

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL N. FRASIER, JR.

APPELLANT

APPELLATE CASE NO 2017-000802

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

COURT'S EXHIBIT NO. 1 (RECORDING OF TRAFFIC STOP)

STATE'S EXHIBIT NO. 5 (BUS TICKET)

STATE'S EXHIBIT NO. 6 (EDITED CD OF DASH-CAM VIDEO)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of General Sessions
3 _____) Case No. 2013-GS-10-6360
4 STATE OF SOUTH CAROLINA)
5 vs.) Transcript of Record
6 MICHAEL FRASIER,)
7 Defendant.) DATE: March 22, 2017
8 _____
9 B E F O R E:
10 The Honorable Deadra L. Jefferson
11
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1 THE COURT: Is the State ready to proceed?

2 MR. KIDD: Yes, Your Honor.

3 THE COURT: Is the Defense ready to proceed?

4 MR.. KING: Well, Your Honor, my client, I told him
5 to be here at 10:30. I called him little after 11. He
6 wasn't here. He said he's in a doctor's appointment in Goose
7 Creek. And he texted me about 18 minutes ago saying he was
8 being seen and he will be here in about an hour.

9 THE COURT: Was he sick or was it a scheduled
10 appointment? I don't want to get too much into his
11 business.

12 MR. KING: I called him last night and he said he
13 had a mental health appointment. And I said, trial is
14 starting in the morning, this is where you need to be.

15 My understanding, he was going to be here 10:30.
16 But this morning, he's at the clinic. He said he's at the
17 clinic. So I'm not sure of the details.

18 THE COURT: You are not sure what that actually
19 means?

20 MR. KING: Not exactly.

21 THE COURT: Are you telling me you are not sure when
22 he might make himself available?

23 MR. KING: He said -- when I talked to him earlier,
24 he would be here in about an hour. But the most recent
25 communication was 19 minutes ago: I will be in court as soon

1 as I'm finished here at the clinic. I'm currently being
2 seen.

3 That was 19 minutes ago. He's in Goose Creek.

4 THE COURT: It's going to take him an hour to be
5 downtown. Is the cruise ship still here? Because it was
6 total gridlock yesterday. I mean, it was gridlock. I
7 couldn't even get out. I was stuck in a block for about 30
8 minutes, block from the courthouse. I finally gave up. So
9 is it still here? Is it gone? That means we might have a
10 little relief with traffic today, but it's still going to
11 take him an hour to get from Goose Creek to here. Are you
12 sure he's going to show up?

13 MR. KING: I believe he is, Your Honor.

14 THE COURT: I don't want to have to issue a bench
15 warrant for him if he's going to show up.

16 MR. KING: He generally comes. He came to three
17 status conferences. He didn't come to the most recent one
18 because he had trouble with transportation.

19 THE COURT: Do you think he's having trouble with
20 transportation today or do you think he really is
21 legitimately at the doctor?

22 MR. KING: I have to assume he's at the doctor. I
23 think if he had transportation issues, he could tell me and I
24 might make arrangements for that.

25 THE COURT: That's what I was going to say.

1 MR. KING: Because he mentioned the doctor's
2 appointment last night. That's why I said, I've been telling
3 you, we may be up for trial Wednesday or Thursday. I've been
4 kind of keeping him on notice.

5 THE COURT: I need him to be here. What's going to
6 give us ability to try this case is disposing of these
7 motions today.

8 MR. KIDD: Could we do the motions in his absence?

9 THE COURT: I don't think we can. I think when you
10 are talking about a suppression, he needs to be present when
11 cross-examining the officers for the stop.

12 MR. KIDD: It's all on video. It's clear legal --

13 THE COURT: Yeah, but he might want to testify. I
14 don't know. I just think that's sketchy. I need him here at
15 the latest two o'clock. Tell him he needs to finish up with
16 the doctor and be here by 2. If not, I'm going to issue a
17 bench warrant for him. I think that's more than generous,
18 because it's 11:57.

19 I know doctors can be unpredictable, especially in a
20 clinic kind of a setting, because you know they are always
21 over scheduled. In any kind of setting, doctors always over
22 schedule. So I think that's more than adequate time. Why
23 don't you -- I would assume you are not going to waive his
24 presence for any of these motions?

25 MR. KING: I would prefer not to.

1 THE COURT: I think he would file PCR and we would
2 have a problem. That's my gut feeling about it.

3 Were any offers extended to Mr. Frasier?

4 MR. KIDD: He rejected seven years negotiated.

5 THE COURT: When was that? He did it on the record?

6 MR. KIDD: I don't think we put it in front of a
7 judge to do it, Your Honor. He rejected in -- let's see, it
8 looks like July of last year.

9 THE COURT: Is that correct, Mr. King?

10 MR. KING: I think he might have had up until
11 November. He definitely rejected the offer. It might have
12 been a little later, though.

13 THE COURT: Does he have any record?

14 MR. KIDD: He does, Your Honor. It's pretty
15 obscure. He got a 25-year sentence on a trafficking charge.
16 Got reversed by the Supreme Court.

17 THE COURT: Really? When was it reversed by the
18 Supreme Court?

19 MR. KIDD: Court's indulgence. I pulled all the
20 certified convictions and everything, though. It doesn't
21 matter for the purpose of the sentencing because the weight
22 is over 100 grams. Mandatory minimum is 25 either way.

23 THE COURT: He's facing a mandatory 25 because of
24 the weight?

25 MR. KIDD: Yes, ma'am.

1 THE COURT: And y'all offered him 7?

2 MR. KIDD: Yes, ma'am.

3 THE COURT: At 65 percent or 85 percent?

4 MR. KIDD: 85 percent. I agree, I thought I was
5 being pretty reasonable.

6 THE COURT: Well, offers always take into account
7 any deficits you think you might have. And it's always -- I
8 think being able to write "closed" on a file is a benefit.

9 MR. MAYNOR: He was convicted of that originally,
10 trafficking, in 1994. And at some point between then and
11 2003, he got out because he picked up another charge in
12 2003.

13 MR. KIDD: It was '99, it was reversed by the
14 Supreme Court.

15 THE COURT: Okay. So they decided not to retry it?

16 MR. KIDD: Well, it was on a suppression issue, so
17 it was not able to be retried.

18 THE COURT: Okay. So what's his record?

19 MR. KIDD: His record is -- so the '94 trafficking
20 was reversed. And then we have an '04 possession with intent
21 to distribute a controlled substance. And then we also have
22 a possession of marijuana and possession of heroin.

23 THE COURT: What year was that?

24 MR. KIDD: Possession of marijuana was in 2003. And
25 the possession of heroin came down from a possession with

1 intent to distribute heroin, was in '04.

2 THE COURT: That possession of heroin is 0 to 3,
3 isn't it? Wouldn't that be 0 to 3 and/or \$5,000, same as
4 crack or cocaine?

5 MR. KIDD: Yes, ma'am. He got one year probation on
6 that charge.

7 THE COURT: So he's already completed that. So he
8 has a minimal record. Now, this is a trafficking 28 to 100
9 grams second?

10 MR. KIDD: 100 to 200.

11 THE COURT: 100 to 200. And is it a -- are you all
12 counting this as a second?

13 MR. KIDD: Judge, it doesn't matter really for the
14 purpose of sentencing. I was just going to treat it as a
15 first.

16 THE COURT: Okay. Now, I'm curious, do you have any
17 of the substances with you for evidentiary purposes?

18 MR. KIDD: They are in my office or my investigator
19 has them locked.

20 THE COURT: Don't worry about it. Because the
21 quantities we are talking about, if we had it, I wanted the
22 kids to see it so they could know really how small amount we
23 are talking about.

24 MR. KIDD: This one is not that small.

25 THE COURT: I think when you hear that, you think

1 like as big as this desk, because -- I was never good at
2 math. So, you know, my quantifying stuff is probably not
3 good.

4 MR. KIDD: SLED weight on it, I think, was 190
5 grams.

6 THE COURT: So how much would that be if you had it
7 in your hands?

8 MR. KIDD: An ounce.

9 THE COURT: About like this much?

10 MR. KIDD: Little bit more than that.

11 MR. MAYNOR: It's kind of hard --

12 MR. KIDD: About the size of this book.

13 THE COURT: Okay. That much?

14 MR. KIDD: 200 grams, it's significant.

15 THE COURT: Okay. All right. Well, I guess we
16 don't have a choice but to see if he appears at two. And
17 like I said, if he doesn't show up, Mr. King, you need to let
18 him know I'm issuing a bench warrant for him. Tell him if
19 he's having transportation issues, he needs to let us know so
20 we can send somebody for him.

21 MR. KING: I thought of kind of an additional motion
22 that goes along with the consent motion that I filed.

23 THE COURT: Let me see what you got here. Actually,
24 we might be able to resolve some things that would not be
25 prejudicial to him in terms of his not being here, because I

1 think the State is probably going to concede. And there was
2 motion to suppress the statements of Cheryl Jones. Did you
3 all try to introduce any of her statements to the
4 third-party?

5 MR. KIDD: Yes, Your Honor. We have her. She's
6 under subpoena.

7 THE COURT: Then that's not hearsay.

8 MR. KIDD: The issue --

9 THE COURT: I think they were moving to suppress it
10 if the officer was going to repeat it without her being here
11 and their opportunity to cross-examine; is that right?

12 MR. KING: Well, I think her statement, even if she
13 appears in court and testifies, that may resolve a
14 confrontation issue, but I think the past statement is still
15 hearsay. And it would bolster any statement she testified to
16 in trial.

17 THE COURT: I think they can call her and she can
18 simply say, it wasn't mine, I didn't have any knowledge it
19 was in my car. They don't have to go back that far. And you
20 can go back and confront her.

21 MR. KIDD: This is some sort of traffic stop, the
22 entire of which is on video. Officer asked her a question
23 after the arrest, or they kind of get into a little bit of
24 back and forth, because there's a four-year-old in the back
25 of the car as well. And he's giving her a hard time about,

1 you got a kid in the car with 200 grams of dope, sort of
2 attitude. And she kind of goes on about, I didn't know it
3 was there, it wasn't my drugs, that sort of thing.

4 In that the defendant and Ms. Jones are the only two
5 people in the car, it's obviously relevant to our case of
6 possession and constructive possession.

7 THE COURT: Are you going to call her as a witness?

8 MR. KIDD: I plan to.

9 THE COURT: Is she going to testify the drugs were
10 hers?

11 MR. KIDD: I haven't -- only time I met with her was
12 in my office, and she cussed me up and down. So I had to
13 have her removed from my office.

14 THE COURT: I don't think somebody is going to come
15 in and admit 100 grams of cocaine are theirs.

16 MR. KIDD: I'm not really worried about what she
17 says, because if she says it is hers, I can impeach her what
18 she said on the video.

19 THE COURT: We have to cross that bridge when you
20 call her as a witness. You have her under subpoena?

21 MR. KIDD: I do.

22 THE COURT: The only other motion is to suppress --
23 based on the stop, I think is what this is, the scope of the
24 stop was exceeded. I have two motions to suppress. I'm
25 trying to figure out what's the difference between the two.

1 They are all about the stop.

2 MR. KING: One is an overall motion, Your Honor.

3 That just means that the traffic stop was extended past
4 routine traffic stop without reasonable suspicion.

5 THE COURT: Got that.

6 MR. KING: If that were granted, I think that would
7 suppress anything. That would be the end of it.

8 THE COURT: Why do you have two if they both say the
9 same thing?

10 MR. KING: There should be a separate motion on this
11 motion to suppress on a pat-down.

12 THE COURT: It's all the same. It's a stop,
13 pat-down, all one continuum.

14 MR. KING: If Your Honor didn't grant the overall
15 motion, it's sort of a submotion where when they got him out
16 of the car --

17 THE COURT: You are saying they exceeded the Terry
18 frisk? I got you.

19 MR. KING: No, it's consent. They say, do you mind
20 if we search you? And he says, I do. So the issue there --
21 and that's where they find cocaine.

22 THE COURT: And they are going to say he consented
23 to the search, right?

24 MR. KING: Right. And that's cocaine in his pocket.
25 The bulk of the cocaine was found inside the car in a jacket

1 pocket.

2 THE COURT: So those are two separate things?

3 MR. KING: That's right.

4 THE COURT: But they are not trying him for the
5 cocaine they found in the pocket, are they?

6 MR. KING: I believe they intend to admit it.

7 THE COURT: For what purpose? Is he charged with
8 what they found in the pocket?

9 MR. KIDD: Well, in the aggregate, all the cocaine
10 is charged as one aggregate weight. It was tested in
11 separate baggies, so it was broken up on the SLED report.

12 THE COURT: But the 190 includes what you found in
13 his pocket?

14 MR. KIDD: The way it is, so the way SLED tested it
15 was, you know, evidence, small Ziploc bag with .7 grams that
16 was in his pocket. And then there was another Ziploc bag
17 with 1.6 grams that was in his pocket. And there were 8
18 larger bags that were tested separately that were in the back
19 of the vehicle, which in their aggregate were 193 -- 194.2.
20 I didn't charge him with possession. I didn't specifically
21 charge the drugs --

22 THE COURT: You are just saying all of it you
23 charged as a trafficking?

24 MR. KIDD: I'm not concerned, necessarily, about the
25 cocaine in his pocket, but I do think it's relevant, because

1 at that point, it's about halfway through the stop and the
2 search. And at that point, he's placed under arrest for the
3 cocaine.

4 THE COURT: You got different layers to this issue,
5 because even if I suppress it, and if I say they exceeded the
6 scope of the search, you still have him on the drugs. And
7 that's a whole other set of laws that apply to that, because,
8 you know, cars don't have the same protection as your person.

9 MR. KING: They are two separate motions, Your
10 Honor, one for the overall stop --

11 THE COURT: So they have enough to try him on what
12 they found in the car, separate and apart from what they
13 found on his person? So even if what was found on his person
14 was suppressed, they have enough to proceed if the stop was
15 valid?

16 MR. KING: They do. I think it gives me a better
17 chance if the jury doesn't know that he had cocaine in his
18 front pocket.

19 THE COURT: We have to go over that. Did he make
20 statements? Are there any statements pursuant to *Jackson vs.*
21 *Denno* that we need to consider?

22 MR. KIDD: There are, Your Honor. So immediately
23 upon his arrest, when he is put in handcuffs, he's not yet
24 Mirandized. This is on the side of the road by the car.
25 This is all on video. Officer asked him -- excuse me. Let

1 me reset the scene.

2 So officer's searching the car. The defendant has
3 been arrested for the cocaine that's in his pocket. And he's
4 standing back by the police officer's car. Officer finds the
5 large quantity of cocaine in the backseat of the defendant's
6 vehicle. He then holds up the jacket where he found the
7 cocaine and said: Whose jacket is this? And he directs that
8 statement both to the defendant and his girlfriend,
9 Ms. Jones. The defendant admits that it's his jacket.
10 Doesn't admit to what's in the jacket, but said, whatever is
11 in there is mine.

12 THE COURT: Why didn't they Mirandize him as soon as
13 they arrested him?

14 MR. KIDD: They should have. No question about it.
15 Then what we have is a continuation of time. He's put in the
16 backseat of the car. He's Mirandized. And then questioned
17 again regarding the jacket. And he says, yeah, that's mine,
18 what's in it? He kind of says, listen, I'm responsible for
19 whatever is in that jacket.

20 THE COURT: What are you contesting, Mr. King, the
21 statements made before Miranda or after or both?

22 MR. KING: Both, Your Honor.

23 THE COURT: What's the basis of after he was
24 Mirandized?

25 MR. KING: *Seibert* issue, Your Honor. The *Seibert*

1 case addressed that issue, Your Honor, where police would
2 elicit an incriminating response from a suspect and then
3 Mirandized them afterwards and get the same information.

4 THE COURT: Yeah, but after Miranda, conceivably,
5 you are told you can be quiet.

6 MR. KING: Right. But even under *Seibert*, even when
7 Miranda is read a second time, they suppress the second
8 statement, because, I guess the argument is, once the person
9 has already admitted it, then the Miranda warnings don't mean
10 as much because the person thinks, I already admitted it,
11 they already know what I said.

12 So in *Seibert*, that's the issue, is whether you
13 suppress the second statement made after Miranda.

14 THE COURT: I have to see what *Seibert* says and see
15 whether it's factually on point.

16 MR. KIDD: In *Seibert*, Your Honor, that's when the
17 officers use it as an investigative tactic, when they say, we
18 are going to subject this guy to an interrogation without
19 Miranda, get them to admit to things, and then go back and
20 Mirandized him, and he will think --

21 THE COURT: My recollection is that the facts are
22 different, but I have to go back and read that case again and
23 see.

24 MR. KIDD: They are, Your Honor. And the State
25 would rely on *State v. Medley*.

1 THE COURT: As a practical matter, though, this is
2 bad, once you -- yeah --

3 MR. KIDD: I agree, Judge. I think the officer will
4 offer a good explanation for why there was that delay in
5 Miranda. You know, we are talking about a ten-minute delay
6 in Miranda. So it's not like there was a huge -- you know,
7 the officer will testify that as he's cuffing him for the
8 small amount of cocaine found in his pocket, the defendant
9 kind of flexed up on him. And that, in his experience, if
10 you immediately Mirandize at that point, it can often
11 escalate the situation.

12 So he was just going to stand the defendant down
13 back by the patrol vehicle. It wasn't to continue
14 interrogation or attack to elicit a response. He was never
15 really subjected to interrogation questioning. It was just a
16 delay in providing his Miranda warnings.

17 THE COURT: Okay.

18 MR. KING: Your Honor, I have *State vs. Navy*. It's
19 a South Carolina case as well that I've cited in my brief.

20 THE COURT: I don't think the facts are the same in
21 Navy, but I will have to go back and read it. I will see. I
22 am not making any decisions right now. I just want an
23 overall. My main concern is whether they plan to call
24 Ms. Jones as a witness and what they were seeking to elicit
25 from her in terms of her testimony. And my main concern was,

1 one, whether you had standing to object to her statement.
2 And the other was whether you were going to be able to have
3 the right to confront her and whether she was going to be
4 present to testify. And I think my concerns about that have
5 been evaluated as long as she's here. But we will cross that
6 bridge when we come to it.

7 Do you have the witness list, Mr. King, or do you
8 not plan to call any witnesses?

9 MR. KING: I don't plan to call any witnesses.

10 This is not in my written motions, but could be a
11 supplemental to the pat-down motion where they find the
12 cocaine, probably similar to that. When the police search
13 the car, driver of the car gets consent to search the
14 vehicle.

15 THE COURT: It's her car, right?

16 MR. KING: That's right. And when my client stepped
17 out, he did not give consent to search the person. And when
18 they are searching the car, they found the bag with some
19 Superior B, which testimony could be used as cut --

20 THE COURT: What is Superior B? What is that?

21 MR. KING: I believe it's some sort of supplement
22 like you get at GMC, a vitamin supplement. I believe there's
23 going to be testimony that it's used as a cutting agent for
24 cocaine.

25 THE COURT: Like Superior with the letter B?

1 MR. KING: Yes. I think may be B vitamins. I did a
2 quick search on it. It looked like it was B vitamins or
3 something. I don't think it's illegal.

4 THE COURT: That's sort of an oxymoron. I guess it
5 does produce serotonin. I don't know. That's a strange
6 combination, but anyway --

7 MR. KING: Well, in the video that we have, Officer
8 Hall refers to the bag as "his bag". Mr. Frasier is the only
9 male there. So, obviously, he was referring to his bag. But
10 he searches the bag. And my argument is that Ms. Jones can
11 consent to the search of her car, but if there's a bag in the
12 car that Officer Hall is referring to as my client's bag,
13 then that exceeds the scope of that consent. And I move to
14 suppress the Superior B from the bag.

15 THE COURT: Yeah. I added that. I noted that on
16 the bottom of the other motion you submitted. And we will
17 see how the testimony --

18 MR. KING: The cases I have, they are out of state,
19 but I do have Georgia and --

20 THE COURT: I am not inclined to look outside of
21 South Carolina, because we have enough case law on stops that
22 gives me guidance. You can look outside the state for
23 guidance when we haven't had some articulation from our
24 courts. But our courts have talked a lot about stops. I
25 don't think I need to look to another state. And other

1 states have different statutory framework. And I just don't
2 know that I need to look to Georgia for guidance.

3 But if you have some South Carolina cases on point,
4 I will be glad to look at them. If you want to give me those
5 citations, I will be glad to look at those.

6 Anything else we need to take up before you get some
7 lunch? Do you all have any exhibits you can premark?

8 MR. KIDD: I can premark at least this disk for
9 purposes of this hearing.

10 THE COURT: Is that your only one?

11 MR. KIDD: It's not my only copy.

12 THE COURT: How long is it?

13 MR. KIDD: It is about -- let me look at my notes
14 real quick. It is about a -- I guess about a 35 to 40-minute
15 video.

16 THE COURT: You said that's your only one?

17 MR. KIDD: It's not my only copy, no, ma'am. The
18 significance on this one is it's initialed by the officer for
19 identification.

20 THE COURT: Do you all have a copy for me that I can
21 watch at lunch?

22 MR. KIDD: You can take this one.

23 THE COURT: Any exception, Mr. King?

24 MR. KING: No exception.

25 THE COURT: Why don't y'all have the court reporter

1 mark it as a court's exhibit and then I can watch it during
2 the break.

3 MR. KIDD: I think part of the reason -- I apologize
4 for not giving a written response, I believe the law to be
5 pretty clear, and I think it's all about factual application.
6 And in a case like this, everything I'm going to argue is on
7 that video.

8 THE COURT: If you wanted to put something in
9 writing, that's fine, but I don't think it's required.

10 MR. KIDD: I do have copies of all the case law.

11 THE COURT: If you want to give me citations, I will
12 be glad to look at them, but I don't need the copies.

13 MR. KIDD: I will do that. I don't think you need
14 *State v. Pichardo* case. That's common. But as to the stop,
15 *State vs. Provet*, 391 S.C. 494.

16 THE COURT: You said 391-494.

17 MR. KIDD: *State v. Pichardo*, 367 S.C. 84; *State vs.*
18 *Moore*, 415 S.C. 245; *State vs. Morris*, 395 S.C. 600; *State v.*
19 *Tindall*, 388 S.C. 518; and *State v. Corley*, S.C. 232.

20 And as to the *Denno* issue, or excuse me, as to the
21 Miranda issue, Judge, *State v. Medley*, which is 417 S.C.
22 18 --

23 THE COURT: You said 417 SC 418?

24 MR. KIDD: No, ma'am, 417 S.C. 18, and then the Navy
25 and the *Seibert* case, if you would like those citations, Navy

1 is 386 S.C. 294, we would offer that to distinguish, as well
2 as *Missouri v. Seibert*, which is 542 U.S. 600.

3 THE COURT: Anything further from the State?

4 MR. KIDD: No, ma'am.

5 THE COURT: From the Defense, Mr. King?

6 MR. KING: No.

7 THE COURT: Okay. I will see y'all at two o'clock.

8 (Court's Exh. 1, CD, was marked for
9 identification.)

10 (Whereupon, the proceedings are adjourned for the
11 day.)

12 (Whereupon, the proceedings continue on March 23,
13 2017.)

14 (State's Exh. 1, Cocaine, was marked for
15 identification.)

16 (State's Exh. 2, Straw, was marked for
17 identification.)

18 (State's Exh. 3, Superior B, was marked for
19 identification.)

20 (State Exh. 4 deleted.)

21 (State's Exh. 5, Greyhound bus ticket, was marked
22 for identification.)

23 (State's Exh. 6, Edited CD, was marked for
24 identification.)

25 (Whereupon, the defendant is present.)

1 MR. KIDD: There's one amendment, I believe, a
2 consent to that indictment, is that the SLED lab weight came
3 back just under 200 grams. So the only amendment to the
4 indictment would be the change that we are in excess of 200
5 to in excess of 100.

6 THE COURT: Do you all want to write -- so where it
7 says in excess of 200, it needs to be changed to what now?

8 MR. KIDD: In excess of 100. It's a
9 lesser-included. It's just one prong under what he was
10 indicted for.

11 THE COURT: Mr. King, do you agree with that?

12 MR. KING: That's correct, Your Honor.

13 THE COURT: Do you all have a problem with me
14 writing that in there? Where it says in excess of 200, I'm
15 going to strike 200 and put 100.

16 MR. KIDD: Correct. Thank you, Judge.

17 MR. KING: Correct.

18 THE COURT: They are bringing the panel up. Is
19 there anything we need to deal with as they are completing
20 that?

21 MR. KIDD: I don't believe so, Judge. The only
22 thing I would ask, because of our pretrial, we could do the
23 suppression and *Denno* hearing procedure before swearing the
24 jury.

25 THE COURT: That's how I plan to do it. But is

1 there a written statement he made?

2 MR. KIDD: No, Your Honor, it was just recorded
3 video. I mean, just the traffic stop.

4 THE COURT: All right.

5 (Whereupon, the venire arrives.)

6 THE COURT: Good morning, ladies and gentlemen. I
7 hope everybody is having a pleasant day so far. We are going
8 to select a jury for the case of the State of South Carolina
9 v. Michael Frasier Jr., Indictment 2013-GS-10-6360.

10 And that indictment alleges that in Charleston
11 County, South Carolina, on or about August 14th of 2013, the
12 defendant, Michael Frasier, Jr., unlawfully and knowingly did
13 sell, manufacture, cultivate, deliver, purchase, or bring
14 into this state or did provide financial assistance or
15 otherwise aid, abet, attempt or conspire to sell,
16 manufacture, cultivate, deliver, purchase or bring into this
17 state, or did possess or attempt to possess a controlled
18 substance or a controlled substance analog, to wit, cocaine
19 in excess of 100 grams, alleging a violation of code Section
20 44-53-370 of the Code of Laws as amended, and alleging those
21 actions to be against the peace and dignity of the state of
22 South Carolina.

23 We are going to go through a process that is called
24 voir dire, which is simply a legal term meaning that I'm
25 going to ask you some questions so that the attorneys can

1 listen to media accounts about this case or do any
2 independent research of any type on the Internet. Please
3 don't he make any comments regarding your jury service on any
4 social networking sites. We would not want an innocent
5 comment to be misinterpreted.

6 Again, you will return directly to your jury room at
7 11:10. And the bailiffs will show you how to do that. We
8 appreciate your patience. If you would go with the bailiffs,
9 please.

10 (Whereupon, the jury leaves open court at 10:38.
11 a.m.)

12 THE COURT: All right. The State may proceed.

13 MR. KIDD: Thank you, Your Honor. The State calls
14 Daniel Pritchard..

15 DANIEL PRITCHARD,
16 having been duly sworn, testifies as follows:

17 THE CLERK: If you could state your first and last
18 name and spell out your last name, please.

19 THE WITNESS: Okay. Daniel Pritchard,
20 P-R-I-T-C-H-A-R-D.

21 THE COURT: You may proceed.

22 MR. KIDD: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. KIDD:

25 Q. Good morning, Sergeant Pritchard. No? Well, tell

1 the judge where you are employed, your title, your typical
2 duties and sort of your law enforcement history, if you
3 could.

4 A. Currently, I'm a police officer at North Charleston
5 Police Department assigned to patrol. I have done two years
6 in person's crime detective, working aggravated assaults,
7 homicide, robberies. Prior to that, I did five years in
8 narcotics. Part of that time I worked a canine. Prior to
9 that, I did a saturation patrol team.

10 Q. How long have you been in law enforcement?

11 A. 15 years.

12 Q. 15 years? So you said 15 years, five of that was in
13 narcotics. Then you were a person's detective, which is like
14 the violent crime unit, murders, armed robberies, burglaries,
15 things like that for two years?

16 A. Yes, sir.

17 Q. And now you're back on the street, back on patrol?

18 A. For last month, yes, sir.

19 Q. All right. Now, back in 2013, what were your --
20 where were you at that point?

21 A. I was in narcotics. Primary assignment was to the
22 parcel interdiction, training and busts.

23 Q. Can you tell the judge a little bit about what that
24 sort of task force was?

25 A. We would go to FedEx, the post office, UPS, and

1 attempt to identify drug-laden packages or currency-laden
2 packages going out to source cities. And we would also
3 attempt to make contact with folks coming in on mass transit,
4 via Amtrak, Southeastern Stages, otherwise known as
5 greyhound, and a few other private bus companies.

6 Q. All right. So let's get right to the case why we
7 are here. This occurred August 14th, 2013. Can you tell the
8 judge what you were doing that morning?

9 A. That morning, we were in the area of the
10 Southeastern Stages bus company down on the lower end of
11 Dorchester Road in the city of North Charleston, myself and
12 Officer Johnson, when we observed the defendant exit the bus
13 station.

14 Q. Was he exiting the bus station or the bus?

15 A. He was exiting the bus station. We missed the
16 arrival of the bus. We were running late. As he exited the
17 bus station, he looked left, cleared right, and then
18 proceeded to a vehicle directly in front of the door,
19 entered, and they left the bus station.

20 Q. So tell me -- and I want you to kind of give
21 particular detail as you can. Tell me the things that the
22 defendant did between the bus station and entering that
23 vehicle that was suspicious to you and why?

24 A. It appeared to me that he was clearing the area for
25 threats, i.e., whether it be law enforcement, enemies,

1 something of the sort. He was uncomfortable, it appeared to
2 me.

3 Q. And where were you observing this?

4 A. From across the bus, across the street from the bus
5 station.

6 Q. You were inside a vehicle?

7 A. Yes, sir.

8 Q. Were there a lot of people coming out of the
9 station, or was he the only one?

10 A. At that particular moment -- there's two doors.
11 They keep one of them locked, so that there's only one person
12 able to go in and out of the doors. He was the only one
13 exiting the bus station at that moment.

14 Q. Okay. And sort of, have you done cases like this
15 before where you make contact with individuals in these sort
16 of scenarios?

17 A. Yes, sir. If we have the opportunity, we will try
18 try to make contact with them at the bus station prior to
19 them getting in a vehicle. Because at that point, in
20 narcotics, we are not assigned -- we don't have vehicles with
21 lights. We don't have the capabilities of doing a traffic
22 stop. We have to call for assistance and sometimes we aren't
23 able to get it.

24 Q. One more time, I just want you to sort of indicate
25 why his sort of scanning of the parking lot was suspicious to

1 you.

2 A. Because the vehicle he entered in was directly in
3 front of the door. He was less than 10 yards from where he
4 was going and he was looking at the whole parking lot, left
5 and right, and it just appeared to be odd to me.

6 Q. What did you do at that point?

7 A. At that point, Detective Johnson had contacted the
8 Officer Hall once they entered that vehicle and began to pull
9 out.

10 Q. Did you all know anything or do you recall anything
11 about the vehicle that he got in that would have --

12 A. Commonly, this happened multiples where we had to
13 get vehicles stopped leaving certain areas due to the fact
14 that we have no lights. And we've had to -- it's easier for
15 us to follow in an unmarked vehicle where we can get a
16 violation.

17 On this particular date, we did follow the vehicle
18 and were able to get a violation on the vehicle, which was a
19 third brake light.

20 Q. And then y'all relayed that information to patrol to
21 have someone execute a traffic stop?

22 A. Yeah. If I'm not mistaken, Detective Johnson was on
23 the phone with Officer Hall.

24 Q. And where did your vehicle go once the traffic stop
25 was initiated?

1 A. We tailed the vehicle the defendant had gotten in.

2 Q. Until the traffic stop was initiated?

3 A. Yes, sir.

4 Q. After the stop was initiated, where did you all go?

5 A. We went down past the traffic stop to a safe parking
6 lot and pulled over.

7 Q. And just waited?

8 A. Yes, sir.

9 Q. Y'all weren't on scene at the traffic stop until
10 after the arrest had been made?

11 A. No, sir.

12 Q. Court's indulgence. Actually, I take that back.
13 I'm sorry. Can we queue up the video? I'm going to go ahead
14 and ask him questions regarding the *Denno* hearing, if that's
15 okay with Your Honor, to expedite.

16 THE COURT: That's fine.

17 Q. Detective Pritchard, did you respond back to the
18 traffic stop at some point?

19 A. Yes. Once Detective Hall had advised he had a
20 larger quantity of drugs, we had went to the scene of the
21 traffic stop.

22 Q. And do you recall having interaction with the
23 defendant while he was in the back of Officer Hall's vehicle?

24 A. Yes, sir. Brief in nature, but I did.

25 Q. Did you observe the Miranda warnings being issued to

1 the --

2 A. First thing I did was make sure he got his Miranda
3 warnings. I was about to give them to him, but I was advised
4 by Officer Hall that he had already given them to him.

5 Q. I'm going to play a small segment of Court's Exh. 1,
6 State's Exhibit for ID purposes 6.

7 (Video playing.)

8 Q. And you watched this video before?

9 A. Yes, sir.

10 Q. And the rest of this conversation, because the
11 vehicle door opened, you can't hear on the video; is that
12 fair to say?

13 A. I personally couldn't make it out, no, sir.

14 Q. Largely because of that road noise is so loud. But
15 right at the beginning, before the doors opened, you can hear
16 a little bit of an exchange. Can you tell the jury a little
17 about that initial answers the response.

18 THE COURT: I heard the question and the response.
19 I don't need to repeat what was said.

20 MR. KIDD: Thank you, Your Honor.

21 BY MR. KIDD:

22 Q. Had you made any threats or promises to the
23 defendant in order to elicit the answers to those questions?

24 A. No, sir.

25 Q. And you were working with narcotics at that time; is

1 that right?

2 A. Yes, sir.

3 Q. Is it fair to say that oftentimes in narcotics
4 arrests, y'all work with the people that you arrested?

5 A. Yes, sir. Ultimate goal is to get higher in the
6 food chain, for lack of better terms.

7 Q. A lot of times, you will show people leniency and
8 they will do buys for you. Was he afforded that
9 opportunity?

10 A. No, sir. He was not able to do so and/or -- we just
11 did not do it with him. I don't recall the particulars;
12 however, we did not go any further with this investigation.

13 Q. Did he appear to understand his rights as they were
14 read to him?

15 A. Yes.

16 Q. And I believe your first question to him was, when
17 Officer Hall said, I just read him his rights, you then
18 followed up with him to ask him if he understood them?

19 A. Correct.

20 Q. And how did he answer that question?

21 A. He advised that he did.

22 MR. KIDD: I have no further questions for this
23 witness.

24 THE COURT: Any questions for the witness?

25 MR. KING: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. KING:

Q. Sergeant?

A. No, sir.

Q. When did you get out of narcotics?

A. The end of December of 2014. I transferred to
detectives.

Q. How did you get from detectives to patrol?

A. I put in a transfer to transfer out of narcotics.
Just, it was time. I was burned out. And I was,
unfortunately, talked into goes to detectives. And then they
started hitting some record homicide rates. And two years
after that, last month, I transferred out of there. And now
I'm taking a break working patrol, no call-out schedules,
just working my hours and going home to my family.

Q. Now, so you testified that you were at the bus
station?

A. We were across the street.

Q. How far would you say from the exit you said that
you saw Mr. Frasier coming out of the bus station? Can you
estimate a distance from where your vehicle was?

A. 75 to 100 yards would probably be my best guess.

Q. So possibly as far as a football field --

A. Yes, sir.

Q. -- away?

1 A. Yes, sir.

2 Q. You are inside an unmarked car, I guess?

3 A. Yeah, a Nissan Altima.

4 Q. And so 75 to 100 yards away is where the exit to the
5 bus station is, right?

6 A. No. The building for the bus station is where the
7 front door is at about 25 yards from Dorchester Road. And
8 then Dorchester, I would give it another 25. And we were
9 probably another 25 off the road in an abandoned parking lot
10 off the street by the El Cheapo gas station. So probably
11 about -- my best guess would be about 75, but could be up to
12 100.

13 Q. And how far did Mr. Frasier walk before he -- how
14 far did you see him walk before he got to the vehicle?

15 A. Less than 10 yards from the vehicle to the front
16 door. I mean, it's 10 yards to where he entered the vehicle,
17 would be tops.

18 Q. And you said that he was looking to the left and he
19 looked to the right?

20 A. He was scanning the parking lot.

21 Q. Was it just one look to the left and one look to the
22 right, or was it more?

23 A. I don't recall if it was multiple looks or if it was
24 an exaggerated one look. It caught my attention whenever it
25 happened.

1 Q. Could you see his field of view? Could you see
2 everything that he could see?

3 A. No, no.

4 Q. So was there something blocking -- I guess what I'm
5 saying, if he's looking to the left, is there something
6 blocking that you could see to his left?

7 A. There's a bus. I will go -- if he's exiting the bus
8 station, there's a bus parked over here. And then his
9 vehicle is right outside the front door here, maybe offset a
10 little bit to the right. And then I couldn't see exactly
11 what he could see on the other side of the bus.

12 Q. You didn't write a report regarding this? Did you
13 write a report or anything?

14 A. No, sir, I did not.

15 Q. Did you take any notes or anything?

16 A. No, sir.

17 Q. You didn't know where he was coming from at the
18 time?

19 A. No, sir, I did not. The bus schedule was really
20 hard to figure out. The train was much easier because we
21 only had five of those a day, but the bus schedule was
22 changing all the time. Management was changing all the time.
23 It was hard to keep up with it. So, no, sir. And there's a
24 bunch of connecting bus stops. Atlanta would probably be the
25 main hub from Charleston.

1 Q. And something was communicated to Officer Hall who
2 eventually made the traffic stop, right?

3 A. Yes, sir.

4 Q. You didn't make that communication to Hall? You
5 said it was Johnson?

6 A. Yes, sir.

7 Q. Were you present for that? Did you hear what was
8 said, communicated to Hall?

9 A. I was in the passenger seat. I don't know exactly
10 what was said. It was something along the lines of this
11 gentleman called our attention, you are in the area, can you
12 please do a traffic stop for us.

13 Q. Johnson moved away?

14 A. Yes, sir. He's in England and should be stationed
15 detectives here soon.

16 Q. And regarding the statement that was played there,
17 Mr. Frasier never said what was in the jacket; is that right?

18 A. No, sir. He never said "the cocaine is mine". He
19 never did say that, nothing about that.

20 Q. And there wasn't anything we can't hear that you
21 intend to testifying about? You are just testifying about
22 what we can hear? There's nothing said --

23 A. Right. There's nothing that sticks out to me about
24 the case beyond that. If there would have been something
25 more circumstantial, we would have probably brought it back

1 to the office and went further with the case, but it was
2 pretty clear cut.

3 MR. KING: I have no other questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. KIDD: Just one quick question.

6 REDIRECT EXAMINATION

7 BY MR. KIDD:

8 Q. I just want to be clear about it. The scanning the
9 parking lot is significant because the vehicle he was getting
10 into was right in front of him; is that fair to say?

11 A. Yes.

12 Q. So he wasn't looking for who was picking him up? It
13 was after seeing the car that was picking him up, it was the
14 scanning of the parking lot that was suspicious to you?

15 A. I personally thought he was either looking for
16 threats or looking for criminal enforcement, something along
17 those lines.

18 MR. KIDD: No further questions, Your Honor.

19 THE COURT: Sir, you may step down.

20 Call your next witness.

21 MR. KIDD: The State calls Steve Hall.

22 STEVE HALL,

23 having been duly sworn, testifies as follows:

24 THE CLERK: If you can state your first and last
25 name and spell your last name, please.

1 THE WITNESS: First name Steve, Hall, H-a-l-l.

2 DIRECT EXAMINATION

3 BY MR. KIDD:

4 Q. Please run through your law enforcement history
5 briefly for you us.

6 A. Been with the North Charleston Police Department 11
7 years. Did almost four years with narcotics. Prior to that,
8 I was on patrol for four years. And the past four years,
9 I've been a backup patrol.

10 Q. And in August of 2013, what were you doing for North
11 Charleston at that time?

12 A. I was a patrol officer.

13 Q. And we will get sort of -- you've pulled over --
14 made a lot of traffic stops in your career?

15 A. Correct.

16 Q. Do you know approximately how many?

17 A. At least 1,000, I would say, if not more.

18 Q. So you have a pretty good idea of how people act and
19 react to traffic stops --

20 A. Correct.

21 Q. -- based on your experience?

22 A. Yes.

23 Q. And do you recall pulling over Ms. Jones and
24 Mr. Frasier on the morning of August 14th?

25 A. Yes, sir.

1 Q. Do you remember about what time of the day that
2 was?

3 A. I believe it was right around eight o'clock, I
4 believe, in the morning.

5 Q. So relatively early in the morning?

6 A. Correct, yes.

7 Q. And we heard a lot from Officer Pritchard, but how
8 did you come about making that traffic stop, if you could
9 give us that breakdown?

10 A. I was contacted by -- I believe it was Detective
11 Johnson who was with Officer or Detective Pritchard at the
12 time, stating they were following a vehicle that they had
13 interest in and was seeing if I was in the area to make a
14 vehicle stop on it.

15 Q. And there was an equipment violation on that
16 vehicle; is that correct?

17 A. Correct. They had relayed to me that there was a
18 brake light out, and which I also observed.

19 Q. And we are going to key up the video real quick to
20 the very beginning of the traffic stop.

21 (Video playing.)

22 BY MR. KIDD:

23 Q. What we see right there, was the brake lights on.
24 The two brake lights on the side are active, correct? Which
25 brake light is out?

1 A. The third brake light in the center in the back
2 window.

3 (Video playing.)

4 BY MR. KIDD:

5 Q. Okay. If we can talk about some of the things THAT
6 you immediately noticed as you approached the vehicle, some
7 of the things that caught your attention. And let me know,
8 did you notice anything about Ms. Jones?

9 A. Well, when I first approached, I noticed her zipper
10 was down. Also, with Mr. Frasier, I noticed --

11 Q. Let's talk about that real quickly. Her zipper WAS
12 down, so her pants were kind of undone?

13 A. Yes, pulled all the way down.

14 Q. Why was that significant to you?

15 A. Just in the past, I've come in contact with people
16 that have attempted to hide contraband or narcotics in their
17 pants or crotch area, if you will.

18 Q. That is, as you are approaching a vehicle?

19 A. Correct.

20 Q. And actually right before you -- I am not going to
21 play it for the purpose of the time right now, but is there
22 anything significant about the time -- the vehicle's behavior
23 and the time it took to pull over?

24 A. When I got behind the vehicle, it made several lane
25 changes, almost in an attempt to evade me somewhat. When I

1 did hit my blue lights, it took probably a few hundred yards
2 for them to pull over.

3 Q. So not a terrible long-distance, but would you
4 characterize it as a little bit longer than normal?

5 A. Correct, yes.

6 Q. And by itself, that doesn't mean a whole lot, but
7 kind of --

8 A. Yeah, with the observations that the detectives had
9 made, it kind of -- the totality --

10 Q. Piqued your interest?

11 A. Exactly.

12 Q. So right now, at this point in the video, just so
13 I'm correct, you know that they are leaving a bus station?

14 A. Correct.

15 Q. And something they did piqued the officer's
16 interest?

17 A. Yes.

18 Q. At the bus station?

19 A. Yes.

20 Q. There was a little bit of evasive maneuvering by the
21 vehicle and a short delay in stopping?

22 A. Correct.

23 Q. As you approached the vehicle, the driver's pants
24 were undone?

25 A. Yes.

1 Q. Is that correct? Okay. What did you notice about
2 the defendant at this time?

3 A. He just appeared to be nervous. He was sweating
4 profusely, did not want to really interact with me a whole
5 lot as far as eye contact, something like that.

6 Q. So he was -- between sweating and some of his
7 mannerisms, he appeared nervous to you?

8 A. Correct, yes.

9 Q. And in relation to your experience on numerous
10 traffic stops, did that appear more or the same, or how did
11 that compare?

12 A. It did compare. I mean, it seemed a little more
13 elevated than if I was just going to stop someone without
14 having the prior knowledge I did. It seemed a little bit
15 elevated than normal traffic stop.

16 (Video playing.)

17 BY MR. KIDD:

18 Q. All right. So a couple of things happened there.
19 That one I want to bring to the Court's attention, I guess.

20 THE COURT: I don't need you to annotate the video.
21 I watched it yesterday. I'm going to watch it again. You
22 need to elicit testimony from him that's germane to the
23 elements of your burden. I don't need you to tell me what
24 the video said. The video speaks for itself.

25 MR. KIDD: Thank you, Your Honor.

1 BY MR. KIDD:

2 Q. What significance did you asking him or asking both
3 of them where they come from? What significance did that
4 have to you?

5 A. Because I knew where they were coming from and I had
6 to ask multiples and did not get a clear answer.

7 Q. And what does that mean to you?

8 A. That they were being evasive.

9 Q. And so they failed to answer your questions; is that
10 fair to say?

11 A. Correct.

12 Q. Did the driver have a driver's license?

13 A. I believe so, yes, he did.

14 Q. No, the driver?

15 A. Oh, the driver, no, the driver did not.

16 Q. And you were given the defendant's driver's license;
17 is that correct?

18 A. Correct.

19 Q. So, and without picking through the video too much
20 further, after this interaction with them, you then returned
21 to your vehicle, correct?

22 A. Correct.

23 Q. You run their licenses through a check?

24 A. Yes, sir, yes.

25 Q. And what are your thoughts at this point in the

1 traffic stop?

2 A. Just with the totality of everything, with what I
3 was relayed from the detectives and almost the evasiveness --
4 well, not evasiveness, but the length they pulled over, her
5 zipper being undone, just not being very direct with their
6 answers with me, my interest was piqued highly that something
7 was amiss or -- I don't know.

8 Q. And you worked narcotics for a period of time as
9 well?

10 A. Correct, yes.

11 Q. And just is it common for people who traffic and
12 deal with narcotics to utilize the mass transit and bus
13 system to bring in drugs --

14 A. Yes.

15 Q. -- into our community?

16 A. Yes.

17 Q. So that is a significant factor as well that was
18 piquing your interest in this issue?

19 A. Oh, yes.

20 Q. At some point, you asked the driver for consent to
21 search the vehicle?

22 A. I did, yes.

23 Q. And had you written a warning ticket at that point?
24 Do you recall?

25 A. I believe I had written it, but I don't think I

1 had -- I can't remember if I had given it to her yet or not.
2 I believe I had already written it though.

3 Q. And when you approached the vehicle, you asked her
4 to step out at that point?

5 A. To speak with her, yes.

6 Q. And you asked for consent to search?

7 A. Correct.

8 Q. And she granted that?

9 A. Correct.

10 Q. And at that point, yourself and another officer was
11 on scene?

12 A. Yes, sir.

13 Q. Who was that?

14 A. Officer Deaton.

15 Q. Officer Deaton. And then y'all got the defendant
16 out of the vehicle at that point; is that correct?

17 A. Yes.

18 Q. And you requested consent to search the defendant?

19 A. I did.

20 Q. And there might be a little dispute about this, but
21 how was that response -- how did you perceive his response in
22 your request to search him, his person?

23 A. I believe he -- I asked him if he minded if I
24 checked him out or searched him, and he said, "I do, but",
25 and just kind of put his hands up on top of the car.

1 Q. So he basically said, like, I do mind, but --

2 A. Yeah.

3 Q. I don't want to put words in your mouth, but, I do
4 mind, but proceed --

5 A. Yes, proceed.

6 Q. -- with that interaction?

7 A. Correct, yes.

8 Q. And then you searched him at that point?

9 A. Uh-huh.

10 Q. And --

11 THE COURT: Sir, if you can say yes or no.

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 BY MR. KIDD:

15 Q. And what did you find in his pockets?

16 A. I believe it was like a small plastic Ziploc baggy
17 of white powder substance.

18 Q. Okay. And you placed him under arrest at that
19 point?

20 A. Yes, I did.

21 Q. And for the purpose of our *Denno* motion as well, did
22 you Mirandized him at that point?

23 A. I did not.

24 Q. In hindsight, should you have?

25 A. In hindsight, yes.

1 Q. Hindsight is always 20/20. Why didn't you?

2 A. I think as I was detaining him, he kind of tensed up
3 on me or flexed up on me and kind of threw my attention
4 towards that. And a lot of times when you immediately start
5 reading someone their Miranda rights, it can add to the
6 tension. So I was just trying to de-escalate, which it did.
7 He was very calm after that.

8 Q. So he's in handcuffs. Where do you all put him at
9 that point?

10 A. I believe he was put to the side of my patrol car.
11 I don't think we had him in the vehicle yet.

12 Q. And yourself and Officer Deaton then conducted the
13 search of the vehicle?

14 A. Yes, sir.

15 Q. And during that search -- and it was a pretty long
16 search, is that fair to say?

17 A. Yeah, I believe, yeah, that's correct.

18 Q. And you found some narcotics during that search?

19 A. Yes.

20 Q. Where were the narcotics located?

21 A. They were located in a jacket, the pocket of a
22 jacket that was in the backseat.

23 Q. And there was a minor child in the vehicle as
24 well?

25 A. Yes, there was a toddler in the backseat as well.

1 Q. A car seat, or do you recall?

2 A. I believe it was a car seat, yes.

3 Q. And where was the jacket located in the vehicle?

4 A. I believe it was -- from what I recall, it was
5 underneath maybe some type of bag or handbag or something
6 next -- sitting next to the toddler's seat.

