

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

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Court of Common Pleas

S.C. SUPREME COURT

The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2017-002355

KENNETH MORRIS,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX VOLUME I

ALAN WILSON
Attorney General

JUSTIN J. HUNTER
Assistant Attorney General
S.C. Bar No. 101254

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR APPELLANT

CLARENCE RAUCH WISE
305 Main Street
Greenwood, South Carolina 29646
(864) 229-5010

ATTORNEY FOR RESPONDENT

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2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 KENNETH DARRELL MORRIS,) 2008-GS-46-2834
7 II,) 2008-GS-46-2837
8) APRIL 15, 2009
9) YORK, SOUTH CAROLINA
10 DEFENDANT.

11 (VOLUME I)

12 B E F O R E:

13 THE HONORABLE JOHN C. HAYES, III, JUDGE. ; And a Jury.
14

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

16 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
17 ATTORNEY FOR THE STATE

18 IRBY WALKER, ESQUIRE
19 JOHNNY GARDNER, ESQUIRE
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, APRIL 15, 2009)

2 THE COURT: All right, Mr. Springs.

3 MR. SPRINGS: This Mr. Irby Walker and Mr. Johnny
4 Gardner.

5 MR. GARDNER: Johnny Gardner, yes, sir.

6 MR. SPRINGS: I believe Johnny is from Myrtle
7 Beach.

8 Your Honor, if I may, I would call the next case.
9 before this Honorable Court.

10 THE COURT: All right.

11 MR. SPRINGS: We are ready to begin the trial of
12 the State of South Carolina versus Kenneth Darrell Morris,
13 II..

14 I'm holding two indictments True Billed by our
15 York County Grand Jury, the first one numbered
16 2008-GS-46-2837 charging Mr. Morris with trafficking in
17 Ecstasy. It's going to be a number of dosage units between
18 one hundred and five hundred units. It would be a third
19 offense, one of those twenty-five to thirty offenses.

20 And the other indictment is possession of
21 marijuana with intent to distribute on 2008-GS-46-2834,
22 possession of marijuana with intent to distribute. It would
23 be a third offense.

24 Mr. Walker, how does Mr. Morris plead to those two
25 charges, sir?

1 MR. WALKER: If it please the court, Your Honor,
2 he pleads not guilty.

3 MR. SPRINGS: Your Honor --

4 THE COURT: I have other two indictments up here.

5 MR. SPRINGS: We are not proceeding on those two
6 proximity indictments.

7 THE COURT: Let me -- those -- yeah, they are
8 proximity. Okay. Let me give them back to you so I won't
9 end up telling the jury something that's not correct.

10 MR. SPRINGS: Your Honor, the jury panel is coming
11 in at 11:30.

12 THE COURT: All right.

13 MR. SPRINGS: We do have some pretrial. We would
14 like to go ahead and get that done before our jury panel
15 gets here.

16 THE COURT: All right. I have got a memorandum of
17 law in support of the search issue, so I guess it's a motion
18 to suppress --

19 MR. SPRINGS: Yes, sir.

20 MR. WALKER: Yes, sir. We have a memorandum, Your
21 Honor, we would like to pass up.

22 THE COURT: Okay.

23 MR. GARDNER: And, judge, I would apologize to the
24 court and to the solicitor, it was -- I caught a couple of
25 typos after I had left Conway.

1 THE COURT: That's all right.

2 Mr. Morris, you can sit down.

3 MR. GARDNER: We will just flip through where we
4 are on that.

5 THE COURT: Let me hear the defense issue as to --
6 or let me hear the motion. I have got it in writing, but
7 let me hear the motion.

8 MR. WALKER: Mr. Gardner will be presenting the
9 motion, Your Honor.

10 MR. GARDNER: Thank you, judge.

11 Well, the motion is basically to suppress both the
12 marijuana -- or both the marijuana and the other drugs as
13 fruit of an illegal search and an unlawful detention.

14 I don't know how the court would wish to proceed
15 with this --

16 THE COURT: Well, I read --

17 MR. GARDNER: -- at this time.

18 THE COURT: I read their brief --

19 MR. GARDNER: Yes, sir.

20 THE COURT: -- Mr. Springs gave me, so I know a
21 little bit about the facts, so I guess we might as well go
22 ahead and start taking testimony on that.

23 MR. GARDNER: Yes, sir.

24 MR. SPRINGS: Thank you.

25 We call Officer Vinesett.

1 If you would, step up and be sworn.

2 THE COURT: Is that okay, to go ahead?

3 MR. GARDNER: Yes, sir, I think that's fine.

4 The facts, the way that they are written in the
5 briefs are a little bit different, but the facts are the
6 facts, and that's why I would like to take the testimony.

7 THE COURT: Yes.

8 MR. GARDNER: And also, judge, we have got a
9 videotape of the whole incident and that would speak pretty
10 clear, I do believe.

11 THE COURT: Okay.

12 MR. GARDNER: Officer Vincent?

13 MR. SPRINGS: Vinesett.

14 MR. WALKER: Vinesett.

15 OFFICER L.T. VINESETT, JR., having been first duly
16 sworn, testified as follows:

17 THE COURT: I'm getting a little confused, because
18 they have got a right to cross-examine modestly, but do you
19 have any questions?

20 MR. SPRINGS: Before we begin the proffer?

21 I believe --

22 THE COURT: Let's just go and do it like we always
23 do. You go ahead and present your witnesses.

24 MR. SPRINGS: Yes, sir.

25

1 DIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Officer, tell everybody your name, sir.

3 A. Lonnie Vinesett, Jr..

4 Q. Are you a member of what's known as the HIT team, the
5 highway interdiction team?

6 A. Yes, sir.

7 Q. And what is the mission briefly of the HIT team?

8 A. We normally work the major highways and interstates of
9 York County as a proactive enforcement, to locate contraband
10 or illegal items, warning people, or anything illegal
11 happening on the interstate.

12 Q. Okay. All right. And as part of that mission, do you
13 stop a number of cars -- a good many cars out on the
14 highways here in the county?

15 A. Yes, sir.

16 Q. All right. I'm going to ask you about things that
17 happened on February the 6th, 2008, around two o'clock in
18 the afternoon. What highway were you on around two o'clock
19 that afternoon?

20 A. I was on I-77.

21 Q. Okay. And what was the weather like?

22 A. It was rainy and cloudy.

23 Q. Anybody with you in your car?

24 A. Yes, sir, Constable Scott.

25 Q. Okay. And about two o'clock that afternoon did you --

1 did anything get your attention? Did anything get your
2 attention a little bit after two o'clock?

3 A. I was traveling 77 northbound and saw a vehicle, a Ford
4 500. That's pretty known to be a rental car. There are
5 certain indicators that let us know that more than likely
6 that a car is a rental. I saw the vehicle following another
7 vehicle too close.

8 Q. Yes, sir.

9 A. As I was --

10 Q. Let me stop you. Is that a violation of the South
11 Carolina traffic laws, to follow another vehicle too close?

12 A. Yes.

13 Q. All right. Did you have some specialized training
14 before you started this HIT team work?

15 A. Yes, sir, we have had several trainings all over the
16 nation, specializing in highway interdiction and drug
17 enforcement.

18 Q. Okay. So you said you noticed it was a rental car and
19 it was following too closely. Then what happened?

20 A. As I was getting closer to the vehicle, the vehicle
21 made a quick exit off the interstate onto Highway 21 and was
22 taking a loop around to go back over 21 heading back north.

23 Q. Okay. And then what did that car do, that car that was
24 following too closely? Are you now following it?

25 A. Yes, sir.

1 Q. What did that car then do?

2 A. The vehicle pulled into the Exxon right beside the
3 Waffle House on the western side of 77.

4 Q. And had you activated your blue lights or siren before
5 it pulled into the filling station?

6 A. As it was pulling in, I activated the siren -- I mean
7 the blue lights.

8 Q. Very good.

9 Did that also turn on your in-car video there at the
10 filling station?

11 A. Yes, sir.

12 Q. And did you get out of your car and go up to the Ford
13 rental car?

14 A. Yes, sir.

15 Q. And which side of the car did you go up to?

16 A. On the passenger's side.

17 Q. How many people were in the car?

18 A. Two.

19 Q. All right. From the passenger's side, did you ask the
20 driver for anything?

21 A. Yes, sir, I asked him for his driver's license and
22 vehicle registration.

23 Q. Okay. And what did he give you?

24 A. He gave me a driver's license, and I believe it was the
25 passenger that gave me the rental agreement. I can't

1 remember which one gave me the rental agreement.

2 Q. Okay. And do you recall the names of the two people
3 that were in the car?

4 A. Mr. Nicholson (sic) or Mr. Morris.

5 Q. All right. I'm going to hand you a copy of your own
6 report. You refer to it if you need to refresh your memory
7 at any time.

8 A. Yes, sir.

9 Q. Now, who was the driver of the car when you pulled it
10 over?

11 A. Mr. Morris.

12 Q. Okay. The defendant in this case?

13 A. Yes, sir.

14 Q. And he gave you a driver's license?

15 A. Yes, sir.

16 Q. What state driver's license?

17 A. North Carolina.

18 Q. And you had a rental agreement. Describe the rental
19 agreement. Who rented the car?

20 A. The passenger was the one that rented it, Mr. Nichols.

21 Q. And did the rental agreement list the drivers of the
22 car?

23 A. It listed the one who rented it. It didn't list who
24 was actually driving it at the time that I stopped them.

25 Q. All right. Did it list any additional drivers, other

1 the man Nichols who had rented the Ford?

2 A. No, sir, I believe it specifically stated no other
3 driver is permitted, or something, or no additional drivers.

4 MR. SPRINGS: Would you mark this, please?

5 (Rent A Car Agreement marked as State's Exhibit
6 No. 1 for identification)

7 BY MR. SPRINGS:

8 Q. Did you make a xerox copy of the rental agreement?

9 A. Yes, sir.

10 Q. Did you give the original back to these fellows later?

11 A. I believe it was put back in their property.

12 Q. That's State Exhibit No. 1, is that the xeroxed copy of
13 the rental agreement?

14 A. Yes.

15 Q. Thank you very much.

16 Now, as you are talking to these fellows, are you
17 standing at the passenger window?

18 A. Yes, sir.

19 Q. The window open?

20 A. Yes, sir.

21 Q. Did you sense or detect anything?

22 A. An odor of marijuana coming from the vehicle.

23 Q. All right. And what did you have the driver of the car
24 do at that point?

25 A. I had him step out of the vehicle.

1 Q. Okay. As he gets out of the car, were you able to see
2 better inside the car?

3 A. Yes, sir.

4 Q. Did you see anything that caught your attention?

5 A. I saw a lot of hollowed out Blunts, a lot of blunt
6 tobacco in the car - the center console, on the floor area,
7 and pretty much all over the vehicle.

8 Q. And do you work with narcotics cases a good bit,
9 Officer Vinesett?

10 A. Yes.

11 Q. What is Blunt tobacco? What does that mean to a
12 narcotics officer? Tell us all about that.

13 A. To me it means that somebody is hollowing out the Blunt
14 cigar to put marijuana in it.

15 Q. That's a brand name, isn't it, Blunt cigar?

16 A. Yes, sir.

17 Q. And they hollowed out -- people do what to the cigar?

18 A. They hollow it out and place the marijuana in there, so
19 if you did see them riding down the road smoking anything,
20 it would look like they were just smoking a blunt.

21 Q. Okay. And later did you take some pictures of that
22 marijuana -- of that Blunt tobacco that you saw in the car?

23 A. Yes, sir.

24 (Photograph marked as State's Exhibit No. 2 for
25 identification)

1 (Photograph marked as State's Exhibit No. 3 for
2 identification)

3 (Photograph marked as State's Exhibit No. 4 for
4 identification)

5 (Photograph marked as State's Exhibit No. 5 for
6 identification)

7 (Photograph marked as State's Exhibit No. 6 for
8 identification)

9 (Photograph marked as State's Exhibit No. 7 for
10 identification)

11 MR. SPRINGS: And let the record know that I did
12 hand the court a copy of the rental agreement, State's
13 Exhibit No. 1.

14 BY MR. SPRINGS:

15 Q. Officer, later on did you take some pictures of this
16 car, and this Blunt tobacco, and such things?

17 A. Yes, sir.

18 Q. Would you look at State's Exhibit No. 2 through 7 and
19 tell us if those are your pictures?

20 A. Yes, sir.

21 Q. And these are the things that you were seeing with your
22 own eyes as Mr. Morris gets out of the car?

23 A. Yes, sir.

24 Q. All right.

25 THE COURT: Seen with his own eyes? It's good to

1 know that. All right.

2 BY MR. SPRINGS:

3 Q. You said it was raining. Did you make Mr. Morris stand
4 out in the rain?

5 A. No, sir, I asked him to have a seat in my passenger's
6 seat.

7 Q. Did you go talk to him?

8 A. Yes, sir.

9 Q. Did you ask him where he was coming from?

10 A. Yes, sir.

11 Q. What did he say?

12 A. He said he was coming -- they were coming from Atlanta.

13 Q. Okay. Did you ask him what was the occasion for his
14 trip to Atlanta, why did he go down there?

15 A. Yes, sir, he said that he had went down there to --
16 they had went down there to see some girls.

17 MR. WALKER: I couldn't understand you. I'm
18 sorry. Speak up.

19 A. They said that they were -- they had went to Atlanta to
20 visit some girls.

21 BY MR. SPRINGS:

22 Q. Okay. Why don't you put that mike up a little higher.
23 Thank you.

24 Now, did you then go talk to Mr. Nichols, the
25 passenger?

1 A. Yes, sir.

2 Q. And let me make this real clear. The passenger, Mr.
3 Nichols, who was not driving, he was the guy that rented the
4 car?

5 A. Yes, sir.

6 Q. With the rental agreement that said no additional
7 drivers?

8 A. Yes, sir.

9 Q. Okay. Did you ask Mr. Nichols outside of the presence
10 of Mr. Morris where they were coming from?

11 A. Yes, sir.

12 Q. What did Mr. Nichols say?

13 A. He also said that they were coming from Atlanta.

14 Q. Okay. And did you ask him why they had been to
15 Atlanta?

16 A. He said that they had went to see the driver of the
17 vehicle's cousin, I believe, play basketball.

18 Q. Okay. Did Mr. Nichols, the passenger, step out of the
19 car?

20 A. Yes, sir.

21 Q. Did you sense or notice anything unusual about Mr.
22 Nichols?

23 A. I could smell an odor of marijuana.

24 Q. And did a canine officer arrive on the scene?

25 A. Yes, sir.

1 Q. Was it still raining?

2 A. Yes, sir.

3 Q. Did the -- were the doors of the -- did the dog walk
4 around the car?

5 A. Yes, sir.

6 Q. Were the doors to the car closed?

7 A. Yes, sir.

8 Q. And had you ever seen this particular dog walk around a
9 car before?

10 A. Several times.

11 Q. Describe how the dog walked around the car in the rain.

12 A. On this particular occasion, a lot of the times if the
13 dogs searching the vehicle, its nose just normally stays on
14 the vehicle all the way around the vehicle. This time it
15 was shaking the water off of him. It was looking around.
16 My only assumption was that he didn't like being out in the
17 rain.

18 Q. All right. So did the dog jump up and down and give
19 indications that he smelled drugs?

20 A. The dog didn't alert.

21 Q. And did you police officers by that time -- there must
22 have been another officer -- the canine officer is on the
23 scene right?

24 A. Yes.

25 Q. Did you officers ask Mr. Nichols if you could search

1 the rental car that he had rented?

2 A. Yes, sir.

3 Q. What did he say, yes or no?

4 A. No.

5 Q. And at that point did you officers decide you were
6 going to search the car anyway?

7 A. Yes, sir.

8 Q. And did you search the car?

9 A. Yes, sir.

10 Q. Tell the court if you found anything interesting in the
11 car.

12 A. In the trunk of the vehicle there was like a gift box
13 and a bag inside of it. And inside the bag was like a
14 sandwich bag full of what appeared to be Ecstasy pills.

15 Q. Okay. Have you ever seen Ecstasy pills before this
16 day?

17 A. Yes, sir.

18 Q. Okay.

19 (Drugs marked as State's Exhibit No. 8 for
20 identification)

21 THE COURT: With your own eyes?

22 THE WITNESS: Yes, sir.

23 BY MR. SPRINGS:

24 Q. Our human eyes?

25 A. Yes, sir.

1 Q. I'm showing you what's been marked State's Exhibit No.

2 8. Do you recognize what's in that bag?

3 A. Yes, sir.

4 Q. What is it?

5 A. The Ecstasy that was in the sandwich bag.

6 Q. And I don't expect you to remember the exact number,
7 but approximately how many pills was it?

8 A. 393.

9 Q. And when you found that in the box in the trunk of the
10 car, did you arrest these two men?

11 A. Yes, sir.

12 Q. And did you Mirandize them?

13 A. Yes, sir.

14 MR. SPRINGS: Your Honor, I think for purposes of
15 this suppression hearing I'm probably safe starting out, but
16 I will stop and I would like to reserve the right, if
17 necessary, if they think things that happened after this are
18 pertinent, reserve the right to recall Officer Vinesett.

19 THE COURT: All right.

20 BY MR. SPRINGS:

21 Q. Answer any questions the defense attorneys have.

22 MR. GARDNER: Thank you, Your Honor.

23 THE COURT: Yes, sir, Mr. Gardner.

24 CROSS EXAMINATION BY MR. GARDNER:

25 Q. Okay. I just have a few, I do believe, Mr. Vinesett?

1 A. Yes, sir.

2 Q. All right. I apologize.

3 You pulled the vehicle over once it was in the parking
4 lot, is that right?

5 A. I'm not sure if I turned my blue lights on as it was
6 turning in, but they did mention that they had to go to the
7 restroom. I believe -- I believe as they was turning in I
8 was turning my blue lights on.

9 Q. Yeah. I believe your testimony was that you activated
10 the blue lights as it pulled into the gas station.

11 A. Yes.

12 Q. So it's fair enough to say that this stop didn't occur
13 until they were in the parking lot of the gas station?

14 A. Yes, sir.

15 Q. All right. And the purpose of the stop, if I
16 understand your testimony, was because of a following too
17 close?

18 A. Yes.

19 Q. And that occurred on the interstate?

20 A. Yes, sir.

21 Q. So you are telling the court that you saw a traffic
22 violation on the interstate, but you waited until they got
23 into the gas station parking lot before you pulled them
24 over, is that right?

25 A. Yes, sir.

1 Q. All right. What is your normal time average for a
2 normal traffic stop?

3 A. As far as being the entire length?

4 Q. Well, let me give you a scenario and see if you can
5 follow it.

6 You see a car on the interstate traveling too closely.
7 You pull them over. You normally pull them over on the
8 interstate, or you --

9 A. If they don't exit.

10 Q. Sir?

11 A. If they don't exit the interstate I do.

12 Q. So you pull them over and you do what you are supposed
13 to do, investigate the violation --

14 A. Yes.

15 Q. -- right.

16 And then at some point in time you write a ticket, I'm
17 assuming? Maybe, maybe not?

18 A. Yes, sir.

19 Q. And the driver goes on his way --

20 A. Yes, sir.

21 Q. -- right.

22 So that would be a normal traffic stop, is that right?

23 A. Yes, sir.

24 Q. How much time, average, on that type of average traffic
25 stop, from pulling him over, talking to them, writing a

1 ticket, writing them a warning ticket, or telling them have
2 a nice day, and them driving off?

3 A. With absolutely no indicators of anything?

4 Q. Yes, sir.

5 A. I would say five minutes.

6 Q. Five minutes. Fair enough.

7 Now, during that five minutes, you -- I'm just using
8 you probably look at their driver's license?

9 A. Yes, sir.

10 Q. Run a computer check?

11 A. Sometimes, yes.

12 Q. Maybe talk to them. Write a ticket, or a warning
13 ticket?

14 A. Yes, sir.

15 Q. Right?

16 A. Yes.

17 Q. And maybe not a ticket? Your discretion, right?

18 A. We have to write something.

19 Q. Oh, you do write something?

20 A. Yes, sir.

21 Q. All right. So five minutes, basically. All right.

22 And in this case there was no consent given to search
23 the car, is that right?

24 A. Correct.

25 Q. None from either defendant?

1 A. I'm not -- I don't believe -- I can't remember if I
2 asked Mr. Morris or not, but consent wasn't given.

3 Q. All right. The solicitor spent a lot of time talking
4 about this rental agreement, that the passenger was supposed
5 to be the only driver. That's a contract with him and the
6 rental company?

7 A. Yes.

8 Q. Okay. Did he give you a reason -- did anybody give you
9 a reason why the other fellow was driving?

10 A. I don't recall.

11 Q. Okay. Do you recall saying that the other one was
12 sleepy and that's why they swapped driving?

13 A. Could possibly be. I don't remember.

14 Q. And that would be a normal explanation, wouldn't it?

15 A. Yes, sir.

16 Q. All right. I want to get one thing -- well, I'm going
17 to wait, because I think the solicitor may want to talk to
18 you a little bit more when I finish.

19 You -- what I was asking you about a normal stop, you
20 started talking about with no indicators. Is that the word
21 that you used?

22 A. Yes, sir.

23 Q. Indicators, is that something in your training that
24 heightens your suspension?

25 A. Suspicion, yes, sir.

- 1 Q. Suspicion, okay.
- 2 All right. And you make a police report once you have
- 3 made an arrest, is that right?
- 4 A. Yes, sir.
- 5 Q. And did you that in this case?
- 6 A. Yes, sir.
- 7 Q. And the police reports are important because it's a
- 8 memorandum of what's going on, what happened, and it's done
- 9 pretty early on in the case, right?
- 10 A. Before we go home.
- 11 Q. Before you go home?
- 12 A. Yes, sir.
- 13 Q. When everything is fresh in your mind, right?
- 14 A. The report, yes, sir.
- 15 Q. Everything is fresh in your mind when you make the
- 16 report?
- 17 A. Yes, sir.
- 18 Q. And then at some point in time you make the solicitor's
- 19 case file report, is that right?
- 20 A. Yes, sir.
- 21 Q. When is that normally made?
- 22 A. We have to have it turned in within five days.
- 23 Q. Five days. Okay.
- 24 So you have one that's done before you go home and then
- 25 you have got another that's done within five days?

1 A. Yes, sir.

2 Q. All right. These indicators that you talked to the
3 solicitor about this morning, none of those are in your
4 police report, is that right?

5 A. In the original report?

6 Q. Yes, sir.

7 A. No, sir.

8 Q. None of them. We -- we -- no doubt about that, right?

9 A. Yes, sir.

10 Q. So in your first report that you made when the incident
11 is fresh in your mind, you don't put anything in there about
12 these indicators that you have testified, correct?

13 A. That's correct.

14 Q. You don't say anything about the smell of marijuana?

15 A. In the original report?

16 Q. Yes, sir.

17 A. I would have to look at it, but I don't believe I did.

18 Q. I believe we can find a copy for you.

19 MR. GARDNER: The original police report?

20 MR. SPRINGS: I think that's a copy. Did I not
21 give you a copy?

22 A. Yes, sir, I apologize. I thought it was just the case
23 folder.

24 BY MR. GARDNER:

25 Q. I don't know.

1 MR. GARDNER: May I approach and look at what you
2 got?

3 THE COURT: Yes.

4 MR. GARDNER: Thank you, judge.

5 BY MR. GARDNER:

6 Q. Okay, just to clarify, I believe it's --

7 COURT REPORTER: It's not marked.

8 MR. GARDNER: It's not marked for evidence?

9 COURT REPORTER: No, sir.

10 MR. GARDNER: Judge, for the purposes of this
11 hearing, and this hearing only, I would propose --

12 MR. SPRINGS: No objection.

13 THE COURT: Make it a Court's Exhibit.

14 MR. GARDNER: Court's Exhibit. Thank you, judge.

15 (Drug Enforcement Unit Report marked as Court's
16 Exhibit No. 1 for identification)

17 MR. GARDNER: Thank you, sir.

18 BY MR. GARDNER:

19 Q. Sir, I'm going to hand you back the document that you
20 handed me. It's been marked as Court Exhibit No. 1. Tell
21 me what it is. It contains two documents?

22 A. It contains two documents. The original report that
23 was done that day and the case folder that was done a couple
24 days after.

25 Q. And for the record purposes, the police report, the

1 second document, is the one that was filled out that day?

2 A. Yes, sir.

3 Q. And the first document, the case summary file, is the
4 one that was supposed to be filled out no later than five
5 days, is that right?

6 A. Yes, sir.

7 Q. Okay. Just to make sure we are all clear, look, if you
8 will, on the police report, the first one that was done when
9 its fresh in your mind, do you put anything in there about
10 the smell of marijuana?

11 A. No, sir.

12 Q. Do you know when you prepared the case file report for
13 the solicitor's office in this case?

14 A. Within five days. I mean, I'm not -- I'm not sure if I
15 came in the next day and did it, or waited three days, four
16 days.

17 Q. You just don't recall?

18 A. No.

19 Q. And that case file report is important, too, right?

20 A. Yes, sir.

21 Q. All right. So the police report is important, because
22 that's filled out when it's freshest in your mind and you
23 want to lay the basis for the foundation for what it is that
24 you did, is that right?

25 A. The report is done that day.

1 The case summary I do the day that I watch the tape and
2 dubbed the tape for the solicitor's office. Watch over the
3 tape, make notes of everything that happened, and then
4 that's how I generate my case summary.

5 Q. Excellent point. I was wondering how you did that.

6 A. Yes, sir.

7 Q. So you viewed the tape of this stop --

8 A. Yes.

9 Q. -- and used that to help fill out that solicitor's case
10 file report?

11 A. Yes, sir.

12 Q. Excellent point. Okay.

13 So even though that may have been five days later, it
14 was pretty fresh in your mind, because you were experiencing
15 it on a video?

16 A. Yes.

17 Q. Okay. Now, your normal traffic stop on normal a case,
18 you are going to write a ticket, unless something happens to
19 get you suspicious, right?

20 A. Yes.

21 Q. Is that fair.

22 And the solicitor said that you got good training in
23 that area, is that right?

24 A. Yes, sir.

25 Q. And in this case you -- I want to ask you if these are

1 what we think are the -- what we think might be the
2 indicators.

3 This marijuana -- I mean, I'm sorry, the tobacco that
4 you saw, right?

5 A. Yes, sir.

6 Q. Okay. And that was the cigar?

7 A. Yes, sir.

8 Q. Okay. Cigar tobacco. All right.

9 The smell of marijuana?

10 A. Yes, sir.

11 Q. As to -- were there any -- did I leave any out?

12 A. The --

13 Q. You can look at your stuff, if you need to.

14 A. Could I see the pictures?

15 THE COURT: If you refer to a picture, refer to it
16 by exhibit number, please.

17 THE WITNESS: Yes, sir.

18 A. Exhibit No. 7, the Red Bull energy drinks.

19 BY MR. GARDNER: --

20 Q. Yes, sir.

21 A. -- which in my training and experience has been people
22 making trips --

23 Q. Okay.

24 A. -- trying to stay awake, trying to get to where they
25 need to go quick and get back.

- 1 Q. That makes sense. I could have used one last night,
2 but that was not talked about in the direct, was it?
- 3 A. No, sir.
- 4 Q. Okay. You can talk about it anything that you want to,
5 okay?
- 6 A. Yes, sir.
- 7 Q. I don't mind. I don't object. If it's in the record,
8 we will talk about it, all right? But let's -- for now
9 let's talk about the ones that you talked to the solicitor
10 about, okay?
- 11 A. Yes, sir.
- 12 Q. All right. We have got -- well, let me just see what
13 we got.
- 14 This is State's Exhibit 4 and that contains what looks
15 to me like a cigar butt, is that right?
- 16 A. Yes, sir.
- 17 Q. Okay. All right. So that would be an indicator,
18 right?
- 19 A. The cigar?
- 20 Q. Yeah.
- 21 A. The hollowed out Blunt on the floor would be, but just
22 a regular Blunt itself, no, sir.
- 23 Q. All right. Show me -- I don't know what a hollowed out
24 Blunt looks like. Could you show me, and for the record,
25 let us know what --

1 A. If you see right here in this picture of the cup,
2 State's Exhibit No. 3?

3 Q. Right.

4 A. They actually take out this portion of the Blunt. I'm
5 not sure exactly why, but I have seen it in a lot of them,
6 they will take this part out and then put the tobacco and
7 the marijuana in. They --

8 Q. That looks like part of the --

9 A. The inside of the Blunt on the --

10 Q. The stuff inside that comes out?

11 A. Yes, sir.

12 Q. And you think that's what that is?

13 A. That's what it is, yes, sir.

14 Q. Okay. All right.

15 THE COURT: Which number is that, 3?

16 THE WITNESS: Yes, sir.

17 MR. GARDNER: Yes.

18 BY MR. GARDNER:

19 Q. Actually that's one.

20 And then you talked to the solicitor about the smell of
21 marijuana, correct?

22 A. Yes, sir.

23 Q. Out of all that, which one would be the biggest
24 indicator of further criminal activity?

25 A. The odor of marijuana.

1 Q. The odor of marijuana. Okay.

2 All right. What kind of marijuana are we talking
3 about?

4 A. As in?

5 Q. What did you -- you said that you smelled marijuana.
6 What did you smell?

7 A. Burnt marijuana.

8 Q. Burnt marijuana, okay, because that's not in your
9 report either, is it?

10 A. In the original report that day?

11 Q. Yes, sir.

12 A. No, sir.

13 Q. All right. Is it in the solicitor's report?

14 A. In the case folder, yes, sir.

15 Q. It is?

16 A. A smell and odor of marijuana.

17 Q. And smell and the odor of marijuana. But it doesn't
18 say in there burnt marijuana, right?

19 A. No, sir.

20 Q. So somebody reading that might be tempted to think that
21 it's -- we either got raw marijuana or burnt marijuana, no
22 other kinds, right?

23 A. Yes, sir.

24 Q. There is no doubt what you are talking about is burnt
25 marijuana?

1 A. Yes, sir.

2 Q. Okay. All right.

3 So out of all the indicators that you have got - the
4 soda cans, or whatever it is that you want to say --

5 A. Energy drink.

6 Q. -- that you got, no doubt about it in your mind the
7 most important one was the smell of burnt marijuana?

8 A. Yes, sir.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. Okay. So with all your police training, you believed
12 at that time that somebody was in the car smoking marijuana,
13 right?

14 A. Yes, sir, or had been.

15 Q. Had been, okay. All right.

16 And you -- did you smell that when you first went to
17 the car?

18 A. Yes, sir.

19 Q. The very first time that you got there?

20 A. Yes, sir.

21 Q. And then you get the driver out of the car, bring him
22 back, put him in your squad car --

23 A. Yes, sir.

24 Q. -- and starting talking to him about normal traffic
25 stuff, but then talked to him about some additional stuff --

- 1 A. Yes.
- 2 Q. -- unrelated to the traffic stop, right?
- 3 A. Yes, sir.
- 4 Q. So you would agree with me at that point in time we
- 5 were prolonging what would normally be a normal traffic
- 6 stop, right?
- 7 A. If I'm not mistaken, in the video you can hear me
- 8 running his license on the computer and I do actually
- 9 mention something to him about speeding tickets, or some
- 10 type of ticket --
- 11 Q. Some time of ticket?
- 12 A. -- while I'm running it and I'm talking with him.
- 13 Q. And, in fact, you talked to him about his prior
- 14 criminal record, right?
- 15 A. Yes, sir.
- 16 Q. Okay. So let's say that you are doing this extended
- 17 investigation while you are doing --
- 18 A. Yes, sir.
- 19 Q. My wife says multi-tasking, fair enough?
- 20 A. Yes, sir.
- 21 Q. So you are doing that. And then at some point in time
- 22 you go back to the car to interview the passenger?
- 23 A. Yes, sir.
- 24 Q. Okay.
- 25 A. The renter.

1 Q. Sir?

2 A. The renter of the vehicle.

3 Q. Yes, sir. He's the passenger, right?

4 A. Yes, sir.

5 Q. Okay. And you talked to him about his travel plans, is
6 that right?

7 A. Yeah.

8 Q. And there is no doubt that that has nothing to do with
9 the traffic stop, right?

10 A. The traffic stop in itself, no.

11 Q. Okay. So that clearly extended the normal traffic
12 stop?

13 A. Yes, sir. Once I smelled marijuana, I believe that was
14 the reason.

15 Q. And, in fact, you went again while you were up there
16 talking with him, did you smell marijuana then?

17 A. Yes, sir.

18 Q. Okay. All right.

19 Then you went back to your car and talked to the
20 defendant Morris again, is that right? He's still in the
21 car?

22 A. Yes, sir.

23 Q. Morris, he told you he had to go to the bathroom at
24 some point in time, right?

25 A. Yes.

1 Q. Early on?

2 A. At first he had told me that's the reason they had
3 pulled in there.

4 Q. Okay. And despite that, though, he didn't get to go to
5 the bathroom for quite some time, is that fair to say?

6 A. It wasn't long after the stop.

7 Q. Okay. However long it was, we will find out --

8 A. Yeah.

9 Q. -- okay?

10 But prior to going to the bathroom, you asked, or he
11 was asked, for consent to search his person --

12 A. Yes, sir.

13 Q. -- is that right.

14 And he said okay, or --

15 A. Yes.

16 Q. Then he was searched?

17 A. Yes.

18 Q. And you made the statement, words to the effect of that
19 he can't go to the bathroom unless Officer Scott goes with
20 him, is that right?

21 A. I would have to listen to it again, but I believe so.

22 Q. Well, the intent is that he wasn't allowed to go
23 without an escort?

24 A. Yes, sir.

25 Q. Okay. So no doubt he was in detention at that time,

1 correct?

2 A. With the blue lights on and his car stopped, yes, sir.

3 Q. Searched?

4 A. Yes.

5 Q. Armed escort to the bathroom, right?

6 A. A police officer escort, yes, sir.

7 Q. Yes, sir. Okay.

8 While he's gone to the bathroom, that's when you called
9 Officer Gibson on the radio, is that right?

10 A. I believe so.

11 Q. I believe so. Okay.

12 And you called Officer Gibson on the radio and you
13 asked him if he wants to bring Justice down, is that right?

14 A. Yes, sir.

15 Q. And Justice is the canine drug dog, correct?

16 A. Yes, sir.

17 Q. And you tell him a little bit about the case. Do you
18 remember that?

19 A. Yes, sir.

20 Q. You tell him that -- you want to tell him, I'm
21 guessing, what your indicators are, right?

22 A. Yes, sir, before he gets there.

23 Q. Before he gets there so he will know.

24 And you have already testified about the number one
25 indicator is the smell of marijuana, is that right?

1 A. Yes, sir.

2 Q. You never mentioned that to Officer Gibson.

3 A. No.

4 Q. You tell him about a prior record. You tell him about
5 travel plans. You tell him about shake, right?

6 A. Yes, sir.

7 Q. Never say anything about the smell of marijuana?

8 A. No, sir.

9 Q. And then it gets into a conversation about consent. Do
10 you remember that?

11 A. Yes, sir.

12 Q. All right. And, in fact, y'all talk about trying to
13 get consent before deploying the dog, correct?

14 A. Yes, sir.

15 Q. And that was important in your mind, wasn't it?

16 A. We -- we normally try to get consent.

17 Q. All right.

18 And, in fact, that's the first thing that Officer
19 Gibson does when he gets there. Were you able to observe
20 Officer Gibson when he approaches the car?

21 A. Yes, sir.

22 Q. The first thing he does, he approaches without the dog,
23 correct?

24 A. Yes, sir.

25 Q. And basically asked for consent, right?

1 A. Yes, sir.

2 Q. "Or do I got to get the drug dog?"

3 A. Yes, sir.

4 Q. So the passenger is forced with two decisions at that
5 time, right; consent, or they are going to get the drug dog,
6 fair enough to say?

7 A. Yes, sir.

8 Q. But we have already testified and it's clear that there
9 was no consent given?

10 A. That's correct.

11 Q. So they bring the drug dog in at that time, right?

12 A. (Shaking head yes).

13 Q. And the drug dog -- we can watch the video. I believe
14 that you said that there was maybe something about his nose
15 on the car, is that right?

16 A. Yes, sir.

17 Q. Did you tell the solicitor that?

18 A. Yes.

19 Q. All right. I don't know what that means, but I have
20 watched the video. He goes around that car twice with that
21 dog, doesn't he?

22 A. Yes, sir.

23 Q. All right. And that dog does not hit, does not alert,
24 is that right?

25 A. That's correct.

1 Q. With your training in narcotics, that is a fair
2 indicator that there is no narcotics in the vehicle,
3 correct?

4 A. Fair indicator, yes.

5 Q. Fair indicator. Okay.

6 Now, when you were going on the -- when the search had
7 been extended with the driver in the car, you said that you
8 were working on tickets and stuff like that?

9 A. I was checking his license.

10 Q. Checking his license. You had mentioned the word
11 tickets.

12 All right. In fact, when you called Gibson, you tell
13 him that you were working on the warrant, right? Do you
14 remember that?

15 A. I believe so.

16 Q. Okay. That means that you were going to write him, the
17 driver, a warning ticket, right?

18 A. Yes, sir.

19 Q. That warning ticket was going to be traveling too close
20 on the interstate?

21 A. Following too close, yes, sir.

22 Q. Despite the fact that you didn't pull him over until he
23 was in the gas station parking lot?

24 A. Yes.

25 Q. All right. Now, you told the solicitor that you -- you

1 made the assumption the dog didn't like rain, is that fair?

2 My comment on it, was that fair?

3 A. The way it looked, yeah.

4 Q. It looked like he didn't like rain.

5 Despite the fact that the dog didn't alert, you
6 searched the car?

7 A. Yes, sir.

8 Q. All right. So you were searching that car for burnt
9 marijuana, fair enough?

10 A. Marijuana, yes, sir.

11 Q. Marijuana. Okay.

12 Well, let's talk about it.

13 A. Burnt marijuana would --

14 Q. Sir?

15 A. Burnt marijuana would possibly be ashes.

16 Q. Okay.

17 A. I was searching for marijuana.

18 Q. All right. But the reason that you were searching for
19 marijuana is because you smelled it, right?

20 A. Yes, sir.

21 Q. So you would be looking for burnt marijuana --

22 A. Yes, sir.

23 Q. -- wouldn't you?

24 You wouldn't be looking for raw marijuana, would you?

25 A. Like I said, if I'm not mistaken, burnt marijuana is

1 ashes and smoke. I mean --

2 Q. All right. Well, the judge has the exhibits that's got
3 the cigar in it, right?

4 A. Yes, sir.

5 Q. Okay. If that cigar had marijuana in it, that would be
6 burnt marijuana, wouldn't it?

7 A. If it had been smoked, yes, sir.

8 Q. And if it, in fact, had marijuana in it?

9 A. Yes, sir.

10 Q. And it didn't, right?

11 A. No, sir.

12 Q. All right. So I'll ask you again, when you searched
13 the compartment of the car, the passenger, where the people
14 sit t and drive, you were looking for burnt marijuana?

15 A. I was looking for marijuana.

16 Q. Looking for marijuana?

17 A. I had smelled burnt marijuana. I was searching the car
18 for marijuana.

19 Q. Okay. You were looking for what you thought you might
20 find?

21 A. Yes, sir.

22 Q. Fair enough.

23 All right. And you didn't find it?

24 A. In the passenger compartment?

25 Q. That's correct.

1 A. No, sir.

2 Q. No illegal contraband in the passenger compartment of
3 the car whatsoever?

4 A. No, sir.

5 Q. Nothing? No burnt marijuana, no guns, no drugs,
6 nothing?

7 A. No, sir.

8 Q. All right. And despite that fact, you went to the
9 trunk and searched the trunk, right?

10 A. Yes, sir.

11 Q. I'm not trying to be funny. Were you looking for burnt
12 marijuana in the trunk?

13 A. I was looking for marijuana.

14 Q. Marijuana in the trunk of the car. All right.

15 So you got what you think burnt marijuana, correct?

16 A. Yes, sir.

17 Q. Okay. You got a dog that tells you there is no
18 marijuana, correct?

19 MR. SPRINGS: Objection. That's argumentative.
20 He can't conclude that.

21 MR. GARDNER: All right, I'll rephrase it then.

22 BY MR. GARDNER:

23 Q. The dog didn't hit, right?

24 A. The dog didn't alert.

25 Q. And you were aware of that at the time?

1 A. Yes, sir.

2 Q. And you were aware at the time that there was no
3 contraband inside the compartment of the vehicle?

4 A. That I could find, yes, sir.

5 Q. And despite that fact, that you went looking in the
6 trunk?

7 A. Yes, sir.

8 Q. Okay. If I understand, the most important indicator of
9 all the indicators that you observed was the odor of
10 marijuana, correct?

11 A. Yes.

12 Q. And you did not talk to Officer Gibson about the smell
13 of marijuana?

14 A. No, sir.

15 Q. And the dog did not hit on the car?

16 A. No, sir.

17 Q. And you searched the compartment because you thought
18 that you smelled burnt marijuana?

19 A. Yes, sir.

20 Q. And you didn't find anything?

21 A. No, sir.

22 Q. And then you looked in the trunk?

23 A. Yes, sir.

24 Q. Okay. When you talked to -- it's in your report. I'm
25 paraphrasing, but something about talking to one of the

1 people, I believe it was the passenger, about smoking
2 marijuana. You tell him something like "somebody has been
3 smoking marijuana," or something like that. I believe you
4 say in your report that "he doesn't answer," or "he couldn't
5 answer," is that fair?

6 A. I believe that's what I read. "He didn't give me an
7 answer."

8 Q. Didn't give you an answer. Okay.

9 Do you remember, though, when you watched the video,
10 doesn't he say "I don't smoke marijuana. I have never
11 smoked marijuana. I wasn't smoking marijuana." Something
12 like that?

13 A. The passenger?

14 Q. Yes, sir.

15 A. Yes, sir, I believe so.

16 Q. Okay. And he also told that you cigar was a black and
17 mild?

18 A. Yes, sir.

19 Q. In your experience have you smelled black and mild
20 cigars?

21 A. Yes.

22 Q. Are they similar to the smell of marijuana?

23 A. No, they're usually a sweet smell.

24 Q. You can distinguish between the two?

25 A. Of marijuana and a black and mild?

1 Q. Yes, sir.

2 A. Yes, sir.

3 Q. Black and milds, are you experienced enough to answer
4 this, don't they have a different smell than a regular
5 cigar?

6 A. Yes, sir.

7 Q. Okay. And that black and mild smells a little bit
8 closer to marijuana than the other cigars?

9 A. I wouldn't say that.

10 Q. Okay. Well, have you had training or experience on
11 that?

12 A. Of the smell of cigars?

13 Q. Yes, sir.

14 A. I haven't had training on it how to smell the cigar,
15 no.

16 Q. You told the solicitor that you had training, if I
17 understood you right. I may have misunderstood you. I
18 believe you told the solicitor something about your
19 training, and then you talked about the cigars and the
20 blunts, right?

21 A. Hollowed out and everything.

22 Q. That comes from the Philly Blunt, correct?

23 A. Philly?

24 Q. Philly Blunt is the name of the cigar that started all
25 this. Are you aware of that from your training?

1 A. I'm not sure exactly which particular Blunt started it.

2 Q. But there is no doubt that cigar smells different?

3 Each cigar is different. Do you know that?

4 A. More than likely.

5 Q. Okay. All right.

6 A. I don't -- I don't smoke.

7 Q. Okay.

8 MR. GARDNER: Your Honor, if you would indulge me,
9 please?

10 THE COURT: Yes.

11 (Off the record)

12 (Back on the record)

13 MR. GARDNER: Your Honor, since I have Officer
14 Vinesett up on the stand now, I would ask the court to allow
15 me to play the videotape. I guess it speaks to the truth of
16 the matter.

17 THE COURT: All right.

18 MR. GARDNER: I'll do that at this time.

19 MR. SPRINGS: May I help you start it?

20 MR. GARDNER: Yeah. Do you have it already cued
21 up?

22 MR. SPRINGS: Do you have it marked? You can mark
23 it as a State's Exhibit.

24 MR. GARDNER: Thank you.

25 Judging, I would propose to mark this tape as

1 Court's Exhibit 2, if I may.

2 THE COURT: Yes, sir.

3 (Videotape marked as Court's Exhibit No. 2 for
4 identification)

5 BY MR. GARDNER:

6 Q. For purposes of the record, do you recognize that as
7 the videotape of your patrol car --

8 A. Yes, sir.

9 Q. -- made on the date of the incident in question?

10 MR. WALKER: May I ask a question? Can the judge
11 see the tape?

12 THE COURT: Yeah, I can see it all right.

13 MR. GARDNER: I think they will play it right
14 there.

15 (Whereupon, Court's Exhibit No. 2, the videotape,
16 was played)

17 (Tape stopped)

18 BY MR. GARDNER:

19 Q. We are in the gas station parking lot, is that right?

20 A. Yes, sir.

21 (Tape played)

22 A. That's the interstate exit ramp in front of us.

23 (Tape stopped)

24 BY MR. GARDNER:

25 Q. Sir, I want to make sure I asked you this. That was

1 when you were calling for the drug dog for Officer Gibson,
2 right?

3 A. Actually -- actually whenever you first heard the first
4 conversation he had with me is he said "I'm turning around
5 at the county line." Most of the time if I stop a car or he
6 stops a car, we start that way."

7 Q. Yes, sir.

8 My question is you just got off the phone with him,
9 right?

10 A. Yes, sir.

11 Q. And you were talking about bringing the drug dog,
12 right?

13 A. Yes, sir.

14 Q. And there is no doubt now in your mind that you never
15 mentioned anything about the smell of marijuana?

16 A. To him, no, sir.

17 Q. All right. And there is no doubt now in your mind that
18 Defendant Morris is in custody or detention, because he's
19 being escorted to the restroom, is that right?

20 A. He was going to the restroom and we still have his car
21 stopped, yes, sir.

22 Q. And he's been searched?

23 A. I think it's getting ready to take place.

24 Q. And he's going to be escorted by the state constable,
25 an armed guard, is that right?

1 A. Yes.

2 (Tape played)

3 (Tape stopped)

4 BY MR. GARDNER:

5 Q. Okay. That's Officer Gibson, correct, and he is the
6 drug dog handler?

7 A. Yes, sir.

8 Q. And he is asking for consent at this time, right?

9 A. Yes, sir.

10 Q. And he's -- "or do I need to get the drug dog out?"

11 A. Yes, sir.

12 (Tape started)

13 (Tape stopped)

14 BY MR. GARDNER:

15 Q. All right. That window is down, is that correct?

16 A. Yes, sir.

17 Q. That window was down when the dog went around and did
18 the search twice, is that right?

19 A. Yes, sir.

20 (Tape started)

21 (Tape stopped)

22 BY MR. GARDNER:

23 Q. There you just continued the search and --

24 A. Yes, sir.

25 Q. -- end up going to the police department, the normal

1 stuff.

2 That's all questions that I have. Thank you, sir.

3 A. Thank you.

4 MR. SPRINGS: Nothing further.

5 We would like to call one other person.

6 THE COURT: All right. You can step down. Thank
7 you, officer.

8 MR. SPRINGS: Just lay that mike, Officer
9 Vinesett.

10 We call Marvin Brown.

11 COMMANDER MARVIN BROWN, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SPRINGS:

14 Q. Tell us your name, please, sir.

15 A. Marvin Brown.

16 Q. And are you the head of the York County narcotics unit?

17 A. Yes, I'm the supervisor.

18 Q. And do you supervise Officer Vinesett's paperwork?

19 A. I do.

20 Q. You told him how you want the paperwork done?

21 A. I approve all of his paperwork. If it's not done the
22 way I want it done -- not the content, so much as I approve
23 it. I red pen it and give it back and he makes changes.

24 Q. Hand me that report right there. It's a court exhibit.

25 Now, a case is done by the HIT team and by the

1 narcotics unit. Are they basically two parts; a standard
2 statewide incident report plus a summary?

3 A. Yes, that's correct.

4 Q. How have you told Officer Vinesett you want him to do
5 the incident report, the statewide report, as opposed to the
6 summary?

7 A. Yeah, the incident report is the first report, the
8 basic report, and it's just the reason for the stop and it's
9 the charges which are found. We do not go into search and
10 seizure. We do not go into indicators. And the reason for
11 that is Freedom of Information Act.

12 The case summary, which is done within five days.
13 Normally it's done the next day, or sometimes that same day.
14 The case summary could be two, three, four, five pages long.
15 That spells out the stop and the reason for the stop and the
16 indicators and all this, but not the incident report.

17 Q. All right. So Officer Vinesett was specifically told
18 by you to make the statewide incident report short and
19 sweet, just the reason for the initial encounter?

20 A. Yes. All the -- there are 25 of us on the drug team,
21 counting interdiction. We all do it that way. Every
22 incident we do from drug arrests are done that way.

23 Q. Okay. And in the summary in this case, and I think you
24 are holding a copy, did Officer Vinesett go into the odor of
25 marijuana, the Blunt tobacco, and the odor of marijuana on

1 the passenger?

2 A. Yes, and three different -- once on the front page,
3 twice on the second page.

4 Q. Okay. Thank you.

5 MR. SPRINGS: Nothing further. Thank you.

6 MR. GARDNER: No questions, judge.

7 THE COURT: You can step down. Thank you.

8 MR. SPRINGS: That's our proffer on the search of
9 the car.

10 THE COURT: Okay. Mr. Gardner, do you have any
11 witnesses that you wish to call?

12 MR. GARDNER: Judge, no, sir, we don't.

13 THE COURT: All right. I'm ready to hear your
14 argument.

15 MR. GARDNER: Thank you, sir.

16 I believe that -- and I don't -- I believe that if
17 he wants to introduce this evidence, that the burden would
18 be on him, but I want to talk a little bit about this law on
19 for Williams, Jones, and Ricardo, but I want to skip down to
20 what I think is the heart of the matter in this case.

21 Assuming that everything else was right, and we
22 dispute that, but just for the sake of argument, as in -- as
23 they might say, judge, once that dog did not alert on that
24 car, there was no more reasonable articulable suspicion of
25 additional crime or criminal activity taking place. They

1 had nothing to do from then on. That's the heart of the
2 matter, judge. No articulable suspicion at that point in
3 time. He's --

4 I will go into the Williams law, because I think
5 it's important, because it talks about these things. We all
6 know what the police are allowed to do, once they make a
7 stop. If they make a legal stop, then they are allowed to
8 do the driver's license check, the computer check, write the
9 ticket, if they want to, or a warning ticket, or whatever.

10 They can only prolong that stop if they have one
11 of two things that happen. One is the reasonable
12 articulable suspicion of further criminal activity,
13 something that's a crime that's afoot at the time; or two, a
14 consensual encounter. This -- I don't think I need to talk
15 about consensual encounter, because they were not even
16 allowed to go to the bathroom without having a guard, so
17 consensual does not apply, so we have to look at whether or
18 not there was reasonable and articulable suspicion of
19 criminal activity under foot. And they need to justify each
20 and every step that they have for continuing or prolonging
21 the detention.

22 We have testimony that a normal traffic stop for
23 this officer, a normal traffic stop, five minutes. This one
24 lasted about fifteen minutes. This one actually
25 transitioned, judge, from a traffic stop with some

1 indicators into what I would call a full-blown criminal drug
2 investigation. We have the people detained. We have -- as
3 far as the Williams court and the other court cases that
4 support that, we have got almost the same thing there. We
5 have got three armed guards, three police officers. We have
6 got the dog there. We have got the people that are not free
7 to go.

8 There is no justifiable reasonable articulable
9 reason to detain these fellows any longer than -- or as long
10 as they did. They basically went on a fishing expedition.

11 I'll consent to some of these indicators are what
12 they are, indicators. But standing alone, none of them are
13 enough to prolong the search or to prolong the detention,
14 and certainly not evidence of further criminal activity. No
15 evidence of further criminal activity. He's not allowed to
16 do that.

17 The big thing, though, judge, and I can't find any
18 case law on it. There may be and I may have missed it, but
19 I can't find any case law on it, as far as what to do when
20 the dog says no. I mean, I believe it's obvious to
21 everybody in this courtroom that the dog went around twice
22 and didn't hit, didn't alert. They can say it's raining, it
23 might be something, but that's -- if the rain was a problem,
24 he's had -- the testimony is his experience with the drug
25 dog, he's seen the drug dog several times. If he thought

1 that the rain was going to be a problem, why bother calling
2 the dog?

3 One of the telling factors of this is the fact
4 that if you smelled the odor of marijuana, that would be the
5 first thing that he did when he radioed your canine friend
6 to come down there, "I smelled marijuana in the car."

7 Or, quite frankly, judge, you smell marijuana in
8 the car, you search the car, the passenger's side of the
9 car.

10 I submit that the odor of marijuana is not as
11 strong an argument as the State has set forth. For those --
12 it's just a credibility issue. And all these cases on the
13 Fourth Amendment turn on the facts and turn on the
14 credibility. We have got the facts that this was an
15 unreasonable search, an unreasonable prolonged detention.

16 But assuming that he did smell marijuana, judge, I
17 haven't found any cases in South Carolina that talk about
18 burnt marijuana. We have got testimony in here that's what
19 he smelled, but I have got a lot of Federal Court cases that
20 talk about cases just like this. I know they are not
21 binding on this court, but they are certainly persuasive,
22 and the logic makes sense to me, Your Honor.

23 For consideration, I would like to hand one of
24 those up, if I may. They are all about the same, and this
25 court may be aware of that, but basically stands for the

1 proposition that if an officer during a routine traffic stop
2 smells the odor of burnt marijuana - that's what we have got
3 here in this case, and, the facts most favorable to the
4 State - then he has probable cause to search the compartment
5 of the vehicle. The United States Supreme Court has said
6 that you can search for what you are looking for. Logically
7 what you are looking for, where it can be, and where it can
8 be is where you can search. The officers exact testimony
9 comported with that. I asked him "did you search for what
10 you were looking for?" And that's what he was doing. The
11 only thing that he and I disagree on was -- I said "you are
12 looking for burnt marijuana," and he said he was looking for
13 marijuana.

14 Even if he smelled the marijuana and even if that
15 gave him the right to search the compartment of the car to
16 look for burnt marijuana, he found, undisputed testimony on
17 the record, no evidence of any contraband. So, therefore,
18 he did not have the right to search the trunk. That's what
19 all these Federal Court cases say.

20 What distinguishes those Federal Court cases,
21 judge, is this in compliance with the United States Supreme
22 Court, is a lot of times that when they search in the
23 compartment of the car, they find evidence of contraband and
24 then you have probable cause to search the vehicle. The
25 smell of marijuana, in a light most favorable to the State,

1 only gives them to search the compartment of the car,
2 because you are not going to look in the trunk for burnt
3 marijuana.

4 THE COURT: Well, the case that you handed up,
5 United States v. Parker, was the 10th Circuit Court of
6 Appeals.

7 MR. GARDNER: Yes.

8 THE COURT: And then I'm going to point this out
9 to you. Maybe Mr. Springs will consent that you have been
10 discussing says "the odor of marijuana in the passenger
11 compartment of the vehicle is not, however, standing alone
12 establish probable cause to search the trunk of the
13 vehicle," and it cites Neilson.

14 Then it says "rather, an officer obtains probable
15 cause to search the trunk of the vehicle once he smells
16 marijuana in the passenger compartment and finds
17 corroborating evidence of contraband."

18 MR. GARDNER: That's correct. And what they found
19 in Neilson was additional drugs. So what this case is,
20 there is no drugs found, so there was no corroborating
21 evidence to justify searching the trunk.

22 THE COURT: Well -- okay.

23 MR. GARDNER: Yes, sir. Thank you, judge.

24 THE COURT: Anything, Mr. Springs?

25 MR. SPRINGS: No, Your Honor. If you have read

1 our brief, I would simply refer to it and say that the odor
2 of marijuana is ample probable cause to search this vehicle
3 and any container or area in it which could obtain the
4 object of the search, which was the marijuana, which would
5 presumably be green marijuana and not something that's
6 disappeared into smoke.

7 THE COURT: Well, I'm going to deny the motion to
8 suppress. I find that the detention in this case did not go
9 beyond the scope of the stop, considering that they had a
10 reasonable suspicion of a serious crime and that they --
11 serious, they don't mean, I don't believe this case -- this
12 is Chardo was talking about the categories of serious,
13 statutory serious, and most serious. I think he's talking
14 about something other than reasonable suspicion, some minor
15 offense, which, of course, possession of marijuana is -- not
16 just simple possession of marijuana, first offense, is not
17 what most people consider a serious crime, but I believe the
18 officer did have objective reasonable and articulable
19 suspicion of criminal activity from the smell of marijuana
20 and based on his training and knowledge of the hollowing out
21 of the blunts to be used as a vehicle for smoking.

22 It's a little different, but it's analogous,
23 anyway, to having seen a crack pipe, or something like that.
24 This, of course, is something that you buy in the store. I
25 guess you buy crack pipes in the store, too.

1 I don't find that the Red Bull Energy gave any
2 validity to the reasonableness of the search. I think we
3 are going a little far when we start basing searches on soft
4 drinks that -- I don't remember. My kids do, and I hate to
5 think they got stopped and they got searched just because
6 they had a Red Bull Energy can in their car.

7 I don't see any real difference, although, the
8 10th Circuit case that we talked about a moment ago, it just
9 talked about the odor of marijuana, but I don't see any real
10 significant difference in burnt marijuana and raw marijuana.
11 There has been no testimony by anybody that -- in fact,
12 Officer Vinesett, to the contrary, that black and mild and
13 burnt marijuana have the same smell. In fact, he testified
14 that they do not. I find his testimony is credible.

15 I find that the stop and detention, while it was
16 about -- I have got about thirteen minutes, based on the
17 times that I was jotting down, but I believe it was only
18 five minutes -- I have trouble reading my notes, but I
19 believe it was only about five minutes before they -- from
20 14:07 to 14:12. I believe about 14:12 was when they got the
21 passenger out and indicated he smelled marijuana, or at
22 least I have got a statement about that within five minutes,
23 but I think detention was not excessively long. I don't
24 know there is any bright line test for what is or is not a
25 reasonable time.

1 I did struggle a little bit, quite candidly, even
2 before you brought it with the dog not alerting, how that
3 factors in. I don't know that -- again, if you use the word
4 bright line, but I don't believe there is any bright line
5 indicator -- that's not the right word. I'm having trouble
6 articulating.

7 I don't think there is any requirement that chain
8 of suspicion is broken by some other event, such as the dog
9 not alerting. I guess the courts will have to decide that,
10 just like they will have to decide what is burnt marijuana
11 smell, but I don't think that they had any obligation to
12 stop the search. I don't believe that -- that certainly
13 didn't mediate or do away with the fact that he had smelled
14 marijuana. Whether the dog smells it or not, the officer
15 testified he did. The dog's nose may be better, and we
16 usually don't see officers running around sniffing like we
17 do a dog, but I affirmatively find, so this would hopefully
18 be clear on the record, that there was no -- that there was
19 no requirement that the search stop and detention stop -- or
20 that the detention stop at the time the dog did not alert.

21 And, as I have already said, I find that based on
22 the main indicator, the smell of marijuana. Also the
23 blunts, his knowledge of how blunts are used and the
24 evidence that, as shown through his testimony and as shown
25 in the photographs, that tobacco had been spilled in the car

1 on the floorboard and the presence of the hollowed out
2 portions in the cups, the Exhibits 3 and 2. So I deny the
3 motion.

4 Let me -- that includes the search at the -- after
5 the car was towed. I believe once the car was towed and in
6 the possession of law enforcement, they had a right -- in
7 fact, I think they have got an obligation to do an inventory
8 search so that they will know what's in there while it's in
9 their possession and someone won't come in later and say "I
10 had \$3,000 in the trunk and when you gave my car back, the
11 \$3,000 wasn't there," so I deny the motions.

12 MR. WALKER: Your Honor, can I ask one question?

13 THE COURT: Yes.

14 MR. WALKER: We could still argue before the jury
15 that it's illegal, right? You will charge Fourth Amendment,
16 or the applicable --

17 THE COURT: I have never charged -- I don't know.
18 You would have to show me some law on that. This is a --
19 I'm the judge of the facts -- the judge of the law --

20 MR. WALKER: Yes, I understand that.

21 THE COURT: -- and this is a legal question, not a
22 fact question, I don't believe.

23 MR. WALKER: All right.

24 THE COURT: So I'm going to find -- unless you can
25 show me some law. I have never had anybody even ask that.

1 That doesn't mean that you are wrong, but --

2 MR. WALKER: Well, I don't know if I'm right, to
3 be honest with you.

4 THE COURT: Well, the law that comes out of Conway
5 is usually pretty good, but -- and we certainly enjoy having
6 Judge Hyman here this week, but I'm not going to -- unless
7 you, between now and when we get to closing arguments, find
8 some law, then I'm not going to allow that to be --

9 MR. WALKER: Okay.

10 THE COURT: -- to be argued. That's a legal
11 question.

12 MR. WALKER: Thank you.

13 MR. SPRINGS: Now, at this point our jury panel
14 should be downstairs. We do have a Jackson v. Denno, which
15 wouldn't take very long. We can go ahead and do that now.
16 All our necessary people are here, or we can pick the jury.

17 THE COURT: Why don't we go ahead and do it.

18 MR. SPRINGS: Very good.

19 Officer Vinesett, if you will take the stand.

20 THE COURT: You are still under oath.

21 I forgot to mention, while I don't think in and of
22 itself stories about the trip to Atlanta, which are arguably
23 not really inconsistent, you could be going to see girls and
24 watch them play basketball, with the some discrepancy in
25 those may have heightened the suspicion, but I find that the

1 suspicion existed -- the reasonable articulable suspicion
2 existed, regardless of those inconsistencies. I'm not
3 relying on those inconsistencies.

4 MR. SPRINGS: And you could say he had probable
5 cause to search?

6 THE COURT: He had probable cause to search, yes.

7 MR. SPRINGS: Thank you, sir.

8 DIRECT EXAMINATION BY MR. SPRINGS:

9 Q. Now, Officer Vinesett, we have just watched a movie, a
10 video, which is been marked as a Court's Exhibit. Did you
11 watch the movie?

12 A. Yes, sir.

13 Q. And on the movie it showed you interacting with Mr.
14 Kenneth Morris, the defendant here, and his companion, Mr.
15 Brandon Nichols, on February 6th, 2008. And you said "hook
16 them up," and I think you told these fellows they were under
17 arrest. Did you see that?

18 A. Yes, sir.

19 Q. Now, after you arrested them, did you read their
20 rights, according to Miranda, to them?

21 A. Yes, sir.

22 Q. And where were they when you read them those rights?

23 A. In the back seat of my patrol vehicle.

24 Q. How many minutes would you say it was after you said
25 "hook them up. You guys are under arrest," I think you said

1 for trafficking. How many minutes would you say that it
2 was?

3 A. If I had to guess, one to two --

4 Q. Okay.

5 A. -- if that. I don't recall.

6 Q. Okay. As you hooked them up, were they handcuffed?

7 A. Yes, sir.

8 Q. And did you hurt them in any way?

9 A. No, sir.

10 Q. And did anybody strike either one of these men, Mr.
11 Morris or his companion, Nichols?

12 A. No, sir.

13 Q. And were they together in the police car?

14 A. Yes, sir.

15 Q. So you read one Miranda Rights to two people?

16 A. Yes, sir.

17 Q. All right. And did they both look sober and in their
18 right mind?

19 A. Yes, sir.

20 Q. Did they both appear fairly intelligent?

21 A. Yes, sir.

22 Q. Did they both speak good English?

23 A. Yes, sir.

24 Q. Was anybody threatening them, being mean to them, or
25 acting like they were going to cause them any harm, anybody?

1 A. No, sir.

2 Q. Anybody making them any promises of wonderful things if
3 they would talk to you?

4 A. No.

5 Q. Please tell the court the Miranda Rights that you gave
6 them to Mr. Kenneth Morris and his companion that day.

7 A. "You have right to remain silent.

8 "Anything you say can and will be used against you in a
9 court of law.

