 Q. So that's, no.

8 All right. Okay. What did I provide
9 again initially?

10 A. License and a registration card.

11 Q. Okay. And you -- were you under the
12 influence of any alcohol or any drugs prior to this
13 incident?

14 A. No. I don't drink nor use drugs.

15 Q. Okay. So you're furthermore saying you
16 conducted this stop competently; correct?

17 A. What was that again?

18 Q. You're saying you stopped -- you're
19 saying -- furthermore saying at this point that you
20 was not influenced, then you conducted this traffic
21 stop incompetently; correct?

22 A. No, I was very competent.

23 Q. Okay. Moving forward. Okay.

24 Prior to you returning to your vehicle,
25 you state you observed what object on the ground?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. It was a piece of plastic.

2 Q. The plastic bag you stated I initially
3 threw out my vehicle?

4 A. That's right.

5 Q. Okay. That's another strike because
6 you just lied. Because you just lied, because we
7 just went over this.

8 MS. LINDER: Objection, Your Honor.
9 Counsel is commenting on every answer that the
10 witness is giving.

11 THE COURT: You can -- you'll have the
12 opportunity to comment on his testimony. Just wait
13 until your argument. Okay. During his testimony,
14 again, refrain from commenting.

15 BY MR. BLAKE:

16 Q. Okay. How did you know, if you stated
17 you never saw what I -- you never witnessed or
18 observed what I threw out?

19 A. Because I observed it. I know the
20 difference between plastic and a chicken bone.

21 Q. Did you ever recover this bag?

22 A. No, I did not.

23 Q. So you furthermore can't prove this bag
24 existed; correct?

25 A. I believe based off the video, yes, we

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 can.

2 Q. Okay. We're going to say, no.

3 Well, maybe the bag never existed;

4 correct?

5 A. It did.

6 Q. Okay. If you can't show proof, then it
7 remains nothing more than a theory; correct?

8 A. I'm not understanding what you're
9 asking.

10 Q. If you can't show that this bag ever
11 existed, then it remains a theory; correct?

12 MS. LINDER: Your Honor, I object;
13 asked and answered yesterday and today multiple
14 times.

15 THE COURT: I'll let you ask the
16 question again. Overruled.

17 MR. BLAKE: Thank you, Your Honor.

18 BY MR. BLAKE:

19 Q. Okay. While running my driver's
20 information, what did you observe me doing in my
21 vehicle?

22 A. Moving.

23 Q. Moving? Just moving?

24 A. Yes, from the driver's side over up to
25 the passenger side of the floorboard over there.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 You were up under doing something at that time.

2 Q. You saw me move from my driver's side?

3 A. Lean forward, lean over into the
4 passenger side, yes, sir, that's correct.

5 Q. Okay. And that's what you were
6 reasoning -- what you were -- I'm sorry.

7 Okay. That's what your initial
8 reasoning for the reapproachment amongst my
9 vehicle; correct?

10 A. That's correct.

11 Q. Okay. While you conducted the
12 reapproachment, what action did you witness me
13 doing?

14 A. Again, that's when you jumped from the
15 passenger side back into the driver's side,
16 throwing something under your buttocks.

17 Q. You witnessed me jump from the
18 passenger side to the driver's side?

19 A. Yes, sir.

20 Q. And then put something under my butt?

21 A. Yes, sir.

22 Q. Okay. So I sat on my chicken meal that
23 was in my passenger side, which I love chicken and
24 I wouldn't do that, and then I jumped over into my
25 driver's side and put something under my butt;

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 correct?

2 A. I never said you sat on your chicken.

3 Q. So where was my chicken located at?

4 A. In the passenger seat.

5 Q. So I jumped on my chicken?

6 A. I never said you jumped on your
7 chicken. I said you leaned forward over into the
8 floorboard of the passenger side.

9 Q. Okay. Well, you know, it's a -- this a
10 discrepancy within these statements and actual
11 incident.

12 MR. BLAKE: And, Your Honor, can I
13 demonstrate this discrepancy?

14 THE COURT: You can ask him questions
15 specifically related to that -- the report.

16 MR. BLAKE: Okay.

17 THE COURT: So I don't know how you
18 intend to demonstrate it. That's the appropriate
19 way if you wish to do it.

20 MR. BLAKE: Okay. Well, it would be
21 actually through the video.

22 THE COURT: You want to put the video
23 up?

24 MR. BLAKE: Yeah.

25 THE COURT: Sure, you can do that.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 MR. BLAKE: Let's see, 16:50.

2 Would you roll it?

3 Let's see 16:50. 16:23.

4 What's going on?

5 THE COURT: You're asking a lawyer to
6 do something technical. He's probably an English
7 major or something. Just be patient, he's going to
8 get it.

9 MR. BLAKE: Okay. This is in regards
10 to your -- the act you said I did when you walked
11 up to the vehicle.

12 (Video played in open court.)

13 MR. BLAKE: Okay. Stop there.

14 Okay. Ram something under my buttocks.
15 Okay. Let's roll 31:00.

16 (Video played in open court.)

17 BY MR. BLAKE:

18 Q. Okay. That's where the discrepancy
19 comes in at. I mean, ain't no way in the world you
20 see me do all these acts at one time. It has to be
21 one or the other. Which one was it?

22 A. What are you asking me?

23 Q. Which act did you see me perform?

24 A. Exactly what I stated on camera and in
25 the statement, that when I walked back up that you

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 jumped back from the passenger side and that you
2 were messing on the floorboard, throwing something
3 under your buttocks and sitting on it.

4 Q. So that's a good cover. I don't think
5 it's believable.

6 MS. LINDER: Your Honor, I'm going to
7 object again for improper comments.

8 THE COURT: I'm going to sustain.
9 Refrain from doing that, Mr. Blake.

10 BY MR. BLAKE:

11 Q. Okay. Moving forward. You made your
12 reapproachment, then requested what?

13 A. Again, your insurance card.

14 Q. Okay. It took you this long as an
15 officer to figure out I never gave you proof of
16 insurance?

17 A. No, it did not take me that long.

18 Q. Did you ever sanction me for lack of
19 insurance?

20 A. I believe I answered that yesterday and
21 said no.

22 Q. Okay. How about the owner of the
23 vehicle?

24 A. Again, I answered that yesterday and,
25 again, that was no.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 Q. Moving forward. After you returned
2 back to your vehicle, checked the status of my
3 driving information; correct?

4 A. That is correct.

5 Q. Okay. And what was the status?

6 A. That your license was valid.

7 Q. It was valid?

8 A. Valid.

9 Q. Okay. At that point, why didn't you
10 just give me a citation and let me go about my way?

11 A. Because I've already previously
12 testified that the situation on this traffic stop
13 had changed.

14 Q. Okay. The purpose of the initial stop
15 for speeding was terminated; correct?

16 A. That was the original reason for the
17 stop; that is correct.

18 Q. And after you called -- then after, you
19 called backup; correct?

20 A. I'm sorry?

21 Q. You called for backup after that;
22 correct?

23 A. Shortly after I did, yes.

24 Q. Okay. Can you give the Court a brief
25 description of what you informed the initial

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 officer regarding the stop?

2 A. Yeah. Basically, the same thing that
3 I've already testified to and that we saw in the
4 video, that I saw you moving around inside the
5 vehicle and I reapproached and saw you throw
6 something under your buttocks and sit on it.

7 Q. Okay. So you never informed this
8 officer what initially transpired in the stop;
9 correct?

10 A. No, I did not.

11 Q. Okay. Did you inform him my car
12 smelled like alcohol?

13 A. Not that I recall.

14 Q. Okay. And why not?

15 A. I don't think that was the reason he
16 was there. He was there to assist me with a
17 search, so anything related to the stop really
18 didn't have any bearing to his duties.

19 Q. Okay. Are you aware that generalized
20 suspicion is a null and void reason to extend a
21 stop?

22 A. Am I aware of what?

23 MS. LINDER: I'm going to object. He's
24 ignoring a previous pretrial ruling of the Court.

25 THE COURT: Okay. I don't know that he

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 is. I'll let you ask that question. And, I don't
2 know, you know, I don't know what you're saying, is
3 a perfectly good response if you don't.

4 Go ahead. You can ask the question.

5 BY MR. BLAKE:

6 Q. Were you aware that generalized
7 suspicion is a null and void reason to extend the
8 stop?

9 A. I still don't understand what you're
10 asking there.

11 Q. Are you or are you not aware of
12 generalized suspicion -- which is saying a person
13 is acting suspicious, or moving around, or on his
14 phone, or eating chicken wings, or looking in his
15 glove box or, you know, things of that nature. Do
16 you or do you not know that that's a null and void
17 reason to extend the stop?

18 A. I think based off the whole totality of
19 the traffic stop in general was enough basis for me
20 to extend the traffic stop to do the duties that I
21 needed to perform that night. Based off the fact
22 of not stopping, based off the fact of disposing
23 something out the sunroof, the odor of the alcohol,
24 the plastic baggie that you disposed of out your
25 driver's side door is all a reason to extend the

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 traffic stop.

2 Q. Okay. So you're not aware of this.

3 Okay. And the deputy confirmed the

4 drugs being on my driver's seat; correct?

5 A. That's correct.

6 Q. Prior to you reconducted (sic) the

7 visual scan; correct?

8 A. What's that?

9 Q. Prior to you reconducted a visual scan
10 amongst my vehicle; correct?

11 A. Prior to me?

12 Q. Yes.

13 A. No. As testified to yesterday, I had
14 already seen it when you exited the vehicle from
15 the passenger side.

16 Q. No. I'm asking you is -- you said the
17 deputy confirmed that he saw drugs on my seat. You
18 said yes, correct?

19 A. That's correct.

20 Q. Okay. And he confirmed this prior to
21 your reconductment (sic) amongst my vehicle -- I
22 mean, prior to your reconductment visual scan
23 amongst my vehicle, correct?

24 A. You're talking about when I went to the
25 driver's side.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 Q. Yeah. When you came -- when you
2 exited -- when you stepped away from the passenger
3 side and then allegedly saw drugs, and then you
4 passed me by and the deputy by and then you did a
5 reconducted visual scan.

6 A. That's not exactly the way it went, but
7 I did reapproach the side -- on the driver's side,
8 but that was after I stopped, had a conversation
9 with him, patted you down, then I approached the
10 driver's side.

11 And before approaching, as I was
12 passing the deputy, he said, yes, there are drugs
13 on the front seat.

14 Q. Before you did the visual scan; right?

15 A. I'd already seen it from the passenger
16 side, as I testified to.

17 MR. BLAKE: That ain't answering the
18 question, Your Honor, but I'm going to move
19 forward.

20 BY MR. BLAKE:

21 Q. Okay. At that point, if you saw it on
22 my passenger side and you didn't need no more
23 confirmation, why didn't you then put me under
24 arrest for drugs? If you saw it, why did you
25 prolong the arrest?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 You know, a dangerous situation could
2 have happened, that I could have either gotten away
3 or -- you know, anything could have happened. You
4 prolonged the stop. Why did you prolong the arrest
5 after all the time that you saw it, allegedly, then
6 you reconducted the visual scan and then you said
7 you placed me under arrest?

8 A. That's exactly the way it happened. I
9 went around and looked and then I came back and
10 placed you under arrest.

11 Q. Okay. Why did you stall is what I'm
12 asking?

13 A. I went around there to look for a
14 second time myself as well.

15 Q. For reinsurance?

16 A. For whatever you --

17 Q. You already got confirmation from a
18 deputy?

19 A. For whatever you --

20 Q. How much confirmation you need?

21 A. Yeah.

22 Q. Okay. And did you sanction me a crack
23 charge?

24 A. No. You were charged with cocaine.

25 Q. What kind of cocaine charge?

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 A. Trafficking cocaine.

2 Q. Okay. And this was found in my
3 vehicle?

4 A. A portion of it was; that's correct.

5 Q. How much of it was -- would you say it
6 was?

7 A. I would have to look at the report
8 that's with the narcotics itself.

9 That was in your vehicle.

10 Q. I mean, you should know this off cap.

11 A. Well, I mean, I'm not going to state
12 something I'm not 100 percent sure about. So if I
13 can look at the reports from the analysis, I can
14 tell you what the weight of it was. If you would
15 like me to, I can look at the evidence that's been
16 presented to the Court.

17 Q. Okay. So you're saying you're not sure
18 of how much it was? Was it big? Was it little?

19 A. It was a smaller amount than the other
20 drugs that were located.

21 Q. Just give me a guesstimation on what --

22 A. I'm not going to guesstimate any
23 amount.

24 Q. Okay. How can you prove -- it wouldn't
25 be a crack charge because you didn't know what you

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 saw or what it was -- it was a trafficking cocaine
2 charge, which is probable cause that you -- that
3 transpired my arrest, but you never charged me with
4 a possession of cocaine charge.

5 A. No, you were charged with trafficking
6 cocaine.

7 Q. So it went from a -- it went from a
8 crack first initially; right?

9 A. That's what I said initially on the
10 side of the roadway. It appeared to be crack
11 cocaine.

12 Q. Then it goes from cocaine, correct?
13 Possession of cocaine?

14 A. You were charged with trafficking
15 cocaine; correct.

16 Q. No, I'm not asking you that now. I'm
17 saying, it went from crack to possession of
18 cocaine, what you stated yesterday.

19 A. No, it didn't go to possession of
20 cocaine. It went to trafficking cocaine.

21 Q. Okay. Then trafficking cocaine?

22 A. Correct.

23 Q. Correct. But you stated that you
24 charged me with possession, but you didn't.

25 All right. Moving forward. Okay. Did

MCABEE, DEAN -- CROSS EXAM BY MR. BLAKE

1 you search the vehicle prior to facing me inside
2 the vehicle?

3 A. It actually shows on video when I'm
4 setting up the camera stuff. I've got my
5 flashlight on, I'm standing there, I'm looking
6 inside the vehicle as well.

7 MR. BLAKE: Okay. Can we see that
8 footage? I'm not going to --

9 (Video played in open court.)

10 MR. BLAKE: All right. Stop that
11 there.

12 BY MR. BLAKE:

13 Q. You lied to me and you lied to them.
14 You said you searched prior to me getting into the
15 vehicle. Why would you lie about something small
16 like that?

17 A. Do you have a question?

18 Q. Why would you lie about something small
19 like that?

20 A. I didn't lie.

21 Q. And you say that with a smile?

22 A. I didn't lie.

23 Q. Man. You got me not even wanting to go
24 on, man. Just -- okay.

25 You retrieved and recovered -- you

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 retrieved and recovered, meaning a redoneactment
2 (sic); correct?

3 A. I don't know what you asked.

4 Q. You got me -- man, after you lied to
5 me, you got me -- hold on. Let me try to get
6 myself together.

7 Okay. As stated in your report,
8 page 5, line 5 through 7 -- and then after that you
9 can read 26 -- let me know after you have read it
10 already.

11 A. Page 6 or page 5?

12 Q. Page 5, lines 5 through 7, you don't
13 have to read it out loud if you don't want to, but
14 if you want to, you could.

15 A. You're talking about the part about the
16 Glock?

17 Q. Yeah. Yeah.

18 A. That this reporting trooper found a
19 Glock 9 millimeter with serial number GPG191 under
20 the seat. It was retrieved with caution for
21 fingerprinting, unloaded, where it was found to be
22 loaded with 17 rounds in the clip and one in the
23 chamber.

24 Q. Okay. Now you can read 26.

25 A. The one where it says, Mr. Blake stated

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 this is not his drugs must have already been there?

2 The vehicle is inspected before each shift and
3 after each arrest, is that what you want me to
4 read?

5 Q. Yeah. You state that you recovered the
6 drugs from your vehicle; correct?

7 A. Should I go back up to where it says,
8 the reporting trooper recovered the drugs from
9 inside the car?

10 Q. Yeah. Was that you?

11 A. This patrol car -- yeah, that's
12 correct.

13 Q. Okay. You recovered the -- I mean, you
14 retrieved the firearm also, right?

15 A. What's that?

16 Q. Firearm also, correct? That you
17 retrieved?

18 A. Firearm?

19 Q. Yeah, firearm and gun -- I mean,
20 firearm and drugs?

21 A. The firearm was recovered from your
22 vehicle.

23 Q. But you did all of this; you recovered
24 and retrieved all of this?

25 A. That's correct.

MCABEE, DEAN - CROSS EXAM BY MR. BLAKE

1 Q. Okay. Retrieve and recovered, meaning
2 a redone-enactment; correct?

3 A. I don't understand what you're asking
4 there, redone-enactment.

5 Q. Well, break down like this. What is
6 re, R-E? What does that mean? Re?

7 A. I don't know what you're asking.

8 Q. Okay. I'll tell you this: Re is the
9 act of being done again. And you confirmed for the
10 jury that you recovered and retrieved both gun and
11 drugs. So, furthermore, confirmed an actment was
12 redone again by retrieving the gun and the drugs
13 you just confirmed.

14 A. No, it wasn't redone. Nothing was
15 redone.

16 Q. You just confirmed that it was
17 retrieved and recovered.

18 A. I recovered the drugs from my vehicle.

19 Q. Re as in repeat, re as in replay, re as
20 in record, re as in redo. It's like being --
21 it's -- what I'm saying to you is, it's an act of
22 being done again. And you just confirmed that you
23 recovered and retrieved firearm and the drugs
24 because you initially possessed these items.

25 MR. BLAKE: And I rest my case.

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 THE COURT: Okay. Thank you. Any
2 redirect, ma'am?

3 MS. LINDER: No redirect.

4 THE COURT: Okay. Thank you very much,
5 sir. You may stand down.

6 Okay. You may call your next witness.

7 MS. FRIERSON: State calls
8 Lieutenant Welch.

9 KYLE WELCH

10 being first duly sworn, testified as follows:

11 THE CLERK: Thank you. Please have a
12 seat. And for the record, if you'd state your
13 first and last name and spell out your last name,
14 please.

15 THE WITNESS: Kyle Welch, W-E-L-C-H.

16 MS. FRIERSON: Thank you, Your Honor.
17 May it please the Court.

18 THE COURT: Absolutely.

19 DIRECT EXAMINATION

20 BY MS. FRIERSON:

21 Q. Where are you employed?

22 A. I am employed with the South Carolina
23 Highway Patrol.

24 Q. And how long have you been with the
25 Highway Patrol?

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 A. Twenty-nine years.

2 Q. What is your current position?

3 A. I am A lieutenant.

4 Q. And, Lieutenant, what are your duties
5 at the Highway Patrol?

6 A. Field operations for Troop 6, which
7 consists of Berkeley, Charleston, Dorchester,
8 Colleton, Beaufort, and Jasper Counties.

9 Q. Thank you. Now, were those the same
10 duties you held back on April 15th of 2012?

11 A. No, ma'am.

12 Q. Could you please tell the jury what
13 duties you had back on that date?

14 A. Back in 2012, I was an enforcement
15 sergeant to Post A, which was Charleston and
16 Berkeley Counties.

17 Q. And could you please also tell the jury
18 what the procedure is for a trooper when he or she
19 collects evidence?

20 A. When a trooper collects evidence,
21 they'll bring it back to the office, our patrol
22 office, which was located in North Charleston.
23 They fill out the proper paperwork, which is chain
24 of custody and a BEST kit, which is a kit that is
25 approved by SLED that we use any time that we

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 confiscate evidence or drugs.

2 Once everything has been labeled and
3 the chain of custody is filled out, the trooper
4 will then drop it into an evidence lockbox.

5 Q. And how many of these offices are
6 there?

7 A. Office -- just one for Post A,
8 Charleston and Berkeley.

9 Q. And can you explain to the jury who has
10 access to these offices and how that access is?
11 Key? Locks?

12 A. The Highway Patrol, what we do is we
13 have a primary and second custodian to our
14 evidence, so there are only two supervisors that
15 have a key to the evidence.

16 Q. And how do you access these offices?
17 How does the patrolman get in?

18 A. Our office is -- we've got a scan badge
19 system. So once you walk into our front door, you
20 come into our lobby. Once you get into the lobby,
21 to proceed anywhere else in the building, you have
22 to have a scan badge or a key.

23 Q. So is it open to the public?

24 A. Just the lobby. The office is not.

25 Q. And where at those post offices is the

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 evidence stored?

2 A. At the time of this arrest, it was on
3 the second floor of our -- second floor of the
4 building, which was located at 8740 North Park
5 Boulevard.

6 Q. And is it stored in a safe in the post
7 offices?

8 A. When -- if it's -- if there is a
9 custodian there during business hours, we will then
10 take it and lock it into our evidence room, but if
11 it's after hours and there's not a custodian there
12 at the office, we have four lock boxes in the squad
13 room where the troopers will then take the
14 evidence, place it in the drop box, and then they
15 will lock it. And the only one that has a key to
16 unlock that box are the two custodians.

17 Q. And was one of your duties back on
18 April 15th, 2012, to access the evidence from those
19 individual patrol facilities for transport to the
20 Central Evidence Facility?

21 A. Yes, ma'am, it was.

22 Q. Can you explain to the jury what the
23 Central Evidence Facility is and where that's
24 located?

25 A. Central Evidence Facility is located in

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 Columbia. All narcotics evidence goes to this
2 facility across the state, so the same troopers in
3 Charleston use it, Greenville, Myrtle Beach. We
4 all take it to Columbia and drop it off there.

5 And what it is, is they house all that
6 evidence at CEF, or the Central Evidence Facility,
7 and then they would then take it to SLED to have it
8 analyzed or logged into their evidence.