7 Q. So there was like the seat, the jacket, and then
8 sort of a handbag on top of the jacket?

9 A. Yes, sir.

10 Q. Or duffel bag?

11 A. Yeah, something to that effect.

12 Q. Okay. And immediately when you found the narcotics,
13 did you ask or direct a question towards the occupants of the
14 vehicle?

15 A. I asked whose jacket it was.

16 Q. And this is in -- Miranda has not been given at this
17 point?

18 A. No, it hadn't.

19 Q. And what was the response that you got?

20 A. Upon asking both subjects in the vehicle, the
21 defendant claimed that it was his jacket.

22 Q. He never admitted it was cocaine or anything like
23 that, though, he just said, that is my jacket?

24 A. No, sir.

25 Q. And at that point, I believe you directed to have

1 Ms. Jones placed in handcuffs as well at that time?

2 A. Yes, sir.

3 Q. And then I think shortly thereafter is when the
4 second video we just watched, where you read him his Miranda
5 rights in back of the vehicle, did he appear to be
6 intoxicated to you in any way?

7 A. No.

8 Q. I mean, you felt like he could have -- he could
9 communicate with you?

10 A. Yes.

11 Q. And understand the things you were saying in the
12 back-and-forth communication?

13 A. Yes.

14 Q. When you read him his rights, you feel like he
15 understood the words you were saying and the impact that they
16 had?

17 A. Yes, sir.

18 Q. Now, was there ever any -- was there ever a tactic
19 of you to delay giving him his Miranda warnings in order to
20 elicit an inculpatory response?

21 A. No, no, there wasn't.

22 Q. And from the time that he -- you found the small
23 amount of cocaine in his pocket, which I believe was at about
24 8:20 in the morning, until you find the cocaine in the back
25 of the car was at about 8:40 and then you Mirandized him at

1 8:48, does that sound about right?

2 A. That sounds correct.

3 Q. So there was about 28 minutes from the time you
4 placed him under arrest until you Mirandized him; is that
5 fair to say?

6 A. That sounds correct, yes.

7 Q. And then after Mirandizing him, you follow up with
8 sort of similar questions and asking him about the jacket and
9 who owns it and that sort of thing; is that correct?

10 A. Yes, sir.

11 Q. And same answer, he answers in the affirmative?

12 A. Yes, same answers.

13 Q. But doesn't give you any particulars what's inside?

14 A. No particulars.

15 Q. Did you ever threaten him or promise him leniency or
16 threaten to arrest his girlfriend should he not have claimed
17 the narcotics?

18 A. No, no, I didn't.

19 MR. KIDD: Court's indulgence.

20 THE COURT: Yes, sir.

21 BY MR. KIDD:

22 Q. Oh, one more thing on some of the suspicious
23 behavior. Do you recall the driver's side door opening while
24 you were writing the warning ticket?

25 A. I do.

1 Q. What does that mean to you, if anything?

2 A. It's a little odd. I don't know why someone would
3 try to get out, especially since there was another officer or
4 standing out there with them just kind of watching. You
5 don't see it very often.

6 Q. And also, there was a couple of points during the
7 search of the vehicle that Ms. Jones kind of shouted a few
8 things at you during the search of the vehicle; do you recall
9 those?

10 A. I do.

11 Q. What was the nature of that communication?

12 A. I believe I was trying to -- I believe I recognized
13 maybe one of the inside panels of the door was somewhat
14 loose, so I was trying to pull that to see if anything was
15 located in there. And, obviously, I can understand why she
16 wouldn't want me pulling or breaking --

17 Q. She told you to stop?

18 A. Yes, stop.

19 Q. And you did?

20 A. I did.

21 Q. At another point, I believe she instructed Officer
22 Deaton on how to open the trunk compartment of the vehicle;
23 is that correct?

24 A. Correct.

25 Q. What about the temperature on that morning? It was

1 relatively early in the morning, but it is August in
2 Charleston. Do you recall the temperature of that morning?

3 A. Probably 75, 80 degrees maybe.

4 Q. So it's warm, but not blistering hot out?

5 A. Correct.

6 Q. And were you sweating out there while you were
7 searching the car?

8 A. I wasn't, no.

9 Q. But you stated earlier that the defendant was
10 sweating pretty profusely while in the passenger's seat of
11 the vehicle; is that right?

12 A. Yes, sir.

13 Q. And there was one other point I wanted to get at.
14 During the search of the vehicle, and you make a comment on
15 this in the video, there was some behavior from the defendant
16 that kind of led you to believe there was something there but
17 you were missing it. Can you kind of describe what that was?

18 A. He was just acting very nonchalant. Didn't seem a
19 whole -- really concerned, almost like maybe like I wasn't
20 going to find anything.

21 Q. Was he kind of like laughing and joking?

22 A. Yes, sir.

23 Q. And he was under arrest for possession of cocaine?

24 A. Correct.

25 Q. At that point?

1 A. Yes, sir.

2 Q. So did that behavior seem sort of inconsistent with
3 the situation that he was in?

4 A. It did a little, yeah.

5 Q. Why was -- did you think that was an attempt to
6 throw you off, or why was that important?

7 A. Yeah, I did believe it like -- someone just getting
8 arrested, they are usually not very happy with you or kind of
9 happy-go-lucky like that. So it led me to believe like maybe
10 he knew I was missing something in the vehicle.

11 MR. KIDD: No further questions.

12 THE COURT: Any questions of the witness?

13 MR. KING: Yes, Your Honor.

14 THE COURT: You may proceed.

15 CROSS-EXAMINATION

16 BY MR. KING:

17 Q. Officer Hall, you got -- this was initiated when you
18 got a phone call, I guess, a cell phone call from narcotics
19 agents?

20 A. Yes, sir.

21 Q. And you think it was Johnson who called you?

22 A. From what I recall, yes.

23 Q. Do you remember what was communicated to you through
24 that call? What information did you have once you got that
25 phone call and went to pull over the car?

1 A. I was told that they had -- they were watching the
2 bus station and observed the subject exit the bus station,
3 enter a car. They didn't give me -- run through all the
4 particulars. They just believed that something was funny
5 about it and asked if I would conduct a traffic stop on the
6 vehicle.

7 Q. And so when you go to make the traffic stop, you
8 know that he exited the bus station?

9 A. Uh-huh.

10 Q. Any other facts, just that he's leaving the bus
11 station, gets in a car and leaves?

12 A. Yeah. Other than the fact that they said that there
13 was something suspicious -- but they didn't -- you know, it
14 was kind of a quick, quick, bam, bam. You know, he was
15 leaving the area, so they didn't really give me a whole a lot
16 of information as far as what they observed.

17 Q. They didn't tell you any specific reasons they
18 thought it was suspicious. They just said, here's a guy
19 leaving the bus station, we think he's suspicious, can you
20 check him out?

21 A. Correct, yes, sir.

22 Q. How long would you say a typical traffic stop lasts
23 in your experience?

24 A. Ten minutes, fifteen minutes maybe. I would say ten
25 probably.

1 Q. So when you pull the car over, you testified you
2 thought that it took longer than normal for them to pull
3 over, right?

4 A. Yes.

5 Q. You approached the car pretty fast from behind.
6 Would you agree there's a miles per hour, I guess, a GPS or
7 something on this camera, and it tells you your latitude,
8 longitude and speed, right?

9 A. Yes.

10 Q. Would you agree you got up to 87 miles per hour
11 trying to catch up with that car?

12 A. I think that's what it says, yes. That's possible.

13 Q. You were hauling it trying to catch him, right?

14 A. Yes.

15 Q. Because they were a good ways away across the
16 bridge?

17 A. Correct.

18 Q. When you initiate the blue lights, you are on the
19 bridge, right?

20 A. Yes, sir.

21 Q. You are on the -- that's the north bridge?

22 A. Yes.

23 Q. And she can't pull over on the bridge, right?

24 There's nowhere to pull over because there's not even a side
25 media, right?

1 A. Correct.

2 Q. And then you said that she was evasive. I just want
3 to show you one part of that. So you come up behind her 87
4 miles per hour. And what she does is put on her left turn
5 signal to get out of the way?

6 A. Correct.

7 Q. Right? Is that something you experienced before, if
8 you come flying up fast behind someone, they don't know if
9 you are going to pull them over or not?

10 A. Yes.

11 Q. First instinct is move out of this guy's way,
12 right?

13 A. Correct.

14 Q. And she can't go right, because she's already in the
15 far right lane and you are behind her, so she moves to the
16 far left lane?

17 A. Uh-huh.

18 Q. But you follow her over to the far left lane?

19 A. Uh-huh.

20 Q. And then she turns on her right turn signal and she
21 starts to move over to the other right lane. I guess at this
22 point, she realizes she's the one being pulled over,
23 unfortunately?

24 A. Right.

25 Q. She gets to the far right. Starts off on the

1 bridge. If you can see here, that's still relatively small
2 shoulder of the road?

3 A. Uh-huh.

4 Q. It's kind of dark on there?

5 A. Yeah.

6 Q. But the shoulder isn't very wide and it's also a
7 little bit steep, right?

8 A. Yes. /

9 Q. So she puts on her hazard lights, right? She puts
10 those on, maybe to signal to let you know, I'm aware you are
11 behind me, I'm looking for a place to pull over. And she
12 pulls over as soon as the shoulder of the road broadened up
13 to a broader area?

14 A. Correct.

15 Q. So it's entirely possible that -- and she pulls over
16 within about 49 seconds. Would you agree with that? It took
17 49 seconds or so once the blue lights happen and she's pulled
18 over on the road?

19 A. Yes, sir, if that's what the video shows.

20 Q. So you are saying it took her a long time to pull
21 over, but you start off when she's on a bridge when she can't
22 pull over. She starts off thinking, you know, she needs to
23 get out of your way. Then gets to the right, puts on her
24 hazard lights to give, I guess, a signal to everybody. And
25 then pulls over as soon as the shoulder widens up for a nice

1 place to pull over. So it is possible that she was just
2 looking for a safe, proper place to pull over, right? That
3 is possible?

4 A. It's possible, yes, sir, absolutely.

5 Q. Now, did you see them moving around inside the
6 vehicle or anything?

7 A. I couldn't. I couldn't really tell, no, sir.

8 Q. Now, when you pull them over, you do start asking
9 them questions, right, about where they are from, where they
10 are coming from, but they tell you, I think within the first
11 two minutes of the stop, he tells you he's coming from New
12 York. And later Cheryl Jones says, I'm coming from the bus
13 station. So they do tell you that she's picking him up from
14 the bus station, right?

15 A. Yes, sir.

16 Q. They never told you any lies?

17 A. No, no, sir.

18 Q. Nothing they told you contradicted what Sergeant
19 Pritchard saw, Officer Pritchard saw?

20 A. No, no, sir.

21 Q. They didn't give two different statements that
22 contradicted each other?

23 A. No, sir.

24 Q. So there was nothing really suspicious that you
25 learned by asking them questions except for the fact that

1 they were coming from a bus station?

2 A. Just that I had to ask multiple times where they
3 were coming from, that kind of piqued my interest.

4 Q. You testified that he was nervous, right?

5 A. Yes, sir.

6 Q. People are often nervous during a traffic stop,
7 right? Even people who aren't doing anything wrong, it's
8 just a common experience that you've seen, right?

9 A. Yes, sir.

10 Q. And you are usually on the other end of it, you are
11 the one that pulled them over. I don't know if you get
12 pulled over very much.

13 A. No.

14 Q. You've experienced seeing people who are nervous who
15 ultimately aren't doing anything wrong?

16 A. Yes, sir.

17 Q. You testified about him sweating, right?

18 A. Yes, sir.

19 Q. And you said you weren't sweating. This was August
20 in Charleston, right?

21 A. Yes.

22 Q. And we all know Charleston in August, it gets hot
23 and humid?

24 A. Oh, yeah, yes.

25 Q. And there are some parts of the video where it

1 appears that you and other officers are hot.

2 (Video playing.)

3 Q. For example, do you know who that person is in the
4 trunk, looking at the trunk?

5 A. I'm not sure who that is.

6 Q. But is that a police officer who was there helping
7 you search the car?

8 A. Yes, sir.

9 Q. And what's he doing with his hand on his brow?

10 A. It looks like he's wiping his brow.

11 Q. Wiping sweat off of his brow?

12 A. Correct.

13 Q. And that's at 8:42.

14 Now, there's another time where -- I believe that
15 Ms. Jones or the people complain about being hot. And you
16 say, you think you are hot?

17 (Video playing.)

18 Q. Right?

19 A. Sounds like me, yes.

20 Q. Right. So they are complaining about being hot and
21 you are saying, you think you are hot, meaning that I'm
22 wearing this uniform working and I'm the one who is hot. Is
23 that what you meant by that?

24 A. Probably, yes, sir.

25 Q. So you were hot, but you weren't sweating?

1 A. Apparently, I was, yes.

2 Q. But you weren't sweating?

3 A. I don't recall if I was sweating that day.

4 Q. You may have been sweating?

5 A. I may have been.

6 Q. Do you hear that officer's voice there? Do you know
7 who that is?

8 A. Can you play it again.

9 (Video playing.)

10 Q. He says: Can I put them in the backseat of the car
11 to get them out of the heat?

12 Do you remember that?

13 A. Okay.

14 Q. Did you hear that?

15 A. Yes, sir, I heard that.

16 Q. Do you agree that other officer is asking you if he
17 can put either the child or Ms. Jones or someone in the back
18 of the police car to get them out of the heat?

19 A. Yes, sir. Yes, sir.

20 Q. So there's three examples from the video that show
21 that it was hot out in August in Charleston, right?

22 A. Correct, yes, sir.

23 Q. Ms. Jones's pants were unzipped. You've talked
24 about that, right?

25 A. Yes, sir.

1 Q. And she told you that, I just got out of the shower,
2 you know, put on my clothes. She came to pick him up at the
3 bus station. She gave some explanation for that, right?

4 A. Yes.

5 Q. I believe her explanation was, basically, she's
6 saying, I just came to the bus station, got out of the
7 shower, and she kind of, I guess, threw her clothes on and
8 forgot to zip her pants?

9 A. Yes.

10 Q. She gave some reasonable explanation for that. Did
11 you ask her about it, why are your pants unzipped, right?

12 A. Yes, I did.

13 Q. Mr. Frasier had his ID on him, right?

14 A. Yes.

15 Q. And he provided it to you?

16 A. Correct, yes.

17 Q. Ms. Jones, she didn't have a driver's license, but
18 she provided her information?

19 A. Yes.

20 Q. Right? Which ultimately turned out to be correct?

21 A. Yes.

22 Q. Now, at a certain point, Officer Deaton arrives.
23 And he goes over and stands by the passenger side. And
24 covers that part of the car while you are by the driver's,
25 correct?

1 A. Yes.

2 Q. You take the documents you have, the information
3 from Ms. Jones and Mr. Frasier's license and go back to the
4 police car and do a computer check, right?

5 A. Yes.

6 Q. And there's a point in that where it sounds like
7 dispatch, about 8:13 a.m., radios back and says, they are
8 clear, right? Do you remember that?

9 A. Yes.

10 Q. Basically, you are checking to see if her license is
11 valid and not suspended, and that neither one of them have
12 any active warrants or any reasons that they would need to be
13 arrested?

14 A. Correct.

15 Q. But that came back clear, so no warrants?

16 A. No warrants.

17 Q. Ms. Jones, her driver's license was valid, even
18 though she didn't have it with her, right?

19 A. Yes.

20 Q. And then at that point, you are still sitting in the
21 car. And you say that you are going to do up a warning
22 ticket and then try to get consent. Do you remember saying
23 that?

24 A. I believe so, yes.

25 Q. Then there's -- I have a few on here. Sounds like

1 you are actually writing up the warning ticket while you are
2 sitting in the car?

3 A. That sounds right, yes.

4 Q. So you've got the information. Everything is clear.
5 You've made the decision, at least as far as the traffic
6 infractions go, that you are going to write up Ms. Jones a
7 warning ticket for the third brake light?

8 A. That's correct.

9 Q. You still have their documents. You still have his
10 ID, Mr. Frasier's ID and Mrs. Jones registration, or whatever
11 documents she had?

12 A. Correct.

13 Q. Still had those in your hand. And you've made the
14 decision to write her a ticket. And you wrote the ticket,
15 warning ticket?

16 A. Uh-huh.

17 Q. You get out of the car and go back to talk to
18 Ms. Jones?

19 A. Yes.

20 Q. At that point, I guess you've got the warning
21 ticket?

22 A. I can recall if I gave it to her right then when I
23 asked her to step out of the vehicle or if I -- I can't,
24 without looking at the video --

25 Q. I can cue it real quick if you want to see it.

1 (Video playing.)

2 BY MR. KING:

3 Q. So doesn't look like you actually gave her the
4 ticket at that point?

5 A. No.

6 Q. But you have the ticket written out and ready to
7 give to her, right?

8 A. Yes, sir.

9 Q. At that point, you are basically done with the
10 traffic part of it, right? You are still concerned about
11 there may be something in the car.

12 A. Correct.

13 Q. But the traffic portion of it, you've written the
14 ticket out. And instead of giving it to her, you get her out
15 and start talking to her about whether you can search the
16 car?

17 A. Yes, sir.

18 Q. Right? She gives you consent to search the car?

19 A. Yes, sir.

20 Q. And you never tell them they are free to leave at
21 this point, right? You don't tell them, you are okay to go
22 if you want to, but do you mind if I search the car? You
23 never tell them they are free to leave, either Ms. Jones or
24 Mr. Frasier?

25 A. No.

1 Q. Then you go and do a pat-down of Mr. Frasier. There
2 are two officers. It's you and Deaton, who walked over to
3 Mr. Frasier's side of the car. First thing you say is, you
4 can go ahead and get him out of the car, right

5 A. Uh-huh.

6 Q. You don't ask him to step out of the car?

7 A. Correct.

8 Q. You tell Deaton, you can get him out of the car?

9 A. Correct.

10 Q. Right? Because you are getting his consent to
11 search him at this point, right?

12 A. Correct.

13 Q. His voluntary consent?

14 A. Right.

15 Q. First thing you say is to tell Deaton get him out of
16 the car? You don't say, Mr. Frasier, would you mind stepping
17 out of the car? You don't say that, do you?

18 A. I don't even know if his window down for him to
19 hear. I think I was just telling Officer Deaton to get him
20 out of the car. I don't think I was speaking to Mr. Frasier
21 at that point.

22 Q. But you are giving a request to Deaton to get him
23 out.

24 (Video playing.)

25 Q. Sounds like Deaton says, step out of the car for

1 me?

2 A. Sounds like it, yes, sir.

3 Q. Now, there's two of you standing there, right? Both
4 of you are armed with weapons?

5 A. Correct.

6 Q. Is that right?

7 A. Yes.

8 Q. What sort of weapons do you have that? You have
9 pistols?

10 A. Yes, sir.

11 Q. You have stun guns?

12 A. Yes, sir.

13 Q. Do you have pepper spray?

14 A. Yes, sir.

15 Q. Do you have batons?

16 A. Yes, sir.

17 Q. So you have an arsenal of weapons around your belt,
18 and two of you standing there?

19 A. Correct.

20 Q. How tall are you?

21 A. About 6' 1".

22 Q. How much do you weigh?

23 A. Little over 200, I would say.

24 Q. Is Officer Deaton similar size?

25 A. I would say so, yes.

1 Q. So two of you fully armed, standing there around his
2 door, telling him to get out of the vehicle, not really
3 asking him, telling him?

4 (Video playing.)

5 Q. At that point, you tell him: Don't put your hands
6 in your pockets, right?

7 A. Yes.

8 Q. You've got someone at a traffic stop. You assert
9 some authority, right?

10 A. Correct.

11 Q. Because it can be a dangerous situation for you.
12 You don't know what's going to happen?

13 A. Correct.

14 Q. So you command him to not put his hands in his
15 pocks, right?

16 A. Yes.

17 Q. But now, this is when you are going to get his
18 voluntary consent. You don't say, and I guess maybe this is
19 unrealistic, but, do you mind if I search you, please, sir?
20 Right? That is not what you said, was it?

21 A. No, sir.

22 Q. You didn't even say, do you mind if I search you or
23 I check you real quick, do you? You kind of make a
24 statement, you don't mind if I check you real quick. Right?
25 Do you want to hear it again?

1 A. I heard it, yes, sir.

2 Q. So it's really more of a statement than a question,
3 you don't mind if I check you real quick, right? You didn't
4 ask him, may I search you, or, do you mind if I search you?

5 A. I didn't sugar coat it, if that's ...

6 Q. And his response to that is, I do, I do mind.

7 Right?

8 (Video playing.)

9 Q. And then he turns around and puts his hands up on
10 the top of the car?

11 A. Yes.

12 Q. So when he says, I do, and you are trying to get his
13 voluntary consent, right? That's part of it, is making sure
14 that he agrees to let you search him. You are not forcing
15 him to do this search, right? You are getting his consent?

16 A. Yes, sir.

17 Q. When he says, I do mind, you didn't stop to try to
18 clarify what he meant by that?

19 A. No, because I don't think anybody would want to be
20 searched at any point in time in their life. So I would mind
21 if someone wanted to search me. I mean --

22 Q. So you didn't think any consent to search is --

23 A. I do not, but he turns around and, if you will,
24 assumes the position like he was okay with it.

25 Q. Right. But you are standing around with an arsenal

1 of weapons with another officer. You are commanding him to
2 not put his hands in his pockets, to keep his hands on top of
3 the car. You don't think he's saying, I do, but you are
4 going to it anyway, or, I don't have a choice?

5 A. He didn't say that.

6 Q. Well, you didn't clarify it? I mean, he gives you
7 an ambiguous answer when you are trying to get his consent,
8 you didn't even get a yes from him. A "yes" is as clear as
9 you can get. Can I search you? Yes.

10 A. I think his body language kind of spoke for ...

11 Q. Well, maybe, but his body language also appears to
12 be submitting to authority. This is a submissive move,
13 right?

14 A. Uh-huh.

15 Q. And submitting to authority is not the same thing as
16 consent. You were in the military?

17 A. I was.

18 Q. Have you ever heard the phrase about volunteering
19 military style?

20 A. Yes.

21 Q. Do you know what that means? What's that mean?

22 A. Are you talking about, like, you are just told to do
23 something.

24 Q. Right, right, right.

25 A. Correct.

1 Q. That seems to me like this is consent military
2 style. You told him, you don't mind if I search you real
3 quick, it's like you are going to do it anyway. And maybe
4 that's what he's thinking, yeah, I mind, but what choice do I
5 have. Right? You don't think you had maybe some duty to ask
6 him follow-up question or at least get a yes from him?

7 A. Yes, in hindsight, I could have worded it better or
8 made the question a little bit more clear towards him.

9 Q. And you continue with exerting your authority by
10 telling him to keep his hands on the car. I understand it
11 may be a safety issue there and there are procedures you have
12 to follow, but you are again exerting authority.

13 (Video playing.)

14 Q. And now, when you go in his pockets, he protests
15 that, doesn't he? He says, my pockets too? Do you remember
16 him saying that?

17 (Video playing.)

18 Q. Did you hear him say that, "my pockets too?"

19 A. I believe that's what he said.

20 Q. So even during the search, he's still protesting
21 that you are going into his pockets, right?

22 A. It just sounded like a question to me, like, you are
23 going ...

24 Q. My pockets too, the tone that he used?

25 A. He never said stop to me, stop doing that, stop.

1 Q. So at that point, you handcuff him, right?

2 A. Yes, sir.

3 Q. You go into his pockets. You find a small bag of
4 cocaine. He's handcuffed, right?

5 A. Yes, sir.

6 Q. He's in custody at that point?

7 A. Correct.

8 Q. He's not going home. He's going to the jail?

9 A. Correct.

10 Q. At some point you say, you are going to get strip
11 searched, is there anything on you, correct?

12 A. Yes.

13 Q. He's not going to be let go. He's in custody at
14 that point?

15 A. Correct, pending the outcome of the field test of
16 whatever, you know, the substance was.

17 Q. But you believed it was cocaine. I think you are
18 saying --

19 A. Yes, sir, he said it was Adderall.

20 Q. He said it was Adderall, crushed up Adderall?

21 A. I believe that's what he said.

22 Q. Which is still illegal?

23 A. Without a prescription, yes.

24 Q. Then you do the actual search of the car, which
25 takes maybe 20 minutes or so. And now it's around 8:39 when

1 you find the cocaine inside the car. All right?

2 A. Okay.

3 Q. I just want to talk about what happens when you find
4 the cocaine inside the car.

5 (Video playing.)

6 Q. "Put her in handcuffs," you are referring to
7 Ms. Jones, right?

8 A. Yes, sir.

9 Q. The driver who has a small toddler with her?

10 A. Yes, sir.

11 Q. This is immediately before you ask, whose jacket,
12 right?

13 A. I believe so, yes.

14 Q. You asked him three questions at that point: Whose
15 jacket? What's in the jacket? Do you know what would be in
16 the jacket?

17 Right?

18 A. Yes.

19 Q. Mr. Frasier says, "They don't have nothing to do
20 with it." Right? Referring to the toddler and Mrs. Jones,
21 right?

22 A. Yes.

23 Q. And then after he says, "They don't have anything to
24 do with it," you tell Mr. Frasier, "She's just been detained
25 right now. I am not saying she's under arrest." Right? The

1 implication being that if things go a certain way, we can let
2 her go. Right? Isn't that the implication, that if he
3 admits to these drugs, she's not going to get arrested? Is
4 that what you are implying when you are saying, she's not
5 detained, she's not under arrest at this point?

6 A. Right, pending further investigation.

7 (Video playing.)

8 Q. And she ended up going free, right?

9 A. Yes, sir.

10 Q. When he claimed the jacket, she left. Her and the
11 child left and had no charges?

12 A. Yes, sir.

13 Q. You testified on the direct that you never promised
14 him anything or anything like that. But you were saying, we
15 can help you; do you remember saying that?

16 A. Yes, sir.

17 THE COURT: You don't have to play the video unless
18 he needs it to refresh his memory. Same rules for you and
19 Mr. Kidd. I watched the video.

20 Q. You said, if you want to help yourself, we can help
21 you, I can get some people very quickly that can help you
22 out, correct?

23 A. Yes, sir.

24 Q. So you were promising him that if he speaks up, then
25 you can help him, right? And you can get people there, I'm

1 assuming narcotics officers, who can help him, right?

2 A. Yes, sir, if he was willing to speak with him, yes.

3 Q. Now, , this is all around 8:40 when you asked
4 questions about the jacket. It's about eight minutes later
5 that you are reading Miranda; is that right?

6 A. Yes, sir.

7 Q. Because you called Pritchard and Pritchard had to
8 get down there. And then it's about 8:48, around eight
9 minutes after you asked the initial question of whose jacket
10 that he's being read his Miranda; right?

11 A. Yes, sir.

12 Q. And after he's read his Miranda, you begin
13 questioning him again, right --

14 A. Yes, sir.

15 Q. -- about the jacket. And you really don't -- you
16 don't kind of start off fresh like, okay, whose jacket is it,
17 right? You say, you are telling me the jacket is yours.
18 That's the first thing you say after Miranda; is that right?

19 A. That sounds correct.

20 Q. Basically, referring back to that statement that he
21 made eight minutes ago?

22 A. I believe so, yes.

23 Q. But you don't start off fresh in the interrogation
24 of somebody you never met before by saying, you are telling
25 me this, right?

1 A. True.

2 Q. That's a reference back to the previous statement
3 that he's made?

4 A. Correct.

5 Q. Kind of a continuation of what was going on eight
6 minutes before?

7 A. Correct.

8 Q. And you asked him basically the same questions. You
9 are telling me the jacket is yours. What was in that jacket?
10 You know, basically the same three or four questions that you
11 asked him eight minutes before; is that right?

12 A. I believe so, yes.

13 Q. Now, one final thing, you found that bag in there
14 that had Superior B, what is referred to as cut. Do you
15 remember that?

16 A. Yes, sir.

17 Q. In the video, there's a couple of times where you
18 are referring to that as his bag. I didn't see anywhere in
19 there where he claimed the bag. Are you just making an
20 assumption it was his bag because he was the one coming from
21 the bus station?

22 A. I was assuming because he had been traveling. I
23 think there were some men's clothing possibly in it as
24 well.

25 Q. But you believed it was his bag?

1 A. Yes.

2 Q. Right? And you said at least twice on the video, I
3 think you said, I found some cut in his bag, he had some cut
4 in his bag, maybe a couple of different times when you were
5 talking to other people; do you recall that?

6 A. Yes, yes.

7 Q. he never gave you consent to search that bag, did
8 he?

9 A. No, sir, I don't believe I asked.

10 Q. Ms. Jones gave you consent to search the car?

11 A. Correct.

12 Q. When you see the bag in the car, you believe that's
13 his bag?

14 A. I think once -- I mean, once I opened it and saw, I
15 think there was some men's clothing in it, I kind of put two
16 and two together and assumed that it was his bag.

17 Q. But he never gave you consent to search the bag?

18 A. No.

19 MR. KING: That's all the questions I have.

20 THE COURT: Any redirect?

21 MR. KIDD: Extremely briefly.

22 REDIRECT EXAMINATION

23 BY MR. KIDD:

24 Q. Now, Mr. King was talking a lot about the sweating
25 and how hot it was. Would you agree there's a difference

1 when you are out there, searching the car, working on the
2 side of the road, getting hot, versus when you're a passenger
3 in a vehicle?

4 A. Yes.

5 Q. When you first notice him sweating, it was right
6 when you walked up to the vehicle, correct?

7 A. Correct.

8 Q. He hadn't been standing out on the side of the road.
9 He hadn't been working or doing anything. He was just a
10 passenger in the vehicle?

11 A. That's correct.

12 Q. Mr. King talked about you having an arsenal. You
13 never drew a weapon or threatened anyone with a weapon or
14 unholstered your firearm at any point?

15 A. No, sir.

16 Q. And when Mr. King was talking about how he could
17 help himself, that was if he cooperated with narcotics and
18 did control buys or set up his supplier and things like that,
19 correct?

20 A. Correct.

21 Q. It's not about getting him to admit the drugs were
22 his? It's about him working off -- he could potentially work
23 off these charges and help himself?

24 A. Correct. I was just out of narcotics, so I was very
25 familiar with how it goes.

1 Q. So you weren't trying to get him to claim the drugs.
2 You were trying to get him to, you know, listen, let's be
3 realistic about this, you can work this charge off with
4 narcotics?

5 A. Trying to help himself out.

6 Q. Trying to help himself out. And Mr. King also
7 talked a little bit about her pants being down. And she gave
8 you an explanation?

9 A. Correct.

10 Q. But people aren't always honest, right? Is that
11 fair to say?

12 A. Yes.

13 Q. Wouldn't be surprising to you if somebody lied to
14 you?

15 A. It would not surprise me.

16 Q. And I agree that they never gave you -- never lied
17 to you, necessarily, about your questions where they are
18 coming from. But you also had to ask them like seven or
19 eight times, is that right, before they gave you an answer to
20 a very simple question?

21 A. Yes, sir.

22 MR. KIDD: No further questions, Judge.

23 THE COURT: Sir, you may step down.

24 Any further witnesses from the State?

25 MR. KIDD: No, ma'am.

1 THE COURT: Any witnesses from the Defense?

2 MR. KING: No, Your Honor.

3 THE COURT: Glad to hear argument.

4 MR. KIDD: It's defense's motion.

5 THE COURT: You have the burden of proof.

6 MR. KIDD: All right. So, Judge, I think the
7 *Pichardo* case is probably -- outlines the law in South
8 Carolina regarding traffic stops the most succinctly, I
9 guess.

10 This traffic stop was initiated at 8:07, 8:08 in the
11 morning, is when the officer initiated the traffic stop. The
12 consent -- the driver's license check was run at 8:11. Came
13 back at 8:13. The driver's door opened at 8:13. Consent was
14 gained at -- consent to search the vehicle was gained at
15 8:19. So it was approximately 11 to 12 minutes after the
16 traffic stop was initiated that the consent to search the car
17 was requested.

18 Now, I agree that I think under these circumstances,
19 this is never going to be a truly voluntary consent case.
20 This traffic stop was extended based on a reasonable
21 articulable suspicion.

22 THE COURT: Like what?

23 MR. KIDD: So we tried to touch on each of the
24 factor. First, the first thing would be his behavior at the
25 bus stop. The narcotics officer testified this is a common

1 method of transportation for people --

2 THE COURT: So you are telling me everybody that
3 comes out of the bus station that looks both ways before they
4 get in a car is subject to being searched because that's
5 suspicious behavior?

6 MR. KIDD: Absolutely not, Judge. If that was the
7 only factor, I would agree with you 100 percent that that
8 standing alone is not enough. But when you combine that
9 factor with some of the evasive driving, the short delay at
10 stop, I agree it's not much, but short delay in stop, her
11 pants being down, evasively not answering very simple direct
12 questions that the officer had, knew the answer to, that he
13 had to ask six, seven, eight times, where are you all coming
14 from? It's a question that someone with nothing to hide
15 would say, coming from the bus station, just picked him up.
16 But he had to ask that eight times and it took approximately
17 nine minutes for him to get an answer to that question. And
18 that is, you know, to me a very important factor, that they
19 could not answer a very simple question that he knew the
20 answer to. So that's piquing his interest further.

21 You combine that with the nervous behavior of the
22 defendant. I know that nervousness alone is not enough to
23 extend a traffic stop, but when you combine his nervous
24 behavior, his sweating profusely --

25 THE COURT: Everybody sweats profusely in August in

1 Charleston. I sweat profusely in Charleston in August. It's
2 hot at 6 in the morning. As soon as you walk out the door,
3 it's 90 to 100 percent humidity.

4 MR. KIDD: I agree to some extent. I don't think
5 anyone sweats more than I do, but I don't sweat driving in my
6 car on my way to work. That just me. I believe I sweat more
7 than anybody.

8 THE COURT: I don't know. There's been no testimony
9 about whether it was air conditioned or not, whether it was
10 working or not. I don't have a clue. I just know that I
11 could take judicial notice that it's hot in Charleston in
12 August.

13 MR. KIDD: Sure, it is, but --

14 THE COURT: If you look at an almanac, it's probably
15 100 percent humidity. Probably at seven o'clock, it probably
16 was 80 degrees.

17 MR. KIDD: It was. I have the almanac, Judge. It
18 was 78 degrees at that time in the morning. I would be happy
19 to give it to you.

20 THE COURT: No. I live in Charleston. I've lived
21 in Charleston my whole life. I am not going to tell you how
22 long, because I'm vain. But you are in Charleston in August,
23 you are going to be sweating.

24 MR. KIDD: No question about it, Judge. And
25 standing alone, I agree, that's not enough standing alone.

1 But this is a totality of the circumstances analysis. And
2 you have to look at all of the factors combined to extend
3 that traffic stop. And, Judge --

4 THE COURT: Was it really the extension of a traffic
5 stop or was it their intention to search that car from the
6 beginning? And that is the rock.. And I need some case law
7 that tells me that you can use brake lights being out as
8 subterfuge to really search a car, because that's really what
9 that amounts to. It was never really a traffic stop.

10 MR. KIDD: So under *State v. Corley*, Judge, and it's
11 exactly on point as to that issue, it's about a pretextual
12 traffic stop. It says: A minor traffic violation arrest
13 will not be rendered invalid by the fact that it was mere
14 pretext for a narcotics search. Subjective intentions of
15 officers play no role in the Fourth Amendment analysis. And
16 that's *State v. Corley*, 383 S.C. 232.

17 So when we are analyzing this under the Fourth
18 Amendment search issue, the subjective intentions of the
19 officer play no role into our analysis. And, you know, I
20 realize that pretextual traffic stops don't taste well all
21 the time, but under the law, it's not relevant.

22 And I can find you that quote under *State v. Corley*.
23 It is on -- citing *Arkansas v. Sullivan*, which is United
24 States Supreme Court case, says: Additionally, a minor
25 traffic violation arrest will not be rendered invalid by the

1 fact that it was a "mere pretext for a narcotics search,"
2 citing *Arkansas v. Sullivan*, 532 U.S. 769. Thus, the
3 subjective intentions of the officers played no role in the
4 ordinary probable cause Fourth Amendment analysis citing
5 *Banda* 371 S.C. 252.

6 So I agree, Judge, it's a pretextual traffic stop
7 based on the observation of the officers at the bus station
8 saying, listen, this is a guy who, to the officer's intent,
9 was getting into a car, still scanning the parking lot which
10 piqued his interest. And he saw an equipment violation on
11 the vehicle. Asked for a patrol officer to pull the car
12 over. All patrol officer knew was that something suspicious
13 went down at the bus stop, pulled him over for an equipment
14 violation. And then he noticed all these additional factors.
15 Then he noticed her pants being down. Then he noticed his
16 nervous behavior, inability to answer the questions directly,
17 her delay in stopping, her opening the car door during the
18 traffic stop.

19 These factors, which further piqued his suspicion,
20 and so then he asked for consent to search. And she gave it.
21 And it's all on video. And the other interesting thing that
22 I think is important is each one of these things that the
23 officer noticed, he verbalized and articulates on the video.
24 So we don't have to take his word for any one of these
25 factors being present. They are mentioned on the video as he

1 observes them or shortly thereafter. So we don't have to
2 question whether or not the officer observed these things
3 contemporaneously.

4 He then asked for consent to search, pulls the
5 defendant out, and asks for his consent to search. Now, I
6 have a duty to the Court. That is a close call on the
7 consent to search his person where that cocaine is found. If
8 that consent --

9 THE COURT: You know what the record is void of is
10 why the officer felt it necessary to go in his pockets,
11 because there's no case law to support that. A Terry frisk
12 is for your safety. Does not mean you go in somebody's
13 pockets and start questioning them about how much money you
14 have, how many keys you have, how many cell phones you have.
15 None of that is relevant to his safety. And you did not
16 question him why he went into his pockets. And the video is
17 not clear, because that part of his body is shielded.

18 And Mr. Jones very frequently walks in front of the
19 camera. So while I can hear voices, I cannot see what's
20 going on. And that portion of when it's found, her body with
21 her red tank top is in front of camera. And in addition, the
22 way his body is positioned on the car, that part of his body
23 is completely -- you can't see it.

24 So neither of you asked him that question. The case
25 law supports that when something feels like it's drugs, you

1 can then probe further. But there is no testimony in the
2 record that would support that that's an additional
3 intrusion. A Terry frisk is for your safety. It's not to
4 find something that inculcates someone.

5 MR. KIDD: Absolutely. I agree with that point
6 wholeheartedly, and this is not a Terry frisk.

7 THE COURT: So what kind of frisk was it?

8 MR. KIDD: It's a consensual search. If you find
9 that he did not give the consent, I agree, those specific
10 drugs should be suppressed, because it went past a Terry
11 frisk, Judge. I agree with the Court, this is beyond a Terry
12 frisk. And that's why those questions weren't asked.

13 So this is a consent -- the officer believed that
14 the interaction he had with the defendant was the defendant
15 giving him consent to search. He then searches his pocket
16 based on what he thought was consent and found narcotics and
17 placed him under arrest at that point.

18 Then we have the further search of the vehicle after
19 that fact, which, you know, is either based on the reasonable
20 articulate suspicion and the consent of the driver, which
21 was, I think, what the officer was acting under, but it was
22 also under search incident to a valid arrest. So, you know,
23 if the defendant is lawfully under arrest at that point --

24 THE COURT: But it's not his car. So how could that
25 be a search incident to a valid arrest?

1 MR. KIDD: Because under the case law, I think it's
2 specifically *Gant*, the passenger compartment of a vehicle can
3 be searched and --

4 THE COURT: Yeah, but in *Gant* it's their car. It is
5 not a passenger in the car, is it? But my memory might be
6 wrong. I haven't read it in a minute. But, generally, when
7 you start -- generally, when you have this situation, the
8 person being arrested is the person who owns the car. And
9 usually the car's inventoried, and that's usually where you
10 find everything.

11 MR. KIDD: I think an inventory search is different
12 from a search incident to --

13 THE COURT: I understand that. What I'm saying is
14 the way it plays out factually. When you start talking about
15 the context we are talking about, usually the person who is
16 driving the car is the one who is arrested. It's usually
17 their vehicle. It's a little different when it's somebody
18 else's vehicle and when you know the purpose of searching the
19 vehicle. Of course, you don't have the same protections with
20 a vehicle as with a person. Car is portable. We know what
21 all the case law says about that.

22 But when you start going into -- it's no different
23 than in an apartment, when you have three different rooms in
24 an apartment, three different bedrooms, and somebody consents
25 to that apartment being searched, but you know that it's not

1 the person's bedroom who owns this apartment whose room you
2 are searching. You know there's something that kind of says
3 maybe we need to pump the brakes and see. It's different --
4 I think you can search a car. Car's portable. It's on the
5 side of the road.

6 Conceivably, she is consenting to the search of the
7 car. It's her vehicle. But now when you start getting into
8 things that are in a vehicle, that are zipped up or otherwise
9 in other containers, suitcases, duffel bags, book bags --

10 MR. KIDD: Judge, I think I have a case that's right
11 on point, *State v. Brown*, which is 401 S.C. 82, and this is
12 coming back from the sort of the --

13 THE COURT: That's a long time ago. What year is
14 that case?

15 MR. KIDD: 2012 -- 2013.

16 THE COURT: That can't be the right citation then.

17 MR. KIDD: 401 South Carolina.

18 THE COURT: You said 41.

19 MR. KIDD: 401 SC --

20 THE COURT: You said 41. And I would say that would
21 have been in 1952. And the law has changed a lot since 1952.
22 Because not many people would have been driving on the
23 highway. We had a few vehicles out there, but not the volume
24 of vehicles we have now. Jurisprudence has changed
25 considerably since then.

1 MR. KIDD: It has. And that's one of the things
2 that this case tracks, is the change in the jurisprudence.
3 And this is a passenger in the vehicle in the *Brown* case.
4 And it tracks us through *Belton* and the new *Gant* and the
5 two-prong factors that we -- that allow us to search the
6 passenger compartment of a vehicle, and in *Brown*, it is the
7 passenger of a vehicle, and that is if anything that's in the
8 immediate reach of the person that's placed under arrest,
9 which we don't have here, because he's been removed from the
10 vehicle.

11 But the second factor, Judge, is whether or not
12 there could be a reasonable belief that evidence that
13 advances the crime that he's under arrest for could be found.
14 And when it comes to a narcotics arrest, that can be pretty
15 much anywhere in the passenger's reach inside that vehicle.
16 And so pretty much the entire passenger compartment of that
17 vehicle would be subject to search incident to arrest.

18 THE COURT: I guess I don't mean to eclipse your
19 argument, but, Mr. King, I need to be clear. What exactly is
20 it that you are asking to be suppressed so that Mr. Kidd can
21 make -- what's the word I'm looking for? -- he could be more
22 focused in his argument, because there's no need for him to
23 make this huge sort of argument that's, you know, sort of
24 encompassing everything. I need to know exactly what it is
25 you are seeking to accomplish in each of your motions so that

1 he can address each of those.

2 MR. KING: If we take them one at that time --

3 THE COURT: I need you to cover everything you are
4 seeking. In other words, what statements are you seeking to
5 suppress? What evidence are you seeking to suppress, and on
6 what grounds, so that he can address that directly?

7 MR. KING: I'm seeking to suppress everything that
8 was -- all incriminating evidence that was found in his
9 pocket, in the car.

10 THE COURT: What's the basis? I need you to take
11 them one at a time.

12 MR. KING: The biggest motion is the extended
13 traffic stop, that this was an illegal seizure, that at the
14 point that Officer Hall sat in his police car, got radioed
15 back that everything was clear and decided he was going to
16 write a warning ticket, the purpose of the traffic stop was
17 concluded. And that's quotes from *Tindall* that says: At
18 this point, the purpose of a traffic stop was accomplished
19 except for the issue --

20 THE COURT: But we know from the beginning that
21 wasn't the purpose of the stop. The purpose of the stop was
22 to see if there was some illicit drugs in the vehicle. And
23 we know traffic stop was subterfuge for that. Normally, when
24 you stop somebody, their traffic light is out, most times
25 officer say, you know your light is out? The law used to be

1 as long as you had two working lights, really didn't matter
2 if your third wasn't working. Now it says, if you choose to
3 have three on the car, all three need to be operating.

4 So, technically, they can stop you for that. Most
5 officers just give you a warning, let you go on your way.
6 Takes less than five minutes. Sometimes they won't give you
7 warning ticket. Sometimes they just say, listen, do you know
8 your light is out? Maybe you need to get that checked.

9 But we know from the beginning that that argument
10 really -- I don't know necessarily it is particularly on
11 point or valid, because we know from the beginning, that
12 really wasn't the purpose for the stop. We know that they
13 called to have him stopped because they saw his behavior at
14 the bus station. They felt it was suspicious, and that they
15 were just looking for a reason to stop the car so that they
16 could search him and find out if there were illegal drugs in
17 the car.

18 So I don't know that it's dispositive that once he
19 wrote a warning ticket -- I think they always intended for
20 the stop to be -- the scope -- in other words, the scope of
21 the stop was never the lights. And I think Mr. Kidd is
22 correct that case law supports that proposition, that they
23 could have stopped him or stopped them for some other purpose
24 other than the lights when their real goal was to see if
25 there were illicit drugs in the vehicle.

1 MR. KING: And what they are allowed to do is
2 investigate the traffic stop. And if any information comes
3 up during the traffic stop that provides reasonable
4 suspicion, that might give them reason to suspend that stop
5 past what that original, at least pretextual purpose was.
6 The way the law quotes it is, it's still -- they can carry
7 out this stop. They can check the license. But there's --

8 THE COURT: They can do all the things they did.
9 They can check the license, see if there are any warrants.

10 MR. KING: Right. But once the reason for the stop
11 has been, the stop cannot be used as a fishing expedition for
12 unrelated criminal activity. That's in Pichardo.

13 So the purpose of the warning ticket is, they no
14 longer have that justification anymore. Once the warning
15 ticket has been written out, they can't use the pretext
16 anymore. The traffic stop is concluded. So for them to
17 continue to even ask for consent, they've created a new
18 illegal detention at that point. That's the way these cases
19 phrase it, is that there is a second detention after the
20 conclusion of the traffic stop. And unless there's
21 reasonable suspicious of a serious crime at that point, then
22 anything past that is an illegal seizure. And even obtaining
23 consent is a product of that seizure. And everything after
24 that is illegal. So everything found after that --

25 THE COURT: Well, they say they have reasonable

1 suspicion, that he was nervous, that he was -- that his
2 behavior was atypical, that they were not direct in their
3 answers, that they were evasive, and that that heightened
4 their suspicion to then enlarge the scope. And then it
5 trickles on down to them saying then he consents to the
6 search of his person and that it wasn't a Terry frisk for
7 their safety, that it was their intention all look to search
8 him for the purpose of finding what they believed to be
9 illicit substances on his person and that he consented to the
10 search.

11 Now, I will concede the video, I've watched it, and
12 his behavior is sort of contradictory. He says, I really
13 don't want to, but then his body language contradicts his
14 words. Because then he immediately turns around and puts his
15 hands on the roof of the car and basically submits to his
16 person being searched. He said, I really don't want to, but.
17 It's kind of what his body says.

18 MR. KING: But that's not supposed to be a
19 submission.

20 THE COURT: Well, it was a consent, like me saying,
21 I don't really want to go to lunch with you, but I'm going to
22 go. That's kind of what his language is. Not kind of, it is
23 what his language is. He says, I really don't, but then my
24 body says -- my language, my verbiage of my body says, well,
25 go ahead and search me. But then he goes on to say, what,

1 you are going to go into my pockets too?

2 MR. KING: Right. He further expresses that he
3 doesn't want to engage in that search, but they are
4 surrounding him with weapons and they are commanding him to
5 keep his hands out of his pockets, I don't believe anybody
6 would have felt they had a choice. But I don't think they
7 have reasonable suspicion.

8 THE COURT: Well, your client has been through the
9 system before. And I don't mean that in any pejorative
10 sense. But I think he knows the scope of a search. He went
11 through the whole appellate process where a case was reversed
12 on the extension of a search, and what the court found to be
13 an unreasonable violation of his constitutional rights. I
14 think he's not like someone being stopped for the first time.
15 I think he knew the scope of consent.

