

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 08 2018

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

ASHLEY EUGENE MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000069

APPENDIX

VICTOR R. SEEGER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED (dated April 25, 2011)	1
APPLICATION FOR POST-CONVICTION RELIEF	292
RETURN.....	299
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated September 22, 2017)	306
ORDER OF DISMISSAL WITH PREJUDICE	333
INDICTMENT.....	343

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,
5 PLAINTIFF,
6 vs.
7 ASHLEY EUGENE MOORE,
8 DEFENDANT.

TRANSCRIPT
OF
RECORD
2010-GS-42-5975

10 April 25th, 2011
11 Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

17 EDDIE HUNTER
18 ASSISTANT SOLICITOR
Attorney for the State

19 ROBERT HALL
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Jury Selection	5
5		
6	Motions	27
7	DALE OWENS	
8	Direct examination by Sol. Hunter	30
9	Cross-examination by Mr. Hall	74
10	JASON CARRAWAY	
11	Direct examination by Sol. Hunter	85
12	Cross-examination by Mr. Hall	96
13		
14	Opening by the Court	115
15	Opening by Solicitor Hunter	126
16	Opening by Mr. Hall	129
17		
18	DALE OWENS	
19	Direct examination by Sol. Hunter	130
20	Cross-examination by Mr. Hall	160
21	JASON CARRAWAY	
22	Direct examination by Sol. Hunter	167
23	Cross-examination by Mr. Hall	183
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	BETH STUART	
4	Direct examination by Sol. Hunter	188
5	Cross-examination by Mr. Hall	197
6	JACK WESTMORELAND	
7	Direct examination by Sol. Hunter	206
8	KEN HANCOCK	
9	Direct examination by Sol. Hunter	211
10	Cross-examination by Mr. Hall	222
11		
12	Motions	232
13	Closing by solicitor Hunter	244
14	Closing by Mr. Hall	252
15	Charge by the Court	259
16	Verdict	285
17	Motion	287
18	Sentencing	290
19	Certificate	291
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3		<u>State's Exhibits</u>		
4				
5	S-1	DVD		38, 138
6	S-2	Rental Agreement		58, 151
7	S-3	Drugs		72, 222
8	S-4	Gun		73, 218
9	S-5	B.E.S.T. Bag	192	219
10	S-6	VHS Tape		204
11	S-7	Enfamil Container	214	
12	S-8	Baby Wipes Container	214	216
13	S-9	Bag	214	216

P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Ask the attorneys to approach briefly.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: At this time, we are about to begin the trial of the State of South Carolina versus Ashley E. Moore, and I'm going to go, be going over some matters that apply specifically to this case. And I realize that earlier Judge Hayes has qualified you as jurors in the Circuit Court this week. But it is necessary, again, that you be sworn so that I can assure myself, myself that the answer that you're, answers that you're about to give to my questions will be truthful, honest, and complete answers, and, for that reason, again, you have to be sworn.

So, Madam Clerk, at this time, please swear the prospective jury panel for me.

(WHEREUPON, the entire jury panel was placed under oath at this time.)

THE COURT: If any juror failed or refused to take the oath just administered by the clerk, I'd ask that you now please stand.

(No response.)

1 THE COURT: All right. The record then will reflect
2 that all potential jurors have been sworn for purposes of my
3 questioning.

4 Before I begin the questioning, there's a couple of
5 things that I will go over with you that will put you in a
6 position to better answer the questions that I'm about to
7 ask you.

8 First of all, I'm going to go over with you the
9 indictment in this case. In, in, in the General Sessions
10 Court, an indictment is the document that brings the case
11 before the Court. It informs this Court of the charges to
12 be tried, and it also informs the defendant of the charges
13 that have been lodged against the defendant. However, an
14 indictment is not evidence in this case, and can not be used
15 by a jury in any fashion whatsoever in determining the guilt
16 or the innocence of a defendant.

17 Again, I'm going to go over the indictments so that
18 you'll know a little bit about what this case is about, and
19 so you'll be able to, again, more fully and completely
20 answer the questions that I'm about to ask you.

21 Now, the indictment in this case is contained in Case
22 Number 10-GS-42-5975. The indictment has two counts. The
23 first count is for trafficking in methamphetamine or cocaine
24 base. The indictment, in the first count, states that
25 Ashley Eugene Moore did, in Spartanburg County, on or about

1 June 30th of 2010, knowingly sell, manufacture, deliver,
2 purchase, or bring into this state, or did provide financial
3 assistance, or did otherwise aid, abet, attempt, or conspire
4 to sell, manufacture, deliver, purchase, or bring into this
5 state, or did knowingly, actually or constructively possess,
6 or did knowingly attempt to become in actual or constructive
7 possession of more than 400 grams of methamphetamine or
8 cocaine base, a Schedule II controlled substance, in
9 violation of Code Section 44-53-375 of the Code of Laws of
10 South Carolina, 1976 as amended. That is Count One of the
11 indictment.

12 The second count is for possession of a firearm or
13 knife during the commission of or the attempt to commit a
14 violent crime. That indictment states that Ashley Eugene
15 Moore, did, in Spartanburg County, on or about
16 June 30th of 2010, possess or visibly display a firearm or
17 visibly display a knife during the commission or attempted
18 commission of a violent crime. To wit, trafficking in
19 methamphetamine or cocaine base in violation of Code Section
20 16-23-490 of the Code of Laws of South Carolina, 1976 as
21 amended, against the peace and dignity of the state and
22 contrary to the statute in such case made and provided.

23 Now, ladies and gentlemen, that's the indictment that
24 is before the Court, and, again, it is not evidence in this
25 case. But it will serve to give you an indication as to

1 approximately when, where, and who was involved in the
2 alleged commission of this particular matter.

3 Now, before I begin my questioning, I'm also going to
4 ask that the attorneys that are involved in the trial of
5 this case introduce themselves to you, and in the case of
6 the defense, I'd ask that the defendant be introduced to the
7 jury panel as well.

8 For the State.

9 SOLICITOR HUNTER: My name is Eddie Hunter with the
10 Seventh Circuit Solicitor's Office here in Spartanburg. I
11 work under the direction of Barry Barnette.

12 THE COURT: For the defense.

13 MR. HALL: And I'm Robert Hall. I represent Ashley
14 Moore.

15 Mr. Moore.

16 THE COURT: Sir, if you'll stand and face the jury
17 panel briefly.

18 (Defendant complies.)

19 MR. HALL: Clarks---

20 THE COURT: Thank you very much.

21 MR. HALL: Clarksville, Georgia.

22 THE COURT: Thank you very much.

23 Now, ladies and gentlemen, I'm going to ask a series of
24 questions of you. We'll follow the same procedure that was
25 probably used earlier when you were qualified. And that is

1 if you have a response to any of my questions, I'm going to
2 ask that you stand, I'll need to get your name and juror
3 number on the record of the court before I receive your
4 answers so we can identify who's responding to the questions
5 that I have in this matter.

6 First of all, has any member of this jury panel ever
7 been related by marriage or are you related by blood or have
8 you ever had a close personal or a social relationship with
9 the defendant, Ashley E. Moore, if that is true, please
10 stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel ever been
13 represented by either of the attorneys that are involved in
14 the trial of this case or have they ever appeared on the
15 other side of some legal matter from you, if that's true,
16 please stand.

17 (No response.)

18 THE COURT: Has any member of the jury panel ever been
19 related by marriage or are you related by blood or have you
20 ever had a close personal or a social relationship with
21 either of the attorneys that are involved in the trial of
22 this case, if that is true, please stand.

23 (No response.)

24 THE COURT: Now, I'm going to read a list of names to
25 you. These are individuals that have been identified to the

1 Court as being potential witnesses in the trial of this
2 case.

3 First of all, Mr. J.D. Owens with the Spartanburg
4 County Sheriff's Office.

5 Beth Stuart with the Spartanburg County Sheriff's
6 Office.

7 Ken Hancock with the Spartanburg County Sheriff's
8 Office.

9 Jason Carraway with the Spartanburg County Sheriff's
10 Office.

11 Jack Westmoreland with the Spartanburg County Sheriff's
12 Office.

13 He's in the courtroom. If you'll turn and face the
14 jury panel.

15 (Witness complies.)

16 THE COURT: Thank you very much. You can be seated.

17 Now, ladies and gentlemen, as to the people that I have
18 just identified as potential witnesses in the trial of this
19 case, has any member of the jury panel ever been related by
20 marriage or are you related by blood or have you had a close
21 personal or a social relationship with any of the
22 individuals that I just named as potential witnesses in the
23 trial of this case, if that's true, please stand.

24 (Juror responds.)

25 THE COURT: Sir, I'll need name and number.

1 JUROR: David Magner. Juror Number 93.

2 THE COURT: Yes, sir.

3 JUROR: I use to work with Jack here at the Spartanburg
4 County Sheriff's Office.

5 THE COURT: So, you were employed at the Sheriff's
6 Office at one time?

7 JUROR: Yes, sir.

8 THE COURT: Well, would that fact affect your ability
9 to be fair and impartial in the trial of this case?

10 JUROR: No, sir.

11 THE COURT: All right. Thank you, sir. You can be
12 seated.

13 Anyone else?

14 (No response.)

15 THE COURT: Has any member of the jury panel or a
16 member of your immediate family or a close personal or
17 friend of yours ever been prosecuted by the Seventh Circuit
18 Solicitor's Office, if that is true, please stand.

19 (Juror responds.)