10 "You have the right to talk to a lawyer and have him
11 present with you while you are being questioned.

12 "If you cannot afford to hire a lawyer, one would be
13 appointed to represent you before any questions, if you
14 wish.

15 "You can decide at any time to exercise these rights
16 and not answer any questions or make any statements.

17 "Do you understand each of these rights I have
18 explained to you?"

19 Q. Now, did Mr. Kenneth Morris indicate that he understood
20 what you just told him?

21 A. Yes, sir.

22 Q. Did Nichols also indicate he understood them?

23 A. Yes.

24 Q. After you read their rights, where did you take these
25 fellows?

1 A. To the Rock Hill Police Department.

2 Q. Okay. And how long after reading the rights did you
3 proceed over to the Rock Hill Police Department with Mr.
4 Morris?

5 A. Shortly thereafter.

6 Q. Would you say within five minutes?

7 A. Yes, sir.

8 Q. And any problems? Anything happen on the way to the
9 police station?

10 A. No, sir.

11 Q. Were you mean to them or threatening them on the way to
12 the police station?

13 A. No, sir.

14 Q. Did they complain that they were hurting, or sick, or
15 in any distress on the way?

16 A. No, sir.

17 Q. And when you got to the police decision, were they
18 taken into the police station?

19 A. Yes, sir.

20 Q. And was your supervisor, Marvin Brown, there?

21 A. Yes, sir.

22 Q. Did he sort of take charge of Mr. Kenneth Morris at
23 that point?

24 A. He -- I can't remember exactly which one, but he did
25 speak to both of them, I believe, at one point, but he did

1 take one of them and speak with them --

2 Q. Okay.

3 A. -- about the charges.

4 Q. All right. And up and to the time you turned Mr.
5 Kenneth Morris over to Marvin Brown, did you promise him, or
6 threaten him, or see anybody promise him anything, or
7 threatening him in any way?

8 A. No, sir.

9 Q. All right. Thank you very much.

10 And if you would answer any questions that the defense
11 attorney has.

12 CROSS EXAMINATION BY MR. WALKER:

13 Q. Officer Vinesett, you say that you gave them the
14 Miranda Rights as you were transporting them, and I'm
15 specifically talking about my client here, Mr. Morris, is
16 that correct?

17 A. I believe right before we left. I'm --

18 Q. Right before you left?

19 A. Right.

20 Q. Did you read them the rights, sir, or -- like you just
21 pulled out your card from your pocket --

22 A. Yes.

23 Q. -- you read it to them?

24 A. Yes, sir.

25 Q. So you did the same thing there on the scene then? In

1 other words, you pulled your card out of your pocket there,
2 too?

3 A. Yes, sir.

4 Q. All right. Now, sir, let me ask you this. At that
5 point in time was this video camera and sound system turned
6 on in your car?

7 A. Yes, sir.

8 Q. It was?

9 And did it remain turned on all of the way to the Rock
10 Hill Police Department?

11 A. Yes, sir.

12 Q. Okay. And during that time that they were in the back
13 seat of the car, is it your testimony that this young man,
14 Mr. Morris, confessed?

15 A. In the back seat?

16 Q. Yes.

17 A. I don't recall that.

18 Q. Okay. In other words, when you read him the Miranda
19 Rights, what did he state regarding the drugs?

20 A. I would have to play the tape back, but I don't
21 remember him --

22 Q. You don't recall. Okay.

23 Where was that tape made, sir?

24 A. As far as --

25 Q. When Mr. Morris -- when you say Mr. Morris said

1 something about knowing about the drugs, where was that tape
2 made?

3 A. The VHS tape?

4 Q. Yes, sir.

5 Is his confession on this tape?

6 A. No, sir.

7 Q. It is not?

8 A. No.

9 Q. All right, sir.

10 Now, where then did he confess?

11 A. Possibly at the Rock Hill Police Department. That's
12 where he was taken.

13 Q. You don't recall?

14 A. I didn't talk with him about --

15 Q. You did not talk with him?

16 A. No.

17 Q. So in your presence, sir, he did not make any type of
18 confession?

19 A. Not that I recall.

20 Q. All you did is you read him the Miranda Rights?

21 A. Yes, sir.

22 Q. Okay.

23 MR. WALKER: Nothing else.

24 MR. SPRINGS: Nothing further. Thank you. If you
25 would, come on down.

1 We will call Marvin Brown.

2 THE COURT: You are still under oath.

3 THE WITNESS: Yes, sir.

4 DIRECT EXAMINATION BY MR. SPRINGS:

5 Q. Commander Brown, I have a little microphone up there,
6 if you -- I'm trying to get the witness audio up as much as
7 possible.

8 A. Okay.

9 Q. Thank you.

10 On February the 6th, 2008, did you meet with Officer
11 Vinesett over at the Rock Hill police station?

12 A. I did.

13 Q. And did he have Mr. Kenneth Morris, the defendant here,
14 with him when you met up with him at the Rock Hill police
15 station?

16 A. Yes, and the other defendant, Mr. Nichols.

17 Q. Okay. When they came in the police station, did you
18 kind of take charge of talking with Mr. Kenneth Morris?

19 A. Yes. Mr. Nichols was placed in one interview room, Mr.
20 Morris was placed in the other. No particular reason. I
21 just walked in and talked to Mr. Morris first.

22 Q. All right. And when you saw him, did he look to be in
23 good health and okay?

24 A. Yes.

25 Q. Did he look to be suffering in any way?

1 A. No, he looked fine.

2 Q. Did he look drunk or intoxicated in any way?

3 A. No.

4 Q. Before you talked to him, did you take his handcuffs
5 off?

6 A. We normally take the handcuffs off when they come into
7 the interview room, but I can't remember if the handcuffs
8 was off. I would say yes, but I don't remember.

9 Q. Okay. Did you give him a chair to sit in when you
10 talked to him?

11 A. Yes. There is seven chairs in that room and he and I
12 were the only two there in the room.

13 Q. Okay. All right.

14 And did you -- was it communicated to you that he had
15 been given his Miranda Rights and understood them?

16 A. Yes.

17 Q. And I'm going to show you a copy of a typed interview
18 sheet.

19 MR. SPRINGS: Can I have this marked?

20 (Drug Enforcement Unit Report marked as State's
21 Exhibit No. 9 for identification)

22 BY MR. SPRINGS:

23 Q. We will lay that right there.

24 Did you later, after you talked to Mr. Morris, type up
25 a report of your interview?

1 A. I did, the same day.

2 Q. And State's Exhibit 9, is that a copy of your typed up
3 interview report?

4 A. It is.

5 Q. Okay. All right.

6 And did you -- before you got into what they said, did
7 you make some notes about where they were given their rights
8 and things like that?

9 A. Yes, I did.

10 Q. And where did you note that they had been given their
11 Miranda Rights?

12 A. I just said "Officer T. Vinesett read both Morris and
13 Nichols their rights at the scene."

14 Q. Okay. Very good. If you would just go ahead and lay
15 that down.

16 Now, did you threaten Mr. Kenneth Morris in any way
17 before you started talking to him?

18 A. In the statement?

19 Q. Did you threaten Mr. Morris?

20 A. Oh, threaten. I thought you said reference.

21 No, I didn't threaten him.

22 Q. You didn't threaten him.

23 A. I normally don't wear my firearm in the office. I lock
24 it up.

25 Q. Did he seem to be fairly intelligent?

1 A. Yes, he did.

2 Q. Was he complaining of any health issues or pain?

3 A.. No, he was not.

4 Q. And did he seem to understand English quite well?

5 A. Yes.

6 Q. Did you make him any promises to get him to have a
7 conversation with you?

8 A. No.

9 Q. Did he indicate he was willing to talk with you and
10 have a conversation with you?

11 A. Yes.

12 Q. Okay. And did you, in fact, have a conversation with
13 him?

14 A. I did.

15 Q. And after you had that conversation, at some point
16 afterwards did you type your notes of what the discussion
17 included?

18 A. I did.

19 Q. And read to the court what that discussion included.
20 If you need to refer, refer to State's Exhibit 9.

21 Just tell the court about the conversation, the notes
22 that you made of the conversation.

23 A. It's just a couple of sentences here, the meat of it.
24 It says "Mr. Morris stated Nichols had rented the vehicle,
25 but that he was driving the vehicle. They were coming from

1 Atlanta. They had taken I-20 going up I-77. Morris stated
2 that he and Nichols were going to split the pills, but that
3 the marijuana belonged to him. Nichols stated that he had
4 been" -- which is a typo. It's -- in the statement it says
5 Nichols, "but Morris stated he had been charged with cocaine
6 and marijuana in the past" aren't --

7 Q. Okay, let me make that clear.

8 A. Okay.

9 Q. I'm looking at the typed up one. That last sentence,
10 typed up, says "Nichols stated that he had been charged with
11 cocaine and marijuana in the past." Did you mean to say
12 Morris, the person that you were talking to?

13 A. I did.

14 Q. Okay. Go ahead with the rest of it.

15 Did the supervisor at Rock Hill, Lieutenant Dalton, get
16 involved in this interview?

17 A. Yes, I talked to Mr. Morris, I talked to him briefly
18 and I told him I was going to speak with Mr. Nichols and I
19 would like for him to tell me the truth about what happened,
20 and I told him that I would send a copy of the report to the
21 prosecutor to show that, you know, they cooperated, and I
22 would like for their stories to match. I talked to him.
23 After he told me the story, he was pretty open about it.

24 Lieutenant Dalton walked into the conference room. The
25 conference room was unlocked. The door was open.

1 Lieutenant Dalton walked into the conference room as we were
2 finishing up and I had Mr. Morris repeat the fact that the
3 pills were going to be split between him and Mr. Nichols and
4 that he owned the marijuana.

5 Q. Okay. So you were in the room when Lieutenant Dalton
6 came in and Mr. Morris continued talking?

7 A. Yes, I just -- we were about to finish and I had Mr.
8 Morris repeat what he just told me about the pills and the
9 marijuana to Lieutenant Dalton.

10 Q. Go ahead and finish reading the rest of your typed up
11 interview.

12 A. Talking about the second statement later that day?

13 Q. And -- well, there is more after we talked about that
14 typo where you got the name Nichols --

15 A. Oh, I'm sorry.

16 Q. -- instead of Morris. Finish reading the rest the
17 interview, the typed up --

18 A. "As the interview concluded, Lieutenant Jason Dalton
19 interviewed Morris and Morris repeated that the pills were
20 split between him and Nichols and they paid four or five
21 dollars each for them and the marijuana belonged to him."

22 Q. Okay. And keep going. There is another page.

23 A. On the second page, there is a second interview. Later
24 Mr. Nichols and Mr. Morris were going to be transported to
25 the county jail and they were going to be housed together,

1 so they wanted to sit in the same room, after I interviewed
2 Mr. Nichols, so I had no problem with that. I let them sit
3 in the same room for five or ten minutes. And when we
4 walked them back to the jail, I was walking with them, and
5 Mr. Morris backed up a little bit on the marijuana. He said
6 that he didn't want to take the -- he couldn't take the
7 marijuana charge. So I looked at Mr. Nichols and asked him
8 if he wanted -- did he have any comment on that and he said
9 he would come back and talk to me when he got out of jail.

10 So in the beginning Mr. Morris said they were going to
11 split the Ecstasy pills and the marijuana was solely his.
12 It was about a half pound of marijuana. And then later, a
13 few minutes later, after they had an opportunity to talk, he
14 said that he didn't want to take the marijuana or he
15 couldn't take the marijuana.

16 I did interview Mr. Nichols also, which his story
17 matched Mr. Morris' story, about as far as splitting the
18 pills and whose marijuana it belonged to.

19 Q. Okay. Thank you very much.

20 MR. SPRINGS: That's all I have.

21 CROSS EXAMINATION BY MR. WALKER:

22 Q. Your name is Mr. Brown?

23 A. Yeah, Marvin Brown.

24 Q. Marvin Brown.

25 Mr. Brown, I just have a few questions for you.

1 You testified earlier that you are the supervisor of
2 this HIT squad, or this -- is that right?

3 A. Yes, sir, HIT team. It's a Highway Interdiction Team.

4 Q. And you are the supervisor of that in York County, is
5 that correct?

6 A. I am.

7 Q. So how long have you been in law enforcement, sir?

8 A. Thirty-three years.

9 Q. How long have you been in your present capacity as a
10 director of the HIT team?

11 A. Ten years.

12 Q. Ten years.

13 And no doubt you have interviewed hundreds of people,
14 if not several thousand people in that career, correct?

15 A. That's correct.

16 Q. Okay. Let me ask you this.

17 Now, as I understand it, this interview with Mr. Morris
18 took place in a conference room at the police department,
19 correct?

20 A. Yes, sir.

21 Q. And other than Mr. Morris and yourself, sir, was there
22 ever anybody else in that room?

23 A. Lieutenant Dalton.

24 Q. Okay. Was he there the whole time?

25 A. He came in at the end of the interview.

1 Q. He came in at the end of interview. All right.

2 A. Yes.

3 Q. Now, this interview that you say that you had with him,
4 as I understand it, you did not reread him the Miranda
5 Rights, correct?

6 A. That's correct.

7 Q. Because they had already been read to him on the scene?

8 A. Yes.

9 Q. By -- all right.

10 Now, was this interview recorded?

11 A. No, sir.

12 Q. It was not?

13 A. No.

14 Q. Was it videotaped?

15 A. No, sir.

16 Q. Okay. At any point in time after Mr. Morris said to
17 you what you say he said, did you subsequently ask him to
18 sign a written confession?

19 A. No, sir, I don't think so.

20 Q. You did not?

21 A. I typed the interview.

22 Q. Are you -- did he initial the interview, or anything
23 like that? Is there any written confession from him?

24 A. No, sir.

25 Q. Now, when you were interviewing him -- let me ask you

1 this. Did you tell him that you would help him get a lower
2 bond if he confessed?

3 A. No, sir, we don't get involved in bonds. I tell
4 everyone we do not get involved in bonds with the
5 magistrates here. We made an agreement with the magistrates
6 we don't get involved in bonds. I have never told anybody
7 that I would get them a lower bond, because I don't.

8 Q. All right. And you say that he subsequently told you
9 that -- something to the effect he couldn't take credit or
10 take responsibility for the marijuana, only the half of the
11 pills, right?

12 A. No, sir. In the first interview he said half the pills
13 belonged to him and the marijuana. When I was walking him
14 back to the jail, he just said "I can't take responsibility
15 for the marijuana." He didn't say anything about the
16 pills --

17 Q. Okay.

18 A. -- at that point.

19 Q. Okay. The marijuana. I misunderstood you. I'm sorry.

20 All right. Prior to his confession to you, did you
21 tell him anything about being able to help himself, if he
22 confessed, and help you set people up and things of that
23 nature?

24 A. I told him that anything that he said, that I would
25 relay it to the prosecutor and the prosecutor could take it

1 into consideration. I don't have the right or authority to
2 make those decisions.

3 As far as him wanting to work, I usually -- I don't
4 remember talking to him about that, because he's from out of
5 town, but sometimes I do advise them that they have -- if
6 they want to, if they want to come by, we will sit down and
7 talk with them to see if they can do anything to help us or
8 help DEA in the advancement of something, maybe going back
9 to Atlanta or something. I don't remember talking to him
10 about that.

11 Q. Okay. Now, I think it was State's Exhibit 9? Yes.
12 State's Exhibit 9 is your documentation of your interview
13 with Mr. Morris, right?

14 A. Yes, sir.

15 Q. What about the underlying -- did you take notes when
16 you were talking to him?

17 A. No, sir, I didn't -- I don't -- I didn't take notes
18 talking to him. It was a brief interview. And after
19 interview was over with, I walked out and typed it up. The
20 computer is right beside the conference room.

21 Q. So there are no actual handwritten notes of yours,
22 merely a computer, correct?

23 A. That's correct.

24 Q. Okay. And there is no videotape of this, of him
25 sitting in there, and there is no tape recording, correct?

1 A. That is correct, and there is a reason for that, but we
2 are working on that.

3 Q. Okay. Well, go ahead. Tell me about that.

4 A. I answer to an eight member board over this HIT team
5 and over the drug unit. It's a -- the FBI -- we do our
6 interviews kind of based on the way the FBI does them.

7 The board is over all the law enforcement agencies in
8 York County. We are trying to work out a system where if
9 who we interview -- when we interview, who do we tape. If
10 we tape all interviews in the station; if we tape all
11 interviews outside. We are looking at protocol. You know,
12 when do we record; what type of crimes do we record; after
13 we record, what do we do with all the tapes; how do we
14 handle the tapes. In the prosecutor's office, is buying a
15 big media center.

16 So we are working on that, but until we get the okay
17 from the law enforcement heads in this county, the tapes
18 that are being done now tapes in the vehicles and tapes on
19 drug dealers that I work with that's we have a protocol for.
20 But for interviews, we don't tape, videotape or audio taped
21 interviews. The FBI says it shows you techniques, but in
22 York County the main thing is we are trying to work up some
23 kind of protocol as to who do we tape; when do we tape; how
24 often do we tape; how do we set these types up; and after
25 they are taped, how do we manage these tapes and control

1 these tapes, because law enforcement countywide wants to do
2 the same thing. So we don't -- as it stands now, we don't
3 record, tape record, or videotape interviews.

4 Q. Okay. So at this period it's not a process that y'all
5 go through in situations like this?

6 A. He was not saying -- we don't interview and videotape
7 any interviews.

8 Q. That's what I'm saying.

9 A. He wasn't singled out.

10 Q. Okay, thank you very much, sir. Appreciate it.

11 MR. WALKER: Nothing further. Thank you.

12 THE COURT: You can step down, Mr. Brown.

13 MR. SPRINGS: Jason Dalton, please.

14 LIEUTENANT JASON DALTON, having been first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. SPRINGS:

17 Q. Tell us all your name, sir.

18 A. Jason Dalton.

19 Q. And are you now a detective with the Rock Hill Police
20 Department?

21 A. Yes, sir, I'm assigned as a lieutenant over the robbery
22 and homicides of our police department.

23 Q. All right. Before you were put into that role, were
24 you the supervisor of the -- of what's known as the Drug
25 Enforcement Unit East, Rock Hill City Police Department

1 based team?

2 A. Correct, I worked in narcotics from -- I believe it was
3 the end of 1996, or 1997, until January of this year.

4 Q. Okay. So on February 6th, 2008, were you the
5 supervisor of the narcs that worked out of the Rock Hill
6 police station?

7 A. Correct, I was the supervisor over the Rock Hill
8 office.

9 Q. Were you over there that afternoon when Mr. Kenneth
10 Morris was brought in?

11 A. Yes, sir.

12 Q. Were you aware of Mr. -- of Officer Marvin Brown
13 interviewing him in a conference room?

14 A. Yes, sir.

15 Q. Did you ever come in and -- come into that room?

16 A. I went into that room briefly. And at that point
17 Commander Brown had Mr. Morris repeat what he had just told
18 him regarding the Ecstasy and the marijuana.

19 Q. All right.

20 And was Mr. Morris being threatened in any way?

21 A. No, sir.

22 Q. Was he being made any promises?

23 A. No, sir.

24 Q. And did he look to be healthy and comfortable and not
25 hurting or in pain?

1 A. He seemed fine.

2 Q. Okay. Could he speak English?

3 A. Yes.

4 Q. And did everything that you saw show him to be talking
5 freely and voluntarily?

6 A. Yes.

7 Q. And this -- I'm showing you State's Exhibit 9. That's
8 Officer Brown's typed up interview. Quietly to yourself
9 read the last part and then I want to ask you a question.

10 A. (Witness reviewing document).

11 Q. All right. Do you remember what Mr. Morris said, once
12 you got in the room?

13 A. Yes, sir, just that sentence.

14 Q. Okay.

15 A. The end of the first page.

16 Q. Tell the court what you heard.

17 A. That he repeated that the pills were to be split
18 between him and the other individual, Mr. Nichols. They had
19 paid four or five dollars for each of them, that the
20 marijuana belonged to him.

21 Q. Belonged to who?

22 A. Mr. Morris.

23 Q. The person speaking?

24 A. Correct.

25 Q. Okay. All right. Thank you very much.

1 MR. SPRINGS: Nothing further.

2 CROSS EXAMINATION BY MR. WALKER:

3 Q. All right. So you came in the room towards the
4 conclusion of the interview, lieutenant?

5 A. Yes, sir.

6 Q. And let me ask you this. Did you specifically ask him
7 any questions?

8 A. Not that I remember, no, sir.

9 Q. You did not?

10 A. No.

11 Q. Okay. All right, sir.

12 So obviously you didn't give him any Miranda Warnings
13 or anything like that, correct?

14 A. No, sir.

15 Q. Okay. Did you make a report independent of State's
16 Exhibit No. 9?

17 A. You mean did I do a separate interview?

18 Q. Yes, sir.

19 A. No, sir.

20 Q. You did not do a separate report at all, correct?

21 A. No, sir.

22 Q. Okay. And this was in early 2008, correct?

23 A. February, I believe, yes, sir.

24 Q. February of 2008.

25 And since that time, up until January of 2009, you have

1 conducted how many other interviews or participated in how
2 many other interviews? Just take a guess. Over five
3 hundred?

4 A. No.

5 Q. Three hundred?

6 A. Numerous. I mean, numerous.

7 Q. Numerous?

8 A. Correct.

9 Q. Thank you.

10 MR. SPRINGS: Nothing further. That's it.

11 THE COURT: You can stand down.

12 MR. SPRINGS: That's our proffer on Jackson v.

13 Denno.

14 THE COURT: Does the defense have any witnesses to
15 call?

16 MR. WALKER: No, sir.

17 THE COURT: Any argument?

18 MR. WALKER: No, sir.

19 THE COURT: All right. I find that by a
20 preponderance of the evidence that prior to giving his
21 statement, Mr. Morris was properly advised of his Miranda
22 Rights. He was advised he had a right to remain silent;
23 that he had the right to have an attorney, that --

24 Well, let me start over. He had a right to remain
25 silent; anything he said could be used against him in trial;

1 that he had the right to have an attorney before questioning
2 and during questioning; and that if he could not afford an
3 attorney, the State would be required to appoint one at no
4 expense to him; that he could exercise his rights at any
5 time.

6 I further find that the statement was not the
7 product of any threats, coercion, promises. I find that
8 there is no evidence that Mr. Morris suffered from any
9 mental or physical problems; no intoxicated state. He
10 appeared to understand. There is nothing to indicate any
11 inability to understand what was being said. Nothing
12 coercive about the sentence -- about the setting.

13 I guess an argument could be made that if the
14 search -- obviously if the search had been illegal and
15 lacked probable cause, this could possibly be the fruit of
16 poisonous tree argument, but I find that since I didn't find
17 the tree was poisonous, that is, I found probable cause for
18 the search, that there is no issue really here about the
19 statement being fruit of the poisonous tree.

20 Anything else before we get the jury up?

21 MR. SPRINGS: Your Honor, I had marked as an
22 exhibit the car rental agreement. I have a much clearer
23 copy. I would ask that I be permitted to substitute, and
24 that's all I have. We are ready to pick a jury.

25 THE COURT: All right. Anything else?

1 MR. WALKER: No, sir.

2 THE COURT: We will let Mr. Morris have a break.
3 We will all take a break while we get the jury up, so let's
4 get the jury up.

5 Now, the strikes would be five and five.

6 MR. SPRINGS: Yes, sir.

7 MR. WALKER: Yes.

8 THE COURT: Has he been out on bond?

9 MR. WALKER: Yes, sir, he's always showed up, Your
10 Honor.

11 THE COURT: Well, based on the nature of the case,
12 and if I understand he is a North Carolina resident, at
13 least there is some indication that he was in 2008, I'm
14 going to require him to remain incarcerated during the
15 trial.

16 MR. WALKER: Yes, sir.

17 Your Honor, my understanding is we will not go
18 past about five o'clock today, is that correct?

19 THE COURT: Well, it wasn't my understanding, but
20 we can have whatever understanding. I do have some concern
21 that this case is starting today, because I am supposed to
22 be in Columbia tomorrow for a meeting with Judge King. It's
23 not completely necessary that I go, but if we don't finish
24 today, is it the State's intention to pick up Friday?

25 MR. SPRINGS: Yes, sir. We -- we can finish -- I

1 have talked to the defense counsel. We can finish all
2 testimony and get it to the point where it could go to the
3 jury today. That may be five-ish, though. It would be with
4 the court to decide whether it goes to the jury late
5 afternoon or you can wait and take it to the jury Friday
6 morning.

7 THE COURT: I don't mind waiting and doing
8 argument and charge on Friday morning. Y'all are up here
9 from Conway and -- you know.

10 MR. WALKER: No problem with me, judge. I have --
11 my wife has family up here, so --

12 THE COURT: Oh, okay. All right.

13 Mr. Gardner, how do you -- are you happy to be in
14 Rock Hill, too?

15 MR. GARDNER: I'm having a great time, judge.
16 I'll be glad to come back any day that you want me here.

17 THE COURT: Let's do that then. We will try to
18 stop around five today.

19 MR. WALKER: Okay.

20 THE COURT: All right. That's no problem.

21 We will take a break while the jury is coming up.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 (Whereupon, the jury venire panel was brought into
25 the courtroom)

1 THE COURT: Members of the jury panel, I'm John
2 Hayes from Rock Hill and, along with Judge Hyman, I'm
3 holding court here this week. We have already had one case
4 and this is second case we are starting in this courtroom.

5 This is the case of the State of South Carolina
6 versus Kenneth Darrell Morris, II.

7 This is Mr. Morris. Would you please stand?

8 He is represented by Mr. Irby Walker and Mr.
9 Johnny Gardner. You may be seated.

10 The State will be represented by the solicitor's
11 office, Mr. E.B. Springs.

12 The charges against Mr. Morris are possession of
13 marijuana with intent to distribute and trafficking in
14 Ecstasy.

15 It's alleged that these two events occurred here
16 in York County on February 6th, 2008. February 6th, 2008.

17 First, are any of you related by blood or
18 marriage, or are any of you a close personal friend or
19 acquaintance of Mr. Kenneth Darrell Morris, II? If so,
20 please stand.

21 No one stands.

22 Have any of you heard about this case from any
23 source whatsoever, or have any of you formed or expressed
24 any type of opinion which would affect your being able to be
25 fair and impartial in this case?

1 Nobody stands.

2 Were any of you members of the Grand Jury that
3 passed on this indictment, these indictments, at an earlier
4 time? If so, please stand.

5 No one stands.

6 Are any of you aware of any bias or prejudice that
7 you would have towards the State, towards Mr. Morris, or
8 towards these particular charges? If so, please stand.

9 No one stands.

10 Are any of you or a member of your family,
11 immediate family, involved in law enforcement or in the
12 prosecution of criminal cases at any level, anything from
13 the military police and Judge Advocate General's Court, to
14 highway patrol, city police, anything like that? If so --
15 and on the other side, prosecutor, DA, solicitor, anything
16 like that, please stand.

17 All right. What I want to do is ask each of
18 you -- we will start in the front and work our way back.
19 Give me your name and number and tell me why you are
20 standing. Then I will have a followup question for all five
21 you.

22 JUROR NUMBER 101: Christopher Heeg. My cousin is
23 a police officer in Ashtabula.

24 JUROR NUMBER 99: 99. My name is Daniel Haynes.
25 My nephew is a police officer in Waxha, North Carolina.

1 JUROR NUMBER 22: Number 22, Jennifer Brink. My
2 brother is a retired police officer in Charlotte.

3 THE COURT: Yes, ma'am.

4 JUROR NUMBER 184: 184. My name is Sally
5 Polhamus. My brother-in-law is a federal judge.

6 THE COURT: All right.

7 JUROR NUMBER 225: 225. My name is Sherise
8 Thompson. My father-in-law is a narcotics investigator.

9 THE COURT: Where?

10 JUROR NUMBER 225: In West Virginia.

11 THE COURT: In Virginia, okay.

12 Would the fact that you have this relationship
13 with either law enforcement or the court system, if that
14 would prevent you from being fair and impartial in this
15 case, please raise your right hand.

16 If that would prevent you from basing your verdict
17 on the law and the evidence in the trial, please raise your
18 right hand.

19 None do. Thank you. You may be seated.

20 Do any of you have any religious, or
21 philosophical, or deeply personal reasons that you would
22 find it impossible or difficult to render a fair decision in
23 this particular case? If so, please stand.

24 No one stands.

25 I'm not going to ask you to go into particulars of

1 this next question. Just stand. And the fact that you are
2 standing will indicate to me a positive response, but I'm
3 not going to ask you to air your problems before everyone,
4 or your situation.

5 If any of you have been charged with, you or a
6 member of your immediate family, charged with possession of
7 an illegal substance, illegal drugs, or if any of you feel
8 like you have been affected somehow by some event that was
9 precipitated or instigated by someone connected with drugs
10 or have something stolen and you think it was done drug
11 related, or something like that, any of experiences with
12 illegal substances, like that? If so, please stand.

13 All right. Yes, ma'am, your name and number.

14 JUROR NUMBER 203: Cynthia Ruiz, number 203.

15 THE COURT: Would the fact that you have had this
16 experience affect your ability to be fair and impartial in
17 the trial of this case?

18 JUROR NUMBER 203: No.

19 THE COURT: All right. You would be able to base
20 your verdict on the law and the evidence?

21 JUROR NUMBER 203: Yes, sir.

22 THE COURT: Thank you.

23 The following are possible witnesses in this case.

24 If you are related by blood or marriage or if you are a
25 close personal friend or acquaintance of any of these

1 individuals, please stand.

2 Officers L.T. Vinesett.

3 Marvin Brown.

4 Jason Dalton.

5 Also a Constable Wes Scott.

6 Evidence room clerk Barbie Traylor.

7 And a Mr. Brandon Nichols.

8 And a chemist, Ms. Dee Ann Johnson.

9 Are any of you related by blood or marriage, close
10 personal friend or acquaintance of any of those individuals?
11 If so, please stand.

12 No one stands.

13 Anything further from the State?

14 MR. SPRINGS: No, sir.

15 THE COURT: Anything further from the defense?

16 MR. WALKER: No, sir, Your Honor.

17 THE COURT: All right. Do any of you know of any
18 reason whatsoever why you could not or should not serve as a
19 fair and impartial juror in the trial of this case? If so,
20 please stand.

21 No one stands.

22 Have any of you not seen how we draw juries in
23 this type court? If so, raise your hand.

24 All right. Okay. The names would be drawn at
25 random. Each side has a right to remove up to five

1 individuals. We call it striking. If you hear your name
2 called, please come forward. The bailiff will be standing
3 here in the middle of the floor. Stand beside the bailiff.
4 Turn around and face the table where Mr. Springs is seated.
5 He will say either present the juror or excuse the juror.
6 If he says excuse the juror, simply return to your seat. If
7 he says present the juror, turn to the table where Mr.
8 Morris and his attorneys are seated. One of them will say
9 either swear the juror, which means you will take a seat in
10 the jury box, and the bailiff will talk to you about that on
11 your way over, or if they say excuse the juror, again, that
12 means you may return to your seat.

13 All right, Madam Clerk.

14 THE CLERK: Number 199, Tracey Rollins.

15 What say you for the State?

16 MR. SPRINGS: Please present the juror.

17 THE CLERK: Defense?

18 MR. WALKER: Swear her, please.

19 THE CLERK: Please have a seat in the jury box.

20 Number 110, Amanda Howe.

21 What say you for the State?

22 MR. SPRINGS: Please present the juror.

23 THE CLERK: Defense?

24 MR. WALKER: We will excuse her on this particular
25 case.

1 THE CLERK: You are excused from this case.
2 Number 99, Daniel Haynes.
3 What say you for the State?
4 MR. SPRINGS: Please present this juror.
5 THE CLERK: Defense?
6 MR. WALKER: We would excuse him on this
7 particular case.
8 THE CLERK: You are excused from this case.
9 Number 137, Wendy Larsen.
10 What say you for the State?
11 MR. SPRINGS: Please present this juror.
12 THE CLERK: Defense?
13 MR. WALKER: Swear her, please.
14 THE CLERK: Please have a seat in the jury box.
15 Number 135, Kari Kyser.
16 What say you for the State?
17 MR. SPRINGS: Please present this juror.
18 THE CLERK: Defense?
19 MR. WALKER: Swear her, please.
20 THE CLERK: Please have a seat in the jury box.
21 Number 164, Keith Milem.
22 What say you for the State?
23 MR. SPRINGS: Please present the juror.
24 THE CLERK: Defense?
25 MR. WALKER: Swear him, please.

1 THE CLERK: Please have a seat in the jury box.
2 Number 113, Mark Huffstetler.
3 What say you for the State?
4 MR. SPRINGS: Please present this juror.
5 THE CLERK: Defense?
6 MR. WALKER: Swear him, please.
7 THE CLERK: Please have a seat in the jury box.
8 Number 184, Sally Polhamus.
9 What say you for the State?
10 MR. SPRINGS: Please present this juror?
11 THE CLERK: Defense?
12 MR. WALKER: Please excuse the juror on this
13 particular case.
14 THE CLERK: You are excused in this case.
15 Number 96, Tara Harris.
16 What say you for the State?
17 MR. SPRINGS: Please present the juror.
18 THE CLERK: Defense?
19 MR. WALKER: Swear her, please.
20 THE CLERK: Please have a seat in the jury box.
21 Number 213, Ryan Smith.
22 What say you for the State?
23 MR. SPRINGS: Please present this juror.
24 THE CLERK: Defense?
25 MR. WALKER: Swear him, please.

1 THE CLERK: Please have a seat in the jury box.

2 Number 187, Lipi Pratt.

3 What say you for the State?

4 MR. SPRINGS: Please present the juror.

5 THE CLERK: Defense?

6 MR. WALKER: Please present her -- oh, I mean
7 please swear her.

8 THE CLERK: Please have a seat in the jury box.

9 Number 198, Danny Rogers.

10 What say you for the State?

11 MR. SPRINGS: Please present this juror.

12 THE CLERK: Defense?

13 MR. WALKER: Please swear the juror.

14 THE CLERK: Please have a seat in the jury box.

15 Number 108, Alexander Hogue.

16 What say you for the State?

17 MR. SPRINGS: Please present the juror.

18 THE CLERK: Defense?

19 MR. WALKER: Swear him, please.

20 THE CLERK: Please have a seat in the jury box.

21 Number 61, William Epps.

22 What say you for the State?

23 MR. SPRINGS: Please excuse the juror.

24 THE CLERK: You are excused from this case.

25 Number 208, Charles Schroeder.

1 What say you for the State?

2 MR. SPRINGS: Please present this juror.

3 THE CLERK: Defense?

4 MR. WALKER: Swear him, please.

5 THE CLERK: Please have a seat in the jury box.

6 Number 163, Dorothy Mew.

7 What say you for the State?

8 MR. SPRINGS: Please present this juror.

9 THE CLERK: Defense?

10 MR. WALKER: We would excuse her on this
11 particular case.

12 THE CLERK: You are excused from this case.

13 Juror number 206, Marc Schins.

14 What say you for the State?

15 MR. SPRINGS: Please present this juror.

16 THE CLERK: Defense?

17 MR. WALKER: Swear him, please.

18 THE CLERK: Please have a seat in the jury box.

19 THE COURT: Strikes would be one and two. One for
20 the State and two for the defense.

21 THE CLERK: Number 46, Fred Crawford.

22 What say you for the State?

23 MR. SPRINGS: Excuse the juror.

24 THE COURT: You will be excused in this case.

25 Number 169, Larry Mull.

1 What say you for the State?

2 MR. SPRINGS: Please present this juror.

3 THE CLERK: Defense?

4 MR. WALKER: We would excuse him on this
5 particular case.

6 THE CLERK: You are excused in this particular
7 case.

8 Number 203, Cynthia Ruiz.

9 What say you for the State?

10 MR. SPRINGS: Please present the juror.

11 THE CLERK: Defense?

12 MR. WALKER: Excuse her on this particular case.

13 THE CLERK: You have been excused from this case.

14 Number 204, Samuel Rumfola.

15 What say you for the State?

16 MR. SPRINGS: Please present the juror.

17 THE CLERK: Defense?

18 MR. WALKER: Swear him, please.

19 THE CLERK: Please have a seat in the jury box.

20 THE COURT: Anything from the State involving the
21 striking of the panel?

22 MR. SPRINGS: May we approach just briefly?

23 THE COURT: Yes, sir.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: We are going to draw one more
2 alternate for this case, so I'm going to ask all of you on
3 the back row to -- first I'm going to ask you to stand up.
4 We are going to do a little musical chairs.

5 Ms. Pratt, I'm going to ask you to be the
6 forelady, so while you are standing, if you will come down
7 and take the seat where this lady in the green is. I want
8 you to go down one, just -- I think you already done it.
9 Just leave one extra chair between -- one extra chair.

10 Now you may be seated.

11 All right. The strikes again would be on second
12 alternate one and two.

13 THE CLERK: 138, Sharon Leaf.

14 What say you for the State?

15 MR. SPRINGS: Present this juror.

16 THE CLERK: Defense?

17 MR. WALKER: Swear her, please.

18 THE CLERK: Please have a seat in the jury box.

19 Anything involving the striking of the panel, from
20 the State?

21 MR. SPRINGS: Nothing from the State.

22 THE COURT: From the defense?

23 MR. WALKER: No, sir, Your Honor.

24 THE COURT: Those of you who were not chosen, I'm
25 going to allow you to leave and call back tonight after

1 seven to find out what your next instructions are. I'm
2 going to ask you to leave quietly so I can start talking to
3 this panel. Thank you.

4 (Whereupon, the jury venire panel left the
5 courtroom)

6 THE COURT: Those of you who were chosen, if you
7 will stand and raise your right hand, the clerk will
8 administer the oath.

9 THE CLERK: You shall well and truly try and in
10 true deliverance make between the State of South Carolina
11 and the defendant at the bar whom you shall have in charge
12 and a true verdict give, according to the evidence and the
13 law, so help you God. Please response by saying I will.

14 JURY PANEL: (Collectively said I Will)

15 THE CLERK: Thank you.

16 THE COURT: Have a seat.

17 Members of the jury panel, I'm going to talk with
18 you just for a few minutes and then we are going to break
19 for lunch, because it's almost one o'clock.

20 When you come back, the attorneys will have a
21 right to come before you and make opening statements. They
22 are not required to, and the opening statements are not
23 arguments. They are not trying to convince you of any type
24 of a verdict. They are simply outlining or blueprinting the
25 trial for you. So we will do that when we come back from

1 lunch.

2 Mr. Morris has entered pleas of not guilty to
3 these two charges, and his pleas of not guilty place on the
4 State the burden of proving his guilt beyond a reasonable
5 doubt. He is presumed innocent and he need not prove his
6 innocence. The State is required to prove his guilt beyond
7 a reasonable doubt before you, as the trial jury in this
8 case, could convict him.

9 I have several jobs as the trial judge. One is
10 the logistics, like I just did with the musical chairs sort
11 of thing. I make sure people are sitting in the right seat.
12 And while I'm thinking about it, the two alternates will
13 always sit there. The forelady will sit there, and the rest
14 of you there is no assigned seating.

15 I take care of the counting part and make sure we
16 take breaks and those sort of things. Sometimes I call it
17 the wagon master. I'm the logistics person.

18 I also rule on questions of evidence, whether
19 certain evidence can be admitted into the trial.

20 I also am the judge of the law. I'm the sole
21 judge of the law. You must take, accept and apply the law
22 as I charge it. This is true, even if you think I charge
23 the law in error or even if you think the law should be
24 different.

25 You are not to infer from anything that I say or

1 do at all during the trial, because I am not allowed as the
2 trial judge to formulate or express to you any opinion on
3 the facts.

4 It is solely up to you as the trial jury in this
5 case to examine the evidence and to give to the evidence the
6 effect, the value, the weight, and the truth you believe
7 that evidence should have. In doing this you may believe
8 one witness as opposed to several, several witnesses as
9 opposed to one. You may believe all, part, or none of a
10 witness' testimony. Use your common sense, your sense of
11 logic, your sense of reason. Use your experiences in life
12 as you analyze the evidence.

13 As judges of the facts, you, of necessity, must
14 judge the credibility, that is, the believability of the
15 witnesses who testify. In assessing credibility, use the
16 things that I just mentioned. Use the things that you find
17 in your day-to-day life as being indicative of truthfulness.
18 And you could use certain indicators or evaluators; a
19 witness' demeanor, how they act on the stand. Are they
20 hesitant or straightforward? Is their testimony consistent
21 or inconsistent? Do they have any bias or prejudice toward
22 one side or the other? And you can consider the opportunity
23 that witness had to actually know those things to which the
24 witness testified.

25 You consider all the facts, apply the law, and you

1 will be in a position to return a verdict that speaks the
2 truth.

3 Madam Forelady, you will be the liaison between
4 the jury and myself, preside over the jury's deliberation,
5 and ultimately sign the jury's unanimous verdict.

6 If you cannot hear or you can't see, let me know.
7 You don't need to take notes, but I want you to be able to
8 hear and see. It's not fair to ask you to sit on this case
9 and then not let you see and hear those things that you need
10 to see and hear, so cup your ear or give me a voice-raising
11 gesture or nudging gesture and I'll correct whatever the
12 problem is.

13 You are not to make up your mind. You are not to
14 discuss the case until I instruct you at the end of the
15 trial to jointly deliberate and return a unanimous verdict.
16 Prior to that time you are not equipped with all the tools
17 that you need to make a fair and reasonable decision. So
18 don't discuss the case or try to make up your mind until we
19 reach that point.

20 Do not let yourself be exposed to anything outside
21 the courtroom; that is, don't let anybody talk to you about
22 this case. If anyone tries to discuss this case with you,
23 tell them that you cannot, that you are seated as a juror,
24 and report back to me, hopefully giving me the person's
25 identity, so that I can take action against an individual

1 . for having discussed the case, or tried to discuss the case,
2 with a seated juror.

3 There is no need for you to go to the scene of
4 where this happened. You will hear from the testimony. I
5 think it's very clear as to where it happened, but there is
6 no reason for you to go out there. It happened a year ago.
7 You have to base your verdict on the law and the evidence
8 that you hear here in the trial. So don't go doing any
9 independent investigation.

10 Modern science has put me in a situation where now
11 I have to charge juries, because this actually happened. A
12 juror -- some jurors in a case, or a juror in a case, did
13 some Internet investigation. That case got reversed by our
14 State Supreme Court. So I don't want to be in that
15 situation, so I'm instructing you don't look up anything
16 that can remotely deal with this trial. Don't try to figure
17 out anything or do any independent research on the Internet,
18 or from any source whatsoever.

19 I do not know that this case would receive any
20 news coverage, but if it does, don't let yourself be exposed
21 to it. Again, you have to base your verdict on the law and
22 the evidence developed here in this courtroom. If something
23 catches your eye or ear that could remotely deal with this
24 trial, don't read, watch, or listen to anything that could
25 deal with this trial.

1 Now, I understand that Judge Hyman had told you
2 that there is a possibility you would not be here on Friday.
3 We will be here on Friday. I have a meeting in Columbia
4 tomorrow, so we will start the trial today, and we should be
5 in a position to do what we call arguments and charge Friday
6 morning, but it won't go late into Friday evening, I'm
7 assured by the attorneys.

8 Anything else you want me to cover at this point?

9 MR. SPRINGS: No, sir.

10 MR. WALKER: No, sir, Your Honor.

11 THE COURT: All right.

12 Well, yes, ma'am.

13 JUROR NUMBER 199: Your Honor, I spoke with Judge
14 Hyman and he excused me for Friday, so I didn't know if that
15 would make a difference.

16 THE COURT: Well, it does. If you have been
17 excused by Judge Hyman, then you will be excused, but stick
18 with us right now. That's why we have alternates.

19 JUROR NUMBER 199: Sure.

20 THE COURT: But nobody called that to my
21 attention, or I certainly would have taken care of that. I
22 wasn't there, of course, but just have a seat for right now
23 and I will let all of you go to lunch and come back at two.
24 You too.

25 JUROR NUMBER 199: Sure.

1 THE COURT: And we will figure out what we are
2 going to do about that.

3 JUROR NUMBER 199: Thank you.

4 THE COURT: All right. Y'all can go to lunch now.

5 You will be coming -- while you are serving on
6 this jury, your home will be the jury room behind us. Not
7 the room downstairs and not this courtroom, so don't report
8 here or downstairs. Mr. Krueger will show you the jury room
9 up here and tell you how to get in and out while you are
10 serving on the jury panel.

11 It's a little before one. We will break until two
12 o'clock, so we will see all of you back in the jury room and
13 hopefully we can start as promptly as possible at two
14 o'clock.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: One last thing before we break for
18 lunch. We discussed the situation of the search and seizure
19 and the jury. But, of course, the statement, the
20 voluntariness of the statement, would be a consideration by
21 the jury. Of course, they apply the usual beyond a
22 reasonable doubt as opposed to the preponderance that I --
23 the burden that I analyzed it under. So I just want to make
24 sure that -- and I know y'all know that, since we had that
25 other issue and I said --

1 MR. WALKER: I just had never faced that issue. I
2 had never faced that issue.

3 THE COURT: All right. Anything else before
4 lunch?

5 MR. WALKER: No, sir.

6 THE COURT: We will see you back at two o'clock.

7 MR. GARDNER: Yes, sir. Thank you, judge.

8 MR. WALKER: Thank you, Your Honor.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Is the State ready?

12 MR. SPRINGS: I did want to say one thing on the
13 record.

14 THE COURT: Let's see if the defense is ready?

15 MR. WALKER: Yes, sir.

16 THE COURT: Go ahead.

17 MR. SPRINGS: The court may have heard when we
18 played the video in this case, there was mention of Mr.
19 Morris' prior criminal history. It was mentioned a couple
20 of times on the tape, and I just -- I didn't want to have to
21 fool with that. I knew it was prejudicial to him, so I told
22 the defense we will just unplug the audio and we are going
23 to play a silent tape.

24 I'll ask the deputies, is there audio on this tape
25 and he's going to say no, and I think they are agreeable to

1 that. It gets rid of the prejudicial material.

2 THE COURT: All right.

3 MR. SPRINGS: And that's it. That's what I had to
4 say.

5 THE COURT: Any problem with that?

6 MR. WALKER: That's correct, no problem.

7 THE COURT: Let's bring us the jury.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Ms. Rollins, I hadn't forgotten about
11 you. I have talked to the attorneys over the lunch and
12 checked with the other courtroom. We may be able to finish
13 the case today. We might have to go a little later to do
14 it, but this would be the last case we try this week, so --
15 I'm not going to keep you to midnight, of course, but it may
16 be that we can finish the case today and then you won't have
17 to come back tomorrow or Friday.

18 JUROR NUMBER 199: Okay.

19 THE COURT: Counsel?

20 MR. SPRINGS: Has our jury been sworn?

21 THE COURT: Yeah, they have been sworn and I have
22 chatted with them.

23 MR. SPRINGS: Yes, I just didn't recall.

24 If it please the court and ladies and gentlemen of
25 the jury, Madam Forelady, as you have heard this is a drug

1 case. The charges are trafficking in Ecstasy. Some of you
2 have heard of Ecstasy. Some of you have not. You will
3 learn more about Ecstasy and drugs as this case goes on.

4 Trafficking, it's a term the legislature in
5 Columbia put on possession of a high number of Ecstasy
6 doses, pills. They could have just said big possession,
7 possession of big numbers. They called it trafficking.
8 They picked that term. I didn't.

9 Here we have got over a hundred pills. We have
10 got some hundreds of pills. Hundreds, plural. So it's
11 trafficking.

12 Then we have got about a half pound of marijuana,
13 more marijuana than one person certainly needs. And the
14 charge is possessing that half pound of marijuana intending
15 to distribute it- sell it to folks, give it to your friends,
16 trade it for things - but possessing it, intending to pass
17 it on to others. And they usually sell it when you have a
18 half pound of marijuana.

19 This case starts out with a specialized police
20 unit called the Highway Interdiction Team. Highway
21 Interdiction Team. Of course, they call themselves the HIT
22 team. They started out with a federal grant. The Feds
23 realized there was some bad stuff coming in and out of
24 Charlotte on the I-77 corridor - guns, drugs, stolen goods -
25 and they provided some money and a lot of training to train

1 some officers to get out on that highway and try to
2 interdict some of these drugs and some of these guns and
3 stolen property. And these officers come up and down the
4 highway. We are glad to see them, because not only are they
5 looking for those things, most of the time the way they
6 check cars out there is for traffic violations. They are
7 looking for any little thing to stop a car and check it out
8 and see if it's got bad stuff in it. And if it doesn't,
9 that's fine. But if it does, we end up here like we are
10 today.

11 This officer -- well, Officer Vinesett, you will
12 see him in a minute. He was riding with a state constable
13 on February 6th, 2008, in the afternoon, a rainy afternoon.
14 He sees a car following a truck too closely out on I-77 in
15 the rain, and he's -- as he's contemplating stopping the car
16 and trying to decide when and how to stop it, the car pulls
17 off the interstate. It pulls off on one of the exits here
18 in York County. The officer in his unmarked police car, HIT
19 team car, pulls off on the exit as well.

20 He followed that car up. It pulls into a filling
21 station and the officer follows him into the filling station
22 and hits his blue lights and gets out and goes up to the
23 car. He goes up to the passenger's side of the car. They
24 do that a lot now. And from the passenger's side asked the
25 driver for his identification. A Kenneth Morris, this man

1 right here, provides the driver's license, his North
2 Carolina driver's license, and provides -- the two men in
3 car, Kenneth Morris and his passenger Brandon Nichols,
4 provide a rental car agreement. It's a rental car. It's a
5 Ford, rented in North Carolina with a North Carolina tag.
6 It's rented by Brandon Nichols, who was the passenger. And
7 as the is at the window and getting these things, he smells
8 marijuana, which, of course, picks his senses up. And as
9 he's talking to these fellows, he asked Mr. Morris to step
10 out of the car. And the officer is seeing tobacco, Blunt
11 cigar tobacco, strewed out all over the inside of the car
12 and Blunt cigars. And the officer will explain to you the
13 significance of that and why that made him suspect even more
14 that there was marijuana in the car.

15 The officer ends up searching the car. Another
16 officer has arrived on the scene, so he had three officers.
17 You have Officer Vinesett, you have the state constable, and
18 then another HIT team officer had arrived. They search the
19 car. In the trunk Officer Vinesett finds hundreds of
20 Ecstasy pills and he immediately has the two men in the car,
21 Kenneth Morris and Brandon Nichols, arrested. They are
22 arrested for trafficking in Ecstasy.

23 They are read their Miranda Rights. They are
24 taken to the police station. The car is taken to the police
25 station, and out of the rain the car is more thoroughly

1 searched. And underneath the spare tire in the trunk,
2 underneath where the Ecstasy was there is approximately a
3 half pound of marijuana in a vacuum sealed bag. So those
4 are the two charges.

5 Mr. Brandon Nichols has closed his case out and
6 he's going to testify here today and tell you his part of
7 it. He got a deal and you will hear what his deal was.

8 The officers will testify. You will see the
9 drugs. You will hear from the chemist, a chemist who
10 analyzed the drugs, and you will get all of the pieces that
11 you need to decide the facts in this case, because that is
12 what you do. You decide the facts. You are going to decide
13 whether he did this behavior. Much like a baseball umpire,
14 you judge his behavior, and he doesn't make up his own
15 rules. This man will give you the rules. And just like a
16 good umpire, you will just judge the facts at the end of
17 this case, and you won't have any problem finding that Mr.
18 Morris was guilty of possessing hundreds of Ecstasy pills,
19 meaning that he was trafficking in Ecstasy, and he had about
20 a half pound of marijuana, such that he would intend to
21 distribute it later, sell it to folks, or give it away, or
22 trade it for something. Thank you.

23 MR. WALKER: Thank you, Your Honor.

24 THE COURT: Yes.

25 MR. WALKER: Madam Forelady, ladies and gentlemen

1 of the jury, before I begin, you are going to see me taking
2 my glasses off a lot. Last week I got bifocals and I can't
3 get used to them to save my life, okay. But, anyway -- and
4 they are killing me.

5 But, anyway, certainly there are two sides to many
6 stories, and there are two sides to this story. When all of
7 y'all took your oath of office, you promised to well and
8 truly, that's the term they use, well and truly try this
9 case, okay? By doing that, you said that you would put
10 aside any preconceived notions that you might have about
11 somebody coming up in court and deliberating on that
12 person's guilt or innocence. You also said that you would
13 follow the law and you would follow -- you would follow the
14 law and consider the evidence in this case. And I'll tell
15 you now, if you do that, if you follow the law that His
16 Honor is going to give you and you look at the evidence in
17 this case, you will go back in your jury room and find that
18 the State did not meet its burden of proof in this case by
19 proving Mr. Morris guilty beyond all reasonable doubt.

20 Folks, everybody -- my generation used to watch
21 Perry Mason, and I think some other generations watched the
22 show called The Practice and stuff like that. Everybody has
23 seen courtroom dramas on TV or in the movies where they tell
24 you that the presumption of innocence rests with the
25 accused, unless it's stripped away by the State, basically.

1 That is incredibly important, because that's the foundation
2 of our legal system.

3 We don't have to -- by pleading not guilty and
4 selecting you twelve people and you alternates as jurors in
5 this case, Mr. Morris does not have to prove a thing to you.
6 He does not have to testify. He does not have to put up one
7 iota of evidence. The State has to prove him guilty beyond
8 all reasonable doubt. And in many, many countries of the
9 world, even nations that we consider civilized nations, I'm
10 not talking about some place like Red China or something
11 like that, but even in France, if you are accused of a crime
12 in France, you got to prove you were innocent, okay?

13 Imagine how hard that would be to do that. Imagine how
14 hard -- for example, this stop occurred in February of 2008.
15 Imagine how hard it would be to prove if somebody had walked
16 up to your door step and said "I'm arresting you for the
17 murder of Ann Smith that occurred on February 8th of 2008,
18 or February 6th of 2008," how hard it would be to
19 reconstruct your day. Well, our forefathers, the people
20 that founded this country, knew that that was a ridiculous
21 burden to put on people, so I ask you to keep that in mind.

22 And I ask you to keep in mind that the State has
23 to prove guilt beyond all reasonable doubt. They have to
24 prove it. Okay, there is no question -- let me say this.
25 There is no question that drugs were found in the car. They

1 have to prove that Mr. Morris knew the drugs were there,
2 okay? They have to prove that Mr. Morris, for example, on
3 the Ecstasy, that he had to -- he intended to traffic in
4 those drugs. They have to prove that Mr. Morris not only
5 knew about the marijuana being in the car, but that he
6 intended to distribute it.

7 There is a co-defendant in this case, a guy that's
8 going to get up here and testify, based on what the
9 solicitor said a few minutes ago, a guy named Brandon
10 Nichols. Okay? Well, Mr. Nichols was initially charged
11 with the same thing. Y'all can use y'all's common sense in
12 determining whether or not somebody has a reason to tell
13 something other than the truth, okay? Mr. Nichols pled
14 guilty under a plea agreement with the solicitor's office,
15 or the police, and that plea agreement gave him probation, a
16 five year probationary sentence, provided, provided that he
17 would testify truthfully, okay, truthfully in this case
18 against Mr. Morris, okay? Truthfully in this case against
19 Mr. Morris. Well, it's up to y'all to determine if he is
20 testifying truthfully, or if he's simply out to save his
21 skin, okay? That's one thing. That's one thing.

22 You will never hear -- you are going to witness a
23 stop on a video, okay? You are going to witness a stop by
24 an officer on a video. You are going to subsequently, and
25 you are going to see that after about fifteen to thirteen

1 minutes, these drugs were found in the car, okay? And they
2 are found in the trunk, okay? In the trunk of a car
3 registered to Nichols, okay? Not to my client, registered
4 to Nichols. You are going to find that Nichols was not
5 driving the car at that point in time, but he had been
6 driving the car, okay? He had only taken over the car
7 because Nichols had gotten sleepy. You see, they had been
8 in Atlanta, okay, and Nichols had gotten sleepy.

9 You are going to hear some testimony, probably,
10 about a statement that my client made, which the State says
11 is in the nature of a confession. Well, let me tell you
12 this right now. Again, you follow the law and you follow
13 the evidence. That confession -- and these are competent
14 law enforcement officers, supposedly, okay? I mean, they
15 are supposedly competent law enforcement officers. I think
16 one of them has been about thirty-two, thirty-three years in
17 law enforcement. Ask them to produce a written statement
18 that my client signed. Ask them to produce a tape recording
19 that my client signed. Ask them to produce a video showing
20 my client confessed. They can't prove it. They can't do
21 it. And the burden is on them, folks. It ain't on me.

22 Use your common sense. If somebody was confessing
23 to a crime and you are a cop --

24 MR. SPRINGS: Your Honor, I'm going to object.
25 This is argument at this point.

1 THE COURT: Yes, Mr. Walker, do a summary outline.

2 MR. WALKER: At any rate, look at the evidence,
3 folks. There are so many holes in this case, so many things
4 that you can use to determine that the State did not meet
5 its burden of proof. That's all I ask you to do. Be good,
6 fair, honest jurors, and I believe that you will conclude at
7 the end of this case the State did not meet its burden of
8 proof. Thank you.

9 THE COURT: Call your first witness.

10 MR. SPRINGS: Yes, we call Officer Vinesett.

11 Officer Vinesett, if you will step up to the
12 clerk, she will swear you in, sir.

13 OFFICER L.T. VINESETT, JR., having been first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. SPRINGS:

16 Q. Officer, I'm going to ask you to please keep your voice
17 up nice and loud so everyone can hear you. If you get soft,
18 I'm going to make you pick up that big microphone.

19 What is your name, sir?

20 A. Lonnie Vinesett, Jr..

21 Q. How are you employed?

22 A. I'm employed with the York County sheriff's office.

23 Q. How long -- are you a sworn law enforcement officer?

24 A. Yes.

25 Q. How long have you been a sworn law enforcement officer?

1 A. Since '97.

2 Q. Are you a member of the Highway Interdiction Team?

3 A. Yes, sir.

4 Q. Was that started on a federal grant?

5 A. Yes, sir.

6 Q. And how long ago was the HIT team created?

7 A. I believe it was July of '04.

8 Q. Before they let you become a HIT team officer, did you
9 receive some specialized training?

10 A. Yes, sir.

11 Q. What kind of folks -- what kind of agencies gave you
12 that training?

13 A. We received training from -- the Georgia Highway Patrol
14 came up. Colleton County Sheriff's Office in South
15 Carolina. I received training in Nevada on interdiction,
16 and numerous other states. Atlanta, Tennessee.

17 Q. Obviously that's a specialized unit.

18 What was the mission of the HIT team? What are you
19 supposed to be doing to earn your pay?

20 A. Working the major highways and interstates, 77.
21 Stopping cars, looking for anything illegal, wanted people,
22 guns, drugs. Anything illegal that's traveling up and down
23 the interstate.

24 Q. Okay. Do you stop people for traffic violations?

25 A. Yes, sir.

1 Q. Is it against the law to commit a traffic violation on
2 the highways in York County, South Carolina?

3 A. Yes, sir.

4 Q. All right. Let's cut to the chase. Let's talk about
5 February 6th, 2008. Were you on duty and in your patrol car
6 about two o'clock that afternoon?

7 A. Yes, sir.

8 Q. Is it an unmarked car?

9 A. Yes, sir.

10 Q. Did you have anybody riding in the car with you?

11 A. Yes, sir, Constable Scott.

12 Q. You say he's a constable?

13 A. Yes.

14 Q. Now, what is your jurisdiction and what geographic area
15 can you arrest somebody?

16 A. In York County.

17 Q. Your jurisdiction is York County as a deputy?

18 A. Yes.

19 Q. What is the jurisdiction for a constable?

20 A. It's statewide jurisdiction.

21 Q. Now, the constable that was with you, what's his name?

22 A. Walter Scott.

23 Q. All right. Was that constable being paid for his time
24 with you that day?

25 A. No, sir.

1 Q. Was he volunteering?

2 A. Yes, sir.

3 Q. How does somebody get to be a state constable? Who
4 gives them their powers of arrest?

5 A. The governor.

6 Q. Now, what street -- what highway were you on about two
7 o'clock that day?

8 A. I was on Interstate 77.

9 Q. And what kind of weather was it?

10 A. Cloudy and rainy.

11 Q. Actual water coming down, rain?

12 A. Yes, sir.

13 Q. A little bit after two o'clock that afternoon, February
14 6th, last year, did something catch your attention?

15 A. Yes, sir.

16 Q. What was it that got your attention?

17 A. It was a vehicle traveling north, just north of Porter
18 Road. I believe it was a Ford 500 following a box truck
19 entirely too close.

20 Q. Okay. And could you tell if it was a privately owned
21 car, a rental car, a leased car? Could you tell anything of
22 that nature about it?

23 A. I believed at the time that it was a rental car.

24 Q. Okay. And as you saw it following too closely a little
25 after two o'clock, then what's the next thing that happened?

1 A. As I was catching up to the vehicle, the vehicle exited
2 onto 21, which is South Anderson.

3 Q. Okay. And then what did that Ford 500 rental car do?

4 A. It went to the top of the exit, kept bearing around to
5 the right, crossed back over 77 and made a right into the
6 Exxon gas station beside the Waffle House.

7 Q. Okay. Did you follow it off the interstate?

8 A. Yes, sir.

9 Q. As it went up the ramp and went into the Exxon, had you
10 turned on blue lights or siren?

11 A. As it was turning into the gas station, yes, sir, the
12 blue lights.

13 Q. Very good.

14 And did the Ford rental car stop?

15 A. Yes, sir.

16 Q. And did you stop your car?

17 A. Yes, sir.

18 Q. And did you go up to the Ford rental car?

19 A. Yes, sir, I did.

20 Q. Which side of the car did you go up on?

21 A. I approached on the passenger's side.

22 Q. And how many people were in the car?

23 A. Two.

24 Q. Okay. Both of them in the front of the Ford?

25 A. Yes, sir.

1 Q. And were you able to talk from the passenger's side
2 window to the person driving the car?

3 A. Yes, sir.

4 Q. Did they put the window down for you?

5 A. Yes, sir.

6 Q. And what did you say to the driver of this car?

7 A. I asked him for his driver's license and vehicle
8 registration.

9 Q. What did you receive when you asked for that?

10 A. I received the driver's license and a rental agreement.

11 Q. Okay. And whose name was on the driver's license?

12 A. Mr. Morris.

13 Q. And what state had issued Mr. Morris' driver's license?

14 A. North Carolina.

15 Q. What kind of tag was on the rental car?

16 A. North Carolina.

17 Q. Okay. Now, what kind of registration documents did you
18 receive?

19 A. I received a rental agreement.

20 Q. Okay.

21 MR. WALKER: No objection.

22 THE COURT: Admitted without objection.

23 BY MR. SPRINGS:

24 Q. I'm showing you State's Exhibit No. 1. Is that the
25 rental agreement?

1 A. Yes.

2 Q. And we will offer it in.

3 Now, the rental agreement is in evidence. Who rented
4 the Ford?

5 A. Brandon Nichols.

6 Q. Pick it up, if you need it.

7 And was Brandon Nichols in that car?

8 A. Yes, sir.

9 Q. Who was driving the car?

10 A. Mr. Morris.

11 Q. And let's stop now. Is Kenneth Morris in this
12 courtroom, the driver of that car?

13 A. Yes, sir.

14 Q. Point him out, please, sir.

15 A. Right over there in the corner.

16 MR. SPRINGS: Let the record show he's pointed to
17 our defendant Kenneth Morris.

18 BY MR. SPRINGS:

19 Q. And you said the man who rented the car, Brandon
20 Nichols, he was in the car?

21 A. Yes, sir.

22 Q. So he was other person?

23 A. Yes, sir.

24 Q. Now, per that rental agreement, who is supposed to be
25 the driver of that car?

1 A. Brandon Nichols.

2 Q. Was Mr. Morris added as an approved driver to the
3 rental car?

4 A. No, sir, it actually states no additional drivers.

5 Q. While you were getting the rental agreement and Mr.
6 Morris' North Carolina driver's license, did your senses
7 detect anything unusual?