16 MR. KING: I'm sure he's been stopped a lot.

17 THE COURT: No, I think he --

18 MR. KING: Because he's used to being searched and
19 being --

20 THE COURT: No. I just think he knows about the
21 system. Your argument that he wouldn't have known any
22 better--

23 MR. KING: No, it's not that. In his mind, they are
24 going to search me anyway; I don't have a choice.

25 MR. KING: I don't know what was in his mind. I can

1 only judge objectively what I see on the video. He didn't
2 testify. Nobody can speculate what this state of mind was.
3 I can only judge the reasonable unambiguous meaning of his
4 words and his body language. And he doesn't have to testify.
5 He doesn't have any burden of proof. But I cannot base a
6 decision on what I speculate to be his state of mind. I can
7 only look at a video and tell me what it says.

8 MR. KING: If they've got the burden and it's
9 ambiguous --

10 THE COURT: It is not ambiguous.

11 MR. KING: He says, I do mind.

12 THE COURT: He didn't say, I do mind. He says, I
13 do, but. His body says "but", because then he turns around.
14 The average person would say, yeah, I do mind, get a warrant,
15 do whatever, but you are not going to search me. I mean, you
16 and I both know people do that all of the time.

17 And part of them being reticent in answering
18 questions is, they had attitude. They were like, we don't
19 know why you are stopping us; why is it your business where
20 we are going?

21 That was their attitude. And that was what
22 Mr. Culver Kidd has told me is going to be Ms. Jones's
23 attitude, and has been her attitude in dealing with him. And
24 you can see her attitude to the video. Like, I just got out
25 of the shower, why is it your business that my zipper is

1 down, which I don't know is necessarily unreasonable.

2 MR. KING: I don't think that's wrong.

3 THE COURT: Everybody reacts differently.

4 MR. KING: It's an intrusion in our lives. And you
5 know, the point of that is, I don't think there was
6 reasonable suspicion because they weren't evasive. They told
7 the officers where they were coming from. There was nothing
8 dishonest that they said. There was nothing inconsistent
9 about what they said.

10 And these other cases that Mr. Kidd had cited, they
11 all involve, you know, the officer catches the person in a
12 lie or the person says he just came from this exit and the
13 officer saw the exit, said, you didn't come from that way.

14 There's some additional fact in those other cases.
15 But just not wanting to answer these broad questions as far
16 as he knows is a routine traffic stop, isn't suspicious.
17 That is --

18 THE COURT: Well, officers always ask you where you
19 are coming from when they stop you. Where are you going?

20 MR. KING: And they told him.

21 THE COURT: That's not unusual. They ask everybody
22 that. I mean, I don't think they have to necessarily
23 be thinking you're -- I mean, I've been stopped for a traffic
24 ticket before, and that's the first thing they ask you is:
25 Where are you going; where are you coming from?

1 MR. KING: I think within minutes, they are
2 answering that question. They are saying, we came from the
3 bus station, came to pick him up. They are not that
4 evasive.

5 THE COURT: You said "not that evasive", are you
6 conceding that they were evasive?

7 MR. KING: It's hard to tell when he first asked the
8 question what their answer -- no, I don't think that they
9 were evasive. Maybe they didn't answer the question the
10 first time, but they didn't lie. And they didn't give
11 inconsistent versions. They said -- she said, I was picking
12 him up from the bus station. He said where he was coming
13 from, that he was coming from the bus station. And that
14 matched up with what Pritchard saw at the bus station.

15 There's nothing suspicious about what they were
16 saying. If they had given different versions of where they
17 were coming from, one said they were coming from the bus
18 station, another said that they were coming from home, that
19 might be suspicious. But there's nothing inconsistent or
20 unusual at all about what they said. They said where they
21 were coming from, where they were going. And none of that
22 was untrue.

23 THE COURT: Well, we look at the officer's
24 subjective opinions, do we not, and the officer's subjective
25 perception from the totality of the circumstance?

1 MR. KING: I think it's objective, what an objective
2 officer would on believe based on the facts and
3 circumstances.

4 THE COURT: But we still have to rely on his
5 subjective opinions of what he perceives. Then we look at
6 objectively, because you cannot have everybody's opinions
7 regarding someone's behavior, whether it's furtive or not is
8 subjective. Because it's based on your rationale perception
9 of what you are seeing of a person's behavior. And everybody
10 rationally perceives things differently.

11 That's just like three doctors may see somebody, and
12 based on objective criteria, they all have three different
13 diagnoses which are subjective. That's why you don't let
14 doctors diagnosis into evidence without subject to
15 cross-examination, because it's all subjective. But what
16 somebody reports as their symptoms is objective.

17 So when you start talking about what an officer
18 perceived of someone, that's all subjective because it's
19 opinion, basically, based on what they are rationally
20 perceiving. And then you looking at it objectively based on
21 the totality of the circumstances.

22 MR. KING: Has to be reasonable.

23 THE COURT: When you look at all of this, is what
24 the officer subjectively perceived reasonable under the
25 circumstances?

1 MR. KING: He wasn't really told what happened at
2 the bus station. All Hall was told is he get off of a bus
3 and they thought he was suspicion. So I don't know him
4 looking at the bus station should even come in, because Hall
5 wasn't aware of that.

6 THE COURT: You have to take into consideration
7 where that bus station is, correct, part of town?

8 MR. KING: I don't think that's reasonable suspicion
9 because he gets out of a bus station at a particular part of
10 town. Anybody that gets out of that bus station is
11 suspicious because of the part town it is in, or anybody
12 riding a bus? He gets off a bus and he looks around. And
13 Hall doesn't even know that. He just knows he got off a bus.
14 He's nervous. Took him 49 seconds to pull over when they
15 start out at a bridge. And he's sweating in summer in
16 Charleston. And he thinks they didn't answer his questions
17 fast enough. That's not reasonable suspicion. There's
18 nothing there to show they are involved in any sort of crime,
19 nothing reasonable.

20 They said if they had found -- the other cases they
21 found broken Phillie Blunts in the car. They found a bunch
22 of air fresheners. People say they are traveling for two
23 days but have no luggage in the car. One person says one
24 thing and another person says another, stories contradict
25 each other. There's nothing like that in this case. They

1 are making a whole lot out of nervousness, the fact that he
2 got out of a bus station and he's nervous.

3 THE COURT: But overriding all of that, you have the
4 owner of the vehicle consenting to the search of the vehicle.
5 Even if the extent of the search was extended, she still said
6 she's the owner of the vehicle. And she says, go ahead and
7 search it.

8 MR. KING: But that's what *Tindall* says, that
9 consent is invalid. That consent is a product of an illegal
10 seizure. There's several of these cases where consent was
11 given. But if the point of the traffic stop is finished and
12 there's no reasonable suspicion at that point, then asking
13 for consent is illegally seizing them. That's what these
14 cases hold.

15 THE COURT: I understand that, but that was never --
16 but that was never the purpose of their stop. The purpose of
17 their stop was always to find drugs. So, arguably, from the
18 beginning of that stop, that was the purpose of it.

19 MR. KING: But they have to find reasonable
20 suspicion of a serious crime to continue that purpose past
21 where the traffic stop ends. They have up until the purpose
22 of the traffic stop to find reasonable suspicion. If they
23 don't have it by the time he's written that warrant, that
24 warning ticket out, then he can't go on a fishing expedition
25 after that. And that's when the illegal seizure happens.

1 When he takes Ms. Jones out of the car, instead of
2 giving her -- he should have given her the ticket and let her
3 go. And when he doesn't do that, he has illegally seized
4 her, and any consent she gives is a product --

5 THE COURT: Yeah, but how can -- what standing do
6 you have to raise that she was illegally seized?

7 MR. KING: He was. He was sitting in the car.

8 THE COURT: Yeah, you argue him. You can't argue
9 that she was illegally detained. You don't have any standing
10 to argue that. She's not under arrest. He could have walked
11 off.

12 MR. KING: He could have gotten out of the police
13 car and walked down the street?

14 THE COURT: He wasn't in the police car at that
15 point.

16 MR. KING: He could have gotten out of the
17 passenger's side of the car and walked away? You really
18 think they would have let him walk away?

19 THE COURT: I don't know. I can't rule on what
20 didn't happen. I can only rule on what did happen. I don't
21 think you have standing to say that she was being illegally
22 seized. She didn't say she was. She wasn't arrested. It
23 was her car.

24 MR. KING: He was being illegally seized because
25 he's inside of the car --

1 THE COURT: You can argue all that, but you don't
2 have any standing to argue what she thought, perceived.
3 She's not here. She didn't testify. So you cannot argue
4 that somehow her constitutional rights were being abridged
5 and, therefore, that trickles to your client.

6 MR. KING: *State vs. Donovan Williams*, the driver
7 gave consent. The passenger is Donovan Williams, who brought
8 the case. And the Court ruled that the consent was invalid
9 and suppressed the evidence. He is --

10 THE COURT: I have to see what the facts are in that
11 case. What's the citation?

12 MR. KING: That is 351 S.C. 591.

13 THE COURT: I'm going to let the jury go to lunch
14 until 1:30. Tell them to come back directly to their jury
15 room.

16 Is there an exception from the State?

17 MR. KIDD: No, ma'am.

18 THE COURT: From the Defense?

19 MR. KING: No, ma'am.

20 MR. KING: If you look at Donovan Williams, that is
21 the exact scenario. It's a 2002 case. I think it was -- may
22 have been Judge Rawl.

23 THE COURT: Any further argument, Mr. King?

24 MR. KING: That was really the main argument on the
25 overall traffic stop. And that would be to suppress

1 everything that was found in the car. My argument is the
2 illegal seizure happened when he had the warning ticket
3 written out and the purpose of the traffic stop.

4 The next thing, Judge, would be the pat-down. We've
5 argued a little bit about that.

6 THE COURT: Do you concede that that was not a Terry
7 frisk, but it was the State's position that that was a
8 consent search and that the purpose of the search was to find
9 inculpatory material?

10 MR. KING: Yes. Right. I don't believe that they
11 had reasonable suspicion he was armed and dangerous to do a
12 Terry pat. So I agree with that. That was a consent search.
13 But I don't believe that he consented. Because they are
14 armed, standing around him. They -- Hall tells them, get him
15 out of the car. They get him out of the car, tell him, don't
16 reach in your pockets. Still don't ask him, can we search
17 you? They say, you don't mind if I check you real quick.
18 It's a statement, an authoritative statement. Telling him to
19 to keep his hands on the car. He protests when they try to
20 get in his pocks.

21 If anything, he's revoked his consent at that point.
22 Even if he did consent in the beginning, once they start
23 going in his pockets, he's protesting that and revoking any
24 consent that I don't think he gave in the first place.

25 I think it's a submission to authority and not a

1 voluntary consent. The case I cite to is *State v. Harris*.
2 In that case, the police wanted to search a guy's car, said,
3 we want to search your car, and the guy said, that's cool.
4 And the court ruled that's not a voluntary consent. He said,
5 that's cool.

6 Again, I think it's because you need to get a yes on
7 the person. If they are going to prove that he voluntarily
8 waived his rights -- you know, even you do a guilty plea --

9 THE COURT: Hold on. Everybody is outside of that
10 hallway, right? Okay. I'm sorry.

11 MR. KING: If you are asking the defendant for a
12 guilty plea if they are waiving their rights and they say,
13 well, maybe --

14 THE COURT: I don't think we can judge that
15 heightened standard as a guilty plea. It's a different form.
16 You are in court. It's a controlled environment. I think
17 it's a little different when you are on the side of the road.
18 I don't think you can, you know -- I don't think our courts
19 support you having that heightened standard. People don't
20 think that rationally -- I mean, it's not the same as being
21 in a controlled environment in a courtroom where you've been
22 advised of your rights and you know why you are there, and
23 you know what you are doing and you are judging
24 voluntariness. I think that's totally different than when
25 you are on the side of the road and you make a decision. I

1 mean, that's just totally different.

2 We know that people make snap decisions all the
3 time. Guilty plea is not a snap decision. When you've taken
4 months and contemplated it, gone over discovery, talked to
5 your lawyer, and then you are in front of a judge talking to
6 you, questioning you about what you are doing, I think that's
7 a whole different parameter, a whole different set of
8 parameters in terms of decision-making than when you are on
9 the side of the road by a car being asked to consent. I
10 don't think you can apply the same set of principles.

11 MR. KING: It's still an important waiver of a
12 right, though. The citizen is still waiving their right.

13 THE COURT: I agree. But people make snap decisions
14 to waive those all the time. I mean, you know, it's a
15 different set of circumstances. I mean, you are outside.
16 You are near a vehicle. I mean, I don't think you can apply
17 the same set of criteria. It's just totally different. It's
18 not analogous.

19 MR. KING: I think under *State v. Harris*, when the
20 response is, "that's cool", that's a stronger response than
21 what he gave, I think. And the Court ruled that wasn't
22 voluntary. And saying "that's cool" is a lot closer to yes
23 than, "I mind", or, "Do you mind?", "I do, but". If you
24 can't distinguish from *Harris*, I think the point of *Harris* is
25 the response you need to get needs to be not ambiguous. It

1 needs to be a yes. Can we search you? Yes. And they
2 haven't had that.

3 So I'm moving to suppress what was found in his
4 pocket, which I think is a bus ticket and a straw and a bag
5 of cocaine under the Fourth Amendment in Article 1, Section
6 10 of the South Carolina Constitution, the statements, Your
7 Honor --

8 THE COURT: I think Mr. Kidd would concede that
9 anything before him was Mirandized --

10 MR. KIDD: Anything what now?

11 THE COURT: Any statements that we are seeking to
12 inculcate him before he was Mirandized I think you would
13 agree those are out?

14 MR. KIDD: I agree.

15 MR. KING: Doesn't help very much if the Miranda
16 part comes in. And that's where the *Seibert* issue, the rule
17 in *Seibert* comes in.

18 THE COURT: Well, he doesn't really inculcate
19 himself after Miranda except to say it's his jacket. And
20 then he says, whatever you found in it is what you found in
21 it. But he doesn't say that there are drugs in it. He
22 doesn't say the drugs belong to me. He simply says the
23 jacket is mine and this young woman and the baby have nothing
24 to do with it.

25 So really what he says after he's Mirandized is very

1 limited. What he says before Miranda is far more
2 inculpatory. And those questions were designed for him to
3 inculcate himself. And he should have been Mirandized as
4 soon as the handcuffs went off.

5 MR. KING: He says the same things both times.

6 THE COURT: No. He says something totally
7 different. When he's in back of the car after they
8 Mirandized him he simply says, the jacket is mine. I'm
9 paraphrasing. And they say, well, do you know that there are
10 drugs in the jacket? And he says, what's in it is what's in
11 it, you know what you found in it, basically, whatever you
12 found in the jacket, that's what it is. But he doesn't say,
13 it's my jacket, the drug's in the jacket and the drugs belong
14 to me. He never says that. He simply says, the jacket
15 belongs to me. And that is the extent of what he says.

16 And then he says that the young lady and the baby,
17 and I'm referring to the infant that was removed from the
18 car, have nothing to do with this. But other than that, he
19 really doesn't say anything. And even those statements are
20 circumstantial in terms of inculcating him. But he doesn't
21 really admit to anything after he's Mirandized.

22 MR. KING: Pretty incriminating to claim a jacket
23 when they found a bunch of cocaine in the jacket pocket.
24 They are going to use it --

25 THE COURT: What you are arguing is, basically, they

1 had him inculcate himself and give a whole lot of details,
2 and then they Mirandized him and tried to clean it up and had
3 to try to elicit the exact same statement from him. And
4 that's not what happened. Factually, that's not analogous to
5 the case you are citing.

6 And the line of cases you cite is when people --
7 when the police don't Mirandize somebody, and they make all
8 these statements. And then they Mirandize them and then they
9 reduce it to writing and basically reduce exactly the writing
10 what the person said before they were Mirandized. Which,
11 basically, those cases stand for the proposition that you
12 can't get somebody to inculcate themselves, and then try to
13 clean it up with Miranda and reduce to writing or on a video
14 exactly what they said before they were Mirandized. And
15 that's just not what happened here.

16 And I agree, they should have Mirandized him as soon
17 as they put the handcuffs on him. But, again, things are
18 very different on the side of a highway. And I don't know
19 that you Mirandizing somebody makes tensions more heightened
20 than putting handcuffs on them. Frankly, I think one is less
21 than the other.

22 MR. KING: Round one of the questioning, he says,
23 who is jacket? He says mine. That's your jacket? You know
24 what is in your jacket? I couldn't hear a response. Yes.
25 And what would be in your jacket? He said, they got nothing

1 to with it. What would we find in the jacket? You found the
2 jacket, right? That is basically the first round.

3 The second round, exact same questions. After
4 Miranda, he picks up where he left off even, which is one of
5 the factors in *Seibert*, which is the degree to which the
6 interrogator's questions treated in the second round is
7 continuous with the first.

8 First thing he says after Miranda is, you are
9 telling me that's your jacket? He's referring back to that
10 previous statement, asking the exact same questions. You are
11 telling me that jacket is yours? She has nothing to do with
12 it? She has nothing to do with it, yes.

13 That's exactly what he was saying in round one.
14 What was in that jacket? Exactly what you found in there.
15 I'm responsible for that.

16 Those are the exact same questions asked in round
17 one and two. Neither one of them was very thorough. But
18 they are both equally about the same number of questions.

19 In *Medley* case that the Solicitor cited, it talks
20 about how -- that's the case where -- a DUI case where they
21 chase the guy, find him on the ground, and the officer
22 immediately asks him, how much did you have to drink. And
23 the person said, too much. And then when they are riding
24 back in the police car, the defendant initiates another
25 conversation. And they -- he gets further details. In that

1 case, it talks about round one saying, he just asked one
2 question.. He didn't ask follow-up questions. And in our
3 case, round one, he asked follow-up questions. He says,
4 whose jacket? What would I find in this jacket? What's in
5 the jacket? He asked those follow-up questions.

6 So it's not this innocent one question like *State v.*
7 *Medley*. It's less than ten minutes between round one and
8 round two of the questioning.

9 And the other factor in *Siebert*, continuing of
10 police personnel, applies in this case too. It's the same
11 officer, Officer Hall asking the initial questions in round
12 one, and Officer Hall asking virtually the same questions in
13 round two.

14 And that's the whole point, is that -- I think most
15 important thing is the degree to which the interrogator's
16 questions are treated in the second round and the first.
17 It's not like there's been some intervening circumstance and
18 we are kind of starting from scratch. He picks right back up
19 where he left off in the round one of the questioning. You
20 are telling me that jacket is yours? He doesn't sit down and
21 say, okay, so whose jacket is it? Let's start from scratch,
22 who is jacket is it? He continues those questions. And
23 that's the whole point of *Siebert*, is that in those
24 situations, Miranda does no good. The Miranda is not a
25 protective measure like it should be once that officer has

1 already asked him the same questions without Miranda and he's
2 already admitted all of it.

3 And it doesn't have to be a deliberate tactic.
4 That's in *State v. Navy*. Doesn't have to be a deliberate
5 tactic by the police officer. That's not what they
6 considered determinative in *State v. Navy*. They just listed
7 these factors. And when you look at the four factors in
8 *Siebert*, they all weigh towards suppressing both statements.

9 If one statement comes in, it doesn't do me a whole
10 lot of good, because the first statement is left out, you
11 know, I would probably bring up the first statement in cross
12 anyway, because the circumstances it was first made --

13 THE COURT: I think that would be incredibly
14 prejudicial to your client. Strategically, if you wanted to
15 do that, that would be on you. Because not only would you be
16 establishing that he said it once, but that he said it twice.
17 And that wouldn't make a whole lot of sense to me. But I
18 guess maybe it might make some sense to you, but I don't see
19 how that would help.

20 MR. KING: The next argument, which is
21 voluntariness, the second before he claims the jacket,
22 Officer Hall says, put her in cuffs. And puts Jones in
23 cuffs. She's got a little toddler with her. He's already in
24 cuffs. So he says, put her in cuffs. Asks whose jacket it
25 is. Mr. Frasier claims the jacket, seeing her in cuffs.

1 Officer Hall tells him, she's just being detained. She's not
2 under arrest. Implication being, I can let her go if you
3 tell me the right thing. And that's when he claims the
4 jacket.

5 THE COURT: I don't think there's any implication of
6 that. I can't read into what was in somebody's mind. You
7 know, that's the beauty of having a video. It speaks for
8 itself. And when it's unambiguous, I don't have to look to
9 try to interpret what the plain and ordinary meaning of words
10 mean. I'm not trying to try to get into anybody's mind and
11 determine what they are trying to say. I'm not clairvoyant.
12 I can't read people's mind.

13 And, technically, usually what they would have done
14 is arrested both of them and just sorted it out. He chose to
15 make that statement after he was Mirandized and they let her
16 go about her way.

17 I don't know that -- the officer never -- normally,
18 when officers going to do that, they say that. They say, you
19 can tell me who it belongs to or I'm going to arrest both of
20 you, or something, or usually they will say, listen, we'll
21 let her go if you admit they are yours, or let your friend go
22 if you say it's yours.

23 MR. KING: He was almost saying it. He was implying
24 that. She's not under arrest, she's just being detained.
25 Why else would he tell Mr. Frasier that except to give him

1 the idea that if you admit it, I will let her go. That's
2 exactly what he's trying to say. He's just not using those
3 exact words. Why else tell Mr. Frasier, she's not under
4 arrest? If you are going to do it right, put her under
5 arrest, separate them both, talk to them. But to cuff her in
6 front of him and then imply that she can be released if the
7 right thing is said, that's coercive.

8 *State v. Corns*, that is where they are basically --
9 it's almost like a threat, a veil threat to arrest her who,
10 the important part about her is the little child in the car.
11 What's going to happen to the little child if they both go to
12 jail?

13 So that concern, I think that's just a coercive
14 situation. And the statements are involuntary. And then he
15 says, we can help you. Just be honest. I have people I can
16 get real quick that can help you. He's saying that while
17 he's asking him about the jacket.

18 So I think they do make promises of leniency to get
19 him to keep talking. And that would apply to the second
20 Miranda as well.

21 So basic arguments are to suppress both rounds of
22 questions as being involuntary, a violation of due process,
23 and in violation of Miranda and the rule in *Seibert*.

24 And I did bring up the -- I don't know if we settled
25 that -- Ms. Jones's statements, Judge, that was --

1 THE COURT: I don't have anything before me
2 regarding Ms. Jones's statement. I haven't heard any
3 testimony from her. And I haven't heard any testimony from
4 the officers regarding it. And until such time as they seek
5 to admit it, it's not before me.

6 MR. KING: Statements, Judge, the pat-down -- I
7 guess if Your Honor were to grant the main motion about the
8 extended traffic stop, that would suppress everything. I'm
9 asking -- that's the first thing I would ask for, is to
10 suppress all of the evidence found, is the whole stop being
11 an illegal seizure, a violation of the Fourth Amendment and
12 South Carolina Constitution, Article 1, Section 10.

13 If not that, then we would ask to suppress whatever
14 was found in his pocket as a violation of the Fourth
15 Amendment because he didn't give voluntary consent. And I
16 just made the arguments about suppressing his statements.

17 And also one final thing, if it's his jacket, they
18 didn't get permission to search or consent to search his
19 jacket. She gave consent to search the car, but not the
20 jacket.

21 THE COURT: Yeah, but they didn't know what they
22 were going to find in the car. They didn't know whose jacket
23 it was. How would they have known that ahead of time when
24 you are searching the interior of a car, which is portable.
25 And women wear men's jackets all the time. And her

1 pocketbook, or whatever, was on top of it. So what is there
2 objectively or subjectively that would lead them to believe
3 that it was his jacket on a backseat in proximity of her
4 child?

5 MR. KING: I guess they could ask. They --

6 THE COURT: What duty did they have to ask before
7 they searched the car once she gave consent? It's her
8 vehicle. Lots of women prefer men's jacket. I don't know.
9 But it was not found in proximity of him. It was not on the
10 passenger seat. It was not on the passenger floorboard. It
11 was in the backseat in proximity to the minor child in a car
12 seat with her belongings on top of it. So really it's up for
13 grabs who the jacket belonged to until somebody claimed it.

14 MR. KIDD: I think it was his belongings on top of
15 it.

16 THE COURT: I must have misunderstood the
17 testimony.

18 MR. KIDD: It was a duffel bag that had men's
19 clothing on it. I just said that to clear the record.

20 MR. KING: And that bag, they found a bottle of
21 Superior B that they are going to classify as cut. So I'm
22 asking suppress that as well, because in the video, two times
23 they do refer to that as his bag. And so the officer was
24 aware that's his bag, but searched it anyway. So I move that
25 final motion to suppress the Superior B that was found in

1 that bag. I think that covered everything, Your Honor.

2 THE COURT: Okay. Mr. Kidd, anything you want to
3 say in response?

4 MR. KIDD: I'm going to try to pick up sort of where
5 I left off. I think I argued about everything I had to
6 regarding the extension of the traffic stop and the
7 reasonable articulable suspicion.

8 As to the search of his person, I would agree that
9 it is not, as I expressed earlier, this is not a Terry frisk.
10 This is based on a consent to search the person.

11 THE COURT: Yeah, he concedes that argument. He
12 doesn't concede it was consensual, but he concedes it was not
13 a Terry frisk.

14 MR. KIDD: Right. So, Judge, I think all we have to
15 go off of there is, you know, the manifestation of consent.
16 And in that, and how he relayed that consent to the officer,
17 you know, it was the officer's belief, as he testified
18 earlier, that his words and actions together was consent.
19 And he was operating off of that consent in searching his
20 person, you know, "I do, but". I think everyone does mind
21 being searched. No one wants to be searched. So, yeah, I do
22 mind, but go ahead. It's probably something similar I would
23 say if a police officer asked to search me, yeah, I mind, but
24 I have nothing to hide, go ahead.

25 So I believe when you look at his words and his

1 actions, his body language, that was a manifestation of
2 consent to the officer's request, which produced one gram of
3 cocaine and I believe the bus ticket was in his pocket as
4 well.

5 Your Honor, as to the -- and I agree that if the
6 defense wants me to keep out his statements procedure to
7 Miranda, I will redact those from the video, if the defense
8 would like. I do believe, however, there's a significant
9 difference between the *Siebert* and Navy case and what we have
10 going on here. I believe this is much more akin to the
11 *Medley* case, which I cited to Your Honor earlier.

12 Both in Navy and *Siebert*, this is back at an
13 interrogation room where they interrogate people for 20, 30
14 minutes.

15 THE COURT: Well, it's longer than that in Navy.
16 It's, like, over a course of several hours. And *Siebert*
17 really stands for the proposition when you interrogate
18 someone, you know that you want them to produce a confession,
19 and then you clean it up later by Mirandize them and
20 basically go over the exact same set of questions. In other
21 words, you know that you intend to inculcate them. You wait
22 for them to break down and inculcate themselves, and then,
23 oh, by the way, let's Mirandize you and reduce this to
24 writing. And I don't think that is factually analogous to
25 this situation.

1 And what's interesting about *Navy*, you have three
2 justices that dissent. I mean, one that concurs in the
3 decision, but two that then say we need to differentiate what
4 happened in this case, what happened in *Siebert*. And then,
5 factually, just doesn't feel it's analogous, it's not the
6 same kind of situation. So I think to say there was real
7 consensus --

8 MR. KIDD: Right. I think we can distinguish our
9 facts here significantly from the *Navy* and *Siebert* case. And
10 I think the *Medley* case is pretty much right on point and
11 that tracks it.

12 THE COURT: But I agree with the sentiment of the
13 decision, which is, you can't sit somebody down and intend to
14 have them inculcate themselves, know that you have them
15 basically under arrest, that they are not free to leave, and
16 all the questions are designed for them to inculcate
17 themselves. And then once they do it, then you say, oh, by
18 the way, let's Mirandize you, and then we are going to go
19 over these same questions again and reduce it to writing or
20 video, and try to clean it up. In other words, we did
21 something wrong and now we want to sanitize it by doing it
22 right.

23 MR. KIDD: I agree.

24 THE COURT: And that is how I read those opinions.

25 MR. KING: Your Honor, just to point out in *Navy*,

1 *State v. Navy* says that that deliberate practice was not
2 determinative in *Siebert*, *Navy* says that's not --

3 THE COURT: I understand that, but I'm reading with
4 more interest than dissent. It's more interesting to me than
5 the --

6 MR. KING: Majority --

7 THE COURT: But I think *Siebert* is clear in its
8 nature. And that is really what that kind of -- it's
9 designed at not rewarding the police for inculcating people
10 when they know they should have Mirandized them and then to
11 say, oh, by the way, we are trying to fix what we broke by
12 Mirandizing you. And then -- and I think we know that's the
13 general principle of *Siebert*, that you can't violate
14 somebody's constitutional rights and then clean it up by
15 Mirandizing them. And I'm just saying it in a real layman's
16 language, but that's really what it amounts to.

17 MR. KING: That's what happened in this case.

18 THE COURT: I don't know that that's what happened.
19 Factually, I haven't made a determination that that's what
20 happened. And I've let you argue that, but I need to let Mr.
21 Kidd respond.

22 MR. KIDD: And I would just rely, if we look at the
23 four *Siebert* factors, and it's hitting exactly what you are
24 talking about, Judge. The first is the detail and vagueness
25 of the questioning, which in *Navy* and in *Siebert* is

1 incredibly detailed and thorough, and then they go back and
2 clean it up.

3 Here we have very brief, one or two quick questions
4 on the side of the road, the first of which wasn't even
5 directed directly at the defendant as it was directed at both
6 occupants in the car, whose jacket is this?

7 So I think it falls quite short of an interrogation.

8 THE COURT: Sometimes -- and I don't remember the
9 case, but sometimes the police are allowed to ask questions
10 that are going to not necessarily inculcate, but they are
11 trying to eliminate folk as well. So sometimes questions are
12 asked of people to exculpate them, not inculcate them. And
13 that is in some ways how I determine "Whose jacket is this?"
14 in determining whether they are going to arrest both of them
15 or whether they are going to arrest one of them.

16 Now it can cut both ways. It can be inculpatory and
17 exculpatory in its nature. And it depends on who answered
18 the question. Because I think they asked the question of
19 both of them, but I need to go back and watch the video
20 again.

21 MR. KIDD: It is. Both the defendant and Ms. Jones
22 are standing next to the police car while the officer is
23 inside the car. When he finds the jacket, he just leans out
24 of the back passenger door of the defendant's vehicle and
25 asks back towards where they are both standing, who is jacket

1 is this? And he direct it at both of them.

2 The second factor of *Siebert*, Judge, is that timing
3 and setting. Once again, side of the road, much different
4 than an interrogation room. It's not like Navy. This isn't
5 a three-hour recorded planned interview. This is a
6 spur-of-the-moment, a fluid situation that is not a planned
7 tactic.

8 And the third, Judge, is the continuity of
9 personnel. And although much of the questions did come from
10 Officer Hall, at the very end there, and that's part of why I
11 asked Officer Pritchard, he reaffirms that he understood his
12 rights. And then he again admits ownership of the jacket to
13 Pritchard. So there is a break. This is a new admission to
14 a new officer.

15 So I also believe that the continuity, while the
16 police presence stay the same, this was a new officer and a
17 new set of questioning both post-Miranda.

18 And the fourth factor, Judge, second round of
19 questions is treated as continuance of the first. I agree,
20 there's not a huge break of time, but we do have eight or
21 nine minutes which he's just by himself in the back of the
22 police car before he's read his Miranda rights and then
23 reaffirms his -- or re-answers the questions regarding the
24 jacket.

25 I think the facts are remarkably similar to the

1 Medley case, Judge. And suppression of his statements
2 post-Miranda should -- the statements should not be
3 suppressed.

4 And I think there's one last threshold sort of
5 factor. And it's after Miranda, did he have the opportunity
6 to choose whether or not to make that statement, again after
7 being advised of his rights. And we, obviously, argue that
8 he did understand his rights at that point and make that
9 decision to answer those questions.

10 You know, moving on to the voluntariness of the
11 statements, Judge, I think that Mr. King is trying to make
12 something out of something else. When the officer's making
13 charging decisions, and when he tells the defendant that
14 she's just being detained, that's in response to his
15 question. That's in response to him. Like, why are you
16 cuffing her? She's just being detained right now while we
17 find out what's going on. This isn't a promise, we are going
18 to let her go if you admit these are your drugs. None of
19 that ever came up, nor would it, Judge, you know.

20 She very well could have been arrested under
21 constructive possession, and quite possibly for unlawful
22 conduct of a child, but the officer made a decision not to.
23 And --

24 THE COURT: Well, I think it would have been
25 questionable as to whether she knew they had illicit

1 substances in the car. I think in order for there to be
2 unlawful conduct, you have to have some consciousness of
3 knowing that you put your child in jeopardy. And, you know,
4 picking somebody up from the bus station, you don't know
5 what's in their belongings. But now, if she had been
6 arrested, that would have been a different story, because DSS
7 or somebody would have been called to take custody of the
8 child and the car would have been impounded.

9 MR. KIDD: At the end of the day, the officer made
10 the decision not to arrest her. And it was just based on
11 that. It was based on a lack of evidence that she knew
12 anything about those drugs. It was in a male jacket
13 underneath a bag containing his belongings and which he
14 claimed it. The officer decided -- he made a decision based
15 on the evidence that would be there against her not to arrest
16 her.

17 So it has nothing to do with promising not to arrest
18 her if he claimed the drugs. They are completely separate
19 and apart. It's just making a rational decision.

20 As to the search of the bag as well, Judge, there
21 is -- if we have the right and ability to search that car
22 based on the consent and the search incident to arrest, he is
23 allowed to go into that jacket and he's allowed to go into
24 that bag. The officer testified he didn't know whose bag
25 that was. He assumed it was his, the defendant's, after

1 searching it, based on the consents being masculine in nature
2 being male clothing and whatnot. So he made the assumption
3 it was his bag after the search. But he has no duty to
4 investigate the ownership of that bag prior to searching the
5 passenger compartment.

6 I believe that addresses each of the defense's
7 motions, Judge.

8 THE COURT: Anything further, Mr. King?

9 MR. KING: No, Your Honor.

10 THE COURT: I'm going to watch the video again, take
11 the matter under advisement. Can counsel approach for me,
12 please?

13 (Whereupon, a bench conference takes place off the
14 record.)

15 THE COURT: We will be at ease until 1:30. Try to
16 get something to eat. I need to watch that video again.

17 (Whereupon, the defendant is present.)

18 THE COURT: I'm going to start with the Miranda issue
19 first. It's the ruling of the Court that anything that the
20 defendant said before he was Mirandized is out.

21 Anything he said after he was Mirandized is in.

22 I do not find that the factors that were articulated
23 by the defense were met.

24 I do not find that this was a continuing
25 interrogatories. In other words, the purpose for which the

1 case law that was cited were not demonstrated in this case.
2 I do not perceive that this was a situation where the police
3 were interrogating him and then used Miranda basically to
4 clear up -- clean up an inappropriate interrogation of the
5 defendant.

6 And the questioning was different. And the
7 questioning initially that was initiated could have
8 exculpated the defendant as well as having inculpated him.
9 And it was directed at both he and Ms. Jones.

10 And I think, clearly, it probably would have been
11 more prudent to have Mirandized him as soon as the defendant
12 was handcuffed. But I am not going to second guess an
13 officer who said that he felt the defendant, I believe the
14 words he used was, was "flexed" when he was handcuffed. And
15 he felt it appropriate to de-escalate the situation, in his
16 experience, because then immediately administering Miranda
17 warnings he found tended to escalate the situation or
18 escalate tensions. And as a result, he waited to Mirandize
19 him. And I do find him credible, that in hindsight, he
20 thought it would have been better, and I agree, that he
21 should have Mirandized him immediately. Because, clearly, he
22 was in detention at that time. His freedom was restricted.
23 And the questions very easily could have been interpreted as
24 questions to inculcate the defendant.

25 But as they were propounded and as they were in the

1 video, it's clear that once they undertook to search the
2 vehicle, the way the questions were directed, they really
3 could have been designed to exculpate the defendant, because
4 it could have been designed -- well, could have been directed
5 to eliminate the defendant. And, clearly, once he was in the
6 car, he was already handcuffed and Mirandized. Clearly, at
7 that point, any questioning of him was designed to inculcate
8 him and to incriminate him.

9 But he was given his Mirandized warnings. There's
10 no indication in the video that he did not understand his
11 Miranda warnings. There was no indication in the video that
12 he was not clear and cogent. There is no indication he was
13 under the influence of any drugs or alcohol, that he was not
14 oriented as to time and place and knew who he was and what he
15 was doing.

16 And this is not his first contact with the system.
17 And, again, the Court does not mean that in any pejorative
18 sense, but only to indicate that clearly he had sufficient
19 education and knowledge to know what his Miranda warnings
20 were, that he did have the right to remain silent, that he
21 did not have to inculcate himself or to incriminate himself,
22 and that he could have remained silent and that he did not
23 have to answer.

24 And I do not find it credible that somehow he felt
25 threatened, that the police were threatening him that they

1 were going to arrest Ms. Jones and that's why he claimed the
2 ownership of the jacket.

3 So any statements before Miranda are out. Any
4 statements after Miranda are in.

5 Now, the next deals with the search of his person.
6 As we know, just as in regarding Miranda, the State bears the
7 burden of proving the voluntariness of a consent to search.
8 That is based on the totality of the circumstances. And
9 whether a search is voluntary or the product of coercion or
10 duress either expressed or implied is a question of fact to
11 be determined by this Court by a preponderance of the
12 evidence based on the totality of the circumstances. And
13 that's whether the situation was custodial on or
14 noncustodial.

15 If it is custodial, however, that custodial setting
16 is a factor to be considered in determining whether the
17 consent was voluntarily given. However, custody alone is not
18 enough in and of itself to demonstrate that a search was
19 coerced or nonconsensual.

20 And when it is contested, the issue is one of
21 credibility to be determined by the trial court. In this
22 case, we are fortunate, because we have a video that is
23 clearly -- it's unambiguous in its terms. I don't have to
24 read -- there's been some argument about what could be
25 inferred or implied. The Court is not in the business nor

1 does it have the prerogative of reading minds. I cannot
2 speculate about what was in someone's consciousness when they
3 did what they did. The video itself is unambiguous. It is
4 clear in the nature of the behavior.

5 And while Mr. Frasier made a statement, his body
6 language is clearly consensual. The officer does not slam
7 him against the car. He does not put his hands on him in any
8 way. His tone is very moderate. There's nothing threatening
9 about it. And he very clearly could have said, no, I don't
10 want to be searched. But he very clearly, by his behavior,
11 in a noncoerced way, turns and puts his hands on the car and
12 consents to his person being searched.

13 So the motion to suppress on that ground is denied.
14 And, clearly, again, it's the same as when you are basically
15 interpreting a statute. I don't have to look and try try to
16 extrapolate from something that is ambiguous. The individual
17 is unambiguous in its terms. His behavior is unambiguous.
18 It's there to be seen. It's not for me to try to interpret
19 what he might have been thinking. His words are clear. He
20 articulates them. His body language is clear.

21 And I think the officer has a right to rely on what
22 someone -- you know, it's funny, I think, in hindsight for us
23 to be sitting in a courtroom and thinking what happened. I
24 rode on that highway many, many times, not to say that that's
25 considered as evidence, but I'm a Charlestonian. I've lived

1 here all my life. People come off that bridge at such a high
2 rate of speed. Used to be 50 miles an hour. They reduced it
3 to 45. But they come off that bridge like a dragway. And
4 the noise, of course, from the traffic is heavy, because
5 there are a ton of people that come that way every day.

6 So it's very easy for us in a courtroom setting to
7 say how we would have behaved or how we would have acted,
8 which is, of course, subjective in its nature. But based on
9 that video, I don't see anything coercive. I don't see --
10 and I think we all have experienced times where an officer
11 literally throws somebody against the car and searches them,
12 or forces their body in some way with either their body
13 language, their tone, their demeanor or their hands or even a
14 baton or some other implement. But in this instance, it's
15 almost -- I won't say a nonchalant conversation, but
16 it's a -- I wouldn't necessarily say it's cordial, because I
17 don't know how cordial necessarily you feel with the police.
18 I think everybody is under stress when you get stopped by the
19 police, already stressed out. Even if it's just a minor are
20 traffic ticket, you are still stressed out when you see blue
21 lights.

22 But clearly, he says two words, stops, and
23 voluntarily puts his hands up on the car and consents to his
24 person being searched. And so I don't have to try to
25 interpret what they meant. And then he makes a statement

1 about his pockets, "even my pockets too?" But even at that
2 point, he could have said, listen, I don't want you in my
3 pockets, I consented to you patting me down, but I don't want
4 you going in my pockets.

5 And there's no attempt by the officer to force his
6 body against the car and tell him, no, I'm going in your
7 pockets forcefully.

8 So I think the search is consensual and it is in.

9 The next, and I've shared this with counsel, the
10 next issue is the stop, which really is at best a 50/50 call
11 based on the facts as they have been presented in the
12 testimony. And we all know that when you -- you can lawfully
13 stop someone for a traffic violation. But once the purposes
14 of that stop has been accomplished, there has to be a
15 reasonable and articulable suspicion based on the totality of
16 the circumstances to extend that stop beyond its initial
17 purpose.

18 The officers -- and that is a -- bear with me one
19 second. And also, just as an aside, there's nothing
20 inappropriate about a police officer asking a driver to exit
21 a vehicle. That's not a violation of the Fourth Amendment
22 nor a violation of the Fourth Amendment's proscription on
23 unreasonable searches and seizures. An officer can also ask
24 for a driver's license. They can ask you where you were
25 going. They can run a vehicle -- they can ask you for your

1 vehicle registration. They can run a computer check. And
2 they can issue a citation. All of these things are
3 reasonable and within the realm of what officers do. That's
4 a reasonable part of a traffic stop. So there's nothing
5 unreasonable about that. And there's nothing unreasonable
6 about them having them exit the vehicle while executing those
7 tasks.

8 Of course, the courts have said once the purpose of
9 the stop has been fulfilled, the continuing detention of the
10 crime occupants amounts to a second detention. And then
11 that's when we get into whether there's a reasonable and
12 articulable suspicion to extend the nature of the stop.

13 And I think the parties would agree that the initial
14 purpose of the stop was the taillight being out, that clearly
15 the purpose of that stop had been concluded. And then there
16 was a second extension of the stop.

17 Now, there also could be a reasonable argument that
18 it was extended, when you look at the totality of the
19 circumstances, based on the initial officer's observations
20 regarding Mr. Frasier when he exited the bus station and what
21 could best be described -- and I'm using my words, not the
22 officer's words -- furtive-type movements, unusual-type
23 behavior, that as a narcotics officer, caught his attention,
24 that it would be odd for somebody to make those kinds of
25 movements when a car was directly in front of where he was

1 exiting.

2 In other words -- and I'm extrapolating again based
3 on what the officer said -- if the car was 20, 30 feet away,
4 you might be looking for oncoming traffic. You might be
5 looking for other people or your own safety. But when the
6 car is directly in front of you, there's really no need to
7 scan your surroundings before you get into a car. And based
8 on his experience, what he observed was him basically looking
9 to see if there was someone there to harm him or looking for
10 police presence before he got into the car.

11 And that's really what started the momentum of this
12 stop. And so I don't know how you separate that observation
13 from that officer dispatching Officer Hall then to initiate
14 this traffic stop. Because all of those things were a part
15 of the totality of the circumstances and the circumference of
16 what he considered as he began to embark upon what really
17 could be considered the continued or extended stop of the
18 vehicle.

19 And, again, our courts have articulated that asking
20 someone the purpose, destination and duration of their trip
21 is reasonably related to a traffic stop, and that there's
22 nothing unreasonable about asking those questions.

23 And our courts have also articulated that
24 nervousness alone is not enough to justify extending a stop
25 or, in other words, to support a reasonable suspicion of some

1 other crime.

2 So then the question becomes whether the officer
3 reasonably suspected a serious crime at that point after the
4 initial stop. And the question then becomes whether the
5 officer had a reasonable suspicion that a serious crime was
6 afoot, therefore justifying the continued detention of the
7 vehicle and the search of the vehicle..

8 And the question then becomes whether the officer
9 had an objectively reasonable and articulable suspicion that
10 an illegal activity has occurred or is occurring. And you
11 can't look at that in isolation. You have to look at that in
12 the totality of the circumstances, totality of the
13 surrounding circumstances.

14 Now, the officers have articulated many factors.
15 And just in the interest of time, because the jury now has
16 been waiting since 1:30 on us and it's now 2:12. It's not
17 their fault. It took us a little bit longer. And I needed
18 to give you all a reasonable chance to eat as well before we
19 proceeded with the trial. But in the interest of time, I'm
20 just going to sort of cut to the chase on it, which is that
21 the officers articulated what they believed to be the basis
22 of a reasonable and articulable suspicion to extend the stop.
23 And I find that testimony is reasonable and supported by the
24 facts.

25 The only one, however, that I would eliminate would

1 be what they termed as taking too long to stop. I think it
2 is reasonable for Ms. Jones to have taken the time she took
3 to stop. I think it's reasonable for people, if you see a
4 vehicle, especially a police car with lights at a high rate
5 of speed, your first thought is, they are going to a call.
6 So your first thought is to get out of the way, get into
7 the -- I usually just pull over all the way out of the way,
8 whether it's fire truck, EMS, whatever, so they can get where
9 they are going.

10 So I think their for her initial -- again, I'm not
11 trying to read her mind, but based on what I see on the
12 vehicle, it is reasonable for her to think, I need to get out
13 of the car's way because it's coming at a high rate of speed.
14 But when she clearly realizes that she's being stopped. She
15 does proceed, and I don't think an unreasonable distance, to
16 move over in a safe spot where there's a larger area on the
17 highway. So that part of it is not unreasonable to me.

18 But all the other things -- and it's not for the
19 Court to substitute its judgment or for me to look at it
20 objectively. It's what the officer perceived objectively
21 based on his experience and his training, his time as an
22 officer in same or similar circumstances, whether objectively
23 what he perceived after that point amounted to a reasonable
24 and articulable suspicion. And I would find for the record
25 that his testimony was credible and it did.

1 Now, the next part then, we move on to the other
2 layer of this onion, which is the consent to search. Because
3 it has a lot of layers and I'm trying not to miss any.

4 And I'm going to reserve the right, if I need to, to
5 do a written opinion on this. I may or may not. In the
6 interest of time, because I'm so conscience of the jury
7 waiting, if I miss anything, when I go back and look at it, I
8 will make sure that the court for appellate purposes is clear
9 of the Court's ruling.

10 But then we move on after that to issues that have
11 been raised about the reasonableness of the search of the
12 vehicle. And I think once we determine that there was a
13 reasonable and articulable suspicion based on the totality of
14 the circumstances, based on the officer's objective
15 observations, that Ms. Jones clearly had the ability to
16 consent to her vehicle being searched. She was the
17 registered owner. That's uncontested. She clearly, from the
18 video, has no problem with the vehicle being searched.

19 And I think that there is enough case law and
20 precedent to support a car being searched. Cars are not
21 provided the same constitutional protections as a house, an
22 apartment, as your person. And, again, without going into
23 all of the details, I think we all know the case law that
24 supports that.

25 And then they embarked upon searching the vehicle.

1 And I think whatever they found in the vehicle at that point,
2 once she consented to search the vehicle, was appropriately
3 seized. And that motion is denied as well.

4 So I think I covered everything. If I missed any
5 basis of the motion -- I don't think I did. I think I
6 covered everything Mr. King raised, which is the consent to
7 search his person, any statements made pursuant to Miranda,
8 anything that was seized in the vehicle. I think I covered
9 all of his arguments regarding that, which is that even if
10 there was probable cause based on the traffic violation, that
11 the scope of that search was exceeded. I think I covered
12 that.

13 Did I miss anything, Mr. King?

14 MR. KING: There was a fourth motion. I mentioned
15 it before, about Ms. Jones's statements on the video.

16 THE COURT: I thought I said we cover that
17 contemporaneously. Because I haven't had any testimony from
18 her. I haven't had any testimony from the officers about
19 that. And so I think for me to rule on that when it's not
20 properly before me, would almost be advisory in nature. And
21 what I would suggest we do, is before the State seeks to
22 introduce that, that we take it up in-camera. So that we can
23 hear it, and if you have an objection, I will allow you to
24 state it for the record. And then I will let the State
25 respond. And then I will rule on it contemporaneously.

1 MR. KING: To summarize it briefly, there's like
2 four times where Jones denies that anything is in the
3 vehicle, which I think is bad for the jury to see her on
4 video saying, they are not my drugs.

5 THE COURT: Well, the other thing is why I said I
6 thought it would be sort of putting the cart before the
7 horse, is the State plans to call her as a witness. So I
8 don't know what she's going to say. She may get on the stand
9 and say that. And the real issue in her statements is
10 whether you have the ability to confront and cross-examine
11 her and to impeach her potentially. And certainly, I don't
12 see you being denied that. And I think she came in while we
13 were talking.