20 THE COURT: Name and number please, ma'am.

21 JUROR: Connitha Foster, Juror Number 45.

22 THE COURT: Yes, ma'am, your situation?

23 JUROR: My dad was prosecuted. His name was Morris E.
24 Davis. Last year.

25 THE COURT: All right. Has that matter been ended at

1 this time?

2 JUROR: Yes, sir.

3 THE COURT: All right. Would that fact affect your
4 ability to be fair and impartial in the trial of this case?

5 JUROR: No, sir.

6 THE COURT: Thank you, ma'am. You can be seated.
7 Anyone else?

8 (No response.)

9 THE COURT: Has any member of the jury panel or a
10 member of your immediate family or a close personal friend
11 of yours ever been arrested for, charged with, or convicted
12 of any crime involving or relating to illegal drugs, if that
13 is true, please stand.

14 (Jurors respond.)

15 THE COURT: All right. I'll start on this side.
16 The gentleman in front, your name and number please.

17 JUROR: Christopher Gibbes. Juror Number 50.

18 THE COURT: Yes, sir.

19 JUROR: My brother was arrested on methamphetamine
20 charges.

21 THE COURT: All right. Has that case been ended at
22 this time?

23 JUROR: Yes, sir.

24 THE COURT: All right. Would that fact affect your
25 ability to be fair and impartial in this case?

1 JUROR: No, sir.

2 THE COURT: You can be seated.

3 A new, new stander, yes, sir, name and number.

4 JUROR: Number 80. My mom was arrested on drug
5 charges.

6 THE COURT: All right. Is that case over or still
7 pending?

8 JUROR: It's over.

9 THE COURT: All right. How long ago did that occur?

10 JUROR: About ten years ago maybe.

11 THE COURT: All right. Would that affect your
12 impartiality in this trial?

13 JUROR: No, sir.

14 THE COURT: Thank you. You can be seated.

15 Name and number please, sir.

16 JUROR: Terry Crocker, Juror 36.

17 THE COURT: Yes, sir.

18 JUROR: My uncle was charged with trafficking with ten
19 years, and one of my closest friends is on probation for
20 crack possession twice, and one of my friends for -- I want
21 to say got knocked down with simple possession, but it
22 started out with manufacturing, intent to distribute---

23 THE COURT: All right.

24 JUROR: ---within a school zone and LSD base.

25 THE COURT: All right, sir. Would those, those facts

1 affect your ability to be fair and impartial in the trial?

2 JUROR: No.

3 THE COURT: Thank you. You can be seated.

4 Ma'am, your name and number again please.

5 JUROR: Connitha Foster, Number 45.

6 THE COURT: Yes, ma'am.

7 JUROR: My dad was convicted of drug charges last year.

8 THE COURT: All right. Ma'am, would that affect your
9 impartiality in this trial?

10 JUROR: No, sir.

11 THE COURT: Thank you.

12 Name and number please, ma'am.

13 JUROR: Pamela Wagner, 159.

14 THE COURT: Your situation, ma'am?

15 JUROR: My husband just got out of prison for
16 trafficking.

17 THE COURT: All right. Ma'am, would that affect your
18 impartiality in the case?

19 JUROR: No.

20 THE COURT: Thank you, ma'am. Be seated.

21 Name and number please, sir.

22 JUROR: Greg Cothran, Number 35.

23 THE COURT: Yes, sir.

24 JUROR: I was arrested on drug charges october of last
25 year.

1 THE COURT: So, those charges are currently pending?

2 JUROR: No, sir.

3 THE COURT: They've been ended?

4 JUROR: Yes, sir.

5 THE COURT: All right. Would that affect your
6 impartiality during the trial?

7 JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 JUROR: Ann Sonoma, 137.

10 THE COURT: Yes, ma'am.

11 JUROR: I just knew people in college that were
12 arrested on drug charges.

13 THE COURT: All right. Would that affect your
14 impartiality in this case, ma'am?

15 JUROR: No.

16 THE COURT: Thank you.

17 Name and number please.

18 JUROR: Terry Henry, 110. My ex-husband and his
19 girlfriend had some charges brought up on them.

20 THE COURT: All right, ma'am. Would that -- I assume
21 those are over at this time?

22 JUROR: Yes, sir.

23 THE COURT: And would that affect your impartiality in
24 this case, ma'am?

25 JUROR: No, sir.

1 THE COURT: Thank you, ma'am.

2 Name and number please, ma'am.

3 JUROR: Angie Bonner, Juror 17. Spouse charged with
4 simple possession.

5 THE COURT: All right. Would that affect your
6 impartiality, ma'am?

7 JUROR: No.

8 THE COURT: Thank you.

9 Name and number please, ma'am.

10 JUROR: Nancy Wallace, 160. My son was arrested for
11 possession of drugs.

12 THE COURT: Is that still pending?

13 JUROR: No, sir.

14 THE COURT: Would that affect your impartiality in this
15 case?

16 JUROR: No, sir.

17 THE COURT: Thank you, ma'am. You can be seated.

18 Name and number please, sir, gentleman in the front.

19 JUROR: Tim Burgman, Number 49.

20 THE COURT: Yes, sir.

21 JUROR: Just knew some people in college that were
22 charged with simple possession.

23 THE COURT: All right. And would that affect your
24 impartiality in this trial, sir?

25 JUROR: No, sir.

1 THE COURT: Thank you. You can seated.

2 Name and number please, sir.

3 JUROR: I'm Jerry Sloan, 139. My stepdaughter was
4 arrested five years ago for possession.

5 THE COURT: All right. Would that affect your
6 impartiality in this trial?

7 JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 Has any member of the jury panel ever had an experience
10 with a police officer, a state trooper, trooper, a federal
11 agent, a state or federal law enforcement agency that might
12 affect your ability to be fair impartial in trial of this
13 case, which, of course, involves testimony from police
14 officers, if that's true, please stand.

15 (Juror responds.)

16 THE COURT: Name and number please, sir.

17 JUROR: Terry Crocker, Juror 133.

18 THE COURT: Yes, sir, your situation.

19 JUROR: I got in a cop car two or three times, verbal
20 exchanges. Probably not the most polite of verbal
21 exchanges.

22 THE COURT: All right. Would that affect your
23 impartiality in the case?

24 JUROR: No.

25 THE COURT: All right. Thank you, sir. You can be

1 seated.

2 Anyone else?

3 (No response.)

4 THE COURT: Does any member of the jury panel have any
5 opinion concerning the use of marijuana, cocaine,
6 methamphetamine, heroine, crack cocaine, or other legal,
7 illegal drugs that might affect your ability to be fair and
8 impartial in this trial, if that's true, please stand.

9 (No response.)

10 THE COURT: Now, has any member of the jury panel
11 gathered any information outside of this courtroom such that
12 it would have caused you to either form or express an
13 opinion concerning any issue or matter that might be
14 involved in this trial, if that's true, please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel who
17 is aware of any bias or prejudice that you might have either
18 in favor of or against either the State or the defense?

19 (Juror responds.)

20 THE COURT: Yes, sir.

21 JUROR: My name is Chester Gist, Number 50.

22 THE COURT: Yes, sir.

23 JUROR: I believe anybody that uses drugs is a scum. I
24 don't, I don't---

25 THE COURT: Just say that again, sir.

1 JUROR: I would not like to be a part of this trial. I
2 really wouldn't.

3 THE COURT: I'm not sure I understand what he, what
4 he's saying.

5 Could you repeat that one more time?

6 JUROR: I don't like anyone who's involved with drugs
7 in any way.

8 THE COURT: So, you may be biased or prejudiced against
9 someone who would---

10 JUROR: Yes, sir.

11 THE COURT: ---have alleged to have done that?

12 JUROR: Yes, sir.

13 THE COURT: All right, sir. I'm gonna excuse you from
14 the trial of the case. If you'll have a seat.

15 Name and number again, sir?

16 JUROR: Christopher Gibbes, Number 50.

17 THE COURT: Thank you, sir.

18 Is there any member of this jury panel who may of been
19 a member of the Grand Jury that issued the indictment in
20 this case?

21 The indictment was issued on October 22nd of 2010.

22 If that's true, please stand.

23 (No response.)

24 THE COURT: Is there any member of this jury panel who
25 is a member of or a contributor to any group that has as

1 it's primary concern the promotion of law enforcement or
2 victims rights?

3 Those groups would include but not be limited to such
4 groups as Mothers Against Drunk Driving, Students Against
5 Drunk Driving, Citizens Against Violent Crime, the South
6 Carolina Troopers Association, the South Carolina Sheriff's
7 Association, or other similarly oriented organizations, if
8 that's true, please stand.

9 (Juror responds.)

10 THE COURT: Name and number please, sir.

11 JUROR: Robin Hood, Juror 67.

12 THE COURT: Yes, sir.

13 Are you a member of some organization such as that?

14 JUROR: I've made contributions to those.

15 THE COURT: Okay, sir. Would that affect your
16 impartiality in this trial?

17 JUROR: No, sir.

18 THE COURT: Thank you, sir. You can be seated.

19 Anyone else?

20 (No response.)

21 THE COURT: Now, does any member of this jury panel
22 know of any reason whatsoever why he or she should not serve
23 as a juror in this case with particular emphasis being
24 placed upon your ability to be both fair and impartial to
25 both the State and the defense, if that's true, please

1 stand.

2 (No response.)

3 THE COURT: Any additional questions from the State?

4 SOLICITOR HUNTER: Nothing from the State, Your Honor.

5 THE COURT: Any from the defense?

6 MR. HALL: No, sir, Your Honor. But I do have
7 something that I need to, I think we need to approach.

8 THE COURT: If you'll approach please.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 SOLICITOR HUNTER: Your Honor, if I may, just two
12 seconds?