9 Q. And did you have any contact with any
10 evidence in this particular case?

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

12 Q. And what evidence was that?

13 A. By looking at the chain of custody,
14 which is located -- or showing that a BEST kit with
15 a control number of B205731, it was a clear baggie
16 with a white rock substance, which weighed -- had a
17 field weight of .70 grams, a clear baggie in an
18 evidence bag, white rock-like substance with a
19 field weight of 30.87 grams, and a white and red
20 bottle with white powder, which field weight at
21 17.69 grams.

22 Q. And can you briefly explain to the jury
23 what a BEST kit is?

24 A. A BEST kit is an evidence kit that is
25 put together by SLED, which all agencies throughout

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 the state use. Everything is uniform. It's got a
2 clear evidence bag that you will then place your
3 evidence in so you can see what's in the bag. It
4 also has paperwork that you fill out, which we call
5 chain of custody, which gives, you know, the
6 violator's information, name, address, as well as
7 the officer's information.

8 Once all this is filled out, that bag
9 is then sealed and placed in a manila envelope,
10 which has BEST kit on it, and it is sealed as well.
11 It's just to keep anyone from tampering with the
12 evidence.

13 Q. And in a case like this where you
14 retrieved it from the safe, once that BEST kit is
15 put in the safe, is it preserved until you, as one
16 of the two that has a key, comes to pick it up?

17 A. That is correct.

18 Q. And do you retrieve evidence to submit
19 to CEF, or Central Evidence Facility as you
20 referred to it, if it appears damaged or tampered
21 with?

22 A. If it's been tampered, it will not go
23 to SLED.

24 MS. FRIERSON: May I approach the
25 witness?

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 THE COURT: Yes, ma'am.

2 BY MS. FRIERSON:

3 Q. Lieutenant Welch, I would like to show
4 you what has been marked for ID as State's Exhibit
5 Number 4. If you could take a look at that. Have
6 you seen that before?

7 A. All right. By verifying the control
8 number, which is on the BEST kit, and agency
9 number, this is the bag that was retrieved and sent
10 to SLED.

11 MR. BLAKE: Your Honor, I furthermore
12 object. Inadmissibility of the duplicate -- the
13 document that they're referring to is the South
14 Carolina Department of Public -- chain of custody
15 evidence pursuant to 1003, subsection B.

16 THE COURT: They haven't moved to admit
17 it into evidence yet, so just reserve your
18 objection until they move to admit it.

19 MS. FRIERSON: Thank you, Your Honor.
20 May I continue?

21 THE COURT: Yes, ma'am.

22 BY MS. FRIERSON:

23 Q. Lieutenant Welch, would you have
24 accepted that into evidence if it appeared tampered
25 with?

WELCH, KYLE - DIRECT EXAM BY MS. FRIERSON

1 A. No, ma'am.

2 Q. Does it appear to be in substantially
3 the same condition as when you took it in?

4 A. Yes, ma'am.

5 Q. And did you ever open that kit?

6 A. No, ma'am.

7 Q. And what did you do with it after you
8 retrieved it from the safe?

9 A. Once it was retrieved from the safe, I
10 then took the chain of custody paperwork, logged it
11 out of the evidence locker to myself, and then I
12 logged it over to Trooper Jesse James, who then
13 transported it to the CEF facility in Columbia.

14 Q. And during the time that you took it
15 out, did it remain in your sole care, custody, and
16 control until you transferred it to Trooper James?

17 A. Yes.

18 MS. FRIERSON: Court's indulgence,
19 Judge?

20 THE COURT: Yes.

21 MS. FRIERSON: I have no further
22 questions at this time, Lieutenant Welch. Please
23 answer any that the defendant may have.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Cross-examination, sir?

JAMES, JESSE - DIRECT EXAM BY MS. FRIERSON

1 MR. BLAKE: No, Your Honor, I don't
2 have any cross-examination.

3 THE COURT: Okay. Thank you, Officer.
4 You may step down. Thank you for being here.

5 Any of you need to take a break? You
6 all good? Okay.

7 Call your next witness.

8 MS. FRIERSON: State calls Trooper
9 James.

10 THE CLERK: Morning.

11 THE WITNESS: Morning.

12 JESSE JAMES,
13 being first duly sworn, testified as follows:

14 THE CLERK: Please have a seat. And
15 for the record, if you could state your first and
16 last name and spell out your last name, please.

17 THE WITNESS: Jesse James, J-A-M-E-S.

18 DIRECT EXAMINATION

19 BY MS. FRIERSON:

20 Q. Good morning, Trooper James.

21 A. Good morning.

22 Q. Could you please tell the jury where
23 you're employed?

24 A. I'm employed with the South Carolina
25 Department of Public Safety, with the Highway

JAMES, JESSE - DIRECT EXAM BY MS. FRIERSON

1 Patrol.

2 Q. And how long have you been employed
3 with them?

4 A. I've been employed with the Highway
5 Patrol now for five years. Before that, I was
6 employed with the Mount Pleasant Police Department
7 for 11.

8 Q. And what is your position? What is
9 your current title?

10 A. Currently, I'm a State Trooper. I do
11 collision reconstruction.

12 Q. And what are your duties as a trooper?

13 A. Duties as a trooper is to make the
14 roadway safer through enforcement and education,
15 and then my position also has investigative work
16 involved with it.

17 Q. And did you hold those same duties back
18 on April 15th of 2012?

19 A. I held the same duties. I had another
20 duty added, which was investigations, but it's the
21 same.

22 Q. And -- I'm sorry. Go ahead.

23 A. But it's the same.

24 Q. And did you handle any evidence in this
25 case, the State v. Mark Blake?

JAMES, JESSE - DIRECT EXAM BY MS. FRIERSON

1 A. I did.

2 Q. And what evidence was that?

3 A. I handled a SLED BEST kit.

4 Q. Okay. And who did you receive that
5 from?

6 A. I received that kit from
7 Lieutenant Welch, who I believe was a sergeant at
8 the time.

9 Q. Per South Carolina Highway Patrol
10 policy, would you have accepted that evidence from
11 Trooper Welch if it appeared to be tampered with in
12 any manner whatsoever?

13 A. No, ma'am, I would not have accepted
14 the evidence.

15 MS. FRIERSON: May I approach the
16 witness, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. FRIERSON:

19 Q. Trooper James, I'd like to hand you
20 what's been marked as State's Exhibit Number 4 for
21 ID.

22 A. Okay.

23 Q. If you could please take a look at
24 that, and tell me if you have seen that before.

25 A. If it was on a chain of custody and got

JAMES, JESSE - DIRECT EXAM BY MS. FRIERSON

1 transported, yes, but, you know, I received it from
2 Sergeant Welch as a transport to CEF. I had
3 several of those.

4 Q. Did you open that bag at all?

5 A. I did not.

6 Q. And what did you do with it after you
7 received it from Lieutenant Welch?

8 A. Generally, I will -- every time I
9 received evidence to take it to our Central
10 Evidence Facility in Columbia, I'll get it from a
11 supervisor at our Troop 6 headquarters in North
12 Charleston. I would transport it straight to
13 Columbia.

14 When I'm in Columbia, we have a Central
15 Evidence Facility, and I'll hand it over to the
16 evidence custodians at that location.

17 Q. And did it remain in your sole care and
18 custody during that entire transport from where you
19 picked it up from Trooper Welch to when you dropped
20 it off at the Central Evidence Facility?

21 A. Yes.

22 MS. FRIERSON: No further questions.
23 Please answer any questions that the defendant may
24 have.

25 THE WITNESS: Okay.

ODOM, PHILIP - DIRECT EXAM BY MS. FRIERSON

1 THE COURT: Do you have any questions,
2 Mr. Blake?

3 MR. BLAKE: No. No, Your Honor.

4 THE COURT: Okay. Thank you, sir.

5 Thank you. I appreciate you being

6 here, sir. You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: You may call your next

9 witness.

10 MS. FRIERSON: The State calls

11 Trooper Odom.

12 PHILIP ODOM,

13 being first duly sworn, testified as follows:

14 THE CLERK: Thank you. Please have a

15 seat. And for the record, if you could state your

16 first and last name and spell out your last name,

17 please.

18 THE WITNESS: My name is Philip Odom,

19 last name O-D-O-M.

20 MS. FRIERSON: Thank you. May I

21 proceed, Your Honor?

22 THE COURT: Yes, ma'am, you may.

23 MS. FRIERSON: Thank you. May it

24 please the Court.

25 DIRECT EXAMINATION

ODOM, PHILIP - DIRECT EXAM BY MS. FRIERSON

1 BY MS. FRIERSON:

2 Q. Good morning.

3 A. Morning.

4 Q. Could you please tell the jury where
5 you're employed?

6 A. I am with the South Carolina Department
7 of Public Safety, State Transport Police Division
8 currently assigned to the Central Evidence Unit.

9 Q. And what are your duties there at the
10 Central Evidence Unit?

11 A. Central Evidence Unit, we are comprised
12 of Highway Patrol, State Transport Police, and
13 Bureau of Protective Services, as well as the
14 Immigration Unit. We handle all of the evidence
15 for all of DPS statewide. We are a centralized
16 location right there in Columbia.

17 We handle all the evidence throughout
18 the state, so anything for long-term storage would
19 come to us and we will hang onto it until it needs
20 to be taken to SLED for analysis, or court, or when
21 we can destroy it.

22 Q. Now, were those the same duties you
23 held back on April 15th of 2012?

24 A. Yes, ma'am.

25 Q. And did you receive or handle any

ODOM, PHILIP - DIRECT EXAM BY MS. FRIERSON

1 evidence in this case, the State v. Mark Blake?

2 A. I did.

3 Q. And what was that?

4 A. I actually received three items. Item
5 one was a BEST kit, looks like item two was a
6 handgun, and item three was a digital scale.

7 Q. And are there multiple people in your
8 office who share the same duty?

9 A. We're a five-person unit. And like I
10 said, we are the only ones in the state that
11 handles -- that works at Central Evidence, and
12 we're the only ones in the state who is authorized
13 access to that building and that can handle the
14 evidence.

15 You know, once the trooper drops it off
16 to us, we're the only ones that can touch it until
17 we take it to SLED for analysis or, like I said,
18 come here and drop it off at court.

19 Q. And could you tell the jury what that
20 facility -- the Central Evidence Facility, once you
21 accept it in, kind of how the storage facility
22 works or any safety mechanisms that might be in
23 place?

24 A. Yes, ma'am. We have several layers of
25 security. Once you get to our building, you have

ODOM, PHILIP - DIRECT EXAM BY MS. FRIERSON

1 to be buzzed in. There's multiple cameras
2 everywhere and you have to sign in. And then you
3 have -- that's just to get into the building
4 itself. And then once the officer drops off the
5 evidence, per se, then we'll go into a separate
6 facility and there's multiple layers of security
7 there.

8 It depends on what type of evidence --
9 we have the main -- I guess the main warehouse,
10 which requires one level of security, and then
11 each -- each room that's inside that warehouse
12 requires additional security, whether it's an
13 additional swipe, extra keys, but there's multiple
14 layers. It depends on what type of evidence
15 within -- we're dealing with.

16 Q. And once an item is taken in by you or
17 the other members in the -- I think you said a
18 five-member unit?

19 A. Yes, ma'am.

20 Q. Is it preserved in that facility until
21 one of you five check it out?

22 A. Yes, ma'am. We're the only ones that
23 can turn it into that building and we're the only
24 ones that can take it out.

25 Q. And who -- who did you get the evidence

ODOM, PHILIP - DIRECT EXAM BY MS. FRIERSON

1 in this case from again?

2 A. Okay. Looking at the chain, I received
3 this evidence from Trooper J. D. James on --

4 MR. BLAKE: Your Honor, again, I
5 object. This is the same document that I'm
6 objecting to that they reading off. This wasn't
7 documented as evidence because this is a --
8 duplicated, once again.

9 THE COURT: Okay. All right. Again,
10 they're not asking that it be admitted into the
11 record.

12 MR. BLAKE: That's what he's just --
13 what he's reading off.

14 THE COURT: He's looking at it. He's
15 referencing it, and I find that that's allowable.
16 Okay.

17 MR. BLAKE: Okay.

18 THE COURT: But reserve your objection
19 for when they attempt to admit the evidence. Okay?

20 MR. BLAKE: All right. Sorry, Your
21 Honor.

22 THE COURT: No worries. Go ahead.

23 MS. FRIERSON: Your Honor, may I
24 approach?

25 THE COURT: You may.

ODOM, PHILIP - DIRECT EXAM BY MS. FRIERSON

1 BY MS. FRIERSON:

2 Q. Trooper Odom, I'd like to show you
3 what's been marked as State's Exhibit Number 4 for
4 identification. Have you seen that before?

5 A. Yes, ma'am.

6 Q. And when did you first see that?

7 A. Back on 4/16/2012, when Trooper James
8 delivered it to me.

9 Q. Would you have accepted that into the
10 Central Evidence Facility if it appeared tampered
11 with?

12 A. No, ma'am. We have the same procedures
13 as SLED. We're not allowed to take anything that's
14 unsecured for the sole purpose of when we take it
15 to SLED, they won't accept it. So there's no
16 reason for us to hang onto something they're not
17 going to keep. So we mirror our procedures when it
18 comes to evidence. It has to be sealed, signed,
19 documented before we take custody of it.

20 Q. And did you ever open that?

21 A. The BEST kit?

22 Q. Yes, sir.

23 A. No, ma'am, it was --

24 Q. And -- I'm sorry, what was that?

25 A. It was sealed.

ODOM, PHILIP - CROSS EXAM BY MR. BLAKE

1 Q. And what did you do you with it after
2 you received it?

3 A. After I received it, I put it in our
4 secured facility at CEF, and then it stayed there
5 until -- according to the chain, it was transported
6 to SLED on the 18th, two days later.

7 MS. FRIERSON: Thank you. I have no
8 further questions at this time. Please answer any
9 the defendant may have.

10 THE COURT: Mr. Blake, any questions?

11 MR. BLAKE: Yes.

12 THE COURT: Okay.

13 MR. BLAKE: I do have a few questions.

14 CROSS-EXAMINATION

15 BY MR. BLAKE:

16 Q. Just a few questions. I'm not going to
17 make it difficult for you. Just re-establishing
18 some things and gonna bring some things to the
19 light that ain't established yet. Okay?

20 A. Okay.

21 Q. Okay. You stated that you received
22 these drugs -- or all items, shall I say. You
23 received all items the date of -- what date?

24 A. 4/16/2012.

25 Q. Okay. All right. And R. A. Frick is

ODOM, PHILIP - CROSS EXAM BY MR. BLAKE

1 the one that took it all to SLED; correct?

2 A. Correct. That's Sergeant Frick.

3 Q. That was 4/18/12; correct?

4 A. Yes, sir.

5 Q. Okay. After the analysis was done and
6 over with, did you or did you not pick the items up
7 from SLED, dated 5/9/2012?

8 A. That's correct.

9 Q. Okay. Now, can you establish for the
10 Court where were these items then placed at amongst
11 from SLED back to -- where do these items go after
12 SLED?

13 A. I'm sorry. Your question is once they
14 leave SLED, where do they go?

15 Q. Yeah. Where did you take them at?

16 A. Back to our facility, Central Evidence.

17 Q. Okay. Which -- do you have any -- like
18 a -- like an evidence locker number or anything to
19 that nature to distinguish this particular
20 evidence?

21 A. Are you -- you mean a tracking number?

22 Q. Yeah. Like, you know, they've got
23 different -- I'm assuming you've got different
24 safes, right? Or do you got just one safe?

25 A. No, we have multiple.

ODOM, PHILIP - CROSS EXAM BY MR. BLAKE

1 Q. Okay. So is it like a particular safe
2 that you put it in?

3 A. Help me out here.

4 Q. Okay. Okay. Okay.

5 A. It goes to our facility when we get it
6 from the trooper, and then we take it to SLED.
7 They do what they do, and then when they give it
8 back, we bring it back to our facility and hold it
9 until --

10 Q. Yeah. And you brought it back -- and
11 you picked it up from SLED 5/9/2012 at 10:24 a.m.;
12 right? Okay. And you brought it back to South
13 Carolina --

14 A. Central Evidence.

15 Q. Okay. And do you remember or can you
16 recall what the particular locker that you admitted
17 this evidence in?

18 A. No, sir, not off the top of my head.

19 Q. You cannot recall? Okay. Can you give
20 me like -- can you recall what time that you
21 admitted that as evidence?

22 A. Not according to this paperwork, no.

23 Q. Okay. Is there any document or any
24 proof that -- that you can produce right here that
25 maybe can assist you on what you did with the

ODOM, PHILIP - CROSS EXAM BY MR. BLAKE

1 items?

2 A. No, sir.

3 MR. BLAKE: Okay. All right. Thank
4 you for your cooperation.

5 THE WITNESS: Thank you.

6 MR. BLAKE: All right.

7 THE COURT: Any redirect?

8 MS. FRIERSON: None from the State,
9 Your Honor.

10 THE COURT: Thank you, Officer. I
11 appreciate you being here.

12 THE WITNESS: Thank you.

13 THE COURT: You may step down.

14 You may call your next witness.

15 MS. FRIERSON: The State calls
16 Trooper Frick.

17 RODNEY FRICK,

18 being first duly sworn, testified as follows:

19 THE CLERK: Thank you. Please have a
20 seat. And for the record, if you could state your
21 first and last name and spell out your last name,
22 please.

23 THE WITNESS: Rodney Frick. The last
24 name is spelled F-R I C-K.

25 THE CLERK: Thank you.

FRICK, RODNEY - DIRECT EXAM BY MS. FRIERSON

1 THE COURT: Yes, ma'am.

2 MS. FRIERSON: May it please the Court,
3 Your Honor.

4 DIRECT EXAMINATION

5 BY MS. FRIERSON:

6 Q. Good morning. Could you please tell
7 the jury where you're employed?

8 A. I'm employed with the South Carolina
9 Highway Patrol, or South Carolina Department of
10 Public Safety. I work in our Central Evidence
11 Facility.

12 Q. And how long have you been in that
13 position?

14 A. Been there for about eight years now.

15 Q. Did you handle any evidence in this
16 case, the State v. Mark Blake?

17 A. Yes, ma'am.

18 Q. And what was that?

19 A. According to the paperwork, I handled a
20 sealed BEST kit, Number B205731.

21 Q. And what did you do with it?

22 A. I removed that package from our safe
23 and delivered it to SLED on April 18th, 2012.

24 MS. FRIERSON: May I approach the
25 witness, Judge?

FRICK, RODNEY - DIRECT EXAM BY MS. FRIERSON

1 THE COURT: Yes, ma'am, you may.

2 BY MS. FRIERSON:

3 Q. I'd like to show you what's been marked
4 as State's Exhibit Number 4 for identification
5 purposes.

6 A. Yes, ma'am.

7 Q. If you can take a moment and look at
8 that. Have you seen that before?

9 A. Yes, ma'am.

10 Q. And when did you first see that?

11 A. On April 18th of 2012.

12 Q. And what did you do with that?

13 A. Like I said, I removed it from our safe
14 at the Central Evidence Facility and I delivered it
15 to SLED.

16 Q. And does it appear to be in
17 substantially the same condition as when you first
18 saw it?

19 A. I don't open the bag whenever it leaves
20 our facility. Whenever we receive it, it's in a
21 manila envelope with the number of these control
22 numbers. And this bag, which is inside this clear
23 bag, is inside that manila envelope sealed.

24 I pull it out and make sure it's
25 sealed, verify the numbers, and I take it to SLED.

FRICK, RODNEY - DIRECT EXAM BY MS. FRIERSON

1 The numbers do correspond with what's on the chain
2 of custody and what's on the bag.

3 Q. And would you have transported it to
4 SLED if it appeared tampered with or the numbers
5 did not match?

6 A. No, ma'am.

7 Q. And did this evidence remain in your
8 sole care and custody throughout your entire
9 transport to SLED?

10 A. Yes, it did.

11 Q. Do you know who you turned it over to
12 at SLED?

13 A. According to the paperwork, I turned it
14 over to Amy Stephens.

15 MS. FRIERSON: Thank you. I have no
16 further questions. Please answer any the defendant
17 may have.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Mr. Blake, any questions?

20 MR. BLAKE: No, Your Honor, I don't
21 believe I have any questions.

22 THE COURT: Okay. Officer, you may
23 step down. Thank you for being here.

24 THE WITNESS: Yes, sir, thank you.

25 THE COURT: You may call your next

STEPHENS, AMY - DIRECT EXAM BY MS. FRIERSON

1 witness.

2 MS. FRIERSON: The State calls
3 Amy Stephens.

4 AMY STEPHENS,
5 being first duly sworn, testified as follows:

6 THE CLERK: Thank you. Please have a
7 seat. And for the record, if you could state your
8 first and last name and spell out your last name,
9 please.

10 THE WITNESS: Amy Stephens,
11 S-T-E-P-H-E-N-S.

12 MS. FRIERSON: Thank you. May it
13 please the Court, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. FRIERSON:

16 Q. Ms. Stephens, could you please tell the
17 jury where you're employed?

18 A. I'm employed with the South Carolina
19 Law Enforcement Division, also known as SLED.

20 Q. And how long have you been there?

21 A. Approximately ten-and-a-half-years.

22 Q. And what's your position?

23 A. I am a forensic technician in the
24 evidence control department and our daily
25 responsibilities are to transfer package and log in

STEPHENS, AMY - DIRECT EXAM BY MS. FRIERSON

1 evidence for forensic analysis.