8 A. Yes, sir.

9 Q. What was that?

10 A. An odor of marijuana.

11 Q. What did you ask Mr. Morris, our defendant, to do then?

12 A. I asked him to step out of the vehicle.

13 Q. And did he step out of the vehicle?

14 A. Yes, sir.

15 Q. And as he's getting out of the vehicle, are you looking
16 in the car with your eyes?

17 A. Yes, sir.

18 Q. Did you see anything that sort of caught your
19 attention?

20 A. Yes, sir.

21 Q. What was it that caught your attention?

22 A. I noticed a lot of tobacco, as in Blunt tobacco, cigar
23 tobacco, on the floor, center console. Basically just
24 strewn all out in the vehicle.

25 Q. Now, do you make many narcotics cases?

1 A. Yes, sir.

2 Q. Do you make a lot of narcotics cases?

3 A. Yes, sir.

4 Q. As a narcotics officer, have you run across Blunt
5 cigars much?

6 A. Yes, sir.

7 Q. Okay. The jury is curious. To a narcotics officer,
8 what is Blunt cigar tobacco in the interior --

9 MR. WALKER: Objection to that. He's not
10 competent to testify as to what other officers might find.

11 THE COURT: I sustain the objection. And that's a
12 leading question anyway. I sustain the objection.

13 MR. SPRINGS: Yes, I'll ask a different question.

14 BY MR. SPRINGS:

15 Q. Officer, what -- seeing the Blunt cigar tobacco, what
16 if -- in your experience, what did that indicate --

17 A. It indicated --

18 Q. -- the possibility?

19 A. -- the use of marijuana.

20 Q. All right. And explain how you connect a Blunt cigar,
21 because that's a brand of cigar, to the use of marijuana?

22 A. Normally what people will do, they will hollow out the
23 Blunt, pull some of the tobacco out of the Blunt and place
24 marijuana inside of the hollowed out Blunt and smoke it that
25 way.

1 Q. Okay. Why would somebody in a car do that?

2 A. Most of the time if they are riding down the road and
3 they are smoking on a Blunt, it looks like they are just
4 smoking on a cigar.

5 Q. I'm showing you now what's been marked State's Exhibit
6 4, 7, 6, 5, and 2, and 3. Look at those. Don't say
7 anything yet. Just take a look at them, please.

8 A. (Witness reviewing exhibits)

9 Q. All right. Later that day did you take some pictures
10 of the inside of this car?

11 A. Yes, sir.

12 Q. These exhibits which I have just handed to you, State's
13 7, and 6, and 5, and 2, and 3, and 4, what are they pictures
14 of?

15 A. The interior of the vehicle that I had stopped that
16 day.

17 Q. Okay. Are they true and accurate photos of what the
18 interior looked like that day?

19 A. Yes, sir.

20 MR. SPRINGS: Your Honor, we do offer into
21 evidence State's 6, and 7, and 5, and 2, and 3, and 4.

22 MR. WALKER: I don't have any objection to that.

23 THE COURT: In without objection.

24 BY MR. SPRINGS:

25 Q. Officer, come on down off the stand, please.

1 (Witness off the witness stand)

2 MR. SPRINGS: Can you dim the lights, Madam Clerk?

3 BY MR. SPRINGS:

4 Q. I am going to put State's Exhibit 4 on this projector,
5 and it's a little fuzzy, but if you go up there, there is a
6 pointer. Go pick up the pointer.

7 Point to the thing on that right.

8 A. Yes.

9 Q. What's that thing?

10 A. A partially smoked Blunt.

11 Q. Okay. I'm now putting State's Exhibit 3 on here. Let
12 me see if this does better.

13 What are these tubes here? What's that?

14 A. That's an interior lining of a Philly blunt.

15 Q. And State's Exhibit 2, what are those things in the
16 cup?

17 A. The same thing, interior lining of a Blunt.

18 Q. And this is State's Exhibit 5. If you want me to, I'll
19 come show it to you before I put it on the projector, but
20 I'm going to ask you what that shows.

21 A. It shows the -- I believe it's the floorboard, the
22 front floorboard and the excessive tobacco that was possibly
23 taken out of the Philly blunts.

24 Q. Okay. Thank you. Go ahead and lay your pointer down
25 and re-take your seat.

1 (Witness back on the witness stand)

2 BY MR. SPRINGS:

3 Q. Now, did you say that you asked Mr. Morris to step out
4 of the car, or had I asked you that?

5 A. Yes, sir, you did.

6 Q. And it was raining, wasn't it?

7 A. Yes.

8 Q. Did you make him stand in the rain, or did you do
9 something else?

10 A. No, sir, I asked him to -- if he would have a seat in
11 my passenger's seat.

12 Q. All right. And did he sit down in your patrol car?

13 A. Yes, sir.

14 Q. Did you join him in the patrol car?

15 A. Yes, sir.

16 Q. What did you ask him in the patrol car?

17 A. I asked him where they were coming from.

18 Q. And what did he say?

19 A. He stated Atlanta.

20 Q. Okay. Did you ask him what he had been doing down in
21 Atlanta?

22 A. Yes, sir. He stated that him and the passenger had
23 went down to visit some girls.

24 Q. And did you then go back to speak with Brandon Nichols,
25 the passenger?

1 A. Yes, sir.

2 Q. Did Mr. Morris stay in your police car when you went to
3 speak with the passenger, Mr. Nichols?

4 A. Yes, sir, he did.

5 Q. And did you find out where Brandon Nichols was from,
6 what city he was from?

7 A. Yes, sir, it was -- I believe it was Greensboro.

8 Q. And don't tell me what he said, but did you ask him why
9 they had gone to Atlanta?

10 A. Yes, sir.

11 Q. Did you get the same response that you had gotten from
12 Mr. Morris in the police car?

13 A. No, sir.

14 Q. You got a different response?

15 A. Yes, sir.

16 Q. And did you ask Mr. Nichols to step out of the car?

17 A. Yes, sir.

18 Q. As he got out of the car, did you notice with your
19 senses anything unusual about him?

20 A. I could smell an odor of marijuana.

21 Q. And at that point did you suspect anything?

22 A. Yes, sir.

23 Q. What did you suspect?

24 A. That there was possibly more marijuana in the vehicle.

25 Q. Now, all while this was going on, was the state

1 constable standing by? Was he your backup, basically?

2 A. Yes, sir.

3 Q. And did another HIT team officer come?

4 A. Yes, sir.

5 Q. And did he have a dog, a canine?

6 A. Yes, sir.

7 Q. And did he walk the canine dog around the car?

8 A. Yes, sir.

9 Q. Was it still raining?

10 A. Yes.

11 Q. How did the dog appear to like the rain?

12 MR. WALKER: I would object to that. The jury can
13 draw that conclusion from the tape.

14 MR. SPRINGS: I'll withdraw that question.

15 BY MR. SPRINGS:

16 Q. Just what did you see the dog do with your own eyes?
17 How did he behave?

18 A. He -- a couple of times he wasn't really even paying
19 attention to the car and you could see him actually shaking
20 the water off of him as it was raining.

21 Q. And did you, as the lead officer, decide to search the
22 car?

23 A. Yes, sir.

24 Q. And did you search the car?

25 A. Yes, sir.

1 Q. And did you find anything illegal in the passenger
2 compartment?

3 A. No, sir.

4 Q. Did you find anything illegal in the trunk?

5 A. Yes, sir.

6 Q. I'm showing you what's been marked State's Exhibit 8
7 for identification. Just give me one second.

8 MR. WALKER: No objection, Your Honor.

9 THE COURT: Admitted without objection.

10 MR. WALKER: One moment, Your Honor.

11 (Off the record)

12 (Back on the record)

13 MR. SPRINGS: I'm not offering it yet.

14 MR. WALKER: You are not offering it yet?

15 MR. SPRINGS: I'm not offering it, no, sir.

16 BY MR. SPRINGS:

17 Q. I'm showing you what's been marked State's Exhibit 8.
18 Have you ever seen the stuff in that bag before?

19 A. Yes, sir.

20 Q. What is that stuff?

21 A. It's Ecstasy pills.

22 Q. And where did you see it the first time?

23 A. In the trunk of the vehicle in a bag.

24 Q. In the trunk of this Ford rental car?

25 A. Yes, sir.

1 Q. Was it more than a hundred?

2 A. Yes, sir.

3 Q. Did you count the pills?

4 A. Yes, sir.

5 Q. Did you -- do you recall how many you did count?

6 A. 393.

7 Q. When you found those pills, did you arrest anybody?

8 A. Yes, sir.

9 Q. Who did you arrest?

10 A. Mr. Nichols and Mr. Morris.

11 Q. Okay. And what did you charge them with?

12 A. Trafficking. Trafficking in Ecstasy.

13 Q. Okay. Now, let me see if I can take a look at that.

14 And while we are talking about State's Exhibit 8, let
15 me ask you if you bagged up this drug evidence later?

16 A. Yes, sir.

17 Q. Did you put it in an evidence bag?

18 A. Yes, sir.

19 Q. Did you seal that bag up?

20 A. Yes, sir.

21 Q. Did you put some identifying writing on the evidence
22 bag?

23 A. Yes, sir.

24 Q. Until you got it to an official police evidence bag,
25 was it in your custody and control the whole time?

1 A. Yes, sir.

2 Q. And after you bagged it up, did you seal the whole bag
3 up?

4 A. Yes, sir.

5 Q. Where did you put it after you sealed it in an evidence
6 bag?

7 A. I dropped it in the evidence locker at the Rock Hill
8 Police Department.

9 Q. Is that a secure locker?

10 A. Yes, sir.

11 Q. Now, let's go back to the filling station where you had
12 just found the Ecstasy pills and you arrested both these
13 fellows, Mr. Morris and Mr. Nichols.

14 A. Yes.

15 Q. Did you read them their Miranda Rights?

16 A. Yes, sir, I did.

17 Q. Were they together when you read them their Miranda
18 Rights?

19 A. Yes, sir.

20 Q. How many minutes would you say after it was when you
21 found the Ecstasy before you read the Miranda Rights to the
22 defendant?

23 A. I'm going to say probably three minutes.

24 Q. Okay. Do you remember where they were?

25 A. Yes, sir.

1 Q. Where were they?

2 A. In the back seat of my patrol vehicle.

3 Q. Okay. And had you handcuffed them?

4 A. Yes, sir.

5 Q. Had there been any fussing, or unpleasantness, or
6 fighting?

7 A. None.

8 Q. Had everybody basically been getting along and not
9 being mean to anybody?

10 A. Yes, sir.

11 Q. When you read them their Miranda Rights, were they
12 complaining, either man, of being hurt, or ill, or needing
13 to go to the doctor, or anything?

14 A. No.

15 Q. Did they appear to be sober and in their right mind?

16 A. Yes, sir.

17 Q. Did they both appear to speak good English, understand
18 what you were saying?

19 A. Yes, sir.

20 Q. Did they both appear to be pretty intelligent fellows?

21 A. Yes, sir.

22 Q. And as you get ready to read them their Miranda Rights
23 and do read the Miranda Rights, were you or anybody
24 threatening them in any way?

25 A. No, sir.

1 Q. Were you or anybody making them any promises of any
2 type?

3 A. No, sir.

4 Q. And if you would, please, tell the jury the Miranda
5 Rights that you gave them exactly the same way that you gave
6 them to Mr. Morris and Mr. Nichols that day, that afternoon.

7 A. "You have the right to remain silent.

8 "Anything that you say can and will be used against you
9 in a court of law.

10 "You have the right to talk to a lawyer and have him
11 present with you while you are being questioned.

12 "If you cannot afford to hire a lawyer, one would be
13 appointed to represent you before any questions, if you
14 wish.

15 "You can decide any time to exercise these rights and
16 not answer any questions or make any statements.

17 "Do you understand each of these rights I have
18 explained to you?"

19 Q. Okay. Did Mr. Morris indicate that he understood what
20 you were telling him in the way of the Miranda Rights?

21 A. Yes, sir.

22 Q. Did he have any questions about his rights?

23 A. No, sir.

24 Q. Did you take them to the Rock Hill police station?

25 A. Yes, sir.

1 Q. And the Ford rental car, how did it get to the -- did
2 it go to the police station as well?

3 A. Yes, sir.

4 Q. And how did it get to the police station?

5 A. Constable Scott drove it to the police station.

6 Q. Okay. And when the Ford rental car got to the police
7 station, did you search it more thoroughly?

8 A. Yes, sir.

9 Q. And did you find anything else in the Ford rental car
10 when you got it to the police station out of the rain and
11 searched it more thoroughly?

12 A. Yes, sir.

13 Q. What did you find?

14 A. I found approximately a half pound of marijuana located
15 in the trunk, actually underneath the spare tire.

16 Q. Okay. All right.

17 Before I talk to you about that marijuana, let's go
18 back for a minute about the Ecstasy. What kind of a
19 container was it in the trunk?

20 A. It was in like a -- almost like a gift box.

21 Q. Okay.

22 MR. WALKER: Your Honor, we have a matter of law
23 to take up.

24 THE COURT: I'm going to let the jury go to the
25 jury room just for a few minutes. It won't be a long break.

1 We will use this as a refresher break while we take up a
2 legal matter.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: All right.

6 MR. SPRINGS: May I go ahead and ask him what I
7 was going ask him and they will know what they are dealing
8 with?

9 THE COURT: Okay.

10 (Evidence Bag marked as State's Exhibit No. 10 for
11 identification)

12 BY MR. SPRINGS:

13 Q. State's Exhibit 10, is that the box that you found the
14 Ecstasy in?

15 A. Yes.

16 Q. There is bag of rubber bands in there. Was that in
17 there too?

18 A. Yes, sir.

19 Q. Is there anything in there now, any sales slips or
20 anything, besides a bag of rubber bands?

21 A. No, sir.

22 Q. All right. And Ecstasy was inside this?

23 A. Yes, sir.

24 Q. Okay. Thank you.

25 THE COURT: What's the issue?

1 MR. WALKER: If it please the court, Your Honor,
2 in order to be consistent with our earlier motion for
3 suppression regarding the items seized in the trunk of the
4 car, we object to this item going in.

5 We would subsequently object to the marijuana
6 going in.

7 We would subsequently object to the Ecstasy being
8 introduced into evidence.

9 We want to be consistent throughout. I hate to
10 send the jury out that many times, but as I understand the
11 law, you need to do that in order to preserve the record.

12 THE COURT: I think you do. The issue of
13 preservation very important.

14 MR. WALKER: Yes.

15 THE COURT: So my ruling will remain the same.

16 MR. WALKER: Yes, sir.

17 THE COURT: I have allowed it. I did not grant
18 the motion to suppress and you are going to object and you
19 offered it into evidence and for the reasons earlier stated
20 I will overrule that objection.

21 MR. WALKER: All right, sir.

22 Your Honor, I do not have to object when the jury
23 comes in?

24 THE COURT: As far as I'm concerned you don't have
25 to.

1 MR. WALKER: For the reasons previously stated?
2 Some people do that differently. I don't know
3 Your Honor's preference.

4 THE COURT: That crowd upstairs, it's their
5 preference, not mine.

6 My preference would be to do it and be done with
7 it one time, but I ain't in charge.

8 MR. GARDNER: I agree with you, judge, and I just
9 don't know how to do it to make sure that it's preserved
10 correctly. I have seen it go both ways.

11 THE COURT: I think it's been preserved and you
12 have made it outside the jury's presence and I'm overruling
13 the motion to suppress it.

14 MR. GARDNER: Yes, sir.

15 THE COURT: We will take a short refresher break.
16 You can step down, if you need to use the restroom. Not
17 long. I know all the jurors would be using the restroom.

18 MR. GARDNER: Thank you.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 THE COURT: Is the State ready?

22 MR. SPRINGS: Yes, sir, the State is ready.

23 THE COURT: Defense ready?

24 MR. GARDNER: Yes.

25 THE COURT: Tell the jury if they are ready, we

1 are ready.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: You may proceed.

5 MR. SPRINGS: Thank you.

6 BY MR. SPRINGS:

7 Q. Officer Vinesett, I hate to skip back and forth, but I
8 want to go back one minute and talk about the Ecstasy again.
9 You said it was found in the trunk in a box?

10 A. Yes, sir.

11 Q. Okay. Inside the box, what kind of packaging was it
12 that the Ecstasy was in?

13 A. It was like a sandwich bag.

14 Q. Okay. I'm showing you what's been marked State's
15 Exhibit 10 for identification. Look inside there and tell
16 the jury what's in there. Pull it out and show them. What
17 is that?

18 A. This is a box that the Ecstasy came out of.

19 Q. Okay. All right.

20 And what else is inside? What is -- what else is in
21 there?

22 A. Another little box and then a bag of opened rubber
23 bands.

24 Q. Were those in there with the Ecstasy?

25 A. Yes, sir.

1 Q. A bunch of rubber bands.

2 Put that back in there, if you would.

3 MR. SPRINGS: Your Honor, we do offer State's
4 Exhibit 10 into evidence.

5 MR. WALKER: We object, Your Honor, on the grounds
6 we previously stated.

7 THE COURT: All right. The objection is overruled
8 for the reasons I previously stated.

9 MR. WALKER: Okay.

10 BY MR. SPRINGS:

11 Q. And you said the Ecstasy was in bags in the box?

12 A. One bag.

13 Q. One bag.

14 All right. Now, let's back up to the police station.
15 You have got the Ford rental car at the Rock Hill police
16 station out of the rain. You did a more thorough search and
17 what else did you find in there?

18 A. Located under the spare tire in the trunk was
19 approximately a half a pound of marijuana.

20 Q. Okay.

21 (Drugs marked as State's Exhibit No. 11 for
22 identification)

23 BY MR. SPRINGS:

24 Q. I'm showing you what's been marked as State's Exhibit
25 No. 11 for identification. Have you ever seen that green

1 stuff in there before?

2 A. Yes, sir.

3 Q. Where did you see it the first time?

4 A. Underneath the spare tire in the trunk of the vehicle.

5 Q. In the Ford rental car?

6 A. Yes, sir.

7 Q. And what did you suspect it was?

8 A. Marijuana.

9 Q. Okay. And did you -- what was it packaged in?

10 A. It was packaged in a plastic bag. I mean, like a zip
11 lock bag, a big one.

12 Q. Did you take it out of that bag and put it into an
13 evidence bag?

14 A. Yes, sir.

15 Q. And did you put some identifying markings on that
16 police evidence bag?

17 A. Yes, sir.

18 Q. Did you seal that police evidence bag up?

19 A. Yes, sir.

20 Q. And where did you put it?

21 A. In the same locker, evidence locker, as the Ecstasy.

22 Q. Okay. And was it in your custody and control the whole
23 time, from the time that you took it out from underneath the
24 spare tire in the Ford rental car, until you put it in the
25 evidence locker?

1 A. Yes, sir.

2 Q. And it was in a plastic bag?

3 A. Yes, sir.

4 Q. Okay. Were those plastic bags that you have been
5 talking about checked for fingerprints?

6 A. Yes, sir.

7 Q. Were any identifiable quality fingerprints found?

8 A. No, sir.

9 (Evidence Bag marked as State's Exhibit No. 12 for
10 identification)

11 (Evidence Bag marked as State's Exhibit No. 13 for
12 identification)

13 (Evidence Bag marked as State's Exhibit No. 14 for
14 identification)

15 (Evidence Bag marked as State's Exhibit No. 15 for
16 identification)

17 BY MR. SPRINGS:

18 Q. I'm showing you what's marked State's Exhibit 12, 13,
19 14 and 15. Did these contain the plastic bags?

20 A. Yes, sir.

21 Q. What's all that black stuff?

22 A. Fingerprint dust.

23 Q. All right.

24 MR. SPRINGS: Your Honor, we do offer into
25 evidence State's 13, 14, 15 and 12, the plastic bags these

1 materials were found in.

2 THE COURT: All right.

3 MR. WALKER: The same objection, Your Honor.

4 THE COURT: Objection overruled.

5 MR. WALKER: All right.

6 THE COURT: They are in evidence over objection.

7 BY MR. SPRINGS:

8 Q. And was Mr. Morris and the friend, Mr. Nichols, were
9 they actually interviewed and questioned at the police
10 station?

11 A. Yes, sir.

12 Q. And did Mr. Morris talk to an officer?

13 A. Yes, sir.

14 Q. Was that at the Rock Hill city police station?

15 A. Yes, sir, it was.

16 Q. And who is the supervisor of the entire York County
17 narcotics unit? What's his name?

18 A. Commander Marvin Brown.

19 Q. Did he take an interest in this case that day and get
20 involved after the Ecstasy was found?

21 A. Yes, sir.

22 Q. And who was the narcotics supervisor for that one
23 particular office, the Rock Hill city police officer?

24 A. Lieutenant Jason Dalton.

25 Q. Jason Dalton?

1 A. Yes, sir.

2 Q. Did he take an interest as well in this case?

3 A. Yes, sir.

4 Q. Now, the other guy, Brandon Nichols, is his case
5 closed?

6 A. Yes, sir.

7 Q. Did he get a deal?

8 A. Yes, sir.

9 Q. Your police car that day, did it have one of these
10 movie cameras mounted in it?

11 A. Yes, sir.

12 Q. Did it make a movie?

13 A. Yes, sir, it did.

14 Q. Does the movie have sound, have audio, or just the
15 movie?

16 A. The movie.

17 (Videotape marked as State's Exhibit No. 16 for
18 identification)

19 BY MR. SPRINGS:

20 Q. I'm showing you what's been marked State's Exhibit 16.
21 Do you recognize that?

22 A. Yes, sir.

23 Q. What is it?

24 A. A copy of the tape from my vehicle, my patrol vehicle,
25 of the stop that day.

1 Q. Is it the movie your car made of the things that were
2 happening in front of your patrol car when you are dealing
3 with Mr. Morris that day?

4 A. Yes, sir.

5 Q. Is it a true and accurate moving picture of what was
6 going on there when you were with Mr. Morris in front of
7 your patrol car on camera?

8 A. Yes, sir.

9 MR. SPRINGS: Your Honor, we do offer State's
10 Exhibit 16 into evidence.

11 MR. WALKER: And absolutely no objection to that,
12 Your Honor.

13 THE COURT: Admitted without objection.

14 MR. SPRINGS: We would like to publish it.

15 THE COURT: All right.

16 MR. SPRINGS: Madam Clerk, would you dim the
17 lights.

18 BY MR. SPRINGS:

19 Q. Can you see this movie screen, officer?

20 A. Yes, sir.

21 Q. All right.

22 (Whereupon, State's Exhibit No. 16, the videotape,
23 was played to the jury panel)

24 BY MR. SPRINGS:

25 Q. Whose car is that moving right there?

- 1 A. That's the vehicle Mr. Morris was driving.
- 2 Q. The Ford rental?
- 3 A. Yes, sir.
- 4 Q. Is that you and the constable?
- 5 A. Yes, sir.
- 6 Q. Who is that getting in your car?
- 7 A. Mr. Morris.
- 8 Q. Who are you talking to there?
- 9 A. Mr. Nichols.
- 10 Q. Mr. Nichols with you?
- 11 A. Yes, sir.
- 12 Q. Who is the other officer?
- 13 A. Officer Gibson, my partner.
- 14 Q. Okay. You are not arresting Mr. Nichols there, are
- 15 you?
- 16 A. No, sir.
- 17 Q. Why were you checking him out?
- 18 A. I asked him if I could search and see if there was
- 19 anything illegal, weapons or drugs, on him.
- 20 Q. Is that the canine, the dog?
- 21 A. Yes.
- 22 Q. Is that the canine, dog?
- 23 A. Yes.
- 24 Q. Did you continue the search of the car here?
- 25 A. Yes, sir.

1 Q. Had you just found the Ecstasy?

2 A. Yes, sir.

3 (Whereupon, the videotape was stopped)

4 MR. SPRINGS: Please turn the lights on.

5 BY MR. SPRINGS:

6 Q. Officer, this station, this gas station, part of a
7 highway where you saw Mr. Morris for the first time in his
8 car tailgating, all these places that you have talked about,
9 are they all in York County?

10 A. Yes, sir.

11 Q. Thank you very much. Would you please answer any
12 questions that the defense attorney has?

13 A. Yes, sir.

14 CROSS EXAMINATION BY MR. WALKER:

15 Q. Did I understand you to say that you had been a police
16 officer since 1997?

17 A. Yes, sir.

18 Q. Okay. And what did you start off doing as a police
19 officer?

20 A. I started off in Lancaster County. I worked in
21 Lancaster County on the patrol division for two years before
22 getting hired at York County in 1999.

23 Q. Okay. And in York County, when you came here in '99,
24 what did you do?

25 A. I worked patrol, basically answering calls.

1 Q. Okay. And in 2004, you went with this HIT team?

2 A. Yes, sir. Actually before that I was assigned to the
3 traffic enforcement unit.

4 Q. And the traffic enforcement unit, I'm assuming it's
5 something similar to the HIT team before y'all got federally
6 funded?

7 A. Yes, sir.

8 Q. Now, let me ask you something. I guess since 1997, you
9 have been on the road a bunch in your life and you probably
10 stopped thousands of people, correct?

11 A. A lot, yes, sir.

12 Q. I mean thousands? You have stopped thousands of
13 people?

14 A. Yes.

15 Q. Okay. And since you have been with this HIT team, you
16 have stopped probably hundreds and hundreds of people over
17 drugs offenses, correct, or suspected drug offenses?

18 A. A lot. I'm not sure of the exact number.

19 Q. Let's kind of narrow this thing down for the jury.
20 Have you stopped a thousand people?

21 A. Since?

22 Q. Huh?

23 A. Since?

24 Q. Have you stopped a thousand people and arrested them
25 for drugs since you have been with HIT?

1 A. I've arrested a thousand people for drugs, no, sir.

2 Q. Okay. Have you arrested three hundred?

3 A. No, sir. I would say closer to two hundred.

4 Q. Closer to two hundred.

5 But you stopped more than that, right?

6 A. Yes, sir.

7 Q. Okay. Now -- and, of course, you are no doubt well
8 trained when it comes to looking at these indicia of drug
9 use, right?

10 A. Yes, sir.

11 Q. You are well trained. You got that training from, I
12 guess, some of them federal -- some places that y'all go to
13 do that, right? Where did you go get your training?

14 A. I have been to Laughlin, Nevada for training. I have
15 been to Nashville, Tennessee for training. Atlanta a couple
16 of times for training. Greensboro for training, and
17 Charlotte. I have been to a lot of training.

18 Q. No question -- I mean, no question that you think you
19 are good at what you do, right? No question about that?

20 A. I believe so, yes, sir.

21 Q. All right. And on this particular day, which was in
22 February of 2008, you were on patrol, correct?

23 A. Yes, sir.

24 Q. Okay. And your job on patrol, as I understand it, is
25 to get on that highway and look for suspicious activities

1 for drugs, right?

2 A. Suspicious activity, once we get them stopped, yes,
3 sir.

4 Q. Well, I mean, now, let's talk about that for a minute.
5 You all aren't out there doing routine traffic stops.

6 I know if you saw somebody speeding at 130 miles a hour down
7 a road, you would stop them, right?

8 A. I'm stopping a lot of people on the interstate.

9 Q. You would stop people, for example, if they were
10 weaving all over the road? That's part of your job, too,
11 right?

12 A. Yes, sir.

13 Q. Okay. But you are not a traffic patrol officer. You
14 are a member of a specified team, a specific team that deals
15 with drug interdiction, correct?

16 A. Highway interdiction.

17 Q. Highway interdiction?

18 A. Yes.

19 Q. Okay. Highway interdiction for drugs is what --

20 A. We look for wanted people, guns --

21 Q. Okay. Anything?

22 A. Stolen vehicles, anything.

23 Q. Anything. All right.

24 On this particular day it's raining.

25 Now, at the top of this screen over here when that

1 thing was playing, I noticed that there was a highway
2 directly in front of where my guy -- the vehicle was parked.
3 Okay. Is that the road that you saw him -- because I'm not
4 from York County, is that the road where you saw him
5 following too closely?

6 A. Actually where he was parked, the road that you saw the
7 cars coming up was an exit ramp from 77 southbound getting
8 off on South Anderson.

9 He actually was coming northbound and exited off and
10 made a turn coming back over 77.

11 Q. Okay. It's the same basic highway, right? Same area?

12 A. Yes.

13 Q. Same area.

14 This was about two o'clock in the afternoon. What time
15 did you come on duty that day?

16 A. Approximately 7:30.

17 Q. 7:30.

18 Now, had you made any other stops that day?

19 A. I'm sure I did, yes, sir.

20 Q. Well, no, I don't want you to be sure. I want to know.
21 Did you make any other stops that day before you stopped
22 them?

23 A. I would have to check my ticket log to be exact, but --

24 Q. You got your ticket log here?

25 A. No, sir.

1 Q. So you don't know, is that a fair statement, whether
2 you checked it -- whether you stopped anybody else or not?

3 A. I can't say a hundred percent that I stopped another
4 car.

5 Q. Okay. You cannot say a hundred percent.

6 All right. So your testimony is that you saw these two
7 African American individuals in a rented car, correct --

8 A. Yes.

9 Q. -- following someone too closely?

10 A. Yes, sir.

11 MR. SPRINGS: Objection. That was not his
12 testimony. That's argumentative. That wasn't his testimony
13 at all. He's injecting facts into evidence that weren't
14 spoken from the stand.

15 MR. WALKER: It's cross-examination, Your Honor.

16 THE COURT: Well, I'm not sure I understand your
17 objection, but just rephrase your question.

18 MR. WALKER: All right.

19 BY MR. WALKER:

20 Q. On this particular day, what you are telling this jury
21 drew your attention to the car that my client and
22 co-defendant were in was the fact that they were following
23 another vehicle too closely?

24 A. Yes, sir.

25 Q. All right. How closely was too closely?

1 A. I don't ---

2 Q. How close were they?

3 A. I don't remember exactly, but I have a rule that I'm
4 not going to stop anybody if they are more than what appears
5 to be three car lengths. So they have got to be at least
6 two and a half car lengths, or closer, in order for me to
7 stop them.

8 Q. And in this particular case, then obviously, based upon
9 what you have said, they were between two and a half to
10 three car lengths, right?

11 A. They was within the bumper of the car to at least two
12 and a half car lengths.

13 Q. Okay. And what kind of car was it that they were
14 following?

15 A. It was a box truck.

16 Q. Box truck?

17 A. Yes.

18 Q. Okay. Of course, we don't have any video of that, do
19 we?

20 A. No, sir.

21 Q. Or anything like that.

22 And you don't recall whether or not you just happened
23 to have stopped other cars that day for following too
24 closely, right?

25 A. I'm not sure exactly.

1 Q. Not sure. Okay.

2 How fast were they going? They obviously weren't
3 speeding, right?

4 A. I don't recall their speed.

5 Q. Okay. All right.

6 So you pulled into the gas station behind them and you
7 cut your blue light on, right?

8 A. Yes, sir.

9 Q. Now, for benefit of the jurors that might not know
10 this, when you cut your blue light on, that also activates
11 this video camera that we saw, right?

12 A. Yes, sir.

13 Q. And you pulled directly behind the car, because you are
14 trained to do that so that you can have kind of a panoramic
15 view of what's happening, right?

16 A. Yes, sir.

17 Q. Let's talk about what you did then. I want to go back
18 over this thing in great detail.

19 Now, when did you first notice that the car was rented?

20 A. Whenever the gentleman handed me the rental agreement.

21 Q. So there is nothing on that car indicating that it was
22 a rental car, right?

23 A. No, sir.

24 Q. Now, of course, officer, the mere fact that somebody is
25 in a rental car, that wouldn't rise -- that wouldn't rise to

1 the level of calling you to believe that there were drugs in
2 the car, would it?

3 A. No, sir.

4 Q. And the mere fact somebody was following too closely,
5 that would not rise to the level of making you suspect that
6 there were drugs in the car, would it?

7 A. No, sir.

8 Q. All right. So on this particular occasion, you came --
9 you got out of the car because you were going to talk to
10 this guy about riding -- about following somebody too
11 closely, right?

12 A. Yes, sir.

13 Q. And you went to the passenger's side of the vehicle,
14 correct?

15 A. Yes, sir.

16 Q. Was the window rolled down when you got there?

17 A. I don't recall if it was rolled down or if I asked him
18 to roll it down. I'm not sure.

19 Q. But, at any rate, while you were there, it obviously
20 got rolled down?

21 A. Yes.

22 Q. And a driver's license and some type of a rental
23 agreement got passed over to you, correct?

24 A. Yes, sir.

25 Q. At that point in time you did what most officers would

1 do -- well, let me just rephrase that for a second.

2 Typically do you ask somebody to come back to your
3 vehicle, or do you ask them to wait in the car while you run
4 their license and registration?

5 A. Typically I ask them out of the vehicle.

6 Q. Typically you ask them out of the vehicle.

7 So this wasn't beyond what you normally do. You asked
8 them to step back into your car, right?

9 A. Yes, sir.

10 Q. And you ran the license, did you not?

11 A. Yes, sir.

12 Q. You found the license to be in good standing?

13 A. Yes, sir.

14 Q. And you saw the rental agreement, right?

15 A. Yes, sir.

16 Q. Okay. So there wasn't ever any question in your mind
17 about the vehicle being stolen, was there?

18 A. No, sir.

19 Q. Okay. You knew it wasn't stolen. Okay.

20 And the fact that someone was driving the car other
21 than the person shown on the exhibit, the rental agreement,
22 okay, the fact that Mr. Nichols wasn't driving the car and
23 that there was apparently nobody else authorized when the
24 car was rented, that ain't evidence of a crime? That might
25 be evidence of a breach of contract, right, between the

1 rental car company and Nichols?

2 A. Yes, sir.

3 Q. Okay. So that certainly didn't give you any suspicion,
4 right?

5 Now, let's talk about what happened after that. You
6 began to ask him other questions, right? You began to ask
7 him other questions? You asked him where he was coming
8 from?

9 A. Yes.

10 Q. That didn't have a thing to do with the reason that you
11 stopped him, did it? Huh?

12 A. Say again?

13 Q. That didn't have anything to do with the reason that
14 you stopped him for following too closely, did it?

15 A. No, sir, it was while I was running his license, it was
16 just casual conversation.

17 Q. Casual conversation.

18 All right. And you asked him what he had done in
19 Atlanta?

20 A. Yes, sir.

21 Q. Did you ask him whether he had any drugs on him?

22 A. I believe I did.

23 Q. Okay. And you say that you smelled an odor of
24 alcohol -- I mean an odor of marijuana, right?

25 A. Yes, sir.

1 Q. You smelled an odor of marijuana.

2 And he told you that he didn't have any drugs on him,
3 did he?

4 A. Yes, sir.

5 Q. So a normal traffic stop takes you, what -- or
6 something like following too closely? A normal traffic
7 stop, I'm guessing, would take you anywhere from four to six
8 minutes?

9 A. Possibly.

10 Q. Approximately four to six minutes.

11 Now, this particular traffic stop -- even before you
12 get into finding the drugs, this particular traffic stop
13 took you fifteen minutes? Thirteen minutes?

14 A. Yes, sir.

15 Q. Okay. So it took you longer, correct, because you were
16 talking to him? Not only did you want to talk to him, you
17 wanted to talk to the other fellow, right?

18 A. Whenever I smelled the odor of marijuana, I wanted
19 to --

20 Q. You wanted to talk to both of them?

21 A. Yes.

22 Q. Now, let me ask you this, officer. When you stopped
23 the car, my client told you that he had stopped to use the
24 restroom, right?

25 A. Yes, sir, he said that's why he was pulling into the

1 Exxon.

2 Q. Pulled over to use the restroom. All right.

3 And subsequent to that he was allowed to go to the
4 restroom, wasn't he?

5 A. Yes, sir.

6 Q. Okay. That didn't come out real clear on this video
7 that we saw, but he was allowed to go to the restroom.

8 Now, he was allowed to go to the restroom when you got
9 Mr. Nichols back to your car, right?

10 A. Yes, sir.

11 Q. So let me ask you this. Was he under arrest, in your
12 opinion, by then?

13 A. No, sir.

14 Q. He wasn't. Well, let me ask you another way then..

15 Was it necessary for a police officer to escort him to
16 the bathroom?

17 A. While he was the driver of the vehicle and I'm still
18 conducting the stop, I would say yes.

19 Q. Well --

20 A. With the odor of marijuana coming from the vehicle,
21 yes, sir.

22 Q. But he wasn't under arrest, right?

23 A. No, sir.

24 Q. So if he would have said "screw you, buddy, I'm going,"
25 what would you have done?

1 A. More than likely I would have placed him under arrest
2 for following too closely.

3 Q. Because he was already under arrest, right?

4 A. No, sir.

5 Q. So he could not walk away freely at that point, could
6 he?

7 A. No, sir.

8 Q. What's your damn definition of under arrest? Excuse my
9 language. What's your definition of under arrest?

10 A. Whenever the handcuffs are placed on him.

11 Q. Oh. So it's not maybe just when you have them down on
12 the ground? It's not maybe when you tell them to put their
13 hands behind their back? Your definition of arrest is when
14 you actually put the handcuffs on somebody?

15 A. Yes, sir.

16 Q. Huh? Not when you restrain their liberty? Let me just
17 make sure of that.

18 A. Well, when the blue lights came on, their liberty was
19 restrained.

20 Q. Okay. They couldn't have gone away then, right?

21 A. No, sir.

22 Q. Okay. All right.

23 Now, you get Brandon Nichols to the back. And as I
24 understand it, Brandon Nichols tells you -- you also smelled
25 some marijuana on him, right?

1 A. Yes, sir.

2 Q. Okay. And I'm assuming in all this time that you have
3 been doing this HIT stuff and this drug interdiction, you
4 have developed quite a keen sense of smell, haven't you?
5 Huh?

6 A. I haven't developed it. I know what the odor of
7 marijuana is.

8 Q. You know what the odor of marijuana smells like, right?

9 A. Yes, sir.

10 Q. Let me ask you this. Do you know how many senses of
11 smell that an individual has?

12 A. Not exactly.

13 Q. Is it about 200,000? Do you know?

14 A. No, sir.

15 Q. Do you know how many these drug dogs have? Is it about
16 42 million? Do you know?

17 A. No, sir.

18 Q. You don't have a clue, right?

19 A. I don't work dogs.

20 Q. So, anyway, so you get Brandon Nichols and you go back
21 to the car with him.

22 Now, you have testified to this jury, and I just want
23 to make sure that we are all on the same page here, you take
24 this other gentleman, this other African American gentleman,
25 out to talk with him because you smelled marijuana in the

1 car?

2 A. Yes, sir.

3 Q. Okay. So you have already looked in the car, right?
4 You looked in the car when you came up to the car to get the
5 license and registration, right?

6 A. Yes, sir, I could see inside the vehicle.

7 Q. You could see in there. All right.

8 But at that point in time you obviously didn't know
9 notice those blunts that you are talking about, right?

10 A. I could see the -- I could see the Blunt tobacco all
11 over the car.

12 Q. You could see all that, right?

13 A. Yes.

14 Q. And that's in the pictures that we saw up here?

15 A. Yes, sir.

16 Q. Right. Okay.

17 So you asked him to come out and you start questioning
18 him. Now, I don't really care about that, but you ain't
19 given anybody Miranda Rights by that time, have you?

20 A. No, sir.

21 Q. You hadn't. All right.

22 And he simply tells you that "we went to Atlanta." And
23 one of them told you they go down for something and one of
24 them tells you they go down to see somebody else? See
25 somebody's cousin, right?

1 A. Yes, sir.

2 Q. But those statements are not inconsistent statements,
3 are they? I mean, I could go to Atlanta, just for example,
4 and see a Hawks game and see a cousin, right?

5 A. Yes, sir.

6 Q. Okay. And I guess it's the same thing. They talk
7 about an elephant sometime, a blind man seeing a elephant.
8 Have you ever heard that story?

9 A. No, sir.

10 Q. They ask a blind man to describe an elephant.

11 A. No, sir.

12 Q. One blind man touches --

13 MR. SPRINGS: Your Honor, can we skip the elephant
14 story?

15 THE COURT: Let's just ask questions.

16 MR. WALKER: Very well. Very well. All right,
17 sir.

18 BY MR. WALKER:

19 Q. So no question, sir, that their stories were not
20 necessarily inconsistent, were they?

21 A. Their stories were inconsistent to me.

22 Q. To you. Okay. Let's go back through that again.
23 What did Mr. Morris tell you?

24 A. That they had went down there to see some girls.

25 Q. To see some girls. Okay.

1 What did Nichols tell you?

2 A. That they had went down there for Mr. Morris -- a
3 basketball game of some family members of Mr. Morris.

4 Q. Okay. And you think those statements are inconsistent?
5 They may describe different things, but you think that
6 that's inconsistent?

7 A. Yes, sir.

8 Q. And that made you think no doubt, based on that, that
9 made you think no doubt that something else was amiss,
10 right? Something was wrong?

11 A. Not that by itself, no, sir.

12 Q. Not that by itself. Okay.

13 So at that point in time you asked the other fellow can
14 you search the car, right?

15 A. Yes, sir.

16 Q. And he tells you no?

17 A. Yes, sir.

18 Q. He tells you no. All right.

19 At that point in time, is that when you called for this
20 drug dog?

21 A. Yes, sir.

22 Q. I want to talk to you about this drug dog.

23 First of all, his name is Justice, right?

24 A. Yes, sir.

25 Q. And how long has Justice been with y'all?

1 A. I believe about two years now.

2 Q. About two years. Okay.

3 And Justice is how old of a dog, roughly, if you know?

4 A. About three and a half.

5 Q. And he has a specific handler, I'm assuming?

6 A. Yes, sir.

7 Q. And that was the gentleman that showed up in this
8 picture holding the dog's leash, or whatever?

9 A. Yes, sir.

10 Q. Sir, how many drug busts have you been involved in --
11 or maybe not drug busts. That might be the wrong word.

12 How many stops have you been involved in where Justice
13 went out to a vehicle, for example?

14 A. Within the last two years, I'm not exactly sure, but I
15 would say in the range of fifty. Somewhere around fifty,
16 seventy-five.

17 Q. Okay. Some of them been in the winter?

18 A. Yes, sir.

19 Q. Some of them been in the summer?

20 A. Yes, sir.

21 Q. Some of them been in the spring?

22 A. Yes, sir.

23 Q. And some of them been in the fall?

24 A. Yes, sir.

25 Q. Some of them been when it's wet?

1 A. Yes, sir.

2 Q. Some of them been when it's dry?

3 A. Yes, sir.

4 Q. Okay. And he's found drugs when it's been wet, ain't
5 he?

6 A. I'm not sure exactly, but, yes, sir, I'm sure he has.

7 Q. You are sure he did, right. Okay.

8 Now, officer, what kind of a dog is Justice? I mean
9 what breed is he?

10 A. He's a Lab.

11 Q. He's a Lab.

12 And Labs are trained as hunting dogs, are they not?

13 A. I don't know anything about dogs.

14 Q. Have you ever heard of them being referred to as
15 Labrador Retrievers?

16 A. Yes, sir.

17 Q. Okay. A retriever retrieves something? It goes and
18 gets something, right?

19 A. Yes, sir.

20 Q. Like mine goes and gets ducks, if I'm lucky enough to
21 shoot them down, right? Okay.

22 So they are used to water, right?

23 A. Like I said, I don't know much about dogs.

24 Q. Okay. Well, let's assume you don't know much about
25 them.

1 What we do know on that video is that dog with its
2 handler walked around that car twice, right?

3 A. Yes, sir.

4 Q. And your report says that it didn't hit on anything,
5 right? It didn't hit on anything?

6 A. It didn't give an alert.

7 Q. Didn't give an alert, that's what not hitting on
8 something means, right?

9 A. Yes, sir.

10 Q. Okay. Now, the window, the window in that vehicle was
11 open at that time, was it not? The passenger's side window
12 was open?

13 A. I'm not sure if Mr. Nicholson rolled it up when he got
14 out or not, I don't recall.

15 Q. You don't recall. All right.

16 Well, is there a point on the video that shows you
17 sticking your head in it?

18 A. Yes, sir.

19 Q. After that?

20 A. Yes, sir.

21 Q. Okay. So let me ask you this another way then.

22 All right. When you put Nicholson in the car with you,
23 was he allowed to go back and sit in the car?

24 A. Was he allowed to go back and --

25 Q. And sit in the car at any point in time, in the rental

1 car?

2 A. No, sir.

3 Q. Did Mr. Morris get the opportunity to go back to the
4 car and sit in the car?

5 A. No, sir.

6 Q. Okay. Did you let any police officer go in that car
7 and sit in the car?

8 A. No, sir.

9 Q. Okay. So if you stuck your head in that car, on that
10 video after that dog ran around it or went around it twice,
11 it's safe to assume, since you didn't roll the window down,
12 it was rolled down, right?

13 A. Yes, sir.

14 Q. So that dog had the opportunity to smell the inside of
15 that car? Not only did he have the opportunity to go around
16 the car, he had the opportunity to -- which they are trained
17 to even detect if a window is rolled up, right? Huh? Huh?

18 A. I don't know if he's trained to tell us a window is up.

19 Q. Huh? I understand that, but I'm saying they can walk
20 around the outside of a car, the windows can be rolled up,
21 the car can essentially be airtight, and they can smell a
22 drug in it, correct?

23 A. Yes, sir.

24 Q. Okay. Now, this window was rolled down, right?

25 A. Yes, sir.

1 Q. Okay. All right.

2 And he smelled nothing?

3 A. I'm not sure what he smelled.

4 Q. Well, he didn't act on anything?

5 A. He didn't alert.

6 Q. Okay. All right.

7 Then let me just get this straight, officer. At a
8 point in time --

9 Well, let me back up just a second. At a point in time
10 when you were out there sitting in your patrol car, you
11 radioed for that dog, right?

12 A. He -- I believe in the initial he heard me stop the
13 vehicle and head that way, and later I explained to him what
14 I had and I did want him to come there.

15 Q. Okay. And that -- that was -- that went over your, I
16 guess -- not loudspeaker system, but your radio system,
17 right?

18 A. That was my Nextel.

19 Q. Okay. And in speaking with him, in speaking with the
20 guy that showed up for you, the dog handler, you will agree
21 with me, will you not, that when you initially spoke with
22 him, you made absolutely no mention whatsoever of detecting
23 an odor of marijuana, did you?

24 A. No, sir.

25 Q. Huh?

1 A. No, sir.

2 Q. You did not, correct? You didn't mention that to him?

3 A. No, I did not.

4 Q. All right, sir. So, we have got the dog coming up.

5 Now, at this point you still haven't mentioned to the
6 fellow about marijuana, have you?

7 A. No, sir.

8 Q. Okay. All right.

9 So after the dog finishes up, you go into the car,
10 right?

11 A. Yes, sir.

12 Q. You go into the car. Okay.

13 And you get these -- you see these blunts more clearly,
14 I assume? You are in the car now, right?

15 A. Yes, sir.

16 Q. After Nichols told you you couldn't go in it?

17 A. Yes, sir.

18 Q. You were in the car. All right.

19 You see these blunts that you talked about.

20 Now, to be honest with you, that term confused me a
21 little bit. A Blunt is a cigar, basically, or some type of
22 a cigarette?

23 A. Basically a cigar.

24 Q. Okay. I mean, they are manufactured somewhere and they
25 are manufactured by Phillip Morris, for example? They are

1 manufactured by somebody else, right?

2 A. Yes, sir.

3 Q. Okay. And there are different kinds of them, right?

4 A. Yes, sir.

5 Q. Okay. And what you are telling us is that what happens
6 is people go down the road smoking the -- they put the
7 marijuana in the cigar or the area and they smoke it, right?

8 A. Yes, sir.

9 Q. And then you see tobacco on the floor, etcetera,
10 etcetera?

11 A. Yes, sir.

12 Q. All right. In this particular case we know from your
13 earlier testimony that those blunts were just that, right?
14 They were blunts? They weren't marijuana?

15 A. There wasn't any marijuana there.

16 Q. There wasn't any marijuana there, right?

17 Okay. You showed a photograph, and I have no clue how
18 to use this machine, but if you could, or if the solicitor
19 would be so kind as to help me, I want to go back to those
20 photographs for just a minute.

21 MR. WALKER: Can you work this machine.

22 MR. SPRINGS: I will get it.

23 (Witness off the witness stand)

24 MR. SPRINGS: It's going to take a minute to warm
25 up. It's ready when you see a little light on the

1 right-hand corner there.

2 MR. WALKER: All right.

3 BY MR. WALKER:

4 Q. Let's see here. I tell you we could do this
5 differently. You can cut this off. Do it differently.

6 Stand up here with the jury, if you don't mind, sir.

7 A. Okay.

8 Q. This is marked Plaintiff's Exhibit No. 5, right,
9 State's Exhibit No. 5?

10 A. Yes.

11 Q. Right?

12 A. Yes.

13 Q. And this is the tobacco that you see?

14 A. Yes.

15 Q. You are telling us it's spread all over the car?

16 A. Yes, sir.

17 Q. So a few drops of tobacco, right?

18 A. Yeah.

19 Q. Huh? I mean they can see that for themselves?

20 A. Yes, sir.

21 Q. A few drops of tobacco. Right.

22 And it is tobacco?

23 A. Yes, sir.

24 Q. All right. This is what? This is a bottle of water,
25 and a few what?

1 A. Some more Blunt innards, tobacco.

2 Q. Some more tobacco, which again is tobacco, a little
3 bit, right? Some on the passenger's side? Some maybe on
4 the driver's side?

5 A. Yes, sir.

6 Q. But very little bit. We agree on that, right?

7 A. It's a Blunt.

8 Q. Now, I want to ask you about this. This is State's
9 Exhibit No. 7. You see that?

10 A. Yes, sir.

11 Q. And you mentioned that in your testimony, right? It's
12 the thing up here. That has a filter on it, doesn't it?

13 Huh?

14 A. Yes, sir.

15 Q. Let's take a look at that thing really good. Have you
16 ever in your life seen anybody smoke marijuana through a
17 filtered cigarette?

18 A. I'm sure they do, but I have never watched it.

19 Q. Have you ever, ever, in your career seen anybody,
20 anybody, arrested anybody with a marijuana cigarette with a
21 filter on it?

22 A. I don't know.

23 Q. All right. All right, sir.

24 The same thing. I'm assuming this is just another
25 picture?

1 A. Yes.

2 Q. State's 4. Same thing, right?

3 A. Yes, sir.

4 Q. All right. Sit back down, if you don't mind, sir.

5 (Witness back on the witness stand)

6 BY MR. WALKER:

7 Q. All right. So then after finding no marijuana in the
8 car and after the dog don't find any -- well, after the dog
9 doesn't find any marijuana, he doesn't sniff it, but you say
10 that you sniffed it, after the dog doesn't find any
11 marijuana, after none of the blunts in the car contain
12 marijuana, you go into the trunk, right?

13 A. Yes, sir.

14 Q. All right. You find these Ecstasy pills, correct?

15 A. Yes, sir.

16 Q. You find them in a bag, some sort of a bag? Do you see
17 it?

18 A. Yes, sir.

19 Q. That's what you found them in?

20 A. Yes, sir.

21 Q. All right. Let me ask you this. Was that bag -- is
22 there a single fingerprint on that bag? I know that you are
23 not a fingerprint expert, I understand that, or I'm assuming
24 you are not, correct?

25 A. No, sir, I'm not.

1 Q. But you know for a fact that my client's prints were
2 not found on that bag?

3 A. No, no one's was.

4 Q. Anything in there. He wasn't. I don't care about the
5 other fellow. I'm talking about my guy.

6 A. Yes, sir.

7 Q. His prints were not found on there, were they?

8 A. No, sir.

9 Q. His prints weren't found on a doggone thing that we
10 have right here, right?

11 A. No, sir.

12 Q. All right. None of the drugs.

13 And the marijuana was hidden even from you, as I
14 understand it? That was not discovered until you got back
15 to the police station and examined the tire well?

16 A. Yes, sir.

17 Q. Okay. All right.

18 All right, sir. Just a few more minutes. All right.

19 When you decided to make this arrest, as you say, after
20 you found the Ecstasy, you had to do something with the
21 vehicle, right?

22 A. Yes, sir.

23 Q. All right. Now, the vehicle is typically towed into
24 what y'all call an impound, right? It's impounded?

25 A. Yes, sir.

1 Q. Okay. And it's impounded, officer, for, among other
2 things, and it's subsequently inventoried, I understand
3 that, it's inventoried so that, number one, you can get an
4 accurate inventory of what is in the vehicle, correct?

5 A. Yes, sir.

6 Q. All right. So that protects the client, or the
7 defendant in this case; that protects the police station,
8 because the guy can't then claim there is \$20,000 missing
9 from the car, right?

10 A. Yes, sir.

11 Q. And that protects you.

12 Let's talk about that for a minute. Normally a vehicle
13 is towed in, is it not? I mean, at least where I come from,
14 vehicles are towed in if they are stopped on the road, like
15 this one is?

16 A. If it's stopped by us and we search the vehicle and
17 find drugs, or we think that there may be more drugs in it,
18 most of the time we will either have someone that's riding
19 with us drive the vehicle in, or call someone from the
20 narcotics officer to drive it in.

21 Q. So that is your procedure? It's not necessarily call a
22 tow truck?

23 A. Yes, sir.

24 Q. That's fine.

25 Okay.

1 MR. WALKER: Just a moment, Your Honor. I beg the
2 court's indulgence.

3 (Off the record)

4 (Back on the record)

5 MR. WALKER: That's all I have.

6 MR. SPRINGS: Nothing further. Thank you,
7 officer. Come on down.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you.

10 MR. SPRINGS: In the second room on the left, a
11 waiting room out there is man and his wife. Ask them to
12 come in, if you would, please.

13 Mr. Nichols, come on in, please. Come around here
14 and go over there. The clerk has a Holy Bible. She's going
15 to swear you in.

16 BRANDON NICHOLS, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. SPRINGS:

19 Q. You have a very soft voice. I'm going to ask you to
20 use this microphone and you are going to need, just like a
21 rock star, hold it up there to your mouth.

22 What is your name, sir?

23 A. Brandon Nichols.

24 Q. Mr. Nichols, where are you from, what city?

25 A. I live in Greensboro, North Carolina.

1 Q. Okay. Did you get arrested on February the 6th of last
2 year?

3 A. Yes, sir.

4 Q. Who were you with that day when you got arrested?

5 A. Mr. Morris.

6 Q. Mr. Morris?

7 A. Yes, sir.

8 Q. What's his first name?

9 A. Kenneth.

10 Q. When the police got up on you, came up on you that day,
11 were you in a building, in a car, standing on a sidewalk?
12 Where were you?

13 A. We were in a car on the highway.

14 Q. Okay. And so who all was in the car with you when the
15 police came up on you that day?

16 A. Me and Mr. Morris.

17 Q. And whose car was it or who had gotten -- who had
18 gotten the car?

19 A. I rented it. I rented the car.

20 Q. And where did you rent the car?

21 A. Greensboro.

22 Q. And the police arrested you on February 6th. What day
23 did you rent the car?

24 A. February the 5th.

25 Q. The day before?

1 A. Yes, sir.

2 Q. When you -- after you rented the car, did you pick up
3 Mr. Morris?

4 A. Yes, sir.

5 Q. Okay. Was he in Greensboro?

6 A. Yes, sir.

7 Q. And after you picked up Mr. Morris in the rental car in
8 Greensboro, where did you two go?

9 A. We headed down south to Atlanta.

10 Q. Atlanta?

11 A. Yes, sir.

12 Q. And when you and Mr. Morris got to Atlanta, did you two
13 together buy anything?

14 A. We bought Ecstasy.

15 Q. Okay. About how many Ecstasy doses or pills did you
16 buy?

17 A. About four hundred pills.

18 Q. And who provided the money?

19 A. We split them, half.

20 Q. You split them 50/50?

21 A. Yes, sir.

22 Q. And when did you and Mr. Morris get the Ecstasy pills;
23 the day that you rented the car or the day that you got
24 arrested?

25 A. The day of. The day of.

1 Q. The day --

2 MR. WALKER: I can't understand him. I'm sorry.

3 A. The day of. The day of.

4 BY MR. SPRINGS:

5 Q. The day you got arrested?

6 A. Yes, sir.

7 Q. Okay. You got arrested about two in the afternoon.

8 When did you two do the Ecstasy deal in Atlanta, about what
9 time that day?

10 A. Did you say -- I'm sorry, did you say the day that we
11 got arrested, or the day --

12 Q. Right. You and Morris bought the Ecstasy. Did you buy
13 it the day that you rented the car on the 5th of February,
14 or did you buy it earlier the day that you got arrested,
15 which was the 6th?

16 A. The day I got the car.

17 Q. Okay. The day before?

18 A. Yes, sir.

19 Q. Okay. And did the Ecstasy get put into the car?

20 A. Yes, sir.

21 Q. Did any other kind of drugs get put into the car?

22 A. Some marijuana.

23 Q. How much back in North Carolina would those Ecstasy
24 pills have sold for each?

25 MR. GARDNER: Objection.

1 MR. WALKER: Objection.

2 THE COURT: I overrule the objection, but you
3 might want to ask does he know first.

4 BY MR. SPRINGS:

5 Q. Let me ask you this. How much were you intending to
6 sell the Ecstasy pills for back in North Carolina each?

7 A. I was going to sell mine for ten dollars a pill,
8 probably.

9 Q. Did you know how much Morris was going to sell his half
10 for?

11 A. No, sir, I don't.

12 Q. Okay. The marijuana in the car, was it yours?

13 A. No, sir.

14 Q. So whose was it?

15 A. It wasn't mine.

16 Q. Did you know it was in the car, though?

17 A. Yes, sir, I knew.

18 Q. Okay. Did you plead guilty to involvement with the
19 marijuana because you were driving the car that transported
20 the marijuana?

21 A. Yes, sir.

22 Q. Did you plead guilty to being involved with the
23 Ecstasy?

24 A. Yes, sir.

25 Q. Did you get a deal?

- 1 A. Yes, sir, I got one.
- 2 Q. What was your deal?
- 3 A. Probation, testify truthfully.
- 4 Q. Okay. Are you testifying truthfully?
- 5 A. Yes, sir.
- 6 Q. Now, after you pled guilty and agreed to testify
- 7 truthfully in this trial here today, did Mr. Morris come to
- 8 you and ask you about that or have some conversation with
- 9 you about you testifying in this trial?
- 10 A. Yes, sir.
- 11 Q. Tell us about that. What did he do? What did he say?
- 12 A. He asked me why did I agree to the deal and that people
- 13 wouldn't be happy about it and that there probably would be
- 14 repercussions.
- 15 Q. And what was the last?
- 16 A. Probably be repercussions.
- 17 Q. Was he alone when he was telling you these things?
- 18 A. First time.
- 19 Q. He said this more than once?
- 20 A. I mean -- yes, sir.
- 21 Q. You got to speak up.
- 22 A. Yes, sir.
- 23 Q. Okay.
- 24 A. I seen him.
- 25 Q. About how many times did he tell you people wouldn't be

1 happy about this?

2 A. I seen him twice.

3 Q. Did you feel threatened?

4 A. I did. My family -- I mean, yes, sir, I did.

5 Q. Do you have a family?

6 A. Yeah, I have a wife and kids.

7 Q. Where did Mr. Morris talk to you about this and tell

8 you that people wouldn't be happy about you testifying?

9 What location?

10 A. Over at another person's house.

11 Q. Both times?

12 A. The first time was at my house.

13 Q. Was it -- whose house?

14 A. The first time was at my house. At my home.

15 Q. At your house?

16 A. Yes.

17 Q. And the second time was where?

18 A. Another location. Another person's house.

19 Q. Okay. Was he alone both times when he told you people

20 wouldn't be happy with you?

21 A. Not the first time. I mean the first time, not the

22 second time.

23 Q. Who was with him the second time?

24 A. Some gentleman I don't know. An acquaintance. Some

25 gentleman.

1 Q. Did Mr. Morris make you sign anything?

2 A. Yes, sir.

3 Q. Did you want to sign it?

4 A. I really didn't. I didn't.

5 Q. This thing that you signed, did it make a statement?

6 A. Yes, sir.

7 Q. This thing that you signed, was the statement true?

8 A. No, sir.

9 Q. Well, why did you sign it?

10 A. I felt that -- I felt that it would benefit my family,
11 that being that people know where I stay at, so I felt like
12 if I signed this, then it might help me more and a better
13 outcome of the situation, so that's why I did it.

14 Q. Okay. How would you describe your feelings when he is
15 making you sign this?

16 A. Hurt.

17 MR. WALKER: I would object to that as being
18 self-serving.

19 THE COURT: I sustain the objection.

20 MR. SPRINGS: All right.

21 BY MR. SPRINGS:

22 Q. Thank you. The defense attorney will ask you some
23 questions now. Just answer them.

24 CROSS EXAMINATION BY MR. WALKER:

25 Q. How old are you, Mr. Nichols?

- 1 A. Twenty-five.
- 2 Q. How old?
- 3 A. Twenty-five.
- 4 Q. Thirty-five?
- 5 A. Twenty-five.
- 6 Q. Twenty-five. Okay. I'm having a little trouble
- 7 understanding you, but I'm deaf, so -- all right.
- 8 State's Exhibit 1 is from Triangle Rent a Car, correct?
- 9 A. Yes, sir.
- 10 Q. All right. You rented that car, correct?
- 11 A. Yes, sir.
- 12 Q. It says no additional driver, correct?
- 13 A. Yes, sir.
- 14 Q. All right. You are coming back from Atlanta, however,
- 15 and you got tired. Mr. Morris drove the car for awhile, did
- 16 he not?
- 17 A. No, I never drove.
- 18 Q. Huh?
- 19 A. I never drove from Atlanta.
- 20 Q. He never drove to Atlanta?
- 21 A. From Atlanta.
- 22 Q. Well, he was driving when this officer stopped him,
- 23 right?
- 24 A. I said I ain't never drove.
- 25 Q. You never drove from Atlanta?

1 A. Yes, sir.

2 Q. I see. All right.

3 A. Yes, sir.

4 Q. Now, I just want to go over a few things with you.

5 Who did I understand you to say a few minutes ago put
6 the Ecstasy in the car?

7 A. I didn't do it.

8 Q. Huh?

9 A. I didn't put the Ecstasy in the car.

10 Q. You didn't put it in the car?

11 A. No, sir.

12 Q. Huh?

13 A. No, sir.

14 Q. You deny that, right?

15 A. Yes, sir.

16 Q. Huh?

17 A. Yes, sir.

18 Q. Who put the marijuana in the car?

19 A. I didn't put it in there.

20 Q. You didn't put nothing in the car?

21 A. No, sir.

22 Q. Right?

23 A. Yes.

24 Q. Nothing in the car whatsoever?

25 A. No, sir.

- 1 Q. That would be your testimony, correct?
- 2 A. Yes, sir.
- 3 Q. All right. When did you plead guilty?
- 4 A. Sir?
- 5 Q. When did you plead guilty?
- 6 A. Was it March 12th?
- 7 Q. March the 12th of 2009, correct?
- 8 A. Yes.
- 9 Q. Huh?
- 10 A. Yes, sir.
- 11 Q. And you pled in this very court here?
- 12 A. Yes, sir.
- 13 Q. You pled to what?
- 14 A. Possession of Ecstasy -- whatever my charges are.
- 15 Q. You pled to whatever your charges are?
- 16 A. Yes, sir.
- 17 Q. You didn't plead to trafficking in Ecstasy, did you?
- 18 A. I don't think so, no.
- 19 Q. I don't think that you did either. All right.
- 20 And you got, what, probation, right?
- 21 A. Yes, sir.
- 22 Q. Probation.
- 23 Five years probation, correct?
- 24 A. No, sir.
- 25 Q. How long?