13 (Pause.)

14 THE COURT: All right. Ladies and gentlemen, one of
15 the other witnesses has arrived, Deputy Hancock.

16 Sir, if you'll stand and face the jury panel.

17 (Witness complies.)

18 THE COURT: Thank you very much. You can be seated.

19 I'd ask questions earlier about him, if anybody was
20 related or had been related with, to him by marriage or if
21 you had any close personal or social relationship with him.
22 Since he's here, you can place a face with a name.

23 Does anyone have an answer to that question other than
24 what they told me earlier, if that's true, please stand.

25 (No response.)

1 THE COURT: All right. Well, I'm gonna declare that
2 the jurors are qualified to proceed in this case. I'm going
3 to ask that the clerk prepare a list of potential jurors in
4 the case.

5 while they're doing that, I always tell the juries the
6 story that when I first started practicing law back in the
7 1970's, we use to put names of jurors in little capsules,
8 and we had a barrel we rolled them around in, and State Law
9 required that the person that pulled the names out for the
10 jury had to be legally blind. Now we do it by random
11 selection by the computer. I like to tell jurors I guess
12 that means computers are legally blind. So, we allow them
13 to pick juries in this state.

14 But at any rate, she is generating a list of names.
15 Once that list is generated, we'll begin to call those names
16 in the order that they appear on the list starting at the
17 top and working down. If your name is called, I'm going to
18 ask that you come forward down front. They'll be a bailiff
19 standing down here, and come to that point, face the back of
20 the courtroom. At that time the attorneys will be in the
21 position, in the position to exercise their strikes in the
22 case.

23 Now, bring with you any personal belongings that you
24 have at this time, pocketbooks, whatever, because if you're
25 selected on the jury, you'll be going directly to the jury

1 box to my left and having a seat. So, bring up whatever you
2 have. You won't be going back to your seat if you're
3 selected.

4 All right. Strikes are five and five. We'll pick one
5 alternate.

6 Madam Clerk, you may proceed.

7 (WHEREUPON, a jury panel was selected at this time.)

8 THE COURT: We're selecting the alternate now.

9 State has one strike, defense has two.

10 (WHEREUPON, the alternate juror was selected at this
11 time.)

12 THE COURT: Any objection to the jury selection process
13 from the State?

14 SOLICITOR HUNTER: None from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. HALL: None from the defense, Your Honor.

17 THE COURT: All right.

18 (Pause.)

19 THE COURT: All right. Ladies and gentlemen, you've
20 been selected as jurors in this case. There's some pretrial
21 matters that I'm going to go over with the attorneys, and,
22 of course, it's already noon as well. So, we're gonna stop
23 as far as you're concerned, allow you to go to lunch, and
24 then we'll be calling you back later on.

25 When you return to the courtroom, you'll be taking an

1 oath. That oath is to decide this case based upon the
2 evidence that's presented and the law that's given to you
3 during the trial of the case.

4 For that reason, it will be highly improper for you to
5 try to gather any information about this case from any other
6 source outside of this courtroom. It would be a violation
7 of your oath as jurors to do so. For that reason, I'm going
8 to ask that you don't listen to, watch, or read any media
9 reports concerning this case. Don't try to gather any
10 information about this case from any source such as the
11 Internet or any other source concerning this matter.

12 Also, I'm going to ask you not to discuss this matter,
13 and I know you know very little about the case at this time
14 other than the nature of the charge and the people that
15 might be involved. But at any rate, I'm going to ask you
16 not to discuss the case even among yourselves or with anyone
17 else, and I'll do that throughout the trial of this case.

18 The reason for that is we've gone through a, an
19 exercise here to try to gather people in the jury who have
20 an open mind concerning this case, who don't have any
21 preconceived notions or ideas about the matters that are to
22 be tried, and I hope you realize even the most innocent
23 conversation that you might have among yourselves are with
24 someone else about the people involved or the nature of the
25 charges or something of that nature, that may begin to color

1 your ultimate decision in this case. And, again, you have
2 been selected as fair and impartial and open minded jurors.
3 I want you to maintain that status throughout the trial
4 until the time that I ask you to begin your deliberations
5 because, at that time, you will have heard all the arguments
6 of counsel, and you will have heard all the evidence, and I
7 will have charged you concerning the law to be applied to
8 the facts that you find. Only at that time will you have
9 all of the information in your possession with which to
10 begin to formulate an opinion concerning this case. So,
11 again, don't discuss it among yourselves or with anyone else
12 at anytime until I've advised you to begin your
13 deliberations.

14 Also, if anyone attempts to contact you concerning your
15 service on this jury panel, I'm going to ask that you report
16 those contacts to the Court. Jury tampering, in this state,
17 is a felony. And if someone attempts to contact you
18 concerning your service, I want that reported to this Court
19 because I can assure you I'll see that the appropriate
20 investigations are begun concerning that contact.

21 Now, I'm -- as I indicated, we're going to do some
22 things here with the attorneys before we actually begin the
23 trial of this case. So, I'm going to ask to be back in the
24 jury assembly room -- oh, excuse me. Not the assembly room,
25 but the jury room at two o'clock this afternoon. And at

1 that point in time, or shortly thereafter, we should be able
2 to begin the trial of the case.

3 Now, don't go back to the assembly room. Now that
4 you're on a jury, you'll be going to the jury room that's in
5 use for this case. As you leave, the bailiffs will show you
6 where the room is, and how to get back to that location.
7 So, come back to the jury room that's in use for this case.
8 Not to the assembly room, two o'clock.

9 Hope you have a good lunch and you're free to go at
10 this time.

11 Thank you very much.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Mr. Hall, at the side bar you raised an
15 issue concerning one of the jurors. I'll allow you to put
16 that on the record at this time.

17 MR. HALL: Yes, sir, Juror Number 50 stood up and said
18 I think anybody involved in drugs is scum, and I don't
19 believe you heard him, and he repeated, basically repeated
20 the same thing, and I think that would taint the jury making
21 that statement that anybody involved in drugs is scum in
22 front of the whole panel, Your Honor, and we'd ask that --
23 we just have to declare a mistrial and start over again.
24 That's just an inappropriate comment to make in front of the
25 panel.

1 THE COURT: Well, I believe the, the answer was given
2 to a question that had to do with whether or not there was
3 any bias or prejudice against people in this situation.
4 And, and, so, his answer was in direct response to the
5 question that I had asked. He stated his opinion, and, of
6 course, after that I asked if any of the jurors are present
7 knew of any reason whatsoever why they shouldn't serve in
8 this case, and particular, their ability to be both fair and
9 impartial to both the State and the defense. No juror
10 indicated that that comment had effected them in any fashion
11 out of the entire panel.

12 So, it's my finding that his answer was in response to
13 a question that I asked, and the jurors did not indicate
14 that there was any bias or prejudice that they had as a
15 result of his comment. So, therefore, I'll deny the motion.

16 MR. HALL: Thank you, Your Honor.

17 THE COURT: Now, I believe there's other motions that
18 you wanted to make, Mr. Hall.

19 MR. HALL: Yes, sir, there is.

20 The issue -- but this is a traffic stop on the
21 interstate, and it involves issuing a warning ticket after
22 field sobriety test, and then detention of some 15 or 16
23 minutes after that warning ticket. I have the case, State
24 versus Terry Tindall, that I'm passing up, and I believe
25 you've got it.

1 SOLICITOR HUNTER: I have a copy.

2 MR. HALL: And we make the motion to suppress the
3 evidence seized, the crack cocaine, and the pistol, as in
4 violation of the search and seizure, that it was an un,
5 unreasonable detention on the side of the road based on that
6 case, Your Honor. We'd ask that you suppress the evidence.

7 THE COURT: All right. The State's position.

8 SOLICITOR HUNTER: Your Honor, obviously we had spoken
9 earlier. We had the officer coming from the emergency
10 medical procedure. He'll be here shortly. We'll gladly put
11 him on the stand to describe what he did. The State's
12 position would be that recently released case by the Court
13 of Appeals State v. Provet.

14 Do you have that?

15 MR. HALL: No.

16 SOLICITOR HUNTER: Here's a copy for you.

17 THE COURT: Pass it up.

18 SOLICITOR HUNTER: Here's a copy for you, Your Honor.
19 It's dealing---

20 THE COURT: All right.

21 SOLICITOR HUNTER: ---with basically---

22 THE COURT: Go ahead.

23 SOLICITOR HUNTER: ---the same issue. In this case,
24 it's actually the same officer in Provet as the same officer
25 that's on this case, Your Honor. In that case, it says that

1 if you can determine the facts that lead to reasonable and
2 articulable suspicion, that investigative detention longer
3 than the initial stop is fine, and I believe the Tindall
4 case, they found the facts that were stated in that case
5 didn't rise to that level. However, I believe the facts in
6 this case will rise to that level.

7 THE COURT: All right. Why don't we go ahead and we'll
8 break for lunch at this time. We'll reconvene at let's
9 say -- you think he'll be here by one o'clock?

10 SOLICITOR HUNTER: Mr. Hancock's gonna go out and call
11 him right now, Your Honor, if you don't mind sitting on the
12 bench for 30 seconds.

13 THE COURT: I'll sit on 30 seconds and we'll find out
14 where he is. That sounds good.

15 SOLICITOR HUNTER: This is also the case Mr. Hall and I
16 approached last week. The chemist is in training in
17 Columbia. If the suppression hearing goes in our favor, we
18 figure we'll probably go through the day, and hope to call
19 her as early in the morning as possible as the judge will
20 allow, Your Honor.