14 MR. KING: The other objective would be the
15 hearsay --

16 THE COURT: I'm assuming that was her.

17 MR. KING: -- that hearsay would bolster her trial
18 testimony.

19 THE COURT: Well, I don't know. There's so many
20 layers to this, because she may come in and testify
21 consistently or inconsistently. If she testifies
22 inconsistently, they can use her out of state -- I cannot
23 talk today. And all I had was a Coca-Cola for lunch. And I
24 apologize, which that's probably all y'all had too.

25 There's so many layers to this, because if she comes

1 in and testifies consistently, yeah, maybe it's not necessary
2 to have her statement, except that it really is kind of part
3 of the res gestae of this whole thing.

4 But then on the other side of it, she may come in
5 and say, I never said that, in which case, they can use her
6 out-of-court statement to impeach her because it's a prior
7 inconsistent statement. There are like so many layers to it
8 that I don't want to try to anticipate what she's going to
9 say. Because the funny thing about witnesses is, they will
10 say one thing in camera and then they will say it totally
11 different when you question them with the same questions. So
12 I would prefer for us to create a proffer. And let's just
13 see how her testimony develops.

14 And, certainly, if you need to make contemporaneous
15 objection, and if I need to, we will take it up outside the
16 jury's presence. So I can't rule sort of in anticipation of
17 how it's going to develop, because certainly you have the
18 right to confront her and to question her and to impeach her,
19 if necessary.

20 MR. KIDD: I won't put anything in before we talk
21 about it.

22 THE COURT: I think we need to take it up in-camera,
23 because you just never know. She may be compliant. She may
24 be noncompliant. I may have to advise her of her rights. I
25 just don't know. So I just think we need to take it sort of

1 as it comes.

2 MR. KIDD: I won't put it in until we talk about
3 it.

4 THE COURT: Ready?

5 MR. KIDD: Yes, Your Honor.

6 THE COURT: Defense ready?

7 MR. KING: Yes, Your Honor.

8 THE COURT: We have notebooks for the jury.

9 (Whereupon, the jury returns to open court at 2:21
10 p.m.)

11 THE COURT: I need to appoint a foreperson. No. 305
12 is our foreperson. So he needs to have a seat in that first
13 chair. And I hope he doesn't have to climb over anybody.
14 And I apologize, because I should have done that already.

15 Okay. Ladies and gentlemen, I've heard this said
16 before, and it's so applicable. I have to fall on my sword:
17 Y'all have been waiting, but please know while you have been
18 waiting, we have been working. We literally have been
19 working since we sent you out. And we had about 15 minutes
20 for lunch, so if we get a little delirious in between, bear
21 with us. Please know that we do not take your time for
22 granted.

23 And it would seem that we should be able to do a lot
24 of these things before a trial starts, but based on case law
25 we can't. We have to do it contemporaneously with the

1 proceedings. And sometimes it just takes a little longer
2 than we expect. So please know that we do not take for your
3 time for your granted. And I hope it's pretty outside. And
4 hope you got to get a little bit of air and be a little bit
5 of a tourist. Sometimes I feel guilty that our garage is
6 under the building and I drive into it every day. And
7 sometimes when I'm riding home I think, it's such a beautiful
8 place and I'm two blocks from the water and I never take
9 advantage of it. So I hope you had a little opportunity to
10 enjoy downtown and the sunshine while you were waiting on us.

11 Before we proceed, I'm going to have the clerk
12 administer the oath to you. If you will raise your right
13 hands to accommodate.

14 (Whereupon, the jury is sworn.)

15 THE CLERK: Let the record reflect everyone had
16 their seats.

17 THE COURT: Thank you, ladies and gentlemen. Y'all
18 are going to be given the opportunity to take notes during
19 this trial. This trial should be very short. We expect it
20 will have swear between five and six witnesses. I hope that
21 we will be able to finish the testimony today, but if not, we
22 should be able to finish it briefly in the morning. And
23 probably I'm anticipating we will have closing argument and
24 then instruction in the morning, because I wouldn't want to
25 keep you here late in the evening for that purpose,

1 shared with anyone else. They are only to be used to refresh
2 your own memory. And keep in mind that someone else's notes
3 or someone else's memory should be considered just as
4 reliable as notes that may have been taken by a fellow juror.
5 During breaks and recesses, we will leave your notes in your
6 seats. And that's to make sure there's no premature
7 temptation to deliberate regarding any matter that may have
8 come before you prior to a break.

9 In order to preserve everyone's rights, I'm going to
10 give counsel to take exception to anything that the Court has
11 said by way of opening instruction.

12 Any exceptions from the State?

13 MR. KIDD: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. KING: No, Your Honor.

16 THE COURT: Mr. Kidd or Mr. Maynor, you may
17 proceed.

18 MR. MAYNOR: Thank you, Your Honor. May it please
19 the Court.

20 Ladies and gentlemen, thank you for being here. I
21 know y'all have been here all day. You've been here all
22 week. I'm sure you have a thousand other things you need to
23 be doing than being here, but we really appreciate it.
24 Appreciate your attention. And we apologize for the delay.
25 So thank you.

1 As she said, this is opening statement. This is my
2 opportunity and Mr. Kidd's opportunity to introduce you to
3 this case, what it's all about. And I may breeze through it
4 will a little bit, but you are going to hear a lot of this
5 testimony from the witnesses. You are going to see the
6 videos. You are going to be able to watch the evidence,
7 maybe touch some of the evidence. And at the end of all of
8 this, we expect you to come to a true and just verdict.

9 If I may get the monitor on, I want to introduce you
10 to the law. And before this is all done, the judge is going
11 to instruct you on the law. I'm hoping she will say the same
12 thing that I've got prepared for you. I imagine she will.

13 But like I said, to introduce you to this case, this
14 is the State, Culver and I, vs. Mr. Michael Frasier, Jr., the
15 individual sitting right here next to his attorneys. The
16 case is trafficking cocaine in the amount of 100 grams to 200
17 grams. You have a big variation there.

18 She mentioned the indictment to you all earlier.
19 And it seems really convoluted and complicated. And it's --
20 I will read it out loud to you. It's any person who
21 knowingly sells, manufactures, cultivates, delivers,
22 purchases or brings into this state or who provides financial
23 assistance or otherwise aids, abets, attempts or conspires to
24 sell, manufacture, cultivate, deliver, purchase, or bring
25 into this state, or who is knowingly in actual or

1 constructive possession, or who knowingly attempts to become
2 in actual constructive of 100 grams or more but less than 200
3 grams of cocaine, or any mixture containing cocaine, is
4 guilty of trafficking cocaine.

5 I will break that down. It's really simple.
6 Somebody knowingly brings into this state or has actual or
7 constructive possession of cocaine in that amount. It's
8 simple, but it's important. It's important to you all. It's
9 important to Mr. Frasier. It's important to the State. It's
10 important to the community of Charleston, because, frankly,
11 we don't want people bringing large amounts of dangerous
12 narcotics in our community. I'm not going to elaborate on
13 the reasons why. I'm sure you have plenty of examples of
14 your own where that's been a problem.

15 Part of trafficking cocaine that I want you to be
16 aware of is it's not about intent. I think you probably
17 heard about possession with intent to distribute. That is
18 not an element here. We are not going to ask you to
19 determine whether Mr. Frasier intended to sell this, intended
20 to cut this or cook this or do something with the narcotics
21 that we are talking about. It's about the weight. It's
22 about the quantity. It's about whether or not an official
23 laboratory got ahold of this, weighed it to be the amount
24 that we are saying it is, and came back with a result that
25 says it is, in fact, cocaine and not some other substance.

1 Because on the street, when these officers see a
2 white powdery substance, they can assume what it is and they
3 do a field test. But until they get it to a real lab, they
4 don't really know.

5 Now, the day in question that we are talking about,
6 and all the facts of what you are planning to hear, it
7 happened several years ago, frankly. Our judicial system is
8 a little slow sometimes. But on August 14th, 2013, Michael
9 Frasier came in to Charleston on a bus that was out of the
10 state. I believe that bus was coming from Texas. It made
11 several stops along the way.

12 That morning, North Charleston narcotics detectives,
13 which they commonly do, were sitting at that bus station and
14 they sit several places where maybe they will pick up
15 packages or people will send packages just to identify drug
16 transactions, people sending drugs, bringing drugs in, paying
17 for them.

18 They saw Mr. Frasier get off the bus. They didn't
19 know who he was, but they observed them. And their
20 experience said to them, there's something going on with this
21 guy. They were in an unmarked car, but they had a radio.
22 And they radioed to a fellow officer, Officer Hall, and they
23 said, something to the effect of, if we have an opportunity,
24 we need to pull this guy over or the car he's riding in.

25 Well, a traffic stop was conducted coming from North

1 Charleston to West Ashley on the Cosgrove River Bridge, I
2 think most of us are familiar with. There was search of
3 Mr. Frasier's person. During that search, there was a small
4 bag of cocaine in his pocket. There was also a little straw
5 in his pocket used for consuming that.

6 And there was a search of the vehicle. In the
7 vehicle there was maybe a duffel bag of men's clothing,
8 probably something he was carrying when he came off that bus,
9 and a jacket, a men's jacket. And officers found in the
10 pocket of that men's jacket a large quantity, several bags of
11 white powdery substance.

12 Mr. Frasier was arrested. And he ultimately
13 admitted possession of the jacket. And he also said, about
14 the driver, they had nothing to do with it.

15 The State's position is that the evidence will show
16 basically what I just told you, that on August 14th, 2013,
17 Michael Frasier brought in to this state and had in his
18 possession 196 and a half grams of cocaine, nearly 200 grams.
19 He arrived in Charleston on an out-of-state bus with
20 narcotics in his possession. Law enforcement executed a
21 traffic stop. Officers searched the vehicle, where they
22 found the narcotics in his jacket pocket. He ultimately
23 admitted to that. And also said the driver had nothing to do
24 with it.

25 After that, those narcotics were collected and

1 bagged and sent in a chain of custody to the State Law
2 Enforcement Division in Columbia. The weight came back 196
3 and a half grams and came back positive for cocaine.

4 And that's kind of where we stand. So just to sort
5 of touch back on those elements, knowingly brings into this
6 state or has actual or constructive possession of cocaine, a
7 quantity of between 100 and 200 grams.

8 So this is the case. Thank you for your time.
9 Thank you for your attention. And please listen to Mr. King.
10 And we will get started. Thank you.

11 THE COURT: Mr. King.

12 MR. KING: Thank you, Your Honor.

13 THE COURT: You're welcome. You may proceed.

14 MR. KING: Michael Frasier claimed the jacket that
15 was in his car. He claimed the jacket because there was a
16 lady with a young toddler in his car. And this lady was
17 going to jail. Mr. Frasier was going to jail anyway, because
18 they already found something in his pocket. He claimed the
19 jacket so that she wouldn't go to jail.

20 When he claimed the jacket, Cheryl Jones, who was
21 the driver of the car, and that young toddler, got to leave
22 and drive home that day. So there's a reason for that. He
23 didn't know it was inside the jacket.

24 The officers ask him, do you know what's inside the
25 jacket? He just claims the jacket. He never says what's

1 inside of it. If it's drugs, what kind of drugs it is or how
2 much it is. And you will see this.

3 The important part of the statute that was shown up
4 there on the screen is "knowing". The State has to prove
5 that this was knowingly done. And if he didn't know it was
6 in the jacket, then it's not knowingly.

7 They have to prove that that big bag of drugs found
8 in the car was his. It's not his car. They are not going to
9 it. They got pretty sophisticated forensic tools now, like
10 touch DNA. They are not going to be able to show you he ever
11 touched it, that his DNA was on it, or wearing the jacket,
12 that his DNA was on the jacket.

13 So it's very important that you listen to the burden
14 as the judge said to you. It's a high burden. They have to
15 prove that he knowingly, constructively, or actually
16 possessed that big bag of drugs, that he knowingly possessed
17 it beyond a reasonable doubt.

18 And as you will see in this case, there is
19 reasonable doubt. And there's reason why he claimed the
20 jacket, as you will see. And I will show you the
21 circumstance how it goes down. But at the end of the day, he
22 was going to jail anyway. He claimed the jacket. And, guess
23 what? She gets uncuffed and she goes home that day.

24 What would happen to that child? What would happen
25 to this little child you are going to see here in this video

1 if she went to jail?

2 So we are asking you to listen to all of the
3 evidence. And at the end, we believe there will be
4 reasonable doubt, that he did not know what drugs were in
5 that bag. Thank you.

6 THE COURT: The State may proceed.

7 MR. KIDD: Thank you, Your Honor. The State calls
8 Dan Pritchard.

9 DANIEL PRITCHARD,

10 having been duly sworn, testifies as follows:

11 THE CLERK: Once seated, if you can state your first
12 and last name, and spell your last name, please.

13 THE WITNESS: Daniel Pritchard, P-r-i-t-c-h-a-r-d.

14 THE COURT: You may proceed.

15 MR. KIDD: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. KIDD:

18 Q. Officer Pritchard?

19 A. Yes, sir.

20 Q. And it's officer now; is that correct?

21 A. Correct.

22 Q. Can you please tell the jury or summarize to the
23 jury your law enforcement experience?

24 A. I've been an officer since 2001. I've been with
25 North Charleston now for 10 years, five of that in with the

1 narcotics division up until the end of 2014, at which time I
2 went to the detective division, worked persons crimes,
3 ranging from crimes of aggravated assaults to murders.

4 Q. How long did you say that you were with the
5 narcotics division in North Charleston Police Department?

6 A. Five years.

7 Q. Five years narcotics? Okay. And that's where you
8 were when you became involved in this case, correct?

9 A. Yes, sir.

10 Q. Can you describe the circumstances in which you
11 first got involved in this case to the jury, please?

12 A. Myself and my partner, Detective Ryan Johnson, we
13 were assigned to narcotics. And we were further assigned to
14 do interdiction at the mass transit areas, the train
15 stations, bus stations, and parcel interdiction through
16 FedEx, UPS and the post office. That morning, we had arrived
17 late to the bus station. The bus had already pulled up. And
18 we had parked across the street from the bus station in an
19 unmarked Nissan Altima with tinted windows.

20 When I observed Michael Frasier, the defendant, step
21 out of the bus station, that's a one-way in/one-way out. And
22 there's two doors. One of them stays locked. And there's
23 only one person able to come in and out at a time. And he
24 scans the parking lot a full 180, looking for who knows what.
25 To me, it appeared as if he was looking for an enemy or the

1 police or was suspecting possible trouble.

2 Once he scans the parking lot and he goes in, he
3 enters the parking lot, and he enters a vehicle which is
4 straight in front of the door, less than 10 yards away. And
5 then they proceed to leave. My partner, Brian Johnson, who
6 is in England right now, his wife was deployed, Contacted
7 Officer Hall --

8 Q. Let's slow down just one minute. Let me ask a
9 couple of questions.

10 A. Yes.

11 Q. First being the task force you were on; what's the
12 specific purpose of that task force that you were on at the
13 time?

14 A. To interdict narcotics coming in to the city.

15 Q. Coming into our community?

16 A. Yes.

17 Q. And you mentioned mass transit?

18 A. Yes.

19 Q. And why is mass transit a target of that task force?
20 Why is that significant?

21 A. It's just an easy way for people to disclaim
22 ownership. If we locate drugs on a bus with 50 people and
23 it's in a luggage or jacket with no name on it, it's easy to
24 disclaim it. You have to go through DNA and fingerprints and
25 stuff like that. You can't sit there and swab 50 people's

1 mouths on a bus and hold the bus up for three hours while you
2 do this and get consent from everybody. It's just an easy
3 way for people to separate themselves from drugs or anything
4 illegal. We've gotten illegal, you know, credit cards, just
5 all kinds of stuff.

6 Q. So based on your experience, would you say it's
7 common for people to use those types of modes of
8 transportation to bring narcotics into the community?

9 A. Yes, sir.

10 Q. Okay. And then, okay, so you are sort of staking
11 out the bus stop. Is this something y'all do regularly?

12 A. Yes, sir. That was our job. We would normally
13 start our date at 4:45 in the morning. First Amtrak train
14 comes at 5:05 in the a.m. And we would be there for the
15 first Amtrak, and go to UPS after that, or we go to FedEx, or
16 whichever place we were able to get in, or we continue on
17 some other cases.

18 We worked other cases as well. So just depends on
19 the day. That day we just happened to arrive at the bus stop
20 a little late. So the bus was already there. Normally, we
21 try to get there before the bus gets there and see people's
22 reaction as they are getting off.

23 Q. So you are at the bus station in an unmarked cruiser
24 and you see the defendant exit the bus or the bus station?

25 A. He exits the bus station. Bus had already arrived.

1 He's inside the bus station. When he exits the bus station,
2 it's a plate-glass door, metal frame. I don't know if it's a
3 push or pull, but he exits and he scans. And he walks less
4 than 10 yards and enters a vehicle right in front of me.

5 Q. Why was that significant to you? Did that pique
6 your interest?

7 A. Absolutely. I mean, he's looking just like -- you
8 know, you want to go check him out -- you know, like there's
9 a pitbull out there; see if he's going to bite you, you are
10 looking.

11 MR. KING: Objection to speculation.

12 THE COURT: Sustained. You may proceed.

13 BY MR. KIDD:

14 Q. So in relation, when he's scanning the parking lot,
15 where is the vehicle that he got into located?

16 A. Right in front of him.

17 Q. And so just, basically, on that, what did that mean
18 to you?

19 A. Just piqued my interest. I felt like he was looking
20 for law enforcement--

21 MR. KING: Objection. Speculation.

22 THE COURT: I haven't heard the whole -- rephrase
23 the question please, Mr. Kidd.

24 MR. KIDD: I just asked: What did that observation
25 of his movement mean to you?

1 THE COURT: It's based on his rational perception.
2 It's not speculative, as long as he stays within foundation
3 of the question.

4 Sir, you may answer the question. Overruled.

5 THE WITNESS: I felt he was looking for law
6 enforcement or looking for an enemy, something wrong.

7 BY MR. KIDD:

8 Q. And so what did you all do next, based on that
9 observation?

10 A. Contacted Brian Johnson, contacted Officer Steve
11 Hall.

12 Q. Okay. Did you notice anything about the -- or did
13 you all follow the vehicle?

14 A. Yes. We are in an unmarked vehicle. We have no
15 lights. We have handheld radios and we have cell phones.
16 It's all we have in our vehicles. So Brian contacted Steve
17 Hall, who had recently left our narcotics unit. And we knew
18 him. And just because he worked the area that we were in, to
19 see if he's in a position to catch up with us, to conduct a
20 traffic stop to see if there was anything more than what we
21 thought.

22 Q. Did you all observe an equipment violation on the
23 car at all?

24 A. While following the vehicle, we observed that there
25 was a third brake light out on the vehicle. And that's a

1 brake light on the rear tail of the vehicle.

2 Q. And then the traffic stop was initiated; is that
3 correct?

4 A. Yes, sir.

5 Q. Where did you all go while the traffic stop was
6 being initiated?

7 A. While they do the traffic stop, we are in civilian
8 clothes. We let the officers in uniform do their job. We
9 don't want there to be any questions about if there is a
10 deadly force situation, us being involved in civilian
11 clothes. We just leave all of that out. We let the uniform
12 patrol take over from there. We went past the traffic stop
13 and pulled on to a safe location waiting for further contact
14 from Officer Hall.

15 Q. After the narcotics were found in the vehicle, did
16 you come back to the location of the traffic stop?

17 A. Yes, sir, we did.

18 Q. And did you have any interaction with the defendant
19 at that point?

20 A. I did. When I got there, the defendant was seated
21 in the back of the vehicle. I went --

22 Q. When you say back of the vehicle, you mean --

23 A. Back of Officer Hall's cruiser, I believe it was. I
24 went to the rear of the vehicle. I opened the door where he
25 was closest to. And I had asked him -- I told him I was

1 going to advise him of his Miranda warnings. There was a lot
2 of road noise. Officer Hall had to tell me -- he told me he
3 already advised him of his Miranda warnings. So I asked him
4 about what Officer Hall and them had found. And he just
5 said, I claim ownership, or something--

6 MR. KING: Objection.

7 THE COURT: Sustained. Hearsay.

8 Sir, you cannot say what someone told you.

9 MR. KIDD: Your Honor, may we approach?

10 THE COURT: Yes.

11 (Whereupon, the following bench conference takes
12 place):

13 THE COURT: Did you all agree what's going to come
14 in on the disk? Because I only ruled on the suppression
15 motion. I don't know if he has contemporaneous objections
16 about --

17 MR. KIDD: I am not going to play it continuously.
18 I am not going to put in Ms. Jones's statement.

19 THE COURT: You are just playing the part where he
20 got to the scene?

21 MR. KIDD: Just part after post-Miranda.

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

23 MR. KING: Only my pretrial objections.

24 THE COURT: But you don't have any objection to the
25 authenticity of the video or that it actually portrays what

1 happens once he arrived?

2 MR. KING: No, no.

3 THE COURT: Just your original objection based on
4 Miranda?

5 MR. KING: Due process, voluntariness, Miranda and
6 Seibert.

7 THE COURT: Okay. We've covered all of that and
8 I've ruled on it. As I said, everything post-Miranda comes
9 in. But you still need to make sure that he's the one that's
10 speaking at that point. Just doesn't come in through him,
11 because I ruled it's admissible. Do you understand what I'm
12 saying? He's physically there participating.

13 MR. KIDD: Correct. That's the only part I'm going
14 to put in right now.

15 THE COURT: Okay.

16 MR. KIDD: You may proceed.

17 (Whereupon, the bench conference ends.)

18 MR. KIDD: I believe it's without objection, Your
19 Honor. At this point in time, the State would offer State's
20 Exhibit 6 into evidence subject to modification through the
21 Judge's pretrial rulings.

22 MR. KING: I just renew all the pretrial motions.

23 THE COURT: I will mark them as renewed and
24 overruled based on the Court's previous rulings. However, it
25 does not relieve you from making any further contemporaneous

1 objections based on anything that was not previously raised.

2 BY MR. KIDD:

3 Q. While he queues that up, Officer Pritchard, were you
4 present when the defendant was -- when Officer Hall read the
5 defendant his Miranda rights?

6 A. May have been present. I did not hear it.

7 Q. And then you, I guess, opened the back door of his
8 cruiser to speak to the defendant; is that correct?

9 A. Correct.

10 Q. Did you then ask him if he understood his rights?

11 A. I did.

12 Q. And did you question him briefly at that point?

13 A. Yes, sir, I did.

14 Q. And what question did you ask him?

15 A. About what was found, if he had claimed ownership.

16 MR. KING: Objection.

17 THE COURT: Sustained. Leading.

18 MR. KIDD: Miranda, due process and Seibert.

19 THE COURT: Overruled and also leading.

20 BY MR. KIDD:

21 Q. How did he --

22 THE COURT: Sustained on leading. Overruled on
23 grounds raised by the Defense.

24 MR. KIDD: I will rephrase.

25 BY MR. KIDD:

1 Q. What questions did you ask him?

2 A. About the narcotics that were found by Officer Hall.
3 I don't remember specifically. If you would like to cue the
4 video, I would be able to say exactly what it was.

5 (Video playing.)

6 MR. KING: Objection on Miranda, due process.

7 THE COURT: You've already noted your objections and
8 I noted them. And he hasn't published it since you made your
9 objection. So the objection is overruled based on the
10 Court's previous rulings. But I need you to get to the
11 pertinent part of the video, the rest is hearsay until you
12 lay the foundation for the admission.

13 (Video playing.)

14 BY MR. KIDD:

15 Q. And it's kind of hard to hear, there's a lot of
16 traffic --

17 A. I was able to pick it up.

18 Q. What was said there?

19 A. I said, the contraband that was in the vehicle that
20 we believed to be cocaine, is it yours. And he said, I'm
21 responsible.

22 MR. KIDD: Court's indulgence. No further questions
23 of this witness, Judge.

24 THE COURT: Any questions for the witness?

25 MR. KING: Yes.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. KING:

4 Q. Officer Pritchard, you are not in narcotics
5 currently --

6 A. No, sir.

7 Q. -- with your current duties?

8 A. No, sir.

9 Q. What are your current duties?

10 A. Patrol, nights.

11 Q. Back on this date, you said that you were at the bus
12 station looking for suspicious behavior.

13 A. Yes, sir.

14 Q. You didn't see Mr. Frasier get off the bus. You saw
15 him come out of the bus station; is that correct?

16 A. Correct. We had arrived late. The bus was already
17 there. Passengers had already deboarded the bus.

18 Q. And would you agree you were about 75 to 100 yards
19 away from that exit of the bus station?

20 A. Yes, sir, that's my best estimate.

21 Q. So you were across the street in some other parking
22 lot?

23 A. Yes, sir.

24 Q. In a car with tinted windows?

25 A. Side and rear tinted windows, not the front.

1 Q. Could you see everything that he could see? Could
2 you see his entire field of vision?

3 A. No, I could not. As he's walking out of the bus
4 station, he's going to have a bus on his left. And then
5 probably about from this field of view over, it's going to be
6 clear. From where I was, I am not able to see on the other
7 side of the bus, because I'm across the street. So I've got
8 the bus and I am not able to see the other side of the bus.

9 Q. So you couldn't see everything that he's looking at?
10 You can't see everything?

11 A. No, sir.

12 Q. There might have been something that he had seen
13 that you didn't see, correct?

14 A. Correct.

15 Q. But, essentially, you are saying he walked out of
16 the bus station and was looking around, right? That's the
17 suspicious behavior you are talking about?

18 A. He walks to the door, does 180 look, and then walks
19 to the vehicle right in front of him.

20 Q. Can you repeat that again about the door?

21 A. 180 degrees.

22 Q. Is he standing at the car door?

23 A. No, he's at the door of the bus station.

24 Q. So he opens up the door of the bus station, takes a
25 look around, right, left and right?

1 A. Full view, yes, sir.

2 Q. That's it?

3 A. Yes, sir.

4 Q. Okay. There was a Detective Johnson there?

5 A. Right, yes, sir.

6 Q. He's not here? He's not in the country?

7 A. He's in England.

8 Q. You were conducting surveillance. Did you have a
9 video camera?

10 A. No, sir.

11 Q. Take any photographs?

12 A. No, sir.

13 Q. Did you check to see if there were any surveillance
14 cameras at the bus station that might have captured this?

15 A. There are video cameras at the bus station.

16 Q. Did you get any video that would support or show
17 what you saw?

18 A. No, sir.

19 Q. Did you write a report?

20 A. No, sir.

21 Q. Do you write reports? During that time as a
22 narcotics officer, did you write reports?

23 A. Yes, sir.

24 Q. But you didn't write one in this case?

25 A. No, sir.

1 Q. Is that a big part of your job, writing reports as a
2 police officer?

3 A. If it were my case, yes, sir. I know I initiated
4 it, but Steve Hall was the charging officer. My partner in
5 this case was -- I know I initiated the actions of the day,
6 but it was -- beyond that, there wasn't much to my
7 participation in this case.

8 Q. You know about supplemental reports?

9 A. Yes, sir.

10 Q. Other officers can write supplemental reports and
11 that goes to the main police officer being --

12 A. Yes.

13 Q. You could have written a supplemental report?

14 A. Absolutely, yes.

15 Q. You think it's a good idea to write reports in
16 general?

17 A. Without a doubt.

18 Q. And that's because this was in 2013, right? People
19 can forget details. Honest people can forget details after
20 four years, right?

21 A. Yes.

22 Q. You didn't even take any notes, did you?

23 A. No.

24 Q. So you haven't documented anything about what
25 happened back in 2013, so, you know, we can't -- I can't look

1 and see whether or question you about whether you've changed
2 anything that might have happened back then in the report or
3 whether you've added something today that wouldn't have been
4 in the report back then, or that was in the report back then
5 and not in your testimony today?

6 A. Right.

7 Q. Candidly, there's no real accountability in that
8 situation, right? That's what reports are about?

9 A. I don't agree with that.

10 Q. You don't agree? When you write a report, it's not
11 just for you?

12 A. When you say accountability, I don't agree with the
13 way you are phrasing at this time. I do agree, it would be
14 great idea to write a supplemental report.

15 Q. That report isn't just for you. It goes to other
16 people, right?

17 A. Yes, sir.

18 Q. Goes to maybe the case agent, if it was a
19 supplemental report, maybe their supervisor. It goes to the
20 prosecutor, right? And, eventually, has to be turned over to
21 the defense. That report travels around and goes to
22 different people, right?

23 A. Uh-huh.

24 Q. Now, regarding the statement, so you were there and
25 heard the other things that he was asked and said, right?

1 When it shows him in back of a police car, you hauled him and
2 talked to him right before then, right?

3 A. Uh-huh.

4 Q. Isn't it true y'all, both of you, were in some sense
5 trying to get him to say what was inside the jacket, right?

6 A. No. I told him that we suspect it to be cocaine. I
7 told him what I thought it was.

8 Q. He never said there's cocaine in the jacket, right?

9 A. No, sir.

10 Q. Never said how much it was?

11 A. Not to my recollection, no, sir.

12 Q. He just basically took responsibility for the
13 jacket?

14 A. I believe that was --

15 Q. And what was in it?

16 A. Pretty much the words exactly, he took
17 responsibility.

18 Q. But gave you no details at all about what was
19 actually in it and what you found?

20 A. No, sir.

21 Q. He didn't say cocaine. You are the one who was
22 saying contraband or cocaine, right?

23 A. Yes, I said contraband and we suspect to be cocaine.

24 MR. KING: That's all the questions I have.

25 THE COURT: Any redirect?

1 MR. KIDD: No, Your Honor.

2 THE COURT: Any objection to the witness being
3 excused from the State?

4 MR. KIDD: No, ma'am.

5 THE COURT: From the Defense?

6 MR. KING: No, Your Honor.

7 THE COURT: Sir, you are excused.

8 THE WITNESS: Thank you.

9 THE COURT: You're welcome.

10 Call your next witness.

11 MR. KIDD: The State calls Officer Hall.

12 STEVE HALL,

13 having been duly sworn, testifies as follows:

14 THE CLERK: If you can state your first and last
15 name and spell your last name, please.

16 THE WITNESS: First name is Steve. Last name
17 H-a-l-l.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. KIDD:

21 Q. Officer Hall, can you please tell the jury where you
22 are employed, please.

23 A. I'm employed with the North Charleston Police
24 Department. I've been there for approximately 11 years. I
25 did four years on patrol. Did another almost four years in

1 narcotics. And I'm currently on patrol, which I've been on
2 for the past four years as well.

3 Q. And what were your duties back in August of 2013?

4 A. Just calls for service.

5 Q. So you were on patrol then?

6 A. Patrol, correct, yes.

7 Q. And I know it's already been marked and entered as
8 State's Exhibit 6. I'm going to show you this disk. Just to
9 clear the record, do you recognize that?

10 A. Yes, sir.

11 Q. Have you reviewed this disk with me?

12 A. Yes, sir.

13 Q. And what's on this disk here?

14 A. The traffic stop.

15 Q. The video, is it your cruiser video?

16 A. Yes, sir.

17 Q. So when you work for patrol, you are in a North
18 Charleston marked patrol vehicle?

19 A. Correct.

20 Q. And is it equipped with audio and video?

21 A. Correct.

22 Q. And so how do you know that's your CD?

23 A. My initials.

24 Q. So you reviewed this and initials are on it. And
25 does it fairly and accurately represent the events that

1 transpired on the morning of August 14th, 2013?

2 A. Yes, sir.

3 MR. KIDD: Your Honor, it's been already marked and
4 entered, but I would just --

5 THE COURT: It's been marked for in-camera purposes.
6 It has not been admitted into evidence for the purpose of
7 trial. Is there any exception to the admission of the video,
8 Mr. King?

9 MR. KING: All of my pretrial motions --

10 THE COURT: Please approach.

11 (Whereupon, the following bench conference takes
12 place.):

13 THE COURT: How are you going to get in her
14 statements when you haven't had her testify yet?

15 MR. KIDD: I will stop the video before any of her
16 statements come up. And I am going to have my investigator
17 cut out anything that's subject to your rulings. We,
18 obviously, just haven't had time to do that since we started
19 kind of immediately after the ruling.

20 THE COURT: Any exception to proceeding in that
21 manner, Mr. King?

22 MR. KING: No, Your Honor.

23 MR. KIDD: I am not going to publish anything that
24 hasn't been ruled on yet.

25 THE COURT: Thank you.

1 (Whereupon, the bench conference is concluded.)

2 THE COURT: You may proceed subject to the bench
3 conference.

4 MR. KIDD: State's Exh. 6 is entered into evidence
5 subject to --

6 THE COURT: Subject to our bench discussion, yes.

7 (State's Exhibit 6 is moved into evidence.)

8 BY MR. KIDD:

9 Q. Before we get to the video, you had just indicated
10 that you have approximately 11 years of law enforcement
11 experience?

12 A. Yes, sir.

13 Q. Can you ballpark how many traffic stops that is for
14 you?

15 A. Thousands.

16 Q. So you've got a lot of experience in pulling people
17 over?

18 A. Correct.

19 Q. And sort of the behaviors of people when they have
20 that interaction with law enforcement?

21 A. Correct.

22 Q. Is that fair to say?

23 A. Yes, sir.

24 Q. So on the morning of August 14th, 2013, how did you
25 get involved in this traffic stop?

1 A. I was contacted by -- I believe it was Detective
2 Johnson, who was with Detective Pritchard. And he advised me
3 that they had someone suspicious they observed at the bus
4 station and wanted to know if I was in the area and was able
5 to conduct a traffic stop to further investigate what they
6 saw, if there was anything more to it.

7 Q. Now, in order to do that, you have to have a reason
8 to pull someone over?

9 A. Yes.

10 Q. Did they indicate --

11 A. They did. They advised me, when I got closer to
12 where -- as they were following the vehicle, they advised me
13 that they had a traffic violation, which being a brake light
14 out. And I was relayed that over the phone. I also observed
15 it once I got behind the vehicle.

16 Q. We are going to play the first section of the video
17 as you approached the vehicle and conducted initial traffic
18 stop.

19 Just for edification of the jury, the audio on these
20 things is a little bit weird, because right when it starts,
21 there is no audio. Can you explain that to the jury.

22 A. The way the cameras work in the car, when you hit
23 your blue lights, the actual footage backs up 30 seconds.
24 It's like pretty much constantly recording, but for evidence
25 purposes, I guess to save it, the audio won't kick on until I

1 actually hit my actual blue lights. The video actually backs
2 up and will start recording. That's in case there's an
3 accident or you were involved in an accident. Just anything,
4 just --

5 Q. So when you hit your blue lights, the first 30
6 seconds of the video will have no audio because the video
7 starts 30 seconds before you get your blue lights?

8 A. Well, the way to tell when my blue lights are
9 actually on is when the audio kicks on. So everything before
10 that, my blue lights are not on.

11 Q. So when we say "blue lights", the lights on top of
12 your vehicle are only on when the audio and the video kicks
13 in?

14 A. Correct, yes.

15 (Video playing.)

16 Q. I probably should have paused it a little bit
17 better, but if we saw the brake lights come on the car a
18 minute ago, there are two brake lights, what are we talking
19 about?

20 A. The third brake light, which would be in the rear,
21 kind of, like, sits up in the rear view.

22 Q. Is that a legitimate traffic equipment violation?

23 A. It is. State law states if it's on the vehicle,
24 it's got to work.

25 (Video playing.)

1 BY MR. KIDD:

2 Q. And might seem common sensical, but can you tell the
3 jury where we are right now, not in the city, but where?
4 What road this is?

5 A. This is the Cosgrove Bridge going into West Ashley,
6 which, I guess, eventually turns into Sam Rittenberg
7 Boulevard. We are probably several hundred yards past once
8 we come to the bottom of the bridge.

9 Q. Okay. What county is this in?

10 A. It's still Charleston, Charleston County.

11 (Video playing.)

12 BY MR. KIDD:

13 Q. Okay. Can you tell the jury a little about the
14 questions you asked them about the things you observed during
15 that first contact with that vehicle?

16 A. When I first walked up to the vehicle, made contact
17 with the driver, Ms., Jones. I noticed her pants were
18 unzipped. Also noticed the defendant, who was in the
19 passenger's seat, was sweating profusely, wasn't really
20 trying to make eye contact with me or kind of interact with
21 me very much at all.

22 Q. And you asked them a question, where are you all
23 coming from?

24 A. Correct.

25 Q. Did you get an answer to that?

1 A. No.

2 Q. And do you recall how many times you asked that
3 question?

4 A. Five, six times, I believe.

5 Q. And it was -- did you know the answer to that
6 question at the time you asked it?

7 A. I did.

8 Q. And how did you know that?

9 A. From speaking with Detective Pritchard and
10 Johnson.

11 Q. So you knew where they were coming from?

12 A. Yes, sir.

13 Q. And just who was the driver?

14 A. Ms. Jones.

15 Q. A female?

16 A. Correct.

17 Q. And this defendant was where in the vehicle?

18 A. The front passenger's seat.

19 Q. Any other occupants in the vehicle?

20 A. There was small toddler in the rear of the vehicle.

21 Q. Seatbelt, car seat?

22 A. I think it was a car seat.

23 Q. In a car seat in the back of the vehicle?

24 A. Correct.

25 Q. So you get driver's license information from the

1 individuals and return to your cruiser?

2 A. Yes.

3 Q. What do you do at that point?

4 A. Just running the driver's name, running the
5 passenger's name, making sure there are no warrants, making
6 sure her driver's license was valid. Possibly even ran the
7 tag. I can't recall if I did or not.

8 (Video playing.)

9 BY MR.. KIDD:

10 Q. I apologize. It was a little hard to hear a second
11 ago. Who was the other officer on the screen there?

12 A. That's Officer Deaton.

13 Q. And did you ask him to show up, or how does that
14 work?

15 A. No. I believe he was in the area. It's pretty
16 common practice if you make a stop, if another officer is in
17 the area, they will come back up just to make sure everything
18 is okay.

19 Q. And it was a little hard to hear, but as you were
20 walking back to the car, did you tell him anything?

21 A. I just told him to watch the defendant.

22 Q. And for what reason?

23 A. I just -- I had an odd feeling that something was
24 amiss.

25 (Video playing.)

1 BY MR. KIDD:

2 Q. Who are you talking to here?

3 A. I believe it was Detective Johnson via telephone.

4 Q. So are you on your cell phone at this point?

5 A. Yes, sir.

6 Q. And do you know where they are located?

7 A. I didn't have -- I didn't know exactly where they
8 were. I knew they were somewhere in the area close by.

9 MR. KING: Your Honor, I object to this as hearsay
10 and bolstering.

11 (Whereupon, the following bench conference takes
12 place.):

13 THE COURT: The only thing that comes in is his
14 statements to the officer, the officer's statements. Any
15 other chatter can't be cross-examined.

16 MR. KIDD: You can't hear any side of this
17 conversation.

18 THE COURT: Don't ask him what's being said then.

19 MR. KIDD: I didn't.

20 THE COURT: Because the video speaks for itself. If
21 it's not being offered for its truth, then it's not -- it's
22 just contemporaneous reporting what happened res gestae. But
23 if there's anything that amounts to establishing an element,
24 it's not admissible.

25 MR. KIDD: All it is is a one-sided communication.

1 You can't hear the other officer speak. You only hear
2 Officer Hall speak. And he's just recounting what he
3 observed in the car. He's really nervous what's going on
4 with this, just present impression --

5 THE COURT: You have the ability to cross-examine
6 him regarding his statements as he's here. So it's
7 overruled.

8 (Whereupon, the bench conference ends.)

9 THE COURT: Overruled, but to the extent bench
10 conference regarding any hearsay statements.

11 (Video playing.)

12 MR. KIDD: Your Honor, may I approach?

13 (Whereupon, the following bench conference takes
14 place.):

15 MR. KIDD: Mr. King just informed me that he's going
16 to object to the first thing she says when he asked for
17 consent to search. He asked, is there anything in the car
18 that I need to know about?

19 THE COURT: You can't have her on that video.
20 That's hearsay unless you are going to have her testify.

21 MR. KIDD: I believe there's an exception to the
22 hearsay because it is not offered for the truth.

23 THE COURT: It is being offered for the truth. It's
24 being offered to confirm that there's consent to search the
25 vehicle. It's the basis of the consent to search.

1 MR. KIDD: But that's not the statement. The
2 statement is -- he's objecting to is when the officer asked,
3 is there anything in the vehicle I need to know about, and
4 she says no.

5 THE COURT: Still hearsay, because he can't
6 cross-examine her about it.

7 MR. KIDD: Well, she's in the hallway.

8 THE COURT: Then you need to call her to testify.
9 That's strategically your decision. You can see where it's
10 going. He's going to blame her for it.

11 MR. KIDD: Sure.

12 THE COURT: It's hearsay. You can decide whether
13 you want to skip over it, call her back.

14 MR. KIDD: Would you agree her giving consent is not
15 hearsay?

16 THE COURT: It's hearsay. Anything she says out of
17 court that he can't cross-examine is hearsay. It's being
18 offered for its truth.

19 MR. KIDD: But it's offered to show what the
20 officers did next, that they went into the car --

21 THE COURT: You don't have to have her talk to say
22 that. He can say based on what happened, I did this. It is
23 your choice how you call your witnesses. You should have
24 called her. And she's out in the hallway. It probably would
25 have been --

1 MR. KIDD: I can obviously have him stand down and
2 call her.

3 THE COURT: If you want to do that, it's fine. But
4 anything she says is hearsay. And it is being offered for
5 its truth because you want the jury to believe that they
6 relied on that in searching the car.

7 MR. KIDD: That she --

8 THE COURT: That she gave consent.

9 MR. KIDD: That she gave consent, yes.

10 THE COURT: Which led to what you found, which you
11 want to use against him. It's a confrontation issue.

12 MR. KIDD: I will call her up. Do you mind if I
13 allow him to stand down subject to recall?

14 THE COURT: Not at all.

15 (Whereupon, the bench conference ends.)

16 THE COURT: Officer, you may stand down subject to
17 being re-called.

18 Call your next witness.

19 MR. KIDD: The State calls Cheryl Jones.

20 CHERYL JONES,

21 having been duly sworn, testifies as follows:

22 THE CLERK: If you can state your first and last
23 name and spell out your last name, please.

24 THE COURT: Ma'am, state your name for the record.

25 THE WITNESS: My name is Cheryl Jones.

1 THE COURT: Spell your last name, please.

2 THE WITNESS: J-o-n-e-s.

3 DIRECT EXAMINATION

4 BY MR. KIDD:

5 Q. Good afternoon. I know it's an inconvenience, and I
6 will try to be as brief as possible. All right?

7 Do you recall being involved in a traffic stop on
8 August 14th, 2013?

9 A. If I may address the Court, please.

10 THE COURT: Ma'am, I need you to answer the
11 question.

12 THE WITNESS: I don't recall.

13 BY MR. KIDD:

14 Q. You don't recall? Would it refresh your
15 recollection if you saw a video of the traffic stop?

16 A. No, it won't.

17 Q. It wouldn't?

18 MR. KIDD: Your Honor, at this time, we would like
19 to play the video of Ms. Jones.

20 THE COURT: Give me one second.

21 Mr. Foreman, ladies and gentlemen, I have a very
22 brief matter of law to take up outside your presence. During
23 the break, please do not discuss the case. And please leave
24 your notepads in your seats.

25 (Whereupon, the jury leaves open court at 3:35 p.m.)

1 THE COURT: Ma'am, what is it that you wanted to
2 address the Court about?

3 THE WITNESS: I would like to be advised of my
4 rights.

5 THE COURT: Okay. Do you anticipate you are going
6 to say anything that would incriminate you or that the
7 Solicitor has indicated they are going to charge you with a
8 crime?

9 THE WITNESS: I am not certain.

10 THE COURT: Have you all given her immunity? Do you
11 plan to charge her with a crime?

12 MR. KIDD: I have no intention of planning on
13 charging her with a crime.

14 THE COURT: Do you need to confirm immunity on her?

15 MR. KIDD: I am not inclined to do so.

16 THE COURT: Well, then I have to advise her of her
17 right against self-incrimination and give her a lawyer,
18 because she apparently thinks that she can say something that
19 can inculcate her. And the Constitution protects her from
20 that. She's under oath. Anything she says can be used
21 against her. And she doesn't have to give me the basis for a
22 criminal charge, especially if you are being vague about
23 whether you are going to charge her.

24 Now, of course, you can give her certain limited
25 immunity. Of course, you are not going to immunize her for

1 saying she killed somebody or something you didn't know
2 about. I use that as an extreme sample. But I think she's
3 talking about something very limited, which is the scope of
4 this stop.

5 Of course, there's a danger inherent in that. She
6 could say it belonged to her, and you would have given her
7 immunity. Have you discussed this with her? I don't want
8 you to get into anything that might be privileged.

9 MR. KIDD: No, but I do not plan to ask her any
10 questions that could incriminate her.

11 THE COURT: What do you plan ask her that you may be
12 able to allay her concerns?

13 MR. KIDD: I plan to ask her regarding her consent
14 to search the vehicle, the general circumstances in there --
15 I am not going to ask her the ultimate question whether the
16 drugs were hers or not.

17 THE COURT: Yeah, but Mr. King might ask her that.

18 Ma'am, do you understand that what he intends to ask
19 you is basically -- and we will play the video so that your
20 memory can be refreshed -- is he plans to ask you about
21 August 14th of 2013, when your car was stopped for having a
22 taillight out, and whether you consented to the search of
23 your vehicle, which I believe was an Altima; is that correct?

24 MR. KIDD: It was a Mazda.

25 THE COURT: Ma'am, what type of car? Do you own the

1 same car?

2 THE WITNESS: No, I do not.

3 THE COURT: Do you remember what type of car you
4 owned in 2013?

5 THE WITNESS: In 2013, I owned a 1996 Mazda 626.

6 THE COURT: And was it burgundy in color?

7 THE WITNESS: Yes, it was.

8 THE COURT: So they are going to ask you about that
9 car, about the stop on Cosgrove Avenue at the foot of the
10 bridge, and whether you consented to the search of that
11 vehicle.

12 Now, with that in mind, are you comfortable in
13 answering those questions, or do you still feel that you need
14 a lawyer?

15 THE WITNESS: I would prefer to have a lawyer.

16 THE COURT: Do we have -- would it be a conflict out
17 of your office to have somebody come talk to her, or can we
18 put up a Chinese wall and insulate whomever? I don't need to
19 appoint somebody. I think she just needs somebody to advise
20 her about her rights against self-incrimination and to allay
21 her concerns about incriminating herself. Do you think
22 somebody over there is available for that purpose?

23 MR. KING: Rhett does our conflicts. We have to
24 start with Rhett because he sort of keeps track of who has
25 the same investigator.

1 THE COURT: Do you think he's available?

2 MR. KING: I can try him.

3 THE COURT: Do you want me to have Chanda call and
4 see if he's available?

5 Ma'am, of course, I cannot advise you of your
6 constitutional rights, but based on what the Solicitor is
7 telling me, there's nothing he's going to ask you that's
8 inculpatory, in other words, that would make you subject of a
9 crime.

10 Now, I'm anticipating that Mr. King is going to ask
11 you if the drugs found in the car were yours. And unless you
12 plan to answer that question yes, that would not be
13 inculpatory either. In other words, that's not something
14 that could incriminate you. What is it that you are
15 concerned about, without --

16 THE WITNESS: I would like to know why I'm being
17 subpoenaed by the solicitor's office.

18 THE COURT: Because you were in a car that was
19 stopped that had a large quantities of drugs in it.

20 THE WITNESS: Okay. And then to be subpoenaed and
21 no prior contact, nothing, just, you need to show up here
22 today.

23 THE COURT: Well, that's kind of the purpose of a
24 subpoena. Even in a civil case where people are fighting
25 over money, it's a courtesy for folk to call you, but they

1 really don't have to. And in civil cases, the lawyers issue
2 subpoenas, not the Court. So it's kind of an inconvenience,
3 and I recognize that. Did you have to get off of work or
4 something?

5 THE WITNESS: Well, actually, I work after school.
6 And I'm responsible for 15 children who are -- right now, I
7 don't know where they are.

8 THE COURT: Were you able to call your job to find
9 out --

10 THE WITNESS: I'm not at the school. I don't know.
11 And I didn't bring my cell phone.

12 THE COURT: What school is it?

13 THE WITNESS: It's James Simmons Elementary.

14 THE COURT: Do you need us to call somebody at James
15 Simmons and let them know that we have you basically here?

16 THE WITNESS: Oh, you could, yes, please.

17 THE COURT: And that we need to make sure that your
18 responsibilities are covered?

19 THE WITNESS: Please.

20 THE COURT: Who would need to be contacted at the
21 school?

22 THE WITNESS: Pamela Bryant. It's [REDACTED]-7763.

23 THE COURT: And it's Pamela Bryant.

24 THE WITNESS: Yes.

25 THE COURT: What is her position at the school?

1 THE WITNESS: She's the parent advisor.

2 THE COURT: Parent advisor.

3 Go ahead and call her and let her know that she's
4 here. How long -- what time did you get here, ma'am?

5 THE WITNESS: I've been here since two.

6 THE COURT: And that she's been here since two
7 o'clock and she needs to make sure that her responsibilities
8 are covered and that the children are not left unattended and
9 that she is in court testifying.