- 1 A. Two years.
- 2 Q. Huh?
- 3 A. Two years.
- 4 Q. Three years? You only got three years probation?
- 5 A. No, sir, two years.
- 6 Q. What?
- 7 A. Two.
- 8 Q. Two. Two years probation.
- 9 So not five, not three, but two years probation.
- 10 And before you got probation, you had talked with the
- 11 prosecutor, through your attorney or -- with your attorney
- 12 or by yourself, had you not, about what you were going to do
- 13 in return for getting probation, right?
- 14 A. Could you repeat the question, please?
- 15 Q. Yeah.
- 16 Before you went up and pled before whatever judge that
- 17 you pled before, you had already cut a deal with the
- 18 prosecutor, had you not? Huh?
- 19 A. Yes, sir.
- 20 Q. Okay. And that deal called for you to get probation in
- 21 return for your truthful testimony against Mr. Morris,
- 22 right?
- 23 A. Yes, sir.
- 24 Q. Your truthful testimony.
- 25 MR. SPRINGS: I'm going to object to this.

1 THE COURT: Let's just ask questions and --

2 MR. WALKER: Huh?

3 THE COURT: Let's just ask questions.

4 MR. WALKER: All right.

5 BY MR. WALKER:

6 Q. So that was part of your plea agreement, right?

7 A. Yes, sir.

8 Q. Okay. And if you didn't testify truthfully, I'm
9 assuming your probation would be violated, right? Huh?

10 A. Yes, sir.

11 Q. Okay. So you obviously think of Mr. Morris as a
12 dangerous man, don't you?

13 MR. SPRINGS: Objection. That's argumentative.

14 THE COURT: I sustain the objection. Just ask
15 questions about the facts.

16 MR. WALKER: Very well.

17 BY MR. WALKER:

18 Q. Do you or do you not fear Mr. Morris?

19 A. I don't understand your question.

20 Q. Do you understand what fear is, sir?

21 A. I understand what fear is, yes, sir.

22 Q. Do you or do you not -- are you afraid of Mr. Morris?

23 A. Are you asking am I afraid, sir, of Mr. Morris as a
24 person -- as a person, or --

25 Q. Sir?

1 A. Or are you asking am I afraid of Mr. Morris at the time
2 that I signed the statement?

3 Q. Well, let's go through both of them then. Are you
4 afraid of Mr. Morris as a person?

5 A. As a person, I mean, I wouldn't say that I would be,
6 no. One on one, man to man, no.

7 Q. How long have y'all been friends? Huh?

8 A. About seven years.

9 Q. About seven years. Okay.

10 All right. So after you pled guilty to whatever it was
11 that you pled guilty to, you signed a statement, did you
12 not, before a notary public, right?

13 A. Yes, sir.

14 Q. And that statement said that -- well, let me read it to
15 you.

16 MR. WALKER: Let me have that statement. No, I
17 want the other one signed in March. I had it.

18 Might I trouble you for a copy of that statement?

19 MR. SPRINGS: Your Honor, while I'm looking for a
20 copy of something, I have a matter of law. Could we talk
21 with you briefly?

22 THE COURT: I'll let the jury go to the jury room
23 for a little refresher break. This won't be long, I hope.
24 I don't know.

25 (The following takes place out of the presence of

1 the jury panel)

2 THE COURT: All right.

3 MR. SPRINGS: I loaned Mr. Irby my copy of the
4 affidavit Mr. Nichols said Morris made him sign.

5 I'm going to object to that being published to
6 this jury. If he wants the jury to hear the content of
7 that, I think he needs to offer it into evidence. I don't
8 think it's fair for him to get the benefit of it without
9 offering it into evidence.

10 THE COURT: I don't understand what you are asking
11 for.

12 MR. SPRINGS: I'm asking that he be required to
13 offer it into evidence.

14 THE COURT: I can't make him offer it into
15 evidence. I don't know if I can make him put anything into
16 evidence.

17 MR. SPRINGS: I'm going to object --

18 THE COURT: Also, you know, he's got certain
19 rights that -- if I made him put something into evidence, he
20 might not get the last argument because then he put
21 something in evidence.

22 MR. SPRINGS: Well --

23 THE COURT: I'm not going to do that to him or
24 anybody else.

25 MR. SPRINGS: Well, yeah, this is where I'm going,

1 Judge Hayes.

2 When he asked Mr. Nichols to read his statement,
3 I'm going to object. And I'm going to say if it's going to
4 be published to the jury, it should be in evidence. It
5 shouldn't be published to the jury read by Mr. Nichols,
6 unless it's in evidence. And I thought we would go ahead
7 and cover this now rather than send them out at the time,
8 since we are right there on it.

9 THE COURT: Well, it's his statement. I don't
10 know why it would have to be in evidence for him to read it.

11 MR. SPRINGS: All right. I have made my argument.
12 I appreciate you hearing me.

13 THE COURT: Let's take a short refresher break
14 again. I'm sure everybody out there would be -- I don't see
15 us finishing today, Mr. Springs. It would be --

16 MR. SPRINGS: Well, I'm done, except for Barbie
17 Traylor to say I carried it from here to here and the
18 chemist to say this is what it is. I'm done.

19 THE COURT: All right, we will see then.

20 MR. WALKER: I beg your pardon?

21 THE COURT: Let's take about a five minute break.

22 MR. WALKER: Oh, yes, sir.

23 (Jury Note marked as Court's Exhibit No. 3 for
24 identification)

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT: All right. We have had two jurors
3 indicate that they recognized and both have worked with this
4 witness' wife at some point. One said it's been at least
5 five years. Tracey Rollins and Kari Kyser. Both in my
6 response to my questions and in the presence of the
7 attorneys indicated that that would not affect their ability
8 to be fair and impartial.

9 Any comments on that, Mr. Springs?

10 MR. SPRINGS: Nothing from the State.

11 MR. WALKER: You stated it correctly, Your Honor.

12 THE COURT: And both of them said they could be
13 fair and impartial. They are remaining on the jury.

14 All right. Bring in the jury.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: All right. You may proceed.

18 BY MR. WALKER:

19 Q. All right, sir. Very briefly.

20 On March the 25th of 2009, you appeared before a notary
21 public, is that correct, and gave a statement?

22 A. Yes, sir.

23 Q. All right. And that notary public was Angela G.
24 Stevens. I'm assuming from North Carolina, correct?

25 A. Yes, sir.

1 Q. All right, sir.

2 Tell the jury, if you would, how Angela Stevens was
3 picked as the notary. Did you know her?

4 A. No, I didn't.

5 Q. All right, sir. Did she simply have a sign out front
6 that said notary public, like some people advertise?

7 A. No, sir.

8 Q. All right. How did y'all get her?

9 A. Mr. Morris knew her, knew how to find her.

10 Q. What?

11 A. Mr. Morris knew how to find her.

12 Q. Mr. Morris knew her, correct?

13 A. Yes, sir.

14 Q. Now, let me ask you this. How did you arrive at her
15 house? By that, I mean who -- did you go with anybody?

16 A. Mr. Morris.

17 Q. You went with Mr. Morris, right?

18 A. (Shaking head yes)

19 Q. And before you went to Angela's house, to Ms. Stevens
20 house, sir, you had the opportunity to go to your house,
21 didn't you?

22 A. Did I have the opportunity to go to my house?

23 Q. Yeah.

24 A. Yes, sir, I did.

25 Q. Okay. And did you go?

1 A. No, sir.

2 Q. Well, you had the opportunity to go to your house,
3 right?

4 A. Yes, sir.

5 Q. And you chose not to go, right?

6 A. Yes, sir.

7 Q. Okay. Who was at your house?

8 A. Who was at my house?

9 Q. At that time.

10 A. I don't recall who was at my house at that time.

11 Q. You live in a neighborhood, in an apartment? Where do
12 you live?

13 A. In a neighborhood.

14 Q. In a neighborhood?

15 A. Yes.

16 Q. And you know your neighbors, right?

17 A. Yes, sir.

18 Q. Mr. Morris doesn't live there, does he?

19 A. No, sir.

20 Q. All right. You signed a statement on March the 25th
21 before Ms. Stevens that said "on March 12th, 2009, I was put
22 under the most pressure of my life," correct?

23 A. Yes, sir.

24 Q. That's the date you pled?

25 A. Yes, sir.

1 Q. All right. You said "I was scared and confused about
2 my situation that was at hand," correct?

3 A. Yes, sir. That's what's on the paper, yes, sir.

4 Q. All right. All right. You said that "some of the
5 statements that I made concerning Kenneth Morris and myself
6 were not true." Huh?

7 A. Me and Mr. Morris were there together.

8 Q. I'm asking you, did you say that "some of the
9 statements that I made concerning Kenneth Morris and myself
10 were not true"?

11 A. That's what was typed on the paper.

12 Q. Okay. And you signed that paper, right?

13 A. Yes, sir.

14 Q. All right. Did you say "I was not aware that Mr.
15 Morris had purchased any marijuana or did not see him place
16 any quantity in the vehicle"?

17 A. That's what I was told to type.

18 Q. Huh?

19 A. That's what I was told to type.

20 Q. You typed this?

21 A. Yes, sir.

22 Q. Okay. Well, I guess Mr. Morris told you to type it,
23 didn't he?

24 A. We were typing it together.

25 Q. Huh?

1 A. We were typing it together.

2 Q. Okay. So it took two of you to type it?

3 A. Yes, sir.

4 Q. Let me ask you this. Did it take two of you to type it
5 because he was holding a gun on you?

6 A. No, sir, no gun was held.

7 Q. Did it take two of you to type it because he was
8 holding a knife on you?

9 A. No knife was held.

10 Q. All right. He wasn't holding a knife on you, wasn't
11 holding a gun on you, right?

12 A. Right.

13 Q. Wasn't holding any weapon on you, was he?

14 A. No, sir.

15 Q. Huh?

16 A. No, sir.

17 Q. Didn't threaten you in any way, did he?

18 A. (No response)

19 Q. Being truthful now?

20 A. I am being truthful.

21 Q. He didn't threaten you in any way, did he?

22 A. I was just -- I took -- I took what he said under --
23 under careful supervision.

24 Q. Under careful supervision?

25 A. Yes, sir.

1 Q. Okay, sir.

2 A. People know where I stand.

3 Q. Huh?

4 A. People know where I stand.

5 Q. Okay. All right. People know where you stand?

6 A. Yes, sir.

7 Q. All right, sir.

8 Now, you said "I was not aware that Mr. Morris had
9 purchased any marijuana or did not see him place any
10 quantity in the vehicle," correct?

11 A. Yes, sir.

12 Q. All right. And then "Mr. Morris was not aware of the
13 purchase of the Ecstasy and had no knowledge of it."

14 A. Yes, sir.

15 Q. That's your statement, right?

16 A. Not true.

17 Q. I want to know if that's your statement.

18 A. Not true.

19 Q. I don't care if it's true or --

20 THE COURT: He's asking you if that's what it says
21 on that piece of paper.

22 THE WITNESS: That's what's on the paper, yes,
23 sir.

24 BY MR. WALKER:

25 Q. That's what's on the paper. All right.

1 Now, I gave a copy of this statement to the solicitor,
2 who incidentally is a very fine person. I say that with all
3 sincerity.

4 They contacted you about it, didn't they, after you
5 gave them that statement?

6 A. Yes, sir.

7 Q. All right. And they told you -- they told you that if
8 you backed up on your initial statement, you would be facing
9 substantial jail time, didn't they? Huh?

10 A. Yes, sir.

11 Q. All right. Thank you, buddy.

12 THE COURT: Any redirect?

13 MR. SPRINGS: I think we have covered it. Nothing
14 further.

15 THE COURT: You can step down and be excused. We
16 appreciate your time.

17 You can call your next witness.

18 MR. SPRINGS: We call Barbie Traylor.

19 May Mr. Nichols be excused?

20 THE COURT: You may be excused.

21 BARBIE TRAYLOR, having been first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION BY MR. SPRINGS:

24 Q. What is your name, please?

25 A. It's Barbara D. Traylor.

1 Q. Who do you work for?

2 A. The York County sheriff's office.

3 Q. Back last year, 2008, before your delicate condition,
4 did you work in the evidence room?

5 A. I did.

6 Q. And was one of your duties in the evidence room to pick
7 up evidence from the drop lockers at the Rock Hill City
8 Police Department and bring it over here to the drug lab?

9 A. It was.

10 Q. The drop locker over there at the Rock Hill City Police
11 Department, is it a secure facility?

12 A. It is.

13 Q. Okay. And once somebody drops something into that drop
14 locker, that police officer, can he get it back out?

15 A. No.

16 Q. And who is the person that can get stuff back out of
17 it?

18 A. Only the evidence personnel.

19 Q. Okay. I want to show you what's been marked for
20 identification State's Exhibit 8 and State's Exhibit 11.
21 Tell this jury if you have ever handled these two things.

22 A. I have.

23 Q. Okay. And did you transport those two things from the
24 drop locker, after you got them out of the drop locker, over
25 here to the evidence room in the drug lab at the Moss

1 Justice Center?

2 A. Yes, I did.

3 Q. And when you got them out of the drop locker, were the
4 bags intact, or did it look like they had been tampered
5 with?

6 A. No, it did not look like they were tampered with.

7 Q. Okay. So you picked them up and brought them over here
8 and you put them in the evidence room?

9 A. In the evidence room.

10 Q. Is that a secure facility?

11 A. Yes, it is.

12 Q. Thank you very much. If you would just lay that right
13 here.

14 A. Okay.

15 MR. SPRINGS: Nothing further.

16 MR. WALKER: We don't have any questions, Your
17 Honor.

18 MR. SPRINGS: Thank you, Ms. Traylor.

19 THE COURT: You may step down and can be excused.
20 We appreciate your time.

21 MR. SPRINGS: We call Ms. Dee Johnson.

22 DEE ANN JOHNSON, having been first duly sworn,
23 testified as follows:

24 MR. WALKER: Your Honor, we will stipulate to her
25 qualifications as a chemist.

1 THE COURT: All right.

2 MR. SPRINGS: More fully articulated, the
3 stipulation is that she's a chemist trained to analyze and
4 weigh and identify illegal drugs and controlled substances.

5 MR. WALKER: That's fine.

6 DIRECT EXAMINATION BY MR. SPRINGS:

7 Q. Tell the jury your name, ma'am.

8 A. Dee Ann Johnson.

9 Q. And you are a chemist?

10 A. Yes, sir.

11 Q. And have you done some work for the York County drug
12 lab?

13 A. Yes, I have.

14 Q. All right. I want to first of all show you what's been
15 marked for identification as State's Exhibit 8. Tell this
16 jury if you have ever seen that and done some work with it.

17 A. Yes, I have.

18 Q. All right. Where did you come into contact with it the
19 first time?

20 A. I received this piece of evidence from Barbie Traylor
21 on March the 3rd, 2008.

22 Q. Okay. And when you got it, did you open the -- when
23 you got it, was the bag intact? Did it look like no one had
24 tampered with it?

25 A. Yes, sir, the seal was still intact inside this outer

1 envelope.

2 Q. Okay. And did you open up the bag and test what was
3 inside?

4 A. Yes, sir.

5 Q. Okay. And these look like pills. Is that how you
6 would characterize them?

7 A. That's correct.

8 Q. Okay. Did you count them? They're 393 in there. Did
9 you test all 393?

10 A. No, sir, I did not.

11 Q. How many did you test?

12 A. I tested a total of 254 tablets.

13 Q. Okay. And why didn't you test -- what is your
14 procedure, your policy, when you have almost 400 pills like
15 this? Why didn't you test all 393?

16 A. I tested enough to meet the level of trafficking that
17 was alleged in this case.

18 Q. Okay. Now, so you did test and analyze the substance
19 in State's Exhibit 8, is that right?

20 A. That's correct.

21 Q. And did you make a written report of what you found it
22 to be?

23 A. Yes, sir, I did.

24 Q. Okay. What did you find -- the pills that you did
25 test, what did you find them to be?

1 A. State's Exhibit 8 contains
2 Methylenedioxymethamphetamine, otherwise known as MDMA.

3 Q. Does it have a street name?

4 A. It does.

5 Q. What is that?

6 A. That would be Ecstasy.

7 Q. Okay. And how many pills were -- how many Ecstasy
8 pills?

9 A. The amount that I tested, 254 tablets.

10 Q. Okay. Were Ecstasy?

11 A. That's correct.

12 Q. Okay. All right.

13 Now, let me show you -- by the way, did you seal it
14 back up in a bag after you tested it?

15 A. Yes, sir, I did. My seal was across the bottom here
16 with my initials and the date seal.

17 Q. Okay. Now, is this actually a bag in a bag? The bag
18 that you got, you opened and tested it and you put it back
19 in your own bag and sealed it up, is that right?

20 A. That's correct.

21 Q. Okay. Is this still sealed up the way you sealed it up
22 after you tested it?

23 A. Yes, sir, the seal falls across my initials.

24 Q. Very good.

25 MR. SPRINGS: We do offer State's Exhibit 8 into

1 evidence.

2 MR. WALKER: We have a matter.

3 THE COURT: All right, let me let the jury go to
4 the jury room. We'll send for you as quickly as we can.

5 (The following takes place outside the presence of
6 the jury panel)

7 THE CLERK: All right. Yes, sir.

8 MR. WALKER: Yes, sir.

9 Two things, Your Honor. One is in order to
10 protect the sanctity of the record, so to speak, in our
11 earlier motion, we object to these, No. 8 going in. I don't
12 think it was offered even yet. We object to No. 8 going in,
13 and I'm assuming he's going to offer No. 7, correct?

14 MR. SPRINGS: Yes, sir.

15 MR. WALKER: And we will object to that as well
16 outside the presence of the jury, based upon the fact that
17 we believe this was an illegal search and seizure.

18 Also Mr. Gardner raised --

19 THE COURT: Let's take them one at a time.

20 I overrule your objection on that grounds --

21 MR. WALKER: Yes, sir.

22 THE COURT: -- for the same reasons as I earlier
23 articulated.

24 MR. WALKER: The other thing is that Mr. Gardner
25 has brought it to my attention, she only tested 254 tablets.

1 It would seem like to me that only 254 tablets should go to
2 the jury, which is enough for trafficking. I realize that.
3 We have got some untested items there.

4 THE COURT: Could she identify which of 254 she
5 tested?

6 MR. WALKER: Sir?

7 THE COURT: Do you think she could identify the --
8 maybe she can. Can you identify the 254?

9 MR. WALKER: I'll defer to the --

10 THE WITNESS: Yes, sir.

11 THE COURT: Let me -- just one person at a time.

12 She can show us which ones -- if you insist on it,
13 she can show us which ones have been tested and -- all the
14 evidence, I mean, alluded to the number over and over again.

15 MR. WALKER: Right.

16 THE COURT: Let me hear the State on that. Only
17 those that are actually tested to have shown to have been
18 MDMA should be for the jury's --

19 MR. SPRINGS: Is that -- they are in two separate
20 bags of what she did test and what she didn't. Two separate
21 bags in that bag. It could be done that way, but because of
22 the report just says 254 Ecstasy pills, and then item 2.1,
23 139 pills that no analysis was performed on. I don't think
24 it's prejudicial, but if necessary we could cut it open and
25 take out the ones that weren't tested.

1 MR. GARDNER: I was just more worried about the
2 other ones, the other objections.

3 MR. WALKER: We will withdraw that.

4 THE COURT: All right. There's been all kind of
5 evidence about how many were in a bag and --

6 MR. WALKER: Right.

7 THE COURT: -- the threshold would be the
8 threshold, regardless of how many other ones are in there.

9 MR. WALKER: Judge, we realize I'm going to have
10 to ask the jury to go back out in another second for that
11 part of the motion just as well after he offers 7.

12 THE COURT: Are you going to offer 7?

13 MR. SPRINGS: The marijuana, yes, sir, I'm going
14 to offer that.

15 THE COURT: This is State's 11, if this is --

16 MR. WALKER: No. 11 then, I'm sorry.

17 THE COURT: And you object for the same reasons?

18 MR. WALKER: Yes, sir.

19 THE COURT: Except for the number of --

20 MR. WALKER: Yes, sir.

21 THE COURT: I find that you -- rather for
22 judicially economy and not for taxing the jury too much.
23 You made it earlier --

24 MR. WALKER: Yes, sir.

25 THE COURT: -- and you indicated through this

1 witness he's going to offer it. So I believe we are at the
2 stage of the trial where you are preserving the record.

3 You are right, if you want me to send them back
4 out, I will.

5 MR. WALKER: Based on what you said, Your Honor, I
6 don't see any need to put them back out.

7 MR. GARDNER: The objection will be
8 contemporaneous.

9 MR. WALKER: We will do that.

10 THE COURT: All right. Three members of the jury
11 request a smoke break, so let's -- they have been at it
12 pretty hard and I -- I'm going to let them while we will
13 take a break. All right.

14 Tell them they can have a smoke break. Tell them
15 to take quick smoke.

16 MR. WALKER: Depends upon what they are smoking,
17 but --

18 THE COURT: All right. Stephanie, would you hand
19 this to him?

20 Ms. Johnson, you can step down if you want.

21 (Jury Note marked as Court's Exhibit No. 4 for
22 identification)

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Any issues before we get the jury

1 back?

2 MR. WALKER: We are just standing up and just
3 state we object on the grounds previously stated. That's
4 all.

5 MR. SPRINGS: Did Scott tell you about --

6 THE COURT: About confusion.

7 MR. SPRINGS: My --

8 THE COURT: All right. Bring in the jury.

9 His wife has not ever come in the courtroom?

10 MR. SPRINGS: I don't think so.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: Not that it would make any difference
14 because you indicated, Ms. Rollins and Ms. Kyser indicated
15 that they could be fair and impartial, the lady that came in
16 with Mr. Nichols is Amy McDaniel, who works for the
17 solicitor's office. Not -- Mr. Nichols wife did not come
18 into the courtroom. So the person that y'all thought that
19 y'all that worked with is, in fact, this lady, but that's
20 not that witness' wife.

21 THE COURT: All right. I'm sorry, Ms. Johnson, up
22 here, go ahead and finish.

23 MR. SPRINGS: Yes, sir.

24 Before we took our break, I was offering into
25 evidence State's Exhibit 8, the Ecstasy, and I did at this

1 time offer it into evidence.

2 MR. WALKER: We would object on the grounds as
3 previously stated.

4 THE COURT: Your objection is overruled as
5 previously ruled.

6 BY MR. SPRINGS:

7 Q. Now, let's look at State's Exhibit No. 11. Have you
8 ever seen that and done business with what's in that bag?

9 A. Yes, I have.

10 Q. Where did you first receive that?

11 A. This evidence, State's Exhibit 11, was received from
12 Barbara Traylor on March the 3rd of 2008.

13 Q. Okay. Over here in the drug lab, in the evidence room?

14 A. That's correct.

15 Q. Okay. And was the bag you received sealed up, or did
16 it look like it had been tampered with?

17 A. It was sealed.

18 Q. Okay. And did you open the bag and do an analysis of
19 the green stuff that was in the bag?

20 A. Yes, I did.

21 Q. And what did you find the green stuff in the bag to be?

22 A. State's Exhibit 11, which is item number 5 on the
23 report, was found to be marijuana.

24 Q. And how much is the weight?

25 A. In the amount of 219.7 grams.

1 Q. Okay. All right. Are there 28 grams in an ounce?

2 A. Approximately, correct.

3 Q. Thank you.

4 Did you re-bag it, put it back in a bag and seal it up
5 like it is today?

6 A. Yes, sir.

7 Q. And is the bag still sealed up the way you put it back
8 in there?

9 A. Yes, it is. My initials appear across the bottom with
10 the date sealed.

11 MR. SPRINGS: Your Honor, we do offer into
12 evidence State's Exhibit 11.

13 MR. WALKER: Your Honor, we object on the grounds
14 we previously stated.

15 THE COURT: And overruled for the same reason.
16 Thank you.

17 BY MR. SPRINGS:

18 Q. You made a written report of the analysis of these two
19 bags of drugs?

20 A. Yes, sir, I did.

21 Q. Do you have your report with you?

22 A. Yes, sir, I do.

23 Q. May have it?

24 (Drug Report marked as State's Exhibit No. 17 for
25 identification)

1 MR. WALKER: To be consistent, Your Honor, we
2 object to that exhibit coming in as well.

3 THE COURT: All right. I overrule the objection.

4 MR. SPRINGS: And we do offer State's Exhibit 17,
5 the report, into evidence.

6 THE COURT: Okay.

7 BY MR. SPRINGS:

8 Q. Thank you, Ms. Johnson. Answer any questions that the
9 defense attorney may have.

10 A. Thank you.

11 MR. WALKER: We don't have any questions of her,
12 Your Honor.

13 THE COURT: You can step down and be excused. We
14 appreciate your time. Thank you.

15 THE WITNESS: Thank you, Your Honor.

16 MR. SPRINGS: Thank you Ms. Johnson.

17 Your Honor, we call Marvin Brown.

18 COMMANDER MARVIN BROWN, having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. SPRINGS:

21 Q. Sir, what is your name?

22 A. My name is Marvin Brown.

23 Q. And are you a police officer?

24 A. Yes, sir, I am.

25 Q. How long have you been a police officer?

1 A. Thirty-three years.

2 Q. How many of the thirty-three years have you worked in
3 narcotics?

4 A. Most of it. I started in the late seventies.

5 Q. What is your job title now?

6 A. I'm the supervisor of the York County
7 Multi-Jurisdictional Drug Enforcement Unit and also the
8 Highway Interdiction Team.

9 Q. That's sometimes called the drug task force?

10 A. Yes.

11 Q. And I want to ask you about the afternoon of February
12 6th, 2008. Did you meet with Officer Vinesett that
13 afternoon at the Rock Hill city police station?

14 A. I did. We have three officers and he happened to bring
15 two guys that he had arrested to the Rock Hill office to
16 where I was at that particular day.

17 Q. And did he tell you he had found some Ecstasy?

18 A. Yes. When I saw him, they had found Ecstasy and the
19 marijuana.

20 Q. Okay. Now, have you been involved in a number of
21 Ecstasy cases in your career in narcotics?

22 A. Yes.

23 Q. Does the drug Ecstasy seem to be more common to a
24 certain age group?

25 A. Yes, sir.

1 Q. What age group is Ecstasy associated with?

2 MR. WALKER: Your Honor, I don't see the relevance
3 of this.

4 THE COURT: I sustain the objection.

5 BY MR. SPRINGS:

6 Q. Officer Vinesett brought some people in. Did he bring
7 in Kenneth Morris?

8 A. He did.

9 Q. And did you learn that Mr. Morris had been given his
10 Miranda Rights?

11 A. Yes, sir, I did.

12 Q. And when you saw Mr. Morris that afternoon, did he look
13 healthy and all right?

14 A. Yes. Actually there were two of them. Mr. Nichols was
15 in one room and Mr. Morris was in the other room, and I
16 happened to go in Mr. Morris' room first. But, yes, he
17 looked healthy and he looked fine.

18 Q. Had anybody mistreated him, that you could see?

19 A. No, sir.

20 Q. Was anybody threatening?

21 A. No, sir.

22 Q. Did he -- the whole time that you were with him, did he
23 complain about anything?

24 A. No, we had a short simple conversation.

25 Q. Okay. Was he still handcuffed?

1 A. I don't remember. Normally we don't have them
2 handcuffed in the conference room and normally I'm not armed
3 in the office, so -- it was just he and I in a conference
4 room with seven chairs and a large conference table. He was
5 sitting on one side of the table and I was sitting on the
6 other. I just stopped in for a minute to talk to him.

7 Q. Okay. Did he have a willingness to talk to you?

8 A. Yes, he did.

9 Q. And did you ask him about the things that had been
10 going on that afternoon?

11 A. I did. I introduced myself to him and had a short
12 conversation with him and just asked him to tell me the
13 truth. I told him I was going to walk over to and talk to
14 his partner after I talked to him and I wanted to -- if the
15 stories were the same, normally it would be the truth, and I
16 asked him just to tell me the truth and he did.

17 Q. All right.

18 MR. WALKER: I would object to that.

19 THE COURT: Well, just disregard him saying that
20 he told the truth. That's him commenting on somebody else's
21 credibility. He can just tell us what he was told. Whether
22 it's true or not, that's up to you, the jury, to decide.

23 BY MR. SPRINGS:

24 Q. While you talked to him, did you make him any promises
25 of any kind?

1 A. I did not.

2 Q. Did he appear to be talking to you freely and
3 voluntarily of his own will?

4 A. Yes, sir, he did.

5 Q. After you talked to Mr. Morris, did you type up your
6 notes? Did you type up an interview -- type up an interview
7 with him?

8 A. Yes, that same day I typed up an interview. Normally
9 when I talk with someone, I do type up an interview
10 afterwards of the conversation. It's similar to what the
11 FBI does.

12 Q. Did you tape record your conversation with him?

13 A. I did not tape record the conversation.

14 Q. Did you make a video movie of your conversation with
15 him?

16 A. I did not.

17 Q. Now, why -- and was that a conscious decision not to
18 tape record and make a movie?

19 A. Yes. In the drug unit we video drug deals, phone
20 calls. We video things, car stops when we can, but we don't
21 video interviews in the conference room, and that is a
22 decision that people above me made, and I can explain why.

23 Q. All right. Explain that. Why -- what -- what's going
24 on? What instructions are you getting that cause you not to
25 tape record or video?

1 A. Yes. I answer to the sheriff, the solicitor, and six
2 police or chiefs in York County. We are looking at a
3 protocol in order to videotape confessions or interviews
4 with persons and we want to do it countywide, so we are
5 looking at a protocol of what type interviews do we
6 interview -- I'm sorry, what type interviews do we record,
7 under murder cases, robbery cases, drug cases, whatever;
8 what type format do we put it in; do we only interview in
9 the conference rooms or in the building; do we interview out
10 in the field; is it only detectives; is it patrol guys? And
11 then in the end what do we do with the tapes? Who houses
12 the tapes; how we number them, how do we keep them.

13 So as -- we are following -- right now we are
14 following -- currently we are following the lead of the FBI.
15 We are not taping, but we are looking at protocol to tape,
16 so we normally don't tape interviews.

17 This particular interview was very short and real
18 simple.

19 Q. Okay. And you typed up your notes of the interview?

20 A. I did.

21 Q. Okay. Is that a copy of your notes?

22 A. It is.

23 Q. All right. Do you need your glasses?

24 A. I got them.

25 Q. All right. Now, tell the jury piece by piece what Mr.

1 Morris told you about the drugs that afternoon, what he was
2 doing.

3 A. I talked to Mr. Morris briefly. I did not take notes,
4 because he and I was just having a general conversation. I
5 talk real loud, but I didn't raise my voice. I don't raise
6 my voice in interviews. I never have.

7 Q. What did he tell you had been going on?

8 A. Mr. Morris stated Nichols had rented the vehicle, but
9 he was driving at the time the officer stopped the vehicle.

10 Q. Who was driving?

11 A. He said he was driving.

12 Q. Okay. Go ahead.

13 MR. WALKER: Your Honor, has he shown the
14 proper -- I do not think he's shown the proper foundation to
15 allow this officer to look at his notes. I don't think this
16 is a case of past recollection reflected, past recollection.
17 He hadn't indicated he doesn't remember what happened.

18 THE COURT: Yeah, I understand. He would only
19 have to look at his notes to refresh his memory, if he's
20 having faulty memory, so I sustain the objection.

21 MR. SPRINGS: All right.

22 BY MR. SPRINGS:

23 Q. Officer, tell us what he told you. And if at any point
24 your memory is failing you, say let me check my notes and we
25 will be glad to let you check your notes.

1 A. Mr. Morris stated he was driving. Nichols had rented
2 the car. He stated they were coming up I-20 from Atlanta
3 and then come up I-77. He stated that they stopped -- the
4 officer stopped the car and they found some Ecstasy and some
5 marijuana in the trunk. Mr. Morris stated they were
6 splitting the Ecstasy down the middle, but that the
7 marijuana belonged to him. Solely belonged to him.

8 And I will be -- I don't think I missed anything, but I
9 can refer to my notes, if you would like.

10 THE COURT: If you didn't think you missed
11 anything, then you don't need to refer to the notes.

12 A. I'm sorry, and they paid five to six dollars apiece for
13 the Ecstasy pills, and the marijuana was his and did not
14 belong to Mr. Nichols.

15 And --

16 THE COURT: He will ask you another question.

17 THE WITNESS: I'm sorry.

18 BY MR. SPRINGS:

19 Q. Bear with me, Commander.

20 Where did Morris say they had gotten the Ecstasy and
21 the marijuana?

22 A. In Atlanta. He said they got it in Atlanta.

23 Q. Okay. And he said he and Nichols had split what
24 portion, what part?

25 A. He said the Ecstasy belonged to both of them. They

1 were splitting it down the middle, but the marijuana
2 belonged to him solely.

3 Q. All right. Were you joined by any other police officer
4 while you were still talking to him in your conference room?

5 A. Yes. About the end of the interview when I was
6 finishing up, it was very short, Lieutenant Dalton walked
7 into the room, so I had Mr. Morris repeat what he had told
8 me about the Ecstasy and marijuana in Lieutenant Dalton's
9 presence. And, again, he stated that the marijuana -- the
10 Ecstasy was being split down the middle and that the
11 marijuana belonged to him, Mr. Morris.

12 Q. Okay. And after Lieutenant Dalton came in, you said
13 Mr. Morris repeated this, a little while later did he say
14 anything else concerning these drugs?

15 A. Yes. When I -- I was walking them back to the jail --
16 the office is attached to the jail. And after Mr. Morris
17 and Mr. Nichols had sat together for a little bit and after
18 I had talked to Mr. Nichols, I was walking them back to the
19 jail and at that point Mr. Morris said he didn't want to
20 take the marijuana -- he couldn't take the marijuana. And
21 that was the statement he made at that time walking down the
22 hallway, that he was backing up on the marijuana a little
23 bit.

24 Q. All right. So at any time did you threaten Mr. Morris
25 or promise him anything?

1 A. No, sir.

2 Q. At any time did you see anybody threaten him, or
3 promise him anything, or be mean to him?

4 A. No, sir, not at all.

5 Q. Did he appear to be sober and in his right mind?

6 A. Yes, sir.

7 Q. Did he appear to be an intelligent fellow?

8 A. Yes, he did.

9 Q. And did he speak good English so that you understood
10 the conversation that you were having?

11 A. Yes, he did.

12 Q. Did he complain of any medical ailments or did he look
13 like he had a medical ailment at any time?

14 A. No, he was fine.

15 Q. And in your thirty odd year career in law enforcement
16 were you also involved in SWAT?

17 A. SWAT?

18 Q. Yeah.

19 A. Yes, sir.

20 Q. Did you do some work with drug sniffing dogs?

21 A. Oh, yes, for a ten year period there I was in charge of
22 the canine runs. If we called the canines at night, for
23 whatever reason, I was in charge of it.

24 Q. Okay. Did rainy weather, in your experience, have any
25 effect on the dogs?

1 A. Yes, it did.

2 Q. And in your experience, how did it affect the dogs?

3 A. We had a problem when it rained, especially if it was
4 raining hard, with the dogs picking up the trail.

5 Q. Nothing further. Thank you.

6 Answer any questions that defense attorney has.

7 CROSS EXAMINATION BY MR. WALKER:

8 Q. Well, let me ask you something.

9 A. Yes.

10 Q. If you have a problem with the dog when it's raining,
11 why the heck call the dog out? I mean --

12 A. Why not?

13 Q. Why not? Why call him out? If you are going to say --
14 you know, you boys look like you want it both ways. We got
15 a drug dog out here and the drug dog finds something, that's
16 great. The drug dog doesn't find something --

17 MR. SPRINGS: I'm going to object.

18 THE COURT: Let's -- you are getting argumentative
19 now. Let's just ask him questions.

20 MR. WALKER: All right.

21 BY MR. WALKER:

22 Q. So -- all right. So you know the drug dog is sometimes
23 not effective in the rain?

24 A. That's been the case.

25 Q. Huh?

1 A. That has been the case.

2 Q. That has been the case.

3 Is that the case more often than not? Huh? How about
4 it?

5 A. No, more often than not the dog will hit in the rain,
6 but the rain has caused some problems.

7 Q. Okay. How about with Justice? How about with this
8 particular dog he brought out here this time? Justice don't
9 like the rain, I gather?

10 A. You know, I don't know.

11 Q. Huh?

12 A. I don't know. That's the first time I have known that
13 Justice didn't hit in the rain.

14 For ten years I run the SWAT team and I knew we had
15 problems with drug dogs and with tracking dogs, but now for
16 Justice I can't answer that question.

17 Q. Now, what kind of dogs are tracking dogs?

18 A. Different types, but normally it's bloodhounds or
19 shepherds, and this is a lab for the drug dogs, but I was
20 involved with both.

21 Q. Okay. Do you know anything about labs?

22 A. Not a whole lot.

23 Q. Do you know if they are hunting dogs, retrievers?

24 A. I think -- yeah, I know that.

25 Q. They jump in the water and get ducks and stuff like

1 that? Do you know that?

2 A. Yeah.

3 Q. Huh?

4 A. I think labs like water.

5 Q. Now, I want to talk with you. You have been a
6 supervisor in this unit for some years, I gather from your
7 testimony?

8 A. In this unit we formed back in '98, so ten years.

9 Q. And were you the supervisor when it was formed?

10 A. Yes. The interdiction team -- we had some
11 interdiction -- semi-interdiction officers, but the
12 interdiction team actually formed in 2004, with a grant, but
13 I have been the supervisor since 1998, over the drug unit
14 and highway interdiction.

15 Q. So are you the boss of the drug unit?

16 A. Pretty much.

17 Q. Let me ask you just a very few questions.

18 Now, when you met Mr. Morris, he was already in
19 custody, right?

20 A. Yes, he was in the office.

21 Q. And I want to just kind of set the scene for the jury,
22 if I can.

23 You indicated that you didn't threaten him in any way.
24 He didn't feel threatened, correct?

25 A. I don't think so.

1 Q. Okay. Let's talk about that for a minute.

2 The interview room where you interviewed him, it's
3 attached to the jail?

4 A. No, it's attached to the office where the secretary
5 sits.

6 Q. It's attached to the office where the secretary sits?

7 A. Yes.

8 Q. Well, for my benefit, because I have never seen it --

9 A. All right.

10 Q. For my benefit, are there armed police officers in and
11 around that area? Maybe not in the conference room, but are
12 there armed police officers in and around that area?

13 A. They can be, but from where he was sitting, you can see
14 the secretary, which is a --

15 Q. And --

16 A. -- lady.

17 Q. All right, sir. And let me ask you this. Is the door
18 locked when somebody is in there?

19 A. It can be locked, but I normally leave it open. It was
20 just he and I talking. It was very short. But whether it
21 was locked that day, I don't remember.

22 Q. And are there other doors? In other words, does this
23 door open out to another door and then another door before
24 you can get out, or something like a typical jail?

25 A. It's a conference room that opens up into a narcotic

1 office where the secretary sits. You go down the hallway
2 and the second hallway to get back into the jail. The jail
3 is on the back side of the narcotic office. You don't --
4 you can't come out of the conference room and go straight to
5 the jail. You come out of the conference room, you walk
6 into that secretary's office.

7 Q. You have to go through other doors where law
8 enforcement officials are, correct?

9 A. No, you go out of the narcotics door and you walk down
10 a hallway straight to the jail. You wouldn't pass any other
11 officers, but there's a potential for narcotic guys to come
12 and go while we were in there talking, but not in the
13 conference room.

14 Q. Now, let me ask you this, officer.

15 A. Yes, sir.

16 Q. It's true, is it not, that he was clearly in custody at
17 that point?

18 A. Absolutely.

19 Q. And it's probably true -- if you know, you can answer
20 this. If not, we will let the jury decide, using their
21 common sense.

22 When people are in custody, they tend to get nervous,
23 don't they, particularly right when they have been put in
24 custody?

25 A. Some people more than others.

1 Q. Some people more than others.

2 And we don't know about Mr. Morris, correct?

3 A. He didn't seem to be.

4 Q. You met him just a few minutes?

5 A. For a few minutes he didn't seem to be nervous. He was
6 kicked back on the other side of the table and we were
7 talking like you -- like a conversation.

8 Q. Just like you and I are talking right now?

9 A. Well, probably more at ease than that.

10 Q. Oh, really? Okay. More at ease than that?

11 A. Sure.

12 Q. You went in there for the purpose of talking to him
13 about his supposed role in this situation that we are here
14 in court on today, didn't you?

15 A. Yes, sir.

16 Q. I mean, you went in there to get a confession from him?

17 A. To find out -- get a confession, find out what
18 happened, where the drugs came from, what his involvement
19 was, what his partner's involvement was, yes.

20 Q. Like any good police officer would do? Like any police
21 officer would do, right?

22 A. Yes.

23 Q. So did you read him his Miranda Rights?

24 A. No, I asked Officer Vinesett had he read him his rights
25 and he said he had, so he has already been read his rights

1 one time, so I walked in and talked to him.

2 Q. All right. And you talked to him without reading them,
3 right?

4 A. That's correct.

5 Q. All right. I want to ask you something. Officer
6 Vinesett said he read him his Miranda Rights. I want you to
7 show this jury any document that my client signed where he
8 acknowledged his Miranda Rights had been read to him. Show
9 it to me.

10 A. We have a photocopy of Officer Vinesett's card where he
11 read it and dated it, but he's not -- he didn't sign it.

12 Q. Are you talking about that little card he pulled out of
13 his pocket when he was reading to this jury?

14 A. Yes. On the scene he pulls out a card and he reads
15 them their rights --

16 Q. Uh-huh.

17 A. -- and then he puts the date on it that he read them
18 the rights and he makes a photocopy and puts it in the file.

19 Q. And that could be done two months later, if somebody
20 wanted to, right? It could have been done last night? Huh?

21 A. It could have --

22 Q. Okay.

23 A. -- but he didn't.

24 Q. Well, at any rate, you don't have a single document
25 with my client's signature on it wherein he was advised of

1 his Miranda Rights and chose to go ahead and make a
2 statement, do you?

3 A. That he signed?

4 Q. That he signed.

5 A. No, sir.

6 Q. Not at all. All right.

7 And let me ask you this, sir. You have seen documents
8 like that, have you not? Huh?

9 A. Yes, I have seen documents.

10 Q. In fact, they are used in almost every case, aren't
11 they? Huh?

12 A. No, it's common on the scene --

13 Q. Huh?

14 A. -- to read it from the rights card and photocopy the
15 rights cards. However, sometimes there is a rights form
16 that you can read their rights.

17 And, yes, you can have them sign off on the rights
18 form. It depends on the situation.

19 Q. And that -- of course, now, you weren't questioning him
20 at the scene. You were questioning him in a conference room
21 with seven chairs?

22 A. I'm sorry, a conference room what?

23 Q. You were questioning him in a conference room that had
24 seven chairs in it, under your testimony, right?

25 A. Yes, a short time later at the office.

1 Q. Okay. Comfortable chairs, like these people are
2 sitting over here?

3 A. Leather chairs, yes.

4 Q. Leather chairs. All right, sir.

5 So there wasn't anything that would have prevented you
6 from going and getting one of those rights cards, was there?
7 Huh?

8 A. No, but he already had his rights read to him.

9 Q. Okay. Now, let me ask you this. You say that he
10 initially made a statement to you that the marijuana was his
11 and that half the Ecstasy was his? Did I understand you
12 correctly?

13 A. Absolutely.

14 Q. I want to talk with you about that, officer.

15 A. Yes, sir.

16 Q. This conference room that we are talking about, now,
17 you have taken, no doubt, many, many statements from people
18 in your life, right?

19 A. Yes, sir.

20 Q. Okay. And this particular conference room is -- have
21 you interviewed people in there before with statements and
22 made -- where they made statements?

23 A. Yes, sir.

24 Q. Okay. Where is the video of it?

25 A. There is no video.

- 1 Q. There is no video in this room, right?
- 2 A. That's correct.
- 3 Q. And this is set up, among other things, to interview
- 4 people charged with crimes?
- 5 A. It's a conference room. Yes, you can use it to
- 6 interview people.
- 7 Q. All right. So we don't have a video.
- 8 How about an audio? How about a tape recorder put in
- 9 front of him, put in the middle of the desk? Do we have a
- 10 video -- do we have an audio?
- 11 A. No, sir, and I have explained why.
- 12 Q. Huh?
- 13 A. Why we didn't do that.
- 14 Q. You explained what y'all's policy is, correct?
- 15 A. Yes, sir.
- 16 Q. Policy. All right.
- 17 All right. Let me see your notes that you made while
- 18 you were sitting across the table with him. Let's show
- 19 those to the jury. Have you got any of them?
- 20 A. It was a short conversation and I didn't take any
- 21 notes.
- 22 Q. You did not take any notes?
- 23 A. I --
- 24 Q. All right.
- 25 A. I sat down with him. It was a brief conversation. I

1 did not take any notes.

2 Q. All right. So we ain't got an audio, we ain't got a
3 video, we ain't got any notes. All we have got is the typed
4 up document that you say that you went outside and typed,
5 right?

6 A. You have me and Lieutenant Dalton, that's correct.

7 Q. Okay. All right.

8 Now, you say later he made a statement changing his
9 earlier statement to you, right?

10 A. Yes. He said that he did not or could not claim the
11 marijuana when we was walking to the jail.

12 Q. He did?

13 A. Yes.

14 Q. All right, sir.

15 Are you positive that's what he said?

16 A. Yes. Mr. Nichols was standing right beside him.

17 Q. Mr. Nichols was, okay.

18 A. We were walking to the jail and he said "I can't take
19 the marijuana."

20 Q. Uh-huh.

21 A. And he made the statement to Mr. Nichols and I took
22 them on to the jail.

23 Q. So now Mr. Nichols testified earlier, right? That's
24 the same Mr. Nichols?

25 A. Yes.

1 Q. Were you in court when he testified?

2 A. I was.

3 Q. Did you hear him say that?

4 A. He wasn't asked.

5 Q. Huh? He wasn't asked. All right.

6 So did you write that statement down? Huh?

7 A. About him saying that he didn't want to take the
8 marijuana?

9 Q. Huh.

10 A. It's on the second page.

11 Q. I understand it's on that, but did you write it down
12 then?

13 A. I typed it up right after that.

14 Q. Right after that?

15 A. Yeah, that same day.

16 Q. How long after that?

17 A. Probably an hour or two.

18 Q. All right. So essentially, officer, you got nothing
19 except your word to show this jury where my client admitted
20 to having something to do with those drugs, right?

21 A. That's correct, my word and Lieutenant Dalton.

22 Q. That's all?

23 A. That's correct.

24 Q. And y'all -- you use videos, you use audios, you use
25 notes, you have used signed statements in your career,

1 haven't you?

2 A. Yes, I do.

3 Q. We ain't got none of that today, do we?

4 A. No, sir.

5 MR. WALKER: That's all.

6 MR. SPRINGS: Nothing further. Thank you.

7 THE COURT: You can step down and be excused.

8 THE WITNESS: Thank you.

9 MR. SPRINGS: We call Lieutenant Dalton.

10 LIEUTENANT JASON DALTON, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. SPRINGS:

13 Q. Tell this jury your name.

14 A. Jason Dalton.

15 Q. Are you a police lieutenant?

16 A. Yes, sir.

17 Q. And on February 6th of 2008, what was your job title?

18 A. I was assigned as a supervisor in the York County Drug
19 Unit over the Rock Hill east office.

20 Q. Are you a detective?

21 A. I am currently a -- I have been a lieutenant with Rock
22 Hill since 2003. I have been a supervisor since 2001. I'm
23 currently assigned over homicide, robberies and our street
24 crimes unit.

25 Q. Okay. On the afternoon of February 6th, 2008, did you

1 join Marvin Brown in a conference room that afternoon?

2 A. Yes, sir, briefly.

3 Q. Who was he talking with?

4 A. Mr. Morris.

5 Q. Okay. Was there anybody else in there besides the two
6 of you?

7 A. No, sir.

8 Q. Did things look friendly or did it look like they had
9 been fussing and fighting?

10 A. Everything appeared normal. I didn't see any duress
11 with Mr. Morris, no.

12 Q. Okay. Did Mr. Morris look like he had been brow beaten
13 or threatened in any way?

14 A. No, sir.

15 Q. Did he seem to be talking normally, or did he seem to
16 have some sort of ailment of any kind?

17 A. Everything seemed to be normal.

18 Q. Okay. Was anybody promising him anything?

19 A. No, sir.

20 Q. All right. When you came in, what did you hear him
21 say?

22 A. Commander Brown had Mr. Morris repeat his involvement
23 with the Ecstasy and he stated that himself and Nichols had
24 purchased the Ecstasy in Atlanta. I believe it was four or
25 five dollars a pill, and they would split it 50/50 or down

1 the middle and that the marijuana was his.

2 Q. Okay. And did you stay around until he was led out to
3 go to the holding area?

4 A. I was in the office, but I wasn't involved in taking
5 him back to the jail.

6 Q. Okay. All right. But at any time did you see him
7 threatened -- threatened in any way or promised anything to
8 speak to the police?

9 A. No, sir.

10 Q. Did he appear to be talking freely and voluntarily?

11 A. Yes.

12 Q. Thank you.

13 MR. SPRINGS: No further questions.

14 CROSS EXAMINATION BY MR. WALKER:

15 Q. To be very brief with you, lieutenant.

16 Okey-do-key. I want to once again, because I happen to
17 think it's important, set the scene for this jury.

18 My guy is in custody?

19 A. Yes, sir.

20 Q. Right. Okay. My guy is in the presence of not one at
21 this point in time, but two officers, you and Detective
22 Brown or Captain Brown?

23 A. Yes, sir, and I was actually armed.

24 Q. You were armed?

25 A. Yes.

1 Q. Now, you would agree with me that sometimes people are
2 nervous when they are about to be incarcerated -- or they
3 have been arrested right? Huh?

4 A. You typically see that more at the point when it
5 happens.

6 Q. Uh-huh.

7 A. I guess that nervousness could carry over, but I didn't
8 see that in Mr. Morris.

9 Q. All right. I want to ask you just a couple questions.
10 You came in there. Did you come in there at Mr. Brown's
11 request, or did you just happen to meander in there?

12 A. I walked in there.

13 Q. You just walked in there, right?

14 A. Yes.

15 Q. You didn't really know what was going on?

16 A. Well, I knew what was going on, but I was involved -- a
17 lot of times our office is pretty busy, so I was kind of
18 doing a couple of things at once.

19 Q. Okay. So you went in there. Nobody really asked you
20 to go in there, right?

21 A. Not that I remember, no, sir.

22 Q. And then Detective Brown or Captain Brown -- is he a
23 captain or detective?

24 A. He holds -- I think his pay grade is a captain, but he
25 hold the rank of a commander.

1 Q. Okay. At any rate, so he asked in your presence Mr.
2 Morris to repeat what he just said, right?

3 A. Correct.

4 Q. Huh?

5 A. Correct.

6 Q. All right. Were you in court a minute ago when Officer
7 Brown, Commander Brown, testified?

8 A. Yes, sir.

9 Q. All right. Did you hear him say anything about the
10 four to five dollars a pill?

11 A. I believe he stated another price range.

12 Q. Sir?

13 A. I believe he stated a different price range.

14 Q. All right. Now, at that point in time, based upon his
15 testimony, Detective Brown's testimony, we can assume that
16 my client had made a confession, right? Huh?

17 A. Yes, sir, he did.

18 Q. That's before you walked in?

19 A. Correct.

20 Q. All right. Now, I want to stop you for a minute.

21 All right. Then you walk in, right? And this office
22 is right next to, as I understand it, some secretary that
23 works there, right?

24 A. Our secretary has a desk in our office.

25 Q. All right.

1 A. The actual conference room that he's in is probably
2 fifteen, twenty feet away from her desk and the front door
3 to our office.

4 Q. All right. So fifteen to twenty feet away, which would
5 be, I don't know, maybe me to this gentleman here, the court
6 reporter, maybe? Okay? Right?

7 A. Yeah, plus or minus a little bit.

8 Q. In that secretary's room there are paper and pen and
9 pencil, right?

10 A. Of course.

11 Q. Okay. All right. And the detective did not go in
12 there to get my client to even sign a statement that he
13 could write down, did he? Huh? Forget him putting it on
14 video or audio for a minute. He didn't even go get my
15 client to sign a statement, did he?

16 A. If we are going to take a statement or interview from
17 someone, we type it ourselves. We don't do defendant
18 written documents.

19 Q. All right. You are at the jail, correct?

20 A. We are at our narcotics office. He had no way to see
21 the jail from where he was.

22 Q. You have the capacity -- I didn't mean to interrupt.
23 You say he had no way to see the jail?

24 A. Yes.

25 Q. But you are at your narcotics office?

1 A. Yes, sir.

2 Q. You had the capacity to, had you chosen to do it, have
3 a statement taken from him, did you not?

4 A. An interview was done at this point.

5 Q. You had the opportunity to actually have a written
6 statement typed out of what he said, have him sign it, did
7 you not?

8 A. Commander Brown --

9 Q. Yes or no and then you can explain.

10 A. Well, I can't answer that, because I didn't take the
11 statement or interview.

12 Q. Well, let me ask you a question.

13 To the best of your knowledge, okay, to the best of
14 your knowledge, could Commander Brown at some point in time
15 when he was in that interview room, or shortly after that,
16 after he, you know, talked with our client, could he have
17 had a statement taken down, transcribed, or whatever, and
18 have my client sign it? He could have, couldn't he?

19 A. If he had chose not to do it in the interview form,
20 yes, sir.

21 Q. He did not take a written statement from my client, did
22 he? That's all I want to know. Huh?

23 A. He conducted the interview.

24 Q. Okay. So the answer would be no, he did not take a
25 written statement?

1 A. No, he did not do a written statement. We did it in
2 interview form.

3 Q. He did not do a video statement, did he?

4 A. No, sir.

5 Q. He did not do an audio statement?

6 A. No, sir.

7 Q. All right. Let me ask you this. You made notes
8 yourself of this, correct?

9 A. No, sir.

10 Q. You didn't make any notes yourself?

11 A. No, sir.

12 Q. All right. Officer, how many times have you
13 interrogated people?

14 A. Numerous.

15 Q. Okay. And is it not true, sir, that on many, many,
16 many of those occasions, many of them, you have taken
17 written statements from people, transcribed them, had the
18 defendant sign them?

19 A. And there is some, and there is many that I haven't.

20 THE COURT: Let's just -- he asked the question,
21 just answer it, and then you can explain. If he asks a
22 specific question, answer the question, and then you can
23 explain it.

24 THE WITNESS: Yes, sir. I'm sorry, Your Honor.

25 A. I have taken written statements from defendants, yes,

1 sir.

2 BY MR. WALKER:

3 Q. You have taken video statements, have you not, in
4 certain cases?

5 A. No, sir.

6 Q. Have you taken an audio statement?

7 A. No, sir.

8 Q. Never have?

9 A. No, sir.

10 Q. How long have you been a law officer?

11 A. I have been a police officer since 1993.

12 Q. Never taken one?

13 A. No, sir.

14 Q. Not even an audio?

15 A. No, sir. The only -- the only stuff that we video or
16 audio tape are actual drug buys, buy-bust operations, so I
17 have never participated in a video or audio statement, no,
18 sir.

19 Q. All right. Final question, or final couple of
20 questions.

21 Have you ever seen them standard forms that law
22 enforcement officers use, "I have been advised of my
23 rights," blah, blah, blah, blah, under Miranda, and "I
24 hereby waive my rights and give a voluntary statement"?

25 A. Yes, sir.

1 Q. Y'all got them, don't you?

2 A. Yes, we do.

3 MR. WALKER: That's all.

4 BY MR. WALKER:

5 Q. Well, let me ask you one other question.

6 That statement, for the benefit of the jury, that is
7 typically the ones I have seen on a white piece of paper and
8 they have got something up here that says "I have been read
9 my rights," and then there is lines to write a statement on,
10 right? And then the defendant signs it?

11 A. Correct, those are typically used with written
12 statement forms, not an interview form.

13 Q. Thank you.

14 MR. WALKER: Thank you.

15 MR. SPRINGS: Just one question.

16 REDIRECT EXAMINATION BY MR. SPRINGS:

17 Q. You said that you were armed. Was your pistol in its
18 holster?

19 A. Yes, I was dressed in a narcotics capacity.

20 Q. Okay.

21 MR. SPRINGS: Nothing further.

22 MR. WALKER: Nothing further.

23 THE COURT: You can step down. Thank you.

24 MR. SPRINGS: May the lieutenant be excused?

25 MR. WALKER: We have no objection.

1 MR. SPRINGS: Your Honor, that is the State's
2 case. We rest our case.

3 THE COURT: All right, members of the jury panel,
4 I was optimistic we could finish today, but I don't believe
5 that we can because we still have a good ways to go, so
6 everybody but Ms. Rollins, who already has been excused by
7 Judge Hyman Friday, we will reconvene Friday at 9:30.

8 I can't tell you right now what stage the trial
9 will be in, to be honest with you, because we have some
10 matters to take up outside of your presence that will take a
11 little bit of time and even push us further into the
12 evening, so don't try to make up your mind. Don't discuss
13 the case. Don't let anybody talk to you about the case.
14 Don't go on line. Don't do any of those things that I said
15 not to do, and we will see you back, all of you but Ms.
16 Rollins. Mr. Rumfola, you will now take her place. Not --
17 you don't have to sit there, but you are now the twelfth
18 juror. Ms. Leaf, you will still be the alternate. So have
19 a pleasant evening and a pleasant Thursday and I'll see you
20 at 9:30 on Friday morning in this jury room where you
21 reported after lunch. Thank you.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: All right. The State is resting and
25 we are now in the motions.

1 MR. WALKER: Could we make them Friday morning,
2 judge?

3 THE COURT: You can.

4 MR. WALKER: It will take five minutes.

5 THE COURT: That's fine. We will take until 9:30
6 on Friday, but let me go ahead and speak to Mr. Morris.

7 MR. WALKER: Yes, sir. Stand up, sir.

8 THE COURT: Mr. Morris, we have reached the point
9 in the trial where you have a right to present a defense, if
10 you wish. You don't have to present any witnesses. You
11 don't have to call any testimony. You heard me, I believe,
12 or at least you were here when I told the jury that you were
13 presumed innocent. Your attorney argued that to the jury,
14 of course. Not argued, but made that statement also. And
15 that's true. You are presumed innocent of these charges and
16 you do not have to prove your innocence. The State must
17 prove your guilt beyond a reasonable doubt.

18 Now, you can call witnesses, if you wish, and you
19 can testify, if you wish. If you testify, you would be
20 asked about your involvement in this. They would be able to
21 ask you about certain offenses, criminal offenses, in your
22 past that -- they would not be able to ask you the nature of
23 those, because they are very similar to what you are on
24 trial for. They can ask whether or not that you have been
25 convicted of felonies in the past. They can ask you that

1 only regarding whether the jury should believe you or not;
2 that is, as to your credibility, and I'll tell the jury
3 that. If you testify and your record is exposed to the
4 jury, I will tell them they could not consider that in
5 determining whether you committed this offense, but only
6 utilize those prior offenses to determine whether you were a
7 truthful person; that is, whether they should believe you or
8 not.

9 If you exercise your right to remain silent, I
10 will tell the jury that that is what you have done, that you
11 have a Constitutional Right to remain silent. I will tell
12 the jury that they cannot in any way hold that against you.
13 I will tell them that they cannot even factor that into
14 their deliberations. I will remind them that you are
15 presumed innocent, and you do not have to prove your
16 innocence and the State must prove your guilt beyond every
17 reasonable doubt. Do you understand all that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about it?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has that been explained to your
22 client, sir?

23 MR. GARDNER: Judge, he and I have spent a great
24 of -- well, we have spent off and on today talking about
25 this and I told him we both decided that we would make the

1 final decision after the dust settled.

2 THE COURT: That's fine. He doesn't have to make
3 it now. I just want to make sure that you told -- your
4 lawyer has told you all that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And it's not his decision. It's not
7 my decision. It's nobody else's decision but Mr. Rollins --
8 I mean Mr. Morris, so you can get advice and that's what you
9 got a lawyer for. And I see some people that look like you
10 have been chatting with, maybe your family, and you can talk
11 to them about it, but it's ultimately your decision. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. We will reconvene at 9:30
15 on Friday, and if you have any requests to charge. We do
16 have an issue about lesser included. On the Ecstasy, this
17 case seems to pretty well address that, but find anything
18 else, I will be glad to look at it, and that's Sellers v.
19 The State.

20 MR. WALKER: Your Honor, I do have one question
21 just as a procedural aspect. He's obviously going to be
22 incarcerated under your earlier ruling. Will he be
23 allowed -- he will not be brought in in like a jail uniform?
24 He will be allowed to put --

25 THE COURT: Oh, no, we will make sure -- no, we

1 will make sure that -- I can't tell you exactly how that
2 process works, but I know that when you try cases, clothing
3 is -- if they don't have their own, I think the public
4 defender keeps a cache of clothes that they use sometimes
5 for their defendants. But, no, he will not have to appear
6 in jail clothing.

7 MR. WALKER: Thank you.

8 THE COURT: All right. We will see y'all on
9 Friday at 9:30.

10 MR. SPRINGS: Your Honor, I would like a charge on
11 joint possession. Do you have that already built into your
12 standard charge?

13 THE COURT: I do not. I thought about that as
14 sort of the hand of one. I do have this statement, though,
15 and this may cover it. Of course, I have got mere presence,
16 but I do have this that I think covers what you are asking
17 me about. It will take me a second to find it.

18 Two or more persons may have joint possession of a
19 drug.

20 MR. WALKER: All right.

21 MR. SPRINGS: Yes, that is going to be in your
22 standard?

23 THE COURT: Right there.

24 MR. SPRINGS: Very good.

25 THE COURT: In fact, if y'all would like to, I'm

1 going to leave this up here and you can look through it and
2 see what I'm going to charge.

3 MR. WALKER: That would be great, Your Honor.

4 THE COURT: I'll leave it here and just make sure
5 I get it back.

6 MR. WALKER: Thank you.

7 THE COURT: All right. I'll see y'all Friday
8 morning at 9:30.

9 MR. WALKER: All right.

10 THE COURT: And, again, I apologize for having to
11 break it up like this, but we are rewriting the entire
12 criminal rules. Judge King had a task force and I'm on that
13 force, along with our Clerk of Court task force, and so this
14 is supposed to be our final meeting, so I really need to be
15 there.

16 MR. WALKER: Have fun.

17 (Whereupon, proceedings were adjourned to April
18 17, 2009)

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF YORK)

) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)

5 -vs-)

) TRANSCRIPT OF RECORD

) 2008-GS-46-2834

6 KENNETH DARRELL MORRIS,)
7 II,)

) 2008-GS-46-2837

) APRIL 17, 2009

) YORK, SOUTH CAROLINA

8 DEFENDANT.

9 (VOLUME II)

10
11 B E F O R E:

12 THE HONORABLE JOHN C. HAYES, III, JUDGE. ; And a Jury.

13
14
15 A P P E A R A N C E S:

16 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
17 ATTORNEY FOR THE STATE

18 IRBY WALKER, ESQUIRE
19 JOHNNY WALKER, ESQUIRE
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, APRIL 17, 2009)

2 THE COURT: Is the State ready?

3 MR. SPRINGS: We are, Your Honor.

4 I have just one quick matter.

5 THE COURT: Well, I'll get to you in a second.

6 Are you ready.

7 MR. SPRINGS: We are ready.

8 THE COURT: All right. Are y'all ready.

9 MR. WALKER: Yes, sir.

10 THE COURT: Now, I just want to make sure
11 everybody is ready, affirmed that they are ready to go.

12 MR. SPRINGS: Yeah.

13 Well, after they -- the point we were about to
14 start closing argument, I would like to briefly take up
15 something, but I'll wait for them to close, or put up
16 evidence, or whatever, before I get there.

17 THE COURT: All right. You can sit down.

18 All right, Mr. Gardner, you are standing, so I
19 presume it's your turn. Do you all have motions?

20 MR. GARDNER: Yes, sir, I believe for the record I
21 would move for a directed verdict at this time and
22 incorporate in that motion my prior motions to have the drug
23 suppressed.

24 THE COURT: All right. Well, your motion to
25 suppress the drugs?

1 MR. GARDNER: Yes, sir.

2 THE COURT: -- is denied as previously ruled upon.

3 The motion for directed verdict is denied. I
4 think there is substantial circumstantial evidence and
5 also -- substantial direct evidence which the jury could
6 conclude the charge that Mr. Morris was involved in illegal
7 activity which he's charged.