21 THE COURT: Okay.

22 (Pause.)

23 SOLICITOR HUNTER: He'll be here at one o'clock.

24 THE COURT: All right. The Court will be in recess
25 till one o'clock. We'll convene for the hearing. Thank you

1 very much.

2 (WHEREUPON, Court was in recess for the lunch break.)

3 THE COURT: All right. Are you ready to begin?

4 SOLICITOR HUNTER: I believe so.

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

7 SOLICITOR HUNTER: The State would call Officer Dale
8 Owens.

9 THE COURT: Sir, come forward to my left and be sworn.

10 DALE OWENS, having been first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat please and state your name for
13 the record.

14 WITNESS: Dale Owens.

15 THE COURT: Your witness, Mr. Hunter.

16 DIRECT EXAMINATION

17 BY SOLICITOR HUNTER:

18 Q Officer Owens, would you please go through your history
19 as a Sheriff's Office employee?

20 A With a Sheriff's Office employee would be very brief,
21 but for about the last year and a half. Prior to that, 17
22 years -- for 17 years I was with the South Carolina
23 Department of Public Safety assigned to the Highway Patrol.
24 Twelve years of that I was assigned to the Aggressive Crime
25 Enforcement Unit. Of those 12 years, nine of those years I

Dale Owens - Direct examination
by Solicitor Hunter

1 was the first line supervisor for the Aggressive Criminal
2 Enforcement Unit in the Upstate. Prior to my being a state
3 trooper, I had two years of law enforcement experience with
4 the City of Columbia with the Airport Police Department.

5 Q So, how, how many years total have you been a police
6 officer?

7 A Going on 20 years.

8 Q And how many years of that have involved interdiction?

9 A Fourteen.

10 Q Can you please explain to the Court what interdiction
11 is?

12 A Interdiction is -- it's actually the apprehension and,
13 and location of criminal, criminals being whether it be drug
14 inter, interdiction, any type of criminal interdiction,
15 large sums of money, illegal money, kidnapping, weapons
16 charges, anything that goes on in the interstate. We're
17 assigned to the interstate --

18 Q So---

19 A -- enforcement.

20 Q -- any major crimes on the interstate?

21 A Yes, sir.

22 Q Okay.

23 A Murders. I mean we've caught all kinds. It's --.

24 Q Little bit of everything?

25 A It's everything. It's everything and it even involves

Dale Owens - Direct examination
by Solicitor Hunter

1 simple traffic violations.

2 Q And what type of experience do you have in specifically
3 drug interdiction?

4 A In drug interdiction, for the last 14 years I've
5 received over, well over a thousand hours in advanced
6 criminal interdiction. I'm an instructor for NHTSA and for
7 the South Carolina Criminal Justice Academy in criminal
8 interdiction, in criminal patrol techniques. Been certified
9 as a master interdictor through the National Criminal
10 Enforcement Association. Like I said, over, over a thousand
11 hours just in advanced training in criminal interdiction,
12 criminal detection, and drug interdiction detection.

13 Q Okay. Now, do you remember June 30th, 2010?

14 A Yes, sir, I do.

15 Q And what were you doing on that date?

16 A I was working for the Spartanburg County Sheriff's
17 office. We were working on the evening patrol that evening.
18 My supervisor was working with me, was actually riding with
19 me that evening, Deputy Hancock, Corporal Hancock. It was
20 one week that we were working night shift --

21 Q Who else was on---

22 A -- on the interstate?

23 Q Who else was on your team, you said the Interstate
24 Criminal Enforcement Team?

25 A Currently assigned to my team, it's myself, which is

Dale Owens - Direct examination
by Solicitor Hunter

1 led by Corporal Ken Hancock, our K-9 handler, Deputy Jason
2 Carraway, and then we have another interdiction officer,
3 Donnie Gilbert, who's a deputy as well.

4 Q And who were with you on that night?

5 A Actually that evening -- all four of us were working
6 that evening in close proximity on the interstate. But
7 actually that night, Corporal Hancock was riding with me on
8 that evening.

9 Q Okay. And where were you stationed or located that
10 evening?

11 A On that evening we were working the 85 corridor from
12 Spartanburg County to Cherokee County. At that time -- at
13 the time that we observed Mr. Moore, we were around the
14 lower end of the county on 85 around the 60-mile marker
15 sitting stationary observing traffic at that time.

16 Q Going which way?

17 A Northbound.

18 Q Going -- so, you were on the northbound side?

19 A That's correct.

20 Q Okay. And that's within Spartanburg County?

21 A Yes, sir, it is.

22 Q Okay. Approximately 1:10 in the morning, what did you
23 observe?

24 A Initially we observed Mr. Moore operating at above the
25 posted speed limit. At that area of the interstate is, it's

Dale Owens - Direct examination
by Solicitor Hunter

1 well posted, 60 miles per hour. When we observed him, my
2 visual estimation was, was, was above 70. We pulled out on
3 him, and by the time we got to the rear of his vehicle or
4 pulled up behind his vehicle, he had maintained a steady
5 speed of 70 miles per hour, which was still well above the
6 posted speed limit, but he was maintaining 70 miles per
7 hour. We paced him at that speed.

8 During that time that we were pacing him, he actually
9 drove over the white dotted line. He failed to maintain his
10 lane as well.

11 Q Can you explain to the Court what pacing means?

12 A Pacing, it's when -- it's, it's a way to measure speed.
13 It's what we're trained, we're trained in the Highway
14 Patrol. It's when you're -- you've maintained the same
15 distance behind another vehicle for a period of time judging
16 your speed -- if you're, if you're operating a vehicle with
17 a certified speedometer, which we are, which we do, all our
18 vehicles are certified speedometers, have certified
19 speedometers, and are calibrated, we use that for our
20 measuring device. In maintaining the same speed and
21 distance, than you determine what speed it is.

22 Q And you determined his speed at that point to be?

23 A Seventy miles per hour.

24 Q Okay. So, well above the 60 mile per hour that's
25 posted?

Dale Owens - Direct examination
by Solicitor Hunter

1 A That's correct.

2 Q Okay. And any time between -- and to your knowledge,
3 if you have knowledge of this, between the state line and
4 Georgia, to the 63-mile marker, is it ever 70 miles an hour?

5 A No, sir, it's not. It's 70 in Georgia. As soon as you
6 cross into the State of South Carolina at the Oconee line,
7 the State, South Carolina state line, it turns to 60.

8 Q Okay.

9 A Sixty-five. At 65 down there actually.

10 Q Okay. And, in fact, it doesn't turn 70 until, back to
11 70 miles an hour until what mile marker?

12 A The 68-mile marker in Spartanburg County.

13 Q Okay. When you noticed the, these traffic violations,
14 what did you do?

15 A I then initiated -- I, of course, conversed with Deputy
16 Hancock or Corporal Hancock at that time. Stated we were
17 gonna stop the vehicle, and then I initiated the blue
18 lights. At that time, the camera came on and we proceeded
19 to stop Mr. Moore for the moving infractions.

20 Q Okay. When you said the camera came on, can you speak
21 a little bit about your camera system?

22 A It's probably one of the oldest systems, systems we
23 have. It's, it's VHS recorded. It's a mobile vision. It's
24 one of the newer, one of the earliest models of the
25 Mobilevision that we have, and it's act, it's activated one

Dale Owens - Direct examination
by Solicitor Hunter

1 of two ways. Either by when you turn on the blue lights it
2 comes on or when you activate your wireless mic it will come
3 on.

4 Q Okay. Have you had issues with your video?

5 A Yes, sir, I have.

6 Q What type of issues have you had?

7 A I -- the microphone has issues with cutting in and out.
8 Sometimes it doesn't come on. The only time you can really
9 know that it does that is when you go to review the
10 videotape. You don't know at the time. The indicator light
11 still comes on and everything, but it's had issues several
12 times. It's been taken to Shepherd's to be fixed and --.

13 Q Have you attempted to fix these issues?

14 A On several occasions.

15 Q And how did you---

16 A Two that, two that I've done since I've had the car.
17 But I don't know prior.

18 Q And how, how are you suppose to go about that?

19 What's the policy of the Sheriff's Office?

20 A Well, I don't, I don't know what the policy is. I
21 know -- I can tell you what I'm suppose to do is notify my
22 supervisor. My supervisor, supervisor then notifies or
23 tells me where to go with it. At that time, I tell --
24 actually it comes from Sergeant Bradley, First Sergeant
25 Bradley who advises us to, where to take it. And, on both

Dale Owens - Direct examination
by Solicitor Hunter

1 occasions, he's told me to take it to Shepherd's.

2 Q Okay. And after you took them there, it worked for a
3 period of time and then broke again?

4 A As far as I know, yes, sir.

5 Q When I say broke, what, what do I mean?

6 A Oh, well, you just don't hear audio. It doesn't, it
7 doesn't -- something's happening with the receiver in the
8 box, in the vault with the camera system is that---

9 Q Obviously you're not an audio video expert.
10 That's why you take it somewhere?

11 A Exactly.

12 Q Okay.

13 A It's in a secured box. I can't -- I don't get into
14 that.

15 Q You said it was a VHS system?

16 A Yes, it is.

17 Q How do you copy that to be able to play it in court?

18 A We actually have a VHS to DVD recorder in our office
19 and we record it on that.

20 Q So, explain how it goes from your car to---

21 A I take the VHS, I take the VHS out of my patrol car. I
22 take it inside to our office. We have a VHS to DVD
23 recorder. I place the VHS in the DVD recorder and I
24 place -- it's a blank CD or DVD in the recorder in the
25 recording side, and I put it in and I mash copy.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q Have you -- did you make a recording that night or did
2 your vehicle make a recording that night?