2 Q. Did you happen to handle any evidence
3 in this case, the State v. Mark Blake?

4 A. Yes, I did.

5 Q. Can you please tell the jury
6 specifically which evidence you handled?

7 A. I handled SLED item number 1, which was
8 one BEST kit evidence.

9 MS. FRIERSON: May I approach the
10 witness, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. FRIERSON:

13 Q. I'd like to show you what's been marked
14 as State's Exhibit Number 4 for identification
15 purposes. If you could take a moment and look at
16 that, Ms. Stephens?

17 A. State's Exhibit Number 4 corresponds
18 with the SLED item number of L12-04641.

19 Q. And when did you -- have you seen that
20 bag before?

21 A. Yes, I have.

22 Q. And when did you see that bag?

23 A. I received this particular evidence on
24 April 18, 2012, at 11:04 a.m. from R. A. Frick with
25 the South Carolina Department of Public Safety.

STEPHENS, AMY - DIRECT EXAM BY MS. FRIERSON

1 Q. And when you say you received it, is
2 that considered accepting it into SLED evidence?

3 A. Yes, it is.

4 Q. And would you have accepted it into
5 SLED evidence if it appeared tampered with?

6 A. No, I would not.

7 Q. What did you do with the evidence after
8 receiving it from R. Frick?

9 A. When I received the evidence, we input
10 the case information into our computer system. A
11 unique lab number is generated for that particular
12 evidence, and then that evidence is transferred to
13 our secure evidence room.

14 Q. Did you ever have contact with the
15 evidence in this case again?

16 A. No, I did not.

17 Q. And is part of your job to open the
18 evidence at all?

19 A. No, it is not.

20 Q. Is it part of your job to just
21 transport it from one place to another?

22 A. We transfer evidence from the time that
23 it's logged in to the time where it's put on a
24 shelf or transferred to be analyzed or returned to
25 an agency.

STEPHENS, AMY - DIRECT EXAM BY MS. FRIERSON

1 Q. And are there several people within
2 your unit that share the same duties?

3 A. Yes, there are.

4 Q. And do their duties -- are any of their
5 duties supplemented by the duty to open or is it,
6 again, to just transport?

7 A. No one employed within my department
8 opens any evidence.

9 MS. FRIERSON: Thank you. I have no
10 further questions at this time. Please answer any
11 the defendant may have.

12 THE COURT: Mr. Blake, any questions?

13 MR. BLAKE: No, Your Honor, I don't
14 have any questions.

15 THE COURT: Fine. Ma'am, thank you for
16 being here. You may step down. I do appreciate
17 it.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. All right.

20 Ms. Frierson, how many additional witnesses do you
21 intend to call for the State?

22 MS. FRIERSON: We have three, Your
23 Honor.

24 THE COURT: Three additional? Okay.

25 Good.

1 Ladies and gentlemen, let's take just a
2 short break and then come in and perhaps we can
3 finish up those three witnesses, depending on where
4 we stand, before we go to lunch.

5 I want to break for lunch in about an
6 hour to an hour and-a-half. It depends on where
7 the witnesses stand, just to give you an idea of
8 where we're going and what's next. Okay.

9 All right. Please retire to your jury
10 room and take a short break. Please don't discuss
11 the case.

12 (Jury out, 11:29 a.m.)

13 THE COURT: All right. We will be in
14 recess until the jurors are in.

15 (A recess transpired.)

16 THE COURT: Ready for the jury?

17 All right. Bring the jury in, please.

18 MS. LINDER: Judge.

19 THE COURT: Yes, ma'am.

20 MS. LINDER: The witnesses who have
21 already testified, are they allowed to come back
22 into the courtroom at this point?

23 THE COURT: Do you intend to call any
24 of those witnesses in your case?

25 MR. BLAKE: No, I don't, Your Honor,

1 but I kind of want to raise an issue.

2 THE COURT: Okay. As to that issue,
3 yes, as long as you're not going to recall them,
4 then they're released from the order of
5 sequestration.

6 MR. BLAKE: Yes, Your Honor. Issue
7 raised in reference to the State's witness list of
8 William Smith. It's already established and
9 verified and undisputable that this gun was stolen.
10 At this point, I feel as though his testimony of
11 a -- regarding a burglary would be confusing
12 amongst the jury because we already -- that's
13 established. We don't need the testimony, Your
14 Honor.

15 THE COURT: Okay. Yes, ma'am.

16 MS. LINDER: And, Judge, my position is
17 that the person who said this gun came back stolen
18 is Corporal McAbee, and the defendant's position is
19 that Corporal McAbee is a liar. And so I'm
20 bringing in the owner of the stolen gun to show
21 that he is the rightful owner. I think it's
22 necessary when --

23 MR. BLAKE: Your Honor --

24 MS. LINDER: -- his position is that
25 Corporal McAbee was lying and not telling the

1 truth, and that's the one person who can testify to
2 those facts.

3 MR. BLAKE: Okay. Your Honor, that's
4 null and void because that's not what I'm saying.
5 I'm saying that it's established and that's
6 undisputable. I'm not arguing the issue that the
7 gun was stolen. I don't care whether it was stolen
8 or not.

9 THE COURT: Okay.

10 MR. BLAKE: That has nothing to do with
11 me.

12 THE COURT: So let me ask you this:
13 Would you agree to a stipulation by the parties
14 that I would publish to the jury that the gun in
15 question was, in fact, a stolen gun.

16 MR. BLAKE: You could say that. I
17 would rather that than going into an incident of a
18 man's house getting burglarized -- I mean, I had
19 nothing to do with it. So, I mean, the
20 introduction of that I feel like it's confusing to
21 the jury.

22 THE COURT: Do you agree with that
23 stipulation?

24 Just know this: I know that you need
25 to get that into evidence. I recognize that, and I

1 would certain not preclude you from doing it. I
2 would limit the testimony to very, very simple
3 questions and not going into any specifics of the
4 burglary. Basically, is that your gun? Was a
5 stolen? When was it stolen?

6 MS. LINDER: Right. No -- and, Judge,
7 I understand that. I will leave it to the Court's
8 discretion. I'm fine with a stipulation that goes
9 to the jury saying that it is uncontested that the
10 gun was stolen. I just -- I want to make sure
11 it's -- it's -- I don't want him to then be able to
12 attack that at all, and I'm just concerned about
13 the defendant's ability to follow the rules of
14 Court frankly.

15 THE COURT: Okay. Okay. I understand.
16 Well, if you'll accept the stipulation, I will
17 publish it and I will tell them that they -- that
18 that is not evidence. That's fact as stipulated by
19 between the parties and they can accept it as such.
20 Okay.

21 It's hard for me to anticipate what
22 Mr. Blake is going to say. It's hard for me to
23 anticipate what you're going to say. We'll just
24 have to address it as it comes up.

25 MR. BLAKE: I -- honestly, I do not

1 plan on questioning this witness in regards to a
2 stolen firearm.

3 THE COURT: Yeah. The Solicitor's
4 concern is that you are going to say something
5 contrary to the stipulation, that is, at some point
6 in time you'll take a position that's contrary to
7 the stated stipulation.

8 And I will tell you, you have accepted
9 the stipulation. The State accepts the
10 stipulation. If you say -- you can form -- you can
11 make a motion at such time -- at any such time that
12 you feel that Mr. Blake is in -- contrary to the
13 stipulation, and I will be happy to remind the jury
14 of the stipulation. Would that cure the problem?

15 MS. LINDER: Yes, Judge, thank you.

16 THE COURT: Okay. Fine.

17 Fair enough, Mr. Blake?

18 MR. BLAKE: Fair enough, Your Honor.
19 Appreciate that.

20 THE COURT: Okay. Bring the jury in,
21 please.

22 (Jury in, 11:50 a.m.)

23 THE BAILIFF: All jurors are present,
24 Judge.

25 THE COURT: Okay. Thank you very much.

1 Ladies and gentlemen, while you were
2 out, the parties and I had a discussion about some
3 of the evidence that will be presented, and we were
4 taking about the flow of the case. And in an
5 attempt to speed things up and in an accommodation
6 to you, both Ms. Linder with the State and
7 Mr. Blake have graciously decided to enter into a
8 stipulation regarding facts.

9 Now, a stipulation is an agreement
10 between the parties, that when agreed to and
11 presented to you, you may accept as fact;
12 therefore, there is no burden of proof on any party
13 with respect to a stipulation, because the parties
14 agree that it is a fact that you can accept at face
15 value.

16 There was a witness who would have
17 taken the stand and testified that it was his gun
18 and that it had been stolen. Ladies and gentlemen,
19 I tell you now, by way of stipulation, that you may
20 accept as fact that the subject gun was stolen.
21 All right.

22 You may call your next witness,
23 Ms. Frierson.

24 MS. FRIERSON: Thank you, Your Honor.
25 The State calls Doug Robinson.

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 DOUGLAS ROBINSON,

2 being first duly sworn, testified as follows:

3 THE CLERK: Please have a seat. And
4 then for the record, if you could state your first
5 and last name and spell out your last name, please.

6 THE WITNESS: My name is
7 Douglas Robinson, R-O-B-I-N-S-O-N.

8 DIRECT EXAMINATION

9 BY MS. FRIERSON:

10 Q. Thank you, Mr. Robinson. Good morning.
11 Could you please tell the jury what your occupation
12 is and where you are employed?

13 A. Yes, ma'am. I'm a forensic chemist
14 assigned to the Drug Analysis Department at the
15 South Carolina Law Enforcement Division, commonly
16 known as SLED.

17 Q. And how long have you been employed by
18 SLED?

19 A. Just under eight-and-a-half-years.

20 Q. Could you please tell the jury about
21 your duties as a chemist there?

22 A. My primary duty is the analysis of
23 evidence that is submitted that is suspected to
24 contain controlled substances. I'm also currently
25 serving as the departmental training manager, so

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 I'm in charge of coordinating and overseeing all
2 new training for internal hires within the
3 department.

4 Q. And could you tell us a little about
5 your background and the training and education and
6 experience you had to have achieved the title of
7 chemist?

8 A. Yes, ma'am. I was -- received a
9 bachelor of science in chemistry from the
10 University of South Carolina. After graduating I
11 spent approximately three years performing chemical
12 analysis in the environmental chemistry field.
13 Upon being hired with SLED, I received law and
14 legal training through the South Carolina Criminal
15 Justice Academy and also training in the analysis
16 of controlled substances through the SLED Drug
17 Analysis Department. I've also attended the Drug
18 Enforcement Administration Forensic Chemist
19 seminar.

20 Q. And have you had an occasion to
21 chemically analyze substances to determine whether
22 that substance contains or -- a narcotic or a
23 narcotic-type drug?

24 A. To date, I've tested approximately
25 10,000 items with SLED.

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 Q. And, specifically, have you had the
2 occasion to chemically analyze substances to
3 determine whether or not they contain cocaine or
4 have the presence cocaine?

5 A. Yes, ma'am. Of the roughly 10,000,
6 about 4500 of those would have been either cocaine
7 hydrochloride or cocaine-based crack samples.

8 Q. And do you make cocaine analysis as
9 part of your regular duties?

10 A. Yes, ma'am. That's one of the more
11 routine or abundant drugs that are submitted.

12 Q. Have you previously been admitted as an
13 expert in state or federal court?

14 A. Yes.

15 Q. Approximately, how many times?

16 A. Twenty-three.

17 Q. Could you tell the jury a little bit as
18 it relates to this case and the work that you did,
19 the type of testing and equipment that SLED has for
20 these drugs?

21 A. Sure. Routinely, we use a battery of
22 three different equipment or type of equipment.
23 The first would be a balance. The first thing we
24 do once we get into the case and remove everything,
25 separate things out by items, will be to remove

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 each individual item from its packaging and take a
2 weight. That would be the first item of
3 instrumentation would be a digital scale.

4 After that, we would perform routinely
5 some type of indicative test. This is a test that
6 indicates what type of drug it may be or a specific
7 drug. It gives us kind of an idea of how to
8 proceed with the analysis. And, in this case,
9 routinely for cocaine-type submissions, it would be
10 a chemical spot test.

11 That's followed, depending on what the
12 results are, with confirmatory testing. And in
13 this case it was a combination of gas
14 chromatography, mass spectrometry. We shorten that
15 routinely and call it GCMS. So this case was
16 analyzed and confirmed by GCMS.

17 It's a confirmatory instrument because
18 once we get the results, we can actually identify
19 that compound to the exclusion of all other
20 compounds. It's very specific.

21 Q. And are these -- is this equipment
22 maintained by SLED?

23 A. Yes, ma'am.

24 MS. FRIERSON: Your Honor, at this time
25 I would move to admit Douglas Robinson as an expert

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 in drug analysis.

2 THE COURT: Okay. Mr. Blake, any
3 exceptions to his qualifications?

4 MR. BLAKE: No, Your Honor.

5 THE COURT: Okay. All right. So
6 admitted.

7 And, ladies and gentlemen, this witness
8 has been accepted by the Court as an expert
9 witness. Now, the reason a party to an action may
10 want to have someone qualified as an expert witness
11 is because an expert witness can testify as to
12 matters that a lay witness may not be able to
13 testify to.

14 Specifically, an expert witness may be
15 able to testify as to opinion evidence that a
16 regular person wouldn't be able to offer. Somebody
17 may be admitted as an expert witness because of his
18 or her expertise, education, or experience in a
19 given field.

20 Now, when someone is admitted as an
21 expert witness, it does not mean that their
22 testimony has any greater value than any other
23 person's testimony. In your role as the finders of
24 the fact, you look at all of the evidence and
25 determine what the facts are, and you determine

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 whether witnesses are credible or not credible and
2 what weight their testimony may have.

3 The same is true for an expert witness'
4 testimony. You look at it and you decide whether
5 the witness' testimony is credible. You decide
6 whether it has weight just like any other piece of
7 evidence that you receive in the case.

8 All right.

9 MS. FRIERSON: Thank you, Your Honor.
10 May I approach the witness?

11 THE COURT: Yes, ma'am.

12 BY MS. FRIERSON:

13 Q. Mr. Robinson, I would like to show you
14 what has been premarked as State's Exhibit
15 Number 6. If you could take a moment and look at
16 that. Do you know what that is?

17 A. It appears to be a copy of the report I
18 issued for this case.

19 Q. And who prepared that?

20 A. It has my signature on the back page,
21 so that would have been me.

22 Q. And when did you prepare that report?

23 A. The report was issued on April 27,
24 2012.

25 Q. And is it signed by you?

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 A. Yes, ma'am. My signature appears on
2 the -- actually, the back two pages.

3 Q. And who is the subject of that report?

4 A. A Mark Blake, Junior.

5 MS. FRIERSON: Your Honor, at this time
6 I would move to admit State's Exhibit Number 6 and
7 publish it to the jury.

8 THE COURT: Okay. Is that the report?

9 MS. FRIERSON: Yes, Your Honor.

10 THE COURT: Any objection, sir?

11 MR. BLAKE: Beg the Court's indulgence?

12 Yeah, I object. Pretrial motion.

13 THE COURT: All right. Okay. Based on
14 the suppression motion that we had and that
15 continuing objection, sir?

16 MR. BLAKE: Yeah.

17 THE COURT: Okay. All right. Thank
18 you, Mr. Blake. And you are protected under the
19 record in that regard, but the objection is
20 respectfully overruled.

21 So admitted. You may publish it.

22 MS. FRIERSON: Thank you.

23 (STATE EXH. 6 in evidence.)

24 BY MS. FRIERSON

25 Mr. Robinson, I'd like to draw your

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 attention to the monitor up here and go through
2 this and have you explain it to the jury.

3 So beginning with the top of the
4 report, could you kind of tell us what this box
5 here indicates?

6 A. Yes, ma'am. That's essentially a
7 return address. In years past we would have
8 actually mailed out a hard copy of the report. Now
9 we have everything digitalized and the submitting
10 agency can retrieve, and the Solicitor's Office can
11 retrieve that -- the reports online, but that's
12 a -- just a return address.

13 Q. And how about moving over to the right
14 under, drug analysis. Can you explain to the jury
15 what that information is?

16 A. Yes, ma'am. That would just be the
17 general case information. As you can see,
18 April 27, 2012, would be the date the report is
19 signed, therefore issued. You also have the SLED
20 lab number, which in this case is L1204641.

21 Where it says, your case number, that's
22 the submitting agency's case number. So whatever
23 agency brought the evidence in, that's their agency
24 case number for their references.

25 You also have an incident date. That's

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 when the incident took place, when the -- when the
2 evidence, drugs would have been seized, and then
3 the suspect's name in the bottom line.

4 Q. And where do you get this case number
5 from?

6 A. Which one are you referring to, ma'am?

7 Q. I'm sorry, your case number. The
8 agency that submits it, where do you get that case
9 number from?

10 A. That case number is assigned as -- when
11 the evidence comes in the door and what we refer to
12 as being logged in. When the submitting agency
13 brings it in, that case number is generated. It's
14 a unique case number. The L12, the 12 refers to
15 2012. So at each year, it has that set of numbers.
16 Right now we're on L16.

17 The very first case, regardless of what
18 discipline, whether it's drug analysis, latent
19 prints, toxicology, the very first one that comes
20 through the door on January 1st would be 0001, and
21 then it just sequentially works up throughout the
22 year. And so it's a unique number that would only
23 be assigned to one case.

24 Q. Thank you. I'd like to move further
25 down where it goes to items of evidence. And if

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 you could kind of take the jury through what this
2 means and explain how it's broken down.

3 A. Yes, ma'am. If you look directly under
4 items of evidence, it says, Submission Number 1.
5 This is what we refer to as the submission line.
6 This gives general information about who submitted
7 it and when they submitted it.

8 So as you can see, it says, on
9 April 18, 2012, items were received in B205731 from
10 R. A. Frick of the SC Department of Public Safety.
11 So that gives us the general information of what
12 date he brought it in, it identifies the person who
13 brought it in and what agency they're from.

14 What you also see there is the number
15 B205731. This is a second unique number that
16 applies to drug cases specifically. This is what
17 we refer to as a BEST control number. In this --
18 with this number, that number is attached to BEST
19 kits specifically. It's a way for agencies to
20 package drug evidence and secure it as it passes
21 through the chain of custody.

22 Once it's sealed in the field or when
23 the initial officer seals it, it comes through the
24 chain of custody to me. The very first thing I'm
25 going to do is ensure that seal is intact. But no

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 two bags are going to have that same number. So
2 that, in combination with our lab number, that
3 gives us duplicity in unique numberization.

4 If you look just below that, you will
5 see Item 1.1. And the description for Item 1.1 is
6 a plastic corner bag containing compressed powder
7 substance. The result of this item are cocaine C2
8 found, 0.6 grams, 9.2 grains.

9 Item 1.2: Evidence bag containing
10 compressed powder substance. Results: Cocaine C2
11 found, 26.9 grams, 415.1 grains.

12 Item 1.3: Plastic bottle containing
13 powder substance. Results: No controlled
14 substances detected.

15 Q. Thank you, Mr. Robinson. I'd like
16 to -- Mr. Robinson, I would like to show you
17 State's Exhibit Number 4. If you could take a look
18 at that and tell me if you have seen that before.

19 A. I do recognize it generically. May I
20 refer to my notes for some comparison?

21 Q. Yes, sir.

22 A. This was the evidence submitted in this
23 case for drug analysis.

24 MS. FRIERSON: Your Honor, May I
25 approach the witness?

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 BY MS. FRIERSON:

2 Q. And did you say you were able to
3 recognize that bag?

4 A. Yes, ma'am. The lab number, as well as
5 the BEST control number match. So both of the
6 numbers I just referred to as specific numbers are
7 the same numbers that we find on the report that I
8 just read from.

9 Q. If you wouldn't mind opening the bag
10 and explaining to the jury what the bag is and the
11 inner bags.

12 A. Okay.

13 Q. Kind of taking them through an
14 explanation.

15 A. Perhaps before I cut into it we'll
16 start with the outside bag and work from there.

17 So this very outside bag is essentially
18 just a heat-sealed -- a heat-sealable plastic bag.
19 It's what we refer to as a Kpak. There's nothing
20 particularly unique about this bag other than we
21 can seal the evidence after my analysis is done.

22 But at the very bottom, it's hard to
23 see from the jury box, but there is a heat seal
24 here and it has my initials as well as the date
25 that it was sealed, which is 4/24/12. Whenever I

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 finish the analysis, as soon as I finish the
2 analysis, the evidence is placed back in this bag
3 and it's sealed up.

4 So it's never opened outside of my
5 direct physical custody. And if I needed to go
6 back into it later or anything like that, I would
7 simply make another cut and a separate seal, but in
8 this case, there's only one set of initials and one
9 date, so it was only opened once.

10 The outside packaging is referred to as
11 a Kpak. Just bear with me for one moment..

12 (Opening bag)

13 The largest item found within this Kpak
14 would be another bag, and this bag is the BEST bag
15 that I was just referring to.

16 So BEST stands for best evidence sample
17 testing. It's a program that we use. We send out
18 empty bags, distribute them to agencies throughout
19 the state. They have these bags on hand so when
20 they do collect what they believe to be controlled
21 substances, they can seal it.

22 You can see across the top where the
23 green is, this is actually the backing. It's a
24 glue backing, so they can just take off the backing
25 strip, fold it over, and it's sealed.

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 On all four sides you have patterns.
2 This bag is tamper evident, so if anyone wants to
3 try to pull on it and stretch it to open it, the
4 swirl pattern would be distorted. We also have
5 kind of a cross-hair pattern across the top which
6 would be distorted. If someone cut into it,
7 obviously we would see a cut pattern. And you
8 can't really pull the glue open without destroying
9 the bag.