8 All right. Now, Mr. Morris, I spoke to you before
9 we left the other day about your right to remain silent or
10 present testimony. Have you made your decision?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you going to testify or
13 exercise your right to remain silent?

14 THE DEFENDANT: Me and my lawyer was still going
15 over it.

16 THE COURT: Well, we are about to the point where
17 we need to make a decision, because it's Friday and -- I
18 don't want to rush you, but this charge is a year old and we
19 have been in this trial and we had all day yesterday off.

20 MR. GARDNER: If I may, judge, what he's trying to
21 refer to is I have another motion to make, and I apologize
22 for not going straight into it, and I believe that's going
23 to help him make a decision --

24 THE COURT: All right.

25 MR. GARDNER: -- to help.

1 THE COURT: I'll ask you again in a minute. Let
2 me hear from your lawyer.

3 THE DEFENDANT: Yes, sir.

4 MR. GARDNER: Judge, at this time I would move to
5 exclude the mention of his prior record when he takes the
6 stand, or if he takes the stand. His prior record, as I
7 understand it, is two possessions with intent to distribute
8 or two drug type charges. The solicitor has provided us
9 with a copy of it. For the purposes of this argument it's
10 just he had two prior drug charges that I know of.

11 I would move to have that suppressed on the
12 grounds that the prejudicial effect on this jury for a drug
13 charge totally and completely outweighs any probative value.

14 THE COURT: Well, he would not refer to them as
15 drug charges, but he would just say felonies as opposed to
16 drug charges, but wasn't there a case recently that said
17 that the drug violations are not indicative of credibility?

18 MR. SPRINGS: There is, but he's outside the ten
19 years. I can't bring it up anyway.

20 THE COURT: Okay. So he would not -- he will not
21 be quizzed or asked any questions about any prior record for
22 impeachment. Is that correct, Mr. Springs?

23 MR. SPRINGS: That's correct.

24 THE COURT: Okay.

25 MR. GARDNER: Thank you, judge.

1 Now, we that have got it on the record, two
2 minutes, if I may?

3 THE COURT: Sure.

4 (Off the record)

5 (Back on the record)

6 THE COURT: Yes, sir.

7 MR. GARDNER: Judge, my client is prepared to
8 answer you.

9 THE COURT: All right. Mr. Morris, are you going
10 to testify or exercise your right to remain silent?

11 THE DEFENDANT: Exercise my right to remain
12 silent.

13 THE COURT: Thank you.

14 MR. GARDNER: Thank you, judge.

15 THE COURT: Does the defense have any witnesses to
16 present?

17 MR. WALKER: No, Your Honor.

18 THE COURT: Defense rests.

19 MR. GARDNER: Yes, sir.

20 MR. WALKER: Yes, sir.

21 MR. GARDNER: Defense rest.

22 MR. WALKER: I do have one request to charge,
23 judge mat the appropriate time.

24 THE COURT: Well, let's go kind of keep it in
25 order. We have got some from -- first, I left my charge up

1 for y'all to review. Did anybody have any problem with what
2 I planned to charge?

3 MR. WALKER: No, sir.

4 MR. GARDNER: No objection.

5 MR. SPRINGS: No, sir, we just wanted to
6 supplement.

7 THE COURT: All right.

8 Let's look at first the State's and then we will
9 look at the defense.

10 MR. SPRINGS: Yes, sir.

11 THE COURT: All right. Actual and constructive
12 possession, I thought I had covered that pretty well in my
13 charge. What differs yours from mine, Mr. Springs?

14 MR. SPRINGS: I glanced at yours and I can't --
15 you know, I do recollect you pretty much verbatim with what
16 I have got here, State v. Bailey, so I'm fine. I don't need
17 No. 1. Your standard is fine with me.

18 THE COURT: No. 2.

19 MR. SPRINGS: Now, this, if I may, I would ask
20 that since the indictments list the entire laundry list of
21 ways in which one can traffic in Ecstasy, I would ask that
22 the ways that do not apply, given the evidence produced in
23 this trial, the three things which wouldn't apply here,
24 sell, manufacture, cultivates, that those would not be
25 included when the court gives them the code section.

1 And, in the alternative, I would move to strike
2 them from the indictment and reflected at this point to
3 conform to the evidence. I just don't think sell,
4 manufactures, or cultivates, which no evidence hit upon
5 would help the jury. It may confuse the jury some.

6 THE COURT: Any problem with that?

7 MR. GARDNER: I -- I would, for the record, ask
8 that you charge the statute as it's written, judge.

9 MR. SPRINGS: And I would move to strike those
10 three words which appeared twice in the indictment as
11 reflected at this point. I don't think it would prejudice
12 the defendant in any way whatsoever.

13 THE COURT: Well, I guess the question I always
14 come back to is when you indict them for something, why do
15 you string them out, if you say it's relying on the evidence
16 you got?

17 MR. SPRINGS: I didn't write it. I wouldn't have
18 written it this way, to be honest with you.

19 THE COURT: I'm going to leave it like it is.

20 MR. SPRINGS: Fine.

21 THE COURT: I will charge those. That's just what
22 the statute says.

23 All right. Let's see. And as far as the -- I'm
24 only going to charge, if you saw where I struck out one
25 hundred capsules or more. There is no -- there is no issue

1 about the quantity, is that right?

2 MR. SPRINGS: Well, I think the jury has to as an
3 element sort of -- they have to make a factual determination
4 there is more than a hundred.. That has to be given to them.
5 To find him guilty of trafficking, you must find there were
6 more than one hundred tablets.

7 THE COURT: I say "Ecstasy, the State must prove
8 beyond a reasonable doubt that the amount of the Ecstasy was
9 one hundred tablets, capsules, dosage units, or equivalent
10 amount of more. Possession of 500 dosage units would be an
11 equivalent amount."

12 MR. SPRINGS: That's fine.

13 THE COURT: Okay.

14 MR. SPRINGS: That's fine.

15 THE COURT: Conspiracy. Any problem with that?

16 MR. GARDNER: He's not charged with conspiracy.

17 THE COURT: He's not, but that's one of those --

18 MR. GARDNER: One of those things.

19 THE COURT: That's one of those things that's
20 strung out in the indictment, so that is one way you can
21 traffic is you can conspire, though he's not separately
22 charged with it, but that is an element or one of the ways
23 that you can traffic, so I would charge it.

24 MR. GARDNER: Yes, sir.

25 THE COURT: All right. The last -- requesting the

1 one ounce inference on PWID marijuana, I have got that.

2 And I don't think on No. 4 that I need that first
3 part, but I will charge that last sentence.

4 MR. SPRINGS: Thank you, sir.

5 THE COURT: All right. Defense requests?

6 MR. WALKER: Yes, sir.

7 Your Honor, if it please the court, the officer
8 testified -- Officer Vinesett testified that the reason that
9 he stopped the vehicle my client was operating was because
10 it was following too closely. No evidence whatsoever he
11 wrote a ticket for that. I would ask the court to charge
12 what the statute says on following too closely.

13 THE COURT: Any objection to that?

14 MR. SPRINGS: Yes, I think it's going to confuse
15 the jury that they have got to make a determination whether
16 he was, in fact, following too closely. I think it's going
17 to confuse the jury very much. I think it's inappropriate.

18 MR. WALKER: I disagree with that, Your Honor,
19 because the statute says there is no set criteria for what
20 determines if someone is following too closely. I want the
21 jury to hear that.

22 THE COURT: All right. I will charge it. I'll
23 charge it.

24 MR. WALKER: Thank you.

25 THE COURT: Have you got it?

1 MR. WALKER: No, sir, I don't have it, but I can
2 get one.

3 THE COURT: All right. Anything else before we
4 get the jury in?

5 MR. SPRINGS: Yes. I don't think Mr. Walker would
6 do this, but out of an abundance of caution I would ask the
7 court to preclude him in closing from making any mention of
8 the potential sentence in this case under the law of State
9 v. Mizell. It's irrelevant to whether he is guilty or not
10 guilty and it's unfairly prejudicial to the State, so I
11 would ask that the defense be precluded from making any
12 mention of potential sentence.

13 MR. WALKER: I never intended to mention the
14 years. I certainly intend to mention he's going to prison.
15 I mean, any idiot would know that.

16 MR. SPRINGS: I object to any sentence. It's
17 irrelevant to whether he committed the crime or not.

18 THE COURT: I'm going to ask you to stay away from
19 the penalty.

20 MR. GARDNER: If I may, judge?

21 THE COURT: Yes.

22 MR. GARDNER: Thank you. The reason I believe
23 that we put on the record that it would be relevant in these
24 proceedings is that we have vague testimony that one witness
25 has pled in exchange for probation. The inference -- the

1 only logical inference that the jury could draw from that is
2 that he's not getting probation; therefore, he's going to
3 prison. And I believe that that -- that that would be
4 permissible argument to the jury. For the record, that
5 would be my position, judge.

6 THE COURT: How do you know he's going to go to
7 prison?

8 MR. GARDNER: Well, the logical inference is that
9 if you plead guilty, you get a deal for probation. You go
10 to trial, you don't get probation.

11 THE COURT: Well, I don't know that there is any
12 case law on that. There is no statute on that. And y'all
13 aren't from this jurisdiction. Y'all probably don't even
14 know my -- maybe you do my sentencing philosophy.

15 MR. GARDNER: No, sir, I don't.

16 THE COURT: I'm going to ask you to stay away from
17 penalties. I don't believe what is going to happen.

18 You can certainly argue that Mr. Nichols, rather
19 than letting himself be exposed to a prison term. I mean,
20 you can get there another way.

21 MR. GARDNER: Yes, sir. Yes, sir.

22 THE COURT: But I'm not going to let you argue
23 directly that this man is going to jail, but you can argue
24 that the other man to keep out of jail has cut a deal.

25 MR. GARDNER: Yes, sir.

1 THE COURT: And talking about logical inferences,
2 I think that's a pretty logical inference.

3 MR. GARDNER: Yes, sir, and I agree with you one
4 hundred percent. Thank you, judge.

5 Oh. And I believe that you said yesterday mere
6 presence, that would be --

7 THE COURT: It's in there. It's in my regular
8 charge. Mere presence where drugs are found are not --

9 MR. GARDNER: And your hesitate to act would be
10 your reasonable doubt?

11 THE COURT: We -- I charge that.

12 MR. GARDNER: Yes, sir.

13 THE COURT: And then I explain it a little bit
14 more. Judge Alford, one of his clerks came up with a pretty
15 good blend that I use and I --

16 MR. GARDNER: Yes, sir.

17 THE COURT: It talks about --

18 MR. WALKER: All right.

19 THE COURT: I don't want to tell you wrong.

20 MR. GARDNER: I remember -- I just -- I remember
21 it now, yes, sir. Thank you, judge.

22 THE COURT: Yeah, reasonable doubt -- and
23 reasonable doubt is the proof that leaves you firmly
24 convinced, that sort of language.

25 MR. GARDNER: Yes, sir.

1 MR. WALKER: Thank you, judge.

2 MR. GARDNER: Thank you, judge.

3 THE COURT: All right. Ready for the jury?

4 MR. SPRINGS: The State is ready.

5 THE COURT: Ready for the jury?

6 MR. GARDNER: May we have a one minute, two minute
7 break, judge?

8 THE COURT: Yeah.

9 THE COURT: While you are doing that, I'm going to
10 talk to the class for just a minute.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: Mr. Springs, are you ready?

14 MR. SPRINGS: Yes.

15 THE COURT: I don't restrict times. That doesn't
16 mean we go to mid-afternoon. Depending on how long your
17 arguments take, we may take a break between arguments and
18 charge. The charge is not that long, but depending on how
19 long your arguments are, we may take a break. All right.

20 Bring in the jury.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: I'll remind you that Ms. Rollins I
24 have excused, and Mr. Rumfola, you are now on the jury. And
25 I know when you look at the clock, you think I missed that

1 class in kindergarten where they taught me how to tell time.
2 So it started at 9:30, and it's almost ten. I apologize and
3 I appreciate your patience, but based on how things
4 progressed, we now are at -- the State has rested. The
5 defense has rested, so we have reached the stage that they
6 will make their closing statements, closing arguments for
7 you, and then I will charge you the law that you are to
8 apply.

9 Mr. Springs.

10 MR. SPRINGS: Thank you, Judge Hayes. May it
11 please the court.

12 Ladies and gentlemen of the jury, Madam Forelady,
13 I'm going to speak to you now, and then the defense attorney
14 is going to speak to you, and then it will be time for you
15 to do your job. Everyone else has done their job; the
16 police, the judge, me, the defense attorney, the clerk. And
17 you have the most important job of all. You determine the
18 facts. You determine whether this man did this behavior.
19 These are the rules that the judge gives you.

20 Let me start by congratulating the defense
21 attorney, because he has fought like a tiger for his client.
22 He's done a good job. Look what he had to contend with. He
23 had to try a case where his client, Kenneth Morris, was
24 found driving the car where the drugs were in the trunk; and
25 he had to try a case where his client, Kenneth Morris,

1 admitted to the police that he and Brandon Nichols had gone
2 down there to buy the Ecstasy and he did buy the marijuana
3 and they did bring it back. He admitted all of it to the
4 police. And he had to try a case where the co-defendant,
5 Brandon Nichols, got on the stand and said "yeah, we went
6 down there to buy four hundred Ecstasy pills, and we bought
7 four hundred Ecstasy pills." Pills for later resale. And
8 he bought some marijuana. That's the case the defense
9 attorneys had to try.

10 We have to prove this case beyond a reasonable
11 doubt. Well, we have proven it beyond all doubt.

12 Let me talk about the police for a minute. You
13 represent all of York County today. The police in this
14 matter you should be very proud of. They work for you. You
15 pay their paycheck and you should be impressed with them.
16 These aren't a bunch of stumblebums. They're cops. These
17 are experienced, well trained officers, doing an extremely
18 good job. You have got a specialized unit, the Highway
19 Interdiction Team. They take an officer with years of
20 experience. They take him all over the country, all over
21 the country, and train him in this job of his to try to
22 interdict guns and drugs and other bad stuff coming up and
23 down the corridor running through York County, that corridor
24 going back and forth to Charlotte primarily, and he's out
25 there stopping cars all day long, driving early for traffic

1 violations, but he would check them out, because very few
2 cars go down I-77 or come up I-77 with a big sign on the
3 side that says "I have got guns and drugs," and so he's out
4 there stopping them.

5 I would love for the word to get out that if you
6 are coming through York County on I-77 you better be doing
7 speed the limit, you better not be following a truck too
8 closely, you better use your turn signal, because there is a
9 team out there stopping cars. They can earn their paycheck
10 that you give them to check to see if there are guns and
11 drugs coming up and down that corridor. And then after they
12 arrest you, you have two supervisors - one supervisor with
13 over thirty years of experience of the entire narcotics unit
14 and the other, a Rock Hill lieutenant detective - come in
15 and talk to this man when he confesses. You should be proud
16 of all of them; pretty sharp bunch.

17 Let's hear about the factual points and I won't
18 belabor the case, because it is such a simple case. The
19 highway interdiction officer, Vinesett, with a state
20 constable riding with him on February 6th of last year, it's
21 raining. He sees a Ford following a truck too closely.
22 He's going to stop it. Before he can stop it the car pulls
23 off on its own on an exit, Anderson Road. He comes up and
24 pulls into a filling station. The officer follows him. And
25 when he gets up to him, he turns on his blue light and a

1 camera comes on. And he goes up to the car. The window was
2 put down and he smells marijuana and he sees these cigars,
3 these blunts, the end. You will see the pictures, and they
4 didn't come up on the board very well, but the cigars are
5 smoked down almost to the tip, so if there was any marijuana
6 inserted in the front of the cigar, it's already been
7 smoked. He smells marijuana and he sees that, which in his
8 experience is often used to hollow out the front of it,
9 stick some marijuana in there, and he admitted he thinks
10 these guys got marijuana.

11 A canine comes out. He walks around the car and
12 he does not alert. Was it a poor dog? Was he having a bad
13 day? It was one or the other because there were drugs in
14 the car. There was marijuana in the car. Vinesett knows.
15 There was marijuana in the trunk and there were hundreds of
16 Ecstasy pills in the trunk, but the dog was having a bad
17 day. And if you have over a hundred Ecstasy pills, you are
18 trafficking; about a half pound of marijuana, way more than
19 anyone needs to make their make their cigarettes. So he
20 arrests Kenneth Morris for trafficking in Ecstasy pills and
21 having the marijuana intending to distribute it, because
22 it's way more than anybody needs for his own use.

23 Judge Hayes will actually tell you that the
24 legislature has passed a law that says if somebody has more
25 than an ounce, that's twenty-eight grams, of marijuana, you

1 could infer, which is a fancy word meaning conclude, that
2 they are intended to distribute something, because an ounce
3 is way more than they need for themselves. This is almost
4 eight times that one ounce, that twenty-eight grams. That's
5 how much marijuana it was.

6 So he arrests these fellows. He reads them their
7 Miranda Rights. There is no fussing. There is no fighting.
8 Everybody got along. Quite civil. He reads their Miranda
9 Rights to them. He takes them to the jail. The Ford rental
10 car is taken to the jail, where the marijuana is then found
11 under the spare tire in a vacuumed-sealed bag. They take
12 them into the jail.

13 Marvin Brown, the narcotics supervisor with over
14 thirty years experience, sits down with Mr. Morris and talks
15 to him and Mr. Morris tells him that they had gone to
16 Atlanta and they did buy the -- they went in together on the
17 Ecstasy, and the marijuana was his. He said it was his. He
18 told them how much they paid for the pills. And Marvin
19 Brown said later, after he and Nichols sat together for a
20 while, Mr. Morris said "you know what? I'm not taking the
21 marijuana. I change my mind." And those are the facts.

22 And then we have the trial and Brandon Nichols
23 comes in, after he had pled guilty and gotten a deal, gotten
24 probation, and he gets on the stand and he said "yeah, we
25 went down there to get four hundred Ecstasy pills. We went

1 in together on the money. We were going to split them. We
2 were coming back and we get stopped."

3 And he was asked about a statement he wrote out
4 when Morris and another guy took him to a notary public and
5 said "that's a lie." I have forgotten how he put it. You
6 use your memory. You are going to have twelve memories back
7 there, which is going to be better than mine or the defense
8 attorney, and what one person misses, the other eleven can
9 fill in, of course, pretty well. And he says "I was
10 intimidated," or, "I was scared for my family," or something
11 to that effect. But he says from the stand, he is telling
12 you "we went in together and we bought the Ecstasy. He puts
13 it in a car and he puts the marijuana in the car and that's
14 the truth."

15 The judge is going to go over the law. He will
16 explain what reasonable doubt is, talk about the code
17 section that deals with trafficking in Ecstasy. He will go
18 over a lot of things. He will give you the rules,
19 basically. He is like an umpire. You are going to take the
20 rules the judge gives you and apply them to what you have
21 seen, just like an umpire does. You don't have any friends,
22 you don't have any enemies. You know, an umpire when
23 the baseball game is going on, he doesn't go "oh, I love the
24 Cubs. They had a bad year last year. I'm going to help
25 them out a little bit. I'm going to help them out." That

1 would be horrible. So you have no friends here. You have
2 no enemies. Just call it like you see it.

3 There are a long list of ways you can traffic in
4 Ecstasy, and you are not familiar with this, so I want to be
5 sure that you get it and you understand it, because the
6 judge is going to give you the whole list of ways you can
7 traffic in Ecstasy. Kenneth Morris hit most of the list,
8 actually. You can be trafficking in Ecstasy if you are
9 delivering over a hundred pills, a hundred tablets. Well,
10 he's driving the car back through South Carolina that's
11 delivering the Ecstasy back to his home state of North
12 Carolina.

13 You can purchase over a hundred tablets of
14 Ecstasy. Well, he and Nichols went down to get four hundred
15 pills. They got shorted by seven, but they purchased way
16 more than a hundred.

17 Now, they together had possession of more than two
18 hundred, and what we want to talk about here is the ones
19 that the chemist tested. There were 393 pills in there.
20 She didn't test them all. She got to 254 and frankly said
21 that's enough. She didn't test the rest, so we are going to
22 talk about 254, because we know 254 of this poison is
23 Ecstasy. 254.

24 You can look at it two ways. You can say, okay, a
25 127, I think that's right, on Morris, and 127 are Nichols,

1 but they really together had joint possession of all of
2 them. I'll talk about that in a minute. We have alleged
3 it's over a hundred pills, and that's what we have to prove
4 to you, that it's over a hundred Ecstasy pills. So he's
5 purchased, went in together 50/50, over a hundred pills. No
6 doubt.

7 And, again, in the statute that Judge Hayes will
8 give you, it's like you can do it this way, or this way, or
9 this way, or this way. He's delivering it. He's purchased
10 over a hundred.

11 Another way is bring into this state. The
12 legislature didn't want people bringing drugs like this into
13 the state in this quantity, and he did. They bought it in
14 Atlanta. He told the officers when he confessed they bought
15 it in Atlanta. Brandon Nichols said they bought it in
16 Atlanta. They rented the car and they went down there,
17 intended to go to Atlanta to get four hundred. So he did
18 bring it into this state. He's actually driving the car.

19 You can aid -- another way, or aid and abet
20 somebody else to do any of the others; deliver, or purchase,
21 or bring into this state. Well, they're sort of aiding and
22 abetting each other. They are accessories to each other.
23 He's helping drive the car, so he's aiding and abetting his
24 buddy in delivering his, Brandon Nichols' share of pills
25 back, and bringing it into this state.

1 You can conspire. This is another totally
2 different way. Again, he's hitting so many of these.
3 Almost all of them. I'll tell you in a minute the ones he
4 doesn't hit.

5 You can conspire. And conspiracy is an agreement.
6 It's just a plan made in advance with somebody. It's a
7 fancy word for just an agreement, and that's what they had.
8 They agreed in Greensboro when they rented the car, "we are
9 going to Atlanta to get four hundred Ecstasy pills." They
10 conspired together, he and Brandon Nichols.

11 And another way he could traffic is just make the
12 agreement with somebody else that you are going to deliver,
13 or purchase, or bring into this state over a hundred pills,
14 and they agreed.

15 And you know what? If they had gotten caught
16 before they ever got their hands on the pills, they would
17 have been guilty of trafficking. Just having made the
18 agreement is enough. Having made the conspiracy is enough.
19 If a bunch of guys were in a hotel room in New York planning
20 to hijack an airliner and crash them and the police had
21 found out and put a bug in there and hears about their plans
22 and how they are going to do it, they can go right in that
23 room and say "that's a conspiracy. You have made the plan.
24 It's done. We are not going to wait until you get the
25 plane. You are guilty of conspiracy." So before they ever

1 got their hands on the drugs they had conspired.

2 And another and/or is you can have actual or
3 constructive possession of over a hundred tablets. Well, he
4 put it in the car and he had the actual possession of them
5 when he put it in the car. I have actual possession of this
6 stick.

7 Constructive possession is when you don't have it
8 in your hand or in your pocket, but you still have control
9 over it. I still have control over that. That's in my
10 constructive possession. My clothes in my closet back home
11 are in my possession right now constructively. I have --
12 the fancy term is dominion and control over that. I could
13 tell somebody to go over to my house and get my blue blazer
14 out of the closet. I have control over it, even though it's
15 not actually in my hand. You have dominion and control over
16 the dishes in your kitchen cabinet right now. You have
17 constructive possession.

18 So once it's in the trunk after he's put all
19 drugs, including the marijuana, in the trunk, he still has
20 constructive possession. And he has constructive possession
21 of all of it, because he has the ability, the dominion and
22 control, to go back there and lay hands on and have some
23 control over even Brandon Nichols' share. So he had control
24 over all of them.

25 So he's hit all of these ways in this laundry list

1 of trafficking except the one that says you sell over a
2 hundred Ecstasy pills. He hadn't gotten the opportunity.
3 He got caught before he got to that one, but he didn't sell
4 any.

5 He didn't manufacture any. He wasn't running a
6 drug lab that made this poison. There is no medical use for
7 this. This is just pure poison, but he didn't manufacture
8 it. So he didn't hit it that way. That's another way.

9 And he didn't cultivate. If there was something
10 that grows that goes into these things, he could have been
11 trafficking by cultivating the material that goes into it.
12 He didn't.

13 He didn't sell. He didn't manufacture. He didn't
14 cultivate, but he hit all these other ways that you can
15 traffic. You only have to find him guilty of one. You only
16 have to find him guilty of one.

17 You could -- you could -- you could conclude --
18 you could give him way more benefit of doubt than he's
19 entitled to about the evidence. You could say, "you know
20 what? Brandon Nichols bought it all. That was Brandon
21 Nichols in the trunk," but he's aiding and abetting Brandon
22 Nichols, if they were all his, because he's the driver.

23 You are not going to have a problem with this
24 case. You told the judge that you could judge this case,
25 judge the facts. You are not going to judge his soul.

1 That's for somebody else later. You are not going to judge
2 whether he is a nice guy or a bad guy. You are just going
3 to judge his behavior, these facts. And you told the judge
4 that you could do that. You took an oath that you could do
5 that. You can. You can. You have got ample, ample, ample
6 evidence.

7 His defense, you can tell from the way the
8 witnesses, the police were cross-examined and Brandon
9 Nichols was cross-examined, this defense dealing with he's
10 caught driving the car with all the drugs, dealing with he
11 confessed to all of it, dealing with it his buddy testified
12 for the State and said he did it, dealing with that, the
13 defense is what I call the "are you going to believe your
14 lying eyes or are you going to believe me," because that's
15 basically what it all boils down to. For you to find him
16 not guilty, you would have to believe in your heart three
17 things. You would have to believe that all the police lied,
18 they all decided "let's just not worry about our thirty
19 something year career and our retirement and our insurance
20 and our families. Let's lie about this guy. Let's all get
21 conspiracy going and lie about it." You would have to
22 believe all the police did that. All those years, all that
23 retirement, all they built for --

24 MR. GARDNER: Your Honor, I'm going to object.

25 THE COURT: I sustain the objection. Let's don't

1 go into that.

2 MR. SPRINGS: You would have to believe that they
3 lied.

4 And on top of that, you would have to believe
5 Brandon Nichols lied.

6 And you would have to believe --

7 MR. GARDNER: Your Honor, I have the same
8 objection.

9 THE COURT: I overrule your objection.

10 MR. GARDNER: Thank you.

11 MR. SPRINGS: And --

12 THE COURT: Go ahead.

13 MR. SPRINGS: And you would have to believe he got
14 into the rental car with Brandon Nichols the day before,
15 went to Atlanta, came back to Atlanta with him driving and
16 he had no idea those hundreds of Ecstasy pills and a half
17 pound of marijuana were in the back; he was just clueless
18 about it. You would have to believe all three of those
19 things, because if he did confess to the police, it's done.
20 He's confessed. And if Brandon Nichols told the truth, he's
21 done. Brandon Nichols told you he did these things. And
22 what are the chances that he jumps in a rental car the day
23 before, he goes to Atlanta and drives his buddy back not
24 knowing all of this is in the trunk? You would have to
25 believe all of those three things to find him not guilty.

1 This is a direct evidence case. There is two
2 kinds of evidence - direct and circumstantial. This is
3 direct. "I did this, I did this, and I did this." His
4 friend is saying "he did this. He did this." The police
5 saying "I found this. I saw this. I smelled this."

6 So what has the defense pounded on? You have
7 already seen, "the dog didn't smell anything. The dog
8 didn't smell anything. That dog didn't smell anything."
9 Well, hey, guys, the marijuana and the drugs, the Ecstasy,
10 were in the trunk. What difference does it make that the
11 dog had a bad day?

12 "And when he confessed, when the police talked to
13 him, they didn't run a tape recorder or a movie camera."
14 Well, so what? If you got married last year in front of a
15 minister and you didn't tape it and video it and you tell
16 somebody "I got married last year."

17 "Where is your tape? Oh, no, you didn't. You
18 didn't tape it, it didn't happen."

19 "Oh, yeah, it did happen," you are entitled to say
20 "I got married," just as the officers are entitled to say
21 "this is what he said. It did happen."

22 Real quick on a couple of points of the law. The
23 standard here is beyond a reasonable doubt. There has been
24 all kinds of definitions of beyond a reasonable doubt over
25 the years, and one that is fashionable now, the one that's

1 used now, is a reasonable doubt is the kind of doubt that
2 would cause you to hesitate to act. That doesn't mean we
3 don't want you to go back there and sit down in those chairs
4 in the deliberation room and deliberate and talk about this.
5 That's not the hesitation that it's talking about. That's
6 why we give you chairs back there, so you can sit around and
7 go over what you have seen and heard. You hesitate before
8 you make all the important decisions in your life that you
9 know that you are going to make going into it. You always
10 hesitate and think about it.

11 If somebody tonight said "I have got a \$250,000 a
12 year job for you, but you are going to have to move to
13 Gastonia." Well, you might discuss it with your family and
14 you might think about how that's going to affect your kids,
15 since you are moving to Gastonia, but you know what? The
16 minute somebody said "I have got a \$250,000 a year job. You
17 are going to have to move to Gastonia." Oh, yeah, oh, yeah,
18 you are going to take the job, but you are going to hesitate
19 and think about it, but that's not to hesitation that they
20 are talking about. We want you to deliberate and go over
21 these things. And when you do that, you will conclude that
22 we have proved this way beyond any doubt. Way beyond any
23 doubt.

24 When I said way beyond any doubt, what are the
25 chances that he's not guilty of trafficking in Ecstasy and

1 having a half pound of marijuana intending to distribute it,
2 when he has already conspired with Brandon Nichols to go
3 there to get it? We know he conspired with him, because
4 Brandon Nichols said that was their plan and Morris told the
5 police that was their plan.

6 And he's purchased over a 100 tablets of Ecstasy.
7 And we know that, because Brandon Nichols said they
8 purchased -- they thought they were purchasing four hundred
9 tablets, and Morris told the police himself that he and
10 Brandon Nichols had bought the Ecstasy to split it.

11 He bought and delivered into the State of South
12 Carolina from Atlanta, Georgia, over a hundred tablets of
13 Ecstasy. And we know, because Brandon Nichols said they
14 went down there to buy four hundred, thought they bought
15 four hundred and were bringing it back. And Morris told the
16 police himself they bought the Ecstasy in Atlanta and were
17 bringing it back and the marijuana was his.

18 And aided and abetted Brandon Nichols in
19 delivering and bringing into South Carolina his portion of
20 over a hundred tablets of Ecstasy. And we know that,
21 because Brandon Nichols said he rented the car and picked up
22 Morris and they went to Atlanta and they bought the Ecstasy
23 together and Morris put the Ecstasy and marijuana in the
24 car. After Morris told the police himself that he and
25 Nichols were coming back from Atlanta in the car, which

1 Nichols had rented and Morris was driving, and they had gone
2 together, gone in together, buying the Ecstasy in Atlanta
3 and he claimed the marijuana.

4 And he had actual possession of the Ecstasy in his
5 hands when he put it into the trunk and the marijuana, and
6 constructive possession of both when he was driving the car
7 and it was in the trunk.

8 I'm going to stop now. The defense attorney is
9 going to talk to you. I'm not allowed to say anything else
10 to you. The defense attorney will go over these things I
11 just did; "the dog didn't smell anything; the police didn't
12 make a movie; and Brandon Nichols changed his story when
13 Morris and his buddy took him to a notary, so it must not
14 have happened." So who are you going to believe, your lying
15 eyes or the defense?

16 I thank you for your time. Please do the right
17 thing. It's a serious case. The police got this stuff off
18 the street. It's not going to be on the streets or any
19 schools somewhere now. They have done their jobs. Now it's
20 your turn.

21 MR. WALKER: Your Honor?

22 THE COURT: Yes, sir.

23 MR. WALKER: I believe that the thing about
24 believing your lying eyes was a song done by the Eagles some
25 time ago, you know. It's a pretty good song.

1 Mr. Springs is an excellent prosecutor and y'all
2 should be glad that you have him up here in York County.
3 He's very good at what he does, but from the tone of his
4 argument you can conclude that he's a little bit desperate
5 about his case. I want to ask y'all -- because he knows.
6 He knows that the State's has holes in its case, big holes,
7 holes that you can drive a truck through. Okay? I want to
8 ask y'all a question and tell y'all a little story before I
9 actually start talking to y'all about the facts of this
10 case.

11 My question, which I will come back to later, is
12 this. What is freedom worth to you? And by that, I mean
13 what is the freedom that the United States Constitution and
14 our comparable State Constitution, what are those freedoms
15 worth to you? Okay?

16 I'll tell a little story real quick. I'm an only
17 child. My wife is an only child. About fifteen years ago
18 this month, in fact, her -- my mother-in-law's husband died.
19 My father-in-law passed away, so we invited my mother-in-law
20 to come live with us for a couple of weeks. You know, she
21 was going through the grieving process and stuff and we
22 inviting her to come live with us for a couple of weeks.
23 Well, my mother-in-law -- everybody has heard mother-in-law
24 jokes, and I'm not making one. Okay? I'm not making a
25 joke. My mother-in-law is a very cantankerous controlling

1 woman. Okay? She really is. Instead of staying two weeks,
2 she stayed about six months. Okay? And one day I was out
3 in the yard. My wife wanted me to plant some flowers. I
4 was out in the yard digging a hole to plant those flowers
5 and my mother-in-law came up to me and said "what are you
6 digging that hole for, Irby?" I said "well, I'm digging it
7 for you for your grave if you don't leave pretty soon.
8 Okay?"

9 I want to fast forward fifteen years. My
10 mother-in-law started becoming very fragile and very -- she
11 started losing it mentally, okay, so this past year we
12 talked about bringing my mother-in-law in to live with us.
13 We knew it was time and it was the right thing to do. And I
14 dreaded that thing like you just would not believe. I mean,
15 it's unbelievable how much I dreaded that, but this past
16 November we brought her in to live with us. And it turned
17 out to be a very pleasant experience so far. I mean, it
18 really has.

19 I know that some of you folks, when you got your
20 jury summons, y'all dreaded coming up here, kind of like I
21 dreaded, you know, my mother-in-law coming to live with me,
22 but I hope -- I hope this experience has turned out pleasant
23 for y'all in the sense that I hope that you have learned
24 something that maybe you did not know about how the court
25 system works and about how important your role is in the

1 process that we are engaged in here today.

2 A fellow named Winston Churchill, who everybody on
3 that jury panel has heard of, once said that except for
4 defending your country in a time of war, a citizen could do
5 no greater duty than to serve on a jury. And I believe
6 that. I believe that with all my heart. I have been a
7 lawyer for thirty-two years. I believed it the day I was
8 sworn in and I believe it today, because you people are the
9 last sort of line of defense, in a sense. Y'all are what
10 prevents tyranny from occurring in this country. Remember,
11 two days ago I told that y'all that in many countries of the
12 world people are not presumed to be innocent. Even in a
13 country like France, basically a country like that you have
14 to prove your innocence, okay, in the sense that you start
15 off equal with the prosecution. Okay? You start off equal
16 with the prosecution. It's not like that here.

17 You know, the best Constitution that was ever
18 written in the world, legal scholars say, it was the
19 Constitution written when the Soviet Union was formed.
20 Okay? But who would want to live in the Soviet Union? A
21 Constitution is nothing but a piece of paper. It's nothing
22 but a piece of paper.

23 It's people like y'all that ensure the rights in
24 the Constitution, and don't let anybody ever tell you any
25 different than that. Don't let anybody tell you that you

1 aren't performing one of the most important services that
2 you will ever perform today.

3 Having said that, I want to talk with you a little
4 bit about the case. I disagree very strongly with some of
5 the things that Mr. Springs told y'all. Obviously I have a
6 much different view of the facts of this case. I obviously
7 have a much different view of some of the things he told
8 you.

9 For example, he told that in order to convict my
10 client, you would have to determine three things. You would
11 have to determine first of all that the police lied. No,
12 you don't. No, you don't. You do not have to determine --
13 or in order to let me client go, rather, you have to prove
14 three things or establish three things. You have to
15 establish that the police lied. No, you don't. You
16 absolutely don't, and I'll tell you why in just a second.

17 You would have to prove that Mr. Nichols lied.
18 Well, we know Mr. Nichols lied, right? Because Mr. Nichols
19 gave conflicting statements. All right. There ain't no
20 question he lied. All right.

21 So I want to talk with you just very briefly about
22 some things that the judge is going to charge you in a few
23 minutes. Okay? The judge is going to charge you something
24 called presumption of innocence. And, again, we have all
25 heard of that. We have all heard of that. What it says,

1 basically, is that a person that's accused of a crime is
2 presumed to be innocent of those charges against him, unless
3 and until the State proves his guilt beyond all reasonable
4 doubt. You can't get any more important of a right than
5 that. And as jurors you cannot take any more of an
6 important task than preserving that right. Okay? And
7 that's what we are asking you to do today.

8 When Mr. Morris pled not guilty, he put his faith
9 in your hands. He believes, as I believe, that y'all have
10 paid attention in this trial and that y'all will honor your
11 oath to make the State prove that he's guilty beyond all
12 reasonable doubt. Okay? Merely by pleading not guilty, he
13 did that. He elected not to take the stand, because there
14 ain't much else he can say. Okay? "I didn't know the drugs
15 were in there. Okay. I'm not guilty." That's basically
16 all he can say by taking the witness stand. And he's done
17 that by his plea.

18 The State has got to prove him guilty beyond all
19 reasonable doubt. Now, the judge is going to charge y'all,
20 I think, that reasonable doubt is a doubt for which you as
21 good honest jurors can give a reason. It's a doubt, as the
22 prosecutor told you, in fact, which causes you to hesitate
23 to act. There is a theory behind that. Okay? You don't
24 want to -- a presumption of innocence and the thing about
25 reasonable doubt is put into our judicial system for a

1 couple of reasons. One thing is it's put in to protect the
2 rights of the defendant, obviously, but it's also put in to
3 protect you. Okay? It's also put in to protect jurors,
4 because you don't want to go home in twenty years from now,
5 or two years from now, or next week in the shower wonder if
6 you made a mistake. See? If you wonder if you made a
7 mistake two weeks from now, or tomorrow, that's reasonable
8 doubt. Okay? So basically reasonable doubt is something
9 that can cause you to hesitate to act.

10 Let's talk for just a few minutes, folks -- there
11 should be plenty of reasonable doubt in this case. Let's
12 talk for just a few minutes about the evidence that you saw.
13 Okay? You know, again, I don't have to prove that my client
14 did anything. The State has got to prove the stuff beyond.
15 And there is some pretty shaky evidence here by which to
16 convict my client.

17 Let's look at what happened. My client and this
18 other fellow who pled guilty, Mr. Nichols, get together in
19 Greensboro and they decide to go down to Atlanta, Georgia.
20 And, please, if I'm quoting something wrong, you know, y'all
21 are twelve of y'all, so y'all will remember. Mr. Nichols
22 rents the car. There isn't any question about that.
23 Everyone agrees on that. Nichols rents the car. Okay?

24 Why do they go down to Atlanta, according to
25 Nichols and according -- you know, why do they go down to

1 Atlanta? And according to Mr. Morris when he's out on the
2 road, they go down to see some girls and they go down to see
3 his cousin. That ain't necessarily an inconsistent
4 statement. Right? You go down to Atlanta probably for a
5 variety of reasons. You go to shop. You go down to eat.
6 You go down to see some girls. You go down to see the
7 Hawks. Okay? It's not unusual for somebody -- if you ask
8 asked me what I enjoyed about being up here today, I would
9 say one thing and my co-counsel, my good friend Johnny
10 Gardner, might say something else. Okay? If we were asked
11 what we observed about you, I would like to say one thing
12 and Mr. Gardner might say something else. The same story
13 about the elephant. Right? Everybody has heard of that. I
14 think the solicitor objected to me the other day saying
15 that, saying that it was argumentative, but everybody has
16 heard that. Three blind men feel different parts of the
17 elephant and asked to describe the elephant and they all
18 describe it differently. One felt the trunk and two of them
19 that felt something else, so that's not unusual. Okay?

20 The judge is going to charge you about following
21 too closely, what constitutes following too closely. And
22 what you are going to find out in South Carolina is that
23 there is no set rule for following too closely. Basically
24 it's in the discretion of the police officer. Okay? They
25 can stop you if they believe, they have a reasonable belief,

1 that you are following too closely. Okay?

2 Vinesett has been a police officer since 1997. He
3 goes to work at 7:30 in the morning on the morning that this
4 arrest occurred. And you saw through the video -- and y'all
5 can look at any of this evidence again, by the way, if you
6 want to do it. About two o'clock in the afternoon he stops
7 the vehicle -- well, the vehicle actually had already
8 stopped, but he stops the vehicle that my client is driving
9 and that Mr. Nichols is in. Now, on cross-examination he
10 can't tell you if he stopped any other vehicle that day or
11 not for following too closely, or for anything else. He
12 doesn't remember. On that video you saw that it was raining
13 and you saw that there was a lot of traffic on that road.
14 And I imagine in y'all's good common sense as jurors, y'all
15 drive that road a lot and you know that there is a lot of
16 traffic on that road. He can't remember if he stopped
17 anybody. I submit to you that he probably did.

18 Why did he stop my people? Okay. That's
19 something for you to consider. Why did he stop? He didn't
20 give anybody a ticket for following too closely, did he? I
21 mean, I guess he really didn't have to if he was going to
22 charge him with trafficking in marijuana. It seems a little
23 silly, but he didn't give him a ticket for that. He can't
24 tell you who else he stopped on that day for following too
25 closely, can he?

1 Why did he stop my client? More importantly, he
2 stops him for following too closely. My client hands him
3 his driver's license and hands him the rental agreement,
4 steps out of the car. I just want to go through the facts
5 with you. He goes back to the police car where the officer
6 starts talking to him. He keeps talking to him. Mr.
7 Nichols says he's got to go to the restroom. That's why --
8 I mean, Mr. Morris says he's got to go to the restroom.
9 That's why he stopped, okay, at the gas station that he
10 stopped at. Nobody disputes that. So then he brings
11 Nichols out. Officer brings Mr. Nichols out, puts him in
12 the car and they allow my client to go to the restroom.

13 Now, I asked the officer was he under arrest at
14 that point in time and the officer said no. He said he
15 wasn't under arrest at that time. Well, you know, if I am
16 ever at the point in my life where I have to be escorted by
17 an officer of the law to go to the restroom, I'm going to
18 believe I'm under arrest. Okay? And I think that anybody
19 in their right mind would believe that.

20 So then they talked to Nichols. Okay? They asked
21 permission to search Mr. Nichols car. These are just the
22 facts that were laid out for y'all. Nichols tells him no.
23 The cop calls the drug dog, a Labrador Retriever, which I
24 have. Okay? It's raining. You saw that video. You saw
25 the police there. He goes around the car twice. He don't

1 find a doggone thing. Okay? Did they go at that point in
2 time? No. What happened at that point is the officer pokes
3 his head into the car and he sees the stuff that these
4 pictures set forth. He sees that cigar right there. Okay?
5 He sees what he says is a lot of tobacco on the floor. That
6 don't look like tobacco to me. It doesn't. It don't look
7 like tobacco to me. I mean, it doesn't look like a lot of
8 tobacco to me. That does not look like a lot of tobacco to
9 me. Okay? He says that that's an indication of marijuana
10 use or drug use. Okay?

11 So, guess what? He does. He finds out that ain't
12 marijuana. Okay? That really is a cigarette or a cigar.
13 Do you remember what I asked? He said it was a Philly
14 Blunt. Okay? This is a Philly blunt right there. It ain't
15 got one of these things on it, a filter. Okay. This is
16 that black and mild thing they were talking about. It's
17 filtered, okay? It's filtered. It's not what you use,
18 apparently, for marijuana. So, anyway, he finds that out.
19 What does he do? He pops the trunk and finds the drugs.
20 Okay?

21 What kind of indications does an officer look for?
22 I don't know. Does he look for two black men driving an out
23 of state car? I don't know, you know. Did he profile them,
24 in other words? I don't know. I don't know, and that's the
25 important part, ladies and gentlemen. I don't know. You

1 don't know. Okay? You don't know. All right.

2 They find the Ecstasy in the car. We have never
3 denied there were drugs in that car. They go back to the
4 police station.

5 Now, let's talk about how they go back to the
6 police station. Officer Vinesett and the constable that are
7 with him put my client in the car and they put Nichols in
8 the car. Okay? There are video cameras in that car.
9 Right? You know that. There are video cameras in that car.
10 There is a sound system in that car. Okay? Is there any
11 testimony that while they are going back to the police
12 station they asked my client anything about the drugs? Or
13 for that matter, did they ask Nichols anything about the
14 drugs, going back to the police station? Nope, they don't.

15 They tell you that they read them their Miranda
16 Rights on that little card. In fact, that officer, that
17 particular officer, actually apparently carries a card with
18 him and pulls it out to read them. Well, I hope that y'all
19 know that in most instances people get to sign a Miranda
20 Rights form, okay? It says "I have read my rights. I
21 understand and I understand them. I either wish to make a
22 statement or I decline to make a statement." It says that.
23 You don't have that here. Okay? You have to assume the
24 officer read them their Miranda Rights. Maybe he did.
25 Maybe he didn't. I don't know.

1 Then you go back to the police station. Now, this
2 is where to me this thing really gets a little bit off
3 kilter. I have a hard time with this. I have a hard time
4 with this. They go into separate rooms. Certainly they
5 would do that, and they get questioned. Supposedly, I
6 believe his name is Mr. Moore (sic), the supervisor.
7 Supposedly Mr. Moore (sic) talks to my client and he claims
8 some responsibility for the drugs, okay, and in a conference
9 room with seven tables. Okay? Next to that conference room
10 is a secretary's office, the person that apparently does the
11 inventory. There are -- there is paper in there. There is
12 pencils in there. Okay? There is a pen in there. They
13 admit that they have these forms that we talked about where
14 you can get somebody to sign something that simply says I so
15 and so, you know, having been read my Miranda Rights and
16 state as follows. They don't do that. They don't videotape
17 the confession. They don't even put a tape recorder out
18 there to tape the confession. I have a problem with that.
19 You see, I have a huge problem with that.

20 The second guy comes in and he says "I overheard
21 him say that. I overheard him say that." Don't tape it.
22 They tell you that they go outside. Now, Mr. Moore (sic)
23 does, rather. He goes outside and he gets on his computer
24 or his typewriter and he types up what was said. Maybe he
25 didn't. Maybe he did. But that certainly leaves room to

1 also believe that he didn't.

2 You see, I talked to y'all a few minutes ago and I
3 asked y'all that question about freedom, what does freedom
4 mean to you? Your job is to determine guilt or innocence of
5 somebody. But your job is also, folks, to make the State
6 prove the case to you beyond all reasonable doubt. And
7 that's where they fall here. It's so much. The way these
8 police officers operated -- and by the way, I'm not some
9 died in the wool villain. I'm an ultra conservative and by
10 dad was, and I have been a prosecutor before. The way these
11 officers did this thing is so out of kilter. I mean,
12 it's -- it's -- it leads to the possibility, at least, and
13 you have to consider that, to the possibility, at least,
14 that something is amiss in this case. Something is wrong
15 with it. They could have so easily, so easily, turned on
16 the sound system inside of that car. You could have heard
17 whether or not my client confessed. They could have so
18 easily done that. Lacking that, they could have so easily
19 had a recorder, a recording device, in that conference room,
20 or even a video. They choose not to do that. Why not? I
21 have a huge problem as a citizen with that, because, you
22 see --

23 MR. SPRINGS: I'm going to object to this
24 continuing -- the defense attorney, I object to his opinion.

25 THE COURT: Yeah, I sustain the objection. Your

1 concerns are --

2 MR. WALKER: Very well. Very well.

3 THE COURT: -- not important.

4 MR. WALKER: Very well.

5 Those things should concern y'all as jurors.

6 Okay? They should concern you as jurors. This situation
7 should concern you.

8 Brandon Nichols. Did Brandon Nichols lie? Yeah.
9 What did Nichols say? I asked him to read -- or I read a
10 statement which he admitted. He said it on March the 12th,
11 2009. This is the date he pled guilty, if y'all don't
12 remember, "I was put under the most pressure of my life. I
13 was scared and confused about my situation that was at hand.
14 Some of the statements that I made concerning Kenneth Morris
15 and myself were not true. I was not aware that Mr. Morris
16 had purchased any marijuana, nor did I see him place any
17 quantity in the vehicle." Okay? "Mr. Morris was not aware
18 of the purchase of the Ecstasy and had no knowledge of it."
19 It's signed. It's notarized. Okay?

20 On March the 12th, 2009, Nichols testified that he
21 pled guilty to the same charge that my client had. He
22 testified that he got probation. Nobody disputes that. And
23 that in return for probation, he had to quote, unquote,
24 testify truthfully in this trial. Well, y'all can use your
25 common sense and I think realize that Mr. Nichols did not

1 testify truthfully. I mean, he clearly lied at some point
2 in time. He said my client put pressure on him to write
3 that statement. Do you remember that? Do you remember
4 that? But he went in his house before the statement was
5 done. He -- there was another guy riding with him. He was
6 in his neighborhood. He had the opportunity to drive his
7 own car, as I recall his testimony. And he went to a notary
8 public. Okay? Another individual. He never mentioned that
9 he was put under pressure.

10 More importantly, more importantly, he testified
11 that after that statement, that written statement, was made
12 known to the prosecutor, they told him that if he didn't
13 testify, he would face substantial jail time. Okay? Now,
14 my god, if that ain't -- if that ain't a man that's lied at
15 some point, okay, what is? I mean, what is? You know he's
16 lying, okay? And you know that you believe part of his
17 testimony that the State, at least, has told him "if you
18 back up on your initial statement, your initial deal to help
19 us, we are going to put you in jail."

20 But, again, folks, it's reasonable doubt. See,
21 remember, this young fellow sitting over here doesn't have
22 to prove he's innocent. Okay? He don't have to prove it.
23 The State has a huge, huge, burden of proof. It's not like
24 in civil court where you have to prove something by the
25 greater weight of the evidence, okay, which is, you know,

1 you have seen them Scales of Justice that just tips a little
2 bit one way? No. Reasonable doubt is something that is a
3 huge, huge, burden for the State to come on -- to have to
4 overcome, rather. It's a huge, huge, burden, and they
5 simply, simply, have not done it in this case.

6 In a few minutes the judge is going to charge you.
7 I'm going sit down in four of five minutes here. In a few
8 minutes the judge is going to charge you, and he's going to
9 charge you, among other things, that merely being in the
10 presence of drugs is not enough. You also have to have
11 knowledge that the drugs were there. You have to have
12 knowledge that the drugs were there. Okay?

13 The co-defendant, Nichols, says in this statement
14 that he gave that Morris was not aware of the purchase of
15 the Ecstasy and had no knowledge of it. If you believed the
16 officer's testimony, if you believe it, at some point in
17 time Morris retracted the statement that he had earlier
18 supposedly made.

19 I'm simply saying this, ladies and gentlemen, I'm
20 going to talk to my co-counsel for a second. If he tells me
21 I left something out, I'll come back up here. If not, I'll
22 sit down. I'm simply say this. I asked you earlier what
23 freedom meant to you. Okay? Is it worth -- or our rights
24 under our Constitution worth preserving for y'all, for your
25 children, for these people sitting out here? I submit to

1 you they are. Your duty as a juror is to make the State
2 prove something beyond a reasonable doubt. Make them prove
3 it. They didn't. There's too many holes in this case. By
4 being good conscientious jurors and by following the oath
5 that you gave, you go back in the jury room, and you
6 deliberate on this case, keep them things in mind. Keep in
7 mind that it's your job to keep the State in line. Okay?
8 The prosecutor told you you represent the citizens of York
9 County. No you don't. You don't represent the citizens of
10 York County. You represent the preservation of freedom, the
11 preservation the rights. Okay? Y'all got the most
12 important job in this country today, right here, because
13 it's up to y'all to preserve those freedoms.

14 Just one second, if I may.

15 (Off the record)

16 (Back on the record)

17 MR. WALKER: Finally, let me just say this to you.
18 I have appreciated appearing before y'all, okay? You have
19 paid attention in the case and I do -- I do appreciate that.
20 I think y'all are a good conscientious jury and I think and
21 I pray that y'all will do the right thing.

22 Please remember this. The verdict has to be
23 unanimous, okay, and you should deliberate. By
24 deliberating, you know, you should go through all the
25 evidence and stuff like that and discuss it among

1 yourselves. Some of you may disagree, okay? If you
2 disagree with something, talk about it among yourselves,
3 okay? But if you still disagree --

4 MR. SPRINGS: I'll object to him telling them how
5 to deliberate.

6 THE COURT: I sustain the objection.

7 MR. WALKER: Very well.

8 At any rate, ladies and gentlemen, follow your
9 conscience in this case. Follow the law as the judge gives
10 it to you and the evidence, and I feel like you will reach a
11 verdict that the State did not prove my client guilty.
12 Thank you.

13 (Whereupon, at 10:55 a.m., the Court gave the Jury
14 Panel the Jury Instructions)

15 THE COURT: Members of the jury panel, I
16 appreciate your attention that you have given to the
17 attorneys and to myself and to the witnesses. I'm going to
18 now ask you to give me your attention while I charge you the
19 law that you will apply to the facts in this case.

20 Mr. Morris is charged in two separate indictments;
21 one with possession of marijuana with intent to distribute
22 it, and one in trafficking in Ecstasy. I will define those
23 offenses for you later in my charge.

24 The fact that Mr. Morris has been arrested, the
25 fact that he is on trial, the fact that he's been indicted

1 is not evidence that he committed these offenses. That's
2 just the way our system works.

3 The fact that there are more than one indictment
4 is of no important. You are to examine the facts as to each
5 indictment and render a verdict, a unanimous verdict, as to
6 each indictment separately; that is, one is not dependent on
7 the other. You can find different verdicts. It's up to the
8 State to prove as to a particular indictment that Mr. Morris
9 was, in fact, guilty of that charge.

10 Now, you will in the jury room have with you the
11 two indictments. They are not evidence. They are simply
12 the paperwork by way of which this case is processed through
13 our court system. They contain the charges, the
14 allegations, as to Mr. Morris, but they are not evidence.
15 They are just formal papers. They will ultimately be where
16 the unanimous verdict is enrolled for our record keeping.

17 Mr. Morris has entered pleas of not guilty to both
18 of these offenses. His pleas of not guilty place on the
19 State the burden of proving his guilt beyond a reasonable
20 doubt.

21 Mr. Morris, like anyone charged with any offense
22 in our criminal system, is presumed innocent of each of
23 these charges. This presumption of innocence is a
24 substantial right. It is not just a mere legal theory or a
25 mere legal phrase. It is a substantial right which attaches

1 to an individual at the time they are arrested, remains with
2 them as their case is processed through our court system.
3 The presumption of innocence remains with Mr. Morris at this
4 very moment. In fact, the presumption of innocence in his
5 favor exists even as you deliberate. The presumption of
6 innocence in Mr. Morris' favor is removed if and when, and
7 only if and when, you, as the trial jury, unanimously find
8 that the State has proven his guilt beyond a reasonable
9 doubt.

10 Now, the State is not required to prove his guilt
11 beyond all doubt or beyond every doubt. There are very few
12 things in our world that we do know with absolute certainty,
13 and that's not required in a case such as this. Our courts
14 have defined a reasonable doubt as the kind of doubt that
15 would cause a reasonable person to hesitate to act. Proof
16 beyond a reasonable doubt is proof that leaves you firmly
17 convinced of an individual's guilt. In criminal cases the
18 law does not require that every possible doubt be overcome.

19 If, based on your consideration of the evidence,
20 you are firmly convinced that he is guilty of one or both of
21 the offenses, you would find him guilty.

22 If, on the other hand, you think there is a real
23 possibility that he is not guilty, you would give him the
24 benefit of that reasonable doubt and find him not guilty.

25 He is entitled to the benefit of any reasonable

1 doubt that you have as to any issue in this case.

2 I will remind you that I am the sole judge of the
3 law in this case and you must take, accept, and apply the
4 law as I charge it. This is true even if you think I
5 charged the law in error or even if you think the law should
6 be different. Your oath requires to you take, accept, and
7 apply the law as I charge it.

8 You are not to infer from anything that I have
9 said or done or anything I now say or do of being indicative
10 of an opinion of mine on the facts. Our law does not allow
11 a trial judge to formulate or express to a jury any opinion
12 on the facts. That is solely your job.

13 It's solely up to you to examine the evidence,
14 give to the evidence the effect, the value, the weight, and
15 the truth that you believe it should have. In doing this
16 you may believe one witness as opposed to several, several
17 witnesses as opposed to one. You may believe all, part, or
18 none of a witness' testimony.

19 Use your common sense, your sense of logic, your
20 sense of reason. Use your experiences in life as you
21 analyze the evidence.

22 As judges of the facts you, of necessity, must
23 judge the credibility, that is, the believability of the
24 witnesses who have testified. In assessing credibility, use
25 those things which I have just discussed with you. Use

1 those things that you in your day-to-day life find as being
2 indications of truthfulness, and you can use certain
3 evaluators:

4 The witness' demeanor, how they acted on the
5 stand. Were they hesitant or straightforward responding to
6 questions.

7 Was their testimony consistent or inconsistent
8 within the testimony as given or when compared to earlier
9 testimony or statements.

10 You can consider the opportunity a witness had to
11 know those things to which the witness testified.

12 And you can consider any bias or prejudice a
13 witness may have; that is, whether a witness would wish to
14 help or hurt one side or the other.

15 All these things you consider to determine the
16 true facts. Apply the law to those facts and you will be in
17 a position to return a verdict that speaks the truth.

18 Our Rules of Evidence ordinarily do not allow an
19 individual to state an opinion. Generally one must testify
20 only as to a fact, something that they have sensed with one
21 of their five senses. Usually it's something they have seen
22 or heard, but it could be taste, touch, or smell. However,
23 where an individual has certain training, qualifications,
24 experience or education in a field, that person can be
25 qualified as an expert and render an opinion; takes facts

1 and from those facts render an opinion.

2 We had an individual testify as to the drugs in
3 this case who had been qualified as an expert in drug
4 analysis. Her testimony is allowed into evidence, like any
5 expert's testimony, to help you. It is not binding on you.
6 You look at her testimony, just as you look at the testimony
7 of any other witness. You may accept it, reject it in whole
8 or in part. It is for your assistance. It's not binding on
9 you.

10 In addition to the factors that I went over in
11 regard to other witnesses, as to an expert witness, you may
12 also examine the qualifications they have; that is, the
13 qualifications to render the opinion and a reason the
14 opinion was reached by that individual.

15 The fact that Mr. Morris exercised his
16 Constitutional Right to remain silent is not to be used
17 against him in any fashion whatsoever. Anyone charged with
18 an offense in our system has an absolute right to remain
19 silent under our Constitution. His exercise of that right
20 cannot be used against him in any fashion whatsoever. You
21 cannot discuss that fact. You cannot factor it into your
22 own deliberation. He has an absolute right to remain
23 silent. He cannot be penalized in any fashion whatsoever
24 for having exercised that right.

25 I'll remind you, he does not have to prove

1 anything. He does not have to prove his innocence. He is
2 presumed innocent. The State must prove his guilt beyond a
3 reasonable doubt.

4 Now, in cases such as this there are generally two
5 types of evidence that are presented: Direct and
6 circumstantial.

7 Direct evidence is testimony of a person who
8 claimed to have actual knowledge of a fact, such as an
9 eyewitness. It is evidence which immediately establishes
10 the fact sought to be proved.

11 Circumstantial evidence is a proof of chain of
12 facts and circumstances which indicate the existence of a
13 fact. Circumstantial evidence is evidence which immediately
14 establishes collateral facts from which the main fact may be
15 inferred. Circumstantial evidence is based on inference and
16 not on personal knowledge or observation.

17 Our law makes absolutely no distinction between
18 the weight or value to be given either direct or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than is
21 required of direct evidence.

22 What you should do is weigh all of the evidence in
23 the case. After weighing all the evidence, if you are not
24 convinced of Mr. Morris' guilt beyond a reasonable doubt,
25 you would find him not guilty.

1 Rules of our road, as set forth in our statutes,
2 our laws as enacted by the legislature, provide, among other
3 things, under Section 56-5-1930 -- you, of course, don't
4 have to member that number. That law states that the driver
5 of a motor vehicle shall not follow another vehicle more
6 closely than is reasonable and prudent, having due regard
7 for the speed of such vehicles and the traffic upon and the
8 condition of the highway.

9 Now, Mr. Morris is charged with possessing with
10 intent to distribute marijuana and trafficking in Ecstasy.
11 Both of these require that he possess the substance, so I'm
12 going to just charge you what constitutes possession under
13 our law, both actual and constructive, just one time. I'm
14 not going to charge it to you with each of the offenses, but
15 whenever I talk about possession, this is what I'm talking
16 about.

17 To prove possession, the state must prove beyond a
18 reasonable doubt that Mr. Morris had both the power and
19 intent to control the disposition or use of the drugs in
20 question.

21 Possession may be either actual or constructive.

22 Actual possession means that the drug was in the
23 actual physical custody of the defendant.

24 Constructive possession means that the defendant,
25 here that's Mr. Morris, had dominion and control or the

1 right to exercise dominion or control over either the drug
2 itself or the property on which the drug was found.

3 Mere presence at the scene where drugs are found
4 is not alone enough to prove possession.

5 Actual knowledge of the presence of a drug is
6 strong evidence of a defendant's intent to control its
7 disposition or use.

8 A defendant's knowledge and possession may be
9 inferred when a substance is found on the property under the
10 defendant's control. However, this inference is simply an
11 evidentiary fact to be taken into consideration by you,
12 along with the other evidence in the case, and to be given
13 such weight, if any, you decide it should have.

14 Two or more persons may have joint possession of a
15 drug.

16 As to trafficking, Mr. Morris is charged with
17 trafficking a controlled substance called Ecstasy. Here the
18 State must prove beyond a reasonable doubt that Mr. Morris
19 knowingly sold, manufactured, cultivated, delivered,
20 purchased, brought into this state, provided financial
21 assistance; or, otherwise, aided, abetted, attempted, or
22 conspired to sell, manufacture, cultivate, deliver, purchase
23 or bring into this state; or, was knowingly in actual or
24 constructive possession or knowingly attempted to become in
25 actual or constructive possession of Ecstasy.

1 The State does not have to prove all of those
2 items. They must only prove that he committed one of those
3 in order to have carried their burden of proof. They do not
4 have to, again, prove that he did all those items that I
5 have enumerated, but they must prove at least one before you
6 can convict him.

7 The State must also prove, of course, that the
8 substance was, in fact, Ecstasy.

9 And to make it trafficking, the State must also
10 prove beyond a reasonable doubt that the amount of the
11 Ecstasy was one hundred tablets, capsules, dosage units, or
12 the equivalent amount, or more, but less than five hundred
13 dosage units or equivalent amount.

14 I used the word conspiracy among the things that I
15 listed a moment ago, and a conspiracy is a combination or
16 agreement between two, or more, persons for the
17 accomplishing of a criminal or unlawful object.

18 The essence of a conspiracy is the agreement. It
19 may be proven by specific overt acts done in furtherance of
20 the conspiracy, but the crime of conspiracy is the
21 agreement.

22 As to the second indictment, possession with
23 intent to distribute marijuana, I'm going to charge you the
24 elements of that law, and it includes, or is not set out in
25 writing, a lesser included charge that may be considered by

1 you, if you decide the State has not carried its burden of
2 proof as to the charge, and that would be simple possession
3 of marijuana, and I would charge you more about that in a
4 moment, but he is charged, Mr. Morris is, with possession
5 with intent to distribute marijuana. Of course, the State
6 must prove that the subject, that the control -- that the
7 items alleged to be marijuana was, in fact, marijuana.

8 The State must prove beyond a reasonable doubt
9 that Mr. Morris possessed marijuana with intent to
10 distribute it.

11 To prove possession, the State must prove beyond a
12 reasonable doubt that he had both the power and intent to
13 control the disposition and use of the marijuana.