3 A Yes, it did.

4 Q And were you able to retrieve that, that recording?

5 A Yes, I did.

6 Q Was there anything wrong with it?

7 A The audio portion of it.

8 Q But, but you still see video in it?

9 A That is correct.

10 Q Okay. And what did you do with that vide?

11 Did you do any of that procedure you just---

12 A I did. I did.

13 Q Okay. Let me show you---

14 A And then when I, when I observed that the audio was
15 out, my first thing was to advise the supervision.

16 SOLICITOR HUTNER: Robert, do you have any objection,
17 for purposes of this hearing, to admit this into evidence?

18 MR. HALL: No objection for this hearing.

19 THE COURT: Without objection, it will be marked for
20 purposes of this hearing.

21 (WHEREUPON, the DVD was marked as State's Exhibit No. 1
22 and received into evidence for purposes of this hearing
23 only.)

24 Q I'm gonna go ahead and start showing a little bit of
25 it.

Dale Owens - Direct examination
by Solicitor Hunter

1 A Yes, sir.

2 (WHEREUPON, a portion of the video was played at this
3 time.)

4 Q What did you first view after you noticed him going
5 70 miles an hour, and, and failure to maintain lane?

6 What, what did he do next once you turned your blue
7 lights on?

8 A Well, initially when I observed him, when he passed us
9 at the 60, he was in the far right-hand lane.

10 Q When you say the far -- so, he's in the slow lane---

11 A Right, we call that the number---

12 Q ---the lane of travel?

13 A We call that the number three lane. From the center
14 wall is number one, two, three. Initially when he passed he
15 was in the number three lane.

16 Q Okay.

17 A All right.

18 Q Where did he go from there?

19 A Then he went to the number two lane.

20 Q Okay.

21 A All right. Which that's the lane he's in now.

22 Q Okay.

23 A That's when we blue lighted him. When we blue lighted
24 him, you see he first initially turns on his left turn
25 signal, and then turns on his right turn signal like he's

Dale Owens - Direct examination
by Solicitor Hunter

1 gonna go left and then he's gonna go right.

2 Q Okay. And then, at this point in the video, I think we
3 started here for about one second. I couldn't get it all
4 the way back. It keeps wanting to play.

5 Is this -- your blue lights are on on this point?

6 A Yes, they are, and that's what activated the camera.

7 Q Okay. If you could go ahead and let it play for about
8 two minutes.

9 (WHEREUPON, another portion of the video was played at
10 this time.)

11 Q Actually go ahead and pause it right here.

12 Okay. Now, we're 52 seconds into the video being
13 turned on.

14 As you said, it turns on by the blue lights?

15 A Right.

16 Q What did you notice when pulling him over?

17 A Initially, like I said, initially his intent was to go
18 left or that's the way it appeared his intent was because
19 you see the vehicle move left. You see him turn his left
20 turn signal on. He appears to move left and then he moves
21 right. He turns his right turn signal on and then takes him
22 more than a, a longer than average time to pull over and
23 come to a stop. Actually, with my training and experience
24 and times like this, this, this appeared to me like he was
25 preparing to flee.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q And what did the turning, the turn left signal indicate
2 to you when he's obviously moving to the right, right-hand
3 side?

4 A Well, I mean he, he may be preparing to flee. I don't
5 know what he, I don't know what -- we'd have to ask him what
6 his intent was. I don't know what it was. But that --
7 those -- this type of behavior is consistent with the people
8 that we've had in the past run from us.

9 Q Okay. Now, did you use your spotlight?

10 A I did.

11 Q And how many times in your career have you had to use a
12 spotlight?

13 A I, I don't make it -- I don't generally use the habit
14 of having -- when I was on the patrol I didn't have a
15 spotlight---

16 Q Okay.

17 A ---in the car. When I was assigned to the aggressive
18 criminal enforcement, I didn't have a spotlight on the
19 vehicle that I had, and probably -- and while I've been with
20 the Sheriff's Office, I may of used it twice. I don't
21 generally use that because it really illuminates me when I
22 get out of the car and go up to the vehicle. But, you know,
23 in this case, I went ahead and illuminated him because I
24 wanted him to know I was there, like I said, because it took
25 him so long to pull over. It wasn't what's consistent with

Dale Owens - Direct examination
by Solicitor Hunter

1 the normal mode of public when we blue light somebody.

2 Q Did you notice anything about the back of the vehicle
3 that indicated anything to you?

4 A The back of the -- I -- when he stops, he leaves the
5 turn signal on, and that's -- I mean that's an indicator of
6 us that really -- what's happening, just like we're trained
7 in law enforcement, and the best analogy I can use when I
8 say this, he's, he leaves the signal on and that's one of
9 our criminal indicators. When you leave the signal on,
10 basically your heart rate's gotten so, so accelerated that
11 you've lost audio, and just like when we're getting to --
12 when officers are in shootings, a lot times they can't tell
13 you how many times they shot. They don't remember how many
14 times they shot for the simple reason their heart rate is so
15 fast that they lose audible hearing and that's a fact.

16 Q All right. Could you, at this point, tell whether the
17 car was in park or drive?

18 A No, I can't tell at this time. It appears that his
19 foot is still on the brake. So, it could be in drive.

20 Q Okay. So, at this point you're still worried about him
21 fleeing?

22 A Yeah, it takes me a little longer to get out of my
23 vehicle and, and walk up there, but I'm more hesitant to
24 walk up there than normal if you -- it took me a little
25 longer to get out of my vehicle and walk up there because I

Dale Owens - Direct examination
by Solicitor Hunter

1 am concerned that he may put it in drive or keep it in drive
2 and decide to take off cause that's a practice of, of
3 fleeing felons.

4 Q Can you go ahead and play one more minute?

5 MR. HALL: Does that show the time up there?

6 SOLICITOR HUNTER: It's -- yeah, I just have to move
7 this.

8 All right. You can go ahead and play it. It should be
9 about 1:42, 1:43.

10 (WHEREUPON, another portion of the video was played at
11 this time.)

12 Q All right. When you first approached the car, why do
13 you approach the passenger side?

14 A That's the way I train officers, and that's, that's the
15 best and the safest practice especially when you're working
16 on an interstate like, like 85, as busy as it is, that's our
17 safest practice and that's the way I train officers in doing
18 criminal patrol, to walk up on the passenger side. You see,
19 you see a lot more and there's many different safety aspects
20 of why you should walk up on the passenger side.

21 Q Okay.

22 A It's, it's what we do 95 percent of the time. The only
23 time I don't walk up on a passenger side is if I'm in a
24 parking lot or if they pull up against that concrete wall
25 over there, which sometimes happens as well.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q Okay. What was Mr. Moore doing when you approached?

2 A He was actually talking on the phone.

3 Q Okay. Did he hang up when you first approached?

4 A No, he did not. I had to ask him to hang up.

5 Q Okay. Did that indicate anything to you?

6 A Yes, that's, that's consistent as well. On many times
7 that I've been involved in criminal cases, that, that's been
8 consistent. Most people, when, when you stop them, most
9 innocent public people hang up the phone when you walk up,
10 but prior to even getting up there. Now, you stop people,
11 and they'll be on the phone, but they generally hang it up
12 before I ever get up there. He, he stayed on it, was on it
13 even while I was at his passenger window.

14 Q Specifically, with drug trafficking cases, what does
15 that indicate?

16 A Well, a lot of times they're, they're having to answer
17 to a higher person, and they're having that higher person on
18 the phone hearing what's happening. Sometimes they have an
19 auto answer. Sometimes they leave -- they don't even hang
20 the phone up, but they let them know that, you know, what's
21 happening or if -- and in, in some cases, if they're gonna,
22 if they're deciding they're gonna, it's gonna be a foot
23 pursuit, they let them know the area that they're in just in
24 case they get separated from communication so somebody can
25 come and get them as well.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q What is an escort vehicle?

2 A An escort vehicle is a vehicle that's in the drug
3 organization, what we consider in the drug organization that
4 is sometimes a decoy or it's just along for the purposes of,
5 of security of the load, whether it be for the load or for
6 the person that it's going to. So, it generally tips people
7 off to or the organization to understand that hey, you know,
8 law enforcement's alerted, they've stopped the vehicle, hey,
9 if it proceeds on, you know, it might not be something you
10 want to, to be involved in because it might be a set-up,
11 and, you know, that's why they do escort vehicles. And then
12 you have decoy vehicles, and then you have protection
13 vehicles and all, which all those work basically along the
14 same lines except they all have a specific function within
15 that organization. Either protect the load in one way or by
16 decoying or, you know, getting in, getting involved in an
17 altercation with law enforcement.

18 Q Did you have any indication that this could be an
19 escort vehicle or involved with an escort vehicle?

20 A I had no indication at the time, no.

21 Q Okay. Did talking on the phone---

22 A Well, it raises your senses. I mean, I mean that's
23 consistent with criminal behavior. I mean that's an
24 indicator. It's not, it's not a tall tail sign (sic) that
25 that's what's happening.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q I understand.

2 A But that's an indicator of what could be happening,
3 yes.

4 Q When you approached the vehicle, how was the defendant
5 seated?

6 A He was actually slightly slumped in the driver's seat
7 behind the steering wheel.

8 Q Now, when you approached the vehicle, did you smell
9 anything coming out of the vehicle?

10 A Yes, I did. I actually smelled the odor of alcohol
11 coming from inside the vehicle, and then I even, just prior
12 to this being stopped, you could see me, I actually gave a
13 signal to Corporal Hancock that I smelled alcohol. I was
14 actually showed the drinking glass.