10 Do you want them to know that?

11 THE WITNESS: That's fine.

12 THE COURT: That she is in court testifying and that
13 as soon as she is released -- I doubt you will be able to
14 make it over there before 5. What time do you normally --

15 THE WITNESS: Six o'clock.

16 THE COURT: It's probably likely she will get over
17 there probably by about 5, I'm thinking, and that if she has
18 any questions, don't hesitate to give us a call, but we want
19 her to know why she was not there. Didn't want her to think
20 that she was abandoning her responsibilities.

21 THE WITNESS: Thank you.

22 THE COURT: Now, what is your other concern? If I
23 can, I will address it for you.

24 THE WITNESS: What are the rights concerning common
25 law and testifying against your spouse?

1 THE COURT: You consider him your common law
2 husband?

3 THE WITNESS: Yes, I do.

4 THE COURT: Tell me how y'all established a common
5 law relationship.

6 THE WITNESS: We met in 2002. And he's lived in my
7 residence since '05 -- no -- '05 -- between '05 and
8 permanently '10, 2010.

9 THE COURT: Well, it would be his right to assert.
10 Do you carry his last name?

11 THE WITNESS: No.

12 THE COURT: Do you all file taxes together?

13 THE WITNESS: No.

14 THE COURT: Do you have children in common?

15 THE WITNESS: I have one child and it's not with
16 him.

17 THE COURT: Okay. And does he call you his wife?

18 THE WITNESS: Yes.

19 THE COURT: Does he refer to you as his wife?

20 THE WITNESS: Yes.

21 THE COURT: Do you refer to him as your husband?

22 THE WITNESS: I do.

23 THE COURT: Do you all have property in common? In
24 other words, do you all own a house together?

25 THE WITNESS: I own a house, but it was obtained

1 prior to our relationship.

2 THE COURT: So his name is not on the deed?

3 THE WITNESS: No, it's not.

4 THE COURT: Do the tax bills come in both your
5 names?

6 THE WITNESS: No. The house is actually owned with
7 my sibling.

8 THE COURT: Do you file taxes together?

9 THE WITNESS: No.

10 THE COURT: Were you aware of this, Mr. King?

11 MR. KING: It was mentioned to me Tuesday night. I
12 haven't spoken with Ms. Jones. I haven't spoken with her.
13 He mentioned it to me. I asked similar questions, but I
14 wasn't sure -- I don't know what she's going to say. I will
15 be honest with you.

16 THE COURT: Do you have any indication that anything
17 that she would say would be a violation of the privilege of
18 being married, because it only -- ma'am, usually being
19 married -- and if I misspeak, y'all please correct me --
20 usually you are only insulated from confessions or statements
21 your husband would have made to you. You are not insulated
22 from things that happened, like, out in the public, like, in
23 this situation where y'all were all present and it occurred.

24 But if he told you something, like, say he confessed
25 to you, you can't be required to repeat what he said to you.

1 But where y'all are in a vehicle and you consent to the
2 search of the vehicle -- whose name is the vehicle in?

3 THE WITNESS: It is in my name.

4 THE COURT: Was it ever in his name with you?

5 THE WITNESS: No.

6 THE COURT: Based on what the State is asking, they
7 are just basically asking you to say what happened out there
8 that day, which is on video. But I don't think they are
9 asking you to incriminate him.

10 Now, by virtue of you saying, potentially, that the
11 drugs are not yours, it becomes a credibility contest for the
12 jury about who the drugs belonged to. And I can't get in the
13 minds of 12 people to know what they are going to believe or
14 not believe.

15 Mr. King, in good faith, I guess, as your client's
16 advocate, do you believe there's any basis to assert the
17 privilege of husband and wife against anything that the State
18 would try to elicit from this witness?

19 MR. KING: When I read it, Your Honor, I did read
20 that it applied to communications.

21 THE COURT: Yeah. Usually when you have -- pillow
22 talk is what we refer to it as, as indelicate as that may
23 sound. Generally, it applies to those kinds of intimate
24 communications that a husband and wife would have, meaning
25 confiding in one another with nobody else present.

1 MR. KING: That was my understanding, it protects
2 confidential communication during the marriage. But there
3 were cases involving domestic violence, where the victim
4 couldn't claim the privilege regarding physical acts by --

5 THE COURT: Usually it doesn't insulate criminal
6 activity. In other words, it protects confessions. Like, if
7 she came to him and said, it's all mine, you couldn't be
8 required to repeat that. But I think things that happen in
9 the public domain that isn't within the sanctity, so to
10 speak, of the marital bed, or the intimacy of pillow talk,
11 which I think usually is how cases kind of refer to it, I
12 don't think that's protected. But I don't want to give you
13 any legal advice, but I just want to have clarity on what the
14 law is.

15 MR. KING: And I don't want to give her legal advice
16 either.

17 THE COURT: No and I wouldn't want you to. I need
18 to know, as his advocate, do you see any basis to assert
19 that? Because it's his privilege to assert, not hers.

20 MR. KING: My position would have to be based on my
21 understanding of it. I would assert as to any communications
22 made --

23 THE COURT: Between the two of them.

24 MR. KING: Between the two of them, I would assert
25 that --

1 THE COURT: Does the State plan to try to ask
2 anything about that?

3 MR. KIDD: No, Your Honor.

4 THE COURT: In addition to that, ma'am, it's his
5 privilege to assert, not yours. Unless, of course, you were
6 charged with a crime, then it would be your privilege to
7 assert and he couldn't testify to anything you may have told
8 him. That's my understanding of the privilege. Does that
9 sufficiently answer your question?

10 His lawyer has indicated that he doesn't plan to
11 assert the privilege, because there's no basis for it. But,
12 now, they can't ask, like, if y'all are at home talking,
13 whether he made any confessions to you.

14 MR. KIDD: Judge, if I could offer a potential,
15 hopefully, resolution.

16 THE COURT: Sure. I'm listening.

17 MR. KIDD: I don't expect me to ask her more than 10
18 questions.

19 THE COURT: You want to ask her the questions and
20 let her hear them?

21 MR. KIDD: What I'm thinking is that if we proffer
22 her testimony outside the presence of the jury, I would be
23 willing to give her immunity for whatever she said under --
24 during the proffer part of it, so for the purposes of
25 understanding what my questions would be and her answers

1 would be. And then that way, we would have a good
2 understanding of whether or not anything that I asked her she
3 stated would be inculpatory for the purpose of questioning in
4 front of the jury.

5 THE COURT: Ma'am, would that help you to know what
6 the questions were in advance?

7 THE WITNESS: It would.

8 THE COURT: Tell her what the questions are going to
9 be.

10 BY MR. KIDD:

11 Q. First question, do you recall being stopped by North
12 Charleston Police Department on August 14th, 2013?

13 THE COURT: I don't think she wants to answer yet
14 until she knows what all the questions are. She already told
15 you no to that one. And we will play the video and let her
16 refresh your memory. She already said, I don't recall.

17 MR. KIDD: Well, if her answers are going to be to
18 everything "I don't recall".

19 THE COURT: I don't know, Mr. Kidd. You need to ask
20 her the questions. Here's the bottom line. She doesn't want
21 to inculcate her husband at all. And that is her
22 prerogative. But I think you need to let her know what the
23 questions are going to be so that we can know what her
24 comfortable level is. And then I will cross that other
25 bridge when I get to it. So I just need you to rattle off

1 the questions you plan to ask.

2 BY MR. KIDD:

3 Q. Do you recall giving consent to North Charleston
4 Police Department to search the vehicle?

5 And then the only other questions that I would ask
6 would be regarding, do you recall interaction with Sergeant
7 Hall in which you indicated you had no knowledge of the
8 presence of the narcotics in the rear of your vehicle?

9 THE COURT: Wait a minute. Say that one more time.

10 MR. KIDD: There was an interaction between
11 Ms. Jones and Officer Hall in which Ms. Jones indicates that
12 she had no knowledge of the presence -- regarding the
13 presence of the narcotics in the vehicle.

14 THE COURT: Ma'am, do you understand what the
15 questions are going to be?

16 THE WITNESS: I do.

17 THE COURT: Do you need us to play the video to
18 refresh your memory?

19 THE WITNESS: Yes. Let's play the video, please.

20 THE COURT: Play the video so she can refresh her
21 memory. And it's going to be right behind you, ma'am.

22 THE COURT: What part of this is relevant to her,
23 because none of the pre-Miranda statements are coming in.

24 MR. KIDD: Right, Your Honor. I thought we were
25 refreshing her recollection.

1 THE COURT: The only thing you need to refresh her
2 memory is about what you were going to ask her about.

3 MR. KIDD: Right. The only other part would be when
4 she gets consent to search the car, and at the very end --

5 THE COURT: Show her that part.

6 THE WITNESS: Yes.

7 MR. KIDD: That was the first part we played.

8 THE COURT: Ma'am, we talked to your employer. And
9 she said that it's just fine. She will make sure everything
10 is covered and for you not to be concerned.

11 THE WITNESS: Thank you. Well, not as concerned --

12 THE COURT: I understand. That's reasonable. You
13 get attached.

14 MR. KIDD: This is the consent to search the vehicle
15 section.

16 (Video playing.)

17 THE WITNESS: I can't hear it.

18 THE COURT: If you can turn that down. It's easier
19 to hear when it's a little lower. The louder you turn it,
20 the louder the road noise gets.

21 (Video playing.)

22 MR. KIDD: So he asked, is there anything in the
23 vehicle you didn't know about? And she said no. He asked,
24 well, do you mind if I take a look in the vehicle? And she
25 says no.

1 THE WITNESS: No, you cannot look in the vehicle.

2 MR. KIDD: Well, you can obviously argue that.

3 THE COURT: Do you need us to play that part for you
4 again?

5 THE WITNESS: Yes, please.

6 THE COURT: Play that part for her again so she can
7 hear what she said and what he said to her.

8 (Video playing.)

9 THE COURT: Now, I couldn't hear what she said after
10 he said, do you mind if I look and she said no. But I don't
11 hear what else she said after that.

12 Ma'am, does that refresh your memory?

13 THE WITNESS: Yes, it does.

14 THE COURT: Now, what other part do you want to ask
15 her about?

16 MR. KIDD: Well, Judge --

17 THE COURT: What other part of the video do you want
18 to ask her about so that she can see it?

19 MR. KIDD: Judge, I would refer her to -- for
20 simplicity purposes, that's all.

21 THE COURT: Ma'am, does that refresh your memory of
22 what happened on that --

23 THE WITNESS: Yes, ma'am.

24 THE COURT: So the only questions you would be
25 asking her are what?

1 MR. KIDD: Her responses to Officer Hall when he
2 asked, is there anything in the vehicle I need to know about?
3 To which she replies in the negative, no. And do you mind if
4 I take a look in your car, to which she responds no.

5 THE COURT: Ma'am, do you have any problem with
6 those two questions?

7 THE WITNESS: That's not the full statement.

8 THE COURT: Well, it is Mr. King's responsibility,
9 as your husband's lawyer, to clarify any statements and do
10 what we call rehabilitate your testimony. And he will have
11 the opportunity to question you.

12 THE WITNESS: Okay. Thank you.

13 THE COURT: Now, are you more comfortable now?

14 THE WITNESS: Very much so.

15 THE COURT: Okay. And are you willing to go forward
16 without a lawyer?

17 THE WITNESS: No.

18 THE COURT: Okay. Is there a reason you haven't
19 seen a lawyer before today --

20 THE WITNESS: Well --

21 THE COURT: -- to advise you of your rights?

22 THE WITNESS: Today is the day.

23 THE COURT: I guess I'm trying to figure out for
24 what purpose you feel you need a lawyer, since none of the
25 questions are going to inculcate you.

1 THE WITNESS: Anything dealing with the solicitor or
2 the government, I would like to have a lawyer to explain what
3 my rights are.

4 THE COURT: Okay. Well, I can tell you, you have a
5 right to a lawyer. You have a right not to incriminate
6 yourself. And if you can't afford a lawyer, we can appoint a
7 lawyer, we can appoint one to represent you. That's
8 basically the gist of your rights..

9 So I'm trying to figure out, since they don't intend
10 to charge you with anything, and since they are only asking
11 you to basically say what happened on the scene of this
12 incident, which is on video, and I need to advise you that if
13 you answer inconsistently, they get to play the video,
14 because it's a contemporaneous record of what happened at
15 that date. I guess what else --

16 THE WITNESS: I have no trust for the government. I
17 would prefer to have a lawyer to advise me of my rights.

18 THE COURT: Mr. Dunaway is in the middle of a guilty
19 plea with Judge Dennis. He's going to come down to 3A as
20 soon as he's done.

21 MR. KIDD: And to be honest, Judge, I think at this
22 juncture, it's probably a good idea. I mean, she probably
23 needs to be advised of perjury and things of that nature as
24 well.

25 THE WITNESS: May I speak?

1 THE COURT: Sure.

2 THE WITNESS: I've had conversations with him, and
3 it's not been very pleasant. So I would rather have somebody
4 advise me before I speak to him.

5 THE COURT: It's your right. And I will try to find
6 somebody. But at this point, I just have to be honest, I
7 don't hear anything that he's asking that inculcates you, in
8 other words, that could be held against you.

9 THE WITNESS: I understand.

10 THE COURT: But I am not a lawyer and I can't
11 represent your interests.

12 MR. KING: Your Honor --

13 THE COURT: I can't be advocate.

14 Yes, sir.

15 MR. KING: What if I asked were the drugs hers?

16 THE WITNESS: I still would like to be advised. I'm
17 sorry, but I don't feel comfortable with this. And phone
18 calls have been made, none returned, very elusive. Come home
19 with a card in the door.

20 THE COURT: Who are you talking about?

21 THE WITNESS: Show up at my job.

22 THE COURT: Who showed up at your job?

23 THE WITNESS: I don't know his name, in the back
24 with the black shirt in the back. Scott, I think.

25 THE COURT: Would you have come to court without a

1 subpoena?

2 THE WITNESS: I would not be testifying for Kidd.

3 THE COURT: Well, as a practical matter, the only
4 way you could testify for your husband is if you said the
5 drugs were yours. And I don't think you plan to say that; do
6 you? So, I mean, that's the only way you are going to be
7 able to exculpate your husband.

8 And I understand this is a difficult position to be
9 in, because nobody ever wants to testify against somebody
10 they love or to perceive they are testifying against someone
11 they love, but I don't know that -- I'm sure that Mr. King is
12 going to ask you that question. And I don't know what your
13 answer is going to be. I'm sure Mr. Kidd is going to ask you
14 that question. And I can tell you that the defense's theory,
15 so far as I've heard it, is it really wasn't your husband's
16 drugs, they can't prove whose drugs there were, there were no
17 friendships taken, they don't know when it was put, where it
18 was put, by really by inference, they are going to say it was
19 yours. That's basically what they were going to do. Not the
20 State, the defense.

21 THE WITNESS: Okay. Clearly in the video, it says I
22 did not -- you cannot hear me giving consent. I did not give
23 consent. And I stated that.

24 THE COURT: Well, you do in the video. I've watched
25 this video, like, five times. You say, I don't have a

1 problem with it. I'm paraphrasing. He said, do you have a
2 problem with me searching the car?

3 THE WITNESS: Can you play that once again without
4 all the static?

5 THE COURT: Well, I mean, we can't eliminate so much
6 of the road noise, but if you can turn it down so she can
7 hear it.

8 (Video playing.)

9 THE WITNESS: I heard -- I didn't hear, yes, you
10 can.

11 THE COURT: Play it again.

12 (Video playing.)

13 THE COURT: He said, do you mind if I take a quick
14 look in your car, and you say no.

15 THE WITNESS: I said, no, you cannot look in my
16 car.

17 THE COURT: Well, replay that part again. I mean,
18 there's nothing that precludes you from testifying to that.
19 And the video says what it says. Some of it is inaudible.
20 They are not going to be able to say what you said. I mean,
21 it speaks for itself. Play it again.

22 (Video playing.)

23 THE COURT: So you are saying that at that part of
24 the video, you told them they couldn't search the car?

25 THE WITNESS: Correct. I would never give them

1 permission to look in my car, come in my home, search me. I
2 have a very big distrust of the government.

3 MR. KIDD: Judge, if this is going to be her
4 position, I'd probably want to play the other two statements
5 during the search when she instructs one of the officers how
6 to open the trunk, and she complains about how one of the
7 officers is pulling on the door panel and she makes him stop.
8 It's clear she's not a wilting flower. She asserts herself
9 when appropriate. And when they are exceeding what she
10 thinks is appropriate, she stops them. And I think that is
11 obviously circumstantial evidence to indicate her assent to
12 the search and the extent that she's willing to allow them to
13 search.

14 There's a point when an officer is trying to open
15 the trunk with a key and she says, no, no, no, stop, you've
16 got to use the button inside the door.

17 And there's a part where he's kind of pulling on a
18 panel and she says, wait, wait, wait, stop, don't do that.
19 And the officer stops. So I think that's also indicative of
20 her level of consent.

21 THE COURT: I don't know. I'm curious why neither
22 of y'all called her in-camera, because what she's saying now
23 is complete -- and then you do have some of this video that's
24 inaudible.

25 MR. KIDD: Judge, I don't believe -- my position all

1 along is, I don't care what her testimony is. I can impeach
2 her with the video. I've always known that she's going to be
3 a hostile witness. In my opinion, none of what she says is
4 hearsay. I think she's a party opponent.

5 THE COURT: She's not a party opponent. She wasn't
6 charged. It's hearsay. It's an out-of-court statement
7 asserted for its truth. And unless there's some level of
8 admission against her, it's not hearsay. And it can't be an
9 admission against her because she's not a party. The party
10 is a person who's charged. And if you want to offer it for
11 its truth as hearsay -- and you know, there's this little
12 problematic thing called the right for him to confront those
13 who are accusing him.

14 MR. KIDD: And she's on the stand for that purpose.
15 But under 801(d)(2), which is statements which are not
16 hearsay, admissions by a party opponent --

17 THE COURT: She's not a party opponent. A party
18 opponent is a person who is a party to the litigation,
19 whether that be a plaintiff or a defendant who is charged.
20 Only your statements can be used against you. They could not
21 be used against somebody else unless they are a 30(b)(6)
22 deponent or an agent who has the right to bind you by their
23 statements.

24 MR. KIDD: Or if it had been adopted by the
25 defendant. Any statements --

1 THE COURT: You don't have any evidence that any of
2 her statements have been adopted by him. He hasn't
3 testified. He's been mum and that's his right.

4 THE WITNESS: May I say something?

5 THE COURT: Yes, ma'am.

6 THE WITNESS: He's referring to me directing an
7 officer to use the key. And you can check. The model that I
8 had did not come with a keyhole on the trunk. The only way
9 that you could get into the trunk was by pushing either the
10 remote or using the latch. So that is what I was directing
11 him to.

12 THE COURT: Yeah, but if you didn't want him in your
13 trunk, then you just don't tell him how to open it.

14 THE WITNESS: True, but he's trying to make it seem
15 like I'm telling him, oh, you can get in my car, you can
16 check. You can't get in the car because there's not a
17 keyhole.

18 MR. KIDD: That's my point.

19 THE WITNESS: Oh, please.

20 THE COURT: But his position is, if you didn't want
21 him in the vehicle, you wouldn't have told him how to get in
22 it.

23 THE WITNESS: They already started by then. If I
24 told him no --

25 THE COURT: Yeah, but you still could have told them

1 no. And you don't impress me as being what we could call a
2 shrinking violet.

3 THE WITNESS: I don't appreciate him saying that.
4 And I don't appreciate adjectives being used as such towards
5 me.

6 Please don't use "she" pronouns. Thank you. No
7 adjectives.

8 THE COURT: Well, here's the bottom line. I need
9 to know whether you feel that any of this testimony will be
10 incriminating to you and if you still feel the need to speak
11 with counsel?

12 THE WITNESS: I would like to, please.

13 THE COURT: I have asked, and they are -- they have
14 indicated -- when I say "they", the solicitor's office has
15 indicated to me that when Mr. Dunaway is done with his plea,
16 they are going to send him down to this courtroom.

17 Mr. Howie, I think, was going to tell him to come to
18 3A as soon as he's done. So I guess we need to see if he's
19 done.

20 MR. KIDD: Judge, my only other points that I would
21 like to make is that I believe that it would also fall under
22 the presence sense impression --

23 THE COURT: I'm sorry. Repeat what you said.

24 MR. KIDD: I also think that her statements would
25 falls under present sense impression and reported

1 recollection exceptions to the hearsay rule.

2 THE COURT: It's hearsay. And I am not going to
3 have any opportunity to create a challenge in a record that's
4 unnecessary. I am going to give him every opportunity to
5 confront every witness against him. No statements are coming
6 in that are not subject to cross-examination.

7 This is the crux of your admissibility of the drugs,
8 which is her consent to search this vehicle, which the fruit
9 of that search was 190-something grams of cocaine. And
10 that's the end of the discussion.

11 MR. KIDD: Yes, ma'am.

12 THE COURT: He will be down in less than five
13 minutes. He's finishing up his last plea. After which, I'm
14 going to have him talk with Ms. Jones and go over all of her
15 rights and what her concerns are within the sanctity of
16 attorney/client privilege, to the extent that would be
17 established, since he's the public defender's basically what
18 you call conflict counsel.

19 MR. KING: He is the one who appoints when there's a
20 conflict --

21 THE COURT: He hasn't been involved in your
22 representation of Mr. Frasier?

23 MR. KING: That's correct.

24 THE COURT: He has no knowledge of the case?

25 MR. KING: That's correct.

1 THE COURT: And he wouldn't have any problems giving
2 her some -- I think she just wants -- any disquiet she feels
3 about this, she wants alleviated.

4 But, ma'am, I will tell you, the fact that you may
5 be compelled to testify in this case and that it may well
6 inculcate the man you consider to be your common law husband,
7 we can't do anything to alleviate that concern, because you
8 are subject to a subpoena and you are required to answer any
9 questions that are not incriminating to you. Okay? And I
10 can tell you that these questions that they are asking on
11 this video do not incriminate you. They might incriminate
12 him, circumstantially, because of what was found in the
13 vehicle. But they don't in any way incriminate you. But I
14 would feel more comfortable if you have legal advice.

15 I'm considering the fact that you've indicated you
16 want to talk to a lawyer. And I am not going to begrudge you
17 that request.

18 Play that video for me again, please, the relevant
19 portion. And turn up the volume for me.

20 (Video playing.)

21 THE COURT: Then what other section?

22 MR. KIDD: Might take me just a second to find that,
23 Judge.

24 THE COURT: Is that the part?

25 MR. KIDD: Yes, Your Honor.

1 THE COURT: Play that again for me.

2 (Video playing.)

3 THE COURT: Okay. Mr. Dunaway should be coming
4 through that door any second.

5 (Whereupon, Rhett Dunaway enters the courtroom.)

6 THE COURT: Rhett Dunaway, the man of the hour. I
7 need a favor. We are in trial in Mr. Michael Frasier. And
8 Mr. King is representing him. His -- the current witness,
9 Ms. Jones, during the course of her testimony has asserted
10 that she believes they are in a common law marriage. There
11 are some questions. And I'm going to ask counsel to play the
12 video for you so that you can see the portions of the video
13 they want to question her about, so that you can have a
14 meaningful conversation with her, if you feel comfortable
15 doing that.

16 She's indicated that she does not want to answer any
17 questions without being advised of her rights. The State has
18 indicated the questions they plan to ask and the scope of
19 those questions. And I'm going to have Mr. Kidd repeat those
20 for you as well, so that you can, again, have a meaningful
21 conversation with her. And he has indicated that he is
22 willing to give her immunity for that line of questions.

23 MR. KIDD: Well, only --

24 THE COURT: I said for that line of questions.

25 MR. KIDD: Only outside the presence of the jury. I

1 am not going to offer her any immunity for testimony in front
2 of the jury.

3 THE COURT: What's the difference?

4 MR. KIDD: The difference being, Judge --

5 THE COURT: If she changes it, but I don't
6 anticipate she's going to change her testimony.

7 MR. KIDD: Well, I am not going to offer her
8 immunity for testimony in front of the jury. I hope I
9 wasn't -- I hope I didn't confuse the Court when I said that.
10 I was offering that to proffer some testimony under immunity
11 so that she would know exactly the questions I'd ask and
12 understand that they had the implication. But I am not
13 willing to offer her immunity for trial testimony.

14 THE COURT: All right. With that clarification,
15 repeat the questions that you plan to ask her so Mr. Dunaway
16 can be aware of them.

17 MR. KIDD: All I was going to ask her was if she
18 recalls the traffic stop that occurred on August 14th,
19 2013.

20 THE COURT: Well, she's already indicated she does
21 not recall, but we have a video to refresh her memory, and we
22 played it for her.

23 MR. KIDD: That, from my understanding, she will
24 answer in the negative, but if she recalls --

25 THE COURT: She did say she was going to answer in

1 the negative. She says she does not recall.

2 MR. KIDD: I'm talking about on the follow-up
3 question, which would be, do you recall consenting to the
4 search of your vehicle upon the request of Officer Hall? And
5 then I believe she will answer that in the negative, that she
6 didn't give consent. And we might argue about --

7 THE COURT: Then they want to play the video to
8 impeach her, basically, as an inconsistent previous
9 statement.

10 MR. DUNAWAY: She has not been charged?

11 MR. KIDD: She has not been charged with anything
12 and I have no intention of charging her, necessarily, with
13 anything.

14 THE COURT: Except he has indicated that he would
15 consider perjury, so you would need to advise her regarding
16 that.

17 MR. KIDD: And if she were to make a claim to the
18 narcotics.

19 THE COURT: Which I think is unlikely that she was
20 going to do that.

21 MR. DUNAWAY: Whose car?

22 MR. KIDD: The drugs were found in pocket of a
23 masculine jacket.

24 MR. DUNAWAY: Would it be appropriate if we stepped
25 outside?

1 THE COURT: Oh, I'm going to let her talk to you. I
2 just want you to know the scope of what's been going on so
3 when you talk to her, you have a point of reference.

4 I need y'all to play those portions of the video so
5 that Mr. Dunaway can see them, so that he isn't in the dark
6 as to what he's talking to her about. And it's hard to hear
7 because the road noise is so loud, but I think that previous
8 volume we had is good.

9 (Video playing.)

10 MR. KIDD: So that would be the two questions.

11 THE COURT: Were you able to hear it?

12 MR. DUNAWAY: I couldn't hear anything.

13 THE COURT: Play it again and turn the volume up.

14 (Video playing.)

15 THE COURT: Could you hear it okay? Are you still
16 confused?

17 MR. DUNAWAY: I heard something about "I just took a
18 shower".

19 THE COURT: Just because I watched it so many times,
20 you almost have to lean into it to hear what's being said.
21 He asked her, do you mind if I take a look in the vehicle?
22 And she says, no. And there's some other stuff that's sort
23 of inaudible. And there's another portion of the video where
24 they don't know how to open the trunk. She instructs them
25 how to open it with a key. And then there's another portion

1 where they are pulling on a loose interior panel of the car
2 and you can see her hand come out from the side of the video,
3 basically telling them to tell the police to stop doing that
4 because she doesn't want her car all torn up and that it's
5 loose and leave it alone. I'm paraphrasing, but that's the
6 gist of it.

7 Ma'am, Mr. Dunaway is here to advise you of your
8 rights, as you've requested. So if you would go with him.
9 And he's going to take you into a private room so y'all can
10 talk. And let me know when y'all are done, Mr. Dunaway.

11 MR. KING: The scope of questions, there may be more
12 questions on cross.

13 THE COURT: Why don't you give Mr. Dunaway an idea
14 so he can advise her completely.

15 MR. KING: That's why I'm sitting here deciding -- I
16 don't want to ask questions I don't know the answer to, but
17 yet it might be a question for me.

18 THE COURT: This is an unpredictable situation. I
19 don't think you can guarantee what's going to be said.

20 MR. KING: Right. I'm considering whether I should
21 ask her are the drugs herself.

22 THE COURT: And, certainly, you would need to advise
23 her of the consequences of a yes-or-no answer to that. And
24 she has -- I think she's just uncomfortable being here
25 testifying against the man that she cares for and she does

1 not want to be a part of any conviction of him, which is
2 reasonable.

3 MR. DUNAWAY: What is the charge, trafficking?

4 THE COURT: Trafficking.

5 MR. DUNAWAY: I will help however I can, but I
6 wonder if we should bring in someone not in our office.

7 THE COURT: That's why I asked, because Mr. King
8 said you were basically like kind of conflict counsel of
9 sorts, where you decide conflict counsel. And that the other
10 question becomes whether you've had any involvement with this
11 case. And he indicated that you didn't and you don't have
12 any knowledge of it.

13 MR. DUNAWAY: Well, I assign the case.

14 THE COURT: Other than that, you don't -- do you
15 feel uncomfortable advising her?

16 MR. DUNAWAY: Yes. I feel uncomfortable with
17 everything I do.

18 THE COURT: That's honest.

19 MR. DUNAWAY: But the uncomfortableness would come
20 from if we had -- if she becomes a co-defendant.

21 THE COURT: They don't plan to charge her. She
22 would have to say the drugs were hers. Well, she wouldn't
23 become a co-defendant at that part, because I think they
24 would then drop the charges. The drugs were found in a
25 jacket in the car which he claimed ownership of and said she

1 had nothing to do with it. They are only trying to establish
2 consent to search the vehicle in her testimony.

3 MR. DUNAWAY: Even without consent, may be
4 relevant.

5 THE COURT: Neither party called her in the pretrial
6 motion to suppress. So all I had to rely on was this video.
7 I never had the value -- I never contemplated that she was
8 going to come into court and say, no, I didn't give
9 consent.

10 MR. DUNAWAY: I will talk to her.

11 THE COURT: Ma'am, if you will step down. And
12 there's a room right that you can utilize in complete
13 privacy?

14 THE WITNESS: Thank you.

15 THE COURT: You're welcome.

16 MR. KIDD: Your Honor, because I have some witnesses
17 here from the upstate, would you mind if we called them out
18 of order?

19 THE COURT: What are they going to be testifying to?

20 MR. KIDD: Just the drugs.

21 THE COURT: Yeah, but we have a little problem, a
22 little glitch right now. So we will wait a few minutes and I
23 think they can hang tight with us.

24 MR. KIDD: I was just thinking --

25 THE COURT: Yeah. Well, let me think about that for

1 a minute.

2 Do you have any objection to him calling those
3 witnesses out of order, Mr. King? I assume you are talking
4 about Mr. Smith from SLED?

5 MR. KIDD: Yes, ma'am.

6 THE COURT: That should be your only out-of-town
7 witness.

8 MR. KIDD: It is, just so he doesn't have to drive
9 back tomorrow.

10 THE COURT: Do you have any objection to that, other
11 than the ones you articulated about the suppression?

12 MR. KIDD: I may have an objection on the chain of
13 custody. I don't know if that goes out of order or make any
14 difference.

15 THE COURT: I don't know. Is there a real chain
16 question?

17 MR. KIDD: I can call --

18 THE COURT: What you would do is have him testify,
19 but you wouldn't admit anything until the rest of the chain
20 has been established as far as practicable.

21 MR. KIDD: How is the chemist going to testify about
22 the drugs?

23 THE COURT: Who took the drugs? Who are your chain
24 witnesses.

25 MR. KIDD: Officer Hall first recovered the drugs

1 from the automobile. He then turned them into North
2 Charleston Police Department. And Shawnta Middleton drove
3 those narcotics up to SLED for testing.

4 THE COURT: Why can't you call your other chain
5 witnesses, the SLED guy, and any admission of it would be
6 subject to establishing -- because you don't have any good
7 faith basis to object that Mr. Hall was part of the chain
8 witness that actually got the drugs out of the car and then
9 turned them over to Ms. -- well, I guess he put it in the
10 evidence locker and then Ms. Middleton took it out of the
11 evidence locker and drove it to SLED.

12 MR. KING: He's the first link in the chain. I just
13 have a problem with going out of order with the chain.
14 Things are already getting a little --

15 THE COURT: Well, things are just dicey because of
16 the way you called your witnesses. If someone had the
17 foresight to call Mrs. Jones, we could have dealt with all
18 this ahead of time, whether she was recalcitrant or not, it
19 just is what it is. It's life. So we may have to wait. If
20 he objects to the chain, I don't think I have a choice.

21 MR. KIDD: Well, even if I don't enter the drugs
22 yet?

23 THE COURT: How are you going to testify to the
24 results when you can't establish a chain, can't establish
25 where they came from?

1 MR. KIDD: Could I call Officer Hall really fast for
2 the purpose of --

3 THE COURT: You've got an issue now. I'm
4 rethinking, if she says she didn't consent to this car being
5 searched, this is just causing me a lot of consternation
6 right now and a lot of concern.

7 MR. KING: I didn't officially renew my motion based
8 on that, but I was thinking if she's changed her --

9 THE COURT: I need to see how she's going to testify
10 before I do anything.

11 MR. KIDD: The only other argument, Judge, I would
12 offer as to that, even if you found that she didn't offer
13 consent to search the vehicle, I still think we have search
14 incident to valid arrest based on the search of him, finding
15 the cocaine in his pocket, then they searched the vehicle
16 incident to a valid arrest. I still believe the search of
17 the car is good, even if you found she didn't consent. But I
18 don't for a second concede she didn't consent. I
19 think Officer Hall --

20 THE COURT: That's been the whole basis of your
21 theory, that she's consented. And that's been the whole
22 theory of his objections, that it exceeded the scope of the
23 original stop. So if you want to change your theory, that's
24 fine. But it is what it is right now, and I just got to take
25 it as it comes, because I'm comfortable, inconvenient as it

1 is.

2 MR. KIDD: I'm not changing the theory at all, Your
3 Honor.

4 THE COURT: I think she says, "aw, nah," consents to
5 the search. I can't put the cart before the horse. It's
6 like dominoes. I have to deal with it how it comes. She now
7 says she didn't consent. It is what it is. You may have to
8 impeach her. It is what it is.

9 (Whereupon, a recess transpired.)

10 (Whereupon, the defendant is present.)

11 MR. KIDD: One of my chain witnesses, who just drove
12 the drugs from North Charleston to SLED, has a funeral
13 tomorrow at 11.

14 THE COURT: We will just take her first.

15 MR. KIDD: First thing in the morning?

16 THE COURT: Uh-huh. I am not staying here 6 to 7
17 o'clock with this jury. My law clerk just told me they
18 stayed in that room six or seven hours today.

19 MR. KIDD: We will just take her out of order?

20 (Whereupon, a recess occurs.)

21 THE COURT: Ma'am, I will remind you, you are still
22 under oath. Have you had sufficient time to speak to Mr.
23 Dunaway?

24 THE WITNESS: Yes, ma'am, I have.

25 THE COURT: Has he answered all of your questions?

1 THE WITNESS: He has.

2 THE COURT: Do you feel that you have been
3 sufficiently apprised of your rights?

4 THE WITNESS: At this point I do.

5 THE COURT: Are you willing to go forward now and
6 testify?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Please bring in the jury.

9 (Whereupon, the jury returns to open court at 5:13
10 p.m.)

11 THE COURT: Ladies and gentlemen, we appreciate your
12 patience. We are now going to resume with the witnesses'
13 testimony.

14 Mr. Kidd, you may proceed.

15 BY MR. KIDD:.

16 Q. Ms. Jones, do you recall being involved in a traffic
17 stop on August 14th, 2013?

18 A. Yes, I do, after reviewing your video.

19 Q. Okay. And do you recall Officer Hall asking you if
20 there were anything illegal or anything he should know about
21 in your vehicle?

22 A. No, I don't recall him asking that.

23 Q. Okay. Do you recall Officer Hall asking if you
24 minded that he searched your vehicle?

25 A. Per the video, my memory has been recollected, yes.

1 Q. And do you recall telling Officer Hall that you did
2 not mind if he searched your vehicle? And those are my
3 words, not yours. I believe he asked, do you mind if I
4 search your vehicle, and I believe your answer was no.

5 A. Incorrect.

6 Q. Okay. What was your response to it?

7 A. What was the question? What was his question?

8 Q. When Officer Hall asked for consent to search your
9 vehicle, what was your response to it?

10 A. No, he could not search the vehicle.

11 Q. No, he could not search the vehicle?

12 A. Well, my response was "no".

13 Q. All right.

14 MR. KIDD: Your Honor, at this time --

15 THE COURT: Just play the video.

16 THE COURT: Watch the video, please.

17 MR. MAYNOR: I'm sorry?

18 THE COURT: I was instructing her to watch the
19 video.

20 (Video playing.)

21 THE WITNESS: Was that the point? I'm sorry.

22 THE COURT: Is there a question for the witness?

23 MR. KING: I just renew my objection based on
24 hearsay and --

25 THE COURT: Overruled. The witness is present and

1 subject to being cross-examined.

2 MR. KIDD: Not as to that question.

3 THE COURT: It's being used as a prior inconsistent
4 statement for impeachment of the witness.

5 Do you have any further questions for the witness?

6 MR. KIDD: Court's indulgence one second.

7 MR. KIDD: I have no further questions for the
8 witness.

9 THE COURT: Any questions for the witness?

10 MR. KING: Court's indulgence one moment.

11 CROSS-EXAMINATION

12 BY MR. KING:

13 Q. Ms. Jones, did you know anything about the drugs
14 found in the car, that the police say they found in the car?

15 A. No, sir.

16 Q. Were they your drugs?

17 A. No, they weren't.

18 Q. Were they Mr. Frasier's drugs?

19 A. I'm not aware of that.

20 Q. You have a child; is that right?

21 A. Yes, I do.

22 Q. How old is your child?

23 A. At this time, she's six, soon to be seven.

24 Q. You got a job?

25 A. I do.

1 Q. Where do you work?

2 A. I'm employed with Charleston County School District.
3 Well, I'm sorry. You are asking me these questions, but at
4 the time, my child was three. This happened in 2013. So at
5 that time, I was employed with the Charleston County Public
6 Library.

7 Q. But you've got a lot to lose --

8 A. Oh, yeah.

9 Q. -- if you were charged with a crime?

10 A. Correct. I'm a county employee.

11 MR. KING: Thank you, Your Honor.

12 THE COURT: Any redirect?

13 MR. KIDD: Just briefly.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY MR. KIDD:

17 Q. Can you tell the jury what your relationship is with
18 Mr. Frasier?

19 A. He is my common law husband.

20 Q. And how long have you all been together?

21 A. We met in 2002 and we broke up a few years later and
22 then we got back together.

23 Q. So you care for him, right?

24 A. I do. I care for a lot of people.

25 Q. Well, I mean, more than just an average person.

1 Y'all have a relationship together, right?

2 A. Correct, at that time, yes.

3 Q. And you don't want to see him get in trouble, right?

4 A. I wouldn't want anyone to get in trouble.

5 MR. KIDD: No further questions, Judge.

6 THE COURT: Any objection to the witness being
7 excused from the State?

8 MR. KIDD: Court's indulgence. Judge, I would just
9 ask she be subject to recall tomorrow, if necessary.

10 THE COURT: Any exception from the Defense?

11 MR. KING: No, Your Honor.

12 THE COURT: Ma'am, you are excused subject to being
13 re-called. Have a good day.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Foreman, ladies and gentlemen, we
16 are going to take advantage of this break in testimony to
17 take our evening recess. It is a gross understatement to say
18 that y'all have been patient with us today. There are many
19 things in this process that we wish we could anticipate, and
20 I guess be a little more efficient, but, unfortunately, due
21 to the nature of the process, I don't know any other way to
22 describe it, it's just one of those things. We have to work
23 our way through certain issues. And we appreciate your
24 patience while we did that.

25 We are going to resume in the morning at nine

1 o'clock. This clerk has given y'all parking passes. And you
2 will be able to park next-door. So that will eliminate your
3 walk from Cumberland and should eliminate a lot of the
4 traffic issues that we accommodate for and start at 9:30. So
5 in the morning we will start at 9.

6 I anticipate that we will have about three more
7 witnesses before concluding this trial. And so the case will
8 be concluded on tomorrow. When you arrive, the clerk is
9 going to take your lunch order. And then after that, I will
10 determine when lunch will arrive, depending on our schedule.
11 So I let you know that for your purposes of planning.

12 Hope y'all have a great evening. We will see you in
13 the morning at 9. If you will stack your notepads on the
14 banister for me, we will secure those during the recess.

15 Please do not discuss the case and have no contact
16 with anyone in or about the courthouse when you return in the
17 morning.

18 (Whereupon, the jury leaves open court at 5:21 p.m.)

19 THE COURT: All right. Guys, we had a long day.
20 Make sure you get some rest. Make sure you leave -- if y'all
21 want to leave your stuff, you can leave it. The courtroom is
22 locked. Nobody comes in here when we are not in here. And
23 we will resume at 9. I presume they will have the courtroom
24 open earlier than that so y'all can come in and get situated.
25 See y'all in the morning.

1 (Whereupon, the proceedings are adjourned for the
2 day.)

3
4 (Whereupon, the proceedings continue on March 24,
5 2017.)

6 (Dft. Exh. 1, Incident Report, was marked for
7 identification.)

8 (State's Exh. 7, Chain of custody, Greyhound Bus
9 ticket, straw, bottle of Superior B, cell phone bill, was
10 marked for identification.)

11 (State's Exh. 8, Chain of custody, Best Kit,
12 B236761, was marked for identification.)

13 (State's Exh. 9, Chain of custody, was marked for
14 identification.)

15 (State's Exh. 10, Drug Analysis, was marked for
16 identification.)

17 (Whereupon, the defendant is present.)

18 THE COURT: 343 is the alternate.

19 MR. KIDD: 30 years old, single, in sales.

20 (Whereupon, a recess transpired.)

21 THE COURT: We still can't find him. The clerk
22 called -- we only have one number for him. We assume it's a
23 cell phone number. She called several times before I came in
24 and told you all about. We were trying to figure out what's
25 going on. And she called again just now and said his phone

1 was making a funny noise and then it finally rang several
2 times and nobody ever picked up.

3 From the roll call, it appears that he is a server.
4 I would assume -- he didn't say where, but I would assume
5 that means at a restaurant. And I'm wondering if he went to
6 work last note and just overslept. Usually when that
7 happens, when we are trying to reach people that can't reach
8 them, it's usually because they had a medical emergency. 90
9 percent of the times it's because they overslept or they had
10 a car accident or something, which, I mean, in all my years
11 of doing this, I can't recall maybe but one juror having had
12 a car accident on the way to the courthouse, or maybe had a
13 car accident the night before. But usually they call us and
14 let us know what's going on.

15 SO the issue then becomes, since we can't reach him,
16 do you all want to proceed with seating the alternate, No.
17 343, who is here and present, or what do you all want to do?

18 MR. KIDD: I would like to move forward with the
19 alternate in interest of time.

20 MR. KING: I have no objection to that, Your Honor.

21 THE COURT: Perfect. That works.

22 Go ahead and have your witness in the courtroom so
23 we don't have to look for him.

24 (Whereupon, the jury returns to open court at 9:41
25 a.m.)

1 THE COURT: Good morning, ladies and gentlemen. I
2 hope everybody had a good evening. We apologize for our
3 delayed start. We are missing a juror. We were trying to
4 ascertain his location to make sure he didn't have any
5 difficulties this morning, and we were unable to do that. So
6 we are now seating our alternate as a member of the panel.
7 And we will now resume testimony. And I appreciate your
8 patience. I would ask that you give counsel your undivided
9 attention.

10 Mr. Kidd, you may proceed.

11 MR. MAYNOR: The State calls Shawnta Middleton.

12 SHAWNTA MIDDLETON,
13 having been duly sworn, testifies as follows:

14 THE COURT: State your name for the record, spelling
15 your last name for the court reporter.

16 THE WITNESS: Shawnta Middleton,
17 M-i-d-d-l-e-t-o-n.

18 THE COURT: If you can spell your first name for us
19 as well.

20 THE WITNESS: S-h-a-w-n-t-a.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION

23 BY MR. MAYNOR:

24 Q. Good morning, Ms. Middleton. Can you tell the jury
25 where you work?

1 A. North Charleston Police Department.

2 Q. And what are your duties there?

3 A. I'm an evidence technician.

4 Q. How long have you been working there?

5 A. Ten years with the department; six years in
6 evidence.

7 Q. And can you kind of explain to the jury what an
8 evidence technician does, what your daily routine would be?

9 A. Yes. An evidence technician receives all evidence
10 items from crime scene or patrol officers. They make sure
11 it's sealed, packaged. And they store it in a secure
12 location until the case has been adjudicated.

13 Q. And when you get evidence, does it come -- how does
14 it arrive to you, in a bag, in a box, just out in the raw
15 form that it's in?

16 A. Yes, arrives in bags, boxes, any type of sealed
17 packages.

18 Q. And if you were to get narcotics, for instance, how
19 would that be presented to you?

20 A. Most of the time, it's in a bag and it's sealed.

21 Q. And is that called a BEST kit?

22 A. Sometimes a BEST kit, and sometimes just an evidence
23 bag sealed.

24 Q. Can you explain what a BEST kit is?

25 A. Yes. It's a bag that you can put evidence items in,

1 preferably drugs. And it's sealed and it's marked BEST
2 kit.

3 Q. Does it have any sort of device in it where, if that
4 seal is broken, it can't be put back the same way? So if
5 someone were to open it, they would know that it had been
6 tampered with already?

7 A. That's correct.

8 Q. So that's a safety measure so that people don't
9 tamper with whatever the evidence is?

10 A. That's correct.

11 Q. And on August 14th, 2013, did you receive evidence
12 from Officer Hall?

13 A. I did.

14 MR. MAYNOR: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 BY MR. MAYNOR:

17 Q. I'm handing you what's been marked as State's
18 Exhibit 1. Can you identify this?

19 A. Yes, sir.

20 Q. Can you tell the jury what that is?

21 A. This is the BEST kit I received from Officer Hall.

22 Q. And how can you tell that that's the BEST kit that
23 you received from Officer Hall?

24 A. It has our label on it with the case number and
25 Officer Hall's signature at the bottom.

1 Q. And when you accepted that from Officer Hall, what
2 did you do with it?

3 A. Made sure it was sealed, labeled, and I stored it in
4 the evidence locker until I took it to SLED.

5 Q. Okay. And when you store it in an evidence locker,
6 who has access to that?

7 A. Only evidence technicians.

8 Q. So when did you take it to SLED?

9 A. I took it to SLED on October 25th, 2013.

10 Q. And what was purpose for that, for you carrying it
11 to SLED?

12 A. For drug analysis.

13 Q. And is that bag in the same or substantially similar
14 condition it was when you first had it?

15 A. When I first had it, it was not in this bag. It was
16 just in this bag right here, the BEST kit envelope.

17 Q. So the items in that bag were inside the BEST kit?

18 A. That's correct.

19 Q. And the BEST kit was sealed?

20 A. That's correct.

21 Q. And untampered with?

22 A. That's correct.

23 Q. And you were the one who took it in from Officer
24 Hall on August 14th, correct?

25 A. Correct.

1 Q. Placed it in a secure locker at North Charleston
2 Police Department?

3 A. Correct.

4 Q. And then transported it to State Law Enforcement
5 Division on what date?

6 A. October 25th, 2013.

7 Q. And did you sign an intake form at the State Law
8 Enforcement Division at SLED that same date when you handed
9 those drugs to the records custodian?

10 A. That same day, yes, sir.

11 MR. MAYNOR: Court's indulgence.

12 THE COURT: Yes, sir.

13 BY MR. MAYNOR:

14 Q. When you got to SLED, who did you end up giving that
15 to? Do you recall who you handed that bag to?

16 A. No, sir, I do not.

17 Q. If I were to hand you State's Exhibit No. 9 to
18 refresh your recollection, would you be able to tell me who
19 you handed that to?

20 A. Yes, sir.

21 Q. Who was that person?

22 A. It was forensic technician Ian Stevens at SLED.

23 Q. Did you sign that document too?

24 A. This document?

25 Q. Yes, ma'am.

1 A. Yes, sir.

2 Q. May I have that back?

3 MR. MAYNOR: Your Honor, no further questions.

4 THE COURT: Any questions for the witness?

5 MR. KING: No questions, Your Honor.

6 THE COURT: Any objection to the witness being
7 excused from the State?

8 MR. MAYNOR: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. KING: No, Your Honor.

11 THE COURT: Ma'am, you are excused.

12 Call your next witness.

13 MR. KIDD: The State recalls Officer Hall.

14 THE COURT: Officer, I will remind you you are still
15 under oath. If you would state your full name for the record
16 and spell your last name for the court reporter.