14 Possession may be actual or constructive, and I
15 have charged you earlier what constitutes possession, actual
16 and constructive.

17 The State must also as to the charge prove that
18 Mr. Morris had the intent to distribute the marijuana.
19 Distribute means to deliver.

20 Intent may be shown by acts and conduct of a
21 defendant and other circumstances from which you may
22 naturally and reasonably infer intent.

23 In determining whether a defendant had the intent
24 to distribute any marijuana, if you find that he possessed
25 it, you may consider the circumstances surrounding their

1 alleged possession. You may consider the amount of the
2 substance alleged to have been possessed; the manner in
3 which it was allegedly possessed; the place where it was
4 allegedly possessed; and other factors which you consider to
5 be important.

6 You must find that the defendant, if you find he
7 possessed drug, did not intend to have it solely for his own
8 use.

9 Possession of more than twenty-eight grams, or one
10 ounce, of marijuana creates an inference that a defendant
11 possessed the marijuana with intent to distribute. This
12 inference does not relieve the State from proving beyond a
13 reasonable doubt that a defendant had the intent to
14 distribute it. It is simply an evidentiary fact to be taken
15 into consideration by you, along with the other evidence in
16 the case, and to be given such weight as you decide it
17 should have.

18 If you find the State has failed as to this
19 indictment to prove Mr. Morris guilty of possession of
20 marijuana with intent to distribute, you can consider, if
21 you wish, the lesser included offense of simple possession
22 of marijuana.

23 To prove this, the State must prove beyond a
24 reasonable doubt that Mr. Morris knowingly or intentionally
25 possessed marijuana.

1 Knowingly, of course, means with knowledge,
2 consciously, not accidentally.

3 And intentionally means willful, intending the
4 results, not accidental or involuntary.

5 Intent may be shown by acts and conducts of the
6 defendant and other circumstances from which you may
7 naturally and reasonably infer intent, as I have already
8 discussed it with you.

9 And to prove possession, the State must prove
10 beyond a reasonable doubt that Mr. Morris, if you find he
11 was -- to prove possession by Mr. Morris, the State must
12 prove beyond a reasonable doubt, as I told you earlier, that
13 he had both the power and intent to control the disposition
14 or use of the marijuana.

15 And I'll remind you that possession may be either
16 actual or constructive.

17 We have in our state a doctrine called the hand of
18 one is the hand of all. If a crime is committed by two or
19 more people who are acting together and committing a crime,
20 the act of one is the act of all.

21 A person who joins with another to commit an
22 unlawful act is criminally responsible for everything done
23 by the other person which happens as a probable or natural
24 consequence of the acts done in carrying out the common plan
25 and purpose.

1 Two, or more, people are together, acting
2 together, assisting each other in committing an offense, the
3 act of one is the act of all. As I said, it's sometimes
4 called the hand of one is the hand of all.

5 Prior knowledge that a crime is going to be
6 committed, without more, is not sufficient to make a person
7 guilty of that crime. Mere knowledge that another person is
8 going to commit a crime, even if a defendant is present when
9 the crime is committed, is not sufficient to convict one as
10 a principal.

11 Guilt as a principal is shown by actual or
12 constructive presence at the scene where the crime allegedly
13 occurred as a result of prior arrangement. Therefore, a
14 finding of a prior arranged plan or common scheme is
15 necessary for finding one guilty as a principal.

16 The State must prove beyond a reasonable doubt by
17 competent evidence this theory; that is, the hand of one is
18 the hand of all.

19 A principal in a crime is one who either actually
20 commits the crime or one who is present aiding, abetting, or
21 assisting in committing the crime. When a person does an
22 act in the presence of and with the assistance of another,
23 the act is done by both. Where two, or more, are acting
24 with a common plan or intent are present at the commission
25 of a crime, it does not matter who actually commits the

1 crime. Are all guilty.

2 However, I charge you that mere presence at the
3 scene of a crime by an individual is not sufficient to
4 convict one on the theory of aiding and abetting. There
5 must be more than just mere presence.

6 Intent is also a necessary element for there to
7 have been a common design or scheme; or intent to commit a
8 crime, and the crime must have been committed pursuant to
9 that agreement -- I'm sorry, not agreement, but common
10 design.

11 Intent may be shown by one's acts and conduct and
12 other circumstances from which you may naturally and
13 reasonably infer intent.

14 Now, your verdict in these cases must be
15 unanimous. All twelve must agree. Your verdict cannot be
16 based on passion, prejudice, public opinion, sympathy, or
17 matters outside the record.

18 While you are deliberating, if you have any
19 question, Madam Forelady, like you have already sent me a
20 couple notes, just send them out. Write it down and knock
21 on the door. The bailiff will bring it to me. I possibly
22 will be doing some other work while you are deliberating,
23 but I will send for you as promptly as possible, if I need
24 to. It may be that I can write an answer on the note
25 itself. And I would only do that after conferring with the

1 attorneys.

2 Any notes that I send back, please make sure that
3 they are kept with the evidence, because they are part of
4 the record, the permanent record of this case.

5 Again, your verdict must be unanimous.

6 If you wish to hear any testimony replayed, we
7 could bring you back in and do that.

8 In South Carolina we do not send in a written
9 charge on the law, but if you wish me to go over any part or
10 all of my charge on the law, just let me know and I'll bring
11 you back here in open court. I will charge you anything
12 that you wish me to go over.

13 Mr. Springs, do we have a video player in the jury
14 room?

15 MR. SPRINGS: No, Your Honor. If they want to
16 review the movie, they need to come back in.

17 THE COURT: All right. If you wish to take a look
18 at the video, just let us know and we will bring you back in
19 and show it with nobody saying anything. I mean, nobody
20 would be able to comment. It would simply be a showing for
21 your consideration, if you wish to see it. We do not have
22 yet the technology to do that, allow you to do that in the
23 jury room.

24 When you first go in the jury room, don't
25 deliberate. Ms. Leaf, you will stay in as the alternate and

1 not participate in the deliberation, but I have to go over
2 my charge with the attorneys. If I have made an error, I
3 have to bring you back in and correct it. If not, I will
4 send in the exhibits, the verdict forms, which I'm going to
5 go over with you in just a moment, and the bailiff will tell
6 you to start deliberating.

7 If you reach a point where you wish to take a
8 break, you can take a break. You don't have to get
9 permission from the court. Just when you are on break, all
10 of you are on break, because your verdict must be unanimous,
11 so all twelve are working or all twelve are on break.

12 If we get to the point where you want us to order
13 lunch, it takes about an hour. Simply let us know and we
14 will order it. And, again, if we do get to that point, you
15 can deliberate while you eat, or you can not deliberate
16 while you are eating.

17 As to each indictment, keeping in mind the
18 indictments are not evidence, I have attached what I call a
19 verdict form. As to the Ecstasy charge, there are only two
20 choices, and the order they are in is of no importance. I
21 have to put them in some order, so I always put them in this
22 order.

23 If you find that the State has proven Mr. Morris
24 guilty beyond a reasonable doubt, unanimously, of
25 trafficking Ecstasy, you would simply put a check mark or an

1 X in front of the sentence that says "we find the defendant
2 guilty of trafficking Ecstasy."

3 If a unanimous verdict is that the State has
4 failed to prove his guilt beyond a reasonable doubt of
5 trafficking Ecstasy, you would simply use the second line
6 that says "we find the defendant not guilty."

7 I have already dated it and there is a place for
8 you to sign it, Madam Forelady.

9 Again, keeping in mind that the order they are in
10 is no importance, and keeping in mind that you are to look
11 at the evidence and the facts as to each indictment
12 separately, which your decision on one is not dependent on
13 what you rule on the other.

14 There are three choices on the verdict form for
15 possession with the marijuana. The first is -- and, again,
16 in no particular order, other than this is the way I do it,
17 "we find the defendant guilty of possession of marijuana
18 with intent to distribute." That's the charge he's charged
19 with in the indictment. If that's your unanimous finding,
20 you will put an X or a check in front of that line.

21 If you find the State has failed to prove that
22 offense beyond a reasonable doubt, but has proven the lesser
23 included offense, as I charged you, of simple possession of
24 marijuana, you would simply put an X or a check in front of
25 that line, Madam Forelady.

1 If you find the State has failed to prove Mr.
2 Morris guilty of either of those offenses, that is, the
3 State has failed to prove his guilt beyond a reasonable
4 doubt, you would use the third line that says "we find the
5 defendant not guilty."

6 I'm going to allow you to go to the jury room but
7 don't get too comfortable. Don't start deliberating until
8 you hear from us.

9 (Whereupon, at 11:16 a.m., the jury panel went to
10 the jury room, awaiting instructions to begin deliberations)

11 THE COURT: Ms. Leaf, I'll be with you in just a
12 moment.

13 All right. Anything from the State?

14 MR. SPRINGS: No, sir.

15 THE COURT: Anything from the defense?

16 MR. GARDNER: No, judge.

17 THE COURT: All right. If you will check the
18 verdict forms and check the exhibits and make sure, we will
19 send everything in.

20 Ms. Leaf, you can certainly stay, if you wish, and
21 find out what the verdict is. You can leave, if you wish.
22 You are through for the week. You will be mailed a check.
23 Do you need any kind of statement to take to work or
24 anything like that?

25 ALTERNATE JUROR: Uh-uh.

1 THE COURT: Okay. Well, you will just be mailed a
2 check then, but you are welcome to stay with us. And
3 just -- if you wish, you can just become part of the
4 audience.

5 And one other thing. The attorneys may want to
6 talk to you. They are not violating any law if they ask you
7 your opinion. You are not violating any law if you tell
8 them "I don't want to tell you anything." So if they say
9 "what do you think of the case?" You can say "none of your
10 business," or you can say "well, I think X, Y, and Z." I
11 just want to make sure that you know they're not violating
12 any rules since you are not participating any further, but
13 you don't have to talk to them.

14 ALTERNATE JUROR: So can I get up and walk around?

15 THE COURT: Oh, you can get up and walk around.
16 Yeah, because you will now be part of the -- the bailiffs
17 will help you. Yeah, you can get up and walk around. We
18 will get you a soft drink, if you wish.

19 ALTERNATE JUROR: Okay.

20 THE COURT: Or anything like that. All right.

21 (Whereupon, the alternate juror was discharged)

22 (Whereupon, at 11:20 a.m., proceedings were
23 recessed, pending the verdict of the jury panel)

24 (Whereupon, at 12:30 p.m., proceedings were
25 reconvened)

1 THE COURT: We have got a question. You can sit
2 down. Another question from the jury. Actually there is
3 two. It says "we would like a copy of the testimony from
4 HIT commander regarding his recollection or confession."

5 It said "we would also like to see Mr. Nichols
6 statement that he signed at the notary."

7 As to the second, I don't believe that was put
8 into evidence, was it?

9 MR. SPRINGS: It was not.

10 MR. WALKER: No.

11 THE COURT: As to the first, interestingly enough,
12 Mr. Watts had typed up Commander Brown's testimony, so we
13 actually have it, or we can bring them in and have them
14 listen to it. I have never sent testimony back. Maybe
15 because I have never had the opportunity to do it, but we
16 have got his testimony and it's -- and we can look at it
17 before I send it back, or we can bring them back in and play
18 it.

19 MR. SPRINGS: I no take no position one way or the
20 other. If we play it, I would like to amplify it a little
21 bit, the amplifier that I have, but either one is fine with
22 me.

23 MR. WALKER: I'm same way, Your Honor. Go ahead.
24 Whatever you choose.

25 THE COURT: Okay. Well, there being no objection,

1 we will send the -- I don't see how it's any different than
2 bringing them back in and just --

3 MR. WALKER: Judge, it might be better to play it
4 because so they can hear the inflection.

5 THE COURT: Well, yeah, I think the demeanor of
6 the witness is something that they can take into
7 consideration, so let's -- we will --

8 COURT REPORTER: Do you want me to play it back or
9 read it back? Just play it back?

10 THE COURT: Play it back.

11 COURT REPORTER: Okay.

12 THE COURT: So they can hear his inflections
13 and --

14 MR. SPRINGS: Mike, I'm going to run and get that
15 amplifier, if you don't mind.

16 THE COURT: We don't mind.

17 (Off the record)

18 (Back on the record)

19 THE COURT: We also received another question or
20 statement. "Four jurors would like to take a smoke break."

21 I will deal with that when they come in.

22 And Mr. Gardner, you said you had an issue?

23 MR. GARDNER: I would just -- more of a question,
24 Your Honor. That second written document that they were
25 referring to was not entered into evidence. You are just --

1 THE COURT: I'll tell them that.

2 MR. GARDNER: You will tell them that it is
3 evidence. It's just the written part is not? Is that how
4 we would handle that?

5 THE COURT: No, I would just tell them you --
6 we've been pretty specific about answering questions. They
7 said we would like to see Mr. Nichols statement. I'm going
8 to just have to say it's not in evidence. The statement,
9 the written statement. I'll -- let me -- I'll put the
10 written statement is not in evidence.

11 MR. GARDNER: Yes, sir, that is my concern.

12 THE COURT: I follow now. The written statement
13 is not in evidence.

14 MR. WALKER: How about the written statement
15 itself is not in evidence? Not quibble, but that might even
16 be somewhat better.

17 MR. GARDNER: I just don't know that --

18 THE COURT: I will. I will tell them the written
19 statement itself.

20 All right, bring in the jury.

21 (Whereupon, at 12:39 p.m., the jury panel returned
22 to the courtroom)

23 THE COURT: Ms. Foreman and members of the jury,
24 we have gotten your questions and we are going to -- we
25 don't have a copy of the testimony that the officer gave

1 you, so we are going to play it back for you in just a
2 moment.

3 You have asked about -- you said that you would
4 like to see Mr. Nichols statement. He signed a written
5 statement. It was never introduced into evidence, so we
6 don't have in evidence the written statement itself.

7 You can take your smoke break when you go back
8 after you hear this testimony.

9 And I may have gotten it to you. When you do
10 reach a verdict, just knock on the door and tell the bailiff
11 and the bailiff will come and get me. We possibly will be
12 doing some other work. Once you have reached a verdict,
13 simply respond.

14 Let's play the testimony back.

15 (Whereupon, the requested testimony was replayed
16 to the jury panel)

17 THE COURT: Members of the jury panel, I should
18 have remarked on this earlier. Where a statement has
19 allegedly been made by a defendant and admitted into
20 evidence, I have already determined earlier that it was
21 admissible, but I instruct you that it's up to you to make
22 the ultimate decision as to whether or not Mr. Morris, in
23 fact, made the statement. If he did make the statement, you
24 must determine whether it was made by him voluntarily and of
25 his own free will. This means that you must determine

1 whether the statement was not caused by pressure, force,
2 fear, threats, coercion, intimidation, hope or promise of
3 reward or leniency, or reward of any kind.

4 In determining whether Mr. Morris' alleged
5 statement was voluntary, you should consider the
6 characteristics of Mr. Morris such as you know them from the
7 evidence and details of the questioning. You can consider
8 such things as the defendant's age, his mental ability, the
9 environment in which the questioning took place, the place
10 and length of the detention, nature of the questioning, the
11 advice, or lack thereof, to him of his Constitutional
12 Rights, including but not limited to the right to remain
13 silent, the right that any statement could be used against
14 him in court, the right to have a lawyer present. And if he
15 could not afford one, a lawyer would be appointed to
16 represent him without any costs, and he could stop making
17 his statement at any time.

18 You must carefully consider all of the surrounding
19 circumstances before you give any weight to the alleged
20 statement.

21 The State has the burden of proving beyond a
22 reasonable doubt that the alleged statement was voluntary.
23 If you determine it was, you may give it any further
24 consideration you deem proper. You must decide what weight,
25 if any, you should give to the alleged statement.

1 If you determine that the alleged statement was
2 not the free and voluntary statement of Mr. Morris, you
3 should not consider it at all.

4 Now, I'm going to let you go back to the jury
5 room. You can take a break, like I said. Four of you want
6 to smoke, that's fine, and eight of you are resting on
7 break. The food I believe is here.

8 And if you have any further questions, send them
9 out. And when you reach a verdict, knock on the door and
10 let us know.

11 (Whereupon, at 1:04 p.m., the jury panel went to
12 the jury room to continue deliberations)

13 THE COURT: Anything from the State?

14 MR. SPRINGS: No, sir.

15 THE COURT: Anything from the defense?

16 MR. GARDNER: No, Your Honor.

17 MR. WALKER: No, sir.

18 THE COURT: All right, we will be at ease again.

19 MR. WALKER: Thank you, Your Honor.

20 (Jury Note marked as Court's Exhibit No. 5 for
21 identification)

22 (Jury Note marked as Court's Exhibit No. 6 for
23 identification)

24 (Jury Note marked as Court's Exhibit No. 7 for
25 identification)

1 (Jury Note marked as Court's Exhibit No. 8 for
2 identification)

3 (Jury Note marked as Court's Exhibit No. 9 for
4 identification)

5 (Whereupon, at 1:05 p.m., proceedings were
6 recessed, pending the verdict of the jury panel)

7 (Whereupon, at 1:25 p.m., proceedings were
8 reconvened)

9 THE COURT: I understand we have a verdict in the
10 Morris trial, so we can bring in -- he's present with
11 counsel and bring in the jury.

12 (Whereupon, at 1:29 p.m., the jury panel returned
13 to open court to report its verdict)

14 THE COURT: All right. I understand that you have
15 reached a verdict?

16 JURY FORELADY: Yes, sir.

17 THE COURT: If you will hand them to the bailiff,
18 then they will hand them up to me.

19 Okay.

20 THE CLERK: Indictment 2008-GS-46-2837, the State
21 versus Kenneth Morris, indictment for trafficking in
22 Ecstasy, "we, the jury, find the defendant guilty of
23 trafficking Ecstasy."

24 Signed by the foreperson, dated today's date.

25 Indictment 2008-GS-46-2834, the State versus

1 Kenneth Morris, indictment for possession of marijuana with
2 intent to distribute, "we, the jury, find the defendant
3 guilty of the lesser included offense of simple possession
4 of marijuana."

5 Signed by the foreperson, dated today's date.

6 Ladies and gentlemen of the jury, if that be your
7 verdict, say you all by raising your right hand.

8 Let the record show that all jurors confirmed this
9 verdict.

10 THE COURT: Anything from the State before the
11 jury is dismissed?

12 MR. SPRINGS: No, sir.

13 THE COURT: Anything from the defense before the
14 jury is dismissed?

15 MR. GARDNER: No, Your Honor.

16 MR. WALKER: No, Your Honor.

17 THE COURT: All right. Thank you for your help.
18 I don't require you to stay for sentencing. Madam Forelady,
19 we have got you to come up. We have got one thing else --
20 two things for you to sign. You can leave, or you can go
21 out the back and come in and sit back there while we go
22 through the sentencing procedure, but I don't -- we have
23 already been here a week, so I don't require you to stay
24 while we go through at the point where I'm told if he has
25 any prior record, or anything like that, and make a decision

1 as to what sentence to impose. So you certainly can view
2 that, if you wish, but you come back -- go out and come back
3 in, but you don't have to. All right. You will be mailed a
4 check. Thank you.

5 (Whereupon, at 1:30 p.m., the jury panel was
6 discharged)

7 THE COURT: Thank you, ma'am.

8 The jury has been dismissed.

9 Anything from the State?

10 MR. SPRINGS: No, sir.

11 THE COURT: Anything from the defense?

12 MR. GARDNER: Yes, Your Honor.

13 Your Honor, I make the normal standard post-trial
14 motions in a criminal case, that the judgment did not
15 withstand the verdict, as in any normal case, but this case,
16 judge, I move that you set the verdict aside on the grounds
17 of inconsistent verdicts. My opinion, this was either
18 guilty of as charged or indicted, or not guilty of as
19 charged or indicted. So obviously they reached as a result
20 of some type of juror compromise, and that we would ask for
21 a new trial.

22 THE COURT: All right. Mr. Springs, do you have
23 any comments on that?

24 MR. SPRINGS: I have none.

25 THE COURT: All right. I deny those motions. I

1 don't see there is any inconsistency in the verdicts. They
2 found that he was in possession of those subjects, one for
3 trafficking, and that was based on the quantity, and I just
4 don't see any inconsistencies in it.

5 All right. Bring Mr. Morris around.

6 And this is what offense?

7 MR. SPRINGS: Third offense, Your Honor.

8 MR. WALKER: Third.

9 THE COURT: Third trafficking, okay.

10 MR. WALKER: His two prior charges were --

11 THE COURT: Let's wait. Let me hear from the
12 State first.

13 MR. SPRINGS: Yes, Your Honor.

14 Your Honor, he has a history of drug dealing in
15 North Carolina. Date of offense July of 1996, possession
16 with intent to sell and deliver cocaine. Convicted of that.

17 And in June of 1997, simple possession of
18 marijuana. Convicted of that.

19 This is a certified true copy from North Carolina
20 showing those convictions and the dates. I would like to
21 have this made a part of the record. May I have it marked
22 as a Court's Exhibit?

23 THE COURT: Yes, sir.

24 (Defendant's Certified Record From North Carolina
25 marked as Court's Exhibit No. 10 for identification)

1 THE COURT: All right. Mr. Walker, I'll be glad
2 to hear from you or Mr. Gardner.

3 Of course, I will be glad to hear from Mr. Morris
4 himself.

5 MR. WALKER: Yes, Your Honor.

6 If it please the court, obviously there is not
7 much you can say. I have always been a great believer in
8 the jury system. And they -- I believe that they
9 conscientiously considered the evidence before them and they
10 rendered a verdict that they believed to be just, even
11 though, you know, we may disagree with it.

12 Having said that, judge, there is not a lot of
13 discretion that Your Honor has in connection with this case,
14 based upon the statute.

15 I would point this out, to the extent Your Honor
16 might could show some mercy in this case. He turned thirty
17 years old about two weeks ago, so he was fairly young when
18 these charges took place, particularly, Your Honor, the
19 first two charges.

20 At no point has he ever been charged with
21 trafficking before. He was charged simply with possession
22 with intent to distribute and with a simple possession
23 charge.

24 He comes from a really good family, judge. He's
25 college educated. He has worked, you know, most of his

1 life. Single with no children, as I understand it.

2 THE DEFENDANT: Yes.

3 MR. WALKER: His parents are in the back. I have
4 spoken with them on numerous occasions about this case
5 since getting involved in it about three weeks ago, and
6 spoke with Mr. Morris on numerous occasions.

7 So I would just simply ask the court to be as
8 merciful on him as Your Honor can under the statute.

9 THE COURT: Mr. Gardner, anything that you want to
10 say?

11 MR. GARDNER: Your Honor, I think Mr. Walker has
12 covered it. I understand the discretion is limited in this
13 case, but my client would like to address the court at the
14 appropriate time.

15 THE COURT: Yes, sir. All right.

16 THE DEFENDANT: Your Honor, I just wanted to say
17 that I got caught up in a bad situation. A few bad mistakes
18 were made and I apologize to the court for that, but like my
19 lawyer told you, I am a college graduate.

20 Those things that happened in my prior life were
21 also bad mistakes that -- I mean, we can't look into them,
22 but they are not what they seem to be. I mean, I have a
23 ten, eleven year history of working. I graduated from North
24 Carolina A & T University with a business degree, and right
25 now I'm currently working also. I just feel like I was just

1 caught up in a bad situation and -- I mean, I'm here and --
2 I mean --

3 THE COURT: You got caught up in a bad situation?
4 You drove to Atlanta and picked up a bunch of drugs and
5 driving the car back. How does to mean you got caught up in
6 a bad situation?

7 THE DEFENDANT: As far as who I was riding with,
8 sir. I feel like I was in a bad situation, just caught up.
9 Some things I didn't know about. And being that they gave
10 him such a sweet deal, he told me to my face that he would
11 choose his family over me. He didn't really care and that's
12 why he wrote the letter. When it came back to him finding
13 out that he could go to jail because of that letter, he
14 changed up again. I mean, he basically told me that he has
15 a family and -- I mean, he would choose them.

16 THE COURT: You told the officers on that day that
17 you were involved.

18 THE DEFENDANT: The officers made a few bad
19 statements. But, I mean, I can't -- I'm not going to get
20 into what they said that day. I'll just leave it at what it
21 is.

22 THE COURT: The sentence is thirty years and
23 \$50,000 fine on the Ecstasy.

24 One year on the marijuana charge to run
25 concurrent. Thank you.

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MR. WALKER: Thank you, Your Honor.

MR. GARDNER: Thank you, your Honor.

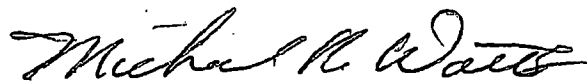
(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 15th & 17th days of April, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

OCTOBER 2, 2009



Michael R. Watts
Circuit Court Reporter

COUNTY OF York
STATE VS.

Kenneth Darrell Morris II

INDICTMENT/CASE#: 2008GS4602837

A/W#: J165012

Date of Offense: 2/6/2008

S.C. Code § : 44-53-0370

CDR Code #: 2914

AKA:

Race: B Sex: M Age: 29

DOB: SS#: 2015 SEP 22 PM 1:31

Address:

DL#: SID#: NC0696559A

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: TRAFFICKING IN ECSTASY, 100 TO 499 DOSAGE UNITS, 3rd offense

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 2914

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Solicitor Springs, E.B.

SC Bar# 13568

Defendant

Attorney for Defendant

SC Bar# 5781

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 50,000.00; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ 50,000

§ 14-1-206 (Assessments 107.5 %) \$ 53,750

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ 103,980

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21 0 1 4 19

Sentence Date: 4-17-09

SCCA/217 (03/2009)

Court Reporter

344

David Hamilton
Clerk of Court/ Deputy Clerk

mike watto

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2015 SEP 22 PM 1:51

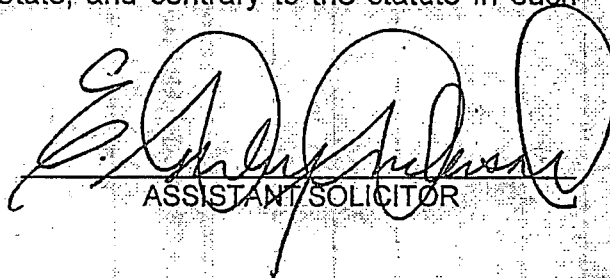
At a Court of General Sessions, convened on July 3, 2008, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC

TRAFFICKING ECSTASY (MDMA)

That on or about February 6, 2008, in York County, South Carolina, the Defendant, Kenneth Darrell Morris, II, did wilfully, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a Ecstasy (also known as Methylenedioxymethamphetamine, or MDMA) in a quantity greater than One Hundred (100) dosage units, all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

HITVinesett

pt

ARREST WARRANT NUMBER

J-165012

ACTION OF GRAND JURY

TRUE BILL

Patricia Simon
Foreperson of Grand Jury

7/3/08

VERDICT

Guilty of trafficking ecstasy

Lipi B. Priddy
Foreperson of Petit Jury

Date: 4-17-09

DOCKET NO. 2008-GS-46-02837

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 3, Term 2008

THE STATE

vs.

KENNETH DARRELL MORRIS, II

Indictment for

TRAFFICKING ECSTASY (MDMA)

SC Code: §44-53-370
CDR Code: 2914

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

Defendant

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

Defendant

Witness:

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

ARREST WARRANT

J-165012

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

200800003965

against

Kenneth Darrell Morris, II

Address:

Phone:

SSN:

Sex: M Race: B Height: 5 7 Weight: 185

DL State: NC DL #: 28217214

DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: L T Vinesett - V6504

Offense: Drugs/ Trafficking in MDMA or ecstasy, 100 dosage units or more, but less than 500 dosage

Offense Code: 2914

Code/Ordinance Sec: 44-53-0370 (e) (8)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 12.0.2008

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

AFFIDAVIT

ORIGINAL

Form approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant L T Vinesett who

being duly sworn deposes and says that defendant Kenneth Darrell Morris, II

did within this county and state on or about 02/06/2008 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs/ Trafficking in MDMA or ecstasy, 100 dosage units or more, but less than 500 dosage units or the equivalent, 3rd or subsequent offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on February 6, 2008, the Defendant did willfully and unlawfully violate South Carolina Drug Laws by scheming, conspiring, aiding and abetting, with Brandon James Nichols to traffick in 393 Ecstasy pills, while on I-77 northbound and S. Anderson Road, Rock Hill, York County, South Carolina. The defendant has two prior drug convictions.

Police Investigation

Recovery of Evidence (393 Ecstasy pills)

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675-2A York Highway
Rock Hill, SC 29730-

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/6/2008 defendant Kenneth Darrell Morris, II

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York) as set forth below.

DESCRIPTION OF OFFENSE: Drugs/ Trafficking in MDMA or ecstasy, 100 dosage units or more, but less than 500 dosage units or the equivalent, 3rd or subsequent offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 02/06/2008

Signature of Issuing Judge (L.S.)

Lewis Daniel Malphrus Jr.

Judge Code: 5071

Judge's Address Moss Justice Center
York, SC 29745-7423

Judge's Telephone (803)628-3095

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

347

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

2015 SEP 22 PM 1:51

Indictment No.: 2008-GS-46-2837

The State of South Carolina

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

v.

VERDICT FORM

Kenneth Darrell Morris, II,

Defendant.

☒

We find the Defendant guilty of trafficking ecstasy.

☐

We find the Defendant not guilty.

Lipi G. Brad
Forelady

April 17, 2009
York, South Carolina

of SOUTH CAROLINA

COUNTY OF
STATE

York

VS.

Kenneth Darrell Morris II

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4602834

A/W#: J165016

Date of Offense: 2/6/2008

S.C. Code § : 44-53-0370

CDR Code #: 0188

AKA:

Race: B

Sex: M

Age: 29

DOB: [REDACTED]

SS#: [REDACTED]

2016 SEP 22 PM 5:51

Address: [REDACTED]

28403

DL#: [REDACTED]

SID#: NC0696559A

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET

#2

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA, 3RD OFFENSE, Simple Possession

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 182

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act)

The charge is ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor 9/35 Springs E.B. SC Bar# 13568

Defendant [Signature] Attorney for Defendant 5781 SC Bar# 6549

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/17/09
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3%-to-County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ 270

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 210 1 4 1A

Sentence Date: 4-17-09

SCCA/21349(2009)

David Hamilton
Clerk of Court/Deputy Clerk

Court Reporter: Mike Watts

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2015 SEP 22 PM 1:51

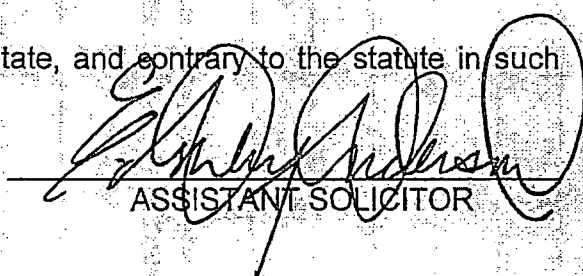
At a Court of General Sessions, convened July 3, 2008, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

That on or about February 6, 2008, in York County, South Carolina, the Defendant, Kenneth Darrell Morris, II, did possess with intent to distribute, dispense, or deliver a quantity of marijuana, a controlled substance under the provisions of Section 44-53-110, et seq., of the Code of Laws of South Carolina (1976, as amended), or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver marijuana, all in violation of Section 44-53-370 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

HIT/Vinesett

pt

ARREST WARRANT NUMBER

J-165016

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Mason
Foreperson of Grand Jury

7/3/08

VERDICT

Guilty of Simple Possession

Lipi B. Snatch
Foreperson of Petit Jury

Date: 4-17-09

DOCKET NO. 2008-GS-46-02834

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 3, Term 2008

THE STATE

vs.

KENNETH DARRELL MORRIS, II

Indictment for

POSSESSION OF MARIJUANA WITH
INTENT TO DISTRIBUTE

SC Code: 44-53-370
CDR Code: 0188

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

Defendant

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

Defendant

Witness:

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

ARREST WARRANT

J-165016

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

200800003965

against

Kenneth Darrell Morris, II

Address:

28403-

Phone:

SSN:

Sex: M Race: B Height: 5 7 Weight: 185

DL State: NC DL #:

DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: L T Vinesett - V6504

Offense: Drugs / Manuf., poss. of other sub. in Sch. I,II,III
or flunitrazepam, w.i.t.d. - 3rd or sub. offense

Offense Code: 0188

Code/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant: K.O. Morris II
on 2-6-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant L T Vinesett

being duly sworn deposes and says that defendant Kenneth Darrell Morris, II

did within this county and state on or about 02/06/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

York

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam, w.i.t.d. - 3rd or sub. offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on February 6, 2008, the Defendant did willfully and unlawfully violate South Carolina Drug Laws by being in possession of
227 grams of Marijuana, with the intent to distribute, while on I-77 northbound and
S. Anderson Road, Rock Hill, York County, South Carolina.
The defendant has two prior drug convictions.

Police Investigation

Recovery of Evidence (227 grams of Marijuana)

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675-2A York Highway
Rock Hill, SC 29730-
Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/6/2008

defendant: Kenneth Darrell Morris, II

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam, w.i.t.d. - 3rd or sub. offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 02/06/2008

Signature of Issuing Judge (L.S.)

Lewis Daniel Malphrus Jr.

Judge Code: 5071

Judge's Address: Moss Justice Center
York, SC 29745-7423

Judge's Telephone (803)628-3095

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

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S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

who

)

CERTIFIED
2015 SEP 22 PM 1:51
DAVID H. HARRIS
CLERK OF COURTS
YORK COUNTY, SC2015 SEP 22 PM 2:37
RECEIVED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

2015 SEP 22 PM 1:51
Indictment No.: 2008-GS-46-2834

The State of South Carolina)
CLERK OF COURT
YORK COUNTY, SC

VERDICT FORM

v.

Kenneth Darrell Morris, II,

Defendant.

☐ We find the Defendant guilty of possession of marijuana with intent to distribute.

☒ We find the Defendant guilty of the lesser included offense of simple possession of marijuana.

☐ We find the Defendant not guilty.

Lipi B. Frazier
Forelady

April 17, 2009
York, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

John C. Haynes, III, Circuit Court Judge

State of South Carolina, ... Respondent,

v.

Kenneth Darrell Morris, II. Appellant.

RECORD ON APPEAL

Johnny Gardner, Esq.
P.O. Box 1001
Conway, SC 29526
(843) 248-7135

Jonathan Hiller, Esq.
P.O. Box 1001
Conway, SC 29526
(843) 248-7135

ATTORNEYS FOR APPELLANT

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1 (PROCEEDINGS, APRIL 15, 2009)

2 THE COURT: All right, Mr. Springs.

3 MR. SPRINGS: This Mr. Irby Walker and Mr. Johnny
4 Gardner.

5 MR. GARDNER: Johnny Gardner, yes, sir.

6 MR. SPRINGS: I believe Johnny is from Myrtle
7 Beach.

8 Your Honor, if I may, I would call the next case
9 before this Honorable Court.

10 THE COURT: All right.

11 MR. SPRINGS: We are ready to begin the trial of
12 the State of South Carolina versus Kenneth Darrell Morris,
13 II..

14 I'm holding two indictments True Billed by our
15 York County Grand Jury, the first one numbered
16 2008-GS-46-2837 charging Mr. Morris with trafficking in
17 Ecstasy. It's going to be a number of dosage units between
18 one hundred and five hundred units. It would be a third
19 offense, one of those twenty-five to thirty offenses.

20 And the other indictment is possession of
21 marijuana with intent to distribute on 2008-GS-46-2834,
22 possession of marijuana with intent to distribute. It would
23 be a third offense.

24 Mr. Walker, how does Mr. Morris plead to those two
25 charges, sir?

1 MR. WALKER: If it please the court, Your Honor,
2 he pleads not guilty.

3 MR. SPRINGS: Your Honor --

4 THE COURT: I have other two indictments up here.

5 MR. SPRINGS: We are not proceeding on those two
6 proximity indictments.

7 THE COURT: Let me -- those -- yeah, they are
8 proximity. Okay. Let me give them back to you so I won't
9 end up telling the jury something that's not correct.

10 MR. SPRINGS: Your Honor, the jury panel is coming
11 in at 11:30.

12 THE COURT: All right.

13 MR. SPRINGS: We do have some pretrial. We would
14 like to go ahead and get that done before our jury panel
15 gets here.

16 THE COURT: All right. I have got a memorandum of
17 law in support of the search issue, so I guess it's a motion
18 to suppress --

19 MR. SPRINGS: Yes, sir.

20 MR. WALKER: Yes, sir. We have a memorandum, Your
21 Honor, we would like to pass up.

22 THE COURT: Okay.

23 MR. GARDNER: And, judge, I would apologize to the
24 court and to the solicitor, it was -- I caught a couple of
25 typos after I had left Conway.

1 THE COURT: That's all right.

2 Mr. Morris, you can sit down.

3 MR. GARDNER: We will just flip through where we
4 are on that.

5 THE COURT: Let me hear the defense issue as to --
6 or let me hear the motion. I have got it in writing, but
7 let me hear the motion.

8 MR. WALKER: Mr. Gardner will be presenting the
9 motion, Your Honor.

10 MR. GARDNER: Thank you, judge.

11 Well, the motion is basically to suppress both the
12 marijuana -- or both the marijuana and the other drugs as
13 fruit of an illegal search and an unlawful detention.

14 I don't know how the court would wish to proceed
15 with this --

16 THE COURT: Well, I read --

17 MR. GARDNER: -- at this time.

18 THE COURT: I read their brief --

19 MR. GARDNER: Yes, sir.

20 THE COURT: -- Mr. Springs gave me, so I know a
21 little bit about the facts, so I guess we might as well go
22 ahead and start taking testimony on that.

23 MR. GARDNER: Yes, sir.

24 MR. SPRINGS: Thank you.

25 We call Officer Vinesett.

1 If you would, step up and be sworn.

2 THE COURT: Is that okay, to go ahead?

3 MR. GARDNER: Yes, sir, I think that's fine.

4 The facts, the way that they are written in the
5 briefs are a little bit different, but the facts are the
6 facts, and that's why I would like to take the testimony.

7 THE COURT: Yes.

8 MR. GARDNER: And also, judge, we have got a
9 videotape of the whole incident and that would speak pretty
10 clear, I do believe.

11 THE COURT: Okay.

12 MR. GARDNER: Officer Vincent?

13 MR. SPRINGS: Vinesett.

14 MR. WALKER: Vinesett.

15 OFFICER L.T. VINESETT, JR., having been first duly
16 sworn, testified as follows:

17 THE COURT: I'm getting a little confused, because
18 they have got a right to cross-examine modestly, but do you
19 have any questions?

20 MR. SPRINGS: Before we begin the proffer?

21 I believe --

22 THE COURT: Let's just go and do it like we always
23 do. You go ahead and present your witnesses.

24 MR. SPRINGS: Yes, sir.
25

1 DIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Officer, tell everybody your name, sir.

3 A. Lonnie Vinesett, Jr..

4 Q. Are you a member of what's known as the HIT team, the
5 highway interdiction team?

6 A. Yes, sir.

7 Q. And what is the mission briefly of the HIT team?

8 A. We normally work the major highways and interstates of
9 York County as a proactive enforcement, to locate contraband
10 or illegal items, warning people, or anything illegal
11 happening on the interstate.

12 Q. Okay. All right. And as part of that mission, do you
13 stop a number of cars -- a good many cars out on the
14 highways here in the county?

15 A. Yes, sir.

16 Q. All right. I'm going to ask you about things that
17 happened on February the 6th, 2008, around two o'clock in
18 the afternoon. What highway were you on around two o'clock
19 that afternoon?

20 A. I was on I-77.

21 Q. Okay. And what was the weather like?

22 A. It was rainy and cloudy.

23 Q. Anybody with you in your car?

24 A. Yes, sir, Constable Scott.

25 Q. Okay. And about two o'clock that afternoon did you --

1 did anything get your attention? Did anything get your
2 attention a little bit after two o'clock?

3 A. I was traveling 77 northbound and saw a vehicle, a Ford
4 500. That's pretty known to be a rental car. There are
5 certain indicators that let us know that more than likely
6 that a car is a rental. I saw the vehicle following another
7 vehicle too close.

8 Q. Yes, sir.

9 A. As I was --

10 Q. Let me stop you. Is that a violation of the South
11 Carolina traffic laws, to follow another vehicle too close?

12 A. Yes.

13 Q. All right. Did you have some specialized training
14 before you started this HIT team work?

15 A. Yes, sir, we have had several trainings all over the
16 nation, specializing in highway interdiction and drug
17 enforcement.

18 Q. Okay. So you said you noticed it was a rental car and
19 it was following too closely. Then what happened?

20 A. As I was getting closer to the vehicle, the vehicle
21 made a quick exit off the interstate onto Highway 21 and was
22 taking a loop around to go back over 21 heading back north.

23 Q. Okay. And then what did that car do, that car that was
24 following too closely? Are you now following it?

25 A. Yes, sir.

1 Q. What did that car then do?

2 A. The vehicle pulled into the Exxon right beside the
3 Waffle House on the western side of 77.

4 Q. And had you activated your blue lights or siren before
5 it pulled into the filling station?

6 A. As it was pulling in, I activated the siren -- I mean
7 the blue lights.

8 Q. Very good.

9 Did that also turn on your in-car video there at the
10 filling station?

11 A. Yes, sir.

12 Q. And did you get out of your car and go up to the Ford
13 rental car?

14 A. Yes, sir.

15 Q. And which side of the car did you go up to?

16 A. On the passenger's side.

17 Q. How many people were in the car?

18 A. Two.

19 Q. All right. From the passenger's side, did you ask the
20 driver for anything?

21 A. Yes, sir, I asked him for his driver's license and
22 vehicle registration.

23 Q. Okay. And what did he give you?

24 A. He gave me a driver's license, and I believe it was the
25 passenger that gave me the rental agreement. I can't

1 remember which one gave me the rental agreement.

2 Q. Okay. And do you recall the names of the two people
3 that were in the car?

4 A. Mr. Nicholson (sic) or Mr. Morris.

5 Q. All right. I'm going to hand you a copy of your own
6 report. You refer to it if you need to refresh your memory
7 at any time.

8 A. Yes, sir.

9 Q. Now, who was the driver of the car when you pulled it
10 over?

11 A. Mr. Morris.

12 Q. Okay. The defendant in this case?

13 A. Yes, sir.

14 Q. And he gave you a driver's license?

15 A. Yes, sir.

16 Q. What state driver's license?

17 A. North Carolina.

18 Q. And you had a rental agreement. Describe the rental
19 agreement. Who rented the car?

20 A. The passenger was the one that rented it, Mr. Nichols.

21 Q. And did the rental agreement list the drivers of the
22 car?

23 A. It listed the one who rented it. It didn't list who
24 was actually driving it at the time that I stopped them.

25 Q. All right. Did it list any additional drivers, other

1 the man Nichols who had rented the Ford?

2 A. No, sir, I believe it specifically stated no other
3 driver is permitted, or something, or no additional drivers.

4 MR. SPRINGS: Would you mark this, please?

5 (Rent A Car Agreement marked as State's Exhibit
6 No. 1 for identification)

7 BY MR. SPRINGS:

8 Q. Did you make a xerox copy of the rental agreement?

9 A. Yes, sir.

10 Q. Did you give the original back to these fellows later?

11 A. I believe it was put back in their property.

12 Q. That's State Exhibit No. 1, is that the xeroxed copy of
13 the rental agreement?

14 A. Yes.

15 Q. Thank you very much.

16 Now, as you are talking to these fellows, are you
17 standing at the passenger window?

18 A. Yes, sir.

19 Q. The window open?

20 A. Yes, sir.

21 Q. Did you sense or detect anything?

22 A. An odor of marijuana coming from the vehicle.

23 Q. All right. And what did you have the driver of the car
24 do at that point?

25 A. I had him step out of the vehicle.

1 Q. Okay. As he gets out of the car, were you able to see
2 better inside the car?

3 A. Yes, sir.

4 Q. Did you see anything that caught your attention?

5 A. I saw a lot of hollowed out Blunts, a lot of blunt
6 tobacco in the car - the center console, on the floor area,
7 and pretty much all over the vehicle.

8 Q. And do you work with narcotics cases a good bit,
9 Officer Vinesett?

10 A. Yes.

11 Q. What is Blunt tobacco? What does that mean to a
12 narcotics officer? Tell us all about that.

13 A. To me it means that somebody is hollowing out the Blunt
14 cigar to put marijuana in it.

15 Q. That's a brand name, isn't it, Blunt cigar?

16 A. Yes, sir.

17 Q. And they hollowed out -- people do what to the cigar?

18 A. They hollow it out and place the marijuana in there, so
19 if you did see them riding down the road smoking anything,
20 it would look like they were just smoking a blunt.

21 Q. Okay. And later did you take some pictures of that
22 marijuana -- of that Blunt tobacco that you saw in the car?

23 A. Yes, sir.

24 (Photograph marked as State's Exhibit No. 2 for
25 identification)

1 (Photograph marked as State's Exhibit No. 3 for
2 identification)

3 (Photograph marked as State's Exhibit No. 4 for
4 identification)

5 (Photograph marked as State's Exhibit No. 5 for
6 identification)

7 (Photograph marked as State's Exhibit No. 6 for
8 identification)

9 (Photograph marked as State's Exhibit No. 7 for
10 identification)

11 MR. SPRINGS: And let the record know that I did
12 hand the court a copy of the rental agreement, State's
13 Exhibit No. 1.

14 BY MR. SPRINGS:

15 Q. Officer, later on did you take some pictures of this
16 car, and this Blunt tobacco, and such things?

17 A. Yes, sir.

18 Q. Would you look at State's Exhibit No. 2 through 7 and
19 tell us if those are your pictures?

20 A. Yes, sir.

21 Q. And these are the things that you were seeing with your
22 own eyes as Mr. Morris gets out of the car?

23 A. Yes, sir.

24 Q. All right.

25 THE COURT: Seen with his own eyes? It's good to

1 know that. All right.

2 BY MR. SPRINGS:

3 Q. You said it was raining. Did you make Mr. Morris stand
4 out in the rain?

5 A. No, sir, I asked him to have a seat in my passenger's
6 seat.

7 Q. Did you go talk to him?

8 A. Yes, sir.

9 Q. Did you ask him where he was coming from?

10 A. Yes, sir.

11 Q. What did he say?

12 A. He said he was coming -- they were coming from Atlanta.

13 Q. Okay. Did you ask him what was the occasion for his
14 trip to Atlanta, why did he go down there?

15 A. Yes, sir, he said that he had went down there to --
16 they had went down there to see some girls.

17 MR. WALKER: I couldn't understand you. I'm
18 sorry. Speak up.

19 A. They said that they were -- they had went to Atlanta to
20 visit some girls.

21 BY MR. SPRINGS:

22 Q. Okay. Why don't you put that mike up a little higher.

23 Thank you.

24 Now, did you then go talk to Mr. Nichols, the
25 passenger?

1 A. Yes, sir.

2 Q. And let me make this real clear. The passenger, Mr.
3 Nichols, who was not driving, he was the guy that rented the
4 car?

5 A. Yes, sir.

6 Q. With the rental agreement that said no additional
7 drivers?

8 A. Yes, sir.

9 Q. Okay. Did you ask Mr. Nichols outside of the presence
10 of Mr. Morris where they were coming from?

11 A. Yes, sir.

12 Q. What did Mr. Nichols say?

13 A. He also said that they were coming from Atlanta.

14 Q. Okay. And did you ask him why they had been to
15 Atlanta?

16 A. He said that they had went to see the driver of the
17 vehicle's cousin, I believe, play basketball.

18 Q. Okay. Did Mr. Nichols, the passenger, step out of the
19 car?

20 A. Yes, sir.

21 Q. Did you sense or notice anything unusual about Mr.
22 Nichols?

23 A. I could smell an odor of marijuana.

24 Q. And did a canine officer arrive on the scene?

25 A. Yes, sir.

1 Q. Was it still raining?

2 A. Yes, sir.

3 Q. Did the -- were the doors of the -- did the dog walk
4 around the car?

5 A. Yes, sir.

6 Q. Were the doors to the car closed?

7 A. Yes, sir.

8 Q. And had you ever seen this particular dog walk around a
9 car before?

10 A. Several times.

11 Q. Describe how the dog walked around the car in the rain.

12 A. On this particular occasion, a lot of the times if the
13 dogs searching the vehicle, its nose just normally stays on
14 the vehicle all the way around the vehicle. This time it
15 was shaking the water off of him. It was looking around.
16 My only assumption was that he didn't like being out in the
17 rain.

18 Q. All right. So did the dog jump up and down and give
19 indications that he smelled drugs?

20 A. The dog didn't alert.

21 Q. And did you police officers by that time -- there must
22 have been another officer -- the canine officer is on the
23 scene right?

24 A. Yes.

25 Q. Did you officers ask Mr. Nichols if you could search

1 the rental car that he had rented?

2 A. Yes, sir.

3 Q. What did he say, yes or no?

4 A. No.

5 Q. And at that point did you officers decide you were
6 going to search the car anyway?

7 A. Yes, sir.

8 Q. And did you search the car?

9 A. Yes, sir.

10 Q. Tell the court if you found anything interesting in the
11 car.

12 A. In the trunk of the vehicle there was like a gift box
13 and a bag inside of it. And inside the bag was like a
14 sandwich bag full of what appeared to be Ecstasy pills.

15 Q. Okay. Have you ever seen Ecstasy pills before this
16 day?

17 A. Yes, sir.

18 Q. Okay.

19 (Drugs marked as State's Exhibit No. 8 for
20 identification)

21 THE COURT: With your own eyes?

22 THE WITNESS: Yes, sir.

23 BY MR. SPRINGS:

24 Q. Our human eyes?

25 A. Yes, sir.

1 Q. I'm showing you what's been marked State's Exhibit No.

2 8. Do you recognize what's in that bag?

3 A. Yes, sir.

4 Q. What is it?

5 A. The Ecstasy that was in the sandwich bag.

6 Q. And I don't expect you to remember the exact number,
7 but approximately how many pills was it?

8 A. 393.

9 Q. And when you found that in the box in the trunk of the
10 car, did you arrest these two men?

11 A. Yes, sir.

12 Q. And did you Mirandize them?

13 A. Yes, sir.

14 MR. SPRINGS: Your Honor, I think for purposes of
15 this suppression hearing I'm probably safe starting out, but
16 I will stop and I would like to reserve the right, if
17 necessary, if they think things that happened after this are
18 pertinent, reserve the right to recall Officer Vinesett.

19 THE COURT: All right.

20 BY MR. SPRINGS:

21 Q. Answer any questions the defense attorneys have.

22 MR. GARDNER: Thank you, Your Honor.

23 THE COURT: Yes, sir, Mr. Gardner.

24 CROSS EXAMINATION BY MR. GARDNER:

25 Q. Okay. I just have a few, I do believe, Mr. Vinesett?

1 A. Yes, sir.

2 Q. All right. I apologize.

3 You pulled the vehicle over once it was in the parking
4 lot, is that right?

5 A. I'm not sure if I turned my blue lights on as it was
6 turning in, but they did mention that they had to go to the
7 restroom. I believe -- I believe as they was turning in I
8 was turning my blue lights on.

9 Q. Yeah. I believe your testimony was that you activated
10 the blue lights as it pulled into the gas station.

11 A. Yes.

12 Q. So it's fair enough to say that this stop didn't occur
13 until they were in the parking lot of the gas station?

14 A. Yes, sir.

15 Q. All right. And the purpose of the stop, if I
16 understand your testimony, was because of a following too
17 close?

18 A. Yes.

19 Q. And that occurred on the interstate?

20 A. Yes, sir.

21 Q. So you are telling the court that you saw a traffic
22 violation on the interstate, but you waited until they got
23 into the gas station parking lot before you pulled them
24 over, is that right?

25 A. Yes, sir.

1 Q. All right. What is your normal time average for a
2 normal traffic stop?

3 A. As far as being the entire length?

4 Q. Well, let me give you a scenario and see if you can
5 follow it.

6 You see a car on the interstate traveling too closely.
7 You pull them over. You normally pull them over on the
8 interstate, or you --

9 A. If they don't exit.

10 Q. Sir?

11 A. If they don't exit the interstate I do.

12 Q. So you pull them over and you do what you are supposed
13 to do, investigate the violation --

14 A. Yes.

15 Q. -- right.

16 And then at some point in time you write a ticket, I'm
17 assuming? Maybe, maybe not?

18 A. Yes, sir.

19 Q. And the driver goes on his way --

20 A. Yes, sir.

21 Q. -- right.

22 So that would be a normal traffic stop, is that right?

23 A. Yes, sir.

24 Q. How much time, average, on that type of average traffic
25 stop, from pulling him over, talking to them, writing a

1 ticket, writing them a warning ticket, or telling them have
2 a nice day, and them driving off?

3 A. With absolutely no indicators of anything?

4 Q. Yes, sir.

5 A. I would say five minutes.

6 Q. Five minutes. Fair enough.

7 Now, during that five minutes, you -- I'm just using
8 you probably look at their driver's license?

9 A. Yes, sir.

10 Q. Run a computer check?

11 A. Sometimes, yes.

12 Q. Maybe talk to them. Write a ticket, or a warning
13 ticket?

14 A. Yes, sir.

15 Q. Right?

16 A. Yes.

17 Q. And maybe not a ticket? Your discretion, right?

18 A. We have to write something.

19 Q. Oh, you do write something?

20 A. Yes, sir.

21 Q. All right. So five minutes, basically. All right.

22 And in this case there was no consent given to search
23 the car, is that right?

24 A. Correct.

25 Q. None from either defendant?

1 A. I'm not -- I don't believe -- I can't remember if I
2 asked Mr. Morris or not, but consent wasn't given.

3 Q. All right. The solicitor spent a lot of time talking
4 about this rental agreement, that the passenger was supposed
5 to be the only driver. That's a contract with him and the
6 rental company?

7 A. Yes.

8 Q. Okay. Did he give you a reason -- did anybody give you
9 a reason why the other fellow was driving?

10 A. I don't recall.

11 Q. Okay. Do you recall saying that the other one was
12 sleepy and that's why they swapped driving?

13 A. Could possibly be. I don't remember.

14 Q. And that would be a normal explanation, wouldn't it?

15 A. Yes, sir.

16 Q. All right. I want to get one thing -- well, I'm going
17 to wait, because I think the solicitor may want to talk to
18 you a little bit more when I finish.

19 You -- what I was asking you about a normal stop, you
20 started talking about with no indicators. Is that the word
21 that you used?

22 A. Yes, sir.

23 Q. Indicators, is that something in your training that
24 heightens your suspension?

25 A. Suspicion, yes, sir.

1 Q. Suspicion, okay.

2 All right. And you make a police report once you have
3 made an arrest, is that right?

4 A. Yes, sir.

5 Q. And did you that in this case?

6 A. Yes, sir.

7 Q. And the police reports are important because it's a
8 memorandum of what's going on, what happened, and it's done
9 pretty early on in the case, right?

10 A. Before we go home.

11 Q. Before you go home?

12 A. Yes, sir.

13 Q. When everything is fresh in your mind, right?

14 A. The report, yes, sir.

15 Q. Everything is fresh in your mind when you make the
16 report?

17 A. Yes, sir.

18 Q. And then at some point in time you make the solicitor's
19 case file report, is that right?

20 A. Yes, sir.

21 Q. When is that normally made?

22 A. We have to have it turned in within five days.

23 Q. Five days. Okay.

24 So you have one that's done before you go home and then
25 you have got another that's done within five days?

1 A. Yes, sir.

2 Q. All right. These indicators that you talked to the
3 solicitor about this morning, none of those are in your
4 police report, is that right?

5 A. In the original report?

6 Q. Yes, sir.

7 A. No, sir.

8 Q. None of them. We -- we -- no doubt about that, right?

9 A. Yes, sir.

10 Q. So in your first report that you made when the incident
11 is fresh in your mind, you don't put anything in there about
12 these indicators that you have testified, correct?

13 A. That's correct.

14 Q. You don't say anything about the smell of marijuana?

15 A. In the original report?

16 Q. Yes, sir.

17 A. I would have to look at it, but I don't believe I did.

18 Q. I believe we can find a copy for you.

19 MR. GARDNER: The original police report?

20 MR. SPRINGS: I think that's a copy. Did I not
21 give you a copy?

22 A. Yes, sir, I apologize. I thought it was just the case
23 folder.

24 BY MR. GARDNER:

25 Q. I don't know.

1 MR. GARDNER: May I approach and look at what you
2 got?

3 THE COURT: Yes.

4 MR. GARDNER: Thank you, judge.

5 BY MR. GARDNER:

6 Q. Okay, just to clarify, I believe it's --

7 COURT REPORTER: It's not marked.

8 MR. GARDNER: It's not marked for evidence?

9 COURT REPORTER: No, sir.

10 MR. GARDNER: Judge, for the purposes of this
11 hearing, and this hearing only, I would propose --

12 MR. SPRINGS: No objection.

13 THE COURT: Make it a Court's Exhibit.

14 MR. GARDNER: Court's Exhibit. Thank you, judge.

15 (Drug Enforcement Unit Report marked as Court's
16 Exhibit No. 1 for identification)

17 MR. GARDNER: Thank you, sir.

18 BY MR. GARDNER:

19 Q. Sir, I'm going to hand you back the document that you
20 handed me. It's been marked as Court Exhibit No. 1. Tell
21 me what it is. It contains two documents?

22 A. It contains two documents. The original report that
23 was done that day and the case folder that was done a couple
24 days after.

25 Q. And for the record purposes, the police report, the

1 second document, is the one that was filled out that day?

2 A. Yes, sir.

3 Q. And the first document, the case summary file, is the
4 one that was supposed to be filled out no later than five
5 days, is that right?

6 A. Yes, sir.

7 Q. Okay. Just to make sure we are all clear, look, if you
8 will, on the police report, the first one that was done when
9 its fresh in your mind, do you put anything in there about
10 the smell of marijuana?

11 A. No, sir.

12 Q. Do you know when you prepared the case file report for
13 the solicitor's office in this case?

14 A. Within five days. I mean, I'm not -- I'm not sure if I
15 came in the next day and did it, or waited three days, four
16 days.

17 Q. You just don't recall?

18 A. No.

19 Q. And that case file report is important, too, right?

20 A. Yes, sir.

21 Q. All right. So the police report is important, because
22 that's filled out when it's freshest in your mind and you
23 want to lay the basis for the foundation for what it is that
24 you did, is that right?

25 A. The report is done that day.

1 The case summary I do the day that I watch the tape and
2 dubbed the tape for the solicitor's office. Watch over the
3 tape, make notes of everything that happened, and then
4 that's how I generate my case summary.

5 Q. Excellent point. I was wondering how you did that.

6 A. Yes, sir.

7 Q. So you viewed the tape of this stop --

8 A. Yes.

9 Q. -- and used that to help fill out that solicitor's case
10 file report?

11 A. Yes, sir.

12 Q. Excellent point. Okay.

13 So even though that may have been five days later, it
14 was pretty fresh in your mind, because you were experiencing
15 it on a video?

16 A. Yes.

17 Q. Okay. Now, your normal traffic stop on normal a case,
18 you are going to write a ticket, unless something happens to
19 get you suspicious, right?

20 A. Yes.

21 Q. Is that fair.

22 And the solicitor said that you got good training in
23 that area, is that right?

24 A. Yes, sir.

25 Q. And in this case you -- I want to ask you if these are

1 what we think are the -- what we think might be the
2 indicators.

3 This marijuana -- I mean, I'm sorry, the tobacco that
4 you saw, right?

5 A. Yes, sir.

6 Q. Okay. And that was the cigar?

7 A. Yes, sir.

8 Q. Okay. Cigar tobacco. All right.

9 The smell of marijuana?

10 A. Yes, sir.

11 Q. As to -- were there any -- did I leave any out?

12 A. The --

13 Q. You can look at your stuff, if you need to.

14 A. Could I see the pictures?

15 THE COURT: If you refer to a picture, refer to it
16 by exhibit number, please.

17 THE WITNESS: Yes, sir.

18 A. Exhibit No. 7, the Red Bull energy drinks.

19 BY MR. GARDNER: --

20 Q. Yes, sir.

21 A. -- which in my training and experience has been people
22 making trips --

23 Q. Okay.

24 A. -- trying to stay awake, trying to get to where they
25 need to go quick and get back.

1 Q. That makes sense. I could have used one last night,
2 but that was not talked about in the direct, was it?

3 A. No, sir.

4 Q. Okay. You can talk about it anything that you want to,
5 okay?

6 A. Yes, sir.

7 Q. I don't mind. I don't object. If it's in the record,
8 we will talk about it, all right? But let's -- for now
9 let's talk about the ones that you talked to the solicitor
10 about, okay?

11 A. Yes, sir.

12 Q. All right. We have got -- well, let me just see what
13 we got.

14 This is State's Exhibit 4 and that contains what looks
15 to me like a cigar butt, is that right?

16 A. Yes, sir.

17 Q. Okay. All right. So that would be an indicator,
18 right?

19 A. The cigar?

20 Q. Yeah.

21 A. The hollowed out Blunt on the floor would be, but just
22 a regular Blunt itself, no, sir.

23 Q. All right. Show me -- I don't know what a hollowed out
24 Blunt looks like. Could you show me, and for the record,
25 let us know what --

1 A. If you see right here in this picture of the cup,
2 State's Exhibit No. 3?

3 Q. Right.

4 A. They actually take out this portion of the Blunt. I'm
5 not sure exactly why, but I have seen it in a lot of them,
6 they will take this part out and then put the tobacco and
7 the marijuana in. They --

8 Q. That looks like part of the --

9 A. The inside of the Blunt on the --

10 Q. The stuff inside that comes out?

11 A. Yes, sir.

12 Q. And you think that's what that is?

13 A. That's what it is, yes, sir.

14 Q. Okay. All right.

15 THE COURT: Which number is that, 3?

16 THE WITNESS: Yes, sir.

17 MR. GARDNER: Yes.

18 BY MR. GARDNER:

19 Q. Actually that's one.

20 And then you talked to the solicitor about the smell of
21 marijuana, correct?

22 A. Yes, sir.

23 Q. Out of all that, which one would be the biggest
24 indicator of further criminal activity?

25 A. The odor of marijuana.

1 Q. The odor of marijuana. Okay.

2 All right. What kind of marijuana are we talking
3 about?

4 A. As in?

5 Q. What did you -- you said that you smelled marijuana.
6 What did you smell?

7 A. Burnt marijuana.

8 Q. Burnt marijuana, okay, because that's not in your
9 report either, is it?

10 A. In the original report that day?

11 Q. Yes, sir.

12 A. No, sir.

13 Q. All right. Is it in the solicitor's report?

14 A. In the case folder, yes, sir.

15 Q. It is?

16 A. A smell and odor of marijuana.

17 Q. And smell and the odor of marijuana. But it doesn't
18 say in there burnt marijuana, right?

19 A. No, sir.

20 Q. So somebody reading that might be tempted to think that
21 it's -- we either got raw marijuana or burnt marijuana, no
22 other kinds, right?

23 A. Yes, sir.

24 Q. There is no doubt what you are talking about is burnt
25 marijuana?

1 A. Yes, sir.

2 Q. Okay. All right.

3 So out of all the indicators that you have got - the
4 soda cans, or whatever it is that you want to say --

5 A. Energy drink.

6 Q. -- that you got, no doubt about it in your mind the
7 most important one was the smell of burnt marijuana?

8 A. Yes, sir.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. Okay. So with all your police training, you believed
12 at that time that somebody was in the car smoking marijuana,
13 right?

14 A. Yes, sir, or had been.

15 Q. Had been, okay. All right.

16 And you -- did you smell that when you first went to
17 the car?

18 A. Yes, sir.

19 Q. The very first time that you got there?

20 A. Yes, sir.

21 Q. And then you get the driver out of the car, bring him
22 back, put him in your squad car --

23 A. Yes, sir.

24 Q. -- and starting talking to him about normal traffic
25 stuff, but then talked to him about some additional stuff --

1 A. Yes.

2 Q. -- unrelated to the traffic stop, right?

3 A. Yes, sir.

4 Q. So you would agree with me at that point in time we
5 were prolonging what would normally be a normal traffic
6 stop, right?