15 Q Can you make that -- show the judge exactly what you---

16 A I just tilted my hand up like I was drinking a drink.

17 Q Okay.

18 A I mean that's -- those are signals that we normally use
19 in law enforcement especially with our team so to let the
20 other person know, without hollering back there to Deputy
21 Hancock or Corporal Hancock, hey, he's drinking, you know.
22 We don't always -- we just give signals so that, so that the
23 person that we're dealing with doesn't always know what,
24 what, what we see or hear or smell.

25 Q Now, does the odor of alcohol reflected anyway on drug

Dale Owens - Direct examination
by Solicitor Hunter

1 trafficking?

2 A It's several, several cases that I've been involved in,
3 a lot of the people have been drinking alcohol and I mean
4 I've even had them tell me it's, it calms their nerves, what
5 they think calms their nerves. But I mean and that's
6 only -- I mean and that's a fact. I mean it's a depressant.
7 I mean that's what it does, that's what it's designed to do.
8 It calms some people. Now, some people, it doesn't have the
9 opposite effect, but many people it, it calms them.

10 Q Now, your first communication with Mr. Moore, what did
11 you state?

12 A I'm sorry?

13 Q Your first communication with Mr. Moore, what did you
14 do?

15 A I actually told him -- I actually identified myself,
16 Deputy Owens with the Spartanburg County Sheriff's Office,
17 and then I tell them the reason that I stopped him. And it
18 was at that time -- I told him that the reason that I
19 stopped him, I told him that, you know, I observed him
20 speeding. He stated that he thought the speed limit was
21 70 miles per hour. I then corrected him and told him that
22 it was -- it was in a well posted 60 mile per hour zone. He
23 didn't -- he told me he wasn't aware of that.

24 Q Okay. Did he tell you anything else about the failure
25 to maintain lane?

Dale Owens - Direct examination
by Solicitor Hunter

1 A He, he started into a conversation about a car was
2 following him real close. There was no other vehicles
3 around him at the time. When I, when I went to pull him,
4 there was nothing around him, and you'll actually, if you
5 watch, if you go back and watch the video, a car doesn't --
6 it's actually -- the first vehicle to pass him is a truck,
7 to pass us is a truck.

8 Q Uh-huh. (Affirmative).

9 A There, there wasn't another car around him when I was
10 observing him. Now, what happened five miles or six miles
11 down the road I don't know.

12 Q Well, five or six miles is not even Spartanburg County,
13 correct?

14 A Exactly.

15 Q Okay. You can go ahead and play it till he exits the
16 car. That will be the 2:45 mark.

17 (WHEREUPON, another portion of the video was played at
18 this time.)

19 Q All right. From -- I believe at the 1:41 mark, you
20 made the drinking signal that you testified to?

21 A Yes, sir.

22 Q What was the defendant's behavior in-between that time
23 or actually the whole time that you, you had stopped him?

24 A Well, during that time, you know, like I said, he was
25 slightly slumped at the time, and then while I was talking

Dale Owens - Direct examination
by Solicitor Hunter

1 to him, I, you know -- and I told him the reason for the
2 stop, and then he tried to explain, you know, his action and
3 trying to justify what, what he was doing. During that
4 time, you know, I also asked him for his driver's license,
5 registration information. He advised me it was a rental
6 car. He provides me with a rental agreement, and then his
7 driver's license. And when he did that, I noted that his
8 hand was heavily shaking. It's just something we look for
9 when they hand me the driver's license and their
10 registrations. It's, it's just an indicator that we look
11 for, and basically we're measuring his nervousness.

12 During that time, I also looked at, you know, the
13 carotid artery in the neck and his breathing, you know,
14 whether it's -- the rise and fall of his chest is fast and
15 stuff like that. And, at that time, I noted, and in the
16 report I even showed that I noted that he was overly
17 nervous. And when I say that, his hand was heavily shaking,
18 and his breathing was accelerated, and the pulse in his neck
19 also appeared to be elevated and pounding, and that, and
20 that would also be supported by leaving the turn signal on.
21 I mean, he's racing right now from whatever reason. And
22 then -- so, then I---

23 MR. HALL: Your Honor, I'm gonna object. He's
24 charging -- he keeps -- he racing, he's this. If he will
25 describe instead of draw conclusions. He's -- I don't know

Dale Owens - Direct examination
by Solicitor Hunter

1 what he means by racing at this point in whatever he's
2 saying. But I don't know what -- but if he wants to say
3 what he observed I think it will be all right, but---

4 THE COURT: Well, I'm gonna let him testify as to what
5 he observed and he described it as racing. You can ask him,
6 on cross-examination, exactly what that means.

7 Overruled.

8 MR. HALL: Thank you.

9 A And then, and then, at that point, I asked him to exit
10 the vehicle. He's already admitted that he's been drinking
11 some.

12 Q So, you, you had asked him if he had been drinking?

13 A Yes, I did.

14 Q Because of the odor of alcohol in the vehicle?

15 A That's correct.

16 Q What did he admit to you?

17 A That he had had a couple of drinks.

18 Q Okay.

19 A And that was his exact word, that he had had a couple.

20 Q Okay. And then, at that point, I asked him to step out
21 of the vehicle and I motioned to Corporal Hancock to watch
22 him as he exits the vehicle. As you observed when he gets
23 out the vehicle, which we just observed, he gets out of the
24 vehicle, and for whatever reason, whatever his attention or
25 his nervousness or whatever, he actually gets out of the

Dale Owens - Direct examination
by Solicitor Hunter

1 vehicle and starts to walk to the back and leaves the door
2 open.

3 Q Okay. Did he try to pick up anything as he was exiting
4 the vehicle?

5 A His cell phone.

6 Q And why would that raise suspicion in your---

7 A Well, there's -- that's -- that, again, is consistent,
8 in many cases, with criminal behavior when people decide to
9 flee. It's their, it's their device for communication.

10 Q Would he have any reason to use---

11 A We don't, we do allow them to use the phone on a
12 traffic stop. That's just our -- that's just safety. It's
13 officer safety issues. But we do note when somebody picks
14 up their phone, and we, we immediately tell them and
15 instruct them, leave your phone in the car.

16 Q So, you didn't advise him to pick up his phone?

17 A No, I did not.

18 Q Okay. And he'd have no reason to use it when he was
19 outside the vehicle speaking with you?

20 A Well, I wouldn't think so.

21 Q Okay.

22 A We wouldn't let him use it if he, if he had of, a
23 reason for it.

24 Q If you would go ahead and leave it playing for a little
25 bit.

Dale Owens - Direct examination
by Solicitor Hunter

1 (WHEREUPON, another portion of the video was played at
2 this time.)

3 Q You can go ahead and stop it. That's at the 4:14 mark.

4 Now, once he exits the door, you said he leaves the
5 door open, what is the next action?

6 A He starts -- he leaves the door open and he begins to
7 walk back towards us, and then he goes back and he shuts his
8 door.

9 Q Okay. Did he light a cigarette?

10 A As he walks back, yes, he begins to put a cigarette in
11 his mouth.

12 Q Did that indicate anything to you?

13 A Well, I, I know that -- well---

14 Q Just based upon your training, what, what does that---

15 A Based on training, you know, people light cigarettes a
16 lot of times on traffic stops to calm their nerves. It's,
17 it's a, it's a, it's a drug that calms their nerves and
18 that's the purpose for lighting the cigarette.

19 Q Okay. And then you begin speaking with them?

20 A I did.

21 Q Okay. What do you and Mr. Hancock do once he gets back
22 right there in front of your vehicle?

23 A We ask him -- I generally ask him can I pat him down
24 for weapons or can I search his person to make sure he
25 doesn't have any weapons. That -- Corporal Hancock, many,

Dale Owens - Direct examination
by Solicitor Hunter

1 on many times says can I search you for weapons, and he, he
2 more than happily he, he gave us no problems at that time
3 and said yes, you can. He even raised his hands
4 voluntarily. We don't tell him to raise his hands. He
5 actually raises his hands and then he actually puts them on
6 the top of his head and he starts scratching his head for
7 whatever reason.

8 And then, you know, during that time, Deputy Hancock --
9 I actually patted his pocket down. I felt what I perceived
10 as a large sum of wadded money in his pocket, and I left it
11 there, and then Deputy or Corporal Hancock proceeded in
12 checking his pockets, then he pulled out the wad of money,
13 and then puts it back in his pocket. During that time,
14 Mr. Moore also, after he scratches his head, he continues to
15 keep his hands -- this is what we call the felony position.
16 He's not asked to put his hands on his head or anything. At
17 no point in time did we ever ask him to raise his hands or
18 put his hands on his head or anything like that.

19 Q Okay. Now, you indicated that you felt a large wad of
20 money. I believe we just saw it on the video. Mr. Hancock
21 took it out of his pocket.

22 A Yeah.

23 Q How big would you say it was?

24 A Well, it's more, more than folded money than I carry.
25 I would, I would said it was at least, you know, bordering a

Dale Owens - Direct examination
by Solicitor Hunter

1 thousand dollars.

2 Q Okay. And in speaking with Mr. Moore during this
3 traffic stop, did you ask him about his employment?

4 A I did.

5 Q And what did he indicate to you?

6 A That he was unemployed.

7 Q Okay. And, so, he had a large amount of cash in his
8 pocket and he was unemployed?

9 A Yes, sir.

10 Q Okay.

11 A That would be reason for alarm as well.

12 Q Now that he's out of the vehicle and you're not on the
13 passenger side, did you smell anything coming from Mr.
14 Moore?