10 So the very first thing that I would do
11 when I receive a case is check the seals. That's
12 what the BEST program is all about. And so I have
13 written on this bag, seal intact, with my initials
14 and the same date of 4/24/12. This is when I would
15 have made my cut into the bag to retrieve the
16 evidence, but before I did so I made sure that it
17 was sealed.

18 This bag obviously is placed back
19 inside the Kpak with the evidence at the time of
20 the analysis.

21 This is a standard evidence bag that
22 law enforcement would submit. It has markings with
23 the case number, as well as the item number and my
24 initials. This happens to be Item 1.2. So from
25 the report, this would have been an evidence bag

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 containing compressed powder substance.

2 There is also some inner packaging. We
3 don't necessarily report that out. We do outer
4 packaging that it's contained in and then
5 substance, just for brevity sake.

6 Have to be a little careful because
7 there is loose material in this bag, so I don't
8 want to invert it. But this is item -- the
9 packaging, just the packaging, is from Item 1.2.

10 This is the -- just the packaging from
11 Item 1.3, a plastic bottle.

12 This is what's referred to in Item 1.1
13 of the report as a plastic corner bag. It's just a
14 plastic bag in the shape of a corner. If you take
15 a plastic sandwich bag and tear off or cut it off
16 in one of the corners, that's what you have as a
17 plastic corner bag.

18 Evidence -- powder substance or a rock
19 substance can be placed in here, twisted and tied
20 off in a knot. It's a very common method of
21 containing narcotics.

22 That's all the packaging from the
23 various items. This is the actual evidence marked
24 on the report as Item 1.1. The Ziplock bag has the
25 same information as the packaging with the addition

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 of, bag added, on the bottom of it. This is my
2 designation that I added.

3 This is a block for containment
4 purposes to the case. This block was not
5 originally submitted in the case. So anytime we
6 have a bag added, that's what that is. We're
7 trying to make sure that we don't have loose drugs
8 roaming around in the Kpak.

9 All right. Item 1.2, which was
10 contained in the evidence bag, is slightly larger.
11 Same thing, case number, item number, initials, bag
12 added.

13 And the evidence from the plastic
14 bottle is Item 1.3. Same thing, case number, item
15 number, initials, and the words, bag added.

16 And that's everything that's contained.

17 Q. Thank you, Mr. Robinson. From whom did
18 you receive that bag?

19 A. I received the evidence directly from
20 Selena Kinard of the Evidence Control Department at
21 SLED.

22 Q. And when did you receive that bag?

23 A. I retrieved it on April 23rd of 2012.

24 Q. And just for clarification, was the
25 seal intact when you received it?

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 A. Yes, ma'am. It's noted both on my
2 worksheet as intact and as well as the
3 documentation I just showed you on the BEST bag,
4 the words, seal intact.

5 Q. After you concluded your analysis, did
6 you reseal the outer bag?

7 A. Yes, ma'am. As soon as the analysis
8 was complete, as soon as I had taken what I needed
9 for testing, the evidence was sealed.

10 Q. And do you initial the bag?

11 A. Yes, ma'am. Across the bottom is the
12 date of the seal and my initials.

13 Q. And are those the drugs in front of you
14 that you tested?

15 A. Yes, ma'am.

16 Q. Do they appear to be in substantially
17 the same condition as when you received them?

18 A. Yes, ma'am.

19 Q. What tests specifically did you perform
20 on these drugs?

21 A. So from my chemical analysis
22 standpoint, all three of these packages look
23 similar, so they were treated initially the same.
24 Again, with each item, once they were separated
25 out -- and we separate it out for ease of reporting

ROBINSON, DOUGLAS - DIRECT EXAM BY MS. FRIERSON

1 and analysis.

2 We make sure we don't cross-contaminate
3 anything. We want to treat each package as it's
4 submitted as its own entity and test it on its
5 merit.

6 So once they're separated out and
7 itemized, the first thing we would do is remove all
8 packaging and take an initial weight. That weight
9 is what we refer to as the net weight. It is the
10 substance only. So in this case, it would be the
11 weight of just the powder, no evidence bags, no
12 corner bags, no bottles.

13 Once that weight is taken, we'll take
14 an aliquot for the indicative testing I referred
15 to. And in this case it was a two-part chemical
16 test specific for cocaine and cocaine base called
17 cobalt-thiocyanate stannous chloride.

18 The results of that test gave me a blue
19 response initially and a blue stain through the
20 second part of it. That is a positive indicative
21 test for the presence of cocaine hydrochloride salt
22 form, what we commonly talk about as powdered
23 cocaine.

24 Based on that result, I performed a
25 chemical extraction for GCMS using a methylene

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1 chloride extraction in basic conditions. That's a
2 common standard test, a way for extracting cocaine
3 hydrochloride.

4 The same process was carried out
5 through the other two items. The second item gave
6 me the blue-blue response for the indicative
7 testing, which is a positive indicative test for
8 the cocaine, followed by that same extraction that
9 gave me the results of cocaine.

10 The third item was submitted to that
11 same test. It gave a negative. It had no color
12 change in both parts. It was followed by a second
13 chemical color test referred to as a marquis test.
14 This is a more generic test.

15 So the first one is specific to
16 cocaine. This one is a much broader test and we
17 can test for different types of drugs. That also
18 gave no response, so it was a no color change for
19 that item.

20 Based on that -- I actually performed
21 the same extraction process. That is what we use
22 for cocaine submissions but also for general
23 unknowns. There was also that -- did not show
24 any -- the presence of anything actually except our
25 internal standards, so it was negative for

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1 controlled substances.

2 Q. And all of these highly scientific
3 tests, were those performed by yourself?

4 A. Yes, ma'am.

5 Q. And the results of those tests as they
6 correspond to Item 1.1 and 1.2 were positive for
7 the presence of cocaine?

8 A. Yes, ma'am, both items were positive
9 for the presence of cocaine.

10 Q. And could you tell us the net weight of
11 the cocaine in 1.1 and 1.2?

12 A. Yes, ma'am. The net weight, substance
13 only, for Item 1.1 is 0.6 grams and for 1.2 is
14 26.9 grams.

15 Q. And is cocaine an illegal substance
16 under South Carolina law?

17 A. Yes, ma'am. It's scheduled as a C-II.

18 Q. Thank you.

19 MS. FRIERSON: Your Honor, at this time
20 I would like to admit the drugs and publish them to
21 the jury.

22 MR. BLAKE: Objection, Your Honor;
23 pretrial motion.

24 THE COURT: Okay. Good enough. I'll
25 respectfully overrule the same. I do find that the

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1 State has complied with the Criminal Rules of
2 Procedure 6(B); therefore, they shall be admitted
3 as the State's next exhibit.

4 MS. FRIERSON: Thank you. Court's
5 indulgence?

6 (STATE EXH. 4 in evidence.)

7 MS. FRIERSON: I have no further
8 questions. Please answer any the defendant may
9 have.

10 THE COURT: You mentioned something
11 about publication. I don't know if you want to
12 hand those drugs in the state they are to the jury.

13 THE WITNESS: If you'd like me to put
14 it back in there as it was.

15 MS. FRIERSON: I can leave them out if
16 Mr. Blake is going to need them.

17 THE COURT: Okay. All right.
18 Afterwards we can just put them back in the state
19 that they were in.

20 All right. Mr. Blake, you may ask your
21 questions, sir.

22 CROSS-EXAMINATION

23 BY MR. BLAKE:

24 Q. All right. Mr. Robinson, I've just got
25 a couple quick questions for you just out of

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1 curiosity. I'd like to try to re-establish things
2 right next to the light that -- I just want to ask
3 you a couple questions.

4 A. Sure.

5 Q. And very simple and just to establish
6 and reestablish some things. Okay?

7 A. Yes, sir.

8 Q. Okay. Hold on.

9 Okay. Mr. Robinson, it's documented in
10 both analysis reports and -- that you executed and
11 conducted a chemical analysis test; correct?

12 A. I'm sorry. I couldn't quite catch the
13 first part of that question.

14 Q. I said. It's documented in both
15 analysis reports that you executed and conducted a
16 chemical analysis test on the total of three items;
17 correct?

18 A. I did -- I did test on three items.
19 I'm not sure what both reports -- I only issued a
20 single report.

21 Q. I'm talking about in the chain of
22 custody and the -- I believe it's the chain and --
23 I guess the chain.

24 A. The chain, sir, wouldn't necessarily
25 have any commentary on analysis performed. It

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1 simply tracks where the evidence moves as it
2 proceeds through the case, but, yes, clearly on my
3 report I issued there were three items and I did
4 perform analysis on those.

5 Q. Okay. On April 27, 2012; correct.

6 A. The report was issued on the 27th. The
7 actual analysis took place on April 24th.

8 Q. Okay. And what, again, date did you
9 come into possession of these items?

10 A. I received the evidence from
11 Selena Kinard at our Evidence Control Department on
12 the 23rd of that month, April 23rd, which was the
13 day before I performed the actual hands-on
14 analysis.

15 We had obviously a gap between the
16 analysis and the report. We have to do peer
17 review. Every case goes through peer review.
18 Another qualified analyst has to look at it and
19 make sure they agree with the results, so there's a
20 couple of days between analysis and the time the
21 report would be issued.

22 Q. So you kind of cleared up the, like, as
23 far as, like, a date discrepancy just now; right?

24 A. I don't think there's a discrepancy. I
25 received it on the 23rd. Analysis -- the bag was

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1 opened, analysis was performed on the 24th.

2 Q. Yeah.

3 A. And on that same day, as we looked at
4 with the seals, everything was sealed back up as
5 soon as analysis was over, which was on the 24th,
6 and the report was issued -- the finalized copy of
7 the report was issued on the 27th, three days
8 later.

9 Q. Okay. I thank you for that, man.
10 You're very intelligent.

11 A. Thank you.

12 Q. Thank you for that. I'm not being
13 sarcastic with you now.

14 A. Appreciate that.

15 Q. Okay. How long does it take you to
16 conduct an analysis of a substance in order to
17 determine the results of the analysis?

18 A. Initial analysis, what we kind of refer
19 to as prep work, only takes a few minutes. It
20 depends on the case. It could take five minutes,
21 it could take an hour, depending on how many items
22 you have, once you separate it out.

23 But initial analysis essentially
24 comprises opening the seals, taking the weight,
25 doing what I was talking about with the spot test,

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1 the indicative testing, and then take what we call
2 an aliquot for the confirmatory testing.

3 Cases are extracted in batches for
4 efficiency, so each case isn't going to be
5 processed start to finish individually. Each case
6 is initially prepped individually so that we don't
7 have any cross-contamination issues, but once you
8 have a batch of cases, the extraction would be
9 done.

10 So initial prep work doesn't take long,
11 but the extraction could take a few hours, up to a
12 day or more, depending on how many samples are on
13 that sequence. And, obviously, peer review could
14 take a few days, just for another analyst to get
15 around to doing it.

16 Q. Okay. I know it's been a while since
17 you conducted that analysis. Do you recall, by any
18 chance, how long it took you to conduct that
19 analysis?

20 A. No, sir, I couldn't even speculate on a
21 case this long ago.

22 Q. You don't even want to give a
23 guesstimation?

24 A. I prefer not to. It would be a total
25 guess from four years ago.

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1 Q. Okay. That's understandable.

2 All right. You said you -- you say --
3 well, okay. I'm going to try to ask -- I'm going
4 to try to break this down a little bit. Okay.

5 You was in possession of the items --
6 after, the items 4/23/12 and 4/23 -- I mean,
7 4/26/12; right? 4/23/12 and 4/26/12?

8 A. Actually, the evidence was returned to
9 our evidence control on May 7th of that year, so I
10 was in constructive possession. As far as chain of
11 custody goes, it was in my possession from 4/23 to
12 5/7. And when I say constructive, that's dealing
13 with the chain of custody. My physical possession,
14 it would have been in my possession for analysis,
15 but we have secured locations within the
16 department.

17 Our department is scanned key code in
18 and of itself, and then within that we have a
19 secured vault, which has another step of security.
20 So if it wasn't in my physical custody, but in the
21 chain of custody it was with me, it would have been
22 secured in that vault, so --

23 Q. So you're saying that from those
24 aforesaid dates of 4/23/12 and 4/26/12, you was in
25 constructive possession?

ROBINSON, DOUGLAS - CROSS EXAM BY MR. BLAKE

1 A. The evidence was in my -- yes, it was
2 in the chain of custody, in my possession those
3 days, yes.

4 Q. Okay. After you finished your
5 analysis, you then returned it -- you then returned
6 it to -- it looks like Doris Yarborough?

7 A. Yes, sir.

8 Q. Okay. So you didn't put it in the
9 actual safe; you gave it to her, sent it over to
10 her?

11 A. On 5/7, but between the time of
12 analysis and the time it was returned, it was -- it
13 was in my section within the vault within the
14 department.

15 Q. Okay.

16 A. So I did physically give it to her on
17 the date that it shows that it was in the chain of
18 custody when it moved to her. Yes. We don't have
19 technicians within the department, so I physically
20 retrieved the evidence from Selena when I picked it
21 up, and I physically took it out of the vault
22 myself and took it down to evidence control and
23 handed it off personally to Doris, yes.

24 MR. BLAKE: Okay. I thank you for your
25 cooperation, man. I wish more witnesses could be

ROBINSON, DOUGLAS - CROSS EXAM BY MR. BLAKE

1 like you. Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Redirect?

4 MS. FRIERSON: None from the State,
5 Your Honor.

6 THE COURT: Thank you, Mr. Robinson.
7 You can repackage that if you'd like.

8 The State has one additional witness;
9 is that correct?

10 MS. FRIERSON: One more witness, Your
11 Honor.

12 THE COURT: Okay. And who would that
13 be?

14 MS. FRIERSON: Deputy Baldwin.

15 THE COURT: And how long do you
16 anticipate that testimony?

17 MS. FRIERSON: I have probably 10,
18 maybe 15 minutes worth of questions.

19 THE COURT: Okay. Good enough.

20 MS. FRIERSON: State calls Deputy
21 Baldwin.

22 GILBERT BALDWIN,

23 being first duly sworn, testified as follows:

24 THE CLERK: Please have a seat. And
25 for our record, if you could state your first and

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 last name and spell out your last name, please.

2 THE WITNESS: Gilbert Baldwin,

3 B-A-L-D-W-I-N.

4 MS. FRIERSON: May it please the Court,
5 Your Honor.

6 THE COURT: Yes, ma'am.

7 DIRECT EXAMINATION

8 BY MS. FRIERSON:

9 Q. Good afternoon, Deputy Baldwin.

10 A. Good afternoon.

11 Q. Could you please tell the jury where
12 you are employed?

13 A. Charleston County Sheriff's Office.

14 Q. And what is your title?

15 A. Deputy sheriff.

16 Q. How long have you been with the
17 Sheriff's Office?

18 A. Six years.

19 Q. Could you tell us a little about your
20 background, any education or training that you may
21 have?

22 A. Yes, ma'am. Originally from
23 Charleston, graduated locally, went to Trident
24 Technical College, and then the Criminal Justice
25 Academy after hire by the Sheriff's Office.

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 Q. And what is your current assignment?

2 A. I'm a detective in the metro major case
3 unit, which is narcotics and vice operations.

4 Q. Is that why you're allowed to have a
5 beard?

6 A. Yes, ma'am.

7 Q. Do you ever do any undercover work?

8 A. Yes, ma'am, I do.

9 Q. And have you received any additional
10 specialized training as it relates to your
11 narcotics work?

12 A. Yes, ma'am. I've been in that unit for
13 two and-a-half-years. I've attended several cases
14 at the Regional Counter Drug Training Academy in
15 Mississippi, as well as regularly attend HIDTA
16 courses, which is federally-funded High Intensity
17 Drug Trafficking Area, and it covers countless
18 narcotics classes.

19 Q. Were you working for Charleston County
20 back on April 15, 2012?

21 A. Yes, ma'am.

22 Q. And what was your assignment back then?

23 A. At that time, I was on the patrol
24 division. My primary responsibility was the West
25 Ashley area of Charleston County.

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 Q. And were you in a uniform back then?

2 A. Yes, ma'am.

3 Q. Were you driving a marked Charleston
4 County vehicle?

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

6 Q. And on April 15th of 2012, did you have
7 the occasion to interact with this defendant?

8 A. Yes, ma'am.

9 Q. And could you tell us about how you
10 came into contact with the defendant?

11 A. I was travelling westbound on 526 and I
12 observed blue lights ahead of me just westbound,
13 west side of the West Moreland, and I actually got
14 out with Trooper McAbee.

15 Q. And when you arrived, what did you do?

16 A. I approached Trooper McAbee and just
17 said -- I think I introduced myself and said I was
18 with Charleston County, you know. I'm just
19 checking on you to see how you're doing.

20 Q. And did he ever advise you what was
21 going on?

22 A. Yes, ma'am. He actually caught me off
23 guard because he was relieved to see me, which is
24 not the typical response when you're just status
25 checking another officer. And he goes, oh, man, I

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 think he said something like, you got here quickly,
2 and -- because he had requested another unit and I
3 was unaware of that.

4 Q. And did you assist with the traffic
5 stop?

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

7 Q. And could you tell the jury what -- how
8 you assisted with the traffic stop?

9 A. Yes, ma'am. When I approached
10 Trooper McAbee, he advised me that there was some
11 incidents that he had observed that raised his
12 suspicion of the vehicle and he asked for my
13 assistance in route just having the driver step
14 out.

15 Q. And did you approach the defendant's
16 vehicle?

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

18 Q. Did you approach on the driver's side
19 or the passenger side?

20 A. I approached from the driver's side so
21 that I could potentially receive when the driver
22 stepped out, and Trooper McAbee was on the
23 passenger side.

24 Q. And was the defendant asked to step
25 out?

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 A. Yes, ma'am.

2 Q. Did he comply?

3 A. Yes, ma'am.

4 Q. And did you walk to the rear of the
5 vehicle or to the front of the vehicle?

6 A. We walked to the rear. He exited the
7 vehicle. The driver's door actually remained open.
8 That lane was not shut down, so there was a concern
9 with traffic. So as he walked backwards, I back
10 stepped until I passed the rear of his vehicle, and
11 then Trooper McAbee addressed him that way.

12 Q. You mentioned he opened the door. When
13 he opened the door, did you see anything in plain
14 view in his vehicle?

15 A. Not at that time.

16 Q. And then what happened?

17 A. He went to the rear of the vehicle and
18 Trooper McAbee was addressing him. At that point,
19 his driver's door was still open to traffic. Like
20 I said, that lane wasn't shut down, which is a busy
21 interstate. I approached the open door, and before
22 even entering the threshold of the vehicle, I
23 observed an object on the front seat.

24 Q. And what did that object appear to be?

25 A. It was a plastic bag with white powder

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 inside.

2 Q. And can you describe where -- first,
3 when you say -- when you got -- before you could
4 get to the threshold, what do you mean?

5 A. I mean, there was no leaning into the
6 vehicle, didn't alter anything. It was clearly
7 visible on the seat portion, the lower seat.

8 Q. And where on the seat was it?

9 A. Directly in the middle, just where you
10 would be sitting on top of it.

11 Q. Was the defendant placed under arrest?

12 A. Yes, ma'am. At that time I actually
13 secured the door, went back around, Trooper McAbee
14 placed him in handcuffs.

15 Q. And what was your understanding of what
16 he was arrested -- under arrest for?

17 A. The drugs at that point.

18 Q. And was he placed in your vehicle?

19 A. No, ma'am.

20 Q. Where was he placed when he was under
21 arrest?

22 A. The front passenger seat of
23 Trooper McAbee's vehicle.

24 Q. Now, prior to the defendant going into
25 Trooper McAbee's vehicle, did you search him?

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

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

2 Q. And did you ask if he had anything else
3 on his person?

4 A. Yes, ma'am.

5 Q. And why would you ask that?

6 A. The location that I observed the
7 powder, and like I said, with my training and
8 experience, I had a concern that he was potentially
9 carrying something else on his person that I wasn't
10 able to discover..

11 Q. Is it common in your training and
12 experience for people to conceal narcotics on their
13 person?

14 A. Extremely.

15 Q. And where is it that they conceal it?

16 A. Most of the times they put it in their
17 shorts, excuse my language, or they conceal it
18 between their butt checks or in the groin region,
19 which is a portion that people do not search as
20 thorough as you probably should.

21 Q. And did you ask that question, if he
22 had anything else on his person, knowing what was
23 coming at the jail?

24 A. Yes, ma'am.

25 Q. And could you explain to the jury why?

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 A. I actually did one year at the
2 Charleston County Detention Center. I know it is
3 policy there that anyone that is arrested for a
4 weapons charge or a drug charge where you have to
5 consent to a strip search.

6 So a normal practice of mine is, if I
7 feel that they may have something that they're
8 concealing that I cannot access, I will ask them
9 that question because if you -- you have the
10 potential to be charged additional charges if you
11 take it into the jail facility.

12 Q. Now, would you have actually conducted
13 a strip search out on 526?

14 A. No, ma'am.

15 Q. It was an opportunity -- were you
16 allowing the defendant an opportunity to be
17 truthful and give you guys --

18 A. Yes, ma'am.

19 Q. -- any other contraband?

20 Now, were you aware of anything else
21 that was located in the defendant's vehicle?

22 A. There was a weapon removed from that
23 vehicle.

24 Q. Anything significant about that weapon?

25 A. Yes, ma'am. When Trooper McAbee and I

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 saw -- when he removed the gun, he brought it back
2 and he was having a hard time locating a serial
3 number on it. One had actually been removed.