17 THE WITNESS: First name Steve, last name Hall,
18 H-a-l-l.

19 THE COURT: You may proceed when you are ready.

20 MR. KIDD: Thank you, Your Honor.

21 STEVE HALL,

22 having been previously sworn, testifies as follows:

23 CONTINUED DIRECT EXAMINATION

24 BY MR. KIDD:

25 Q. Good morning, Officer Hall.

1 A. Good morning.

2 Q. I believe when we left off in your testimony the
3 last time, it was sort of at the point when you were in a
4 conversation with Ms. Jones outside of her vehicle. Is that
5 about where we left off?

6 A. Yes, sir.

7 Q. At some point shortly thereafter, did you have the
8 defendant step out of the vehicle?

9 A. Yes.

10 Q. And did you ask for -- what did you ask him?

11 A. I believe I asked him if he had anything on him I
12 needed to know about.

13 Q. Did you ask to search him?

14 A. I did.

15 Q. What was his response?

16 A. I asked him if he minded if I checked him or
17 searched him. He said no, but then just kind of turned
18 around and verbal -- I mean, body language, kind of gave me
19 consent to search.

20 Q. Did you end up searching him?

21 A. I did.

22 Q. And what did you find on his person?

23 MR. KING: Your Honor, objection. Renew my pretrial
24 objection.

25 THE COURT: Noted and overruled.

1 THE WITNESS: I found a small Ziploc, I believe it
2 was like a green Ziploc baggie that had some white powder
3 substance in it.

4 BY MR. KIDD:

5 Q. What did you do at that point when you found that
6 small baggie of narcotics?

7 A. I detained him at that point.

8 Q. By detain, you mean put him in handcuffs?

9 A. Correct.

10 Q. After that, did you have the occasion to search the
11 vehicle?

12 A. I did.

13 Q. And what did you find inside the vehicle?

14 A. I found a --

15 MR. KING: Objection again on my pretrial motions.

16 THE COURT: I don't think you have to have a running
17 objection.. I think once you made a contemporaneous objection
18 and the Court has ruled on it, it's preserved.

19 You may proceed.

20 THE WITNESS: I located a jacket inside the rear
21 compartment of the vehicle. Inside the jacket were several
22 large bags of white powder substance.

23 BY MR. KIDD:

24 Q. I'm going to show you, and it's right in front of
25 you, what's been marked for identification purposes only as

1 State's Exhibit No. 1. Do you recognize that item?

2 A. I do.

3 Q. And what is that that we are looking at there?

4 A. Cocaine.

5 Q. Is it just any cocaine, or is it cocaine from that
6 day or what?

7 A. It's the cocaine from that day. Has my signature on
8 it.

9 Q. And your signature is on what, the BEST kit?

10 A. Yes, sir.

11 Q. And the BEST kit, is that inside that overall bag
12 there?

13 A. It is.

14 Q. Okay. So the cocaine that you found inside the
15 jacket and inside his pocket, what did you do with it?

16 A. I put it into an evidence bag, put it in the trunk
17 of my police cruiser until I was able to take it up to the
18 evidence room.

19 Q. And when you say evidence bag, you mean BEST kit?

20 A. Correct, yes..

21 Q. So you took all of the narcotics that you found in
22 his car out there in the scene, put it inside that BEST kit?

23 A. Yes, sir.

24 Q. Put it in your trunk?

25 A. Correct.

1 Q. Took it to North Charleston evidence?

2 A. Yes, sir.

3 Q. Do you remember who you gave it to in North
4 Charleston?

5 A. I believe I put it in a locker. I didn't physically
6 hand it to anyone.

7 Q. So y'all have an evidence lockers?

8 A. Correct.

9 Q. Are they double-sided locker?

10 A. They are double-sided, so once we put it in there
11 and lock it, no one else can get to it from that side except
12 for the technician who's on the other side.

13 Q. Do you recall what day you turned the drugs over to
14 the evidence technician?

15 A. The 14th, the same.

16 Q. Same day --

17 A. Same day.

18 Q. -- as you arrested him?

19 A. Yes, sir.

20 Q. Now, I want to talk a little bit about the packaging
21 of the narcotics. You said in the defendant's pocket, you
22 just testified the first thing you found was a small green
23 baggie?

24 A. Yes, sir.

25 Q. Was there anything similar found in the jacket

1 pocket?

2 A. There was. There was an identical green, little,
3 tiny Ziploc baggie that was also located in the jacket where
4 the majority of the rest of the cocaine was found.

5 Q. So the same type of baggie that was in his pocket
6 was in the jacket pocket?

7 A. That's correct. That's correct.

8 Q. I'm going to try to take it to where we --

9 (Video playing.)

10 Q. Is that what we just referred to?

11 A. Yes, sir.

12 Q. And that was -- I am not trying to narrate it, but
13 that was the point that you found the small green baggie of
14 cocaine?

15 A. That's correct.

16 Q. We are going to kind of fast-forward to this segment
17 of the search of the vehicle. Okay? If you could track
18 along with us.

19 (Video playing.)

20 BY MR. KIDD:

21 Q. So that clip we just watched right there, what were
22 you doing during that clip?

23 A. I was searching the rear compartment of the vehicle.
24 I located a -- some type of bag or duffel bag where I located
25 some B supplement, I guess type vitamins. And then kind of

1 searching that bag, I found a jacket underneath of it.
2 Searched the pockets in the jacket and located the quantity
3 of white powder.

4 Q. Okay. And that narcotics you are talking about,
5 that's State's Exhibit 1 in front of you?

6 A. Yes, sir.

7 Q. I'm going to show you what's been marked for
8 identification as State's Exhibit No. 3. Do you recognize
9 that item?

10 A. Yes, sir.

11 Q. And what is that?

12 A. It is Superior B dietary supplement.

13 Q. Is that what you referred to earlier that you found
14 in the duffel bag of the car?

15 A. Yes, sir.

16 Q. Is it in the same substantial condition that it was
17 when you found it?

18 A. Yes, sir.

19 MR. KIDD: Your Honor, at this point, the State
20 would offer State's Exhibit 3 into evidence.

21 THE COURT: Any objection other than what's been
22 raised pretrial?

23 MR. KING: No, Your Honor.

24 THE COURT: Marked and admitted.

25 (State's Exhibit 3 is moved into evidence.)

1 Q. You have some experience as a narcotics officer?

2 A. Correct.

3 Q. What is this commonly used for, or a substance like
4 this commonly used for in the narcotics trade?

5 A. It's usually used as a cutting agent. You have a
6 quantity of cocaine that's pretty much used to making it into
7 more cocaine for sale purposes.

8 Q. So if you have 5 grams of cocaine, you mix it with 5
9 grams of cutting agent, now you have 10 grams of cocaine?

10 A. Correct.

11 Q. I'm going to also show you what's been marked as
12 State's Exhibit No. 5. See if you recognize that item.

13 A. Yes, sir.

14 Q. And what was State's Exhibit No. 5?

15 A. It is a bus ticket, Greyhound bus ticket.

16 Q. And where did you locate it?

17 A. It was -- I believe it was in one of his pockets on
18 his person.

19 Q. On his person? And then you collected it, placed it
20 in that evidence bag?

21 A. Correct.

22 Q. And signed it and signed that bag?

23 A. Yes, sir.

24 Q. Is that ticket substantially the same condition it
25 was when you found it on his person?

1 A. Yes, sir.

2 MR. KIDD: Your Honor, at this time, the State would
3 offer State's Exhibit No. 5 into evidence.

4 THE COURT: Any objection?

5 MR. KING: Only the pretrial.

6 THE COURT: There was nothing raised about the
7 ticket. So I need to know if you have any objection to the
8 ticket.

9 MR. KING: It was included in the Fourth Amendment
10 motion, Your Honor.

11 (Whereupon, the following bench conference takes
12 place.):

13 THE COURT: There was absolutely no testimony about
14 the ticket or it being taken off of his person. So I need to
15 know if you have contemporaneous objection regarding the
16 ticket.

17 MR. KING: Yes. It was found in the same pat-down
18 in his pocket where they found the cocaine. So it was
19 included in the motion suppressing the cocaine.

20 THE COURT: Do you have any response? Because there
21 was no testimony as to him regarding that ticket or that it
22 was found in his pocket during the pat-down search when he
23 found the cocaine. It's not obvious from the tape that he
24 found that either. But I don't know that it really matters.
25 It was uncontested he was coming from New York and got off a

1 bus.

2 MR. KIDD: He was not coming from New York, but --
3 he's come from Dallas, which I think is --

4 THE COURT: I don't know how many pit stops he made
5 along the way.

6 MR. KIDD: A bunch, but not through New York.

7 THE COURT: Is there any contention that's his bus
8 ticket that was found on his person?

9 MR. KING: No.

10 THE COURT: It will be admitted subject to your
11 objection. Overruled.

12 MR. KING: The two objections would be the overall
13 traffic stop and the lack of consent, the two motions.

14 THE COURT: I will note them. Overruled based on
15 the Court's previous ruling.

16 (Whereupon, the bench conference is concluded.)

17 THE COURT: Marked and admitted State's 5.

18 (State's Exh. 5 is received in evidence.)

19 BY MR. KIDD:

20 Q. Finally, I'm going to show you what's been marked
21 for identification as State's Exhibit No. 2. Do you
22 recognize that item?

23 A. Yes, sir.

24 Q. And where did you locate that item?

25 A. That was in one of his pockets on his person.

1 Q. And what is that?

2 A. Like a cut straw.

3 Q. Is it substantially the same condition as the day
4 you recovered it?

5 A. Correct, yes.

6 MR. KIDD: Your Honor, at this time, the State would
7 offer State's Exhibit 2 into evidence.

8 THE COURT: Marked and admitted subject to the
9 previous objection and overruled.

10 (State's Exh. 2 is moved into evidence.)

11 BY MR. KIDD:

12 Q. After locating the narcotics, did you read -- at
13 some point thereafter, did you read the defendant his Miranda
14 warnings?

15 A. Yes.

16 Q. And where was that done?

17 A. In the rear of my patrol vehicle.

18 (Video playing.)

19 MR. KING: Your Honor, I renew my pretrial
20 objection.

21 THE COURT: Overruled, based on the Court's previous
22 ruling.

23 (Video playing.)

24 BY MR. KIDD:

25 Q. And just so we are clear, did he ever tell you how

1 much cocaine was in his jacket?

2 A. No.

3 Q. Or tell you that he knows there's cocaine in his
4 jacket?

5 A. No.

6 Q. What was his response to your questions?

7 A. Pretty much that whatever was in the jacket was his,
8 or the jacket belonged to him.

9 MR. KIDD: Court's indulgence, Your Honor.

10 BY MR. KIDD:

11 Q. The jacket, was it a female jacket, a male jacket?

12 A. It appeared to be a male jacket.

13 Q. The duffel bag that you searched, what sort of
14 contents were inside that duffel bag?

15 A. From what I recall, it was like a male clothing or
16 male-type products, if you will.

17 Q. How about in relationship to the jacket, how were
18 the duffel bag and the jacket sort of positioned in the car
19 before you could manipulate it?

20 A. It was in the rear passenger's seat. The duffel bag
21 was kind of sitting on top of the jacket.

22 MR. KIDD: No further questions for the officer.

23 THE COURT: Any questions for the witness?

24 MR. KING: Yes, Your Honor.

25 THE COURT: You may proceed.

1 CROSS-EXAMINATION

2 BY MR. KING:

3 Q. Officer Hall, good morning.

4 A. Good morning.

5 Q. This all started when you were alerted to this

6 particular car by the narcotics agents, Pritchard and

7 Johnson; is that right?

8 A. Yes, sir.

9 Q. I think they were following the car; is that right?

10 They were right ahead of you following the car?

11 A. Yes, sir.

12 Q. Did they inform you about the third brake light
13 being out?

14 A. Yes, sir.

15 Q. Because you have to -- you are driving up. You
16 agree you got up to 87 miles per hour to catch up to them,
17 right, when you were on the bridge?

18 A. I believe so.

19 Q. You are hauling a little bit to catch up to them?

20 A. Correct.

21 Q. So you weren't just -- this wasn't just a random car
22 stop, right?

23 A. No. I mean, there seemed to be like there might be
24 something more to it. There could have been.

25 Q. Right. You weren't just driving around, randomly

1 saw this car and pulled this car over?

2 A. Correct.

3 Q. This was sort of a targeted approach to finding this
4 car?

5 A. That's correct.

6 Q. Now, you wrote a report in this case, right?

7 A. I did, yes, sir.

8 Q. That's part of your procedure, to write reports?

9 A. Yes, sir.

10 Q. Is that something you have to do? I guess, this is
11 your case. You are considered like the case agent on the
12 case?

13 A. Yes.

14 Q. Is that something you are required to do, write a
15 report?

16 A. Yes.

17 Q. What sort of things are you supposed to put in the
18 report?

19 A. Date, time, where, kind of like who, what, when,
20 where, how. If it's a drug case, weight, if it tested, and
21 just kind of anything that happened during the stop that's
22 significant.

23 Q. And you try to be as complete as possible, as
24 thorough as you can in your report?

25 A. Yes, sir.

1 Q. Your reports, you want your report to be accurate,
2 right?

3 A. Yes, sir.

4 Q. And truthful?

5 A. Correct, yes.

6 Q. And other people are relying on these police reports
7 as well?

8 A. Yes, sir.

9 Q. You are not the only one who sees them?

10 A. No, I'm not the only one.

11 Q. May be other officers, maybe your supervisor sees
12 it, it goes to the prosecutor?

13 A. Yes.

14 Q. Eventually, they have to turn it over to defense as
15 well?

16 A. Correct, yes.

17 MR. KING: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. KING:

20 Q. I'm going to show you Defendant's Exhibit No. 1 for
21 identification. Do you recognize that?

22 A. Yes, sir.

23 Q. Now, you noted in your report, and looking at the
24 first couple of sentences: On the above date and time, I,
25 Officer Hall, was on routine patrol on Cosgrove near I-26

1 when I observed the burgundy-in-color Mazda with an
2 inoperable brake light. Right?

3 A. Right.

4 Q. So in your report, you're writing up your report as
5 if this is just some routine traffic stop, right?

6 A. Correct.

7 Q. And that you saw -- you are just driving along and
8 you see this car and the car has inoperable brake light and
9 you pull him over?

10 A. Correct.

11 Q. That's what you wrote in your report?

12 A. That's correct.

13 Q. That's not true, is it?

14 A. I mean, I did observe an inoperable brake light.

15 Q. Yeah, but there's no mention in here about the
16 narcotics agents, Pritchard or Johnson, right?

17 A. No. I mean, that's -- I know the media could get
18 ahold of these reports, and to blow any type of their cover,
19 I am not going to put that in the report, because that
20 wouldn't be smart on my part.

21 Q. It's different than just leaving something out. You
22 could have put in the report that during a traffic stop, you
23 know, I observed this. But you actually put in there -- and
24 it's kind of misleading, right, that you were on routine
25 patrol and you observed an inoperable brake light, right?

1 A. I was on routine patrol on Cosgrove avenue when I
2 got the call.

3 Q. But this was not a routine traffic stop, was it?

4 A. No.

5 Q. And when did you disclose the information about the
6 narcotics agents being involved, that this was more than just
7 a routine traffic stop?

8 A. As far as the report?

9 Q. To the solicitor? Do you remember? Was that
10 just --

11 A. Yeah, I believe so.

12 Q. Like December of last year?

13 A. I believe so, yes.

14 Q. So over three years after the report was written,
15 you make it known that, hey, this -- this report isn't
16 exactly accurate, or there's more information here you need
17 to know?

18 A. There's more -- yes, there's more information that I
19 believe did not need to be put in there for the safety of
20 those officers and the job that they do.

21 Q. You wouldn't have had to name the officers, right?

22 A. Yeah, but if I'm going to put that in a report where
23 the media could get it, they know all the tactics that these
24 guys use. That just defeats the whole purpose of having a
25 narcotics unit.

1 Q. So you pull this car over. You have experience
2 pulling people over. You have to do that as part of your
3 job?

4 A. Correct.

5 Q. In this particular case, your suspicions were raised
6 because you thought the driver took longer than normal to
7 pull over to the side of the road, right?

8 A. Correct.

9 Q. That was something that you are always paying
10 attention, I guess, to details and things like that, right,
11 when you are trying to solve crimes?

12 A. Yes, sir.

13 Q. So you thought that was suspicious, the driver not
14 pulling over fast enough?

15 A. A little bit, yes.

16 Q. And what you think in there, they may be -- she can
17 be trying to delay the stop or something and buy some time?

18 A. Yes.

19 Q. And you also, when you pulled the car over, you
20 noticed that Cheryl Jones, the driver, her zipper was undone,
21 right?

22 A. Yes.

23 Q. And that further raised your suspicions, right?

24 A. Yes, sir.

25 Q. That maybe she could be trying to hide drugs?

1 A. Yes, sir.

2 Q. And that's maybe something you experienced before,
3 people hiding drugs in their pants?

4 A. Correct.

5 Q. You said Mr. Frasier was sweating, right?

6 A. Yes, sir.

7 Q. But this was mid-August in Charleston, right?

8 A. Correct.

9 Q. So it was hot and humid that day?

10 A. It was getting hot. It was probably 75, 80 degrees
11 in the morning.

12 Q. And you weren't hot that day?

13 A. After searching the vehicle, wearing a vest and the
14 clothing that I have to wear at work, yeah.

15 Q. Do you remember at some point previously in a
16 pretrial hearing you were watching some of the video and --

17 A. Yes.

18 Q. -- we talked about this one officer who is wiping
19 sweat off of his brow?

20 A. Correct, I do recall that.

21 Q. At one point when they are complaining about the
22 heat, you say, "You think you are hot," right? Meaning that,
23 hey, I'm hotter than you are.

24 A. Correct.

25 Q. At some point, Cheryl Jones and the child were put

1 in a patrol car to get them out of the heat?

2 A. I believe so.

3 Q. So it was hot that day?

4 A. It was getting, yes.

5 Q. And it was humid?

6 A. Yes.

7 Q. And it was Charleston in the summer?

8 A. Correct.

9 Q. And then as we move along the stop, you find some
10 powder in Mr. Frasier's front pocket, right?

11 A. Correct.

12 Q. You put him in handcuffs?

13 A. Yes, sir.

14 Q. And at that point, he's under arrest?

15 A. Yes, sir.

16 Q. He's going to be going to jail for that powder no
17 matter what happened after the rest of the stop? At that
18 point, he's under arrest and he's going to jail?

19 A. Yeah, pending the outcome of the field test of what
20 it was. I didn't know exactly what it was at the time, but
21 he was detained until I could determine what it was.

22 Q. And it did field test, right?

23 A. Correct.

24 Q. So if nothing else had happened, he would have gone
25 to jail for that cocaine in his pocket?

1 A. That's correct.

2 Q. Cheryl Jones is not under arrest at that point,
3 right?

4 A. No.

5 Q. You find stuff in the pocket. She's not under
6 arrest and she's not handcuffed?

7 A. No, sir.

8 Q. She's off, I guess, kind of standing off by the car
9 with the child, and they just are sort of chatting as the
10 search is going on with the car?

11 A. Yes, sir.

12 Q. And you find what you believe to be cocaine in that
13 jacket pocket, I guess zipped up in a jacket pocket in the
14 backseat, right?

15 A. Yes.

16 Q. I just want to play that part, just want to go over
17 that again.

18 (Video playing.)

19 Q. This is the part we just saw previously.

20 (Video playing.)

21 Q. So that's when you found the jacket?

22 A. Correct.

23 Q. With the powder in it?

24 A. Correct.

25 Q. At that point, you say, it's a good bit, it's a

1 couple of ounces, right?

2 A. I believe so.

3 Q. You have to deal with weights and scales and things
4 like that as part of your job?

5 A. Correct.

6 Q. Do you know how many grams are in an ounce?

7 A. 28.

8 Q. 28 grams in an ounce. So at that point you are
9 saying, it looks like about 2 ounces, which would be two
10 times 28, 56 grams, right?

11 A. Yes, by math, yes.

12 Q. And you ended up later noting in your police report
13 a weight for the drugs, right?

14 A. Yes, sir.

15 Q. That's something that you wrote down, that you
16 document?

17 A. Yes, sir.

18 Q. And later, when you wrote the report, you documented
19 it as 224.6 grams as the combined weight of the powder in the
20 jacket; is that right?

21 A. Yes.

22 Q. 224.6 grams.

23 A. Yes, sir.

24 Q. The powder is in plastic bags, right?

25 A. Yes, sir.

1 Q. Did you have those plastic bags tested for
2 fingerprints?

3 A. I did not.

4 Q. You have the ability to submit evidence for
5 fingerprinting, right?

6 A. Correct, yes.

7 Q. Are you familiar with touch DNA?

8 A. Yes, a little bit.

9 Q. If someone touches an object, that it's possible
10 that person could leave DNA just by touching it, right?

11 A. Yes, yes.

12 Q. And you have the ability to submit items for DNA
13 testing as well, right?

14 A. Correct.

15 Q. You didn't submit the drugs for any sort of DNA test
16 to see if there was anybody's DNA on those drugs?

17 A. No, sir.

18 Q. The jacket, you didn't submit the jacket to the DNA
19 lab to see if there was any of Mr. Frasier's or Ms. Jones's
20 DNA on the jacket?

21 A. No, sir.

22 Q. Or the Superior B bottle, you didn't have it
23 submitted for prints?

24 A. No.

25 Q. Or DNA? So there was no forensic evidence, I guess,

1 saying that Mr. Frasier touched this or anything like that,
2 right?

3 A. No, sir.

4 Q. Now, continuing on this video, you just found what
5 you are referring to as a couple of ounces in the police car.

6 (Video playing.)

7 Q. "Put her in handcuffs." Now, at this point
8 Ms. Jones is standing off to the side sort of talking. So
9 immediately after you found the drugs, you have her put in
10 handcuffs, right?

11 A. Correct.

12 Q. Mr. Frasier is standing right over there as well
13 too, so he can hear that?

14 A. I believe so, yeah.

15 Q. Now, if Michael Frasier and Cheryl Jones go to jail,
16 what happens to that child?

17 A. We would either call a relative or call DSS.

18 Q. What if no relative is available?

19 A. We would call DSS.

20 Q. So he would go into some sort of foster care?

21 A. Correct.

22 Q. And immediately after you say, "put her in cuffs" --

23 (Video playing.)

24 Q. -- that's when you are asking -- you wanted to know
25 whose jacket that is, right?

1 A. Yes, sir.

2 Q. And at some point after that, do you remember
3 telling Mr. Frasier -- because now you've handcuffed Cheryl
4 Jones. Right? And you told Mr. Frasier, she's just being
5 detained right now, I am not saying she's under arrest she's
6 just been detained. Right? You told him that?

7 A. Correct.

8 Q. You also remember telling him, we can help you, I
9 can get some people really quickly here who can help you out.
10 Right?

11 A. Yes, sir.

12 Q. So he claims the jacket, right?

13 A. Yes, sir.

14 Q. We saw that there, but he never says what's in the
15 jacket, what type of drug, or if it even is a drug in the
16 jacket, right?

17 A. Yes.

18 Q. How much of it it is, how much of the drugs was in
19 the jacket, right?

20 A. Correct, yes.

21 Q. Or how it's packaged or any sort of details like
22 that?

23 A. No, sir.

24 Q. And when he did that, Cheryl Jones got a warning,
25 right? You wrote her a warning?

1 A. Yes, sir.

2 Q. For the brake light?

3 A. Yes.

4 Q. And her and the child got in the car and drove
5 away?

6 A. That's correct.

7 MR. KING: That's all the questions I have.

8 THE COURT: Any redirect?

9 MR. KIDD: Briefly, Judge.

10 REDIRECT EXAMINATION

11 BY MR. KIDD:

12 Q. Just because he brought it up as an explanation, can
13 you tell the jury what the field testing narcotics is?

14 A. It's basically when you find what you believe to be
15 some type of narcotics. We have little test kits that you
16 can take a sample, put it in this little plastic thing, break
17 some vials, and it will turn a different color.

18 Q. And if it's cocaine, it will turn a certain color?

19 A. It will turn blue, yes.

20 Q. Did you do that in this case?

21 A. I did.

22 Q. Did it field test presumptive?

23 A. It did.

24 Q. That's not conclusive? That's an indication to you
25 what the substance is?

1 A. Correct.

2 Q. Ms. Jones, zipper being down, what does that mean to
3 you as a police officer when you approach a car?

4 A. Just that she was either trying to conceal something
5 or -- it just raises a red flag. Like, when someone's zipper
6 is all the way down, someone tends to notice that.

7 Q. Now, without trying to sound sexist or something, is
8 there a different sort of expectation, do you think, amongst
9 individuals, male and female, about how they are treated by
10 police officers?

11 A. Yeah, I believe so.

12 Q. In your experience at a traffic stop, is it sort of
13 common that contraband of some sort changes hands inside a
14 vehicle?

15 A. Absolutely, yes.

16 Q. So the zipper down to you could mean she's
17 concealing it for her own benefit or for his benefit?

18 A. Yes.

19 Q. Mr. King indicated that you said at first that it
20 was a couple of ounces of cocaine?

21 A. Uh-huh.

22 Q. That -- is it fair to characterize that as an
23 estimation at that point?

24 A. Yes, I was just -- heat of the moment. I hadn't
25 even found it all. So I just immediately, as soon as I

1 started finding it, is when I --

2 Q. How long had you had the cocaine in your hands when
3 you --

4 A. Not long at all.

5 Q. Seconds?

6 A. Yes.

7 Q. At some point later during that stop, did you have
8 the opportunity to actually weigh the drugs out?

9 A. Yes, sir.

10 Q. And when you weigh narcotics that you find, do you
11 dump all the powder on the scale or weigh the baggies and
12 everything else?

13 A. We weigh the packaging weight, everything. Whatever
14 it's contained in, it goes in as the weight as well.

15 Q. And you've got experience as a narcotic officer.
16 You've seen a lot of the drugs that you've field weighted go
17 up to SLED and they reweigh the same drugs?

18 A. That's correct. That's correct.

19 Q. Is there often a discrepancy there?

20 A. Yeah, because I believe SLED, I would assume, takes
21 them out of the packaging. But us as officers, we do our
22 weights with packaging. That's just to avoid handling the
23 narcotics.

24 Q. In State's Exhibit 1, there is a lot of different
25 types of packagings, is that fair to say?

1 A. Yes, sir.

2 Q. That were recovered?

3 A. Yes, sir.

4 Q. Do you recall how many baggies, separate baggies
5 there were?

6 A. I think it was like seven or eight maybe larger
7 bags.

8 Q. Does the defendant's admission to being responsible
9 for everything in the jacket, does that weigh into your
10 decision about whether or not you are going to fingerprint or
11 DNA test and things like that?

12 A. Oh, absolutely.

13 MR. KIDD: No further questions.

14 MR. KING: Recross?

15 THE COURT: Limited to redirect.

16 RECROSS-EXAMINATION

17 BY MR. KING:

18 Q. When the solicitor asked you about, when you said it
19 was a couple of ounces, you said you hadn't even found all of
20 it yet at that point?

21 A. I hadn't pulled it all out the pocket of -- the
22 jacket pocket.

23 Q. So you are saying maybe you were only looking at a
24 couple of the bags?

25 A. Yeah, I just knew it was at least a couple of

1 ounces. And that's when I radioed to the detective that it
2 was going to be probably substantial.

3 Q. But wasn't all of that -- all of the bags inside a
4 bigger bag? It was all packaged together? It's not like
5 there were seven or eight bags separately in the jacket,
6 right?

7 A. Correct, from what I recall, I think so.

8 Q. There was one bag?

9 A. Yes.

10 Q. And then the eight bags were all inside that?

11 A. From what I recall, yes.

12 Q. So when you found that, seems like you would have
13 found one bag with all of it in it, right?

14 A. Yeah, but I hadn't pulled it out, so I wasn't
15 sitting there just looking at it. I just made a -- like I
16 said, it was only a couple of seconds from when I found it to
17 when I said that. And when I said ounces, I mean, a couple,
18 that -- I think that can be construed as not just two. I
19 mean, sometimes I say a couple, I mean five, you know.

20 Q. Couple is five?

21 A. Well, when I'm talking, you know.

22 Q. Okay.

23 MR. KING: No other questions, Your Honor.

24 THE COURT: Any further questions?

25 MR. KIDD: No, Your Honor.

1 THE COURT: You may step down, sir.

2 You may call your next witness.

3 MR. MAYNOR: The State calls Willie Smith.

4 WILLIE SMITH,

5 having been duly sworn, testifies as follows:

6 THE CLERK: Once seated, if you can state your first
7 and last name and spell your last name, please.

8 THE WITNESS: My name is Willie C. Smith III,
9 S-m-i-t-h.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION,

12 BY MR. MAYNOR:

13 Q. Good morning, Willie. Thank you for being here.
14 Can you tell the jury what you do.

15 A. I work for South Carolina Law Enforcement Division.
16 I'm a senior agent criminalist in the drug analysis
17 department.

18 Q. How long have you been working there?

19 A. 16 years and 9 months.

20 Q. And I'm assuming within that 16 years, you were
21 working there between 2013 and 2014?

22 A. Yes.

23 Q. Can you explain the duties of that position?

24 A. Basically, what I do is receive submissions from
25 across the state of South Carolina and determine if there's a

1 controlled substance in that item.

2 Q. And you determine that by what means?

3 A. I use visual test and then I use a sort of color
4 test also to determine exactly what it is. And I test the
5 item on a molecular level.

6 Q. Do you also weigh that substance?

7 A. Yes, I do weigh the substance. And I also generate
8 a report of my results if I found something or if I did not
9 find something.

10 Q. And when you weigh the substance, you weigh it in
11 itself alone in its own nature, not with additional baggies
12 it may have come in?

13 A. That's correct. The only thing that I weigh is the
14 actual substance. And that's what I report out on my report.

15 Q. And have you had the occasion to actually analyze
16 cocaine before?

17 A. Yes.

18 Q. How many times have you done that if you had to
19 estimate?

20 A. I have done over 15,000 cases. I would imagine in
21 several of those cases have cocaine and crack in it. So I
22 would imagine I have at least done 10,000 samples of cocaine.

23 Q. And does it happen sometimes where there's a
24 submission that claims to be cocaine that turns out to be
25 something different?

1 A. Yes. It all depends on, when I look at it and test,
2 I treat every sample as an unknown sample, and that's when I
3 test it on a molecular level, that breaks it down. And
4 that's how I determine exactly what is in that sample.

5 Q. And can you briefly explain to the jury what type of
6 equipment you might use to do that?

7 A. Yes. Basically, equipment is standard across the
8 field of forensics, and that is gas chromatography and mass
9 spectrometry. And it breaks it down and tests on a molecular
10 level.

11 Q. Would you be able to testify that it's precise and
12 accurate?

13 A. Yes. It's very precise and very accurate, because I
14 run the standard before I run my unknown, so I'm going to
15 identify it so that I know exactly what I find in the
16 sample.

17 Q. Mr. Smith, have you ever been admitted as an expert
18 in court to testify?

19 A. Yes, 82 times in the state of South Carolina and in
20 the state of New York.

21 Q. And when you're qualified as an expert, what type of
22 expert would you be testifying as?

23 A. Chemical analyst in the field of drug analysis.

24 Q. And how many times did you say you were qualified?

25 A. 82 times.

1 MR. MAYNOR: Your Honor, the State moves to admit
2 Mr. Smith as an expert in the field of drug analysis.

3 THE COURT: Any objection to the questions?

4 MR. KING: No, Your Honor.

5 THE COURT: Without objection. You may proceed.

6 MR. MAYNOR: May I approach the witness?

7 THE COURT: You may.

8 BY MR. MAYNOR:

9 Q. I'm going to hand you a report that's marked State's
10 Exhibit 10. Will you take a look at that, please. Can you
11 identify that?

12 A. Yes. It's a report that I issued on one of my drug
13 cases that was submitted to SLED for analysis.

14 Q. And did you prepare it?

15 A. Yes, I did prepare this report.

16 Q. And is it signed by you?

17 A. Yes, it is signed by me on the date that I issued
18 the report.

19 Q. Is that a fair and accurate representation of the
20 lab work that you did on that report?

21 A. Yes, it is.

22 MR. MAYNOR: Your Honor, the State would like to
23 admit State's Exhibit 10 into evidence.

24 THE COURT: Any objection?

25 MR. KING: Just our pretrial motions, Your Honor.

1 THE COURT: Marked and admitted subject to the
2 objection, and overruled.

3 (State's Exh. 10 is received in evidence.)

4 MR. MAYNOR: Your Honor, permission to publish this
5 to the jury?

6 THE COURT: You may proceed.

7 BY MR. MAYNOR:

8 Q. Mr. Smith, it may be hard to see this. So I may
9 hand this back to you and then publish it. Mr. Smith, can
10 you identify the lab number on this?

11 A. Lab number on this report is L13-13869.

12 Q. And the case number on there?

13 A. The case number on this case is 2013027775.

14 Q. Is that case number generated by the law enforcement
15 division that sends this to SLED?

16 A. Yes. It's generated by the agency that submits the
17 evidence to SLED.

18 MR. MAYNOR: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 BY MR. MAYNOR:

21 Q. I believe you already have it in front of you, but
22 it's State's Exhibit 1. Can you pick that up and identify
23 that for me, please. If you need to --

24 A. This is the heat-seal pack from the case SLED lab
25 number L13-13869, which corresponds to our tracking number

1 B236761. And it contains the evidence in this case that I
2 did analysis on back on November 19th, 2013.

3 Q. And did you retrieve those drugs from a secure
4 location within SLED?

5 A. Yes. I retrieved the evidence from our log-in
6 department. And the evidence was sealed and secured and
7 intact before I would take the evidence from that department.

8 Q. And we have a record to refresh your memory if you
9 need it, but would you be able to tell the jury who SLED
10 retrieved these drugs from? Who brought that item to SLED?

11 A. The evidence was delivered to SLED on 10/25/2013 by
12 Shawnta Middleton, and it was delivered to our log-in
13 department.

14 Q. When you retrieved that item, was it tampered with
15 in any way?

16 A. No, it was not tampered with.

17 Q. Would you test it if it were tampered with?

18 A. At that time I would have returned it to the agency.

19 Q. And does it appear to be in the same or
20 substantially similar condition as it was when you tested it?

21 A. Yes. It's just that my heat-seal pack has been
22 opened. Yes, the evidence appears to be the same when I did
23 my testing back on that date.

24 MR. MAYNOR: Your Honor, at this time I would like
25 to admit State's Exhibit 1 into evidence.

1 THE COURT: Any objection other than those that were
2 raised pretrial? And what's that number again?

3 MR. MAYNOR: State's Exhibit 1.

4 THE COURT: Please approach.

5 (Whereupon, the following bench conference takes
6 place.):

7 MR. KING: They didn't call Amy Stevens.

8 THE COURT: I don't think they have to do that.

9 MR. KING: Only argument I've got for that is the
10 weight seems to have changed.

11 THE COURT: It always does with the heat with the
12 packaging because they dry it out.

13 MR. KING: He says a couple of ounces at first and
14 then 224 grams.

15 THE COURT: It goes to weight, not admissibility.

16 (Whereupon, the bench conference concludes.)

17 THE COURT: Objection is overruled. The chain has
18 been proven as far as practicable. Admitted.

19 (State's Exh. 1 is moved into evidence.)

20 Q. Mr. Smith, can you identify the items in that
21 package and tell the jury how you recognize those items and
22 what you may have done with those items as well?

23 MR. KIDD: Would you like some gloves?

24 THE WITNESS: Yes, if you have some gloves. Thanks.

25 A. Inside this case I had the evidence bag that had a

1 Ziploc bag that had a powder substance. And I tested that
2 item using gas chromatography and mass spectrometry, and I
3 did a chemical test to determine the functional group. And
4 that was labeled at item 1.1, which corresponds to item 1.1
5 on my report that was found to be cocaine, which is a
6 Schedule II drug. And it was 0.7 grams. Item --

7 Q. Wait a second, Mr. Smith. will you hold up item 1.1
8 for the jury, please.

9 A. This is the evidence bag that it was in. It had a
10 Ziploc bag. I repacked the item. And this powder substance
11 that's inside the repacked item that I tested was found to be
12 cocaine. And it has a weight of just the powder only of 0.7
13 grams.

14 Q. For the record, will you tell me the color of the
15 baggie that that cocaine arrived in?

16 A. It was a green Ziploc bag.

17 Q. Thank you. Will you explain to the jury item 1.2
18 and what your findings were?

19 A. Item 1.2 was the evidence bag, which is this bag
20 right here. And it contained a Ziploc bag. Then it
21 contained another Ziploc bag. Then it contained another
22 Ziploc bag, which are labeled at item 1.2. And inside there
23 was a Ziploc bag which is item 1.2.1, which is another green
24 Ziploc bag. And it was this powder substance that I found
25 inside this green Ziploc bag that I tested it. And I tested

1 it on a molecular level once again using GSMS, which stands
2 for gas chromatography and mass spectrometry. And it was
3 found to be in this case 1.6 grams of cocaine. And like I do
4 with all my samples, I test it on a molecular level to make
5 sure I'm testing it properly.

6 Also in that bag, I had eight plastic bags that
7 contained big chunks of powder substances. And I treated
8 those all -- those items all appeared the same, treated them
9 as one item. Of those eight big plastic bags, as far as item
10 1.2.2, I tested four of the eight bags. And all four of the
11 eight bags I tested separately, which is the first bag, item
12 one of that eight bags. Item two, item three and item four,
13 I weighed only the powder substance, and I took a sample from
14 the powder substance, tested them all separately.

15 And all bags tested separately for cocaine using
16 GSMS. And the weight for item 1.2.1 was .6 grams of cocaine.
17 And item 1.2.2, which is four of those bags, was 112.8 grams
18 of cocaine. And the remaining four bags, which I did not
19 test, had a weight of 81.4 grams of cocaine.

20 And when we reach a threshold weight as far as it
21 goes, that is when we stop our testing. And that's why I
22 only tested four of the bags in this case.

23 Q. Is it safe to say that you concluded that the
24 remaining, what once you met the threshold, the remaining
25 that you didn't test was also cocaine?

1 A. That's correct. Everything that's in this case was
2 cocaine that I tested.

3 Q. And if you were to add 1.2, 1.2 -- excuse me, 1.1,
4 1.2.1 and 1.2.2 together, could you tell the jury how much
5 that is?

6 A. That weight would be 115.1 grams of cocaine that was
7 found in this case.

8 Q. Is that including the 81.4?

9 A. That's not including the 81.4, because since I did
10 not test it, I cannot say 100 percent that it's cocaine or
11 not. But all the items that I did test, is the weight I can
12 combine together and say that it is cocaine.

13 MR. MAYNOR: Court's indulgence.

14 THE COURT: Yes, sir.

15 MR. MAYNOR: Your Honor, no further questions.

16 THE COURT: Any questions for the witness, Mr. King?

17 MR. KING: No, Your Honor.

18 THE COURT: Any exception to the witness being
19 excused from the State?

20 MR. MAYNOR: No, Your Honor.

21 THE COURT: From the Defense?

22 MR. KING: No.

23 THE COURT: Sir, you are excused.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

1 Call your next witness.

2 MR. KIDD: Judge, I believe the State is going to
3 rest. I would just like one second to confirm with the court
4 reporter on the exhibits that have been entered, if I may.

5 (Whereupon, an off-the-record discussion takes
6 place.)

7 MR. KIDD: Your Honor, at this time the State
8 rests.

9 THE COURT: Mr. Foreman, ladies and gentlemen, the
10 State has rested their case. I have some matters of law to
11 take up with the attorneys. During this break, please do not
12 discuss the case, and please leave your notebooks in your
13 seats. We appreciate your patience.

14 (Whereupon, the jury leaves open court at 10:47
15 a.m.)

16 THE COURT: The State has rested. Are there any
17 motions?

18 MR. KING: Your Honor, I make a motion for directed
19 verdict regarding the cocaine found regarding the trafficking
20 charge. I think they have proven possession of cocaine, but
21 it's not his car. The circumstances where he claimed the
22 jacket, doesn't admit any knowledge of the jacket. We just
23 ask that you grant a directed verdict on the trafficking and
24 reduce it down to a possession of cocaine.

25 THE COURT: Wouldn't that be more appropriately

1 requested as a lesser-included offense?

2 MR. KING: Yes, Your Honor. I intend to do that as
3 well.

4 THE COURT: All right. Would the State like to
5 respond?

6 MR. KIDD: I believe there's plenty of evidence
7 that's submitted to the jury being in the light most
8 favorable favorable to the State, Judge. I believe most
9 importantly, he's got a green baggie of cocaine in his pocket
10 and a green baggie of cocaine in that jacket pocket. And
11 they are identical green baggies, if nothing else, plus the
12 admission is enough to submit to the jury, Your Honor.

13 THE COURT: Anything further, Mr. King?

14 MR. KING: No, Your Honor.

15 THE COURT: Motion for directed verdict is denied.
16 The Court is concerned with the existence or nonexistence of
17 evidence and not its weight. What has been argued to the
18 Court is a factual matter which can certainly be
19 differentiated when argued on a factual basis to the finder
20 of fact, which is the jury. And I think it probably is
21 appropriate to request a lesser-included instruction. And
22 that's the more appropriate vehicle than directed verdict.
23 And so the State has produced both direct and
24 substantial circumstantial evidence reasonably tending to
25 prove the defendant's guilt. Therefore, the motion for

1 directed verdict is denied.

2 Now, do I need to question your client regarding his
3 right to testify? I would assume I do. And then you can
4 talk with him about whether he wants to testify or not.

5 MR. KING: I don't believe he wants to testify.

6 THE COURT: I still have to give him his rights,
7 though. Bear with me just one second because I need to get
8 something.

9 Does the defendant have any record that the State
10 would be looking to use to impeach him if he testified?

11 MR. KIDD: I wouldn't seek to impeach him with his
12 record, Judge. However, I believe made prior bad act and I
13 read -- last night I went and read the Court of Appeals
14 decision. In this case, it was reversed, in which he was
15 stopped getting off of an Amtrak train from New York to
16 Charleston with a large amount of narcotics. I believe
17 that's falling under a common scheme or plan regarding mode
18 of transportation.

19 THE COURT: I think that is a real stretch,
20 especially with the Supreme Court or Court of Appeals says
21 his rights were violated in that stop. I think by virtue of
22 saying that, they made any stop a nullity. So I don't think
23 you can -- I don't think you can argue that that's a prior
24 bad act not the subject of a conviction where the courts have
25 said that his constitutional rights were violated and that

1 the stop was not appropriate. Therefore, by virtue of what
2 they said, in the eyes of the law, there never was a stop.
3 There never was a prior bad act.

4 MR. KIDD: There's not a conviction. There's an
5 act. So I understand your position. My position would be
6 that be --

7 THE COURT: It's creative, but it's a stretch.

8 I assume, Mr. King, you agree with me?

9 MR. KING: I do. And it's very remote, Judge. This
10 is the 1990s, 1994, I believe. So I think there's also
11 issue --

12 THE COURT: Did you give him written notice that you
13 planned to use that?

14 MR. KIDD: No, Your Honor.

15 THE COURT: I think that's a stretch. And,
16 certainly, I think would be reversible error. I read that
17 opinion. He was stopped on an Amtrak train, was subsequently
18 convicted. I think it was Judge Nicholson's case. And it
19 was reversed, said his constitutional rights were violated
20 and the drugs should have been suppressed. So I don't think
21 you can then come back. That's like trying to do through the
22 back door what Court of Appeals said you couldn't do through
23 the front door.

24 And even if he had been convicted, it wouldn't have
25 been admissible to impeach his credibility. And certainly

1 wouldn't have been admissible under *Lyle*, because it's too
2 close to this crime. And it runs the likelihood -- the high
3 likelihood that a jury would say that because they think he
4 did it last time, he did it this time. So certainly I think
5 would not be able to survive the probative versus prejudicial
6 threshold.

7 So he has no record you would be seeking to use to
8 impeach him, correct?

9 MR. KIDD: Correct.

10 THE COURT: Sir, stand for me and raise your right
11 hand to be sworn.

12 Do you swear or affirm the testimony you give will
13 be the truth?

14 THE WITNESS: Yes, ma'am, but I never agreed or
15 denied to testify.

16 THE COURT: I have to advise you of your right to
17 testify. The Constitution requires that I ask you these
18 questions. The Constitution requires that you have a
19 meaningful discussion with your lawyer about that, because if
20 I don't, you will file PCR if you're convicted and say your
21 lawyer never told you you can testify, never explained to you
22 your right to testify. So the Supreme Court requires that I
23 ask these questions of you. Do you understand?

24 THE WITNESS: Understood.

25 (Whereupon, the defendant is sworn.)

1 THE COURT: Sir, we have reached the stage of the
2 trial where you may present your defense. And at this time
3 I'm going to explain to you certain of your rights. If you
4 don't understand something that I say, please let me know.
5 If you need me to repeat something, please let me know. Do
6 you understand?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: As I've already indicated, we've reached
9 the stage of the trial where you may present your defense.
10 You have the right to claims the protections given to you by
11 the Fifth Amendment to the Constitution of the United States.
12 And that amendment says in pertinent part that no person
13 shall be compelled in any criminal case to be a witness
14 against himself.

15 That means that you do not have to testify in this
16 case. You have the right to testify, but it's a personal
17 right and no one can waive this right except for you. If you
18 decide to testify, you will be subject to the same rules that
19 govern other witnesses. And you may be examined and
20 cross-examined on any relevant issue in this case.

21 In addition, if you have any convictions involving
22 dishonesty or false statement or for crimes punishable by
23 imprisonment for more than one year, and this court
24 determines that the probative value of admitting this
25 evidence outweighs its prejudicial effect to you, the

1 solicitor will be able to introduce your record to attack
2 your credibility.

3 If you decide to testify, this decision on your part
4 must be made freely, voluntarily and intelligently, with
5 knowledge of the protections given to you by the Fifth
6 Amendment and the consequences of your decision to testify.
7 If you decide not to testify, I will instruct the jury that
8 they cannot give that fact any consideration whatsoever, that
9 there's no prejudice to you, that there's no inference to be
10 drawn from your not testifying, that you have the right to
11 remain silent and that silence cannot be used against you.
12 And the fact that you did not testify cannot be discussed in
13 any manner whatsoever in their deliberative process.

14 You may talk with your attorney, your family members
15 and friends, but the final decision as to whether you want to
16 testify or not is left entirely up to you. Sir, do you
17 understand your rights as I've explained them to you?

18 THE DEFENDANT Yes, ma'am.

19 THE COURT: Do you have any questions of me about
20 what I've explained to you?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Have you discussed with your lawyers
23 whether you should or should not testify?

24 THE DEFENDANT: No, we have not.

25 THE COURT: Do you want some time to discuss that

1 with him?

2 THE DEFENDANT Yes, ma'am.

3 THE COURT: Okay. We will take a short break.

4 Y'all discuss that with him. And let me know when you are
5 ready to resume.

6 (Whereupon, a recess transpired.)

7 THE COURT: Have you had enough time to talk with
8 your client, Mr. King?

9 MR. KING: Yes, Your Honor.

10 THE COURT: All right. Please bring in the
11 defendant.

12 (Whereupon, the defendant is present.)

13 THE COURT: Okay. Mr. King, have you had a full
14 opportunity to discuss with your client whether he wishes to
15 testify?

16 MR. KING: Yes, Your Honor.

17 THE COURT: Do you need any additional time to speak
18 with him?

19 MR. KING: No, Your Honor.

20 THE COURT: Sir, if you will stand for me, please.
21 I will remind you you are still under oath.

22 Have you had a full opportunity to discuss with your
23 lawyer whether you should or should not testify?

24 THE DEFENDANT: Yes, ma'am, I have.

25 THE COURT: And do you need to talk with him any

1 further?

2 THE DEFENDANT: I don't need to speak with him
3 anymore, no, ma'am.

4 THE COURT: All right. And do you have -- you've
5 already answered that question. I apologize. Sir, do you
6 wish to testify or not to testify?