7 A. If I'm not mistaken, in the video you can hear me
8 running his license on the computer and I do actually
9 mention something to him about speeding tickets, or some
10 type of ticket --

11 Q. Some time of ticket?

12 A. -- while I'm running it and I'm talking with him.

13 Q. And, in fact, you talked to him about his prior
14 criminal record, right?

15 A. Yes, sir.

16 Q. Okay. So let's say that you are doing this extended
17 investigation while you are doing --

18 A. Yes, sir.

19 Q. My wife says multi-tasking, fair enough?

20 A. Yes, sir.

21 Q. So you are doing that. And then at some point in time
22 you go back to the car to interview the passenger?

23 A. Yes, sir.

24 Q. Okay.

25 A. The renter.

1 Q. Sir?

2 A. The renter of the vehicle.

3 Q. Yes, sir. He's the passenger, right?

4 A. Yes, sir.

5 Q. Okay. And you talked to him about his travel plans, is
6 that right?

7 A. Yeah.

8 Q. And there is no doubt that that has nothing to do with
9 the traffic stop, right?

10 A. The traffic stop in itself, no.

11 Q. Okay. So that clearly extended the normal traffic
12 stop?

13 A. Yes, sir. Once I smelled marijuana, I believe that was
14 the reason.

15 Q. And, in fact, you went again while you were up there
16 talking with him, did you smell marijuana then?

17 A. Yes, sir.

18 Q. Okay. All right.

19 Then you went back to your car and talked to the
20 defendant Morris again, is that right? He's still in the
21 car?

22 A. Yes, sir.

23 Q. Morris, he told you he had to go to the bathroom at
24 some point in time, right?

25 A. Yes.

1 Q. Early on?

2 A. At first he had told me that's the reason they had
3 pulled in there.

4 Q. Okay. And despite that, though, he didn't get to go to
5 the bathroom for quite some time, is that fair to say?

6 A. It wasn't long after the stop.

7 Q. Okay. However long it was, we will find out --

8 A. Yeah.

9 Q. -- okay?

10 But prior to going to the bathroom, you asked, or he
11 was asked, for consent to search his person --

12 A. Yes, sir.

13 Q. -- is that right.

14 And he said okay, or --

15 A. Yes.

16 Q. Then he was searched?

17 A. Yes.

18 Q. And you made the statement, words to the effect of that
19 he can't go to the bathroom unless Officer Scott goes with
20 him, is that right?

21 A. I would have to listen to it again, but I believe so.

22 Q. Well, the intent is that he wasn't allowed to go
23 without an escort?

24 A. Yes, sir.

25 Q. Okay. So no doubt he was in detention at that time,

1 correct?

2 A. With the blue lights on and his car stopped, yes, sir.

3 Q. Searched?

4 A. Yes.

5 Q. Armed escort to the bathroom, right?

6 A. A police officer escort, yes, sir.

7 Q. Yes, sir. Okay.

8 While he's gone to the bathroom, that's when you called
9 Officer Gibson on the radio, is that right?

10 A. I believe so.

11 Q. I believe so. Okay.

12 And you called Officer Gibson on the radio and you
13 asked him if he wants to bring Justice down, is that right?

14 A. Yes, sir.

15 Q. And Justice is the canine drug dog, correct?

16 A. Yes, sir.

17 Q. And you tell him a little bit about the case. Do you
18 remember that?

19 A. Yes, sir.

20 Q. You tell him that -- you want to tell him, I'm
21 guessing, what your indicators are, right?

22 A. Yes, sir, before he gets there.

23 Q. Before he gets there so he will know.

24 And you have already testified about the number one
25 indicator is the smell of marijuana, is that right?

1 A. Yes, sir.

2 Q. You never mentioned that to Officer Gibson.

3 A. No.

4 Q. You tell him about a prior record. You tell him about
5 travel plans. You tell him about shake, right?

6 A. Yes, sir.

7 Q. Never say anything about the smell of marijuana?

8 A. No, sir.

9 Q. And then it gets into a conversation about consent. Do
10 you remember that?

11 A. Yes, sir.

12 Q. All right. And, in fact, y'all talk about trying to
13 get consent before deploying the dog, correct?

14 A. Yes, sir.

15 Q. And that was important in your mind, wasn't it?

16 A. We -- we normally try to get consent.

17 Q. All right.

18 And, in fact, that's the first thing that Officer
19 Gibson does when he gets there. Were you able to observe
20 officer Gibson when he approaches the car?

21 A. Yes, sir.

22 Q. The first thing he does, he approaches without the dog,
23 correct?

24 A. Yes, sir.

25 Q. And basically asked for consent, right?

1 A. Yes, sir.

2 Q. "Or do I got to get the drug dog?"

3 A. Yes, sir.

4 Q. So the passenger is forced with two decisions at that
5 time, right; consent, or they are going to get the drug dog,
6 fair enough to say?

7 A. Yes, sir.

8 Q. But we have already testified and it's clear that there
9 was no consent given?

10 A. That's correct.

11 Q. So they bring the drug dog in at that time, right?

12 A. (Shaking head yes).

13 Q. And the drug dog -- we can watch the video. I believe
14 that you said that there was maybe something about his nose
15 on the car, is that right?

16 A. Yes, sir.

17 Q. Did you tell the solicitor that?

18 A. Yes.

19 Q. All right. I don't know what that means, but I have
20 watched the video. He goes around that car twice with that
21 dog, doesn't he?

22 A. Yes, sir.

23 Q. All right. And that dog does not hit, does not alert,
24 is that right?

25 A. That's correct.

1 Q. With your training in narcotics, that is a fair
2 indicator that there is no narcotics in the vehicle,
3 correct?

4 A. Fair indicator, yes.

5 Q. Fair indicator. Okay.

6 Now, when you were going on the -- when the search had
7 been extended with the driver in the car, you said that you
8 were working on tickets and stuff like that?

9 A. I was checking his license.

10 Q. Checking his license. You had mentioned the word
11 tickets.

12 All right. In fact, when you called Gibson, you tell
13 him that you were working on the warrant, right? Do you
14 remember that?

15 A. I believe so.

16 Q. Okay. That means that you were going to write him, the
17 driver, a warning ticket, right?

18 A. Yes, sir.

19 Q. That warning ticket was going to be traveling too close
20 on the interstate?

21 A. Following too close, yes, sir.

22 Q. Despite the fact that you didn't pull him over until he
23 was in the gas station parking lot?

24 A. Yes.

25 Q. All right. Now, you told the solicitor that you -- you

1 made the assumption the dog didn't like rain, is that fair?

2 My comment on it, was that fair?

3 A. The way it looked, yeah.

4 Q. It looked like he didn't like rain.

5 Despite the fact that the dog didn't alert, you
6 searched the car?

7 A. Yes, sir.

8 Q. All right. So you were searching that car for burnt
9 marijuana, fair enough?

10 A. Marijuana, yes, sir.

11 Q. Marijuana. Okay.

12 Well, let's talk about it.

13 A. Burnt marijuana would --

14 Q. Sir?

15 A. Burnt marijuana would possibly be ashes.

16 Q. Okay.

17 A. I was searching for marijuana.

18 Q. All right. But the reason that you were searching for
19 marijuana is because you smelled it, right?

20 A. Yes, sir.

21 Q. So you would be looking for burnt marijuana --

22 A. Yes, sir.

23 Q. -- wouldn't you?

24 You wouldn't be looking for raw marijuana, would you?

25 A. Like I said, if I'm not mistaken, burnt marijuana is

1 ashes and smoke. I mean --

2 Q. All right. Well, the judge has the exhibits that's got
3 the cigar in it, right?

4 A. Yes, sir.

5 Q. Okay. If that cigar had marijuana in it, that would be
6 burnt marijuana, wouldn't it?

7 A. If it had been smoked, yes, sir.

8 Q. And if it, in fact, had marijuana in it?

9 A. Yes, sir.

10 Q. And it didn't, right?

11 A. No, sir.

12 Q. All right. So I'll ask you again, when you searched
13 the compartment of the car, the passenger, where the people
14 sit t and drive, you were looking for burnt marijuana?

15 A. I was looking for marijuana.

16 Q. Looking for marijuana?

17 A. I had smelled burnt marijuana. I was searching the car
18 for marijuana.

19 Q. Okay. You were looking for what you thought you might
20 find?

21 A. Yes, sir.

22 Q. Fair enough.

23 All right. And you didn't find it?

24 A. In the passenger compartment?

25 Q. That's correct.

1 A. No, sir.

2 Q. No illegal contraband in the passenger compartment of
3 the car whatsoever?

4 A. No, sir.

5 Q. Nothing? No burnt marijuana, no guns, no drugs,
6 nothing?

7 A. No, sir.

8 Q. All right. And despite that fact, you went to the
9 trunk and searched the trunk, right?

10 A. Yes, sir.

11 Q. I'm not trying to be funny. Were you looking for burnt
12 marijuana in the trunk?

13 A. I was looking for marijuana.

14 Q. Marijuana in the trunk of the car. All right.
15 So you got what you think burnt marijuana, correct?

16 A. Yes, sir.

17 Q. Okay. You got a dog that tells you there is no
18 marijuana, correct?

19 MR. SPRINGS: Objection. That's argumentative.
20 He can't conclude that.

21 MR. GARDNER: All right, I'll rephrase it then.

22 BY MR. GARDNER:

23 Q. The dog didn't hit, right?

24 A. The dog didn't alert.

25 Q. And you were aware of that at the time?

1 A. Yes, sir.

2 Q. And you were aware at the time that there was no
3 contraband inside the compartment of the vehicle?

4 A. That I could find, yes, sir.

5 Q. And despite that fact, that you went looking in the
6 trunk?

7 A. Yes, sir.

8 Q. Okay. If I understand, the most important indicator of
9 all the indicators that you observed was the odor of
10 marijuana, correct?

11 A. Yes.

12 Q. And you did not talk to Officer Gibson about the smell
13 of marijuana?

14 A. No, sir.

15 Q. And the dog did not hit on the car?

16 A. No, sir.

17 Q. And you searched the compartment because you thought
18 that you smelled burnt marijuana?

19 A. Yes, sir.

20 Q. And you didn't find anything?

21 A. No, sir.

22 Q. And then you looked in the trunk?

23 A. Yes, sir.

24 Q. Okay. When you talked to -- it's in your report. I'm
25 paraphrasing, but something about talking to one of the

1 people, I believe it was the passenger, about smoking
2 marijuana. You tell him something like "somebody has been
3 smoking marijuana," or something like that. I believe you
4 say in your report that "he doesn't answer," or "he couldn't
5 answer," is that fair?

6 A. I believe that's what I read. "He didn't give me an
7 answer."

8 Q. Didn't give you an answer. Okay.

9 Do you remember, though, when you watched the video,
10 doesn't he say "I don't smoke marijuana. I have never
11 smoked marijuana. I wasn't smoking marijuana." Something
12 like that?

13 A. The passenger?

14 Q. Yes, sir.

15 A. Yes, sir, I believe so.

16 Q. Okay. And he also told that your cigar was a black and
17 mild?

18 A. Yes, sir.

19 Q. In your experience have you smelled black and mild
20 cigars?

21 A. Yes.

22 Q. Are they similar to the smell of marijuana?

23 A. No, they're usually a sweet smell.

24 Q. You can distinguish between the two?

25 A. Of marijuana and a black and mild?

1 Q. Yes, sir.

2 A. Yes, sir.

3 Q. Black and milds, are you experienced enough to answer
4 this, don't they have a different smell than a regular
5 cigar?

6 A. Yes, sir.

7 Q. Okay. And that black and mild smells a little bit
8 closer to marijuana than the other cigars?

9 A. I wouldn't say that.

10 Q. Okay. Well, have you had training or experience on
11 that?

12 A. Of the smell of cigars?

13 Q. Yes, sir.

14 A. I haven't had training on it how to smell the cigar,
15 no.

16 Q. You told the solicitor that you had training, if I
17 understood you right. I may have misunderstood you. I
18 believe you told the solicitor something about your
19 training, and then you talked about the cigars and the
20 blunts, right?

21 A. Hollowed out and everything.

22 Q. That comes from the Philly Blunt, correct?

23 A. Philly?

24 Q. Philly Blunt is the name of the cigar that started all
25 this. Are you aware of that from your training?

1 A. I'm not sure exactly which particular Blunt started it.

2 Q. But there is no doubt that cigar smells different?

3 Each cigar is different. Do you know that?

4 A. More than likely.

5 Q. Okay. All right.

6 A. I don't -- I don't smoke.

7 Q. Okay.

8 MR. GARDNER: Your Honor, if you would indulge me,
9 please?

10 THE COURT: Yes.

11 (Off the record)

12 (Back on the record)

13 MR. GARDNER: Your Honor, since I have Officer
14 Vinesett up on the stand now, I would ask the court to allow
15 me to play the videotape. I guess it speaks to the truth of
16 the matter.

17 THE COURT: All right.

18 MR. GARDNER: I'll do that at this time.

19 MR. SPRINGS: May I help you start it?

20 MR. GARDNER: Yeah. Do you have it already cued
21 up?

22 MR. SPRINGS: Do you have it marked? You can mark
23 it as a State's Exhibit.

24 MR. GARDNER: Thank you.

25 Judging, I would propose to mark this tape as

1 Court's Exhibit 2, if I may.

2 THE COURT: Yes, sir.

3 (Videotape marked as Court's Exhibit No. 2 for
4 identification)

5 BY MR. GARDNER:

6 Q. For purposes of the record, do you recognize that as
7 the videotape of your patrol car --

8 A. Yes, sir.

9 Q. -- made on the date of the incident in question?

10 MR. WALKER: May I ask a question? Can the judge
11 see the tape?

12 THE COURT: Yeah, I can see it all right.

13 MR. GARDNER: I think they will play it right
14 there.

15 (Whereupon, Court's Exhibit No. 2, the videotape,
16 was played)

17 (Tape stopped)

18 BY MR. GARDNER:

19 Q. We are in the gas station parking lot, is that right?

20 A. Yes, sir.

21 (Tape played)

22 A. That's the interstate exit ramp in front of us.

23 (Tape stopped)

24 BY MR. GARDNER:

25 Q. Sir, I want to make sure I asked you this. That was

1 when you were calling for the drug dog for Officer Gibson,
2 right?

3 A. Actually -- actually whenever you first heard the first
4 conversation he had with me is he said "I'm turning around
5 at the county line." Most of the time if I stop a car or he
6 stops a car, we start that way."

7 Q. Yes, sir.

8 My question is you just got of the phone with him,
9 right?

10 A. Yes, sir.

11 Q. And you were talking about bringing the drug dog,
12 right?

13 A. Yes, sir.

14 Q. And there is no doubt now in your mind that you never
15 mentioned anything about the smell of marijuana?

16 A. To him, no, sir.

17 Q. All right. And there is no doubt now in your mind that
18 Defendant Morris is in custody or detention, because he's
19 being escorted to the restroom, is that right?

20 A. He was going to the restroom and we still have his car
21 stopped, yes, sir.

22 Q. And he's been searched?

23 A. I think it's getting ready to take place.

24 Q. And he's going to be escorted by the state constable,
25 an armed guard, is that right?

1 A. Yes.

2 (Tape played)

3 (Tape stopped)

4 BY MR. GARDNER:

5 Q. Okay. That's Officer Gibson, correct, and he is the
6 drug dog handler?

7 A. Yes, sir.

8 Q. And he is asking for consent at this time, right?

9 A. Yes, sir.

10 Q. And he's -- "or do I need to get the drug dog out?"

11 A. Yes, sir.

12 (Tape started)

13 (Tape stopped)

14 BY MR. GARDNER:

15 Q. All right. That window is down, is that correct?

16 A. Yes, sir.

17 Q. That window was down when the dog went around and did
18 the search twice, is that right?

19 A. Yes, sir.

20 (Tape started)

21 (Tape stopped)

22 BY MR. GARDNER:

23 Q. There you just continued the search and --

24 A. Yes, sir.

25 Q. -- end up going to the police department, the normal

1 stuff.

2 That's all questions that I have. Thank you, sir.

3 A. Thank you.

4 MR. SPRINGS: Nothing further.

5 We would like to call one other person.

6 THE COURT: All right. You can step down. Thank
7 you, officer.

8 MR. SPRINGS: Just lay that mike, Officer
9 Vinesett.

10 We call Marvin Brown.

11 COMMANDER MARVIN BROWN, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SPRINGS:

14 Q. Tell us your name, please, sir.

15 A. Marvin Brown.

16 Q. And are you the head of the York County narcotics unit?

17 A. Yes, I'm the supervisor.

18 Q. And do you supervise Officer Vinesett's paperwork?

19 A. I do.

20 Q. You told him how you want the paperwork done?

21 A. I approve all of his paperwork. If it's not done the
22 way I want it done -- not the content, so much as I approve
23 it. I red pen it and give it back and he makes changes.

24 Q. Hand me that report right there. It's a court exhibit.

25 Now, a case is done by the HIT team and by the

1 narcotics unit. Are they basically two parts; a standard
2 statewide incident report plus a summary?

3 A. Yes, that's correct.

4 Q. How have you told Officer Vinesett you want him to do
5 the incident report, the statewide report, as opposed to the
6 summary?

7 A. Yeah, the incident report is the first report, the
8 basic report, and it's just the reason for the stop and it's
9 the charges which are found. We do not go into search and
10 seizure. We do not go into indicators. And the reason for
11 that is Freedom of Information Act.

12 The case summary, which is done within five days.
13 Normally it's done the next day, or sometimes that same day.
14 The case summary could be two, three, four, five pages long.
15 That spells out the stop and the reason for the stop and the
16 indicators and all this, but not the incident report.

17 Q. All right. So Officer Vinesett was specifically told
18 by you to make the statewide incident report short and
19 sweet, just the reason for the initial encounter?

20 A. Yes. All the -- there are 25 of us on the drug team,
21 counting interdiction. We all do it that way. Every
22 incident we do from drug arrests are done that way.

23 Q. Okay. And in the summary in this case, and I think you
24 are holding a copy, did Officer Vinesett go into the odor of
25 marijuana, the Blunt tobacco, and the odor of marijuana on

1 the passenger?

2 A. Yes, and three different -- once on the front page,
3 twice on the second page.

4 Q. Okay. Thank you.

5 MR. SPRINGS: Nothing further. Thank you.

6 MR. GARDNER: No questions, judge.

7 THE COURT: You can step down. Thank you.

8 MR. SPRINGS: That's our proffer on the search of
9 the car.

10 THE COURT: Okay. Mr. Gardner, do you have any
11 witnesses that you wish to call?

12 MR. GARDNER: Judge, no, sir, we don't.

13 THE COURT: All right. I'm ready to hear your
14 argument.

15 MR. GARDNER: Thank you, sir.

16 I believe that -- and I don't -- I believe that if
17 he wants to introduce this evidence, that the burden would
18 be on him, but I want to talk a little bit about this law on
19 for Williams, Jones, and Ricardo, but I want to skip down to
20 what I think is the heart of the matter in this case.

21 Assuming that everything else was right, and we
22 dispute that, but just for the sake of argument, as in -- as
23 they might say, judge, once that dog did not alert on that
24 car, there was no more reasonable articulable suspicion of
25 additional crime or criminal activity taking place. They

1 had nothing to do from then on. That's the heart of the
2 matter, judge. No articulable suspicion at that point in
3 time. He's --

4 I will go into the Williams law, because I think
5 it's important, because it talks about these things. We all
6 know what the police are allowed to do, once they make a
7 stop. If they make a legal stop, then they are allowed to
8 do the driver's license check, the computer check, write the
9 ticket, if they want to, or a warning ticket, or whatever.

10 They can only prolong that stop if they have one
11 of two things that happen. One is the reasonable
12 articulable suspicion of further criminal activity,
13 something that's a crime that's afoot at the time; or two, a
14 consensual encounter. This -- I don't think I need to talk
15 about consensual encounter, because they were not even
16 allowed to go to the bathroom without having a guard, so
17 consensual does not apply, so we have to look at whether or
18 not there was reasonable and articulable suspicion of
19 criminal activity under foot. And they need to justify each
20 and every step that they have for continuing or prolonging
21 the detention.

22 We have testimony that a normal traffic stop for
23 this officer, a normal traffic stop, five minutes. This one
24 lasted about fifteen minutes. This one actually
25 transitioned, judge, from a traffic stop with some

1 indicators into what I would call a full-blown criminal drug
2 investigation. We have the people detained. We have -- as
3 far as the Williams court and the other court cases that
4 support that, we have got almost the same thing there. We
5 have got three armed guards, three police officers. We have
6 got the dog there. We have got the people that are not free
7 to go.

8 There is no justifiable reasonable articulable
9 reason to detain these fellows any longer than -- or as long
10 as they did. They basically went on a fishing expedition.

11 I'll consent to some of these indicators are what
12 they are, indicators. But standing alone, none of them are
13 enough to prolong the search or to prolong the detention,
14 and certainly not evidence of further criminal activity. No
15 evidence of further criminal activity. He's not allowed to
16 do that.

17 The big thing, though, judge, and I can't find any
18 case law on it. There may be and I may have missed it, but
19 I can't find any case law on it, as far as what to do when
20 the dog says no. I mean, I believe it's obvious to
21 everybody in this courtroom that the dog went around twice
22 and didn't hit, didn't alert. They can say it's raining, it
23 might be something, but that's -- if the rain was a problem,
24 he's had -- the testimony is his experience with the drug
25 dog, he's seen the drug dog several times. If he thought

1 that the rain was going to be a problem, why bother calling
2 the dog?

3 One of the telling factors of this is the fact
4 that if you smelled the odor of marijuana, that would be the
5 first thing that he did when he radioed your canine friend
6 to come down there, "I smelled marijuana in the car."

7 Or, quite frankly, judge, you smell marijuana in
8 the car, you search the car, the passenger's side of the
9 car.

10 I submit that the odor of marijuana is not as
11 strong an argument as the State has set forth. For those --
12 it's just a credibility issue. And all these cases on the
13 Fourth Amendment turn on the facts and turn on the
14 credibility. We have got the facts that this was an
15 unreasonable search, an unreasonable prolonged detention.

16 But assuming that he did smell marijuana, judge, I
17 haven't found any cases in South Carolina that talk about
18 burnt marijuana. We have got testimony in here that's what
19 he smelled, but I have got a lot of Federal Court cases that
20 talk about cases just like this. I know they are not
21 binding on this court, but they are certainly persuasive,
22 and the logic makes sense to me, Your Honor.

23 For consideration, I would like to hand one of
24 those up, if I may. They are all about the same, and this
25 court may be aware of that, but basically stands for the

1 proposition that if an officer during a routine traffic stop
2 smells the odor of burnt marijuana - that's what we have got
3 here in this case, and, the facts most favorable to the
4 State - then he has probable cause to search the compartment
5 of the vehicle. The United States Supreme Court has said
6 that you can search for what you are looking for. Logically
7 what you are looking for, where it can be, and where it can
8 be is where you can search. The officers exact testimony
9 comported with that. I asked him "did you search for what
10 you were looking for?" And that's what he was doing. The
11 only thing that he and I disagree on was -- I said "you are
12 looking for burnt marijuana," and he said he was looking for
13 marijuana.

14 Even if he smelled the marijuana and even if that
15 gave him the right to search the compartment of the car to
16 look for burnt marijuana, he found, undisputed testimony on
17 the record, no evidence of any contraband. So, therefore,
18 he did not have the right to search the trunk. That's what
19 all these Federal Court cases say.

20 What distinguishes those Federal Court cases,
21 judge, is this in compliance with the United States Supreme
22 Court, is a lot of times that when they search in the
23 compartment of the car, they find evidence of contraband and
24 then you have probable cause to search the vehicle. The
25 smell of marijuana, in a light most favorable to the State,

1 only gives them to search the compartment of the car,
2 because you are not going to look in the trunk for burnt
3 marijuana.

4 THE COURT: Well, the case that you handed up,
5 United States v. Parker, was the 10th Circuit Court of
6 Appeals.

7 MR. GARDNER: Yes.

8 THE COURT: And then I'm going to point this out
9 to you. Maybe Mr. Springs will consent that you have been
10 discussing says "the odor of marijuana in the passenger
11 compartment of the vehicle is not, however, standing alone
12 establish probable cause to search the trunk of the
13 vehicle," and it cites Neilson.

14 Then it says "rather, an officer obtains probable
15 cause to search the trunk of the vehicle once he smells
16 marijuana in the passenger compartment and finds
17 corroborating evidence of contraband."

18 MR. GARDNER: That's correct. And what they found
19 in Neilson was additional drugs. So what this case is,
20 there is no drugs found, so there was no corroborating
21 evidence to justify searching the trunk.

22 THE COURT: Well -- okay.

23 MR. GARDNER: Yes, sir. Thank you, judge.

24 THE COURT: Anything, Mr. Springs?

25 MR. SPRINGS: No, Your Honor. If you have read

1 our brief, I would simply refer to it and say that the odor
2 of marijuana is ample probable cause to search this vehicle
3 and any container or area in it which could obtain the
4 object of the search, which was the marijuana, which would
5 presumably be green marijuana and not something that's
6 disappeared into smoke.

7 THE COURT: Well, I'm going to deny the motion to
8 suppress. I find that the detention in this case did not go
9 beyond the scope of the stop, considering that they had a
10 reasonable suspicion of a serious crime and that they --
11 serious, they don't mean, I don't believe this case -- this
12 is Chardo was talking about the categories of serious,
13 statutory serious, and most serious. I think he's talking
14 about something other than reasonable suspicion, some minor
15 offense, which, of course, possession of marijuana is -- not
16 just simple possession of marijuana, first offense, is not
17 what most people consider a serious crime, but I believe the
18 officer did have objective reasonable and articulable
19 suspicion of criminal activity from the smell of marijuana
20 and based on his training and knowledge of the hollowing out
21 of the blunts to be used as a vehicle for smoking.

22 It's a little different, but it's analogous,
23 anyway, to having seen a crack pipe, or something like that.
24 This, of course, is something that you buy in the store. I
25 guess you buy crack pipes in the store, too.

1 I don't find that the Red Bull Energy gave any
2 validity to the reasonableness of the search. I think we
3 are going a little far when we start basing searches on soft
4 drinks that -- I don't remember. My kids do, and I hate to
5 think they got stopped and they got searched just because
6 they had a Red Bull Energy can in their car.

7 I don't see any real difference, although, the
8 10th Circuit case that we talked about a moment ago, it just
9 talked about the odor of marijuana, but I don't see any real
10 significant difference in burnt marijuana and raw marijuana.
11 There has been no testimony by anybody that -- in fact,
12 Officer Vinesett, to the contrary, that black and mild and
13 burnt marijuana have the same smell. In fact, he testified
14 that they do not. I find his testimony is credible.

15 I find that the stop and detention, while it was
16 about -- I have got about thirteen minutes, based on the
17 times that I was jotting down, but I believe it was only
18 five minutes -- I have trouble reading my notes, but I
19 believe it was only about five minutes before they -- from
20 14:07 to 14:12. I believe about 14:12 was when they got the
21 passenger out and indicated he smelled marijuana, or at
22 least I have got a statement about that within five minutes,
23 but I think detention was not excessively long. I don't
24 know there is any bright line test for what is or is not a
25 reasonable time.

1 I did struggle a little bit, quite candidly, even
2 before you brought it with the dog not alerting, how that
3 factors in. I don't know that -- again, if you use the word
4 bright line, but I don't believe there is any bright line
5 indicator -- that's not the right word. I'm having trouble
6 articulating.

7 I don't think there is any requirement that chain
8 of suspicion is broken by some other event, such as the dog
9 not alerting. I guess the courts will have to decide that,
10 just like they will have to decide what is burnt marijuana
11 smell, but I don't think that they had any obligation to
12 stop the search. I don't believe that -- that certainly
13 didn't mediate or do away with the fact that he had smelled
14 marijuana. Whether the dog smells it or not, the officer
15 testified he did. The dog's nose may be better, and we
16 usually don't see officers running around sniffing like we
17 do a dog, but I affirmatively find, so this would hopefully
18 be clear on the record, that there was no -- that there was
19 no requirement that the search stop and detention stop -- or
20 that the detention stop at the time the dog did not alert.

21 And, as I have already said, I find that based on
22 the main indicator, the smell of marijuana. Also the
23 blunts, his knowledge of how blunts are used and the
24 evidence that, as shown through his testimony and as shown
25 in the photographs, that Lobacco had been spilled in the car

1 on the floorboard and the presence of the hollowed out
2 portions in the cups, the Exhibits 3 and 2. So I deny the
3 motion.

4 Let me -- that includes the search at the -- after
5 the car was towed. I believe once the car was towed and in
6 the possession of law enforcement, they had a right -- in
7 fact, I think they have got an obligation to do an inventory
8 search so that they will know what's in there while it's in
9 their possession and someone won't come in later and say "I
10 had \$3,000 in the trunk and when you gave my car back, the
11 \$3,000 wasn't there," so I deny the motions.

12 MR. WALKER: Your Honor, can I ask one question?

13 THE COURT: Yes.

14 MR. WALKER: We could still argue before the jury
15 that it's illegal, right? You will charge Fourth Amendment,
16 or the applicable --

17 THE COURT: I have never charged -- I don't know.
18 You would have to show me some law on that. This is a --
19 I'm the judge of the facts -- the judge of the law --

20 MR. WALKER: Yes, I understand that.

21 THE COURT: -- and this is a legal question, not a
22 fact question, I don't believe.

23 MR. WALKER: All right.

24 THE COURT: So I'm going to find -- unless you can
25 show me some law. I have never had anybody even ask that.

1 That doesn't mean that you are wrong, but --

2 MR. WALKER: Well, I don't know if I'm right, to
3 be honest with you.

4 THE COURT: Well, the law that comes out of Conway
5 is usually pretty good, but -- and we certainly enjoy having
6 Judge Hyman here this week, but I'm not going to -- unless
7 you, between now and when we get to closing arguments, find
8 some law, then I'm not going to allow that to be --

9 MR. WALKER: Okay.

10 THE COURT: -- to be argued. That's a legal
11 question.

12 MR. WALKER: Thank you.

13 MR. SPRINGS: Now, at this point our jury panel
14 should be downstairs. We do have a Jackson v. Denno, which
15 wouldn't take very long. We can go ahead and do that now.
16 All our necessary people are here, or we can pick the jury.

17 THE COURT: Why don't we go ahead and do it.

18 MR. SPRINGS: Very good.

19 Officer Vinesett, if you will take the stand.

20 THE COURT: You are still under oath.

21 I forgot to mention, while I don't think in and of
22 itself stories about the trip to Atlanta, which are arguably
23 not really inconsistent, you could be going to see girls and
24 watch them play basketball, with the some discrepancy in
25 those may have heightened the suspicion, but I find that the

1 suspicion existed -- the reasonable articulable suspicion
2 existed, regardless of those inconsistencies. I'm not
3 relying on those inconsistencies.

4 MR. SPRINGS: And you could say he had probable
5 cause to search?

6 THE COURT: He had probable cause to search, yes.

7 MR. SPRINGS: Thank you, sir.

8 DIRECT EXAMINATION BY MR. SPRINGS:

9 Q. Now, Officer Vinesett, we have just watched a movie, a
10 video, which is been marked as a Court's Exhibit. Did you
11 watch the movie?

12 A. Yes, sir.

13 Q. And on the movie it showed you interacting with Mr.
14 Kenneth Morris, the defendant here, and his companion, Mr.
15 Brandon Nichols, on February 6th, 2008. And you said "hook
16 them up," and I think you told these fellows they were under
17 arrest. Did you see that?

18 A. Yes, sir.

19 Q. Now, after you arrested them, did you read their
20 rights, according to Miranda, to them?

21 A. Yes, sir.

22 Q. And where were they when you read them those rights?

23 A. In the back seat of my patrol vehicle.

24 Q. How many minutes would you say it was after you said
25 "hook them up. You guys are under arrest,". I think you said

1 Q. Is it against the law to commit a traffic violation on
2 the highways in York County, South Carolina?

3 A. Yes, sir.

4 Q. All right. Let's cut to the chase. Let's talk about
5 February 6th, 2008. Were you on duty and in your patrol car
6 about two o'clock that afternoon?

7 A. Yes, sir.

8 Q. Is it an unmarked car?

9 A. Yes, sir.

10 Q. Did you have anybody riding in the car with you?

11 A. Yes, sir, Constable Scott.

12 Q. You say he's a constable?

13 A. Yes.

14 Q. Now, what is your jurisdiction and what geographic area
15 can you arrest somebody?

16 A. In York County.

17 Q. Your jurisdiction is York County as a deputy?

18 A. Yes.

19 Q. What is the jurisdiction for a constable?

20 A. It's statewide jurisdiction.

21 Q. Now, the constable that was with you, what's his name?

22 A. Walter Scott.

23 Q. All right. Was that constable being paid for his time
24 with you that day?

25 A. No, sir.

1 Q. And did you find anything illegal in the passenger
2 compartment?

3 A. No, sir.

4 Q. Did you find anything illegal in the trunk?

5 A. Yes, sir.

6 Q. I'm showing you what's been marked State's Exhibit 8
7 for identification. Just give me one second.

8 MR. WALKER: No objection, Your Honor.

9 THE COURT: Admitted without objection.

10 MR. WALKER: One moment, Your Honor.

11 (Off the record)

12 (Back on the record)

13 MR. SPRINGS: I'm not offering it yet.

14 MR. WALKER: You are not offering it yet?

15 MR. SPRINGS: I'm not offering it, no, sir.

16 BY MR. SPRINGS:

17 Q. I'm showing you what's been marked State's Exhibit 8.
18 Have you ever seen the stuff in that bag before?

19 A. Yes, sir.

20 Q. What is that stuff?

21 A. It's Ecstasy pills.

22 Q. And where did you see it the first time?

23 A. In the trunk of the vehicle in a bag.

24 Q. In the trunk of this Ford rental car?

25 A. Yes, sir.

1 Q. Was it more than a hundred?

2 A. Yes, sir.

3 Q. Did you count the pills?

4 A. Yes, sir.

5 Q. Did you -- do you recall how many you did count?

6 A. 393.

7 Q. When you found those pills, did you arrest anybody?

8 A. Yes, sir.

9 Q. Who did you arrest?

10 A. Mr. Nichols and Mr. Morris.

11 Q. Okay. And what did you charge them with?

12 A. Trafficking. Trafficking in Ecstasy.

13 Q. Okay. Now, let me see if I can take a look at that.

14 And while we are talking about State's Exhibit 8, let
15 me ask you if you bagged up this drug evidence later?

16 A. Yes, sir.

17 Q. Did you put it in an evidence bag?

18 A. Yes, sir.

19 Q. Did you seal that bag up?

20 A. Yes, sir.

21 Q. Did you put some identifying writing on the evidence
22 bag?

23 A. Yes, sir.

24 Q. Until you got it to an official police evidence bag,
25 was it in your custody and control the whole time?

1 Q. And the Ford rental car, how did it get to the -- did
2 it go to the police station as well?

3 A. Yes, sir.

4 Q. And how did it get to the police station?

5 A. Constable Scott drove it to the police station.

6 Q. Okay. And when the Ford rental car got to the police
7 station, did you search it more thoroughly?

8 A. Yes, sir.

9 Q. And did you find anything else in the Ford rental car
10 when you got it to the police station out of the rain and
11 searched it more thoroughly?

12 A. Yes, sir.

13 Q. What did you find?

14 A. I found approximately a half pound of marijuana located
15 in the trunk, actually underneath the spare tire.

16 Q. Okay. All right.

17 Before I talk to you about that marijuana, let's go
18 back for a minute about the Ecstasy. What kind of a
19 container was it in the trunk?

20 A. It was in like a -- almost like a gift box.

21 Q. Okay.

22 MR. WALKER: Your Honor, we have a matter of law
23 to take up.

24 THE COURT: I'm going to let the jury go to the
25 jury room just for a few minutes. It won't be a long break.

1 Q. A bunch of rubber bands.

2 Put that back in there, if you would.

3 MR. SPRINGS: Your Honor, we do offer State's
4 Exhibit 10 into evidence.

5 MR. WALKER: We object, Your Honor, on the grounds
6 we previously stated.

7 THE COURT: All right. The objection is overruled
8 for the reasons I previously stated.

9 MR. WALKER: Okay.

10 BY MR. SPRINGS:

11 Q. And you said the Ecstasy was in bags in the box?

12 A. One bag.

13 Q. One bag.

14 All right. Now, let's back up to the police station.
15 You have got the Ford rental car at the Rock Hill police
16 station out of the rain. You did a more thorough search and
17 what else did you find in there?

18 A. Located under the spare tire in the trunk was
19 approximately a half a pound of marijuana.

20 Q. Okay.

21 (Drugs marked as State's Exhibit No. 11 for
22 identification)

23 BY MR. SPRINGS:

24 Q. I'm showing you what's been marked as State's Exhibit
25 No. 11 for identification. Have you ever seen that green

1 A. Yes, sir.

2 Q. And it was in a plastic bag?

3 A. Yes, sir.

4 Q. Okay. Were those plastic bags that you have been
5 talking about checked for fingerprints?

6 --A. Yes, sir.

7 Q. Were any identifiable quality fingerprints found?

8 A. No, sir.

9 (Evidence Bag marked as State's Exhibit No. 12 for
10 identification)

11 (Evidence Bag marked as State's Exhibit No. 13 for
12 identification)

13 (Evidence Bag marked as State's Exhibit No. 14 for
14 identification)

15 (Evidence Bag marked as State's Exhibit No. 15 for
16 identification)

17 BY MR. SPRINGS:

18 Q. I'm showing you what's marked State's Exhibit 12, 13,
19 14 and 15. Did these contain the plastic bags?

20 A. Yes, sir.

21 Q. What's all that black stuff?

22 A. Fingerprint dust.

23 Q. All right.

24 MR. SPRINGS: Your Honor, we do offer into
25 evidence State's 13, 14, 15 and 12, the plastic bags these

1. materials were found in.

2. THE COURT: All right.

3. MR. WALKER: The same objection, Your Honor.

4. THE COURT: Objection overruled.

5. MR. WALKER: All right.

6. THE COURT: They are in evidence over objection.

7. BY MR. SPRINGS:

8. Q. And was Mr. Morris and the friend, Mr. Nichols, were
9. they actually interviewed and questioned at the police
10. station?

11. A. Yes, sir.

12. Q. And did Mr. Morris talk to an officer?

13. A. Yes, sir.

14. Q. Was that at the Rock Hill city police station?

15. A. Yes, sir, it was.

16. Q. And who is the supervisor of the entire York County
17. narcotics unit? What's his name?

18. A. Commander Marvin Brown.

19. Q. Did he take an interest in this case that day and get
20. involved after the Ecstasy was found?

21. A. Yes, sir.

22. Q. And who was the narcotics supervisor for that one
23. particular office, the Rock Hill city police officer?

24. A. Lieutenant Jason Dalton.

25. Q. Jason Dalton?

1 A. State's Exhibit 8 contains
2 Methylenedioxymethamphetamine, otherwise known as MDMA.

3 Q. Does it have a street name?

4 A. It does.

5 Q. What is that?

6 A. That would be Ecstasy.

7 Q. Okay. And how many pills were -- how many Ecstasy
8 pills?

9 A. The amount that I tested, 254 tablets.

10 Q. Okay. Were Ecstasy?

11 A. That's correct.

12 Q. Okay. All right.

13 Now, let me show you -- by the way, did you seal it
14 back up in a bag after you tested it?

15 A. Yes, sir, I did. My seal was across the bottom here
16 with my initials and the date seal.

17 Q. Okay. Now, is this actually a bag in a bag? The bag
18 that you got, you opened and tested it and you put it back
19 in your own bag and sealed it up, is that right?

20 A. That's correct.

21 Q. Okay. Is this still sealed up the way you sealed it up
22 after you tested it?

23 A. Yes, sir, the seal falls across my initials.

24 Q. Very good.

25 MR. SPRINGS: We do offer State's Exhibit 8 into

1 time offer it into evidence.

2 MR. WALKER: We would object on the grounds as
3 previously stated.

4 THE COURT: Your objection is overruled as
5 previously ruled.

6 BY MR. SPRINGS:

7 Q. Now, let's look at State's Exhibit No. 11. Have you
8 ever seen that and done business with what's in that bag?

9 A. Yes, I have.

10 Q. Where did you first receive that?

11 A. This evidence, State's Exhibit 11, was received from
12 Barbara Traylor on March the 3rd of 2008.

13 Q. Okay. Over here in the drug lab, in the evidence room?

14 A. That's correct.

15 Q. Okay. And was the bag you received sealed up, or did
16 it look like it had been tampered with?

17 A. It was sealed.

18 Q. Okay. And did you open the bag and do an analysis of
19 the green stuff that was in the bag?

20 A. Yes, I did.

21 Q. And what did you find the green stuff in the bag to be?

22 A. State's Exhibit 11, which is item number 5 on the
23 report; was found to be marijuana.

24 Q. And how much is the weight?

25 A. In the amount of 219.7 grams.

1 (Jury Note marked as Court's Exhibit No. 8 for
2 identification)

3 (Jury Note marked as Court's Exhibit No. 9 for
4 identification)

5 (Whereupon, at 1:05 p.m., proceedings were
6 recessed, pending the verdict of the jury panel)

7 (Whereupon, at 1:25 p.m., proceedings were
8 reconvened)

9 THE COURT: I understand we have a verdict in the
10 Morris trial, so we can bring in -- he's present with
11 counsel and bring in the jury.

12 (Whereupon, at 1:29 p.m., the jury panel returned
13 to open court to report its verdict)

14 THE COURT: All right. I understand that you have
15 reached a verdict?

16 JURY FORELADY: Yes, sir.

17 THE COURT: If you will hand them to the bailiff,
18 then they will hand them up to me.

19 Okay.

20 THE CLERK: Indictment 2008-GS-46-2837, the State
21 versus Kenneth Morris, indictment for trafficking in
22 Ecstasy, "we, the jury, find the defendant guilty of
23 trafficking Ecstasy."

24 Signed by the foreperson, dated today's date.

25 Indictment 2008-GS-46-2834, the State versus

1 Kenneth Morris, indictment for possession of marijuana with
2 intent to distribute, "we, the jury, find the defendant
3 guilty of the lesser included offense of simple possession
4 of marijuana."

5 Signed by the foreperson, dated today's date.

6 Ladies and gentlemen of the jury, if that be your
7 verdict, say you all by raising your right hand.

8 Let the record show that all jurors confirmed this
9 verdict.

10 THE COURT: Anything from the State before the
11 jury is dismissed?

12 MR. SPRINGS: No, sir.

13 THE COURT: Anything from the defense before the
14 jury is dismissed?

15 MR. GARDNER: No, Your Honor.

16 MR. WALKER: No, Your Honor.

17 THE COURT: All right. Thank you for your help.
18 I don't require you to stay for sentencing. Madam Forelady,
19 we have got you to come up. We have got one thing else --
20 two things for you to sign. You can leave, or you can go
21 out the back and come in and sit back there while we go
22 through the sentencing procedure, but I don't -- we have
23 already been here a week, so I don't require you to stay
24 while we go through at the point where I'm told if he has
25 any prior record, or anything like that, and make a decision

1 caught up in a bad situation and -- I mean, I'm here and --
2 I mean --

3 THE COURT: You got caught up in a bad situation?
4 You drove to Atlanta and picked up a bunch of drugs and
5 driving the car back. How does to mean you got caught up in
6 a bad situation?

7 THE DEFENDANT: As far as who I was riding with,
8 sir. I feel like I was in a bad situation, just caught up.
9 Some things I didn't know about. And being that they gave
10 him such a sweet deal, he told me to my face that he would
11 choose his family over me. He didn't really care and that's
12 why he wrote the letter. When it came back to him finding
13 out that he could go to jail because of that letter, he
14 changed up again. I mean, he basically told me that he has
15 a family and -- I mean, he would choose them.

16 THE COURT: You told the officers on that day that
17 you were involved.

18 THE DEFENDANT: The officers made a few bad
19 statements. But, I mean, I can't -- I'm not going to get
20 into what they said that day. I'll just leave it at what it
21 is.

22 THE COURT: The sentence is thirty years and
23 \$50,000 fine on the Ecstasy.

24 One year on the marijuana charge to run
25 concurrent. Thank you.

1 Officer Vinesett: How y'all doing?
2 Mr. Morris: All right.
3 Officer Vinesett: Deputy Vinesett with the
4 Sheriff's office. You got your driver's
5 license and ---
6 Mr. Morris: Yeah. I got to pee, man.
7 Officer Vinesett: The reason why I stopped
8 you is you were following that box truck
9 entirely too close.
10 Mr. Morris: Oh no. I was trying to get
11 off the exit. Nah, I got to pee bad. That's
12 why I came over here.
13 Officer Vinesett: All right. You got your
14 vehicle registration?
15 Mr. Morris: Yeah. it's right there.
16 This is my friend right here. He's all about
17 to fall asleep right there.
18 Officer Vinesett: You got your ID with you?
19 Mr. Nichols: Yes.
20 Officer Vinesett: Y'all been running into
21 much of this storm?
22 Mr. Morris: It ain't been too bad.
23 Officer Vinesett: All right. If you'll just
24 step back here and let me explain this to you?
25 Mr. Morris: All right.

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1 Officer Vinesett: You can sit right over
2 here.
3 Mr. Morris: All right.
4 Officer Vinesett: Wes, you want to stand
5 right over there?
6 Mr. Morris: Owie, killing myself.
7 Officer Vinesett: Where are y'all coming from
8 today?
9 Mr. Morris: From Atlanta, Georgia.
10 Officer Vinesett: What did y'all have going
11 on down there?
12 Mr. Morris: Went to visit some girls.
13 Officer Vinesett: Uh-oh, y'all don't work?
14 Mr. Morris: Yeah, I work --
15 (unintelligible.)
16 Officer Vinesett: Is everything straight with
17 your license?
18 Mr. Morris: Yeah.
19 Officer Vinesett: What's your last name?
20 Mr. Morris: Morris.
21 Officer Vinesett: How long was y'all down in
22 Atlanta?
23 Mr. Morris: We just went for a day to
24 see ---
25 Unidentified radio voice: (Unintelligible.)

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1 Officer Gibson: Yeah, I'm turning around at
2 the county line.
3 Officer Vinesett: All right. I got a guy in
4 the front seat with me, getting ready to check
5 his license and stuff.
6 Officer Gibson: Okay.
7 Unidentified radio voice: I got this 18-wheeler
8 turning around heading in the right direction.
9 Unidentified radio voice: Okay.
10 Mr. Morris: I work nights.
11 Officer Vinesett: What kind of work you do?
12 Mr. Morris: I work with
13 (unintelligible).
14 Officer Vinesett: Where'd y'all meet them
15 girls at, the hotel?
16 Mr. Morris: Yeah.
17 Officer Vinesett: Uh-oh, (unintelligible.)
18 Mr. Morris: And I got family down
19 there, too though. Yeah, down south.
20 Officer Vinesett: Oh, you got family?
21 Mr. Morris: Yeah.
22 Officer Vinesett: Okay. You stay with the
23 family?
24 Mr. Morris: Nah, the hotel.
25 Officer Vinesett: Which one?

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TRANSCRIPT OF TRAFFIC STOP

Page No: 5

1 Mr. Morris: The Hilton.
2 Officer Vinesett: Who checked you in, him or
3 you?
4 Mr. Morris: He checked us in.
5 Officer Vinesett: You like to speed, too.
6 don't you?
7 Mr. Morris: Yeah. I done had some
8 tickets.
9 Officer Vinesett: Has your license ever been
10 suspended?
11 Mr. Morris: Yeah. a while ago.
12 Officer Vinesett: Have you ever been arrested
13 for anything?
14 Mr. Morris: Yeah, when I was younger.
15 Officer Vinesett: What was that for?
16 Mr. Morris: Like weed, and stuff like
17 -- I was in eleventh grade. I graduated from
18 (unintelligible) in Greensboro. That's where
19 my daughter's living at. That's where we was
20 about to go.
21 Officer Vinesett: Which one is that Hilton?
22 Is that the big tall one?
23 Mr. Morris: Whatever it was it wasn't
24 that nice though. It was downtown. TV, they
25 had a 17-inch TV in there.

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1 Officer Vinesett: What floor was y'all on?
2 Mr. Morris: 15.
3 Officer Vinesett: Goodness.
4 Mr. Morris: 1547, 1548.
5 Officer Vinesett: Was that even close to the
6 top?
7 Mr. Morris: 28. (Unintelligible.)
8 Officer Vinesett: All right.
9 Mr. Morris: I'm about to pee, so we can
10 switch up, take over ---
11 Officer Vinesett: Hold on one second, hold
12 on, got to get some information from him.
13 Officer Vinesett: Where y'all coming from
14 today?
15 Mr. Nichols: Atlanta.
16 Officer Vinesett: What did y'all have going
17 on down there?
18 Mr. Nichols: A little basketball game.
19 Officer Vinesett: Who was playing?
20 Mr. Nichols: A, a cousin.
21 Officer Vinesett: Y'all didn't go down there
22 and see the Hawks or nothing?
23 Mr. Nichols: Huh-uh (negative response).
24 Officer Vinesett: Your rental agreement says
25 "No additional drivers."

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TRANSCRIPT OF TRAFFIC STOP

Page No: 7

1 Mr. Nichols: Uh-huh (affirmative
2 response).
3 Officer Vinesett: Any reason why he was
4 driving?
5 Mr. Nichols: I was tired. He just took
6 over for me.
7 Officer Vinesett: How long was y'all down
8 there, a few days?
9 Mr. Nichols: Nah. Yesterday.
10 Officer Vinesett: Oh, okay. Who won?
11 Mr. Nichols: They did.
12 Officer Vinesett: That's good. All right.
13 I'm going to check your -- Everything straight
14 with your license?
15 Mr. Nichols: Everything's straight.
16 Officer Vinesett: I'll be right back with
17 you.
18 Constable Scott: You got to get his driver's
19 license?
20 Officer Vinesett: Yeah. Nope, that one.
21 Sir?
22 Mr. Morris: Yes.
23 Officer Vinesett: Could you step out here and
24 give this guy your information right quick?
25 Mr. Morris: All right.

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1 Officer Vinesett: Hey.
2 Officer Gibson: I'm ready.
3 Officer Vinesett: Two young guys born in '83
4 coming from Atlanta. One said they went down
5 there to visit some girls. They stayed in a
6 hotel, the Hilton, last night. They from
7 Greensboro. Go up there and talk to the other
8 one, he said they went down there for his
9 friend's cousin had a basketball game, went
10 down there and watched the basketball game.
11 Driver admitted he's been arrested before in
12 the past for drugs. Can see shake all in the
13 car and on them like they've been rolling
14 marijuana, but I was going to see if you wanted
15 to get Justice out.
16 Officer Gibson: Yeah, you ---
17 Officer Vinesett: You broke up. I heard
18 "Yeah" and "you."
19 Officer Gibson: You want me to go ahead and
20 just get the dog out, or you want us to get the
21 consents?
22 Officer Vinesett: Yeah -- go -- where you at
23 right now? Come on in and ask the passenger.
24 I'm getting ready to get started on the warning
25 and check 29's, but go ahead and ask the

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1 passenger and look around on the center console
2 too and see if you can -- Hey. Wes, come here.
3 Constable Scott: I'm with the driver ---
4 Officer Vinesett: Hold on one second.
5 Officer Gibson: I'm getting off on Anderson
6 now.
7 Officer Vinesett: All right. Hold on.
8 (Unintelligible.)
9 Officer Vinesett: Yeah. If he goes to the
10 bathroom, you're going with him. You're going
11 to stand in the stall with him.
12 (Unintelligible.) Do you want to use the
13 restroom?
14 Mr. Morris: Yes, sir.
15 Officer Vinesett: All right. The traffic
16 stop is not over.
17 Mr. Morris: Uh-huh (affirmative
18 response).
19 Officer Vinesett: I'm still checking some
20 stuff on the computer; but before I let you go
21 in there, you got anything illegal on you?
22 Mr. Morris: No. I'm good.
23 Officer Vinesett: Can I search you?
24 Mr. Morris: Sure.
25 Officer Vinesett: Turn around for me. You

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1 ain't got to hold your hands up. man. What is
2 that?
3 Mr. Morris: (Unintelligible.)
4 Officer Vinesett: Oh okay. All right. He's
5 going to walk with you, all right?
6 Mr. Morris: Okay. Is there a problem?
7 Officer Vinesett: No, no. We just don't like
8 people getting away, walking away from a
9 traffic stop.
10 Mr. Morris: Okay.
11 Mr. Nichols: Can I go to the bathroom?
12 Officer Vinesett: You got anything illegal on
13 you?
14 Mr. Nichols: No, sir.
15 Officer Vinesett: All right. Do you mind if
16 I search you ---
17 Mr. Nichols: (Unintelligible.)
18 Officer Vinesett: --- before you go. Come on
19 out.
20 Mr. Nichols: (Complies with request.)
21 Officer Vinesett: All right, turn around. We
22 just, we just ain't finished with the traffic
23 stop, so we don't want to ---
24 Mr. Nichols: That's cool.
25 Officer Vinesett: -- let people walk away or

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1 nothing.

2 Mr. Nichols: All right.

3 Officer Vinesett: The other guy had to use

4 the bathroom real bad now.

5 Mr. Nichols: I do too.

6 Officer Vinesett: He's got to pee.

7 Officer Gibson: Is anything in the car

8 illegal?

9 Mr. Nichols: No, sir.

10 Officer Gibson: Can I search it?

11 Mr. Nichols: I mean, for what? I mean

12 ---

13 Officer Gibson: Do I need to get the drug

14 dog out?

15 Mr. Nichols: You don't need no drug dog.

16 (Unintelligible.)

17 Officer Vinesett: What is this?

18 Mr. Nichols: That's my syringe. I'm

19 diabetic.

20 Officer Vinesett: I'm just going to lay this

21 right there, all right?

22 Mr. Nichols: All right. I'm ready to

23 get home, to the house.

24 Officer Vinesett: Stand over here for me?

25 All right. If you don't mind, just step back

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1 there and wait on that guy, all right?
2 Mr. Nichols: All right.
3 Officer Vinesett: You can have a seat in my
4 passenger seat. Right here. Right here.
5 Mr. Nichols: Can one of y'all walk with
6 me?
7 Officer Vinesett: He's getting ready to.
8 Mr. Nichols: He was speeding or
9 something?
10 Officer Vinesett: He was following like a box
11 truck entirely too close.
12 Mr. Nichols: Dang.
13 Officer Vinesett: Just wait right there.
14 Hold on one second. No, no, you ain't got to
15 stand in the rain. Stand back a little bit.
16 Has your license ever been suspended?
17 Mr. Nichols: Nah, it ain't never been
18 suspended.
19 Officer Vinesett: Have you ever been arrested
20 for anything?
21 Mr. Nichols: No.
22 Officer Vinesett: Never.
23 Mr. Nichols: Never been arrested.
24 Officer Vinesett: When's the last time you
25 smoked marijuana? You can tell me this

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1 morning, and there ain't nothing I can do to
2 you.

3 Mr. Nichols: What?

4 Officer Vinesett: You can tell me this
5 morning, and there ain't nothing I can do to
6 you.

7 Mr. Nichols: I mean, ---

8 Officer Vinesett: Was it while y'all was in
9 Georgia?

10 Mr. Nichols: (Unintelligible.)

11 Officer Vinesett: You said he didn't have to
12 get the drug dog out. Does that mean there's
13 nothing in there?

14 Mr. Nichols: Right.

15 Officer Vinesett: And he can search it?

16 Mr. Nichols: I mean, I -- that's a waste
17 of time. Why would you search the car? I
18 mean, I'm ready to go. I'm ready to go.

19 Officer Vinesett: Hold on one second.

20 Officer Vinesett: (Exits the vehicle.)

21 Mr. Nichols: Can one of y'all take me,
22 just take me to pee, please?

23 Unidentified Speaker: In just a minute.

24 Mr. Nichols: I'm going to pee in my
25 pants, man.

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1 Unidentified Speaker: Huh?
2 Mr. Nichols: I'm going to pee in my
3 pants. He already peed. Can I go with one of
4 y'all to take me, please?
5 Unidentified Speaker: In just a minute.
6 Mr. Nichols: All right.
7 Officer Vinesett: Hold up. Hold up. hold up.
8 hold up. You said, you said you ain't smoked
9 no marijuana the last time you know?
10 Mr. Nichols: Nah.
11 Officer Vinesett: All right. Whenever I was
12 up here talking to you I called him, and
13 whenever I got you out, I swore I could smell
14 some marijuana coming ---
15 Mr. Nichols: You probably smelled Black
16 & Mild. I smoke Black & Mild, that's all.
17 Officer Vinesett: I smelled marijuana.
18 Mr. Nichols: We didn't have no
19 marijuana.
20 Officer Gibson: Is anything in the car?
21 Mr. Nichols: No, there's nothin' in the
22 car. You didn't smell any marijuana. It's
23 Black & Mild, 'cause I don't smoke marijuana.
24 (unintelligible.)
25 Officer Vinesett: All right, you step out

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1 here.
2 Mr. Nichols: I don't have any marijuana
3 in there.
4 Officer Vinesett: Step out here. Step over
5 here.
6 (Unintelligible.)
7 Officer Vinesett: Step over here. Step over
8 here.
9 (Unintelligible.)
10 Officer Gibson: Hey, you see the phone
11 keeps going off?
12 Officer Vinesett: Yeah.
13 Officer Gibson: Where'd they get a ticket
14 from?
15 Officer Vinesett: Two days ago in Gaffney.
16 Officer Gibson: I'm going to wait for you.
17 (Unintelligible.)
18 Officer Gibson: God damn, hook them up,
19 (Unintelligible.)
20 Officer Vinesett: Huh?
21 Officer Gibson: Hook them up. God damn,
22 there's a bunch of this.
23 Officer Vinesett: Huh?
24 Officer Gibson: Hook them up.
25 Officer Vinesett: (Unintelligible.)

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1 Officer Gibson: Yes.
2 Officer Vinesett: Put your hands behind your
3 back right now. Put your hands behind your
4 back. Put your hands behind your back. Y'all
5 both are under arrest for (unintelligible).
6 (Unintelligible.)
7 Officer Vinesett: Somebody has been smoking
8 marijuana in that car.
9 Mr. Nichols: No, they have not. No.
10 they have not.
11 Mr. Morris: Nobody's been smoking in
12 this car.
13 Officer Gibson: There ain't nobody that's
14 been smoking marijuana?
15 Mr. Nichols: Black & Mild.
16 (Unintelligible.)
17 Mr. Nichols: Nobody's been smoking
18 marijuana in that car.
19 (Unintelligible.)
20 Unidentified Speaker: Ain't but about five
21 minutes away, right?
22 Unidentified Speaker: Hold on.
23 (Unintelligible.)
24 Officer Vinesett: Put it in the trunk, Wes.
25 Constable Scott: I am.

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1 Officer Vinesett: Both of y'all, if you
2 would, listen up for me, all right?

3 (Unintelligible.)

4 Officer Vinesett: If y'all would, listen up.
5 You have the right to remain silent. Anything
6 you say can and will be used against you in a
7 court of law. You have the right to talk to a
8 lawyer and have him present with you while
9 you're being questioned. If you cannot afford
10 to hire a lawyer, one will be appointed to
11 represent you before any questions, if you
12 wish. You can decide at any time to exercise
13 these rights and not answer any questions or
14 make any statements. Do you understand each of
15 these rights that I have explained to you? Do
16 you understand, sir?

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Conway, South Carolina 29527
(843) 248-5252

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

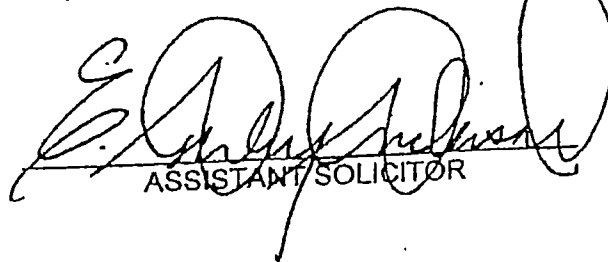
INDICTMENT

At a Court of General Sessions, convened on July 3, 2008, the Grand Jurors of York County present upon their oath:

TRAFFICKING ECSTASY (MDMA)

That on or about February 6, 2008, in York County, South Carolina, the Defendant, Kenneth Darrell Morris, II, did wilfully, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a Ecstasy (also known as Methylenedioxymethamphetamine, or MDMA) in a quantity greater than One Hundred (100) dosage units, all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DOCKET NO. 2008-GS-46-02834

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

Defendant

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

Defendant

Witness:

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

- 92 -

WITNESSES

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

July 3, Term 2008

REST WARRANT NUMBER

THE STATE

VS.

KENNETH DARRELL MORRIS, II

ACTION OF GRAND JURY

BILL

Joe S. Morris
of Grand Jury
7/3/08

VERDICT

Indictment for

POSSESSION OF MARIJUANA WITH
INTENT TO DISTRIBUTE

SC Code: 44-53-370
CDR Code: 0188

of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

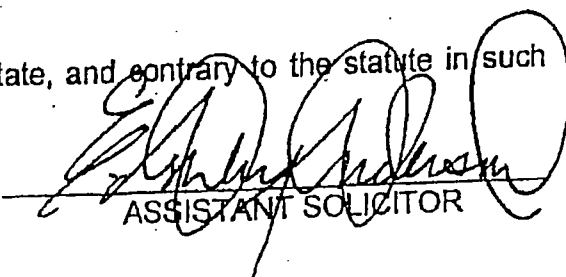
INDICTMENT

At a Court of General Sessions, convened July 3, 2008, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

That on or about February 6, 2008, in York County, South Carolina, the Defendant, Kenneth Darrell Morris, II, did possess with intent to distribute, dispense, or deliver a quantity of marijuana, a controlled substance under the provisions of Section 44-53-110, et seq., of the Code of Laws of South Carolina (1976, as amended); or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver marijuana, all in violation of Section 44-53-370 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DOCKET NO. 2008-GS-46-02837

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 3, Term 2008

THE STATE

VS.

KENNETH DARRELL MORRIS, II

Indictment for

TRAFFICKING ECSTASY (MDMA)

SC Code: §44-53-370
CDR Code: 2914

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

Defendant

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

Defendant

Witness:

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

WITNESSES

sett

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

FILE

nicia S. mon
on of Grand Jury

7/3/08

VERDICT

son of Petit Jury

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

STATE OF SOUTH CAROLINA)

v.)

Kenneth Darrell Morris, II,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
OF THE ~~FOURTH~~ JUDICIAL CIRCUIT
~~SIXTEENTH~~

MOTION TO SUPPRESS AND
INCORPORATED MEMORANDUM
OF LAW

Warrant No.: J-165012; J-165014;
J-165016; J-165018

Charge: Trafficking Ecstasy 3rd;
PWID Ecstasy Close Proximity to School;
PWID Marijuana;
PWID Marijuana Close Proximity to School.

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS

This matter is before the Court upon the Motion of the Defendant, Kenneth Darrell Morris, II, to suppress the evidence discovered during his detention following a traffic stop on February 6, 2008. For the following reasons, the Court should suppress the fruits of the seizure and search as a violation of the Fourth Amendment of the United States Constitution and as a violation of Article I Section 10 of the South Carolina Constitution.

I. Factual Background

On February 6, 2008, Kenneth Darrell Morris, II, was driving north on I-77. Brandon James Nichols was the passenger. As they passed through York County, they exited the interstate to find a restroom. After they pulled into the parking lot of a gas station, Officer L.T. Vinesett, Jr., stopped them for following too close on I-77 north bound. Constable W.E. Scott was riding with Officer Vinesett.

Officer Vinesett approached the vehicle from the passenger side and asked the driver, Morris, for his driver's license and vehicle registration. Vinesett then ordered Morris out of the vehicle and to sit in the patrol car. Vinesett then began questioning Morris on issues unrelated to the traffic stop. Vinesett then went back to the vehicle and asked the passenger for his driver's license and questioned him about their travel plans.