4 Q. And is there anything about that serial
5 number being removed that is significant to you, as
6 a law enforcement officer?

7 A. Yes, ma'am. Generally, you remove it
8 or attempt to obscure it so that it can't be run
9 through our NCIC system to potentially not realize
10 if it's stolen or who owns it.

11 Q. And were you aware of any additional
12 paraphernalia that was located in the defendant's
13 vehicle?

14 A. Yes, ma'am. I know Trooper McAbee
15 recovered a scale and I believe a bottle of cut.

16 Q. Do those items have any significance to
17 you?

18 A. Yes, ma'am. With the amount of --
19 generally, when you find a scale, you're not
20 looking possession weight of narcotics. It's, you
21 know, someone who's a -- who's a user isn't going
22 to weigh out there whatever listed narcotic before
23 they purchase it. We generally associate that with
24 more of a dealer aspect, and having the cut just
25 affirms that.

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 Q. And could you explain to the jury what
2 cut is?

3 A. Cut is basically any substance that you
4 would use to add weight to your product. It
5 increases the value because you could go -- each
6 dealer has their own guidelines that they use, kind
7 of like if you were baking a cake and you got your
8 grandmother's recipe.

9 They may do -- take 10 grams of
10 cocaine, add 7 to 10 more grams of cut, and you've
11 just doubled your profit, which is generally you --
12 a user weight for, you know, illicit drugs would
13 never have a reason to have that.

14 Q. And does the cut actually contain any
15 narcotic substance substitution?

16 A. It can potentially, because if you're
17 going to cut it a significant amount, say
18 75 percent, you know, if you wanted to go that
19 high, you generally would add -- they add sugar
20 compound sometimes to give you that feeling, or you
21 will add -- I've seen them add amphetamine, whether
22 it be ephedrine or any type of amphetamine because
23 it can still give you that -- that feeling change.

24 Q. Now, did your vehicle -- you said you
25 had a marked vehicle. Did it have any in-car video

BALDWIN, GILBERT - DIRECT EXAM BY MS. FRIERSON

1 back in 2012?

2 A. Yes, ma'am.

3 Q. And did you submit that video into
4 evidence?

5 A. No, ma'am, I didn't have any video.

6 Q. And what was your primary role in this
7 case?

8 A. My primary role was the safety of the
9 stop. Like I said, initially, you know,
10 Trooper McAbee -- they work out there alone by
11 themselves. You know, if we get the opportunity,
12 we just check on them, make sure everything's okay.
13 I was a secondary unit so I never initiated my
14 primary blue lights, which is why I didn't activate
15 a camera.

16 Q. Your primary blue lights, is that what
17 activates the camera?

18 A. Yes, ma'am, that triggers it. The
19 reason we don't activate them is I don't want to
20 drown out whatever he has going on with my blue
21 lights in addition to his, because potentially if
22 he's in a position, I'll be backlighting both of
23 us. It just means we're casting shadows on
24 everything that weren't necessary at that time.

25 Q. Is that a safety issue?

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 A. Yes, ma'am.

2 Q. Now, did you collect any evidence?

3 A. No, ma'am.

4 Q. Did you take any statements?

5 A. No, ma'am.

6 Q. Did you have any further involvement in
7 this case?

8 A. No, ma'am.

9 MS. FRIERSON: Court's indulgence, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 MS. FRIERSON: Department Baldwin, I
13 don't have any further questions at this time.
14 Please answer any that the defendant may have.

15 THE WITNESS: Yes, ma'am. Thank you.

16 CROSS-EXAMINATION

17 BY MR. BLAKE:

18 Q. How are you doing?

19 A. Good. How are you?

20 Q. All right. I've Got a couple questions
21 for re-establishment and to shed some light on some
22 situations. I'm trying to break it down the best
23 way I know how to in A, B, C form.

24 Okay. Deputy Baldwin, April 15, 2012,
25 approximately 0400 hours, you assisted

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 Trooper McAbee in reference to a traffic stop that
2 he conducted amongst myself; correct?

3 A. Yes, sir.

4 Q. Okay. When you approached
5 Trooper McAbee, particularly describe for the Court,
6 the reasoning he stated that why he conducted the
7 traffic stop amongst myself.

8 A. When I approached the trooper, like I
9 said, I identified myself, you know, because I
10 didn't want him to think that somebody was just
11 walking up on him. I believe he stated that he
12 stopped the car and he saw an object being thrown
13 from the vehicle, and that -- also elaborated that
14 he believed the driver -- he saw the driver
15 manipulating something below him.

16 And he didn't -- I think he actually
17 stated on the video that he wasn't sure if it was
18 drugs or a gun, but he wanted to see what that item
19 is that was being concealed.

20 Q. Okay. So he never once informed you
21 that he conducted a traffic stop amongst myself in
22 regards to the speeding violation?

23 A. I don't believe so.

24 Q. Okay. So after he informed you of his
25 beliefs of my suspicious activities, then after, he

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 asked you to assist him on removing me from my
2 vehicle; correct?

3 A. Yes. Well, he stated he wanted to get
4 the driver out, so he could, you know, see what was
5 being concealed.

6 Q. Yeah. I'm the driver, so -- all right.

7 Okay. After you instructed -- after
8 you were instructed to assist Trooper McAbee on
9 removing me from my vehicle, you then approached my
10 vehicle driver's door and removed me from my
11 vehicle; correct?

12 A. No, I wouldn't say correct on that. I
13 did not remove anything from the vehicle. The
14 driver stepped out of the vehicle.

15 Q. Okay. Well, all right. Stepped out.
16 Sorry, I might have --

17 A. Yeah. I don't want you to think that I
18 physically removed anything from you.

19 Q. No, I'm not saying that.

20 Okay. When I exited my vehicle, you
21 then conducted a visual scan search amongst the
22 interior of my vehicle from the driver's side;
23 correct?

24 A. I did not conduct a search of the
25 driver's side. When I entered the doorjamb, I did

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 shine a flashlight onto the seat, which is where
2 Trooper McAbee had actually addressed an issue, and
3 it was clearly visible at that point, yes.

4 Q. Okay. So that sounds like a visual
5 scan at that point, ain't it?

6 A. It was in plain sight.

7 Q. Okay. So you visually scanned it and
8 you saw it?

9 A. In plain sight, yes.

10 Q. Okay. Okay. So did you discover this
11 item that you saw on my driver's seat first or did
12 McAbee saw it before you did?

13 A. I can't speak for Trooper McAbee.

14 Q. Okay. You don't know who saw it first?

15 A. No. I -- I can't speak for him.

16 Q. Okay. Did he ever, like, authorize you
17 to conduct a scan amongst my vehicle?

18 A. No, sir. It's actually normal law
19 enforcement practice.

20 Q. Yeah.

21 A. Because I had a concern with the
22 driver's door being ajar.

23 Q. Uh-huh.

24 A. It actually -- on the video you can see
25 it's right there at the edge of traffic. It is a

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 safety issue.

2 Q. Yeah.

3 A. And, also, if we'd already addressed a
4 concern with the driver's seat, that the occupant
5 was potentially sitting on something, I'm going to
6 take a look at it because I want to know right then
7 if there is something on that driver's seat or does
8 it increase the potential that the person
9 actually has it on them.

10 Q. Okay. Moving forward. After you
11 conducted a visual scan search amongst my vehicle,
12 did you or did you not observe any drugs of any
13 sort in my vehicle?

14 A. On the driver's seat, yes.

15 Q. Driver's seat. Okay. Okay.

16 Okay. What exact drugs did you observe
17 in my vehicle and where were the exact locations --
18 well, you don't have to answer that, but what
19 exactly did you observe?

20 A. It was a plastic bag with a white
21 powdered substance that training and experience, I
22 would identify it as cocaine.

23 Q. Identified as cocaine. Okay.

24 Do you recall how big that bag was?

25 Was it small? Was it --

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 A. I do not.

2 Q. -- big?

3 A. I don't recall.

4 Q. You can't recall?

5 A. No, sir. At that point --

6 Q. But if it was big, you definitely
7 couldn't have forgot that if it was big.

8 A. No. At that point I'm not concerned
9 with the amount of the drugs. Like, in the video,
10 if you watch, my encounter at that vehicle driver's
11 seat was very brief. As soon as I realized that we
12 had anything of, you know, a controlled substance
13 in the vehicle, I actually just shut the door and
14 backed away.

15 Q. Okay. If you observed these drugs in
16 my vehicle, why didn't you then seize the drugs
17 from my vehicle, announce me under arrest, and
18 provide incident reports to support the facts of
19 what you observed in regards to this incident?

20 A. I would never initially seize a
21 vehicle, seize drugs like that. Our most primary
22 concern at that point is the safety of us and the
23 safety of the person, you know, we have a stop
24 with.

25 At that time, the vehicle was -- the

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 door was shut. I shut the door, which at that
2 point isolated the drugs. They're not going to
3 blow out. They're not going to -- somebody's not
4 going to walk up and take them.

5 Q. Uh-huh.

6 A. So when the defendant, or the driver,
7 was placed into handcuffs -- we don't go to these
8 items wearing gloves, which is an evidence
9 collecting practice. We would never collect drugs
10 instantly without wearing gloves. You know, we
11 have certain steps that we follow just as normal
12 law enforcement practice.

13 Q. Okay. Okay. Correct me if I'm wrong,
14 the average layperson would agree to this, okay:
15 Of having any type of encounter by an officer,
16 whether they called the officer or reported an
17 incident, okay, as an officer of the law, standard
18 procedures are to observe and report; are they not?

19 A. No, sir.

20 Q. They're not?

21 A. I mean, I don't know -- I'm not
22 understanding the question. Standard procedures of
23 my policy with my department?

24 Q. Yeah. Like, you know, just general
25 policies being a law enforcement officer.

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 A. No, sir. We have certain items that we
2 do have to do reports for.

3 Q. Yeah.

4 A. Domestic violence, things like that
5 where we are -- we have a mandated reporting
6 policy.

7 Q. Yeah.

8 A. Nothing that applies to this situation.

9 Q. So nothing involving guns?

10 A. No. If -- I would not -- I mean, if
11 you -- I can answer the question of why I didn't if
12 that's what you --

13 Q. Okay. Hold on.

14 Are you saying it is not procedure, not
15 by your department anyway?

16 A. No, sir.

17 Q. Okay. Yeah. Why was -- did you not
18 provide an incident report to support this
19 incident?

20 A. Generally, when you have multiple
21 officers on a scene, especially, like, in my --
22 even now being a detective, we write supplements
23 and things like that to support another officer's
24 report.

25 If it is -- there is nothing that I did

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 that entire time on the scene that was not in the
2 presence of Trooper McAbee. When you have a
3 situation like that, if I just notice something, I
4 notify him. He notices it. There is no change of
5 the location. The item has not been moved. It is
6 the way it sits as when I found it, as when he
7 found it. The time frame there, there is not
8 enough delay that would issue for us to basically
9 duplicate our work.

10 Q. Okay. At this point -- and this is
11 just common sense, at this point, without having
12 any incident report to support your testimony,
13 wouldn't you say that your testimony is pretty much
14 hearsay at this point?

15 A. No, sir. I don't -- I'm -- hearsay
16 would be if someone told me my testimony, but this
17 is my testimony as I was there as a sworn law
18 enforcement officer that upholds the law every day.
19 These are the facts that I encountered. These are
20 not hearsay. I was there.

21 Q. Well, okay. Now, the fact that you was
22 there, I'm not challenging that. The only thing
23 I'm challenging at this point is to my conjecture,
24 and correct me if I'm wrong, is if you have nothing
25 documented in support of the testimony, just a

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 sworn oath, whether it's fact or not, wouldn't you
2 technically just say that's just hearsay if you
3 cannot produce documented evidence?

4 A. If you're asking me that question, no,
5 I actually completely disagree since there's a
6 video that I feel follows me throughout this entire
7 investigation.

8 Q. Okay. Moving forward. After you
9 conducted a visual scan amongst my vehicle, then
10 you closed my driver door; correct?

11 A. Yes.

12 Q. Okay. And walked back to the rear of
13 my vehicle empty-handed; correct?

14 A. I believe I had a flashlight.

15 Q. Well, you know, without the drugs.

16 A. Yes.

17 Q. Okay. Okay. Then after, Trooper
18 McAbee approached my driver door, then after, he
19 opened my driver door and reconducted another
20 visual scan search amongst my vehicle; correct?

21 A. Uh-huh.

22 Q. Okay. After he finished the visual
23 scan search, he then closed my driver's door and
24 after walked back to the rear of my vehicle also
25 empty-handed and placed me under arrest; correct?

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 A. No, sir, I believe that's false. I
2 don't think Trooper McAbee actually re-shut the
3 door.

4 Q. He re-shut the door?

5 A. I don't believe he did. I think the
6 door was left open at that point.

7 Q. Left open, ajar and --

8 A. Open.

9 Q. Open? But he definitely walked back
10 empty-handed; correct? Well, he had a flashlight
11 maybe or -- but he didn't have any drugs in his
12 hands when he came back?

13 A. I don't see why he would have because
14 they were still on your seat.

15 Q. Okay. So you're saying no.

16 Okay. Did he ever -- they were still
17 in my seat. I guess it was kind of hard at this
18 point for him to obtain these drugs, so --

19 A. Is that a question?

20 Q. No, I'm just saying -- yeah, that's a
21 question. I'm gonna turn it into a question now.
22 Okay. You're saying it was in plain view of my
23 seat. You established that, okay. And you said it
24 was still laying on my seat and he never had it;
25 correct?

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 A. No. We eventually recovered it from
2 the vehicle, but I think in his initial approach,
3 no, he did not touch it. There again, he wasn't
4 wearing gloves. You know, we weren't prepared for
5 evidence collection at that point.

6 Q. Okay. All right. After that point,
7 can you recall how many -- how many substance was
8 recovered? You said, we. You said, we recovered
9 it; right? Correct?

10 A. No, Trooper McAbee recovered it. What
11 I -- I was answering that -- you asked multiple
12 questions that asked why I didn't collect evidence
13 and why he -- didn't he collect evidence. I was
14 saying that neither one of us were prepared to
15 collect evidence at that time.

16 Q. Okay. But did he ever seize these
17 items, these items out of the car?

18 A. Yes. Trooper McAbee eventually did
19 recover those.

20 Q. Okay. Do you know what he put it in
21 when -- after he seized it?

22 A. I can't speak for Trooper McAbee. I
23 don't know that.

24 Q. You didn't --

25 A. I was more concerned -- my position at

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 this point was to watch. I was, basically, just
2 standing next to the window where you were.

3 Q. Uh-huh.

4 A. Trooper McAbee did all the evidence
5 collection.

6 Q. Okay. Do you remember what he said I
7 was being placed under arrest for?

8 A. I do not recall that.

9 Q. You don't recall what he said?

10 A. No, sir.

11 Q. But you know -- you know it was drugs,
12 though; correct?

13 A. Yes, sir.

14 Q. Okay. But you can't recite the exact
15 charge; right?

16 A. No. I mean, I know what I -- I know
17 what I would say of that, but I can't speak for
18 what he said.

19 Q. Okay. And did Trooper McAbee ever
20 physically produce at any time the drugs that he
21 claimed that he found in my vehicle? Did he
22 produce it to you; correct?

23 A. Can you rephrase it?

24 Q. You said he received it and he produced
25 it to you; correct?

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 A. No. I know he removed the item from
2 the vehicle. He didn't produce it to me. I mean,
3 that item was secured at that point.

4 Q. So after he -- after the item was
5 recovered by him, you never seen it after that?

6 A. Which item are you referring to?

7 Q. The item of the cocaine or crack.

8 A. No, I never -- I never looked at it
9 after Trooper seized it because at that point it
10 was evidence. It's not something we generally
11 carry around.

12 Q. Yeah.

13 A. It's usually placed -- it's placed in
14 an evidence bag and it's secured.

15 Q. Okay. So he definitely placed it in an
16 evidence bag?

17 A. Yes, sir, because I actually -- like I
18 said, I believe I actually provided Trooper McAbee
19 with gloves and everything for the collection.

20 Q. Okay. Okay. Can you give me a brief
21 description on the drugs seized by Trooper McAbee?
22 I'm going to skip that question because you already
23 said it was -- you said it was a bag of whatever,
24 maybe cocaine; correct?

25 A. Yes, sir.

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 Q. Do you remember or recall the exact
2 location of my vehicle Trooper McAbee said he
3 recovered these drugs from?

4 A. When I observed the drugs, they were on
5 your seat as if you would have been sitting on
6 them.

7 Q. Okay. Okay. Does he -- did he ever
8 state, if you can recall, if -- let me ask you this
9 because I want to clarify this: All right. It was
10 a CPD, Charleston Police Department officer
11 assisting -- also assisting the incident; right?

12 A. After I made my approach to
13 Trooper McAbee, he -- I didn't -- that was actually
14 one thing that we had spoke about was, apparently,
15 he had called for dispatch for an officer --

16 Q. Yes.

17 A. -- which they send City. They don't
18 send Charleston County.

19 Q. Okay.

20 A. But there was one that arrived --

21 Q. Yes.

22 A. -- as we approached the vehicle that I
23 wasn't even aware when he pulled up. I saw him
24 after the fact.

25 Q. Okay. Let me clarify this because I

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 don't know. Which officer, was it you or was it --
2 who initially left first?

3 A. The party?

4 Q. Yeah. The party, which officer?

5 A. The City officer I believe departed
6 well before I did.

7 Q. Okay. So you stayed amongst basically
8 the whole shebang, arrest, seizure?

9 A. Uh-huh, until Trooper McAbee was kind
10 of secure with everything and we had run -- run
11 the -- you know, he had run the gun and the scene
12 was basically secured at that point, I departed.

13 Q. Okay. Once he arrested me --
14 Trooper McAbee, once he arrested me, then after, he
15 placed me in his passenger seat; correct?

16 A. Front passenger seat.

17 Q. Front passenger seat. Sorry. Thank
18 you for the correction.

19 A. No problem.

20 Q. Okay. Prior to him placing me in the
21 front passenger seat, as far as you can remember,
22 did he or did he not conduct a scan search amongst
23 the passenger, front passenger seat of the vehicle?

24 A. I can't speak for Trooper McAbee.

25 Q. But you definitely didn't witness that.

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 You can't recall or you didn't witness that;
2 correct?

3 A. No, I can't say I observed that. He
4 rides next to that seat his entire shift. I
5 imagine at some point he constantly scans that
6 seat.

7 Q. Okay. But being that he's the driver
8 of the vehicle, it's definitely -- would you say
9 it's definitely convenient for any driver of the
10 vehicle to -- to basically be -- conveniently have
11 access to the passenger side; correct?

12 A. For the -- the --

13 Q. For the driver.

14 A. Yeah, the driver.

15 Q. It's convenient?

16 A. Yeah, the driver has complete
17 convenient access of the passenger seat.

18 Q. Okay. All right. Okay. You said you
19 stayed amongst the whole stop; right?

20 A. I wouldn't say the whole duration of
21 the stop --

22 Q. The majority. The majority.

23 A. The majority, yes.

24 Q. Okay. Okay. I've got to ask you this:
25 As far as you can remember, how long have you been

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 a police officer?

2 A. About six years.

3 Q. Six years. As far as you can remember
4 within your six years, have you ever once placed
5 yourself in a drug dealer's shoes?

6 A. Drug buyer. I do undercover work, so I
7 have a very close relationship with a lot of drug
8 dealers. I work with them.

9 Q. You have a close relationship with drug
10 dealers?

11 A. Yes; I work with informants. I work
12 for a narcotics unit. It is an integral part of my
13 job.

14 Q. So what we -- so would it be, at that
15 point, not appropriate to say close, but we'd say a
16 business relationship?

17 A. Yes, you could say business
18 relationship.

19 Q. Yeah, because close, that just -- that
20 just sounds scary.

21 A. It is.

22 Q. That type line of work is definitely
23 risky at times, I imagine.

24 A. Uh-huh.

25 Q. Okay. So you have placed yourself in a

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 drug dealer's shoes?

2 A. I mean, we do reverses where I have
3 sold marijuana. I have sold other items. It's
4 something that I have done in my career.

5 Q. You sold marijuana to drug dealers?

6 A. To users. You asked if I had put
7 myself in any drug dealer's shoes. I have
8 actually -- that is part of my job, something that
9 we do.

10 Q. But did you know Trooper McAbee prior
11 to the incident?

12 A. I had never met him before.

13 Q. Okay. I'm going to touch base on a
14 comment that you made during the scene of the --
15 during the scene of the stop. Now, if you want me
16 to clarify this, I will. You precisely said that
17 if I were -- if I were a drug dealer, the best
18 place I want to get pulled over at is over a
19 bridge. You don't recall saying that?

20 A. I really don't. Do you have a clip
21 that you could play?

22 Q. Yeah, we're good.

23 MR. BLAKE: Do you want to play that
24 clip, Mr. King?

25 (Video played in open court.)

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 THE WITNESS: That's not me. That's
2 not me.

3 BY MR. BLAKE:

4 Q. That's not you? Who was that?

5 A. It's not me. I --

6 Q. So who came -- who came -- so hold up.
7 Hold up. Tell me --

8 A. Play it again. I'll listen, but it
9 doesn't sound like my voice. I get where they're
10 going with the comment, but it is not me. I
11 understand the comment, because related to that
12 stop where that comment would come into play would
13 be the fact that by a bridge is a convenient place,
14 that when you threw the other drugs or whatever
15 contraband out --

16 Q. Yeah.

17 A. -- it's a convenient place to do it.
18 It's an easy way to discard additional narcotics,
19 weapons, whatever.

20 Q. Okay. So prior -- correct me if I'm
21 wrong, okay? When you left the incident, right,
22 were you the last -- was Trooper McAbee the only
23 person at that point -- officer at that point still
24 on the scene?