7 THE DEFENDANT: I choose not to testify at this
8 time, Your Honor.

9 THE COURT: Okay. You may take your seat.

10 And, Mr. King, do you have any other witnesses that
11 you would be calling in your defense?

12 MR. KING: No, Your Honor.

13 THE COURT: So does the defense rest?

14 MR. KING: Yes.

15 THE COURT: Are there any motions?

16 MR. KING: I just renew my previous motions, Your
17 Honor, and my motion for a directed verdict. And I think I
18 asked you this earlier, but with Ms. Jones coming in and
19 testifying about the lack of consent, if that affected your
20 ruling on the pretrial motions --

21 THE COURT: No, because that's a credibility issue,
22 because the video clearly indicates that she consented.
23 There is some portion of it that's inaudible, but it doesn't
24 indicate to me that her consent is negated. I think she has
25 a hindsight recollection based on her affection for

1 Mr. Frasier, which is understandable. But I think it's a
2 jury question. You can argue that there wasn't consent. But
3 as a threshold, by a preponderance of the evidence, the State
4 established consent. However, that doesn't stop you from
5 arguing that they haven't met their burden beyond a
6 reasonable doubt.

7 Because my determination is not beyond a reasonable
8 doubt, it's preponderance of the evidence, which is more
9 likely than not.

10 MR. KIDD: Correct, but my understanding is that the
11 lawfulness of the search is a question for the judge and not
12 the jury.

13 THE COURT: I've already made that decision, but he
14 can still argue you haven't met your burden of proof and he
15 can use that as an element of you not meeting your burden of
16 proof as to the thoroughness of the investigation.

17 MR. KIDD: Correct, but we would agree that the
18 lawfulness of the search is not an appropriate --

19 THE COURT: I think I already ruled on everything
20 contemporaneously that's been ruled upon. But I don't think
21 you get to argue that to the jury, because they are not to
22 give undue weight to a matter of law that I have decided. I
23 am not the finder of fact. So you need to be very careful.

24 MR. KIDD: I agree I have to walk that line, but I
25 think I have an obligation to tell them the issues that are

1 appropriate for them to decide, that they are the finders of
2 fact, that you are --

3 THE COURT: I don't think you get to argue anything
4 that was heard in-camera to this jury.

5 MR. KIDD: Not heard in --

6 THE COURT: You cannot give undue weight to any
7 findings I've made. It's not like a civil case where I say
8 I've decided as a matter of law certain things, and you make
9 certain determinations. It's not the same thing in a
10 criminal case.

11 MR. KIDD: So you are telling me that I cannot tell
12 the jury --

13 THE COURT: You cannot talk about anything that was
14 heard in-camera.

15 MR. KIDD: I agree. I'm not talking about something
16 heard in-camera. I'm saying, ladies and gentlemen of the
17 jury, the only question in front of you is whether or not he
18 was in possession of over 100 grams of cocaine, whether or
19 not you like the traffic stop or not is not a question that's
20 appropriate for you to answer today.

21 THE COURT: If he argues that they did not
22 thoroughly investigate this and they were rash and they
23 rushed to judgment, he can argue that.

24 MR. KIDD: Sure.

25 THE COURT: If he wants to argue the inaudible part

1 of that video as something they can consider, and they want
2 to talk about the credibility of her testimony and she says
3 contrary to what they see on this video or what they
4 interpret they see on this video, that she didn't consent,
5 they can consider that as to whether you've met your burden
6 beyond a reasonable doubt. I only make decisions based on a
7 preponderance of the evidence and legality of the evidence
8 coming in. I do not make a final decision about whether
9 you've met your burden of proof. All right. Because I
10 assume that's how Mr. King is going to argue it and that's
11 why he asked that question.

12 I will give the jury an instruction regarding their
13 responsibility and my responsibility, how they are to judge
14 witness credibility and believability. I will give a general
15 instruction -- I apologize. I went too far. I will give the
16 jury a general instruction regarding expert witness
17 testimony. I will give the jury a general instruction
18 regarding the fact that the defendant did not testify and
19 that they would give that no weight in their decision.

20 I will give them a general direction regarding
21 direct and circumstantial evidence, the charge and arrest
22 indictment not being evidence on the presumption of
23 innocence. And I will charge *Victor v. Nebraska* on
24 reasonable doubt.

25 I will also -- and I need to back up a little bit.

1 I will give a general instruction regarding the statements
2 that were made by the defendant, and that involves Miranda.

3 And this is a good place for me, I guess, to further
4 explain what we were just talking about. While I've
5 determined by a preponderance of the evidence that the
6 statement comes in, and that the State has met their proof
7 that the statement was voluntary, ultimately, the jury
8 decides whether you met your burden of proof beyond a
9 reasonable doubt that the statement was reasonable and
10 voluntary. And it's the same thing on the search. While
11 I've determine that by a preponderance of the evidence that
12 it comes in, whether you met your burden of proof is the
13 jury's province. It's not mine.

14 MR. KIDD: Absolutely.

15 THE COURT: And you have to be very careful not to
16 make comments to a jury that give them the impression that
17 somehow my ruling creates an inference, because it doesn't.

18 MR. KIDD: Absolutely.

19 THE COURT: I will then instruct on trafficking in
20 cocaine. And the evidence supports the 100 to 200 grams.

21 I will also charge constructive -- actual and
22 constructive possession within that instruction.

23 Also, when I say the State must also prove beyond a
24 reasonable doubt that the amount of cocaine or any mixture
25 containing cocaine was 100 grams or more but less than 200

1 grams -- well, I already went over that. I apologize. Then
2 within that instruction, deliver, distribute and manufacture
3 are defined.

4 Now, are you going to request any lesser-included
5 offenses, Mr. King?

6 MR. KING: Yes, Your Honor.

7 THE COURT: What are you requesting?

8 MR. KING: Possession of cocaine.

9 THE COURT: With the intent to distribute?

10 MR. KING: No. They found .7 grams in his pocket.
11 It's under the presumption allowed --

12 THE COURT: I don't think you can consider that in
13 isolation. You have to consider all of the drugs there were
14 found. So I think PWID would be an appropriate
15 lesser-included. And I have contemplated charging also just
16 plain old possession, but if you don't want me to charge
17 PWID, I won't. But I think it's a stretch to say that the
18 evidence in this case only supports possession of cocaine.

19 MR. KING: That's my whole argument --

20 THE COURT: That the only drugs that belong to him
21 is what was found on his person?

22 MR. KING: In the pocket.

23 THE COURT: But the drugs --

24 MR. KING: It was only .7.

25 THE COURT: Do you have any desire to have PWID

1 instructed?

2 MR. KING: No, Your Honor, just possession.

3 And I would also ask for trafficking 28 to 100.

4 Officer Hall testified that --

5 THE COURT: What the officer testified to doesn't
6 count. It's what the SLED weight that counts.

7 MR. KING: There's some evidence it could weigh 2
8 ounces. There may be evidence whatever went into the lab is
9 not what was found --

10 THE COURT: Do you have any evidence that what was
11 taken from that car was hypothecated in any way before it got
12 to SLED?

13 MR. KING: The weight's changed.

14 THE COURT: The weight always changes. Packagings
15 gets dried out.

16 MR. KING: He said it was two ounces. Later it was
17 28 grams -- I mean, 56 grams.

18 THE COURT: He's not qualified to test what anything
19 is. And there was no testimony about him establishing a
20 field weight. There was some testimony elicited from you as
21 to whether he actually tested it in a field test kit, which
22 then was further elucidated on redirect. But he's not
23 qualified to say what the weight of the drugs are. And there
24 were no scales out there. Were there?

25 MR. KIDD: He did field weigh it. It was 224.

1 THE COURT: Which is more than the SLED weight,
2 which always comes back less because they dry out all the
3 packagings and they dry out all the moisture that's in the
4 substance. I guess I'm trying to figure out -- say that
5 again for me.

6 MR. KING: There's been testimony in the trial that
7 it was two ounces.

8 THE COURT: That all of the drugs were two ounces?

9 MR. KING: It's probably a couple of ounces. When
10 he finds the drugs, he said: I found it, it looks like a
11 couple of ounces.

12 There's some evidence that it could be less than 100
13 grams.

14 THE COURT: I think what's dispositive is the
15 scientist that weighs it. You look at expert testimony when
16 we are talking about weight of drugs. Now, if he was the
17 only person who testified, that's a different story. But I
18 don't think that's what's dispositive on the weight of a
19 substance. I would have to think about that for a minute.
20 Tell me again what you say he testified to, what you are
21 basing this on.

22 MR. KING: In the video, when he finds the drugs, he
23 says: I found it; it looks like a couple of ounces.

24 So then I asked him about that --

25 THE COURT: Yeah, but that's not based on any kind

1 of scientific method of measuring. When you start talking
2 about the amount of drugs, the statute is clear that you are
3 talking about the weight of the drugs after a sufficient
4 testing, not what somebody looks at and says, I think that's
5 a couple of ounces.

6 MR. KIDD: And you can't look at that in isolation.
7 He finds the drugs and says, it looks like a couple of
8 ounces. Then he goes back and weighs it and says it's 224
9 grams.

10 MR. KING: Did Your Honor rule if you were going to
11 charge possession of cocaine?

12 THE COURT: I'm going to charge possession, uh-huh.

13 Is there anything else in terms of lesser-included
14 offenses that you are requesting? And you are clear that you
15 do not want the Court to instruct PWID?

16 MR. KING: May I discuss that just a minute with
17 Mr. Frasier?

18 THE COURT: Yeah, go right ahead.

19 MR. KING: Your Honor, we would be okay with PWID
20 being charged, so trafficking, possession with intent and
21 possession.

22 MR. KIDD: We would object to possession with
23 intent.

24 THE COURT: I'm going to take exceptions in a
25 minute, but as I was going through the instruction, I needed

1 to note if there was a request for lesser-included
2 instructions.

3 I will be instructing trafficking, PWID, and simple
4 possession, as well as mere presence. And then I will
5 instruct on the form of the verdict.

6 Are there any exceptions to the instruction from the
7 State?

8 MR. KIDD: Just possession with intent.

9 THE COURT: And what's the basis of that objection?

10 MR. KIDD: I don't believe that under their theory
11 of the case, the possession with intent to distribute could
12 only apply to the .7 grams in the pocket based on those
13 statutory --

14 THE COURT: I don't think that's how he's going to
15 argue it. Is he?

16 MR. KIDD: I think that's the only way we can get to
17 the charge.

18 THE COURT: I think he's going to say our contention
19 is this, but even if you don't believe me, this is my
20 contention on the other part of it.

21 MR. KIDD: Right. And I guess my point is that
22 there's -- if the jury finds that he -- it's his cocaine in
23 the jacket, then it does not support a possession with intent
24 to distribute charge.

25 THE COURT: Tell me why.

1 MR. KIDD: Because it's over the threshold for
2 trafficking.

3 THE COURT: Yeah, but they may not believe the
4 expert.

5 MR. KIDD: There's no evidence to the contrary that
6 it's less than trafficking level.

7 THE COURT: According to him there is.

8 MR. KIDD: If that's what they are going on, it
9 should be trafficking 28 to 100, but that's not appropriate
10 either because that's --

11 THE COURT: I think that's a different standard.

12 MR. KIDD: But there's no evidence to support the
13 intent charge if we are only look at --

14 THE COURT: There's evidence to support intent,
15 because there's a cutting agent in the car, which indicates
16 an intention to cut it and sell it.

17 MR. KIDD: Which is in the back in the same area as
18 the cocaine, same general pile in the backseat as the
19 cocaine.

20 THE COURT: Anything further from the State?

21 MR. KIDD: Nothing further.

22 THE COURT: Okay. Mr. King, be glad to hear from
23 you in response to Mr. Kidd.

24 MR. KING: As far as possession with intent, Your
25 Honor?

1 THE COURT: Yes. He has an exception to that
2 instruction and I need to know what your response is.

3 MR. KING: I don't have a strong position on that.
4 I'm arguing more just the possession that was found in his
5 pocket.

6 THE COURT: So then you don't have any objection to
7 it not being instruction? I need clarity.

8 MR. KING: I'm okay with it being instructed. That
9 gives the jury another option. You are right about the
10 evidence of the cut that was found in the car. It's possible
11 they could think he had an intent to distribute.

12 THE COURT: Well, I guess the better question is,
13 are you requesting that I instruct PWID? If you are not
14 requesting it, I am not going to instruct it. I need to know
15 if that is your request.

16 MR. KING: I do request that.

17 THE COURT: What is the basis of the request?

18 MR. KING: The Superior B, the cut found in the car,
19 and the whole circumstances. They might think that, okay,
20 it's not trafficking, but based on everything else they see,
21 that he might have had an intent to deal drugs where there
22 being multiple bags.

23 THE COURT: All right.

24 MR. KING: But I'm focusing mainly on -- to be
25 candid with everybody, I'm arguing possession probably in

1 closing. But I am not probably going to be arguing for the
2 PWID to the jury, necessarily. But it's an option that they
3 could have. I'm going to be arguing mainly for possession in
4 his pocket. But I don't think it's a bad idea for the jury
5 to have options.

6 MR. KIDD: Am I mistaken? I don't think possession
7 with intent to distribute is a lesser-included of
8 trafficking.

9 THE COURT: It is a lesser-included.

10 MR. KIDD: It is? Because it has the intent
11 elements for trafficking.

12 THE COURT: I charge -- both specifically say it is.
13 And I have a chart I created that specifically says by case
14 law it is, as well as conspiracy and attempt, are both
15 lesser-included offenses.

16 And possession with intent to distribute has all of
17 the elements except the weight factor, which is not required.
18 That's the only exception to the elements, the only
19 difference. It has all of the same elements except the
20 weight inference.

21 MR. KIDD: Well, it has the additional element of
22 intent, which trafficking doesn't, because trafficking is
23 only possession.

24 THE COURT: According to case law, it's a
25 lesser-included. The only missing element is the weight.

1 And the State has to prove that the defendant had the intent
2 to distribute the cocaine, which trafficking and PWID, they
3 are kind of the same. The only difference is one has a
4 weight element, because you are saying they are bringing
5 drugs into the state to cut it up and distribute it, either
6 by selling it individually or in large quantities. PWID says
7 you are bringing it into the state with the intent to
8 distribute it. And that's determined by how it's packaged,
9 how it's found or otherwise, versus the weight element.
10 That's the only difference. I don't see how the State is
11 prejudiced.

12 MR. KIDD: You are probably right -- or you are
13 right. If you are right on the case law, I don't have an
14 objection on that point.

15 My main objection, Judge, is that there's no
16 evidence to support it in that if they believed the large
17 amount of cocaine is his and there's no evidence to support
18 PWID, that it's trafficking.

19 If they don't believe it's his, and they only
20 believe that the small amount in his pocket is his, then it's
21 possession. You've got a straw. There are indications of
22 personal use with the cocaine that's in his pocket. There's
23 no indication that cocaine in his pocket was meant for
24 distribution.

25 So if they only believe what's in his pocket, then

1 it's possession. If they believe what's in the jacket is
2 his, then it's trafficking. To me, there's no evidence to
3 support the middle ground.

4 THE COURT: And there is a presumptive amount in
5 possession with intent to distribute, because there is an
6 inference that's created when you have more than 10 grains or
7 one gram of cocaine. That creates an inference that the
8 possession was -- that the cocaine was possessed with the
9 intent to distribute it.

10 MR. KIDD: And it was .7 which was in his pocket.

11 THE COURT: But the total amount is more than one
12 gram. It's more than 10 grains. It's actually -- one was
13 10.8 grains, 24.6 grains and 1,740.7 grains, were three
14 amounts that were tested.

15 MR. KIDD: Right. And the amount in his pocket
16 was .7 grams, 10.8 grains.

17 THE COURT: Not this what he's arguing. He's going
18 to say even if you don't believe he was this big trafficker
19 of drugs, I would assume he's going to try to draw some
20 difference between what the officer said and the chemist
21 said. And even though the chemist is an expert and his
22 testimony is uncontradicted, the jury doesn't have to believe
23 him. And I'm going to instruct them that his testimony is no
24 different than any other lay witness.

25 MR. KIDD: The only thing the officer said as to the

1 weight was it was 224 grams.

2 THE COURT: Which is more than --

3 MR. KIDD: Which was more than it was tested for.

4 THE COURT: I'm trying to figure out -- yeah. Yeah.

5 I just don't -- I'm just trying to figure out how you are
6 prejudiced.

7 MR. KIDD: Because we are giving the jury an out
8 which isn't lawful.

9 THE COURT: What do you mean it's not lawful?

10 MR. KIDD: The evidence doesn't support it. When I
11 mean it's not lawful, the evidence doesn't support possession
12 with intent to distribute. It supports possession or it
13 supports trafficking. We are giving them a way to split a
14 baby when the evidence doesn't support it.

15 THE COURT: How does that prejudice you? Because if
16 you've proved your trafficking, it really doesn't matter if
17 you are giving them an out, because they are going to choose
18 trafficking.

19 MR. KIDD: Agreed. But we are giving them an out
20 that's not supported by the evidence. If they just feel
21 sympathetic and sorry for someone because it's just drugs,
22 let's --

23 THE COURT: I've never had a jury look at -- I've
24 never -- that's not been my experience.

25 MR. KIDD: It's been mine. And I am always hesitant.

1 to give the jury an out.

2 THE COURT: Well, if that's the case, then you would
3 be opposed to simple possession, because that's the bigger
4 out.

5 MR. KIDD: I am, but it's supported by the evidence.
6 I don't want a simple possession charge, but I don't have a
7 good basis to object to it because there's evidence in the
8 record to support it, contrary to possession with intent to
9 distribute charge.

10 THE COURT: *State v. Peay*, which is Court of Appeals
11 1996 decision, says possession with intent to distribute is a
12 lesser-included of trafficking, as well as other cases
13 support the conspiracy to possess cocaine, conspiracy to
14 possess with the intent to distribute, conspiracy to
15 distribute and possession are also lesser-included, which is
16 *State v. Timmons*, *State v. Raffaldt*, and then again *State v.*
17 *Peay*, which is P-e-a-y, which is 321 S.C. 405.

18 Mr. King, would you like to respond to the State's
19 objection to instructing possession with the intent to
20 distribute? In the gravamen of their argument is that it's
21 not factually supported. And I need you to directly respond
22 to that.

23 MR. KING: The Superior B, I think, is the key --

24 THE COURT: I'm sorry. I didn't hear you.

25 MR. KING: Superior B, they found a bottle of cut,

1 they said it had male clothes in it. They are trying to tie
2 that bag, which is separate from what they found the
3 trafficking weight of cocaine in. They are trying to tie
4 that bag to him. They're going to argue he was getting off
5 the bus or traveling, that must have been his bag. That bag
6 had what they referred to as cut in it. So he has cocaine on
7 him and cut. I think that's an indicia of intent to
8 distribute that the jury could find.

9 THE COURT: Anything further from the State?

10 MR. KIDD: No, Your Honor.

11 THE COURT: I'm going to instruct the PWID, just out
12 of abundance of caution.

13 Now, since the defendant did not present any
14 evidence, he gets last argument, correct?

15 MR. KIDD: I believe so, Judge. And my
16 understanding under the new case law is that I can have them
17 close in full. Then I get my closing and then they get
18 rebuttal.

19 THE COURT: Well, I just read that case the other
20 day. There's so much confusion.

21 Mr. King, what's your -- I didn't read it to say
22 that. I read it to say that the old rules are still in
23 effect, which is that if the State closes, they have to close
24 in full, the defense responds. That's if they present
25 evidence. And then the State is limited to rebuttal, true

1 rebuttal. They don't get to reargue their case.

2 And then if the defense does not present any
3 testimony, they get last argument, which means you close in
4 full, and then he closes with last argument.

5 MR. KIDD: So the way the opinions are written,
6 though, it's not about State/Defense --

7 THE COURT: Well, it says middle argument, which is
8 what's creating the confusion. But when you cut through
9 that, it basically says the same thing. Because, see, the
10 real crux of the argument is that the State has been waiving
11 opening. And that's really what they are talking about.
12 They are basically saying, in essence, the State can't waive
13 its opening.

14 MR. KIDD: I think it's pretty unambiguous.

15 THE COURT: I don't know. It's creating a lot of
16 confusion. There hasn't been any consensus reached on it.

17 Mr. King, what's your position? If y'all agree, I
18 really don't have a dog in the fight.

19 MR. KING: I would prefer to have -- to do it the
20 way Your Honor said.

21 THE COURT: I don't think the law has changed. I
22 think it says that they haven't presented evidence. You
23 argue in full. They close. They get last argument. I don't
24 think it changes the rules except to the extent that we've
25 had situations where -- and I've done it myself, where I

1 said, does the State want to waive opening. And the way I
2 read it, the State can't waive opening. They have to open in
3 full. They get to respond in full. And then you are limited
4 to rebuttal as to what he raises in his closing, because you
5 get the last argument because you have a burden of proof.

6 But I will look at it again. I don't see anything
7 that supports that the rules have flipflopped now, that they
8 argue, you argue and they argue again.

9 As a practical matter, I don't really see what
10 difference -- I mean, I don't see how you get any benefit to
11 that other than protracting closing argument, making them
12 longer than they need to be.

13 MR. KIDD: The benefit to me is that my closing can
14 be in response to his closing in full and then he gets to
15 rebut --

16 THE COURT: Is there some language in the case that
17 supports that? Because I haven't heard any judges say that's
18 their view of that case.

19 MR. KIDD: The main paragraph regarding closing
20 arguments: We agree in part and whole that in a criminal
21 trial where the party with the middle argument requests, the
22 party with the right and last closing argument must open in
23 full on the law and the facts, and in reply, may respond in
24 full to the other party's argument but may not raise a new
25 matter.

1 THE COURT: See, I think that's where the confusion
2 is, because I think that's really talking about saying that
3 the State can't waive its opening anymore the way it's been
4 doing it.

5 MR. KIDD: If we interpret this the way it's
6 written --

7 THE COURT: I think they need to provide clarity,
8 personally.

9 MR. KIDD: I agree, but if we are going to give this
10 the meaning that it's written, if they wanted to say that,
11 they would say State. But they say middle party. They say
12 party with the right to close last. I think it's -- I think
13 we are making it more complicated than it is.

14 THE COURT: No, I think it's obtuse in the way it's
15 written. And I think they should have just been a lot more
16 clear with it, for what it's worth. If it was that clear and
17 that unambiguous, you wouldn't have 51 different opinions
18 about it. And I can assure you, all my colleagues have
19 different opinions about it and nobody has reached a
20 consensus on it. And people are experimenting because they
21 just are not clear what it means.

22 What's the citation on that again?

23 MR. KIDD: It is State --

24 MR. MAYNOR: 27-693.

25 THE COURT: I'm sorry. Say that one more time.

1 MR. MAYNOR: Opinion number is 27-693.

2 THE COURT: Because I always put an extra T in
3 Beaty, and it's just B-e-a-t-y, correct?

4 MR. MAYNOR: That's correct.

5 THE COURT: What can you all agree upon, I guess is
6 a better way of putting it. Do you all agree on the
7 interpretation of *Beaty*?

8 MR. KING: There's language in the footnote, Your
9 Honor, that says: We preserve the common law rule that the
10 defendant has the right to open and close if he presents no
11 evidence adopted.

12 THE COURT: That the defendant has the right to open
13 and close?

14 MR. KING: Yes.

15 THE COURT: Are you agreeing with Mr. Kidd's
16 interpretation?

17 MR. KING: I think he may be right.

18 THE COURT: I'm just trying to see if y'all have
19 consensus, because if you all agree, I don't have a dog in
20 the fight.

21 MR. KING: I would like to go the old way. I like
22 the old way. But I mean, I can't --

23 THE COURT: I'm hoping that -- I don't know if
24 somebody has applied for a rehearing on this or not, but I'm
25 hoping that they will give some more clarity, because I'm

1 going to tell you, it's been the subject of a lot of
2 discussion. And they are experimenting. But, mostly, if
3 y'all can agree, we just approach it. If you all agree, we
4 don't have a dog in the fight. So if you all agree on it,
5 I'm fine.

6 MR. KING: Opening sentence, the common law rule,
7 the defendant has the right to open and close if he presents
8 no evidence. I don't know if I can waive the opening or if
9 that's kind of the same thing --

10 THE COURT: Well, you know, there has been some
11 discussion about whether the State can waive openings. I
12 mean, if y'all agree to waive an opening, I think -- I think
13 there's never a problem with the State waiving opening where
14 there's not an objection. But, usually, when somebody says,
15 no, I object, then I usually require the State to open in
16 full. And I think there's some case law to support that,
17 even though I can't think of it right now right off the top
18 of my head.

19 But I think, like, if Mr. Kidd said, I want to waive
20 my opening, and you didn't object, that's fine. But if you
21 said, no, Your Honor, I want him to open in full, I would
22 require him to open in full.

23 MR. KIDD: I think that's what the case says cutting
24 it both ways. Under this circumstance, I could make him open
25 in full and I get to close and he gets rebuttal. So he still

1 gets the last close, but it's just limited to rebuttal of my
2 close. That's my interpretation of the case.

3 THE COURT: Says: Today we preserve the common law
4 rule that the defendant has the right to open and close if he
5 presents no evidence adopted in *State v. Brisbane*,
6 B-r-i-s-b-a-n-e. The rule -- they are talking about Rule 21,
7 which didn't get through.

8 Well, it says you have the right to open and close,
9 which is preserving a right to the defense. But it's sort
10 of -- not sort of, it is silent on whether -- I think the
11 general common law rule that the State is -- if you object,
12 the State is required to open in full. I mean, if they waive
13 it and you don't object, that's one thing, but if you object,
14 I'm going to make them open in full.

15 MR. KIDD: So the difference being, is that I'm the
16 one that gets to object, because the new rule is, he has to
17 open in full.

18 THE COURT: Well, it's not a new rule. They say
19 they are preserving the common law.

20 MR. KIDD: Harkening back to the common law, and it
21 gives me the right to object to him waiving his opening. And
22 I can force him to open in full. Then I close. Then he has
23 rebuttal.

24 THE COURT: Okay. Mr. King, do you all agree on the
25 interpretation?

1 MR. KING: What he stated, I think I agree with him.
2 The language, between the footnote and the language, it says,
3 the party with the middle argument requests, it doesn't say
4 distinguish between State --

5 THE COURT: So y'all agree? Y'all agree, I'm fine.

6 MR. KING: I agree, yes.

7 THE COURT: Now, are you all ready to close?

8 MR. KIDD: Yes, Your Honor.

9 THE COURT: Defense ready?

10 MR. KING: Can we have five or ten minutes just to
11 get notes together?

12 THE COURT: Yeah.

13 MR. KING: Ten minutes?

14 THE COURT: That jury has been sitting back there a
15 long time. I will give you five. I would like to give you
16 ten, but I think they are getting a little weary. How long
17 do you all think your arguments will be?

18 MR. KIDD: Mine will be very short, Judge, 10, 15
19 minutes.

20 MR. KING: About the same for me.

21 THE COURT: Okay.

22 (Whereupon, a recess transpired.)

23 MR. KING: Your Honor, I apologize, mere presence, I
24 know he's found with cocaine in his pocket, but were you
25 going to charge mere presence?

1 THE COURT: That's always a part of it, uh-huh.

2 Mr. King, are you ready?

3 MR. KING: Yes, Your Honor.

4 THE COURT: The State ready?

5 MR. KIDD: Yes, Your Honor.

6 THE COURT: Please bring in the jury.

7 (Whereupon, the jury returns to open court at 12:01
8 p.m.)

9 THE COURT: Bear with us just one moment, ladies and
10 gentlemen.

11 (Whereupon, the following bench conference takes
12 place.):

13 THE COURT: Any exceptions to the form of the
14 verdict from the State?

15 MR. KIDD: Judge, I would ask that you put the
16 amount, because there are different thresholds of
17 trafficking.

18 THE COURT: I'm only going to instruct them
19 regarding one. Statute only -- you can only instruct -- I
20 don't instruct all of them. You only instruct the one
21 category it falls into.

22 MR. KIDD: Right.

23 THE COURT: If they don't meet that threshold, they
24 can't find him guilty of it, because that's the only one I'm
25 going to instruct, which is more than 100 but less than

1 200.

2 MR. KIDD: I was thinking for clarity for the
3 possession with intent to distribute, but I understand your
4 position.

5 THE COURT: possession with intent to distribute
6 doesn't have a threshold. It has something they can draw an
7 inference from, which is only an evidentiary fact that they
8 can disregard or regard. It does not have an amount
9 threshold.

10 MR. KIDD: Right, which is why I thought it would be
11 important to put 100 to 200 on the trafficking.

12 THE COURT: That's one of the elements of the
13 trafficking. If they don't find that, then they can't find
14 him guilty of it.

15 What's your position, Mr. King?

16 MR. KING: I have no objection to the way it is.

17 (Whereupon, the bench conference is concluded.)

18 THE COURT: Okay. Mr. Foreman, ladies and
19 gentlemen, and, actually, Mr. King, you may proceed. You can
20 rest in the presence of the jury.

21 MR. KING: Your Honor, the defense rests.

22 THE COURT: Ladies and gentlemen, both the State and
23 the Defense have rested their cases. We have now reached the
24 stage of the trial where we will have closing argument and
25 instruction. I would ask that you give the attorneys your

1 undivided attention.

2 We have ordered your lunch. And when we are done
3 with argument and instruction, then you will be -- your lunch
4 will be in the jury room for you all to be able to have your
5 lunch. I would ask that you give counsel your undivided
6 attention.

7 Mr. King, you may proceed.

8 MR. KING: Thank you. When you deliberate, you are
9 not going to have other options. He had cocaine in his
10 pocket. I'm not going to stand here and say he didn't have
11 cocaine in his pocket. He's guilty of that. He's guilty of
12 possessing cocaine. But he's not guilty of knowingly
13 trafficking cocaine. That's different.

14 The State has the burden in this case, and it's a
15 high burden. They have to prove that he knowingly trafficked
16 cocaine beyond a reasonable doubt. So if based on the facts
17 as you see them and reasonable interpretations from those
18 facts, if there's a reasonable explanation that he's not
19 guilty of trafficking, then it's reasonable that you must
20 find him not guilty. That creates a reasonable doubt in your
21 mind.

22 And here's the reasonable explanation. Cheryl Jones
23 drove to pick up Michael Frasier at the bus station. She had
24 a young child in the back of the car. And there was a jacket
25 with cocaine in the back of that car and a bag in the back of

1 that car before Mr. Frasier ever gets in it.

2 The narcotics Officer Pritchard, he testifies that
3 he saw Frasier, Michael Frasier, walking out of the bus
4 station. Saw him walk about 10 yards. Described how he
5 looked to the left, looked to the right. He didn't say
6 anything at all about Mr. Frasier wearing a jacket or
7 carrying a jacket or carrying a bag. So there's been no
8 evidence that he's ever worn that jacket or ever carried that
9 bag.

10 A few minutes after leaving the bus station, North
11 Charleston police officer comes flying up 87 miles per hour
12 behind him with blue lights on. And then Cheryl Jones, who
13 knows she has this much cocaine in the back and she doesn't
14 pull over immediately, according to Officer Hall. Unzips her
15 pants, trying to hide it. Gives up because the cops are
16 already right behind her.

17 He pulls the car over. And he sees Mr. Frasier
18 sweating. But it's August in Charleston. And it's hot and
19 humid. Everybody knows that. And he testified that there
20 were other officers out there wiping sweat.

21 They put Ms. Jones and the child into the car to get
22 them out of the heat. And at one point he made a remark
23 about, you think you are hot? It was hot. So there's
24 nothing unusual about him sweating. And if he's nervous, it
25 could be because the woman he's riding with is not stopping

1 for the police and unzipping her pants.

2 But he does have cocaine in his pocket and the
3 police arrest him. They put him in cuffs. He's going to
4 jail. Police continue to search. And they find that jacket.
5 And I just want to show the clip again of how that went down.
6 When he finds the drugs, "Put her in handcuffs."

7 (Video playing.)

8 MR. KING: And next thing he says is, whose jacket?
9 So Mr. Frasier is on his way to jail. Ms. Jones is now
10 handcuffed. And there's a young child there whose fate rests
11 on what happens after that. He makes a statement to
12 Mr. Frasier implying that Jones could be released. He says:
13 I am not saying she's under arrest; she's just been detained.

14 So he's communicating to Mr. Frasier that she
15 doesn't have to go to jail. And he's demanding to know whose
16 jacket is this. That's the circumstances where Mr. Frasier
17 ends up claiming this jacket. If they are both going to
18 jail, what's going to happen to that child? If there's no
19 relative, that child goes into foster care. Minimum, that
20 child is going home to someone else and not seeing that
21 child's mother. At worst, going to foster care. He's going
22 to jail anyway.

23 He didn't know what was in the jacket. He never
24 said what was in the jacket. Never said whether it was
25 drugs, what kind of drugs, how much it was. He claimed the

1 jacket. And when he claimed the jacket, that got Cheryl
2 Jones and that child a free ticket out of there.

3 And you saw Cheryl Jones on the stand. She wasn't a
4 timid lady. There's no reason that it couldn't have been her
5 drugs, that she could have pulled this off and let
6 Mr. Frasier go down for this.

7 Now, is that reasonable? Is that a reasonable
8 interpretation of what happened that day? That's reasonable
9 doubt. They have to prove that he knowingly trafficked that
10 cocaine in the back of the car. They've got that burden.
11 We've got a narcotics officer who doesn't write anything
12 down. Officer Hall does. He writes a report. But it's not
13 accurate. You can't trust what he says in the report because
14 he just leave out the part about the narcotics officer. He
15 writes up the report in a way as if he's just on a routine
16 patrol and sees the brake light out and pulls this car over.
17 No way to know from that report what really happened that
18 day.

19 He didn't fingerprint the plastic bag that the drugs
20 were in. He didn't fingerprint the Superior B bottle. He
21 didn't -- even though there are labs available and he has the
22 ability to submit these things, they have the burden of proof
23 to prove this, and they have techniques that they can prove,
24 fingerprints and DNA can both be used. We've got
25 sophisticated science these days. No reason he couldn't have

1 done that. No DNA on the bags. No DNA on the Superior B.

2 And there's no DNA on the jacket.

3 And, by the way, where is the jacket? Where is it?

4 There's no jacket sitting on that table over there. Is it a

5 man's jacket? Is it a women's jacket? What size is the

6 jacket. Where is it at? That's funny, it's not sitting over

7 there. Where is the bag? Where is the bag with all the male

8 contents in it that Officer Hall testified about? Is there a

9 bag sitting over there? Where is the bag and its contents?

10 They have to prove this stuff. This is serious. They can't

11 just come in here and put officer up and ask you to convict

12 him without building their case and making you eliminate any

13 reasonable doubt that you might have about this.

14 There's something funny about the drugs. Says when

15 he first finds them they are a couple of ounces. Couple is

16 two as far as I've ever heard, not five. A few might be

17 five, but a couple isn't five. A couple is two. Two people

18 are a couple.

19 56 grams, so he's looking at it, and it's all in one

20 bag, so it's not like he pulled out one small bag or two

21 small bags. It's all in one bag. And he's got experience as

22 a police officer, because two ounces, 56 grams. Then later

23 then is documented in his report, which is already

24 inaccurate, is 224.6 grams. It's a whole lot more than 56.

25 And when he gets to the lab, now it's more like

1 112.8, plus 81.4, plus a little 1.6. And I'm leaving out the
2 first one, .7 which is what was in his pocket. So I'm adding
3 up 195.8 grams. So now that's over 28 grams less than what
4 Officer Hall put in his report. So 28 grams is an ounce.
5 Ounce of it is gone. Where is an ounce of it?

6 What we know for sure is that Michael Frasier had
7 cocaine in his pocket and he's guilty of possession of
8 cocaine. And he gets the benefit of any doubt. So we are
9 asking you to convict him of possession of cocaine for what
10 he did, but not what he didn't do. He's not guilty of
11 trafficking.

12 THE COURT: You may proceed.

13 MR. KIDD: Thank you, Your Honor. May it please the
14 Court.

15 Mr. King.

16 No good deed goes unpunished, right? Officer Hall
17 made some decisions out there. He chose not to arrest
18 Ms. Jones. He probably should have, because she knew exactly
19 what was going on. You know, but he made the decision not to
20 arrest her. Probably could have arrested her for unlawful
21 conduct of a child, having a couple of hundred grams of
22 cocaine sitting next to a three-year-old, but he chose not
23 to. He chose not to because the cocaine was his. And he was
24 being a reasonable person.

25 You know, they are going to want to turn that

1 against us today and say, oh, well, the cocaine is hers now.
2 But the point of why we do this and the best tool you have as
3 a jury is common sense, and it's just common sense. And you
4 are going to look at this evidence and you are going to use
5 your common sense.

6 You are going to have back there the bus ticket, not
7 from New York, but from Dallas, leaving at 2:50 a.m. and
8 coming into Charleston 7:55 a.m. Most importantly, most
9 importantly, item 1.1 recovered from Mr. Frasier's pocket;
10 item 1.21, recovered in the jacket pocket. That's a
11 coincidence?

12 You know, I know this has been probably a rough day
13 and a half for you all, a lot of waiting and a lot of
14 frustration. And I take some responsibility for that. It's
15 my job to present this case to you in a cogent and a clear
16 manner and a manner that flows a little more smoothly than
17 this. I apologize for that. I don't think it's all my
18 fault, necessarily, but I could have anticipated things
19 coming up and we could have made this a little easier on
20 everyone.

21 But all that being said, despite some of the
22 confusion and some of the disjointed nature of how this has
23 taken place, the question in front of you is extremely
24 simple. You have one question to deliberate and ask yourself
25 about: Was he in possession of over 100 grams of cocaine?

1 That's what he's charged with. So I have a legal mentor who
2 says you always focus on the elements. That's what the jury
3 focuses on, the elements of the crime. And that's what
4 Mr. Maynor talked to you about in the opening statement.

5 Pull that up. If we can throw that up real quick.
6 Trafficking cocaine, what is trafficking cocaine? This is
7 what he's charged with: Knowingly, actual or constructive
8 possession of cocaine in excess of 100 grams.

9 That's the issue before you. You are the finders of
10 facts. You are the jury. You are the finders of fact.
11 Legal issues, legal issues are for the judge. She determines
12 what's admissible, what's okay, is the search good or not.
13 Those are issues that the judge determines.

14 You are to make factual determinations. Was he in
15 possession of over 100 grams of cocaine, actual or
16 constructive possession?

17 So what's actual or constructive possession? I like
18 to give kind of a ridiculous demonstration with my pen. And,
19 currently, my pen is in my hand. So I'm in actual possession
20 of my pen. It's in my pocket. I'm in actual possession of
21 it. I know about it. I have dominion and control over it.
22 I can set it down on the desk. Now I'm in constructive
23 possession. I know it's there. I can pick it up if I want
24 to. I can manipulate it if I want to. I know about it. I'm
25 in constructive possession of it.

1 I have a similar pen in my office next-door. I'm in
2 constructive possession of that pen. I know it's there. I
3 can go back over there and grab it if I want. It's my pen.
4 That's the difference between actual and constructive
5 possession. Doesn't have to be in your pocket for it to be
6 yours and you to possess it.

7 And that's exactly what's going on here. We have an
8 individual who -- he's not an evil person. It doesn't make
9 him a terrible person. He's made choices. He's not a child.
10 This isn't an 18- and 25- or even 35-year-old guy who needs a
11 second chance. This is a grown man who's made decisions and
12 he needs to be held accountable.

13 And so when you go back there and you deliberate,
14 you ask yourself that one question: Is he guilty of
15 possessing over 100 grams of cocaine? And it's my burden, I
16 agree it's my burden to prove to you beyond a reasonable
17 doubt that he is.

18 And what's beyond a reasonable doubt? Beyond a
19 reasonable doubt does mean beyond all doubt. Absolute
20 certainty is not required. Beyond a reasonable doubt is that
21 which leaves you firmly convinced of his guilt, firmly
22 convinced. There are very few things in this world that are
23 absolute certainties. And that's not what's required.

24 So you go back and you consider the one question in
25 front of you. Did he possess the cocaine? And what have I

1 given to you to prove it? You heard from Officer Pritchard.
2 Mass transit is often used to bring narcotics in our
3 community, because, you know, you don't run the risk of
4 getting pulled over running down I-95, or you don't run the
5 risk of having your car seized by police if they catch you.
6 So, oftentimes, they will use mass transit as another way to
7 avoid protection. It's not a coincidence that he gets off
8 the bus and acting that way.

9 The cutting agent in his bag, another indication of
10 intent. While this might be 200 grams of cocaine, when it
11 hits the streets, it's a lot more than that. And this
12 isn't -- while this is a lot of cocaine, it might not look
13 like that much to some of you. I don't know. Maybe it does.
14 Maybe it doesn't. But on the street, that's a lot of
15 cocaine. 200 grams is a lot of cocaine. We are talking
16 thousands and thousands of dollars of street value of
17 cocaine. It is not a corner-level drug dealer. This is
18 someone who's preying on the weakness in our community.

19 Drug addiction is a weakness. It's vulnerable.
20 They are turning a profit on a disease that other people
21 have. And that's why it's illegal.

22 You know, like I said, it doesn't make him an awful
23 person, but it does make him a drug dealer. And makes him
24 someone who is violating the law in our community, our state.

25 And at the end of the day, that's all this is about.

1 It's about his choices, the choices that he made. It's about
2 us holding him accountable for this choices. Nobody forced
3 him to do what he did. You just go to your common sense. I
4 mean, it's on video. And there's more of that video that you
5 didn't see. And, you know, they want to pick apart a police
6 officer's report and things like that. You know, it's all on
7 video. It's all right there.

8 I wish that it was presented to you in a different
9 manner. I do. But you have it the way you have it. And the
10 fact of the matter is, this is the evidence in front of you
11 to consider. And that is that you have an individual getting
12 off the bus 8 a.m. in the morning. He's pulled over. They
13 search the vehicle with consent. And as a result, they find
14 a bunch of cocaine in a male jacket behind in the backseat,
15 similar packaging as the cocaine that's in his pocket, and he
16 claims it and admit it's his. It is what it is.

17 And you have an obligation. You have a duty. You
18 took an oath. And that oath is to follow the law. Follow
19 the law that the judge charges you. She's going to charge
20 you what the law on the case is. And you answer the question
21 question. And that one question is, do you determine that
22 I've met my burden to prove that he was in actual or
23 constructive possession of that cocaine.

24 The analyst -- I don't think there's going to be
25 much argument about the weight of the cocaine. The report is

1 in evidence. It is what it is. It's over 100 grams. It is
2 cocaine. Analyst tested that. If they want to make a big
3 deal about the second after the officer found it, he said,
4 it's a couple of ounces. And then he weighs it and it's 224.
5 You know, it's a red herring. It doesn't mean anything.
6 Yeah, the SLED agent testified that the amounts are reduced
7 because he doesn't weigh all the packagings. He just weighs
8 the cocaine itself. So it's going to be less than what the
9 officer weighs on the scene, not to mention it dries out in
10 the interim.

11 So I just ask you to use your common sense. Look at
12 the evidence that is in front of you. And return the only
13 verdict that makes sense and hold him accountable. Hold him
14 accountable for the decisions he made and find him guilty of
15 trafficking cocaine in excess of 100 grams.

16 I thank you for your time and attention this week.

17 THE COURT: Mr. King.

18 MR. KING: This is the last word. His argument
19 should be easy if he's proven the case beyond a reasonable
20 doubt. He ought to be able to get up here and lay it all out
21 for you and explain the evidence, explain why he's guilty.
22 But what he's saying is, use your common sense, you figure it
23 out. Common sense is not a substitute for evidence. You
24 don't convict people for common sense. You convict them with
25 evidence. It's basically a serious crime like trafficking.

1 He's going to leave it to you to figure it out.

2 All Mr. Frasier did was claim the jacket, say it was
3 his jacket, claim the jacket so that Cheryl Jones and that
4 child could leave and go home. He can't stand up here and
5 say Mr. Frasier knew it was cocaine and knew about how much
6 it was and what bags were in it --

7 MR. KIDD: Objection, Your Honor.

8 THE COURT: Basis?

9 MR. KIDD: Outside the scope. Scope. It's limited
10 to rebuttal.

11 THE COURT: Yeah, overruled. It's limited to
12 your -- well, overruled. But be careful, Mr. King. Don't
13 argue any new matters.

14 MR. KING: He should be able to lay all of this
15 evidence out and convince you. He wants you to figure this
16 out. That's not the way it works. He's got to prove
17 Mr. Frasier was knowingly in possession of over 100 grams.
18 And what he's telling you is, look, because it's the same
19 green bag, because the same green Ziploc bag as what he's
20 got. But what he didn't tell you when he was standing up
21 here is where that jacket is and why we can't look at it and
22 see if it's a man's jacket.

23 MR. KIDD: Objection, Judge.

24 THE COURT: Basis?

25 MR. KIDD: Same basis. He's arguing what I didn't

1 tell him.

2 THE COURT: No speaking objections. It's within the
3 scope of what would circumstantially be inferred. And you
4 can always argue the absence of something. And you
5 introduced it in your argument. Overruled.

6 You may proceed.

7 MR. KING: Didn't tell you why the jacket is not
8 there and why you can't look at it and see whether it's a man
9 or women's jacket and what size it is. He didn't tell you
10 where the bag was and why you couldn't look at the bag and
11 see what's in the bag. Why didn't -- he didn't say why
12 Pritchard didn't see him wearing the jacket or carrying the
13 bag. He didn't tell you why he didn't have the bag, plastic
14 bags, fingerprinted or tested for DNA when all that is
15 available. It's all available to the police. That's why
16 they got that burden.

17 They have to do this stuff. They have to prove
18 their case. So they haven't proven it, except cocaine in his
19 pocket. Well, that's beyond a reasonable doubt. He's guilty
20 of possession of cocaine, and that's it. Thanks.

21 THE COURT: Ladies and gentlemen, stand up and
22 stretch. During this trial, ladies and gentlemen, you and I
23 have certain duties to perform. As the trial judge, it is my
24 responsibility to preside over the trial of this case and to
25 rule upon the admissibility of evidence offered during the

1 trial. You are to consider only the competent evidence that
2 is before you. And you are to disregard and disabuse from
3 your mind any testimony I've ordered stricken from the record
4 in this case during the progress of this trial, if there has
5 been any. You are to consider only the testimony which has
6 been presented from the witness stand, together with the
7 other exhibits which have been introduced into the record of
8 this case.

9 I have the additional duty to charge you on the law
10 applicable to this case. As the presiding judge, I'm the
11 sole judge of the law of this case. It is your duty as
12 jurors to accept the law and apply the law as I now state it
13 to you. If you have a preconceived idea as to what the law
14 is or the law ought to be in a case or this case, and it
15 should not agree with what I tell you the law is, you are
16 obligated under your oath to abandon this preconception on
17 your part, because you are sworn to accept the law and apply
18 the law precisely as I now state it to you.

19 In every case tried in this court before a jury, the
20 jury becomes the sole judges, sole and exclusive judges of
21 the facts in the case. You the jury are the judges of the
22 facts in this case. This Court is the judge of the law. The
23 Constitution of our state has declared that a trial judge
24 should not intimate, state, comment upon or make any
25 statement to a trial jury about the facts in a case.

1 Since you the jury are the sole judges of the fact
2 in this case, you are not to infer anything from what I've
3 said during the progress of this trial in ruling upon the
4 admissibility of evidence or otherwise, or anything that I
5 say now to you during the course of this instruction, that I
6 have any opinion about the facts. The law does not permit me
7 to have an opinion about the facts. This is a matter solely
8 for you the jury to determine.

9 As jurors then, it is your duty, as I've instructed,
10 to determine the effect, the value, the weight, and the truth
11 of the evidence presented during this trial. Necessarily,
12 ladies and gentlemen, you must assess the credibility of
13 witnesses who have testified.

14 Credibility is simply a legalistic term meaning
15 believability. It becomes your duty as jurors to analyze and
16 to evaluate the evidence in this case.

17 I further instruct you that some of the things you
18 may consider as you decide whether or not to believe a
19 witness's testimony about a particular matter include: What
20 was the manner and appearance of the witness who testified?
21 Was he or she straightforward or hesitant in answering? Was
22 the testimony of a witness consistent or inconsistent? How
23 did the witness come to know the facts that he or she
24 testified to, or what was her his or her ability to know
25 these facts? Is there some reason a witness would want to

1 give testimony that would hurt or help one side or the other?
2 In other words, was the witness bias or prejudice? And was
3 the testimony of a witness strengthened or weakened by other
4 testimony or evidence?

5 I further instruct you that in determining the
6 question of the credibility or believability of witnesses,
7 you may believe one witness as against several witnesses, or
8 several witnesses as against one witness. You may believe a
9 part of the testimony of a witness and reject the remaining
10 part of the testimony of that same witness. If you have a
11 good and sound reason, you may believe the testimony of a
12 witness in its entirety or reject the testimony of a witness
13 in its entirety. You may consider the demeanor of a witness,
14 that is, the manner and appearance of the witness from the
15 witness stand.

16 Our rules of evidence ordinarily do not permit
17 witnesses to testify to opinions or conclusions. An
18 exception to this rule exists for witnesses we call expert
19 witnesses. A witness who, by their education, training and
20 experience, has become an expert in some art, science,
21 profession or calling may state their opinion as to relevant
22 and material matters in which the witness claims to be an
23 expert. And may also state the reasons for the opinion.