Vinesett returned to his patrol car. Morris asked to go to the restroom. Before Morris was

allowed to go to the restroom, Vinesett asked for and received permission to search him. Nothing illegal was found. Constable Scott escorted Morris to the restroom.

Officer Vinesett called Officer W.R. Gibson to bring K-9 Justice to the scene. Officer Gibson arrived at the traffic stop approximately eight and one-half minutes after the initial stop. He and Vinesett approached the passenger side of the vehicle. Gibson asked Nichols if he could search the car or if he needed to get the drug dog out and he refused. Vinesett asked Nichols to step out of the vehicle again. Gibson then deployed K-9 Justice and conducted a sniff of the vehicle. Justice did not alert on the vehicle. Despite the fact that the drug dog did not alert on the vehicle, Officer Vinesett searched the interior of the vehicle. He did not find any contraband. Officer Vinesett then searched the trunk of the vehicle. This search resulted in a seizure of what is alleged to be 393 ecstasy pills. Afterwards, Constable Scott drove the vehicle to the Rock Hill Police Department and a second search of the vehicle resulted in a seizure of what is alleged to be 227 grams of marijuana, which was also discovered in the trunk of the vehicle.

Vinesett states that "[w]ith probable cause Officer Vinesett and Officer Gibson searched the vehicle and located in the trunk..." Although Vinesett does not set out specifically what the "probable cause" was, or why the prolonged detention of the Defendants was justified, a review of his report indicates the following: an odor of marijuana coming from the vehicle; blunt tobacco in the vehicle; both defendants said they were in Atlanta, however, Morris said they went to visit some girls and Nichols said they went to see the driver's cousin play basketball.¹ Approximately fourteen minutes passed from the initial contact of the officer and the officer's search of the vehicle.

II. Law/ Analysis

A. Violation of the Fourth Amendment

The Fourth Amendment guarantees "[t]he right of the people to be secure in their

¹ General Sessions Case File Summary.

persons, houses, papers, and effects, against unreasonable searches and seizures.”² The Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention.³ Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment.⁴

Police may stop and briefly detain a vehicle for a traffic violation and once the vehicle is stopped, the police may order the driver to exit the vehicle.⁵ In carrying out the stop, an officer may request a driver’s license and vehicle registration, run a computer check, and issue a citation.⁶ Any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime.⁷ Once the reason for the stop has been satisfied, the stop may not be used as a “fishing expedition for unrelated criminal activity.”⁸

The police may lengthen a detention for further questioning beyond that related to the initial stop in two circumstances. The officer may detain the driver for questioning unrelated to the initial stop: 1) if he has an objectively reasonable and articulable suspicion of criminal activity, or 2) if the initial detention has become a consensual encounter.⁹

B. State v. Williams

In State v. Williams,¹⁰ the Court of Appeals affirmed the trial court’s suppression of evidence where there was no reasonable, articulable suspicion to support the continued detention of the passenger of a vehicle after completion of a traffic stop. In Williams, the officer asked the

² U.S. Const. amend IV.

³ *State v. Pichardo*, 367 S.C. 84, 97 (Ct.App. 2005), citing *U.S. v. Mendenhall*, 446 U.S. 544 (1980).

⁴ *Id.*, citing *Whren v. U.S.*, 517 U.S. 806 (1996).

⁵ *Id.*, citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

⁶ *Id.*, citing *U.S. v. Sullivan*, 138 F.3d 126 (4th Cir.1998).

⁷ *Id.*

⁸ *State v. Williams*, 351 S.C. 591, 598 fn 1 (Ct.App. 2002).

⁹ *State v. Pichardo*, 367 S.C. 84, 99 (Ct.App. 2005).

¹⁰ 351 S.C. 591 (Ct.App. 2002).

driver to step out of the vehicle while the passenger remained seated.¹¹ Once he had explained the ticket to the driver and returned his license and registration, the officer said he wanted to ask a few questions.¹² The officer asked the driver where they were coming from, where they were headed, the name of the passenger, and what their relationship was.¹³ The officer said that he became suspicious because the driver and passenger gave inconsistent answers to his questions.¹⁴ The driver then consented to a search of the car, and the officer discovered twenty-five pounds of marijuana.¹⁵

The detention in Williams lasted between twenty-five and forty minutes.¹⁶ Despite the officer's testimony that the Defendant was free to leave before answering the questions, the court held that the Defendant was not free to leave and that the Defendant was seized for purposes of the Fourth Amendment.¹⁷ In deciding whether a Fourth Amendment seizure had occurred, the Court noted "the detention associated with roadside searches is unlike a mere field interrogation where an officer may question an individual without grounds for suspicion. Roadside consent searches are instead more akin to an investigatory stop that does involve a detention."¹⁸

The circumstances the Court considered included: it was a roadside traffic stop; the presence of two uniformed officers and a drug dog; the officer asked the driver to exit his car so that the officer could talk to driver and passenger separately; the officer asked a second officer to stand by the driver at the rear of the car while the first officer questioned the passenger; and the seemingly innocuous but immediate transition from the valid traffic stop such that the defendants may not have realized that the initial seizure had ended.¹⁹

In addition, the Court concluded that the consent to search was not valid, because: it was

¹¹ *Id.* at 595.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 596.

¹⁵ *Id.*

¹⁶ *Id.* at 602.

¹⁷ *Id.* at 601.

¹⁸ *Id.* at 601-2.

¹⁹ *Id.* at 602.

obtained through the officer's exploitation of the unlawful detention; a minimal amount of time had passed between the seizure and the ensuing consent; there were no intervening or attenuating circumstances; and the detention had no legal basis.²⁰

There was no consent to search in this case. However, as in Williams, the search in the instant case was an exploitation of the unlawful detention, there was no reasonable, articulable suspicion of criminal activity to justify the prolonged detention, and the evidence that was acquired as a result should be suppressed.

The incident report does not reflect the officer's basis for reasonable suspicion to prolong the Defendant's detention. The following information, however, is contained in the General Sessions Case File Summary:

- a. Officer Vinesett could smell an odor of marijuana coming from the vehicle;
- b. He noticed all throughout the vehicle blunt tobacco all in the floor and on the center console of the vehicle; and
- c. The two suspects' stories were inconsistent with the reason for the trip;

Vinesett first approached the passenger side window of the vehicle, and then asked the driver, Kenneth Darrell Morris, II, to accompany him to his patrol car. Vinesett questioned Morris as to where they were coming from and what they had going on there. Morris responded that were coming from Atlanta and they were there to visit some girls.

After questioning Morris, Vinesett returned to the passenger side window and asked Brandon James Nichols similar questions. Nichols responded that they were coming from Atlanta and that they went to see the driver's cousin play basketball.²¹

Vinesette did not inquire as to whether Morris and Nichols were in Atlanta to see the same people or the same family members. He did not inquire as to whether the girls were family members or friends of the cousin. The fact that each of them stated a different reason for being in

²⁰ *Id.* at 604.

²¹ General Sessions Case File Summary

Atlanta, without further inquiry as to the details of their visits, was not inconsistent to the point of creating a reasonable suspicion that the Defendants were engaged in criminal activity.

Similarly, the officer's observation of tobacco in the vehicle does not give rise to the point of establishing a reasonable suspicion that the Defendants were engaged in criminal activity.

With regard to the odor of marijuana, the Defendant concedes that case law supports the proposition that the odor of marijuana has been held to establish probable cause. This case, however, can be distinguished. First, Morris challenges the reliability of Officer Vinesette's statement. When Vinesett radios the drug dog handler, he never mentions the smell of marijuana. In fact, Vinesett and Gibson discuss getting consent to search. When Officer Gibson arrived, he immediately asked for consent to search or he would get the drug dog. Once consent was denied, Gibson deployed the drug dog (over ten minutes after the initial contact with Officers Vinesette and Scott). The drug dog did not alert.²²

Once the drug dog did not alert, the officers had absolutely no reasonable, articulable suspicion of criminal activity or to support the continued detention of the Defendant. Approximately fourteen minutes passed from the initial contact of the officer and the officer's search of the vehicle.

C. State v. Pichardo

State v. Pichardo²³ is another case where the Court found no reasonable suspicion to justify a prolonged detention, and that the search was an exploitation of the original stop.²⁴ The officer said that the driver appeared nervous, and the Defendants were driving from Miami to New

²² Video tape of traffic stop.

²³ 367 S.C. 84 (Ct. App. 2005). There is a discussion in *Pichardo* of whether the Defendant Reyes spoke sufficient English to consent to the search of his vehicle. However, the opinion is clear that the basis for the Fourth Amendment violation is that there was no reasonable, articulable suspicion of criminal activity ("when the Deputy asked for consent the Defendants were detained anew, triggering the Fourth Amendment," *Id.* at 104.)

²⁴ *Id.* at 104.

York.²⁵ The Deputy returned their paperwork and then asked if he could ask a question – he then explained the situation they had with people running contraband on the interstate, and asked for consent to search the car.²⁶ A kilo of heroin was found inside the car door.²⁷ The Court held that when the Deputy asked for consent the Defendants were detained anew, triggering the Fourth Amendment.²⁸

By prolonging the initial stop beyond its proper scope, the Deputy rendered the ensuing encounter coercive.²⁹ The circumstances considered by the Court in determining that the Defendants were not free to leave included: the two men were isolated when questioned; the Deputy requested them to separately step to the rear of the vehicle; two uniformed officers were present; and both Defendants were physically searched.³⁰

D. State v. Jones

State v. Jones³¹ is another Court of Appeals case that illustrates a detention that is reasonable. In Jones, the Court held that a detention was not unreasonably prolonged where the passenger jumped from the car and ran before the officer finished explaining the ticket to the driver, throwing 230.83 grams of crack to the ground as he ran.³² The Court found that there was no further detention for questioning beyond the scope of the stop – the purpose of the stop, the issuance of the traffic ticket, had not been fulfilled when the passenger jumped from the car and ran, throwing objects to the ground.³³ The detention was at most eleven minutes.³⁴

In contrast, in the instant case the detention lasted for approximately ¹⁵⁻²⁰thirty-one minutes, and there was no precipitating event such as the passenger leaping from the car throwing crack rocks as he ran. As in Williams, in the instant case the officer questioned the car's occupants, later

²⁵ *Id.* at 92.

²⁶ *Id.* at 93.

²⁷ *Id.*

²⁸ *Id.* at 104.

²⁹ *Id.* at 103.

³⁰ *Id.*

³¹ 364 S.C. 51 (Ct.App. 2005).

³² *Id.* at 55-6.

³³ *Id.* at 58.

³⁴ *Id.* at 56.

stating that their statements were inconsistent, and then requested consent to search the vehicle, thereby extending the traffic stop beyond its proper scope and exploiting the original stop.

E. Suppression of the evidence is the proper remedy

The detention of the Defendant and search of the car were unlawful and in violation of the Constitution, therefore the evidence which was obtained should be inadmissible as fruit of the poisonous tree.³⁵

F. Violation of the South Carolina Constitution

The Court should suppress the evidence discovered during the seizure and search of the Defendants and the vehicle on February 6, 2008, because the officer's conduct violated Article One, section ten of the South Carolina Constitution.

Like the Federal Constitution, the South Carolina Constitution protects against unreasonable searches and seizures. Specifically, Article One, section ten of the South Carolina Constitution states, in pertinent part, "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated[.]"³⁶

"It is firmly established that state courts may interpret their own constitutions in such a way as to expand rights conferred by the Federal Constitution."³⁷ On several occasions, the Supreme Court of South Carolina has interpreted the South Carolina Constitution in a manner more expansive than the Federal Constitution.³⁸

³⁵ *Sikes v. State*, 323 S.C. 28 (1994), citing *Wong v. U.S.*, 371 U.S. 471 (1963).

³⁶ S.C. Const. Art. I, Sec. 10 (emphasis added).

³⁷ *State v. Austin*, 306 S.C. 9, 16 (Cl. App. 1991). See also *South Carolina v. Forrester*, 343 S.C. 637, 644 (2001) (stating "the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution resulting in the exclusion of the discovered evidence").

³⁸ See, e.g., *Jernigan v. South Carolina*, 340 S.C. 256, 264 n.5, 531 S.E.2d 507, 511 n.5 (2000) ("[W]e find the change in parole consideration under § 24-21-645 offends S.C. Const. art. I, § 4, even if the federal constitution is not offended."); *Singleton v. South Carolina*, 313 S.C. 75, 89, 437 S.E.2d 53, 61 (1993) ("We hold that the South Carolina Constitutional right to privacy would be violated if the State were to sanction forced medication solely to facilitate execution."). See also *Forrester*, 343 S.C. at 645, 541 S.E.2d at 841 ("The South Carolina Constitution, with an express right to privacy provision included in the article

As discussed above, the South Carolina Constitution provides greater protections to its citizens than the Federal Constitution. In this case, the officer's detention of the Defendants and search of Rivera's vehicle violated Article I, § 10 of the South Carolina Constitution because the officer had no reason for the detention and search. Such a suspicion-less detention and search not only violates the Fourth Amendment of the United States Constitution, but it also violates the Defendants' right to privacy under the South Carolina Constitution.

The inclusion of the express privacy language in Article I, § 10 of the South Carolina Constitution and the decisions in Singleton, Austin, Jernigan, and Forrester, where the supreme court gave the citizens greater protection under the South Carolina Constitution based upon the express privacy language in Article I, § 10 of the South Carolina Constitution, demonstrate that the seizure of the Defendant and the search of Rivera's vehicle violated the Defendant's right to privacy under the South Carolina Constitution.

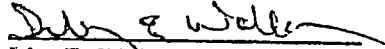
III. Conclusion

As in Williams, the search in this case was an exploitation of the unlawful detention, there was no reasonable, articulable suspicion of criminal activity to justify the prolonged detention, and the evidence which was acquired as a result should be suppressed.

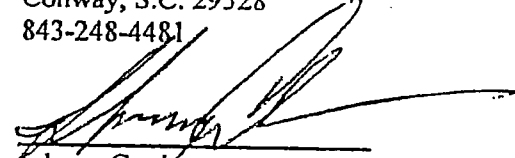
For the foregoing reasons, the Court should suppress the fruits of the seizure and search as a violation of the Fourth Amendment of the United States Constitution and as a violation of Article I Section 10 of the South Carolina Constitution.

prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.").

Respectfully submitted,



Irby E. Walker
212 Elm Street
P.O. Box 1138
Conway, S.C. 29528
843-248-4481



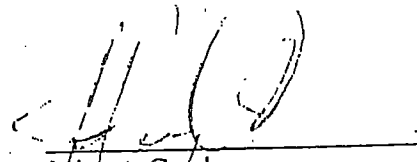
Johnny Gardner
1413 Tenth Avenue
P.O. Box 1001
Conway, S.C. 29528
843-248-7135

Attorneys for the Defendant

April 14, 2009

CERTIFICATE OF COUNSEL

Counsel for Appellant Kenneth Darrell Morris, II certifies that the forgoing Record on Appeal contains all material proposed to be included by all parties to this action. Counsel further certifies that this Record on Appeal includes no other materials.



Johnny Gardner
Gardner Law Firm, P.A.
1423 Tenth Avenue
Conway, SC 29526
(P) 843-248-7135
(F) 843-248-0270

ATTORNEY FOR THE APPELLANT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

**On Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge**

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

KENNETH DARRELL MORRIS, II,

APPELLANT.

Appellate Case No. 2011-203786

APPENDIX

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

Moss Justice Center
1675-1A York Highway
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

JOHNNY GARDNER
212 Main Street
Conway, SC 29526
(843) 248-7135

ATTORNEY FOR APPELLANT

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

John C. Haynes, III, Circuit Court Judge

State of South Carolina, ... Respondent,

v.

Kenneth Darrell Morris, II, ... Appellant.

FINAL BRIEF OF APPELLANT

Johnny Gardner, Esq.
P.O. Box 1001
Conway, SC 29526
(843) 248-7135

Jonathan Hiller, Esq.
P.O. Box 1001
Conway, SC 29526
(843) 248-7135

ATTORNEYS FOR APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the trial judge commit clear error when he denied the appellant's motion to suppress drugs found during the traffic stop when, after a prolonged detention, the officer conducted a warrantless vehicle search without probable cause or consent?

II. Did the trial judge commit clear error when he accepted the allegation that one officer smelled burnt marijuana during the detention?

STATEMENT OF THE CASE

The York County Grand Jury indicted the appellant, Kenneth Darrell Morris, II, (Morris) on July 3, 2008 for trafficking ecstasy and for possession of marijuana with intent to distribute. The grand jury also indicted a co-defendant, Brandon Nichols, (Nichols) who accepted a plea deal. Morris pleaded not guilty and requested a jury trial.

At the request of the defense, the Honorable John C. Haynes, III conducted a suppression hearing before the start of Morris's trial. Both the solicitor and defense counsel handed up written motions that addressed the admissibility of the drugs (R. p. 3, lines 16-22). At the end of the hearing, the trial judge respectfully denied the motion to suppress the drugs found in Morris's vehicle (R. p. 57, lines 7-8). Judge Haynes found that the search was supported by probable cause, (R. p. 62, line 6), and that the duration of the traffic stop was not unreasonable (R. p. 58, line 23). Morris's trial began on April 15, 2009.

During the State's case-in-chief, the solicitor moved to introduce the drugs into evidence (R. p. 67, lines 3-4; R. p. 68, lines 24-25). Defense counsel objected appropriately (R. p. 67, lines 5-6; R. p. 69, line 3). Consistent with his ruling at the suppression hearing, Judge Haynes overruled the objections and admitted the drugs into evidence (R. p. 67, lines 7-8; R. p. 69, lines 4, 6). On April 17, 2009, the jury returned a verdict of guilty on the charge of trafficking ecstasy and returned a verdict of guilty on the lesser-included offense of simple possession of marijuana (R. p. 72, lines 22-23; R. p. 73, lines 2-4). At the trial's conclusion, Judge Haynes sentenced Morris to 30 years in prison (R. p. 74, lines 22-25). Morris timely filed and served his Notice of Appeal on April 24, 2009.

STATEMENT OF THE FACTS

During the early afternoon hours of February 6, 2008, Morris and Nichols were driving northbound on I-77 through York County, SC. Around 2:00 p.m., Morris exited I-77 to take a brief rest stop at an Exxon gas station (R. p. 8, lines 2-3). As he pulled into the station's parking lot, Officer L.T. Vinesett Jr. (Vinesett) of the York County Highway Interdiction Team (HIT) executed a traffic stop on Morris's vehicle because he had observed Morris commit a traffic infraction on I-77. The time stamp on the camera mounted inside Vinesett's unmarked patrol car reveals the detention began at 14:06:18 p.m. Videotape: Kenneth Morris Traffic Stop (On file with the South Carolina Court of Appeals).

Vinesett exited his patrol car and approached the passenger side of Morris's rented vehicle (the Ford). At the same time, Constable W.E. Scott (Scott), who was riding with Vinesett, took up a position near the trunk of the Ford. Vinesett asked Morris to produce his license and registration and told Morris that he had been stopped for following another vehicle too closely (R. p. 75, lines 7-9). Morris began to explain that he stopped at the Exxon to use the restroom (R. p. 75, lines 6, 10-12).

While speaking with Morris, Vinesett saw what he recognized as loose cigar tobacco laying around the center console area of the Ford (R. p. 11, lines 6-7). He also observed some partially-smoked, "hollowed out" cigars in the same vicinity (R. p. 11, line 5). The case summary report he prepared some days later indicates that Vinesett detected the smell of burnt marijuana too (R. p. 30, lines 5-14). But he did not mention this smell to Morris or Nichols. Instead, Vinesett ordered Morris out of the Ford to discuss the traffic violation (R. p. 75, lines 23-24). Because of rainy conditions that afternoon, he asked Morris to get into his patrol car (R. p. 13, lines 3-6).

Inside the patrol car, Vinesett inquired about Morris's travel plans (R. p. 76, lines 7-11, 21-22). He discovered Nichols had rented the Ford the previous day in Greensboro, and that Morris and Nichols were on their way back from a rendezvous with some girls in Atlanta (R. p. 13, lines 19-20). Vinesett then peppered Morris with specific questions about the trip, the girls, and the prior evening's accommodations. He also questioned Morris about his criminal record and learned that Morris had previously been convicted of a drug related offense (R. p. 78, lines 16-17). Once finished questioning Morris, Vinesett asked Nichols about his travel itinerary. Nichols said he was returning from Atlanta where he watched a basketball game (R. p. 14, lines 12-17).

The video recording of the traffic stop reveals that at 14:11:25 p.m. (just over five minutes into the detention) Vinesett ended his interrogation of Nichols, returned to his patrol car, and told Morris to get out. He placed Morris under the custody of Scott, (R. p. 80, lines 23-24), and then called Officer W.R. Gibson (Gibson), a K-9 officer with HIT (R. p. 81, lines 1-2). He asked Gibson to bring a drug dog to the scene (R. p. 35, lines 12-13). To support his request, Vinesett said he had detained two young guys coming from Atlanta (R. p. 81, lines 3-4). He told Gibson that Morris said they made the trip to visit some girls, but Nichols said they went to watch a basketball game. He also mentioned Morris's prior record and said he could see "shake"¹ inside the Ford (R. p. 81, lines 12-14). He never once mentioned the smell of burnt marijuana (R. p. 35-36, lines 24-25, 1-3).

¹ The term "shake" is often used as a slang word for small fragments of marijuana. Urban Dictionary, <http://www.urbandictionary.com/define.php?term=shake> (last visited Nov. 23, 2009). However, very early on in the suppression hearing Vinesett readily admitted that he recognized the "shake" he saw in the passenger compartment of the Ford as loose tobacco, not loose marijuana (R. p. 11, lines 5-7).

Before the drug dog arrived, Vinesett asked Morris if he still needed to use the restroom (R. p. 82, lines 12-13). Morris responded that he did. But before he allowed Morris to go inside the gas station under Scott's supervision, Vinesett conducted a consensual search of Morris's person. It produced no contraband (R. p. 34, lines 10-17). Once Morris and Scott left the scene, Vinesett asked Nichols to step outside the Ford, and he complied.

He did not mention the smell of burnt marijuana to Nichols at this time; though much later in the stop Vinesett would state that when Nichols exited the Ford, he "swore [he] could smell some marijuana" (R. p. 87, lines 13-14). Instead, Vinesett completely ignored any odor he detected and asked for consent to search Nichols's person (R. p. 83, lines 15-16). After the search failed to reveal any evidence of illegal activity, Vinesett still made no mention of the smell of burnt marijuana. He merely told Nichols that the traffic stop was not over (R. p. 83, lines 22-23).

About the time Vinesett finished his search of Nichols (eight and one-half minutes after he made the stop) Gibson arrived at the gas station with the drug dog. Both officers tried to get consent to search the Ford with the threat that Gibson would get his dog out if Nichols refused to give consent (R. p. 84, lines 10-15). Nichols would not give his consent, so Gibson went for his dog (R. p. 37, lines 8-11).

While Gibson and the dog worked, Vinesett continued his drug investigation. He asked Nichols if his license had ever been suspended or if he had ever been arrested (R. p. 85, lines 14-23). Nichols responded in the negative to both questions. Then, Vinesett asked Nichols to tell him about the last time he smoked marijuana (R. p. 85, lines 24-25). He assured Nichols that he could not do anything to him if Nichols admitted to smoking earlier that day (R. p. 86, lines 4-5). The microphone Vinesett wore failed to capture Nichols's

exact response, but never once during the detention did Nichols admit to smoking marijuana (R. p. 87, lines 22-23; R. p. 89, lines 9-10, 15-18).

Gibson walked the dog around the Ford twice with at least one window rolled down (R. p. 48, lines 15-18). The dog did not alert, and he finally gave up and returned the dog to his vehicle (R. p. 37, lines 23-25). Vinesett then asked Nichols for consent to search the Ford a second time. Nichols again refused to consent (R. p. 86, lines 15-18). The officers then engaged in a hushed conversation that Vinesett's microphone failed to capture. After that conversation ended (thirteen minutes into the detention) Vinesett for the first time claimed that he "swore [he] could smell some marijuana," (R. p. 87, lines 13-14), when Nichols exited the Ford. Not once during the detention did Vinesett say that he smelled burnt marijuana as he first approached the Ford, which was his testimony during the suppression hearing (R. p. 10, lines 16-22).

Nichols denied the allegation and attributed any odor Vinesett detected to his Black and Mild cigar (R. p. 87, lines 15-16). The officer walked over to the Ford and searched the center console area of the passenger compartment (R. p. 40-41, lines 22-25, 1-7). He examined the partially-smoked, "hollowed out" cigars he had seen earlier and determined those cigars did not contain any marijuana residue (R. p. 40, lines 5-11). The search of the passenger compartment produced no evidence that either Morris or Nichols had engaged in any criminal activity.

Without any further evidence, Vinesett then engaged in a full-blown search of the Ford. He opened the trunk and proceeded to riffle through the personal belongings it contained. Inside a gift box, he found a plastic bag containing ecstasy pills (R. p. 16, lines

12-14). An inventory search conducted at the impound lot revealed marijuana hidden under the spare tire. From start to finish, the detention lasted just over fourteen minutes.

Standard of Review

An appellate court may only review a trial court's ruling on a Fourth Amendment search and seizure issue for clear error. State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000). Under this standard, "[a]n appellate court must affirm the trial court's ruling if there is any evidence to support the ruling," id. at 66, 528 S.E.2d at 666, and cannot reverse "a trial court's finding of fact simply because it may have decided the case differently." State v. Corley, 383 S.C. 232, 239, 679 S.E.2d 187, 191 (Ct. App. 2009). While the clear error standard is deferential to the discretion of the trial court, an appellate court may still reverse if "on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed." Easley v. Cromartie, 532 U.S. 234, 242 (2001) (internal citations omitted).

ARGUMENT

The trial judge committed clear error when he failed to suppress the drugs found during Vinesett's warrantless search of the Ford. First, assuming (but not conceding) that Vinesett was acting on more than a mere hunch of criminal activity during the traffic stop, he never had probable cause to conduct a warrantless vehicle search as required by the automobile exception to the Fourth Amendment's warrant requirement.

Vinesett extended the scope of the traffic stop numerous times to corroborate his suspicion that Morris and Nichols had engaged in criminal conduct, which he testified to be the consumption of marijuana (R. p. 40; lines 12-18). But not one of these extensions produced any evidence from which a reasonably cautious person could conclude that contraband would be found in the Ford's trunk. Blind to the totality of the circumstances,

Vinesett searched anyway. In so doing, he conducted a warrantless search of the Ford without probable cause.

Vinesett also illegally extended the duration of the traffic stop. The fourteen-minute detention lasted much longer than was necessary for Vinesett to request Morris's driver's license and registration, run a license check, and issue a traffic citation. Both the transcript and the video recording of the traffic stop reveal that Vinesett wholly abandoned the reason he executed the traffic stop five minutes into the detention. He transformed it into a blatant fishing expedition for evidence of criminal activity that culminated in an illegal search.

For these reasons, Vinesett's search was patently unlawful; the trial court's decision to admit the drugs into evidence was clear error, and Morris's conviction should be reversed.

I. The trial court should have suppressed the drugs because the officer's warrantless, full-blown search of the vehicle was not supported by probable cause.

The Fourth Amendment of the Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. This constitutional protection extends to the use of automobiles. "[A]n automobile stop implicates the Fourth Amendment prohibition against unreasonable searches and seizures, imposing a standard of 'reasonableness' upon the exercise of discretion by [law enforcement officers]." State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006). South Carolina courts have provided our officers with abundant guidance on what constitutes the reasonable exercise of discretion as they perform their law enforcement duties.

The decision to stop a vehicle is reasonable per se when an officer has probable cause to believe a traffic violation has occurred. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009) (citing Whren v. U.S., 517 U.S. 806 (1996)). "In carrying out the stop,

an officer 'may request a driver's license and vehicle registration, run a computer check, and issue a citation . . .'" State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (quoting U.S. v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998)). But, prolonging the stop to engage in further questioning is "beyond the scope of the [] stop and . . . illegal unless the officer has a reasonable suspicion of a serious crime." Id. (quoting Sullivan, 138 F.3d at 131). Thus, even if an officer suspects that a person, who has been lawfully detained for a traffic violation, could be engaged in criminal activity, he or she cannot prolong the stop without "a particularized and objective basis' that would lead [the officer] to suspect [the person] of criminal activity." State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting U.S. v. Cortez, 449 U.S. 411 (1981)).

Though the Fourth Amendment will certainly permit an officer to expand the scope and duration of a traffic detention provided his or her reasonable suspicion of criminal activity is particularized and objective, a warrantless search of a vehicle will only withstand constitutional scrutiny if it is supported by probable cause. Ornelas v. U.S., 517 U.S. 690, 693 (1996) ("An investigatory stop is permissible . . . if supported by reasonable suspicion, and a warrantless search of a car is valid if based on probable cause.") (internal citations omitted); accord State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007) ("Pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary [if] the search is based on facts that would justify the issuance of a warrant . . .").

An officer has the probable cause needed to conduct a warrantless search when the "circumstances known to [the] officer are such as to warrant a person of reasonable caution [to believe] that a search would reveal incriminating evidence." State v. Moultrie, 316 S.C. 547, 552 fn. 3, 451 S.E.2d 34, 37 (Ct. App. 1994) (quoting U.S. v. Thornton, 733 F.2d 121,

127 (D.C. Cir. 1984). As the United States Supreme Court has explained, "the question is whether the totality of the circumstances is sufficient to warrant a reasonable person to believe that contraband or evidence of a crime will be found in a particular place." Ornelas, 517 U.S. at 696 (emphasis supplied).

- A. Based on all the information gathered by the officer prior to the search, a reasonable person would not have had cause to believe contraband would be found in the trunk.

When he denied Morris's motion to suppress, the trial judge found Vinesett had a reasonable suspicion of criminal activity (R. p. 57, lines 18-19). He based this finding on Vinesett's detection of burnt marijuana and the officer's knowledge that "hollowed out" cigars can be used to smoke marijuana (R. p. 57, lines 19-21). However, the trial judge never stated that Vinesett's warrantless search was supported by probable cause until prompted to make that finding by the solicitor (R. p. 62, lines 4-7). Thus, the record is bereft of any evidence from which to conclude that the trial judge's probable cause analysis rested on more than the uncorroborated odor of burnt marijuana and Vinesett's knowledge that "hollowed out" cigars can be used as a receptacle for marijuana.

When he found Vinesett had probable cause to search the Ford based on the above grounds, the trial judge entirely overlooked the fact that Vinesett had already conducted a plain view search of the passenger compartment of the Ford about three minutes prior to his full-blown, warrantless search. That first search, which is grounded on the plain view exception to the warrant requirement, included an inspection of the exact same "hollowed out" cigars that Vinesett suspected had been used to smoke marijuana. It revealed those cigars were not paraphernalia and failed to produce any evidence to corroborate Vinesett's

allegation that marijuana had been smoked in the Ford. The trial judge's failure to properly factor the result of that plain view search into his probable cause analysis was clear error.

1. The plain view doctrine allowed the officer to examine the cigars observed in the passenger compartment of the vehicle.

The plain view doctrine applies to "any object falling within the plain view of [an] . . . officer who is lawfully in a position to view the object." State v. Abdullah, 357 S.C. 344, 352, 592 S.E.2d 344, 349 (Ct. App. 2004) (citing State v. Brown, 289 S.C. 581, 588, 347 S.E.2d 882, 885 (1986)). Under this doctrine, an officer may seize evidence or contraband if: "the initial intrusion which afforded the [officer] the plain view was lawful; the discovery of the evidence was inadvertent; and the incriminating [nature of the] evidence was immediately apparent to the seizing [officer]." Id. at 352-53, 592 S.E.2d at 344.

In the present case, Vinesett was in the process of investigating a lawfully executed traffic stop when he approached the Ford and observed partially-smoked, "hollowed out" cigars. In his case summary report, which a court's exhibit during the suppression hearing, (R. p. 24, lines 13-16), he wrote that he smelled marijuana immediately and claimed to smell burnt marijuana when Nichols exited the Ford (R. p. 87, lines 11-14). Vinesett also testified that, based on his training and experience, he suspected the cigars he saw had been hollowed out for the purpose of smoking marijuana (R. p. 11, lines 13-14). Assuming but not conceding he was certain that he really did smell burnt marijuana, then, under the plain view doctrine, Vinesett was likely justified in further investigating his suspicion by inspecting the cigars.

As the Supreme Court has explained, "[t]he plain view doctrine is often considered an exception to the general rule that warrantless searches are presumptively unreasonable, but this characterization overlooks the important difference between searches and seizures. If an

article is already in plain view, neither its observation nor seizure would involve any invasion of privacy." Horton v. California, 496 U.S. 128, 133 (1990). Thus, under Horton, the plain view search of the Ford's passenger compartment appears justified. But, because it revealed no evidence of criminal activity, Vinesett should have ended his drug investigation when his plain view search ended. See Arizona v. Hicks, 480 U.S. 321, 328 (1987) ("[T]he plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.").

On cross-examination during the suppression hearing, Vinesett admitted, in no uncertain terms, that he found no evidence of marijuana consumption inside the passenger compartment of the Ford.

COUNSEL: All right. So I'll ask you again, when you searched the [passenger] compartment of the car . . . you were looking for burnt marijuana?

VINESETT: I was looking for marijuana.

COUNSEL: Looking for marijuana?

VINESETT: I had smelled marijuana. I was searching the car for marijuana.

COUNSEL: Okay. You were looking for what you might find?

VINESETT: Yes sir.

COUNSEL: Fair enough. All right. And you didn't find it?

VINESETT: In the passenger compartment?

COUNSEL: That's correct.

VINESETT: No sir.

COUNSEL: No illegal contraband in the passenger compartment of the car?

VINESETT: No sir.

COUNSEL: Nothing? No burnt marijuana, no guns, no drugs, nothing?

VINESETT: No sir.

(R. p. 40-41, lines 12-25, 1-7). Clearly stated, Vinesett's own admission was that he was looking for evidence of marijuana use during his search of the Ford's passenger compartment, but never found any evidence to confirm his suspicion that Nichols or Morris used marijuana.²

2. The officer conducted the subsequent full-blown, warrantless search without probable cause.

The moment the plain view search of the Ford ended is the crucial center of focus for a proper probable cause analysis. It is also the moment during the traffic detention that the trial court failed to properly consider. Vinesett had just eliminated the "hollowed out" cigars as the source of the uncorroborated odor of burnt marijuana, watched a drug dog fail to alert on the Ford, and searched both Morris and Nichols to no avail. The only available avenue remaining for him to further explore his hunch that drugs were present was to conduct a warrantless, full-blown vehicle search. Vinesett elected to take this avenue, but did so without probable cause, so the drugs he found should have been suppressed.

A panel of this Court recently decided a case that involved a warrantless search conducted after an officer issued the defendant a warning ticket for speeding on I-85. State v. Tindall, 379 S.C. 304, 306, 665 S.E.2d 188, 190 (Ct. App. 2009) (cert. granted ___ S.C. ___, ___ S.E.2d ___). About 20 minutes into this detention, the officer (allegedly acting with the

² Even though he never mentioned the odor to anyone (including his fellow officers) until after the plain view search ended, apparently Vinesett was also looking for evidence of that Morris or Nichols had consumed marijuana when he searched Morris and Nichols prior to the drug dog's arrival. The purpose of calling the drug dog at the scene also seemed to be to uncover evidence of marijuana consumption. Neither effort was successful.

defendant's consent) searched and found 2,380 grams of cocaine hidden under the rear bumper of Tindall's rented vehicle. Id., 665 S.E.2d at 190.

The officer extended the duration of the traffic stop beyond the initial detention because he suspected Tindall was a drug runner. To support his suspicion, he observed that: Tindall remained nervous even after he was told he would receive only a warning ticket; he was driving a rental car he had not rented (though he was an authorized driver); he was driving one way between two "drug hubs," and he was planning to be on the road for approximately eighteen hours that day. Id. at 311, 665 S.E.2d at 192.

The panel found it unnecessary to even consider the argument that Tindall failed to give valid consent to the search, reasoning that it did not need to reach that argument because it found "evidence in the record to support the determination that [the officer] had a reasonable suspicion something illegal was occurring." Id., 665 S.E.2d at 192 (emphasis supplied). Because of the officer's reasonable suspicion, the panel held "the search and seizure did not violate Tindall's Fourth Amendment rights, and the trial court did not err in admitting the cocaine." Id., 665 S.E.2d at 192.

The appellant respectfully disagrees with the Tindall Court's conclusion that a mere reasonable suspicion of criminal activity is sufficient to conduct a warrantless vehicle search. Ever since announcing the automobile exception in Carroll v. United States, the United States Supreme Court has never relaxed the standard that probable cause is required before an officer may search a vehicle without a warrant. See, e.g. California v. Acevedo, 500 U.S. 565, 569 (1991) ("[A] warrantless search . . . based upon probable cause . . . [does] not contravene the Warrant Clause of the Fourth Amendment.") (internal citations omitted), and

Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (if probable cause exists to believe a vehicle contains contraband, the Fourth Amendment permits police to search without more).

Prior to Tindall, no South Carolina appellate court has ever suggested that a full-blown, warrantless vehicle search could be supported by less than probable cause. "A warrantless search of a vehicle may be made if there is probable cause to believe the vehicle contains evidence of a crime; and there are exigent circumstances arising out of the mobility of the vehicle and its consequently likely disappearance if the search is not executed immediately." State v. Brannon, 347 S.C. 85, 91, 552 S.E.2d 773, 776 (Ct. App. 2001) (Anderson, J., concurring in result); see also State v. Moore, 377 S.C. 299, 309, 659 S.E.2d 256, 261-62 (Ct. App. 2008) (finding sufficient information to establish probable cause which, combined with the automobile exception, justified the warrantless vehicle search).

Based on the above, the automobile exception to the Fourth Amendment's warrant requirement only allows an officer to forego the process of obtaining a warrant to search a vehicle "so long as the search is based on facts that would justify the issuance of a warrant." Weaver, 374 S.C. at 320, 649 S.E.2d at 482. The warrantless search of Morris's vehicle that began approximately fourteen minutes into the detention was not based on facts that would allow a magistrate, objectively viewing all the evidence, to issue of a search warrant. Any evidence Vinesett had of drug activity was simply not sufficient to allow a reasonably cautious person to conclude that the search of a locked trunk would produce evidence of recent marijuana consumption after the plain view search of the passenger area of the Ford

revealed no such evidence; a drug dog gave no such alert, and the search of both Morris's person and Nichols's person produced no such evidence.³

Thus, the trial judge committed clear error when he upheld Vinesett's search. His analysis as he articulated it was integrally based on the officer's knowledge that "hollowed out" cigars can be used to smoke marijuana (R. p. 59, lines 22-23). He simply failed to properly evaluate the fact that Vinesett knew the cigars – the logical and only potential source of the smell – did not contain any evidence to support the allegation he smelled burnt marijuana.⁴

B. The uncorroborated odor of burnt marijuana with no additional evidence of marijuana consumption should not give an officer probable cause to conduct a warrantless vehicle search.

During the suppression hearing, the solicitor argued that the odor of burnt marijuana, standing alone, is sufficient to establish probable cause to conduct a warrantless search (R. p. 57, lines 1-6). However, this argument is misguided. Fourth Amendment jurisprudence is seldom amenable to bright-line tests, and allowing an officer to conduct a warrantless search a vehicle based on nothing more than the unsubstantiated allegation the he smelled burnt marijuana creates a potential for abuse. This is especially true when the burden imposed by requiring an officer to first corroborate the odor before conducting a search is marginal.

³ United States v. Ross, 456 U.S. 798 (1982) is of no help to the State because it stands for the proposition that an officer may search the entire vehicle provided he or she has probable cause to initiate the search. Here, the appellant argues that Vinesett never had probable cause to search the passenger compartment of the Ford, and any right he had to conduct that search was grounded solely on the plain view exception to the warrant requirement.

⁴ In fact, Vinesett testified that he knew Black and Mild cigars and burnt marijuana have different smells (R. p. 43, lines 19-23). The judge found this testimony credible (R. p. 58, line 14). But this lending of credibility to Vinesett's testimony does not at all square with the fact that Vinesett unequivocally admitted the "hollowed out" cigars were not paraphernalia.

The better approach is to treat an officer's alleged detection of burnt marijuana as a reasonable suspicion of criminal activity until it is confirmed or corroborated. Only after the presence of the odor is somehow substantiated should an officer be permitted to engage in a warrantless vehicle search. This approach resonates with prior South Carolina treatment of the odor of burnt marijuana when detected during a traffic stop. It also better ensures that officers will continue to take into account the totality of circumstances known to them during a traffic stop instead of focusing solely on one aspect of the stop to the exclusion of others.

1. **The Fourth Amendment is seldom amenable to bright-line tests as an officer must evaluate the totality of the circumstances when engaged in a probable cause analysis.**

The United States Supreme Court has repeatedly cautioned that bright-line tests are seldom appropriate in the Fourth Amendment context. "The [Fourth] Amendment's touchstone is reasonableness, which is measured in objective terms by examining the totality of the circumstances. In applying this test, the Court has consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry." Ohio v. Robinette, 519 U.S. 33, 34 (1996). From a policy standpoint, a bright-line test in this context is inappropriate precisely because the circumstances surrounding each case that involves the alleged detection burnt marijuana are fact-specific and unique.

As an example, the Georgia Court of Appeals encountered a case where an officer testified he "could smell a strong odor of burnt marijuana almost smelling like it was smoldering and burning inside the vehicle . . . Long's eyes were extremely red and 'all washed out,' [and] both Long and [his passenger] 'were scared to death.'" State v. Long, 239 Ga. App. 463, 463-64, 521 S.E.2d 401, 402 (Ga. Ct. App. 1999). The Georgia appellate court reversed and remanded the case to correct an error made by the trial judge and noted in

dicta that "the odor of marijuana emanating from a car and driver, along with physical characteristics such as those manifested by Long, may provide probable cause to search a vehicle." Id. at 465, 521 S.E.2d at 403 (emphasis provided). Here, with seemingly strong testimony provided by an officer that marijuana was present, the court was still unwilling to craft a bright-line rule that would allow the officer to search based solely on the smell of burnt marijuana alone.

The adoption of a bright-line rule in South Carolina that would allow an officer, in the context of a traffic stop, to conduct a full-blown vehicle search based only on the allegation that he or she smelled burnt marijuana would effectively eviscerate the requirement that officers must consider the totality of the circumstances known to them when seeking to establish probable cause to search. Appellant would respectfully urge this Court to reject a bright-line approach such as this as a violation of the spirit (if not the letter) of Fourth Amendment jurisprudence and consider instead the approach adopted by the Tenth Circuit.

The odor of burnt marijuana in the passenger compartment of a vehicle does not, standing alone, establish probable cause to search the trunk of the vehicle. Rather, an officer obtains probable cause to search the trunk of a vehicle if he smells marijuana in the passenger compartment and finds corroborating evidence of contraband.

United States v. Bradshaw, 423 F.3d 1149, 1160 (10th Cir. 2005) (internal citations omitted).

The corroboration requirement advanced by this approach would ensure the concern that law enforcement officers could abuse their power by claiming to smell marijuana when none is present is kept to a minimum. Also, the Tenth Circuit's approach is reasonable and would not impose an undue burden on law enforcement endeavors.⁵ Finally, to adopt an

⁵ In most instances, corroboration of the presence of a controlled substance will occur as a matter of course during the investigation. The presence of marijuana can easily be confirmed in many ways, including: the competent testimony of other officers at the scene, the physical presence of illegal drugs or paraphernalia (e.g. found using the plain view doctrine or during

approach such as this would help keep the focus of law enforcement officers properly on the totality of the circumstances known to them.

In the present case, Vinesett ignored the totality of the circumstances known to him when he searched the Ford, and he certainly was unable to corroborate his alleged detection of burnt marijuana. Neither the search of Morris nor the search of Nichols revealed any corroborating evidence of marijuana use; the drug dog failed to alert on any part of the Ford, and Vinesett examined the "hollowed out" cigars and concluded they contained no marijuana residue before he made the decision to search the Ford's trunk.⁶ Thus, to find Vinesett's search supported by probable cause only because he claimed to smell burnt marijuana would be to ignore the greater weight of the evidence and the totality of the circumstances known to him during the traffic stop.

2. The uncorroborated odor of marijuana plus the observation of a partially-burnt cigar should at most create a reasonable suspicion of criminal activity.

While the uncorroborated odor of burnt marijuana standing alone should not give an officer probable cause to search, it is also clear that law enforcement officers cannot and should not be expected to ignore such an odor when potentially detected. The mandate that an officer must consider the totality of the circumstances when determining whether probable cause exists rejects this conclusion. Thus, the odor of burnt marijuana should be treated as a reasonable suspicion of criminal activity sufficient to allow the officer latitude to prolong the

[continued from p. 16] a lawfully conducted Terry frisk), the defendant's manifestation of the physical effects of marijuana consumption, or by a positive alert from a drug dog. The Georgia case discussed above is a perfect example. The defendant appeared to display "symptoms" of marijuana use while he was speaking with the law enforcement officers.

⁶ Furthermore, the record contains no evidence that Morris or Nichols appeared to be under the influence of marijuana or any other controlled substance. Neither does it contain any evidence that the other officers at the scene (Gibson and Scott) also smelled burnt marijuana.

scope and duration of the detention to further investigate whether marijuana is present and to attempt to locate its source.

Treating an officer's detection of burnt marijuana as a reasonable suspicion of criminal activity appears consistent with prior South Carolina case law. Recently, a panel of the Court of Appeals heard a case involving facts somewhat analogous to those present here. That case involved a traffic stop executed on James Odom because an officer observed him driving without his seatbelt fastened. State v. Odom, 376 S.C. 330, 334, 656 S.E.2d 748, 751 (S.C. Ct. App. 2007). As he approached the vehicle, the officer smelled "a strong odor of marijuana and recognized a Swisher-Sweet cigar on the dashboard." Id., 656 S.E.2d at 748.

Unlike the present case, Odom admitted he had smoked marijuana earlier that morning. Id., 656 S.E. at 748. While the officer never actually examined the cigar to see if it contained marijuana, he did notice an empty holster in the back seat of Odom's vehicle. Based on a concern for officer safety, he ordered Odom out of the vehicle and performed a Terry frisk. Id., 656 S.E.2d at 748. During the frisk, he felt and immediately recognized a bundle of raw marijuana on Odom's person and placed him under arrest. Id., 656 S.E.2d at 748. A search incident to lawful arrest produced more marijuana.

On appeal, the panel affirmed the trial court's decision not to suppress the marijuana and explained why the trial court properly allowed the marijuana into evidence.

The officer smelled a strong odor of marijuana as he approached Odom's car and noticed a common indicium of paraphernalia, a Swisher-Sweet cigar, on the dashboard. Additionally, Odom admitted to smoking marijuana earlier in the day, and [the officer] observed an empty gun holster in the back seat. Having cause to fear for his own safety and reasonable suspicion of the existence of drugs, [the officer] asked Odom to exit the vehicle and conducted a Terry search.

Id., 656 S.E.2d at 751 (emphasis supplied). Implying the observation of the empty holster coupled with some evidence of drug activity was sufficient to give the officer the reasonable

suspicion he needed to justify a Terry frisk, the Court held: "[t]he existence of the evidence described above gave [the officer] the reasonable suspicion necessary to perform a pat down for weapons . . ." Id. at 336, 656 S.E.2d at 751.

Comparing the rationale adopted by the Odom Court to the present case, Vinesett's uncorroborated claim that he smelled burnt marijuana plus his observation of a partially-smoked "hollowed out" cigar should have provided him with nothing more than a reasonable suspicion of the existence of drugs. Appropriately armed with this particularized and objective basis for his reasonable suspicion, Vinesett would then be justified in prolonging the scope and duration of the traffic stop while he continued to investigate his suspicions. Thus, the search of Morris and Nichols, the use of a drug dog, and the plain view search of the passenger compartment of the Ford were all at least arguably proper as Vinesett was merely continuing to investigate his reasonable suspicion of drug use (however it arose) without infringing on Morris's Fourth Amendment rights.

But because not one of the investigative techniques he employed revealed any physical evidence of contraband, Vinesett was left without sufficient facts "to warrant a reasonable person to believe that contraband or evidence of a crime will be found in a particular place." Ornelas, 517 U.S. at 696. In the end, he acted without probable cause when he searched the Ford's trunk, so the trial court should have suppressed the fruit of the search.

II. The trial court should have suppressed the drugs because the officer extended the length of the detention illegally.

At the conclusion of the suppression hearing, the trial court ruled that the "detention was not excessively long" (R. p. 58, line 23). For some reason, the trial judge's analysis focused on the moment Vinesett got Nichols out of the Ford (before the drug dog arrived) so he could search him. When he issued his ruling, the trial judge stated:

I find the stop and detention, while it was about – I have got about thirteen minutes, based on the times I was jotting down, but I believe it was only about five minutes before they – from 14:07 to 14:12. I believe about 14:12 was when they got the passenger out and indicated he smelled marijuana, or at least I have got a statement about that within five minutes, but I think the detention was not excessively long. I don't know that is any bright-line test for what is or is not a reasonable time

(R. p. 58, lines 1-25). Simply restated, the trial court's logic appears to be as follows.

Vinesett got Nichols out of the Ford about five minutes into the detention. Then, about five minutes later, Vinesett said he smelled burnt marijuana back when Nichols exited the Ford.⁷

Thus, the length of the detention was not excessive.

This analysis, like the probable cause analysis, amounted to clear error. As a threshold matter, the trial court's time calculations are inaccurate. The time stamp on the on-board camera that captured the stop reveals that Vinesett got Nichols out of the Ford a little over eight minutes after the traffic stop began. Five minutes into the stop, Vinesett was speaking with Nichols, but he was doing so to compare Nichols's story to the one Morris had just provided. Then, from the inception of the stop, it took Vinesett a full thirteen minutes to allege that he smelled burnt marijuana. In the intervening time, the search of Morris and Nichols occurred, the drug dog failed to alert on the Ford, and the plain view search of the cigars in the passenger compartment did not corroborate the presence of that odor. Only after all the time it took to conduct the above investigation transpired did Vinesett allege he smelled burnt marijuana and search the Ford's trunk.

This fact raises an important reason the length of the detention violated the Fourth Amendment. Vinesett stopped Morris because he observed him commit a traffic infraction. The appellant contends the length of the traffic stop had already far exceeded constitutional

⁷ For reasons unstated, the trial judge either refused or neglected to credit Vinesett's claim that he smelled burnt marijuana from the moment he approached the Ford.

limits when, thirteen minutes after the stop, Vinesett finally informed Nichols about the smell of burnt marijuana and proceeded to conduct the warrantless search of the Ford.

A. The officer extended the initial traffic stop multiple times to engage in a blatant fishing expedition for drugs.

When an officer conducts a traffic stop after he or she observed a traffic infraction occur, that officer “may briefly detain the vehicle and its occupants . . .” Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) (emphasis in original) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). During a typical traffic stop the officer may ask to see the driver’s license and vehicle registration, run a computer check, and issue a traffic citation.⁸ Williams, 351 S.C. at 598, 571 S.E.2d at 707 (quoting Sullivan, 138 F.3d at 131). But the detention “must be temporary and last no longer than necessary to effectuate the purpose of the stop.” Florida v. Royer, 460 U.S. 491, 500 (1983) (plurality opinion).

In the typical case, after an officer has “fulfilled” the purpose for the initial traffic stop, the detention may only be extended if the officer has an objectively reasonable suspicion of illegal activity or if the encounter becomes consensual. State v. Pichardo, 367 S.C. 84, 99, 623 S.E.2d 840, 847-48 (S.C. Ct. App. 2005). Though the precise moment a traffic detention ends is often elusive, a rough general rule seems to be that the initial stop is “fulfilled” when the officer issues a traffic citation and warning ticket. See Tindall, 379 S.C. at 311, 665 S.E.2d at 192 (cert. granted ___ S.C. ___, ___ S.E.2d ___) (“We find the traffic stop ended when [the officer] issued a warning ticket and returned Tindall’s license.”).

⁸ The United States Supreme Court has held that law enforcement officers may even utilize drug detection techniques during a lawfully conducted traffic stop. Illinois v. Caballes, 125 U.S. 834 (2005). However, the Court also cautioned “a seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” Id. at 837.

Appellant concedes that Vinesett's initial seizure was justified since he observed Morris commit a traffic infraction. But, the detention became unlawful when, approximately five minutes into the detention, Vinesett ceased addressing the traffic infraction and instead engaged in a full-blown fishing expedition for drugs. The moment he abandoned the traffic stop came when he had Morris in his police car and went to the Ford to interrogate Nichols.⁹

At the suppression hearing, Vinesett testified that a typical traffic stop without any indication of criminal activity lasts approximately five minutes (R. p. 20, line 5). He further stated that at the end of every traffic stop he is required to write either a traffic citation or a warning ticket (R. p. 20, line 18). The record below almost conclusively reveals that Vinesett did not complete the initial stop by writing Morris a traffic citation or warning. Almost seven minutes into the stop, Vinesett ended his call to the K-9 officer by stating he was about to get started on a warning ticket (R. p. 81, line 24). After that statement, the video recording of the traffic stop never captures Vinesett returning Morris's documents and a citation to him.

When he first approached the Ford, the first thing Vinesett did was ask Morris to get into his police cruiser so he could "explain" the situation to him (R. p. 75, lines 23-24). As soon as they sat down inside the cruiser, Vinesett launched into a series of specific questions about Morris's travel plans, including the floor on which his hotel room was located (R. p. 6, line 1). Once he had the answers he wanted, Vinesett presented Nichols with similar questions (R. p. 79, lines 13-22). As soon as he found an inconsistency, Vinesett immediately returned to his police car, ordered Morris out, and called the K-9 officer. After

⁹ The State may argue that Vinesett was justified in immediately launching into a drug investigation because he detected marijuana as soon as he approached the Ford. That argument is simply unsupported by the record and will be addressed in Part II-B, infra.

the call ended and instead of writing a warning ticket and "check[ing] 29s,"¹⁰ which is what he said he was going to do, Vinesett approached Morris and asked for consent to search him (R. p. 82, line 23). Morris cooperated with this request just as he and Nichols did throughout the detention.

When Gibson arrived on the scene around eight and one-half minutes after Vinesett initiated the traffic stop, Vinesett had just finished (or was about to finish) his search of Nichols. While Gibson and the dog worked, Vinesett did not return to the traffic citation. He was interviewing Nichols about his driving record, criminal record, and potential drug habits instead. Thus, over ten minutes into the detention, all three officers at the scene were actively engaged in exploring the suspicion that Morris and Nichols were engaged in criminal activity: Vinesett interviewed Nichols; Gibson worked the dog, and Scott kept a custodial eye on Morris.

Then, after the dog failed to alert, Vinesett detained Morris and Nichols for another three minutes while they conducted the plain view search of the passenger compartment of the Ford that eliminated the partially-burnt, "hollowed-out" cigars as the source of burnt marijuana. A full thirteen minutes into the detention, Vinesett finally "swore" he smelled marijuana five minutes earlier (R. p. 87, lines 11-14). He then opened the doors to the Ford, popped the trunk, and began to riffle through its contents.

The facts presented in this case are immediately distinguishable from another decision this Court recently issued. During a traffic stop initiated because the driver was speeding, the officer (Elrod) became suspicious because several passengers gave inconsistent

¹⁰ "Check 29s" is shorthand for 10-29, the code for running a criminal background check. Police Codes, <http://www.radiolabs.com/police-codes.html> (last visited Dec. 3, 2009). At the suppression hearing, Vinesett stated he ran a check of Morris's license while speaking with him in the police car early on in the detention (R. p. 32, lines 7-9).

stories about their travel itinerary. State v. Jones, 364 S.C. 51, 54, 364 S.E.2d 846, 847 (S.C. Ct. App. 2005). Jones indicated they had been in Greenville; another stated they had been in Spartanburg, and a third told him they were traveling from Atlanta. Id., 346 S.E.2d at 847. Elrod learned of these inconsistencies while he spoke to the front seat passenger (Patterson) who was searching for proof the vehicle was properly registered.

About seven minutes into that stop, Elrod called for backup support, which arrived three or four minutes later. While waiting, he continued to fill out paperwork related to the traffic stop. When the backup officer arrived, Elrod was in the process of explaining the finished citation to Jones. Id. at 54, 346 S.E.2d at 848. "Almost simultaneous" with the backup officer's arrival, Patterson bolted from the car. The backup officer gave chase and observed him throw what was later identified as crack cocaine into a patch of briars. Id. at 54-55, 346 S.E.2d at 484.

Defense counsel argued that Elrod impermissibly extended the duration to engage in a fishing expedition for criminal activity. A panel of this Court affirmed the trial court's ruling to admit the drugs into evidence finding

no question but that the vehicle was detained lawfully for a traffic violation . . . [and] [u]nlike the Williams case, there was no further detention for questioning beyond the scope of the stop here . . . Trooper Elrod had not completed the issuance of the traffic ticket, and the purpose of the stop had not yet been fulfilled when Patterson jumped from the car and ran, throwing objects to the ground. Although Jones alluded . . . that Elrod essentially extended the stop beyond a reasonable time by going on a "fishing expedition" prior to the issuance of the ticket, there is evidence to support the trial judge's determination that the . . . extension of time was attributable to the additional time required in obtaining the car registration, and the questions asked of Jones and the passengers did not exceed the scope of the traffic stop such as would convert the stop into an illegal detention.

Id. at 58, 346 S.E.2d at 849-50 (emphasis in original).

The subtle differences between the present case and Jones are clear. In Jones, the officer was in the process of filling out the citation when Patterson fled the scene and had justifiably been delayed in completing the citation. Vinesett abandoned his paperwork after his discussion with Nichols five minutes into the stop. Further, the fourteen-minute detention of Morris and Nichols was in no way attributable to their lack of cooperation, while Jones's inability to produce his vehicle's registration contributed to the extra time his traffic stop lasted. Finally, the questions asked by Vinesett had nothing to do with the reason for the stop, while those asked by Elrod, at least in some respect, related to the speeding ticket.

The remaining differences between the traffic stops are patent. While he was supposed to be addressing a traffic infraction, Vinesett searched both Morris and Nichols, called a drug dog to the scene, and conducted a plain view search of the Ford's passenger compartment. Each extension of the detention provided no evidence that either Nichols or Morris had engaged in criminal activity, but the duration of the detention still continued to escalate. Thus, Vinesett transformed the traffic stop into an illegal detention that culminated in a warrantless search of the Ford in violation of Morris's Fourth Amendment rights.

B. The officer's testimony that he smelled burnt marijuana during the detention is unsupported by the evidence and lacks believability.

As was the argument at the suppression hearing, the State's position on appeal likely will remain that Vinesett smelled marijuana as soon as he approached the Ford. Therefore, the argument will probably be that the present case is distinguishable from Jones and other cases cited above because those cases do not involve the olfactory detection of illegal drugs by an officer. The State will also point to the trial judge's ruling (the limitations of which have been discussed at length) and argue the clear error standard should prevent this Court from reversing his ruling as to the admissibility of the drugs.

Although the trial court accepted Vinesett's testimony that he smelled burnt marijuana during the traffic stop, (R. p. 59, lines 12-14), this Court is not bound by the trial court's factual finding on that point if it was clearly erroneous. See State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) (defining the appropriate standard of review in Fourth Amendment cases); State v. Maybank, 352 S.C. 310, 318, 573 S.E.2d 851, 855 (Ct. App. 2002) ("[T]his Court is bound by the trial court's factual findings unless they lack evidentiary support or are clearly erroneous."). Appellant would respectfully urge this Court to examine all the evidence on the record under the appropriate standard of review. Then, after a thorough review of the video recording of the stop contrasted against Vinesett's testimony during the suppression hearing, conclude the trial court's factual finding that Vinesett smelled burnt marijuana during the stop lacks evidentiary support.

Vinesett may have had some level of suspicion about drug activity on which he based his decision to extend the duration of the traffic stop. But the record contains two completely dissimilar versions of how that detention actually unfolded – and what those suspicions really were. One version is found in the video recording of the stop that played in open court (R. p. 46, lines 15-16). The other is found in Vinesett's case summary report, which was entered as a court's exhibit for the defense during the suppression hearing, (R. p. 24, line 15-16), and the testimony he gave during the suppression hearing.

No matter what revisionist account of the traffic stop Vinesett created in the case summary report he prepared in the days following the search, the incontrovertible video evidence is that he never once, not even to his fellow officers, breathed a word about the smell of burnt marijuana until he mentioned it to Nichols thirteen minutes into the detention (R. p. 41, lines 2-3; R. p. 87, lines 13-14). Further, the evidence of drug activity that he did

vocalize during the traffic stop was insufficient to support a fourteen-minute traffic stop that was only cut short by a warrantless vehicle search.

The facts of the present case are well rehearsed above and need not be repeated at length again. Appellant would simply and respectfully request this Court to consider the evidence relied upon by Vinesett when he called the K-9 officer as the true measure of his suspicions. The evidence Vinesett provided at that time, when he had absolutely zero reason, incentive, or motivation to minimize his suspicions, is as follows:

VINESETT: Hey.

GIBSON: I'm ready.

VINESETT: Two young guys born in '83 coming from Atlanta. One said they went down there to visit some girls. They stayed at a hotel, the Hilton, last night. They from Greensboro. Go up there and talk to the other one, he said they went down there for his friend's cousin had a basketball game, went down there and watched the basketball game. Driver admitted he's been arrested before in the past for drugs. Can see shake all in the car and on them like they've been rolling marijuana, but I was going to see if you wanted to get Justice¹¹ out.

(R. p. 81, lines 1-15). Vinesett's failure to mention the odor of burnt marijuana is a very strong indication that the smell simply was not present.¹² Further, the fact the drug dog failed

¹¹ Justice is the name of the drug dog that failed to alert on the car (R. p. 35, line 15).

¹² As a point of stark contrast to Vinesett's reaction to the odor he alleged to detect, compare another officer's reaction to the smell of marijuana. "When [the officer] returned to his patrol car with Ross's license and registration, he immediately told [his partner] that he had smelled marijuana in Ross's car and intended to investigate further, with her assistance. His subsequent conversation with Ross confirmed his suspicion that there was contraband in the car." United States v. Ross, 300 Fed. App'x. 386, 390 (6th Cir. 2008) (unreported decision).

to alert on the Ford, with the passenger window rolled down, a mere two minutes after Vinesett claimed he smelled marijuana also severely undermines Vinesett's credibility. Finally, the fact that Vinesett never found one shred of physical evidence to corroborate the smell stongly implies that he never detected the odor of burnt marijuana. For all these reasons, the trial court's finding that Vinesett smelled burnt marijuana during the traffic stop was clear error.

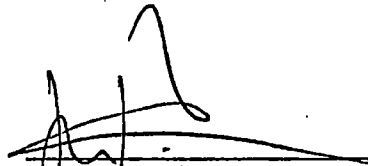
CONCLUSION

For the above reasons, the appellant respectfully requests this Court to reverse the decision of the trial court to allow the drugs into evidence and remand the case for a new trial with instructions to suppress both the drugs found during the warrantless search of Morris's vehicle and the drugs found at the police impound lot as the fruit of an unlawful search.

Respectfully Submitted,



Johnny Gardner
Gardner Law Firm P.A.



Jonathan Hiller
Gardner Law Firm, P.A.

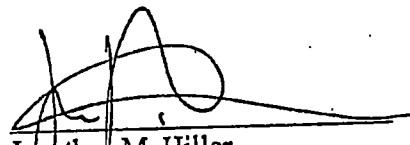
ATTORNEYS FOR THE APPELLANT

This 17th day of March, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability, this Final Brief of the Appellant complies with Rule 211(b), SCACR, and the August 13, 2007 order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

Dated: March 17, 2010



Jonathan M. Hiller
Gardner Law Firm, P.A.
P.O. Box 1001
Conway, SC 29528

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

KENNETH DARRELL MORRIS, II,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

Moss Justice Center
1675-1A York Highway
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

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