25 A. Yeah. I believe that Trooper McAbee

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 remained on scene, most likely waiting -- like, we
2 have to get cars towed and things like that.

3 Q. Yeah.

4 A. Generally, we wouldn't leave before all
5 that happens.

6 Q. And so you're saying this definitely
7 could not be you at this point because you left and
8 you did not see anybody else on the scene but
9 McAbee, as far as you can remember?

10 A. No. The question you asked was did we
11 stay the entire time, which we did not.

12 Q. Yeah.

13 A. I said I assumed that Trooper McAbee
14 was the last one there because that is general
15 practice.

16 Q. Yeah.

17 A. I'm telling you that that audio clip,
18 if you can hear the sound of my voice now and the
19 sound of that, that is not me in that audio clip.

20 Q. You have no awareness who this could
21 be?

22 A. You can play it again.

23 Q. It's two people. Can you look at it?

24 A. Oh, is it up here? I'll probably do
25 better not looking at it and just hearing it.

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 Q. It's two people outside.

2 MS. FRIERSON: Your Honor, may we
3 approach?

4 (Bench conference.)

5 BY MR. BLAKE:

6 Q. All right. Things have gotten cleared
7 up a little bit, but it doesn't satisfy my -- it
8 doesn't satisfy my needs. But do you know a
9 Deputy Chavez?

10 A. Uh-huh.

11 Q. Okay. Can you recall him ever coming
12 to the -- to this incident?

13 A. I recall him being in the area.

14 Q. Yeah.

15 A. I couldn't personally recall if he ever
16 even got out of his vehicle. So I'm -- he was in
17 the area. I don't know his involvement; I guess I
18 could say that.

19 Q. Okay. So you never -- okay. You
20 never --

21 A. No. I mean, I'm not saying I didn't
22 see him. I know he was there. I just
23 personally -- I know when he arrived he blocked one
24 of the lanes for us, but that's the most I can
25 think that I can recall he did.

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 Q. Okay. What kind of line of work does
2 Officer Chavez does? Do you know?

3 A. Currently?

4 Q. Yeah.

5 A. I do not.

6 Q. Okay. At that point in time of the
7 incident, can you recall what kind of line of work
8 he did?

9 A. He was patrol as well. We were working
10 West Ashley together I believe that night.

11 Q. Okay. So he doesn't -- he doesn't
12 interact with, like -- like, the same work you do,
13 like, drug busts and drug buys and things of that
14 nature?

15 A. No, sir.

16 Q. He doesn't work that --

17 A. No, sir. He's normal patrol, which
18 consists of wearing multiple hats.

19 Q. I think -- I mean, I can't -- I can't
20 argue anything about your testimony because I don't
21 have any documents to support anything. Okay. I
22 appreciate your cooperation, though.

23 A. Thank you, sir.

24 MR. BLAKE: Thank you, Your Honor.

25 THE COURT: Any redirect?

BALDWIN, GILBERT - CROSS EXAM BY MR. BLAKE

1 MS. FRIERSON: None from the State.

2 THE COURT: Okay. Thank you, sir. You
3 may step down. I appreciate you being here.

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Anything further
6 from the State?

7 MS. LINDER: The State rests.

8 THE COURT: Okay. All right.
9 Mr. Blake, do you intend to call any witnesses or
10 introduce any evidence, sir?

11 MR. BLAKE: I would -- I would --
12 honestly, if it was possible, I would like to try
13 to get Chavez up there and -- to testify.

14 THE COURT: We'll talk about that
15 outside of the jury. Other than that issue, is
16 there any other witness that you intend to call to
17 the stand, sir?

18 MR. BLAKE: No, Your Honor.

19 Okay. All right. Good.

20 All right. Ladies and gentlemen, this
21 is what we're going to do. I want you to be back
22 at 2:15. Okay? 2:15. And we'll go to argument
23 and charge if there are no additional witnesses
24 that need to be presented in this case.

25 In that period of time, we'll remain

1 here for a period of time to talk about additional
2 issues and talk about the charge and the argument.

3 Ms. Mccloud, that's you; right?

4 JUROR: Yes.

5 THE COURT: I'm going to appoint you as
6 foreperson of the jury. Okay. And you're sitting
7 in the right seat. Okay. When you're appointed as
8 foreperson of the jury, your responsibilities
9 during deliberation is to ensure that everyone has
10 the opportunity to be heard, that everyone has a
11 voice.

12 Now, when 12 people get together,
13 certainly there are going to be people who are
14 louder than others. There will be people that are
15 more opinionated and people that don't express
16 themselves as clearly or as loudly as others, but
17 your job is to make sure that everyone has the
18 opportunity to express themselves and to offer an
19 opinion in deliberations.

20 Over and beyond that, I can't tell you
21 anything additionally about the way to conduct
22 deliberations or the manner and method of
23 deliberations because I'm not allowed to go into
24 your jury room.

25 If I were to cross the threshold of

1 your jury room, it would be an automatic mistrial,
2 and I've never really -- I've never had the luxury
3 of serving on a jury. I'd like to, but I've never
4 been able to, and I'm disqualified now.

5 So I can't tell you anything beyond
6 that and give you any greater instructions about
7 how to conduct deliberations, but I'm sure that you
8 will come to the most efficient and best manner of
9 deliberating.

10 Now, also, Ms. McCloud, if at any time
11 during your deliberations you have a question,
12 you're welcome to write that down and deliver it to
13 the bailiff and he'll deliver it to me.

14 A lot of times I can't answer the
15 questions that juries ask. Sometimes juries ask
16 for additional evidence, which I can't give you.
17 Sometimes you ask me for legal conclusions that I
18 can't necessarily give you. Sometimes you ask me
19 about things that I'm not at liberty to answer.
20 Sometimes they're factual issues that you need to
21 determine as opposed to the Court.

22 So if I send you back a curt response
23 that says, no, or, I can't answer that, or, you
24 have to determine that based on the evidence, don't
25 think that I'm dismissing you out of hand. It's

1 just something that I can't answer.

2 Okay. So if you all would retire for
3 lunch and be back please at 2:15, and we'll start
4 as promptly as we possibly can. Thank you very
5 much.

6 (Jury out, 1:05 p.m.)

7 THE COURT: All right. You can have a
8 seat.

9 All right. The first question I
10 understand is that you would like to call to the
11 stand Trooper Chavez or Deputy Chavez; is that
12 correct?

13 MR. BLAKE: Can we pause that real
14 quick and I have a brief moment with Mr. King?

15 (Brief pause)

16 MR. BLAKE: I'm not going to proceed
17 with calling Officer Chavez as a witness.

18 THE COURT: Okay.

19 MR. BLAKE: Because it doesn't
20 really -- that's a point that doesn't really prove
21 anything.

22 THE COURT: Okay. I agree with that
23 assessment, Mr. Blake. I appreciate that. Would
24 you like to make any directed verdict motions at
25 this time, sir?

1 MR. BLAKE: Yes, Your Honor, I would.
2 I would like to present -- yes, Your Honor. I
3 would re -- direct verdict for the case of
4 trafficking cocaine be dismissed on grounds of
5 failure to believe in good faith that the State has
6 not properly demonstrated actual constructive
7 possession amongst the trafficking charge.

8 And reason that being, Your Honor,
9 there were never any additional or separate drug
10 charge sanctions to support the fact that the
11 officer seized drugs allegedly from my vehicle at
12 that point. So -- and that's the probable cause
13 and -- which would be -- basically, Your Honor, I
14 say all that to say this: There's nothing in
15 support amongst the sanction that probable cause
16 was ever received from my vehicle.

17 And, therefore, the State did not
18 demonstrate actual constructive possession based on
19 never being sanctioned on an individual drug charge
20 other than trafficking cocaine.

21 THE COURT: Okay. Okay. All right.
22 I've heard your motion, sir, and I'll respectfully
23 deny the same. It is incumbent upon the Court to
24 not weigh the value of the evidence, but determine
25 whether there's any evidence on which the jury

1 could determine that the State has met its burden
2 of proof.

3 I recognize that you don't think much
4 of the various officers' testimony and their
5 statements on the record, but it's a matter of
6 credibility, which is a factual issue that needs to
7 be determined by the jury.

8 The jury is tasked with determining
9 whether what the officers have said is believable
10 or not, whether you were in possession of drugs or
11 not. That's not a question for the Court to
12 determine in as much as there was evidence in the
13 record to support the fact.

14 I'm not saying it's good evidence. I'm
15 not saying it's right. I'm not saying it's
16 credible. I'm just saying there is evidence.
17 Okay.

18 MR. BLAKE: I get it, Your Honor.

19 THE COURT: Okay. Anything else?

20 Okay. What I would like you to do is
21 -- we'll go into recess. If you-all will come up,
22 we're going to talk through this charge a little
23 bit just to make sure that before you argue you
24 know what I'm going to charge and we'll talk about
25 some specifics. Okay.

1 MR. BLAKE: Your Honor, another thing I
2 want to say is -- this came to mind.

3 THE COURT: Sure.

4 MR. BLAKE: Within this chain of
5 custody and the argument that I was objecting to
6 based on the documents duplicate, can I -- can I --
7 can I now -- it's appropriate for me to raise an
8 argument?

9 THE COURT: Sure, if you'd like to.

10 MR. BLAKE: Okay. This is regarding to
11 the SPC -- I mean, SCDPS Chain of Custody, South
12 Carolina Department of Public Safety Chain of
13 Custody, page 56.

14 Your Honor, the original South Carolina
15 Department of Public Safety Chain of Custody
16 document 12, within the Brady discovery, has
17 remained the original for approximately 48 months,
18 as far as both my knowledge and awareness.

19 Furthermore, document 56, as far as my
20 awareness, is a most recently added document within
21 the Brady discovery which have been altered, fixed,
22 and prepared to aid and support document 61 and 65,
23 which are also most recently added documents within
24 Brady discovery.

25 Furthermore, admitting document 56 as a

1 fixed and prepared duplicate and the value of the
2 original document 12 will weigh against the
3 fairness within this trial pursuant to Rule 1036,
4 Section 2 as stated.

5 Do I need to produce any evidence on
6 this matter?

7 THE COURT: No. Let's talk through it.
8 That document was not produced, was it? It was not
9 introduced into evidence, am I right?

10 MS. LINDER: Your Honor, I'm not
11 completely sure what document 56 and 61 through 65
12 is, but I believe it's the Chain of Custody. We
13 did not introduce that document.

14 THE COURT: Okay. Let me explain it to
15 you, Mr. Blake. What that contemplates is that if
16 the State and the defense agree that they will
17 submit that Chain of Custody, that notarized Chain
18 of Custody, in lieu of the actual witnesses
19 appearing, then it needs to be essentially what's
20 referred to as best evidence.

21 MR. BLAKE: Okay.

22 THE COURT: Okay. That is the
23 original, unless that original is lost.

24 In this instance, the State didn't
25 present or didn't admit that document into evidence

1 because they actually had the witnesses who took
2 the stand and testified. So you are right about
3 all of that and that you were right about that
4 regulation.

5 And, actually, if you look at Criminal
6 Rules of Procedure 6(B), it contemplates that very
7 affidavit that you're talking about, but it also
8 says, but the affidavit isn't necessary if the
9 witnesses takes the stand. So in this case the
10 witnesses took the stand. Okay.

11 MR. BLAKE: Okay. So the witness can
12 take the stand without providing any document
13 evidence regarding the Chain of Custody?

14 THE COURT: Yes, they actually can. As
15 long as they raise their hand and they testify as
16 to the Chain of Custody, they can.

17 Now, you can ask them questions about
18 whether they have documents. You can ask them
19 questions which throw into question the reliability
20 of the Chain of Custody, and you can throw their
21 credibility into question.

22 So -- and I'm not giving you any
23 heads-up or anything, but if you want to argue to
24 the jury that, hey, these people just tripped in
25 here willy-nilly and said that they had custody of

1 it, but did they give you any documentation which
2 suggested that? You can argue that if you want to.

3 MR. BLAKE: Okay.

4 THE COURT: But -- but that -- their
5 testimony standing alone is sufficient to support
6 the Chain of Custody.

7 MR. BLAKE: Okay. But the testimony
8 was -- was supported by this document.

9 THE COURT: They specifically
10 referenced it, that is correct. That's exactly
11 correct. They specifically referenced it, and that
12 is upon which you made your objections, but the
13 State never moved to admit that, to admit that
14 specific document.

15 MR. BLAKE: Okay. So this -- okay,
16 Your Honor. I see where you're coming from. Sorry
17 about that.

18 THE COURT: Okay. No worries. You're
19 here to protect your interests and I appreciate
20 that.

21 Okay. Any other issues we need to take
22 up?

23 Okay. Then we'll go off the record now
24 and if you would come up, I'll talk to you about
25 the charge so we're on the same page.

1 (A luncheon recess transpired.)

2 THE COUR: Okay. Any issues or matters
3 of law to take up before we bring in the jury and
4 begin closing arguments?

5 MS. LINDER: None from the State, Your
6 Honor.

7 THE COURT: Mr. Blake?

8 MR. BLAKE: I'm sorry?

9 THE COURT: Any issues or anything to
10 take up before we start arguments?

11 MR. BLAKE: No, nothing.

12 THE COURT: Okay. Let's bring them in.

13 (Jury in, 12:20 p.m.)

14 THE BAILIFF: All jurors are seated,
15 Judge.

16 THE COURT: Thank you.

17 Okay. Take your seats. Where we're
18 at, ladies and gentlemen, we're going to proceed
19 now to closing arguments. Both the State and the
20 defense have rested in this case. The defense has
21 elected not to put any evidence into the record,
22 and that is the prerogative and the right of the
23 defendant not to offer any evidence; because, in
24 this case, just like in every criminal case, the
25 State has the burden of proof.

1 The defendant has no burden of proof
2 and there's no burden or requirement that the
3 defense put any evidence into the record. And I'll
4 talk to you about that a little bit further during
5 the charge.

6 I will remind you that closing
7 arguments are much like opening statements -- and I
8 discussed this with you earlier in the trial --
9 it's not evidence presented by the parties. You
10 have already received all of the evidence that you
11 will receive in this case. There is no new
12 evidence that will be presented in this trial, and
13 there is no evidence that will be presented by and
14 through argument of the parties.

15 The arguments of each party is simply
16 commentary and comments on the evidence that's been
17 presented. Each side will be advocating their
18 respective position in an attempt to persuade you
19 to their position.

20 So, ladies and gentlemen, having said
21 that, we will hear from the State first, and then
22 we will hear from the defendant.

23 So, Ms. Linder, your argument.

24 MS. LINDER: Thank you, Your Honor.

25 May it please the Court.

CLOSING ARGUMENT - BY THE STATE

1 Good afternoon, ladies and gentlemen.
2 When I came up and addressed you yesterday, I
3 explained to you how there are a lot of rules,
4 there are a lot of laws in South Carolina about
5 drugs and about guns. And some of those laws are
6 why we're here today.

7 And we're all here today and we were
8 all here yesterday due to the defendant's,
9 Mark Blake, actions back on April 15th, 2012. He's
10 been charged with trafficking cocaine in excess of
11 10 grams, he has been charged with unlawful
12 carrying of a pistol, and he has been charged with
13 unlawful possession of a stolen pistol.

14 As the judge just said, and he'll go
15 into the law with you more later, I'm here to
16 highlight certain things to you that I think are
17 persuasive and I'm here to tell you and ask you to
18 review the evidence in this case.

19 The evidence is not what I say. The
20 evidence are physical items that have been entered
21 that you will get back there with you. The
22 evidence is testimony from that witness stand. So
23 after someone was sworn from that witness stand and
24 answered on that microphone. So there is physical
25 evidence and there is evidence from the witness

CLOSING ARGUMENT - BY THE STATE

1 stand. That is the evidence in this case and that
2 is the evidence that you are here to consider.

3 This all started back on April the 15th
4 of 2012. It was about 4:00 in the morning. It was
5 late Saturday night, early Sunday morning,
6 depending on how you view it. It was dark outside.
7 Corporal McAbee was traveling on 526 going
8 westbound, West Ashley area near the Glen McConnell
9 bridge. All that's here in Charleston County.

10 It was dark outside. It was 4:00 a.m.
11 when all of a sudden (indicating) a car going 22
12 miles over the limit flew past him in the left
13 lane. A car going 82 in a 60 flew past him. At
14 that point he put on his blue lights and sirens.
15 That blue lights and siren is attached to a
16 recording device in his vehicle.

17 I previously had shown you clips of the
18 video. You will have the entire thing. It's about
19 an hour and 15 minutes, start to finish. You can
20 go through and watch clips of it or if you've seen
21 enough, you don't have to, but you will have that
22 video back there with you. That is evidence. That
23 was entered as evidence for you to consider in this
24 case.

25 Watch that video. Watch him fly past

1 in the left lane. Watch him then drift from the
2 right lane back to the left lane before pulling
3 over.

4 You will see Corporal McAbee -- through
5 his testimony you heard and also through the video
6 you see, he approaches; license, registration,
7 insurance. License registration, insurance.
8 License, registration -- I mean, he asked it
9 multiple, multiple times. He asked for this basic
10 information. But you know what? The defendant
11 didn't hand over those three pieces of information.
12 He didn't hand them over.

13 While the officer was waiting and
14 asking, he was also observing. He was observing
15 smells. He was observing a corner-cut baggie on
16 the seat. He was observing the defendant open and
17 close that driver's side door and throw something
18 out.

19 Corporal McAbee went back to his
20 cruiser, went back to his car. As he does in any
21 traffic stop, he tries to run the bit of
22 information that he was given by the defendant. He
23 ran his driver's license number. It happens every
24 single time.

25 And then he's waiting to hear back from

CLOSING ARGUMENT - BY THE STATE

1 dispatch and what does he see? He sees a lot of
2 movement. He sees a lot of movement over in the
3 passenger side floorboard, reaching over in the
4 passenger side floorboard. He's in the driver's
5 seat; he's in the passenger side floorboard.

6 The trooper thought it was kind of
7 unusual. The defendant's behavior was changing
8 this stop. He went back up. Again, he still
9 didn't get that last of the three pieces of
10 information that he needed. He saw that movement
11 and all this other stuff.

12 He went back up and when he approached
13 again, he testified that the defendant was stunned.
14 He was startled. (Indicating) He was digging
15 around under his seat. Oh, there he is. He was
16 stunned. I think the video said stunned the crap
17 out of him. Imagine.

18 So he was stunned. He jumped away from
19 that seat, grabbed something, shoved it under and
20 sat on it. Corporal McAbee saw all of this
21 happening. The stop changed because of the
22 defendant's behavior.

23 At that point Corporal McAbee, per
24 policy, called for backup. He called on backup
25 because it's their policy. You don't want to be

CLOSING ARGUMENT - BY THE STATE

1 outnumbered getting somebody out of a car, policy
2 because of the odor, policy because of the
3 movement, policy because of jumping back after
4 messing around in the passenger side floorboard,
5 policy because throwing stuff out of the sunroof,
6 policy because throwing stuff out of the driver's
7 side door.

8 So Deputy Baldwin was first on scene,
9 he joined McAbee. You heard from him today. He
10 was briefed about everything that happened. And,
11 again, watch the video if you want. If you don't
12 remember what people were saying or if you don't
13 remember watching it I think the one or two times
14 you saw it, go back and watch it. It's evidence.
15 It will be with you for you to consider in this
16 case.

17 So Baldwin and Corporal McAbee went up
18 to approach. Baldwin went to the driver's side;
19 McAbee went to the passenger side. The defendant
20 was asked out of the vehicle and he complied.
21 Baldwin didn't open that door. Baldwin didn't yank
22 him out. He opened the door and then he -- I think
23 he said he was back walking. He was helping him
24 try to get back to the back of the car, make sure
25 that everything was fine.

CLOSING ARGUMENT - BY THE STATE

1 But again, when the defendant got out
2 of the car, his behavior changed this stop. His
3 behavior changed his stop because when he got out
4 of that car, that's when McAbee, who's at the
5 passenger side with a flashlight instructing him
6 because it's his stop, to get out of the car, boom.
7 He sees dope on the seat. That's what it is.
8 Baldwin sees it on the seat.

9 At that point, the defendant was
10 arrested for various charges. He was Mirandized
11 and he was placed in the trooper's car. He was put
12 in the front seat. He described to you they don't
13 have a cage, so for safety they put him in the
14 front seat so they're right next to him.

15 That seat was searched prior to the
16 shift, beginning of the shift. It's his car. It
17 was a 6:00 p.m. to 6:00 a.m. shift, and this was
18 4:00 a.m. He'd been sitting next to the seat all
19 night. So he searched it before his shift.

20 And then you'll watch again on the
21 video, go back and watch it. I believe the
22 defendant played it for you during
23 cross-examination. When he's in there (indicating)
24 and then the camera flips to the inside, you see
25 him holding a flashlight after he flips it, and he

CLOSING ARGUMENT - BY THE STATE

1 looks down on the seat before he gets out. Again,
2 that's another time that seat was searched.

3 So when the camera's switched to the
4 inside, it's a little different. You hear a lot
5 more outside from Corporal McAbee's belt cam and
6 you see what's inside. It was explained to you how
7 policy, they have to turn the video. It has to
8 remain on the defendant, and that's to protect
9 everyone who's involved.