24 You should consider any expert opinion received in
25 evidence in this case like any other evidence. Give it the

1 weight you think it deserves. If you decide that the opinion
2 of an expert is not based on sufficient education, training
3 and experience, or if you conclude that the reasons given in
4 support of the opinion are not sound, or that the opinion is
5 outweighed by other evidence, you may disregard the opinion
6 entirely.

7 An expert witness's testimony is to be given no
8 greater weight than that of other witnesses simply because
9 the witness is an expert. And you are not required to accept
10 an expert's opinion even though it is not contradicted.

11 Ladies and gentlemen, I instruct you and I emphasize
12 that the fact that the defendant did not testify is not a
13 factor to be considered by you in any way whatsoever in your
14 deliberation and in your consideration of reaching a verdict
15 in this case. It must not be considered by you in any manner
16 whatsoever.

17 A defendant has the constitutional right to remain
18 silent. And the assertion of this right must not be
19 considered by you in your deliberations. I repeat, under
20 your oath, you are to draw no conclusion whatsoever from the
21 fact that the defendant in this case did not testify. The
22 fact that the defendant did not testify cannot be discussed
23 in any manner whatsoever in the jury room during your
24 deliberations.

25 The burden of proof, as I have and will instruct

1 you, is on the State. The defendant is not required to prove
2 his innocence. The burden of proof remains on the State to
3 prove guilt beyond a reasonable doubt.

4 Ladies and gentlemen, there are two types of
5 evidence which are generally presented during a trial, direct
6 evidence and circumstantial evidence. Direct evidence is the
7 testimony of persons who asserts or claims to have actual
8 knowledge of a fact, such as an eyewitness. Circumstantial
9 evidence is proof of a chain of facts and circumstances
10 indicating the existence of a fact. The law makes absolutely
11 no distinction between the weight or value to be given to
12 either direct or circumstantial evidence, nor is a greater
13 degree of certainty required of circumstantial evidence than
14 of direct evidence.

15 As I've instructed, crimes may be proven by
16 circumstantial evidence. And, again, the law makes no
17 distinction between the weight, value or effect to be given
18 to either direct or circumstantial evidence. However, to the
19 extent the State relies on circumstantial evidence, all of
20 the circumstances must be consistent with each other, and
21 when taken together, point conclusively to the guilt of the
22 accused beyond a reasonable doubt. If these circumstances
23 merely portray the defendant's behavior as suspicious, the
24 proof has failed.

25 The State has the burden of proving the defendant

1 guilty beyond a reasonable doubt. This burden rests with the
2 State regardless of whether the State relies on direct
3 evidence, circumstantial evidence, or some combination of the
4 two.

5 Ladies and gentlemen, you should weigh all of the
6 evidence in this case. After weighing all of the evidence,
7 if you are not convinced of the guilt of the defendant beyond
8 a reasonable doubt, you must find the defendant not guilty.
9 Conversely, or if you are convinced of the guilt of the
10 defendant beyond a reasonable doubt, then you must find him
11 guilty.

12 I instruct you, ladies and gentlemen, that the fact
13 that the defendant was arrested, charged and indicted, is not
14 evidence in this case and cannot be considered by you as
15 evidence of guilt in this case, nor does it create any
16 presumption or inference of guilt. This documentation is
17 simply the formal written instrument or instruments which
18 contain the charge or charges made against the defendant.
19 They simply serve as the formal documentation by which the
20 case is processed or brought in to the court.

21 The defendant has pled not guilty to the indictment.
22 And that plea casts the burden on the State to prove the
23 defendant guilty. Because a person charged with committing a
24 criminal offense in South Carolina is never required to prove
25 himself innocent. I instruct you, ladies and gentlemen, that

1 it is a cardinal and important rule of the law of evidence
2 that the defendant in a criminal trial, no matter what the
3 seriousness of the charge made against him may be, will
4 always be presumed to be innocent of the crime for which he
5 is indicted unless his guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.

7 This presumption of innocence does not cease when
8 you retire to deliberate, but it accompanies the defendant
9 from the time of his appearance throughout the trial until
10 you reach a verdict in this case. Our Supreme Court has said
11 that the presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the defendant,
13 and it remains with him and assigns him to that class of the
14 innocent until that presumptive robe of righteousness has
15 been stripped from his person by evidence satisfying you of
16 that guilt beyond a reasonable doubt.

17 The presumption of innocence is not mere legal
18 theory. It is not just a legal phrase. It is a substantial
19 right to which every defendant is entitled unless you the
20 jury are satisfied from the evidence of his guilt beyond a
21 reasonable doubt.

22 The State has the burden of proving the defendant
23 guilty beyond a reasonable doubt. Some of you may have
24 served as jurors in civil cases where you were told that it
25 is only necessary to prove that a fact is more likely true

1 than not true, such as by the greater weight or preponderance
2 of the evidence.

3 In criminal case, the State's proof must be more
4 powerful than that. It must be beyond a reasonable doubt.
5 Proof beyond a reasonable doubt is proof that leaves you
6 firmly convinced of the defendant's guilt. There are very
7 few things in this world that we know with absolute
8 certainty. And in criminal cases, the law does not require
9 proof that overcomes every possible doubt. If, based on your
10 consideration of the evidence, you are firmly convinced that
11 the defendant is guilty of the crime charged, you must find
12 the defendant guilty.

13 If, on the other hand, you think there's a real
14 possibility that the defendant is not guilty, you must give
15 him the benefit of that doubt and find him not guilty.

16 Ladies and gentlemen, a statement or statements is
17 alleged to have been made by the defendant. And those
18 statements, statement or statements, have been admitted into
19 evidence in this case. While the Court has determined that
20 the statements are admissible, I instruct you that you make
21 the ultimate decision as to whether or not the defendant made
22 the statements. If the defendant did make the statements,
23 you must determine whether the statements were made by the
24 defendant voluntarily and of his own free will. This means
25 that the statements were not caused by pressure, force, fear,

1 threats, coercion, intimidation, or by hope or a promise of
2 leniency or a reward of any kind.

3 In determining whether the statements were
4 voluntary, you should consider both the characteristic of the
5 defendant and the details of the questioning. Some of the
6 factors that you must consider are the age of the defendant,
7 the defendant's education or lack of education, the
8 defendant's mental ability or capacity, the defendant's IQ or
9 intelligence, the defendant's background and environment, the
10 place and length of the detention, the nature of the
11 questioning, and the advice or lack thereof to the defendant
12 of his constitutional rights. Including, but not limited to,
13 the right to remain silent, that any statement could be used
14 against him in a court of law, the right to have a lawyer
15 present, that if he could not afford a lawyer, a lawyer would
16 be appointed to represent him without cost, and that he could
17 stop making a statement at any time.

18 You must carefully consider all of the surrounding
19 circumstances before you give any weight to an alleged
20 statement. The State has the burden of proving beyond a
21 reasonable doubt that the alleged statements were voluntary.
22 If you determine it was, you may give the statements any
23 further consideration that you deem proper. You must decide
24 what weight, if any, should be given to the alleged
25 statements. If you determine the alleged statements were not

1 the free and voluntarily statements of the defendant, you
2 should not consider the statements at all.

3 The defendant is charged with trafficking in
4 cocaine. The State must prove beyond a reasonable doubt that
5 the defendant knowingly sold, manufactured, cultivated,
6 delivered, purchased, brought in to this state, provided
7 financial assistance or otherwise aided, abetted, attempted
8 or conspired to sell, manufacture, cultivate, deliver,
9 purchase, or bring into this state, was knowingly in actual
10 or constructive possession, knowingly attempted to become in
11 actual or constructive possession of cocaine.

12 The State must also prove beyond a reasonable doubt
13 that the amount of the cocaine or any mixture containing
14 cocaine was 100 grams or more but less than 200 grams.

15 To prove possession, the State must prove beyond a
16 reasonable doubt that the defendant had both the power and
17 intent to control the disposition or use of the cocaine.

18 Possession may be either actual or constructive.
19 Actual possession means that the cocaine was in the actual
20 physical custody of the defendant.

21 Constructive possession means that the defendant had
22 dominion and control or the right to exercise dominion or
23 control over either the cocaine itself or the property on
24 which the cocaine was found. Mere presence at the scene
25 where drugs were found is not enough to prove possession.

1 Actual knowledge of the presence of the cocaine is
2 strong evidence of the defendant's intent to control its
3 disposition or use. The defendant's knowledge and possession
4 may be inferred when a substance is found on the property
5 under the defendant's control. However, this inference is
6 simply an evidentiary fact to be taken into consideration by
7 you along with the other evidence in the case and to be given
8 the weight, value and affect you decide it should receive.

9 Two or more persons may have joint possession of a
10 drug. "Deliver" means to -- "to deliver" means to actually
11 constructively or attempt to transfer the drugs.

12 "Distribute" means to deliver other than by
13 administering or dispensing a drug.

14 "Manufacture" means to produce, prepare, convert,
15 process, plant, cultivate, grow or harvest a drug naturally
16 or actually.

17 "Manufacturing" includes any packagings or
18 repackaging of the drug or labeling or relabeling of the
19 drugs container.

20 Included within the offense of trafficking cocaine
21 is the lesser offense of possession with the intent to
22 distribute. Possession with intent to distribute contains
23 all of the elements of trafficking except the amount of
24 cocaine. In addition, the State must prove beyond a
25 reasonable doubt that the defendant had the intent to

1 distribute the cocaine.

2 In order to prove possession with intent to
3 distribute cocaine, the State must prove beyond a reasonable
4 doubt that the defendant possessed cocaine with the intent to
5 distribute it.

6 As I've instructed, to prove possession, the State
7 must prove beyond a reasonable doubt that the defendant had
8 both the power and intent to control the disposition or use
9 of the cocaine. Possession may be either actual or
10 constructive. Actual possession means that the cocaine was
11 in the actual physical custody of the defendant.

12 Constructive possession means that the defendant had
13 dominion and control or the right to exercise dominion or
14 control over either the cocaine itself or the property on
15 which the cocaine was found. Mere presence at the scene
16 where the drugs were found is not enough to prove possession.

17 Actual knowledge of the presence of the cocaine is
18 strong evidence of the defendant's intent to control its
19 disposition or use. The defendant's knowledge and possession
20 may be inferred when the substance is found on the property
21 under which -- on the property under the defendant's control.
22 However, this inference is simply an evidentiary fact to be
23 taken into consideration by you along with the other evidence
24 in the case and to be given the weight, value and affect you
25 decide it should receive.

1 Two or more persons may have joint possession of a
2 drug. The State may -- must also prove beyond a reasonable
3 doubt that the defendant intended to distribute the cocaine.

4 "Distribute" means to deliver other than by
5 administering or dispensing a drug.

6 Intent may be shown by acts in conduct of the
7 defendant and other circumstances from which you may
8 naturally and reasonably infer intent.

9 In determining whether the defendant had the intent
10 to distribute the cocaine, you may consider the circumstances
11 surrounding the defendant's alleged possession. You may
12 consider the amount of the substance alleged to have been
13 possessed, the manner in which it was allegedly possessed,
14 the place where it was allegedly possessed, and other factors
15 which you consider to be important. You must find that the
16 defendant did not intend to have the cocaine solely for his
17 own use.

18 Possession of more than 10 grains, or 1 gram of
19 cocaine, creates an inference that the defendant possessed
20 the cocaine with the intent to distribute it. This
21 inference, ladies and gentlemen, does not relieve the State
22 from proving beyond a reasonable doubt that the defendant had
23 the intent to distribute. It is simply an evidentiary fact
24 to be taken into consideration by you along with the other
25 evidence in the case, and to be given the weight, value and

1 affect you decide it should receive.

2 Included within each of these -- included within the
3 offense of trafficking of cocaine is the lesser-included
4 offense of simple possession of cocaine. Simple possession
5 does require the elements of trafficking in cocaine. In
6 order to prove simple possession of cocaine, the State must
7 prove beyond a reasonable doubt that the defendant knowingly
8 or intentionally possessed cocaine.

9 "Knowingly" means with knowledge, consciously, not
10 accidentally.

11 "Intentionally" means willfully, intending the
12 result which actually occurs, not accidentally or
13 involuntarily. Intent may be shown by acts and conduct of
14 the defendant and other circumstances from which you may
15 naturally and reasonably infer intent.

16 And as I've instructed, to prove possession, the
17 State must prove beyond a reasonable doubt that the defendant
18 had both the power and intent to control the disposition and
19 use of the cocaine.

20 Possession may either be actual or constructive.
21 Actual possession means that the cocaine was in the actual
22 physical custody of the defendant.

23 Constructive possession means that the defendant had
24 dominion and control or the right to exercise dominion or
25 control over either the cocaine itself or the property on

1 which the cocaine was found. Mere presence at the scene
2 where the drugs were found is not enough to prove possession.
3 Actual knowledge of the presence of the cocaine is strong
4 evidence of the defendant's intent to control its disposition
5 or use.

6 The defendant's knowledge and possession may be
7 inferred when a substance is found on the property under the
8 defendant's control. However, this inference is simply
9 evidentiary fact to be taken into consideration by you along
10 with the other evidence in this case and to be given the
11 weight, value and affect you decide it should receive. Two
12 or more persons may have joint possession of a drug.

13 Ladies and gentlemen, there are several possible
14 verdicts in this case. There's no significance whatsoever to
15 the order in which I state these possible verdicts. It is
16 simply that one must be stated first. And you don't have to
17 try to write this down, because the verdict form goes into
18 the jury room with you and it is self-explanatory.

19 In order to reach a verdict in this case, ladies and
20 gentlemen, your verdict must be unanimous, which means all 12
21 of you must agree in order to reach a verdict. And the
22 options are as follows. As to the Indictment No. 2013 -- as
23 to indictment 2013-GS-10-6360, we the jury unanimously find
24 the defendant guilty of trafficking in cocaine or of the
25 lesser-included offense, guilty of possession with intent to

1 distribute cocaine; or of the lesser-included offense, guilty
2 of possession of cocaine, or not guilty

3 Again, there's no significance whatsoever that I
4 state these potential verdicts. And again, ladies and
5 gentlemen, your verdict must be unanimous, which means all
6 twelve of you must agree in order to reach a verdict.

7 Mr. Foreman, once the jury has reached a verdict, it
8 will be your responsibility to fill out the verdict form, to
9 sign and date the form and knock on the door and advise the
10 bailiffs that the jury has reached a unanimous verdict.
11 Also, if the jury has any questions during deliberations, it
12 is, likewise, your responsibility to write out those
13 questions, to sign and date the form, knock on the door and
14 advise the bailiffs that the jury has a question.

15 Ladies and gentlemen, please know that if you have
16 any questions during deliberations, there will be a delay in
17 our responses. And that is because there's a process that we
18 must follow in answering your questions. So note if you have
19 a question, there will be a delay because we have to follow
20 that process.

21 I'm going to ask that you return to your jury room.
22 But do not yet begin your deliberations. There are some
23 matters of law I need to take up with the attorneys that may
24 require additional instruction or clarification of an
25 instruction. However, if there's no further instruction, we

1 will send in your notepads, the evidence and the verdict
2 forms, and you will then be allowed to begin your
3 deliberations.

4 Also, your lunch has already arrived and we have
5 already put it in the room for you. So, again, if there's no
6 further instructions, the bailiffs will advise you to begin
7 your deliberations. Please leave your notepads on the
8 banister as you exit. And give us a few moments. Again, do
9 not yet begin your deliberations. We appreciate your
10 patience.

11 (Whereupon, the jury leaves open court at 12:51
12 p.m.)

13 THE COURT: Any exceptions from the State?

14 MR. KIDD: Judge, the only thing I would add, and I
15 don't think there's a way to do it, I just renew my objection
16 to the PWID charge.

17 THE COURT: Okay. I will note it. Overruled. Any
18 exceptions from the Defense?

19 MR. KING: Just my previous requests for the
20 trafficking, but we argued that before.

21 THE COURT: I mean, anything we haven't already
22 covered.

23 MR. KING: No.

24 THE COURT: We don't need to renew that. I don't
25 think there's any factual support for that. Your argument

1 goes to the weight according to the testimony whether the
2 State has met their burden of proof. And there is no -- the
3 way the statute is written, it's one or the other. You don't
4 get multiples. They fall into certain categories. And the
5 only testimony that we have from someone qualified to testify
6 as to the amount of drugs and them being weighed is the
7 chemist from SLED. And his testimony more than meets the 100
8 to 200 level. And, therefore, that relief is denied.
9 However, I've already articulated that you can argue your
10 other -- the other facts as to whether the State has met its
11 burden of proof on the 100 to 200 grams.

12 Please make sure all the evidence is in place for
13 me, please. And I've reduced the verdict form to one sheet
14 of paper.

15 We've accounted for all of the evidence from the
16 State?

17 MR. KIDD: 1, 2, 3, 4, 5, 6 and 10.

18 the court: Is that correct from the State?

19 MR. KIDD: Yes, Your Honor.

20 THE COURT: From the Defense?

21 MR. KING: I believe so, Your Honor.

22 THE COURT: I can't hear you.

23 MR. KING: Yes, Your Honor.

24 THE COURT: You can take that along with their
25 notebooks. The record should reflect the jury has begun

1 deliberations at 12:55.

2 (Whereupon, the jury deliberates at 12:55 p.m.)

3 MR. KIDD: Can we send the laptop back or just if
4 they've requested it?

5 THE COURT: No, the clerk is getting the laptop.
6 They shouldn't have to ask us to watch any of the evidence,
7 but she went to get it from another jury room.

8 (Whereupon, a recess transpired.)

9 THE COURT: The jury has their lunch and they are
10 situated. It's 12:58. I'm thinking 45 minutes. And if
11 y'all could leave us your cell phones. Usually if they have
12 any questions, it's after they eat. And if we have any
13 smokers, sometimes they just want to get air. And I'm going
14 to let the bailiffs know if they want to get air or smoke,
15 they can do that. And, of course, they don't deliberate
16 while somebody is out. But leave us your numbers just in
17 case. Let's just say for argument's sake, quarter of 2. And
18 if something happens before then, we will call y'all, but we
19 need your cell phone numbers.

20 (Whereupon, a recess transpired.)

21 (Whereupon, the defendant is present.)

22 THE COURT: Jury has reached a verdict. Is the
23 State ready to proceed?

24 MR. KIDD: We are, Judge.

25 THE COURT: Is the Defense ready to proceed?

1 MR. KING: Yes, Your Honor.

2 THE COURT: Just so y'all know, I did have the clerk
3 of court follow up on our missing juror. He had overslept.
4 But in addition to that, he had an incredibly nonchalant
5 attitude. He said he didn't feel like being bothered with
6 jury duty. So he just didn't bother to show back up and
7 didn't plan to show back up. And I'm sort of sugar coating
8 the way he spoke to her. It is my understanding, he was a
9 bit recalcitrant during roll call and was a little ugly. Is
10 that correct?

11 THE CLERK: The attitude of didn't want to be here,
12 definitely.

13 THE COURT: And he was not scheduled to work,
14 because we called his employer, because I wanted to see, I
15 wanted to give him the benefit of the doubt. Although we did
16 not disclose. I made sure it was very neutral because I
17 didn't want to endanger or jeopardize this employment. But
18 he did not work last night and he was not scheduled to work
19 today or tonight, so he's off. But when she finally reached
20 him -- did he call you back? Is that what it was?

21 THE CLERK: I called him, Your Honor.

22 THE COURT: She called him again, which was probably
23 the sixth or seventh time she called him. And he answered
24 and said, literally, he had just woken up, that he didn't
25 plan to show up, he had no intention of showing up, he just

1 couldn't bothered with jury duty. So I probably am going to
2 issue a bench warrant or either a rule to show cause for him
3 to come and explain why after being sworn, he did not think
4 it was important enough to show up for jury duty. And it's
5 not that I want to penalize him, but I can't allow that kind
6 of behavior to sort of slide. Because he had a duty and he
7 didn't fulfill it, not just to the State, but to the Defense.
8 Y'all took a lot of time in picking your jury, and for him
9 just to not show up, I find incredibly troubling. And I will
10 probably need y'all here for that hearing, unless you don't
11 want to be here. But I will let you know when it's
12 scheduled, because we are going to have to get him served.

13 Any exception from the State?

14 MR. KIDD: No, ma'am.

15 THE COURT: From the Defense?

16 MR. KING: I don't take a position on it, no.

17 THE COURT: I just wanted you to know. I mean, I
18 would imagine you would be troubled you have a juror that
19 didn't show up.

20 MR. KING: My instinct is to defend, not to -- you
21 know, what I mean?

22 THE COURT: Okay. Well, my instinct is for people
23 to meet their obligations.

24 MR. KING: I completely understand, Your Honor.

25 THE COURT: I just find it a little troubling that

1 somebody would be that cavalier. I mean, it was rude,
2 actually. The way he talked to her was, like, how dare you
3 really bother me about this.

4 MR. KING: Shocking.

5 THE COURT: It was little shocking. So I plan to
6 handle it. I just want to let y'all know that we didn't drop
7 the ball, that we did follow up, and that was the result.

8 Okay. Please bring in the jury. And if that's the
9 alternate's notes, I need those.

10 THE CLERK: These are 60's notes.

11 (Whereupon, the jury returns to open court at 2:16
12 p.m.)

13 THE COURT: Mr. Foreman, is it correct that the jury
14 has reached a verdict?

15 THE FOREPERSON: Yes, Your Honor.

16 THE COURT: If you will give the verdict form to the
17 bailiff for me, please.

18 Sir, if you could stand for publication of the
19 verdict.

20 THE CLERK: State of South Carolina in the Court of
21 General Sessions of the Ninth Judicial Circuit, County of
22 Charleston, State of South Carolina v. Michael Frasier Jr.
23 Indictment No. 2013-GS-10-6360, we the jury unanimously find
24 the defendant guilty of trafficking cocaine, signed
25 Mr. Foreperson, March 22nd, 2017.

1 Ladies and gentlemen of the jury, if this is your
2 verdict, please raise your right hand.

3 Please let the record reflect all jurors raised
4 their right hand and the verdict stands.

5 THE COURT: Is there any request to poll the jury
6 from the State?

7 MR. KIDD: No, ma'am.

8 THE COURT: From the Defense.

9 MR. KING: Yes, Your Honor.

10 THE COURT: Please poll the jury. Ladies and
11 gentlemen, please give the clerk your attention.

12 THE CLERK: Ladies and gentlemen, I'm going to ask
13 you two questions: Is this your verdict? Is this still your
14 verdict? So when your number is called, if you will please
15 stand and answer each question with a yes or a no.

16 Juror No. 361. Is this your verdict?

17 JUROR NO. 361: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 361: Yes.

20 THE COURT: And you can raise your right hand. You
21 don't have to stand.

22 THE CLERK: Juror No. 343. Is this your verdict?

23 JUROR NO. 343: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 343: Yes.

1 THE CLERK: Juror No. 151, is this your verdict?
2 JUROR NO. 151: Yes.
3 THE CLERK: Is this still your verdict?
4 JUROR NO. 151: Yes.
5 THE CLERK: Thank you.
6 Juror No. 54, is this your verdict?
7 JUROR NO. 54: Yes.
8 THE CLERK: Is this still your verdict?
9 JUROR NO. 54: Yes.
10 THE CLERK: Thank you.
11 Juror No. 232, is this your verdict?
12 JUROR NO. 232: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR NO. 232: Yes.
15 THE CLERK: Thank you.
16 Juror No. 305, is this your verdict?
17 JUROR NO. 305: Yes.
18 THE CLERK: Is this still your verdict?
19 JUROR NO. 305: Yes.
20 THE CLERK: Thank you.
21 Juror No. 268, is this your verdict?
22 JUROR NO. 268: Yes.
23 THE CLERK: Is this still your verdict?
24 JUROR NO. 268: Yes.
25 THE CLERK: Thank you.

1 Juror No. 220, is this your verdict?
2 JUROR NO. 220: Yes.
3 THE CLERK: Is this still your verdict?
4 JUROR NO. 220: Yes.
5 THE CLERK: Thank you.
6 Juror No. 216, is this your verdict?
7 JUROR NO. 216: Yes..
8 THE CLERK: Is this still your verdict?
9 JUROR NO. 216: Yes.
10 THE COURT: Thank you.
11 Juror No. 320, is this your verdict?
12 JUROR NO. 320: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR NO. 210: Yes.
15 THE CLERK: Thank you.
16 Juror No. 68, is this your verdict?
17 JUROR NO. 68: Yes.
18 THE CLERK: Is this still your verdict?
19 JUROR NO. 68: Yes.
20 THE CLERK: Thank you.
21 Juror No. 125, is this your verdict?
22 JUROR NO. 125: Yes.
23 THE CLERK: Is this still your verdict?
24 JUROR NO. 125: Yes.
25 THE CLERK: Thank you.

1 The jury has been polled and the verdict stands.

2 THE COURT: Mr. Foreman, ladies and gentlemen, we
3 thank you for your time and your attention to this case. I
4 know jury service may seem thankless, but I really hope that
5 you've learned what the system is actually about and how
6 vital you are to the system operating as it should.

7 You are welcome to discuss this case if you would
8 like. You are excused for the remainder of the week. And
9 the rest of the panel has been excused. By the same token,
10 you do not have to discuss the case if you don't desire to.

11 If you need a work excuse, you can get that on the
12 first floor of the courthouse from any of the deputy clerks
13 in the circuit court side of the courthouse. Otherwise, we
14 will mail those to you along with your checks.

15 You are welcome to remain for sentencing, if you
16 would like. Is there anyone who desires to remain for
17 sentencing, if you would raise your right hand for me.

18 Okay. Then you are all excused with the court's
19 profound thanks. Have a wonderful weekend. And I will hear
20 post-trial motions and sentencing in a moment.

21 (Recess is taken.)

22 THE COURT: You have a sentencing sheet?

23 MR. KIDD: I do, Your Honor. I'm not sure about it
24 because it was originally indicted as a trafficking that goes
25 to 200. And then the SLED weight came back under. And we

1 amended the indictment. I checked lesser-included because it
2 is less than it was originally indicted for, although we've
3 amended the indictment.

4 THE COURT: I don't know, Mr. King, what do you
5 think?

6 MR. KING: I don't really know that it's a
7 lesser-included. I think the sentence sheet should just
8 reflect that the indictment was amended without objection.

9 THE COURT: It will be as indicted. And I will make
10 a note on here.

11 Mr. King, do you need to sign this?

12 MR. KIDD: Typically, they don't.

13 THE COURT: I'm going to write on the bottom here
14 that the indictment was amended without objection on whatever
15 date that was, amended to 100 grams. And that was on the
16 first day of trial, which was the 22nd.

17 All right. This is a mandatory 25 years, correct,
18 no part of which can be suspended or probation given; is that
19 accurate?

20 MR. KIDD: That's correct, Your Honor.

21 THE COURT: Is that correct Mr. King?

22 MR. KING: Yes, Your Honor, mandatory 25.

23 THE COURT: And does he have any pre-detention time
24 he needs to get credit for?

25 MR. KING: It does, Your Honor.

1 THE COURT: I'll mark that box. Are there any
2 post-trial motions from the State?

3 MR. KIDD: No, ma'am.

4 THE COURT: From the Defense?

5 MR. KING: Just renew my previous motions, Your
6 Honor, and reconsider those and move for a new trial.

7 THE COURT: Would the State like to respond?

8 MR. KIDD: We would just rely on our argument on
9 what that pretrial hearing is, as far as his other motions.
10 And I'm not sure what grounds he would be asking for a new
11 trial on.

12 THE COURT: Yeah, I need to know the basis.

13 MR. KING: To reconsider the pretrial motions that I
14 made at pretrial. And if you reconsider that, granted those,
15 then --

16 THE COURT: I got you. I see what you are saying,
17 then it would be the basis of a new trial. I will take the
18 matter under advisement. And I will let y'all know within 10
19 days.

20 All right. Anything further from the State?

21 MR. KIDD: Nothing further, Your Honor.

22 THE COURT: Anything further, Mr. King?

23 MR. KING: No, Your Honor.

24 THE COURT: And the fine is required to be imposed,
25 but I'm going to suspend it. There's nothing that says it

1 cannot be suspended.

2 Sir, if you would stand for sentencing. Sir, the
3 law in this instance is mandatory. The Court has no
4 discretion. And that sentence is 25 years. So your sentence
5 is State Department of Corrections for a period of 25 years.
6 Likewise, the fine is mandatory, but it can be suspended and
7 I am doing that. So upon the service of 25 years, you will
8 get credit pursuant to 24-13-40. So any time that you've
9 served pre-detention you will get credit for. And they will
10 calculate that in you're at R and E.

11 Do you need any substance abuse at the institution?
12 Do you desire to go to the alcohol treatment? Says alcohol,
13 but it's really drug treatment unit, prior to or during
14 your -- well, you will be evaluated and I think if there's an
15 opening at ATU, you would able to go. Do you desire to do
16 that?

17 THE WITNESS: Yes, ma'am, if it would be beneficial,
18 yes.

19 THE COURT: I don't see how it could hurt. So I'm
20 going to note that on your sentence sheet as well.

21 Okay. Is there anything further from the State?

22 MR. KIDD: No, ma'am.

23 THE COURT: From the Defense?

24 MR. KING: No, ma'am.

25 THE COURT: Thank you all very much.

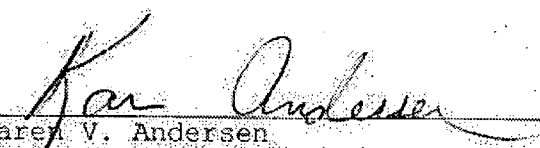
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(Whereupon, the proceedings are concluded.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

MICHAEL FRASIER

Defendant

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2013GS1006360

) Warrant No(s): 2013A1010204484

) Charge(s): Trafficking Cocaine

MOTION TO SUPPRESS

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MAR 22 AM 9:21

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The Defendant was illegally seized when police exceeded the scope of a traffic stop without reasonable suspicion of a serious crime. The Defendant moves to suppress all evidence obtained as the result of the illegal seizure, including cocaine, dash cam video, and statements of the Defendant.

FACTS

The Defendant believes the following facts will be presented by the State: On August 14, 2013, Det. Pritchard was conducting surveillance at the Greyhound Bus Station in North Charleston, looking for suspicious behavior. According to Det. Pritchard, after the Defendant exited the bus, he continuously looked left and right while approaching the car that was picking him up. Det. Pritchard believed this behavior indicated possible criminal activity and alerted Officer Hall to stop the vehicle if he had an independently valid reason to do so. At approximately 8:06 A.M. Officer Hall conducted a traffic stop on the vehicle driven by Cheryl Jones with the Defendant in the passenger seat and a young child in the back seat. The traffic stop was recorded on dash cam video. Officer Hall had approached the vehicle from behind at a high rate of speed, up to 70 mph, in order to catch up to the vehicle and he activated his blue

lights while both vehicles were on the North Bridge over the Ashley River on Cosgrove Avenue.

The driver initially moved to the far left lane in an apparent attempt to get out of the way of the fast-moving patrol car. Upon realizing that she was being pulled over, the driver moved to the far right lane and pulled off the side of the road. Approximately 49 seconds passed from when the blue lights were first activated to the time the driver pulls to the shoulder of the road.

Officer Hall approached the driver's side and explained the reason for the stop was that the vehicle's third brake light was out. Within minutes, another officer, Officer Deaton, arrived in a separate vehicle and approached the passenger side. Although the driver Cheryl Jones did not have her driver's license on her, she provided her name and other information to Officer Hall. The Defendant gave his ID to Officer Hall. According to Officer Hall, the Defendant was nervous and sweating, and Jones had her zipper down on the pants she was wearing. Officer Hall went back to his patrol car with the driver's and Defendant's information to run a computer check. Officer Deaton remained at the passenger side questioning Jones and the Defendant, who explained that Jones had just picked up the Defendant from the bus station. At approximately 8:13 A.M., the dispatcher tells Officer Hall that both the Defendant and Jones are clear, meaning that Jones had a valid driver's license and there were no warrants outstanding on either party. Officer Hall tells dispatch that he is going to write up a warning ticket and "try and get consent".

At approximately 8:18 A.M. Officer Hall exits his patrol car and approaches Jones on the driver's side. Instead of giving the warning ticket to Jones and concluding the traffic stop, Officer Hall asks her to step out of the car and speak with him. Officer Hall speaks with Jones at the rear of her car and asks where she is coming from and why her zipper is down. Jones explains that she is picking up the Defendant from the bus station and explains that she just got out of the shower and her hair is still wet. Jones gives Officer Hall consent to search the car at

approximately 8:19 A.M. Officers subsequently find cocaine in the Defendant's pocket and in a jacket in the vehicle.

LAW

The Fourth Amendment of the United States Constitution and Article I, §10 of the South Carolina Constitution grants citizens the right to be secure against unreasonable search and seizure. U.S. Const., amend. IV; S.C. Const. art. I, §10. When a police officer makes a traffic stop, both the driver and passenger are seized within the meaning of the Fourth Amendment and may challenge the constitutionality of the stop. Brendlin v. California, 551 U.S. 249 (2007). In carrying out a routine traffic stop, a law enforcement officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. State v. Tindall, 388 S.C. 518, 521 (2010). Any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has reasonable suspicion of a serious crime. Id. at 521. Nervousness alone is not sufficient to support reasonable suspicion of some other crime. State v. Pichardo, 367 S.C. 84 (2005). When an officer asks for consent to search, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention. Id. at 524.

ANALYSIS

Officer Hall exceeded the scope of the traffic stop and his continued detention of the Defendant after the purpose of the stop was concluded amounted to an illegal seizure. Officer Hall pulled the car over for an inoperable third brake light. Officer Hall obtained information to run a computer check on Cheryl Jones's and the Defendant. The computer check revealed that Cheryl Jones had a valid driver's license, and neither she nor the Defendant had outstanding warrants. Officer Hall then states his intention is to write a warning ticket for Cheryl Jones for the inoperable third brake light and try to get consent to search the car. At this point, the purpose

of the traffic stop was accomplished except for the issuance of the warning ticket. However, rather than issuing the warning ticket, Officer Hall chose to further detain the Defendant while requesting consent to search the car. At this point, the traffic stop became an illegal seizure.

Officer Hall did not have reasonable suspicion of a serious crime. The burden is on the State to articulate facts sufficient to support reasonable suspicion. State v. Pichardo, 367 S.C. 84, 104 (Ct. App. 2005). Given the facts, the State can only point to three facts to support any contention of reasonable suspicion: that the Defendant looked around at a bus station, that the Defendant was nervous during a traffic stop, and that the Defendant was sweating while waiting for the traffic stop to conclude. Those facts, however, do not support a reasonable suspicion of a serious crime. An individual merely looking around after exiting a bus is not reasonable suspicion of a serious crime. Officer Hall believing that the Defendant was nervous, which is a common reaction during a traffic stop, alone is not sufficient to support reasonable suspicion of a serious crime. Officer Hall noting that the Defendant was sweating during August in Charleston, a time that is normally hot and humid, is not reasonable suspicion of a serious crime. Furthermore, it is apparent from the video that the officers themselves were sweating as one officer wipes sweat from his brow while searching the car. Officer Hall mentions the heat when he makes a comment, "You think you're hot?" At another point in the video, an officer tells Officer Hall, "I'm gonna put them in the back seat of the car just so they can be out of the heat." None of these facts support a reasonable suspicion of a serious crime.

Officer Hall's continued questioning of the occupants of the car was not a consensual encounter. The detention associated with roadside searches is unlike a mere field interrogation where an officer may question an individual without grounds for suspicion. Pichardo at 102. A traffic stop, or pre-existing seizure, enhances the coercive nature of the situation. Id. In State v.

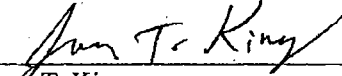
Pichardo, several factors are listed in determining whether a seizure has occurred. These factors include the time and place of the encounter, the existence and nature of any prior seizure, whether there was a clear and expressed endpoint to any such prior detention, the number of officers present and whether they were uniformed, the length of the detention, whether the officer moved the person to a different location or isolated him from others, whether the officer informed the person he was free to leave, whether the officer indicated to the person he was suspected of a crime, and whether the officer retained the persons documents or exhibited threatening behavior or physical contact. *Id.* at 101. In this case, the traffic stop was a pre-existing seizure. There were two uniformed officers present, with one standing at the driver's door and one standing at the passenger side door by the Defendant. Neither the driver nor the Defendant were told they were free to leave. Officer Hall moved the driver from one location to another by asking her to step to the rear of the car, isolating the Defendant in the car. Officer Hall had not returned the Defendant's ID even after receiving information from dispatch that the Defendant did not have any outstanding warrants. Under these circumstances, the Defendant would not have believed he was free to leave. See also, Pichardo 367 S.C. at 103 ("It strains credulity to imagine that any citizen, directly on the heels of having been pulled over to the side of the road by armed and uniformed police officers in marked patrol cars, would ever feel 'free to leave' or 'at liberty to ignore the police presence and go about his business'").

CONCLUSION

Therefore, as the State cannot articulate any facts sufficient to establish a reasonable suspicion of a serious crime and as the consent procured to search the vehicle was per se invalid as it was not voluntary and was an exploitation of an unlawful detention, the Defendant was illegally

seized. All evidence obtained as the result of the illegal seizure, including cocaine, dash cam video, and statements of the Defendant should be suppressed.

Respectfully Submitted,



Jason T. King
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 3-22-17

BY _____

CLERK OF COURT

2017 MAR 22 AM 9:21

FILED

LAW

The State bears the burden of proving the voluntariness of a consent to search from the totality of the circumstances. State v. Harris, 277 S.C. 274 (1982).

ANALYSIS

All fruits of the search of the Defendant, including cocaine and a straw found in the Defendant's pocket, should be suppressed because the Defendant did not voluntarily consent to the search. Any video of the illegal search should also be suppressed. The Defendant objected to the search when he told Officer Hall that he did mind if Officer Hall searched him. Instead of voluntarily consenting to the search, the Defendant submitted to the authority of two armed and uniformed police officers. Just before asking for consent, Officer Hall exerts his authority by ordering the Defendant not to put his hands in his pockets, and during the search orders the Defendant to keep his hands on the car. The Defendant protests when Officer Hall searches his pockets. Therefore, based on the totality of the circumstances, the State will be unable to prove the voluntariness of the Defendant's consent to the search. Any and all items recovered pursuant to a search of the Defendant's person should be suppressed.

Respectfully Submitted,

Jason T. King
 Jason T. King
 Assistant Public Defender
 Attorney for Defendant

Charleston, South Carolina

Dated: 3-22-17

FILED
 2017 MAR 22 AM 9:21
 JUDIE A. HARRIS
 CLERK OF COURT
 BY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

MICHAEL FRASIER

Defendant

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2013GS1006360

) Warrant No(s): 2013A1010204484

) Charge(s): Trafficking Cocaine

) MOTION TO SUPPRESS STATEMENTS

FILED
2017 MAR 22 AM 9:22
CLERK OF COURT

The Defendant moves to suppress involuntary statements by the Defendant and statements made during a custodial interrogation where the Defendant was not advised of his Miranda rights. The Defendant also moves to suppress his statements made after being read his Miranda rights because these statements were involuntary and obtained in violation of the rule established in Missouri v Seibert, 542 U.S. 600 (2004).

FACTS

The Defendant was a passenger in a car stopped by Officer Hall of the North Charleston Police Department. The driver of the car was Cheryl Jones, who also had a young child in the backseat. A search of the Defendant revealed cocaine in his pocket. Upon finding the baggy of powder on the Defendant, Officer Hall immediately put the Defendant in handcuffs behind his back and ordered the Defendant "Don't flex up on me". The incriminating nature of the baggy of powder was immediately apparent to Officer Hall, who then asked the Defendant, "Is that coke or what is it?" The Defendant stated it was crushed up Adderall, which he acknowledged was

illegal for him to possess. The powder later tested positive for cocaine. Officer Hall then asked the Defendant, "Is there anything else on you because you are gonna get strip searched?"

The Defendant was told to sit on the hood of Officer Hall's patrol car ~~while the~~ officers searched the vehicle. After approximately twenty minutes, Officer Hall found a large amount of cocaine in a jacket located in Ms. Jones' vehicle. He then ordered that Ms. Jones also be handcuffed. Without reading Defendant or Ms. Jones their Miranda rights, Officer Hall asked "Who's jacket?" The Defendant said the jacket was his. Officer asks "Do you know what is in your jacket?" and "What would I be finding in your jacket?" Officer Hall tells the Defendant, "I'm not saying she is under arrest. She is just being detained" referring to the driver Cheryl Jones. Officer Hall then tells the Defendant, "Just be honest . . . if you want to help yourself . . . we can help you. I can get some people very quickly who can help you out." The Defendant is placed in the back of Officer Hall's patrol car. Less than 10 minutes later, Officer Hall reads the Defendant his Miranda rights and gets the Defendant to again say the jacket is his. Officer Hall tries to get the Defendant to say what was in the jacket and if it is cocaine. The Defendant does not state what is in the jacket but says the driver has nothing to do with it and he is responsible for what is in the jacket.

LAW

The test for determining the admissibility of a Defendant's statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Peake, 291 S.C. 138, (1987). The burden is on the State to prove by a preponderance of the evidence that the statement given was voluntary. State v. Washington, 296 S.C. 54, 55 (1988). A confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence. State v. Corns, 310

S.C. 546, 552 (Ct. App 1992). It is a violation of due process to admit into evidence an involuntary statement made by the Defendant. U.S. Const., amend. XIV; Jackson v. Denno, 378 U.S. 368 (1964); S.C. Const., art. I, §3.

In a criminal case, a Defendant cannot be compelled to be a witness against himself. U.S. Const. amend IV; S.C. Const. art. I, §12. Statements made by a Defendant during a custodial interrogation are not admissible unless the Defendant is read his Miranda rights. Miranda v. Arizona, 384 U.S. 436 (1966). Law enforcement must state the Miranda warnings after a person has been taken into custody or otherwise deprived of his freedom in any way. State v. Evans, 354 S.C. 579, 583 (2003). To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose and length of the interrogation, as well as whether the suspect was free to leave the place of questioning. *Id.* The custodial determination is an objective analysis based on whether a reasonable person would have concluded that he was in police custody. *Id.* The burden is on the State to prove by a preponderance of the evidence that the Defendant voluntarily waived his Miranda rights. State v. Washington, 296 S.C. 54, 55 (1988).

In Missouri v. Seibert, 542 U.S. 600 (2004), the United States Supreme Court dealt with the police practice of questioning a suspect until incriminating information is elicited, then administering Miranda warnings and questioning the suspect again to re-elicite the incriminating information. The factors to be considered in determining whether a constitutional violation occurred in this setting are:

1. The completeness and detail of the question and answers in the first round of interrogation;
2. The timing and setting of the first questioning and the second;

3. The continuity of police personnel;
4. The degree to which the interrogator's questions treated the second round as continuous with the first.

Missouri v. Seibert, 542 U.S. 600 (2004); State v. Navy, 386 S.C. 294 (2010).

ANALYSIS

The Defendant's statements to Officer Hall regarding the substance found in his pocket should be suppressed because the statements were involuntary and the Defendant was not read his Miranda rights prior to making these statements during custodial interrogation. Upon finding the bag of powder in the Defendant's pocket, Officer Hall told the Defendant to put his hands behind his back, handcuffed him, and ordered the Defendant "Don't flex up on me." Both Officer Hall and Officer Deaton were in uniform and armed standing around the Defendant when Officer Hall began asking what the substance was in the baggie found on the Defendant's person. At this point, the situation changed from a routine traffic stop to a custodial interrogation. The Defendant should have been read his Miranda rights before any questioning began. The statements are also involuntary because of the coercive questioning while two armed police officers stood around him.

The Defendant's statements to Officer Hall regarding ownership of the jacket containing the cocaine should be also suppressed. After finding cocaine inside the jacket, Officer Hall asked whose jacket it was, intending to elicit an incriminating response. The Defendant had already been handcuffed after Officer Hall found an illegal substance in his pocket. Officer Hall told the Defendant that he would be strip searched, with the implication being that the Defendant was going to be booked into the jail. The Defendant was in custody and not free to leave. No

reasonable person would have thought he was free to leave under those circumstances, nor that they had any choice but to respond to the officer's questions.

The Defendant's statements to Officer Hall regarding ownership of the jacket containing the cocaine also should be suppressed because these statements were involuntary. Upon finding the cocaine in the jacket, Officer Hall immediately had the driver of the car handcuffed. This was a coercive situation as it implied that the driver, who had a young child in the car, would be arrested unless the Defendant claimed the jacket. See State v. Corns, 310 S.C. 546 (1992) (suppressing a statement by a defendant where veiled threats were made against the defendant's family).

The statements made by the Defendant after being read his Miranda rights should be suppressed because those statements were involuntary. Officer Hall made promises of leniency to the Defendant. Officer Hall made statements to the Defendant such as "if you want to help yourself", "We can help you", "I can get some people here very quickly who can help you out", and "Just think about it". The Defendant's subsequent statements were induced by these promises of leniency and were therefore involuntary.

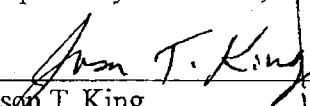
The statements made by the Defendant after being read his Miranda rights should be suppressed because of the violation of the rule in Missouri v. Seibert. Officer Hall had already elicited an incriminating response while the Defendant was in custody without reading him his Miranda rights. Officer Hall asked the same questions previously asked before the Defendant was read his Miranda rights. There was continuity of police personnel because the same officer interrogated the Defendant both times. The Defendant was read his rights and questioned approximately eight minutes after giving the first response before Officer Hall informed him of his Miranda rights, so only a short period of time occurred between the two interrogations.

Officer Hall appears to treat the second round of questioning as continuous with the first. He begins the second round of interrogation by asking "So you're telling me that jacket is yours?" which appears to reference his previous statement made before he was Mirandized.

CONCLUSION

Therefore, as the Defendant was improperly induced to make incriminating statements during a custodial interrogation without being advised of his Miranda rights, and the lack of voluntariness of the statements made after being advised of his Miranda rights in violation of the rule in Missouri v. Seibert, all statements made by the Defendant should be suppressed.

Respectfully Submitted,



Jason T. King
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 3-22-17

FILED
2017 MAR 22 AM 9:22
JULIE M. ARMSTRONG
CLERK OF COURT
BY _____

CDD20130806129

364

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013027775

ARREST WARRANT NUMBER

2013A1010204484

DATE OF ARREST

August 15, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 08 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1006360

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2013

THE STATE

vs.

MICHAEL FRASTER JR

DOB:)

B/M

Indictment for
Trafficking Cocaine

RECEIVED

APR 03 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 7, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

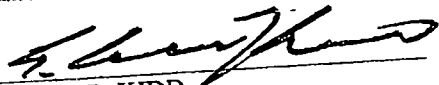
That in Charleston County, South Carolina, on or about August 14, 2013, the Defendant, MICHAEL FRASIER JR, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of ¹⁰⁰~~200~~ grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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APR 03 2017

SC Court of Appeals

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

COUNTY OF CHARLESTON

STATE VS.

MICHAEL N. FRASIER, JR.AKA: Michael Frasier Jr., Michael Frasier JrRace: Black/African AmericanSex: M

DOB: _____ SS# _____

Address: _____

City, State, Zip: Charleston, SC 29403DL# _____ SID# SC00978204*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Traff Cocaine 100g but <200gIn violation of § 44-53-0370(e)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0280☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

E. Kidd 76671
Culver Kidd, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

68630
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$50,000; provided that upon the service of 25 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 Service 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Ordered. PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

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: ATU if available

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 8.25TOTAL \$ 283.25☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine DawgCourt Reporter: Karen AndersenPresiding Judge: Dr. JeffJudge Code: 128Sentence Date: 3/24/17

Indicted Amended to 100g without objection
 on 3.22.17.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
OF THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs:)
MICHAEL FRASIER JR.,)
Defendant.)

VERDICT FORM

AS TO INDICTMENT NO. 2013-GS-10-06360:

We, the jury, unanimously find the Defendant:

☒ Guilty of Trafficking Cocaine.

OR OF THE LESSER INCLUDED OFFENSE:

☐ Guilty of Possession with the Intent to Distribute Cocaine.

OR OF THE LESSER INCLUDED OFFENSE:

☐ Guilty of Possession of Cocaine.

OR:

☐ Not Guilty.

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APR 03 2017

SC Court of Appeals

Please sign and date:

[Signature]
Foreperson

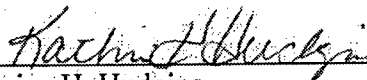
3/24/17
Date

Please notify the Bailiff when you have completed your deliberations.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of April, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of April, 2018.

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SC Court of Appeals