15 A Yes, I did. I continued to smell the odor of alcohol.
16 A lot of times, when you're on the passenger side, you're
17 not quite sure if it's coming from the actual occupant or if
18 it's coming from a spilled beverage in the vehicle, which
19 happens a lot of times, and that's, you know, that's another
20 reason you get them out. And then when you're in close
21 proximity to them, as we are here, you know, I continue to
22 smell the odor of alcohol.

23 Q Okay. Did you ask him, again, how much he had to
24 drink?

25 A I did.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q And what did he---

2 A Two beverages.

3 Q ---reply back to you?

4 A Two beverages.

5 Q Okay. If you will go ahead and let it play for a
6 while. We can go ahead and let it play until he starts
7 field sobriety tests.

8 (WHEREUPON, another portion of the video was played at
9 this time.)

10 SOLICITOR HUNTER: If you pause it for a second.
11 What did you notice right there?

12 A Well, I mean he just, he just stuck his hand in his
13 pocket, he's looking down. It's -- this is what we call the
14 defeated look. I mean it's -- I mean that's just a nervous
15 energy that he's doing. He's trying to dissipate his
16 nervous energy and by sticking his hands in his pocket, and
17 you'll see him during, at several times right here, he's
18 gonna raise his hands and he's gonna assume the felony
19 position again, you know. He's gonna do all kind of things
20 to try to dissipate that nervous energy.

21 Q At any time did you or Corporal Hancock ever tell him
22 anything to where to put his hands?

23 A Well, we tell them not to put their hands in their
24 pockets.

25 Q But you don't tell them where to place their hands?

Dale Owens - Direct examination
by Solicitor Hunter

1 A No.

2 Q Just not in their pockets?

3 A Just not in your pockets. Even after we pat them down
4 or search their person, we still tell them not to put their
5 hands in their pocket.

6 Q In fact, what pocket is he going into?

7 A That right front pocket where the money was located.

8 Q Okay. Actually one more, one more thing.

9 Just throughout this entire video, that right turn
10 signal on the vehicle remains on?

11 A It's still on.

12 Q Okay.

13 A See and now his hands are going back up and above his
14 shoulders.

15 Q And you didn't tell him to put it there?

16 A No, sir, I did not.

17 Q Okay.

18 A Now he's checking his pocket again. It was very
19 consistent with nervous behavior.

20 Q And what are you doing at this point?

21 A Looking at the rental agreement, and actually we're
22 talking about the rental agreement because his name is not
23 on the rental agreement.

24 Q Okay. And is he explaining his story?

25 A Yes.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q Okay. Did you ask him where he's coming from?

2 A Yes, I did.

3 Q And where was he coming from?

4 A He stated Lawrenceville, Georgia.

5 Q And are you aware of where Lawrenceville, Georgia is?

6 A Very aware of it.

7 Q Where, where is it located?

8 A It's actually a suburb of Atlanta, Georgia.

9 Q Okay.

10 A Which is a known drug source, major drug source city.

11 Q And how do you know that?

12 A In the 14 years that I've been doing drug interdiction
13 on Interstate 85, I would say 95 percent of the drugs that
14 we catch are coming from the Atlanta source.

15 Q Okay. You talked about a rental agreement.

16 If you want to go ahead and pause it for a second.

17 MR. HALL: May I have a moment, Your Honor?

18 THE COURT: Yes, sir.

19 MR. HALL: I've just not seen it. I was wondering if
20 it was still here.

21 (Pause.)

22 MR. HALL: No objection for the purposes of this
23 hearing.

24 THE COURT: All right. It will be marked as an exhibit
25 for purposes of the hearing.

Dale Owens - Direct examination
by Solicitor Hunter

1 (WHEREUPON, the rental agreement was marked as State's
2 Exhibit No. 2 and received into evidence for purposes of
3 this hearing only.)

4 Q I show you what's been marked State's Exhibit 2.

5 Do you recognize this document?

6 A Yes, sir, it's the actual rental agreement that was
7 provided to me by Mr. Moore on that date and time.

8 Q Okay. Did Mr. Moore actually rent the vehicle?

9 A No, he did not.

10 Q Okay. And what, what about the, the rental vehicle?

11 A Third party rental vehicles are consistent in many many
12 many cases with criminal activity. It's, it's probably one
13 of the largest indicators of criminal activity that we see
14 on the interstate in criminal patrol, and you can obviously
15 see on this rental agreement that it's -- they're several
16 things on this rental agreement that bring attention to me.

17 One, the initialing that he didn't rent the car, and
18 the person that rented the car isn't in the car. I mean to
19 say that it's a third party rental -- a lot of times you
20 have people that rent the car that are actually in the car.
21 That---

22 Q Like a husband rents a car, but his wife is driving it?

23 A Right, and, and that would be consistent in many cases
24 with the normal motoring public, but this -- the renter's
25 not present in the vehicle, all right, and on top of that,

Dale Owens - Direct examination
by Solicitor Hunter

1 you have that the operation of the vehicle is only to be in
2 South Carolina when he's telling us that he rented the
3 vehicle -- well, it's rented in Georgia, and he's going to
4 North Carolina to visit his grandmother, you know.

5 So, that's another, that's another thing. It does have
6 on here that Mr. Moore is an additional driver. But like I
7 said, a lot of times that's, that's what's consistent with
8 the criminal behavior, and you also notice that the vehicle
9 was rented at four o'clock, I'm sorry, that's when it's
10 gonna be returned. I'm sorry. So, it was still rented at
11 four o'clock in the morning or in the afternoon. 3:59 on
12 the 29th.

13 Q On the 29th?

14 A Uh-huh. (Affirmative).

15 Q Where did he say he was going?

16 A Morgan -- Marion. I'm sorry.

17 Q Specifically what was he---

18 A Marion.

19 Q What was he gonna do there?

20 A He stated he was going to see, visit his grandmother.

21 Q What, what time is this traffic stop occurring?

22 A One o'clock in the morning.

23 Q And he admitted to drinking to you?

24 A Yes, sir.

25 Q Okay. Did that indicate anything to you?

Dale Owens - Direct examination
by Solicitor Hunter

1 A Well, I mean -- yes, it's several. I mean I can't
2 say -- I don't know.

3 Q Well, not specifically.

4 A Yeah, I mean---

5 Q But generally?

6 A Generally, I mean, you're going -- you're not gonna go
7 visit your grandma at one o'clock in the morning or most of
8 the, most---

9 Q The general public.

10 A General people are, are not gonna go visit grandma at
11 one o'clock in the morning. Generally, I'm not -- I don't
12 encounter people who are going to visit grandma at one
13 o'clock in the morning that have been drinking on top of
14 that, and then, you know, if he rented this car -- if this
15 car was rented at 3:59 in the, in the afternoon, at four
16 o'clock, why didn't he go earlier. He doesn't have a job.
17 So, why didn't he go -- why didn't he proceed there earlier
18 prior to drinking on top of that, you know.

19 I mean it, it raises several questions I mean -- but
20 only Mr. Moore can answer as to the reason why.

21 Q Now, this position -- watch out there.

22 This position -- this is that same position you were
23 speaking of earlier?

24 A Yes. Now, he's -- instead of raising his hands, he's
25 placed his hands behind his back. That's what we call

Dale Owens - Direct examination
by Solicitor Hunter

1 assuming the position of arrest.

2 Q Okay. Well, arrest position.

3 You can go ahead and keep playing.

4 Now, what are you writing right there?

5 A At this point I made be writing notes, notes on, on my
6 pad. Writing -- I may even be writing his name on a warning
7 pad. I don't -- I really can't tell. I take notes
8 especially when I'm doing, when I'm gonna do field sobriety
9 tests. I just take notes on what the test that I perform
10 and their results and conclusion.

11 Q So, you decided, at this point, you're gonna give him a
12 field sobriety test?

13 A Oh, yes, sir.

14 Q And why did -- why is that?

15 A Well, I mean because it's our obligation, it's our duty
16 to make sure that he's not impaired I mean, and if -- that
17 he can proceed on.

18 Q And what specific factors led you to believe that you
19 needed to---

20 A Well, I mean his driving, number one. Then, number
21 two, the odor of the alcohol, and it still being consistent
22 on his, on his person when I've gotten him out of the
23 vehicle.

24 Q And it's, it's around this point that you're asking
25 about his employment?

Dale Owens - Direct examination
by Solicitor Hunter

1 A Yes, some time during this time, yes. Now he's
2 explaining to me the driving, and the reason for the
3 violation or what he did.

4 Q You're about to fall off again.

5 A Can I move down there so I can see the---

6 Q If the judge doesn't mind.

7 THE COURT: That's fine. You can step up -- you can
8 stand up, if you'd like.

9 WITNESS: I just can't see around the corner of the
10 bench.

11 THE COURT: That's okay.

12 A And you, and you still see he's hanging his hands from
13 his shoulders and stuff like that. That's just consistent
14 with nervousness.

15 Q At that point you look back and---

16 A Viewed the tag information to make sure it's consistent
17 with what's on the rental agreement.

18 Q You said earlier about a warning ticket.

19 A Yep.

20 Q What would that warning ticket be for?

21 A Well, we write warning tickets for, for violations, you
22 know, for infractions on the interstate. Now, of course, we
23 don't want anyone driving under the influence or, you know,
24 any drug violations or anything like that. But a lot of
25 times what we do is when we're writing that warning is we,

Dale Owens - Direct examination
by Solicitor Hunter

1 we'll tell them it's basically to put them at ease, to help
2 calm their nerves a little bit, and I look for a reaction
3 from that because a lot times when you tell somebody well,
4 I'm gonna write you a warning for that infraction, and I
5 mean for that moving infraction, and the moving infraction
6 only, you know, you'll see, you'll see that easiness come
7 from and they're not worried anymore. That never
8 disappeared with Mr. Moore.