10 So when you're in there. I think it's
11 around 33 minutes or so, you see the defendant kind
12 of lean forward, lean forward a little bit, lean
13 forward a little bit.

14 You're going -- you can hear on the
15 video and also you heard testimony about the drugs
16 on the seat, the drugs on the seat in the
17 defendant's car seen by Deputy Baldwin at that
18 location. He said the center of the seat. The
19 drugs on the seat in the center of the car -- in
20 the center of the seat seen by Corporal McAbee.

21 And then it was all there. It was just
22 located in plain view when the defendant got out of
23 the car. And that is also the place where the
24 defendant placed an item and sat on it when McAbee
25 was up there moments prior.

CLOSING ARGUMENT - BY THE STATE

1 You also hear about a gun that was
2 recovered from the car. That gun was located in
3 the floorboard of the passenger seat where the
4 defendant was seen leaning and then was stunned
5 when he was approached with the flashlight and law
6 enforcement.

7 You heard testimony from
8 Corporal McAbee about what -- about how to carry a
9 gun. We have a lot of rules in the state with it,
10 which are good. They're there to protect each and
11 every one of us. You cannot just carry a gun
12 however and wherever you feel. That's just not how
13 it happens.

14 And you heard from Corporal McAbee that
15 you are not allowed without some protection to
16 carry a firearm just hanging out. I think he said
17 the butt of the gun was hanging out by -- in the
18 passenger floorboard underneath the passenger front
19 seat. It's not an acceptable place to have a gun.

20 You also heard about that gun, that
21 there were no prints. It wasn't that there was no
22 attempt, it was that there were no prints. It took
23 Corporal McAbee a second, because he had to go back
24 and get gloves to properly handle evidence because
25 that is so important. And when it was tested,

CLOSING ARGUMENT - BY THE STATE

1 there were no prints. No prints from the rightful
2 owner, no prints from Joe Shmo on the street. No
3 prints -- just no prints. So they tried. It
4 doesn't change anything.

5 You also heard, and you can hear it on
6 the video also when they were outside, they were
7 talking about the serial number on the gun. And,
8 again, you'll have this back there, you can look at
9 it. It's a little different because the barrel is
10 removed. And this is State's Exhibit 2.

11 There is a plaque on the Glock -- and
12 it's a little hard to tell through this thick bag.
13 There is place right under here where there's,
14 like, an indent and there's three dots, and that's
15 supposed to be a silver plate of the serial number
16 of the firearm. It is gone. And you heard
17 testimony that a lot of times that's done to
18 conceal the rightful owner and to conceal items
19 about that gun.

20 So, okay. So all of this is going on.
21 The next step in the procedure is got to get that
22 vehicle towed. It can't just sit on the side of
23 the road on the shoulder for who knows how long.
24 So their inventory is always conducted prior to
25 tow. That's so every party is protected to know

CLOSING ARGUMENT - BY THE STATE

1 what's going on.

2 You heard in that vehicle they found
3 the gun. And the gun, it wasn't all in separate
4 pieces like this. This is all done for safety and
5 you heard Corporal McAbee talk about that. And
6 there were 17 and 1 in the chamber and McAbee --
7 and here's the gun. That was in the car. Digital
8 scale, again, no prints. You know, it's -- no
9 prints are on it. No prints of anybody.

10 This scale was on the driver's side
11 floorboard like, oh, in your way when you're trying
12 to drive. That digital scale was in the car.

13 You heard Deputy Baldwin, with all his
14 narcotics experience, talking about what that is,
15 what that means, why people -- generally speaking,
16 in his training and experience, why they have
17 scales. To measure.

18 You also heard right by that scale was
19 the substance in here. There was a plastic bottle.
20 Cut is how he referred to it. Cut is something --
21 I think he talked about like grandma's recipe or
22 something. You know, you have X amount and if you
23 put in this cheap substance, you cut the drug, it
24 increases the volume that you have to sell. So
25 you'll have this in there.

CLOSING ARGUMENT - BY THE STATE

1 You'll have two plastic bags that are
2 all in there. You'll see all -- you'll see these
3 drugs that were found everywhere, as I'm dropping
4 things, the corner-cut baggie. You'll see all this
5 stuff back there. All this is evidence. All of
6 this will go back there with you.

7 So again, keep moving forward. The
8 trooper gets in the vehicle with the defendant.
9 Everyone else has left the scene. They're just
10 waiting for the tow truck. Filling out paperwork,
11 you can watch that. It's kind of boring in my
12 opinion. You fill out paperwork for the tow slip.
13 You're waiting. You're waiting.

14 And then the wrecker arrives, so
15 Trooper gets out of the car and goes back. Let me
16 tell you, that is some good three minutes of video.
17 Start at about an hour and four minutes I think it
18 is. That's when the defendant says, oh, my, this
19 is my last shot. This is my last chance to try to
20 get this dope off of me. I have to distance myself
21 from this. I can't be caught with it on me.

22 And that is where you really see
23 there's -- there's leaning forward, there's turning
24 around looking at the wrecker and the trooper.
25 There's leaning forward. There's a little bit of

CLOSING ARGUMENT - BY THE STATE

1 grimacing. There's leaning forward. There's all
2 sorts of stuff. Watch it. It's just about two
3 minutes.

4 And then right before the trooper comes
5 up, all this and then, fake sleeping. What's
6 happening there? That is ultimately for you to
7 decide what is happening there. You did hear from
8 training and experience from narcotics. You did
9 hear from training and experience from
10 Corporal McAbee, who has been in law enforcement
11 for 20 years, that graceful or not, buttocks are a
12 place to store and hide your drugs.

13 The State would submit to you that
14 Mr. Blake was trying to store and hide drugs there
15 when he was in his car. He was successful for the
16 most part, but then some of it still was on his
17 seat. And then when it was go-time, about to go to
18 the jail, what is he going to do? Watch that.
19 What else is he doing?

20 When they drive to the jail, the
21 trooper -- Corporal McAbee walks around and gets
22 Blake out of the car. And as he gets out of the
23 car, whoa, drugs all over. The bigger bag of all
24 that powder is what was covering that seat. That's
25 what was covering that whole seat from the

CLOSING ARGUMENT - BY THE STATE

1 grimacing, from the brushing off, from the looking
2 behind, from the twisting, from the turning. All
3 of that was then collected.

4 You heard -- it's less exciting to some
5 people, really exciting to others -- all about the
6 chain of custody and procedures and evidence.
7 These SLED kits, these tamper-proof bags, you heard
8 that that's what Corporal McAbee placed everything
9 in, then he dropped it off at his post.

10 There was checking in, checking out,
11 driving to Columbia, going to CEF, then going to
12 SLED. They're all these people that you heard from
13 this morning.

14 Amy Stephens said they would not touch
15 it, they would not accept it if it had been
16 tampered with. And that's a specially designed
17 bag. And I believe the chemist actually gave the
18 most detailed description of it with, like, the
19 swirls along the side. If you even tried to
20 stretch it, it will mess all of that up so you'll
21 know that it's been messed with and you'll know
22 that it's been tampered with. And no one would
23 have taken it and no one would have tested it but
24 for.

25 So you heard -- everybody went through

CLOSING ARGUMENT - BY THE STATE

1 and then you heard from the chemist. The chemist
2 told you that from the amount of cocaine on the
3 seat of the defendant's car, it's Item 1.1 --
4 you'll have the lab report back there as evidence
5 -- it was .6 grams, and the amount all over the
6 trooper's seat was 26. -- I don't want to get this
7 wrong -- 26.9 grams. So a total of 27.5 grams of
8 lab-confirmed cocaine was found.

9 I would submit to you 27.5 is greater
10 than 10. Trafficking cocaine is possession of an
11 illegal substance of the weight greater than.

12 You also heard today there was a
13 stipulation done, and the judge will explain that
14 more and he explained to you at the time. A
15 stipulation is when both parties agree to
16 something. And that stipulation was that we both
17 agree that gun was stolen. So that is something
18 also for you to think about.

19 Again, ladies and gentlemen, I
20 appreciate your attention these past, I guess, day,
21 day-and-a-half, and I appreciate your patience.
22 And we are here today -- what we have to remember
23 is that we're all here due to the defendant's
24 actions. His actions back on April 15, 2012, is
25 what brings us here today, and it's time that he

CLOSING ARGUMENT - BY THE DEFENDANT

1 was held responsible and accountable for those
2 actions.

3 He's charged with trafficking cocaine
4 in excess of 10 grams, unlawful carrying of a
5 pistol, and possession of a stolen pistol, and I
6 respectfully request that you come back with guilty
7 on all three counts.

8 Thank you.

9 THE COURT: Mr. Blake, your argument,
10 sir.

11 MR. BLAKE: I have to say that was a
12 pretty quite decent presentation, but the fact is
13 that the State's psychologically using distraction
14 as a game, distracting you from what can be proven
15 and what can't be proven; therefore, I will rehash
16 some issues to bring it all back to light based on
17 the psychological confusion amongst this incident.

18 All right. Numerous aspects within
19 this incident already failed to meet minimum
20 international standards safeguarding the legal
21 proceedings. All of these deliberately corrupted
22 acts conducted by this officer of the law that I
23 have proof of before you to show you reasonable
24 doubt.

25 As a proud United States citizen, my

CLOSING ARGUMENT - BY THE DEFENDANT

1 United States constitutional rights founded by the
2 forefathers of this country have been violated by
3 this officer of the law who is paid taxpayers'
4 money that we trust to uphold the law, not to
5 bend or break the law.

6 Sorry about this. My United States
7 constitutional rights have been violated as a
8 citizen and blood is spilled. And when blood has
9 been spilled, then the only alternative left as a
10 citizen is to exhaust the State's constitutional
11 rights to a trial by a jury, which gathers us here
12 today, to both confront my accusers and oppressors
13 and to seek proper justice.

14 I don't rely on the system, as you can
15 see, to help me seek proper justice. Why? Because
16 the system are not my peers, but the 12 of you are.
17 And as the 12 of you as my peers, I rely on you all
18 to make just decisions using the sufficient facts
19 presented in this case and everyday common sense.

20 Reasonable doubt in this case are both
21 established, accomplished beyond the minimum, and
22 that alone produces an acquittal from a not guilty
23 verdict. And if I failed to win you over with
24 reasonable doubt, then the next alternative is to
25 then determine whether the State proved before you

JURY CHARGE

1 the burden of proof. It's the main element within
2 the case, which is actual possession, which
3 consists of a person personally possessing an
4 illegal item or object.

5 Okay. It's both clarified and
6 established and therefore undisputable to all items
7 seized within this incident were not seized
8 personally from me; therefore, the State has failed
9 to prove burden of proof without a reasonable doubt
10 demonstrating actual possession. And, therefore,
11 this undisputable fact don't connect the dots to a
12 non guilty verdict, and that is the conscious of
13 making a just decision.

14 I rest my case. Thank you.

15 THE COURT: All right. Ladies and
16 gentlemen, it's come time for me to give you a
17 charge on the law. When we began this case
18 yesterday you took an oath, and that oath was to
19 fairly and truthfully try the case in accordance
20 with the law and in accordance with the evidence
21 that's presented.

22 So if you come in to this case with any
23 prior opinions or any predispositions about what
24 the law is or about what the law should be, I
25 charge you now to disregard that, because under

JURY CHARGE

1 your oath you swore to accept the law as I give it
2 to you. And I will give it to you in my capacity
3 as the judge of the law in this case.

4 Now, you understand, of course, and
5 I've explained to you that you-all are the judges
6 of the facts, which means that you will determine
7 what the facts are in this case and you will
8 determine whether the State has met its burden of
9 proof.

10 Now, ladies and gentlemen, in this
11 case, as you know, there are three charges: The
12 unlawful carrying of a pistol, possession of a
13 stolen firearm, and trafficking in cocaine.
14 Understand that those are three separate and
15 distinct indictments, three separate and distinct
16 charges, which means that you need to consider each
17 of them separately and distinctly.

18 What that means is that you will look
19 at each one separately and determine whether the
20 State has met its burden of proof of proving each
21 and every element of each indictment of each charge
22 separately from one another.

23 So just by way of example, if you were
24 to find that the State had met its burden of proof
25 on one indictment, that doesn't necessarily mean

JURY CHARGE

1 that you have to find that they met their burden of
2 proof on another indictment. Again, in the
3 converse, if you find that they haven't met their
4 burden of proof on one, you don't have to find
5 likewise on the other two.

6 Again, consider them all separately and
7 distinctly and determine whether the State has met
8 its burden of proof.

9 Now, ladies and gentlemen, again, I
10 will state for you and I've already told you twice
11 in this case that Mr. Blake, the defendant, is
12 presumed innocent until the State meets its burden
13 of proving each and every element of each offense
14 beyond a reasonable doubt.

15 Now, that's not just a legal theory,
16 that's the cornerstone of our criminal justice
17 system. So it's something you must take very
18 seriously in your considerations. He retains that
19 presumption of innocence until such time that 12
20 deliberating jurors determine that the State has
21 met its burden of proof. So as Mr. Blake sits here
22 right now he retains that burden -- or excuse me,
23 that presumption of innocence.

24 Now, ladies and gentlemen, I bandied
25 around this term reasonable doubt, so I find, you

JURY CHARGE

1 know, that it's important that I tell you what that
2 is. Now, proof beyond a reasonable doubt is proof
3 which leaves you firmly convinced of the
4 defendant's guilt.

5 Now, there's nothing on earth that you
6 can measure with absolute certainty, and the law
7 does not require that the State prove its case
8 beyond any possible doubt, but if after your review
9 of the evidence you find you are firmly convinced
10 of the defendant's guilt, under your oath, you must
11 find him guilty.

12 However, if after your review of the
13 evidence you believe that there is a real
14 possibility that the defendant is not guilty, then
15 you must, again, under your oath, find him not
16 guilty of the offense.

17 Now, ladies and gentlemen, when you are
18 reviewing this evidence in your capacity as the
19 finders of the facts, what you will do is you will
20 weigh the evidence. You're going to decide what's
21 important and what's not important. You're going
22 to look and determine who is believable and what's
23 not believable.

24 Now, you're going to determine whether
25 a witness is credible or whether a witness is not

JURY CHARGE

1 credible. That's all within your purview. So
2 let's just say that a witness got up on the stand
3 and you heard that witness' testimony. You can
4 take part of his testimony and find it believable
5 and very valuable and give it great weight and then
6 discard the rest. You can take all of it, you can
7 dismiss all of it. It's all within your
8 discretion. You decide who's believable and what
9 weight all of that evidence has.

10 Now, ladies and gentlemen, evidence is
11 going to come in two -- one of two forms. One of
12 two forms. It's either going to be direct evidence
13 or it's going to be circumstantial evidence.
14 Direct evidence is evidence which immediately
15 establishes the fact to be proven. Circumstantial
16 evidence is evidence of a chain of facts, of
17 collateral facts that when taken together, prove
18 the main fact to be proven.

19 That's a simple explanation and a
20 fairly trite definition, but I will give you an
21 example that will help you conceptualize it a
22 little bit more.

23 Now, let's say that on a January --
24 January morning, you're going to bed. You walk
25 past your front door or your front window and you

JURY CHARGE

1 look -- you look out and there's no precipitation
2 on the ground. And the next morning you wake up
3 and you walk past that same window or that same
4 door and you look out, and in your front lawn or in
5 the parking lot and you see that there's a blanket
6 of snow on the ground. And I recognize that's
7 hypothetical in Charleston.

8 But let's say there's a blanket of snow
9 on the ground. You see the blanket of snow,
10 footsteps which lead to your door and lead away.
11 Within that set of circumstances, you have direct
12 evidence that it snowed last night because you see
13 the snow. You can touch the snow, feel it, taste
14 it. It's there. It's immediately established by
15 its presence.

16 But you have circumstantial evidence
17 that someone, either late that night or early that
18 morning, came to your door and walked away. Now,
19 you can't see that person. You can't touch him.
20 You can't feel him. You can't have a conversation
21 with him, but you know that as a consequence of the
22 timing of that snowfall and the presence of the
23 footprints in the snow that someone came to your
24 door and walked away.

25 Now, ladies and gentlemen, the State

JURY CHARGE

1 there's -- the law doesn't prefer circumstantial
2 evidence over direct evidence or direct evidence
3 over circumstantial evidence. You decide what
4 weight circumstantial or direct evidence may have.
5 And understand that a case may be proven by
6 circumstantial evidence.

7 But to the extent that the State relies
8 upon the circumstantial evidence, all of the
9 circumstances must be consistent with one another,
10 and when taken together point conclusively to the
11 guilt of the accused beyond a reasonable doubt. If
12 the circumstances in the aggregate only create a
13 suspicion, then the proof has failed.

14 Now, ladies and gentlemen, in this case
15 you noticed that the defendant did not testify. He
16 has a constitutional right under the Fifth
17 Amendment to remain silent, and that's an important
18 right. The defendant does not have to take the
19 stand and testify because the State, as I told you,
20 has the burden of proof.

21 And that's a very important
22 constitutional right, and you can't hold that
23 against the defendant that he elected not to
24 testify. As a matter of fact, it is such a sacred
25 constitutional right in our society that you can't

JURY CHARGE

1 even discuss it in your jury deliberations. It's
2 not relevant.

3 Mr. Blake also elected to represent
4 himself. Again, that's a constitutional right,
5 that he elected to represent himself. You can't
6 hold that against him either.

7 Now, you do understand, again, that
8 there's a difference between statements that are
9 made in representation and statements that are made
10 in testimony. Defendant made any number of
11 representations during the course of the case.
12 That was not evidence. He was representing his
13 interest. He was not testifying to you.

14 So you will not consider those
15 statements, just like you won't consider the
16 statements of State's counsel, that is the
17 questions of State's counsel as evidence. You
18 won't consider the questions of the defendant as
19 evidence in your deliberations either.

20 Now, ladies and gentlemen, let's start
21 talking about the charges before the Court. First
22 charge is unlawful carrying of a handgun. Under
23 the law in the State of South Carolina, it is
24 unlawful for anyone to carry about the person any
25 handgun whether concealed or not, except by legal

JURY CHARGE

1 exception.

2 Now, ladies and gentlemen, there are a
3 laundry list of exceptions under the law and I'm
4 not going to read those for you. I will tell you
5 that in this case, there are no exceptions claimed
6 by the defense.

7 All right. Second case -- second
8 charge, indictment that you must consider, and that
9 is possession of a stolen -- stolen handgun. In
10 the State of South Carolina, a person should not
11 knowingly buy, sell, transport, pawn, receive, or
12 possess any stolen handgun or one from which the
13 original serial number has been removed or
14 obliterated.

15 The State must prove beyond a
16 reasonable doubt that the defendant possessed a
17 stolen firearm and that the defendant knew or had
18 reason to believe that it was stolen. Whether the
19 defendant knew or had reason to believe that the
20 property was stolen may be shown by direct or
21 circumstantial evidence.

22 The State may prove that the defendant
23 knew or had reason to believe that the property was
24 stolen by showing that the defendant knew facts
25 that would make a reasonable person believe that

JURY CHARGE

1 the property was stolen.

2 Now, ladies and gentlemen, to prove
3 possession, the State must prove beyond a
4 reasonable doubt that the defendant had both the
5 power and intent to control the disposition or use
6 of an object.

7 Actual possession means that the object
8 was in the actual physical custody of the
9 defendant. Actual possession may be proven by
10 circumstantial evidence, but again, it must proven
11 beyond a reasonable doubt.

12 Ladies and gentlemen, the third charge
13 that you must consider today is trafficking in
14 cocaine, and the defendant is charged with
15 trafficking in cocaine. The State must prove
16 beyond a reasonable doubt that the defendant
17 knowingly sold, manufactured, cultivated,
18 delivered, purchased, brought into the state,
19 provided financial assistance or otherwise aided,
20 abetted, attempted, or conspired to sell,
21 manufacture, cultivate, deliver, purchase, or bring
22 into this state, was knowingly in actual possession
23 of or knowingly or attempted to become in actual
24 possession of cocaine.

25 The State must also prove beyond a

JURY CHARGE

1 reasonable doubt that the amount of the cocaine was
2 10 grams or more.

3 All right. Ladies and gentlemen, I'm
4 going to hand to you, when it's time to begin your
5 deliberations, verdict forms of this case -- in
6 this case. Now, I have the verdict forms here.
7 And they kind of look like a ninth grader typed
8 them out; that's because I did it.

9 My clerk -- my clerk isn't with me this
10 week, so I have to do it. So you're reduced to
11 this. I apologize for it.

12 But they're very simple verdict forms.
13 They're very simple verdict forms and there's one
14 for each indictment. Okay? And that's -- that
15 symbolizes that you must consider each indictment
16 separately from one another. So you will have a
17 verdict form for each one.

18 So just, by way of example, I'll go
19 over the first one. And you'll see it simply has
20 the caption, The State of South Carolina v. Mark
21 Lorenzo Blake, Junior. As to trafficking in
22 cocaine, we the jury, unanimously find the
23 defendant -- and there are two options, either not
24 guilty or guilty of trafficking in cocaine.

25 If each of you determine that that

JURY CHARGE

1 is -- if you unanimously find that the State has
2 met its burden of proof, then, Madam Forelady, you
3 simply sign here and date. Okay.

4 Now, understand it says unanimously.
5 Your verdict in this case must be unanimous. You
6 must all agree on the verdict. It can't be 11 to 1
7 or 10 to 2, or any other combination of numbers
8 that add up to 12. It has to be a unanimous
9 verdict.

10 Understand, as well, that your verdict,
11 again, must be based on the evidence and on the law
12 that's been presented in this case. It can't be
13 based on passion, prejudice, bias, caprice. It has
14 to be based on the law and the evidence that was
15 presented in this case.

16 Now, after you have come to a unanimous
17 decision, given those constraints, then you will
18 let the bailiff know and the bailiff will come let
19 us know and we'll come in and proceed with the
20 verdict.

21 Now, I'm going to ask you to return to
22 your jury room now, but don't begin your
23 deliberations quite yet. This is the opportunity
24 for the attorneys, for the parties to take
25 exception to my charge, to tell me things that I

1 either left out or things that I may have stated
2 incorrectly.

3 So give us the opportunity to -- to go
4 through that. If I have to amend something or
5 bring you back out, I will bring you back out. If
6 I don't, what I'm going to do is I will send you
7 these verdict forms with the bailiff and he's going
8 to tell you to begin your deliberations.

9 Not long after that, after the parties
10 have the opportunity to inventory all of the
11 evidence, then you will also receive your evidence
12 at that time as well. Okay.

13 So please retire to your jury room and
14 I'll get in contact with you in a moment.

15 (Jury out 2:57 p.m.)

16 THE COURT: All right. Any exceptions
17 to the charge?

18 MS. LINDER: None from the State.

19 THE COURT: Mr. Blake?

20 MR. BLAKE: None.

21 THE COURT: Okay.

22 All right. Counsel and Mr. Blake, you
23 have done an excellent job. I commend you for
24 being civil, for being professional and being
25 prepared. And I don't know what the outcome of

1 this trial will be, but I will tell you that each
2 of you acquitted yourself very well and I thank you
3 for it. Having been here today, it was a pleasure
4 to have the opportunity to work with you.

5 MR. BLAKE: Thank you.

6 THE COURT: If you'll do an inventory,
7 I will go ahead and send back the verdict forms
8 with the bailiff. When you are satisfied, give
9 those to the bailiff. I'm going to receive the
10 alternate in chambers and dismiss the alternate in
11 chambers. Okay?

12 (Jury deliberating, 3:03 p.m.)

13 THE COURT: All right. Ladies and
14 gentlemen, I received a note from the jury and it
15 says: Need definitions of carrying and possession
16 of a firearm. So I will make this note Court's
17 Exhibit 2.

18 So what I am going to do is I didn't
19 specifically define carry, but I have Black's Law
20 Dictionary and I will read the definition of carry,
21 which is to bear, bear about, sustain, transport
22 remove, or convey; to have or bear upon or about
23 one's person as a watch or weapon.

24 Then I'm going to again define
25 possession for them using the same -- the very same

1 language that I used the first time, and that is,
2 that a person has both the power and intent to
3 control the disposition or use of an object.
4 Actual possession means that the object was in the
5 actual physical custody of the defendant. Actual
6 possession may be proven by circumstantial
7 evidence, but must be proven beyond a reasonable
8 doubt.

9 So that's what I intend to tell them.
10 Okay? Are you comfortable with that?

11 MR. BLAKE: Comfortable, Your Honor.

12 MS. LINDER: Yes, Judge.

13 THE COURT: All right. You can bring
14 the jury in.

15 (Jury in, 3:26 p.m.)

16 THE BAILIFF: All jurors are present.

17 THE COURT: Okay. Thank you.

18 Ladies and gentlemen, I received your
19 question. And I don't know what you are fleshing
20 out in the jury room and I don't want to know; it's
21 none of my business.

22 But I do want to tell you that you were
23 chosen as jurors in this case because you are
24 representative citizens of the community and you
25 are armed with something very important, and it's

1 common sense. You are allowed to use your common
2 sense. And you specifically have the right and
3 discretion to do that in your deliberations.

4 I'm going to read for you, first of
5 all, the definition of carry. Now, I've taken the
6 definition of carry from Black's Law Dictionary,
7 which is the common usage of the word carry both in
8 normal, everyday parlance and in legal fields. And
9 that is as follows: To bear, bear about, sustain,
10 transport, remove, or convey; to have or bear upon
11 or about one's person, for example, as a watch or
12 weapon.

13 Possession. Possession means that
14 someone has both the power and the intent to
15 control the disposition or use of an object.
16 Actual possession means that the object was in the
17 actual physical custody of the defendant. Actual
18 possession may be proven by circumstantial
19 evidence, but again must be proven beyond a reasonable
20 doubt.

21 Now, ladies and gentlemen, with those
22 definitions, I ask you to return to your jury room
23 and continue your deliberations.

24 (Jury out at 3:28 p.m.)

25 MR. BLAKE: Your Honor, is that it?

VERDICT

1 THE COURT: Yes, sir. Anything else?

2 MR. BLAKE: I was asking if that's all.

3 THE COURT: Yes, sir, that's it.

4 We will be in recess until we hear back
5 from the jury.

6 MR. BLAKE: Okay.

7 (A recess transpired.)

8 THE COURT: I have been advised that
9 the jury has reached a verdict. Is the State ready
10 to receive the verdict?

11 MS. LINDER: The State is ready.

12 THE COURT: Is the defense ready?

13 MR. BLAKE: Yes, Your Honor, I am.

14 THE COURT: Bring the jury in, please.

15 (Jury in, 4:31 p.m.)

16 THE BAILIFF: Jurors are all present.

17 THE COURT: Okay. You can take your
18 seat.

19 Ms. McCloud, has the jury reached a
20 unanimous verdict?

21 JURY FOREPERSON: Yes, Your Honor, we
22 have.

23 THE COURT: Would you pass the verdict
24 form to the bailiff, please?

25 Would you publish the verdict, please?

VERDICT

1 THE CLERK: In the State of South
2 Carolina, County of Charleston, Court of General
3 Sessions, Case Number 2012-GS-10-4707, State of
4 South Carolina v. Mark Lorenzo Blake, Junior, We,
5 the jury, unanimously find the defendant guilty of
6 trafficking cocaine, signed Foreperson, dated
7 August 9, 2016.

8 State of South Carolina, County of
9 Charleston, Court of General Sessions, Case Number
10 2012-GS-10-4709, State of South Carolina v. Mark
11 Lorenzo Blake, Junior, We, the jury, unanimously
12 find the defendant not guilty of possession of a
13 stolen firearm, signed Ms. Foreperson, dated August
14 9, 2016.

15 State of South Carolina, County of
16 Charleston, Court of General Sessions, Case
17 2012-GS-10-4704, State of South Carolina v. Mark
18 Lorenzo Blake, Junior, We, the jury, unanimously
19 find the defendant not guilty of unlawful carrying
20 of a pistol, signed Ms. Foreperson, dated August
21 9th of 2016.

22 THE CLERK: Ladies and gentlemen of the
23 jury, if this is your verdict, please raise your
24 right hand.

25 JURY: (Hands raised.)

VERDICT

1 THE CLERK: Let the record reflect that
2 all jurors raised their right hands.

3 THE COURT: Okay. Anything further for
4 this jury from the State?

5 MS. LINDER: Nothing from the State.

6 MR. BLAKE: Can you poll the jury?

7 THE COURT: Sure.

8 Madam Clerk, would you poll the jury,
9 please?

10 THE CLERK: Okay. Ladies and
11 gentlemen, I'm going to ask you two questions: Is
12 this your verdict and is this still your verdict?
13 When I call your name and number, stand and answer
14 the question either yes or no.

15 Juror Number 154, Michelle Griffin, is
16 this your verdict?

17 JUROR NO. 154: Yes.

18 THE CLERK: This still your verdict?

19 JUROR NO. 154: Yes.

20 THE CLERK: Thank you.

21 Juror Number 257, Imad Mohtassem?

22 JUROR NO. 257: Yes.

23 THE CLERK: Is this your verdict?

24 JUROR NO. 257: Yes.

25 THE CLERK: Is this still your verdict?

VERDICT

1 JUROR NO. 257: Yes.

2 THE CLERK: Thank you.

3 Juror Number 103, Belinda Duncan. Is
4 this still your verdict?

5 JUROR NO. 103: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR NO. 103: Yes.

8 THE CLERK: Thank you.

9 Juror Number 157, Maria Guerry. Is
10 this your verdict?

11 JUROR NO. 157: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR NO. 157: Yes.

14 THE CLERK: Thank you.

15 Juror Number 206, Talha Khan. Is this
16 your verdict.

17 JUROR NO 206: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR NO. 206: Yes.

20 THE CLERK: Thank you.

21 Juror Number 121, Mark Flynn. Is this
22 your verdict?

23 JUROR NO. 121: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO 121: Yes.

VERDICT

1 THE CLERK: Thank you.
2 Juror Number 107, Sunlin --
3 JUROR NO 107: Yes.
4 THE CLERK: Thank you.
5 Is this your verdict?
6 JUROR NO. 107: Yes.
7 THE CLERK: Is it still your verdict?
8 JUROR NO. 107: Yes.
9 THE CLERK: Juror Number 190, Tracy
10 James. Is this your verdict?
11 JUROR NO. 190: Yes.
12 THE CLERK: Is it still your verdict?
13 JUROR NO. 190: Yes.
14 THE CLERK: Thank you.
15 Juror Number 175, Darius Hill. Is this
16 your verdict?
17 JUROR NO. 175: Yes.
18 THE CLERK: Is this still your verdict?
19 JUROR NO. 175: Yes.
20 THE CLERK: Thank you.
21 Juror Number 248, Joan Mcloud. Is this
22 your verdict?
23 JUROR NO. 248: Yes.
24 THE CLERK: Is this still your verdict?
25 JUROR NO. 248: Yes.

1 THE CLERK: Thank you.

2 Juror Number 316, Alan Seim. Is this
3 your verdict?

4 JUROR NO. 316: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR NO 316: Yes.

7 THE CLERK: Thank you.

8 Juror Number 173, Christine Henderson.

9 Is this your verdict?

10 JUROR NO. 173: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR NO. 173: Yes.

13 THE CLERK: Thank you.

14 Your Honor, the jury has been polled
15 and the verdict stands.

16 THE COURT: Okay. All right.

17 Anything -- anything further?

18 All right. I'm going to dismiss the
19 jury informally from their jury room and I will
20 return afterwards to the courtroom for any
21 appropriate post-trial motions and for sentencing.

22 Ladies and gentlemen, if you would
23 return to your jury room, I won't keep you very
24 long. I'm just going to dismiss you informally.

25 (Jury out, 4:38 p.m.)

1 THE COURT: Take your seats. Any
2 post-trial motions?

3 MS. LINDER: None from the State.

4 MR. BLAKE: Just renew my pretrial
5 motions.

6 THE COURT: Okay. All right. And I
7 will respectfully deny those on the same basis that
8 I articulated on the record. Okay.

9 MR. BLAKE: Okay.

10 THE COURT: All right. Would you like
11 to approach for sentencing?

12 MS. LINDER: Yes, Your Honor, if I may
13 approach. I have the sentencing sheet and prior
14 convictions.

15 THE COURT: All right. Thank you very
16 much.

17 MS. LINDER: Your Honor, as far as
18 sentencing is concerned for Mr. Blake, I think this
19 is a somewhat unusual case. I understand that it's
20 trafficking third, so it's an automatic 25 years.
21 And in this case I'm actually asking you to impose
22 a consecutive term.

23 Although, it's not up to this Court to
24 consider all of his other pending charges, he has
25 three other distribution third offenses pending, he

1 also has a pending attempted murder and failure to
2 stop for a blue light where he shot a City of
3 Charleston Police Officer.

4 Your Honor, the State's intention has
5 been stated from the outset when Mr. Blake rejected
6 his prior offer a number of times, that the State
7 is going to be serving life without parole notice
8 and will be seeking life without parole for one out
9 of any of those other four pending charges.

10 His prior record; in 2006, unlawful
11 carrying of a pistol; 2009, possession of cocaine
12 and knuckles; 2012, DUI and reckless; and in 2016,
13 he has a PWID heroin second, and he is currently
14 serving a 12-year sentence at SCDC.

15 And, Your Honor, furthermore, with this
16 defendant, the day after our last trial, he sent
17 a -- we'll call it a nasty letter to me wherein he
18 addressed me in foul language, he threatened me,
19 and he also addressed Judge ^.

20 I don't believe any of that's
21 appropriate, and for all of these reasons I would
22 respectfully request that you invoke the
23 consecutive sentence.

24 THE COURT: All right. Mr. Blake, I'll
25 be happy to hear from you, sir.

1 MR. BLAKE: All right. Your Honor,
2 with regard to that letter, I did not threaten her
3 whatsoever. And, furthermore, she can't produce
4 what she's saying, so --

5 THE COURT: When -- you were sentenced
6 to 12 years on June 15th this year; is that
7 correct?

8 MR. BLAKE: Correct.

9 THE COURT: When did you -- what's your
10 sentence start date? Do you know?

11 MR. BLAKE: I don't know. Maybe
12 she knows.

13 MS. LINDER: I may be able to help.
14 That sentence start date -- he did some pretrial
15 detention. I revoked his bond based on -- he had
16 about six different pending charges, so I revoked
17 his bond, and that was, I believe, April 9th of
18 2013.

19 However, he had more pretrial time
20 before that before he bonded out. So he has at
21 least three-and-a-half-years of credit already.

22 THE COURT: Okay. I see on
23 Judge Hill's order he gave you credit for 1,156
24 days; is that correct?

25 MR. BLAKE: Yeah, that's correct, Your

1 Honor.

2 THE COURT: All right. Anything else
3 you need to tell me, Mr. Blake?

4 MR. BLAKE: I mean, at this point, Your
5 Honor, it's at your discretion however you want to
6 sentence me. And I believe Mr. King informed me
7 that my dad would like to speak on my behalf.

8 THE COURT: Mr. King, do you agree that
9 this is a mandatory minimum of 25 years?

10 MR. KING: Yes, Your Honor.

11 THE COURT: Okay. Good enough. Thank
12 you.

13 Where is your father?

14 MR. BLAKE: Right there.

15 THE COURT: And you are Mr. Blake as
16 well, sir?

17 THE WITNESS: Yes, sir.

18 THE COURT: Would you state your full
19 name for the record, please.

20 THE WITNESS: Mark Lorenzo Blake,
21 Senior.

22 THE COURT: Okay, sir. I'd be happy to
23 hear from you.

24 THE WITNESS: Well, Judge, I just
25 wanted to say I'm Mark's father. He's one 100

1 percent loved by me and the rest of his family. He
2 has three kids, a ten-year-old and the youngest is,
3 like, three years old. So I'm hoping that the
4 Court takes that under consideration so that he
5 could possibly one day be able to get back home to
6 his family.

7 THE COURT: Okay. Thank you,
8 Mr. Blake. I appreciate you being here.

9 THE WITNESS: Thank you.

10 THE COURT: Yes, ma'am.

11 THE WITNESS: I am Mark Lorenzo Blake,
12 Junior's aunt, the eldest of the family. And I
13 just wanted to say that I have worked in the system
14 for over ten years, school system, and I find that
15 with any -- of every family, I would say can
16 witness that they have not had one person that has
17 made a mistake in their lives.

18 And I truly feel as though if God have
19 given his only son for us to live, why should we be
20 judgmental of a person that made mistakes in their
21 life.

22 And sometimes when mistakes are made,
23 we don't realize that -- the things we've done
24 until it's too late. And as an older woman now, I
25 have back-talked my mom underneath my breath or we

SENTENCE

1 have done things that our parents didn't want us to
2 do, but it's not because we didn't come from a good
3 family.

4 And all I can say is that he's from a
5 good family. His father is a limousine service
6 worker, and before that, you know -- what can we
7 say? All we can do is try to lead them in the
8 right direction and they choose to make -- to go on
9 the wrong track.

10 And, you know, we are not responsible,
11 but in all that I'm saying that his -- he has not
12 seen or been attached with his child from the time
13 she was three months old. And so that child is to
14 be raised up to be an adult without a father's love
15 or father's hug. To me, that's not rehabilitation.
16 There has to be some kind of other way.

17 THE COURT: All right, thank you.
18 Thank you both for being here. I do appreciate it.
19 I'm sorry you find yourselves in this position
20 because I know it's not easy for you. And I
21 recognize it is truly a blessing to Mr. Blake,
22 regardless of what happens today, that he has
23 people like you that care about him. Thanks for
24 being here.

25 Okay. Anything else, Mr. Blake?

SENTENCE

1 MR. BLAKE: I mean, I just want to say
2 that I've been found guilty, but I feel like my
3 mission is accomplished, and I don't feel guilty.
4 So, like I say, Your Honor, it's your discretion at
5 this point.

6 THE COURT: Okay. Let me find your
7 sentence start date real quick.

8 All right. Mr. Blake, it is
9 unfortunate that you find yourself here, and I
10 couldn't agree with your aunt more, that people do
11 make mistakes. And I do believe that we shouldn't
12 live in a zero-tolerance community for people who
13 make mistakes. Everybody does. I know I have, and
14 I continue to make mistakes.

15 Your problem now today is that you've
16 made a series of mistakes over the course of the
17 last decade, which have landed you in this
18 position. And it's not just your second mistake or
19 your third mistake, it's a series of mistakes. And
20 that leaves my hands tied essentially with respect
21 to sentencing, because under this provision of law,
22 it's a mandatory minimum 25 years.

23 And I've never -- I have never realized
24 any gratification or personal satisfaction from
25 sentencing anyone to jail. I dislike it. I truly

SENTENCE

1 dislike it, but sorry to say that's my job. And I
2 must administer the law in accordance with the law
3 as it's prescribed.

4 This is particularly sad because I
5 think you have acquitted yourself well over the
6 last couple of days.

7 MR. BLAKE: Thank you, Your Honor.

8 THE COURT: You have demonstrated that
9 you have a keen intellect and that you have the
10 capacity to do really meaningful things in your
11 life if you set your mind to it, and I'm sorry that
12 you've arrived at this place and time and it's too
13 late to realize it any sooner.

14 The sentence of the Court is for you to
15 be committed to the Department of Corrections for
16 25 years. It's concurrent with the time that
17 you're currently serving and that you be given
18 credit since April 16, 2013.

19 Also, Mr. Blake, I'm going to issue a
20 restraining order from contacting the Solicitor's
21 Office or anyone in the Solicitor's Office.

22 In the future, if you want to contact
23 the Solicitor's Office, you need to go through your
24 standby counsel.

25 MR. BLAKE: Okay.

SENTENCE

1 THE COURT: You may not have intended
2 to be intimidating or threatening, but that's a
3 matter of perspective, and certainly Ms. Linder
4 perceived it as such. So you need to refrain from
5 doing that.

6 MR. BLAKE: Okay. Maybe she
7 misunderstood me, Your Honor, but I did not
8 deliberately threaten her by any means.

9 THE COURT: Good luck to you,
10 Mr. Blake.

11 MR. BLAKE: Thank you, Your Honor. I
12 appreciate that.

13 THE COURT: Yes, sir.

14 (These proceedings were concluded at
15 5:04 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 4th day of November, 2016 at
13 Charleston, Charleston County, South Carolina.

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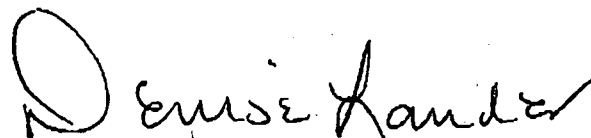
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S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

C.A. No. 2012-GS-10-4707

The State of South Carolina

Trafficking in Cocaine

VS.

Mark Lorenzo Blake, Jr.

We the jury unanimously find the Defendant:

☐ Not Guilty☒ Guilty of Trafficking CocaineJames McLoud

Foreperson of the Jury

Date: 8-9-16

SLB20120402872

WITNESSES

SC Highway Patrol

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

M997496

DATE OF ARREST

April 17, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 07 2012

VERDICT

*Guilty**Joan McLeod**8-9-16*

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004707

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

MARK LORENZO BLAKE JR

DOB: 1/

B/M

Indictment for

Trafficking in Cocaine

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

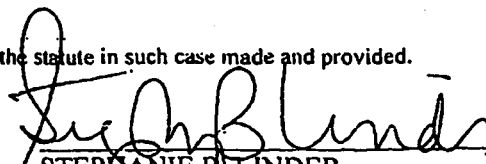
INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Trafficking in Cocaine

- That in Charleston County, South Carolina, on or about April 15, 2012, the Defendant, MARK LORENZO BLAKE JR, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 10grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SLB20130201393

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012018602BB

ARREST WARRANT NUMBER

2013A1010201000

DATE OF ARREST

February 23, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 3 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1002729

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

MARK LORENZO BLAKE JR

DOB:

B/M

Indictment for

Possession With Intent to Distribute Heroin

401

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

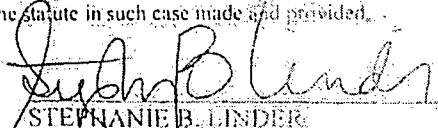
INDICTMENT

At a Court of General Sessions, convened on June 3, 2013, the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Heroin

That in Charleston County, South Carolina, on or about February 22, 2013, the Defendant, MARK LORENZO BLAKE JR., did manufacture, distribute, dispense, deliver, purchase, or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: heroin, in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

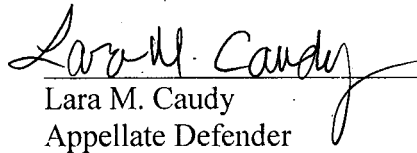
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of April, 2017.

RECEIVED

APR 26 2017

SC Court of Appeals