9 Q So, his nervous behavior continued?

10 A It continued all the way through the stop.

11 Q And you see Deputy or Corporal Hancock there, he's
12 starting to call in the information as far as the license
13 information, driver's license information, and the tag
14 information, and that's what he's doing now.

15 Q And now, now he hands it back to me, and now, you know,
16 of course, we're waiting for a response from dispatch.

17 Q Do you remember ever getting a response?

18 A I'm, I'm sure we got a response. I don't remember what
19 it was.

20 Q But nothing indicated that the vehicle was stolen or---

21 A No, sir.

22 Q ---or that Mr. Moore had warrants at that time or
23 anything?

24 A No, sir. At this point I advised Corporal Hancock if
25 he would turn off the blue lights so that I can administer

Dale Owens - Direct examination
by Solicitor Hunter

1 the field sobriety tests.

2 Q Is that the procedure, the policy of the Spartanburg
3 County Sheriff's Office?

4 A Yes, it is.

5 Q And why is that?

6 A It's just because when you're doing the horizontal gaze
7 nystagmus test you're not blinding them, and it's, and it's
8 not giving you any false readings or anything like that.

9 Q Now, what is this test that you're performing right
10 here?

11 A This is the horizontal gaze nystagmus.

12 Q Can you please explain it?

13 A Yes, it's the test, it's to test the involuntary
14 jerking of the eyes to tell if there's alcohol present in
15 his, in his system, in his body and if it's affecting his
16 ability to do motor tasks.

17 Q In your estimation, you believe Mr. Moore passed the
18 test?

19 A He did pass this test.

20 Q Okay. And what's the next test you're gonna perform?

21 A I always do the order, the horizontal gaze nystagmus
22 any then I do the one leg stance. Then I do the walk and
23 turn unless there's something else that prevents me from
24 doing those tests, one of those tests, and that just
25 depends, but Mr. Moore, this was -- these are the three

Dale Owens - Direct examination
by Solicitor Hunter

1 tests that I was able to perform. They're standardized
2 tests, and that's, that's what I did, and he was able to
3 perform them.

4 Q What is the one leg stand?

5 A I'm sorry, what is it?

6 Q Yes.

7 A It's a, it's a standardized test that's made
8 standardized from the National Highway Traffic Safety
9 Administration. It's a stance to test his balance and motor
10 function and things like that.

11 Q And what do you ask them before you give them the
12 instructions to do the test?

13 A I actually -- you explain to them what you're gonna do.
14 You explain the test to them. You explain how to do the
15 test. I show them how to do the test for a brief period,
16 and then I ask him to perform the test.

17 Q And that's---

18 A And I asked them do they understand the instruction, of
19 course.

20 Q And do you ask them if they have any problems with
21 their legs?

22 A With their legs, anything like that, yes, I do.

23 Q So, this is you performing the tests?

24 A Yes, it is. And what I do is I like to perform the
25 test on the same, in the same area that they are to show

Dale Owens - Direct examination
by Solicitor Hunter

1 that it can be done in that area that's not an unreasonable
2 task.

3 Q What indicator are you looking for, for impairment in
4 this test?

5 A Well, you have, you have to actually and, look if he
6 follows instructions. You're actually looking to see if he
7 places his foot down on the ground, if he raises his arms,
8 or if he sways back and forth or if he hops. Those are the
9 things you're looking for, and it only takes two -- it only
10 takes two indicators here to fail this test.

11 Q And who, who standardizes this test?

12 A NHTSA.

13 Q And what is NHTSA?

14 A National Highway Traffic Safety Administration.

15 Q And that's you with your right leg up?

16 A That's correct, and I let them choose whichever leg
17 they want to stand. I mean that's, that's up to them.

18 Q Okay. And, again, notice his hands, where is his --.

19 A And he places his foot back down, raises his arms.
20 He's talking and everything else too.

21 Q Did he just switch feet?

22 A He just switched feet, raising his arms, places his
23 foot down, and you, you perform this test for 30 seconds.
24 Sometimes this test is for 30 seconds. Basically what I'm
25 doing is I'm counting in my head 1,001, 1,002. He can

Dale Owens - Direct examination
by Solicitor Hunter

1 count -- he's got to count as well. But I'm really not
2 paying attention to his counting. I'm paying attention to
3 my counting.

4 Q Did you give him another opportunity to do it?

5 A I did.

6 Q And?

7 A Failed it.

8 Q Okay. So, each time he had the opportunity to do the
9 one legged stand he failed that test?

10 A That is correct.

11 Q What is the next test that you administer?

12 A The one -- I'm sorry. The walk and turn.

13 Q Can you briefly explain that one?

14 A Yes, it's a -- it's, again, it's an agility test to
15 test balance as well, and what you do is basically you, you
16 have him walk up nine steps, down a line, an imaginary line,
17 and nine steps back, heel to toe making sure that he counts
18 his steps, and that he does a proper turn when he turns, and
19 then he does his nine steps back, heel to toe as well,
20 keeping your arms to your side, keeping your heel to toe,
21 actually heel clicking your toe, and that you don't step off
22 the line. And I -- then when I say step off the line, it's
23 an imaginary line. If you step to the right, you know,
24 things like that.

25 You'll see him -- that's an improper turn. You're

Dale Owens - Direct examination
by Solicitor Hunter

1 suppose to take three small steps, make your right turn, and
2 you can explain that to him as well. But I didn't fail him
3 for this test. I didn't -- really that's all he did was the
4 improper turn, and this, again, is to fail this test, you
5 got to have two, and I didn't fail him on that test.

6 Q Okay. So, in your estimation, did you believe, at that
7 time, that he was impaired?

8 A Not at that time I did not.

9 Q Okay. So, you would not have brought in him at that
10 time for impairment?

11 A Not at that time I would not.

12 Q Okay. Did you ask any questions about items in the
13 vehicle?

14 A I asked him if there was any alcohol in the vehicle.

15 Q And what was his response?

16 A No, but he looked back at the car. He looked -- when I
17 asked him the question, he looked back at the car as if, as
18 if I could see it, but he stated no.

19 Q Okay. Did you ask for any other illegal items?

20 A Yeah, I asked him if there were any weapons, alcohol,
21 drugs, or anything like that in the vehicle and he told me
22 no.

23 Q Okay. Did you ask him for consent to search the
24 vehicle?

25 A I did.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q And what did he say at that time?

2 A No basically.

3 Q You can go ahead and let it play for a little bit.

4 A He did, he did claim that he had some luggage in the
5 trunk that belonged to him. That's all he had. And his
6 exact response was I don't want you searching my luggage.

7 Q Now, are you finishing up writing, writing a warning
8 ticket at this point?

9 A I am.

10 Q And he's asking me questions, and I'm, and I'm replying
11 to them as well.

12 Q Okay. What is Mr. Hancock doing right here?

13 A I just asked for consent to search the vehicle, and he,
14 he declined consent, and I -- and Corporal Hancock's
15 actually calling Deputy Carraway to come to the scene---

16 Q If you would, go ahead and pause it right here.

17 A ---with his drug detection K-9.

18 I'm sorry?

19 Q No, I was asking Mr. Carraway to pause it. Just go
20 ahead.

21 What are you informing him of at this time?

22 A I'm explaining the warning, what I stopped him for, and
23 I'm advising him that I'm detaining him based on my
24 reasonable suspicion to believe that he's involved in
25 criminal activity, and that I'm going to wait for a drug

Dale Owens - Direct examination
by Solicitor Hunter

1 detection K-9 to come to the vehicle.

2 Q And that's criminal activity other than the impaired
3 driving and the---

4 A That is correct.

5 Q ---traffic violations---

6 A That is correct.

7 Q ---you pulled him for? So --.

8 MR. HALL: Your Honor, if he's gonna have Corporal
9 Hancock testify, I think we can foregoing -- I'll ask him
10 about that time frame, that 15 minutes or so.

11 SOLICITOR HUNTER: I'm gonna put Jason up after him
12 unless you're gonna call him.

13 MR. HALL: But I --

14 SOLICITOR HUNTER: If you want to, you can go ahead and
15 fast forward till the point we were getting here.

16 well, actually, what's he -- what is, what is he doing
17 right now?

18 A He's standing there talking.

19 Q What's in his mouth?

20 A He's wanting to smoke a cigarette I think. I can't, I
21 can't -- I -- my attention was diverted from you for a
22 minute. I'm sorry. From the video. I think -- yeah, a
23 cigarette.

24 Q So, he's, according to your training and exercise, he's
25 calming his nerves again?

Dale Owens - Direct examination
by Solicitor Hunter

1 A That is correct.

2 Q And for the next, I believe it's about 15 to 16
3 minutes, y'all are off to the side of the road?

4 A Yeah, just step away between the vehicles just in case
5 something were to happen. It's a little safer over there.
6 It's not much safer, but it is a little bit safer.

7 Q And how would you describe traffic that night?

8 A Very very light. At this time, for 85, this is very
9 light.

10 SOLICITOR HUNTER: Your Honor, I'm gonna fast forward
11 the next 15 minutes without objection from the defense.

12 THE COURT: All right.

13 Q So, at this point, it's just you and Corporal Hancock
14 there.

15 A Yes, sir.

16 Q And he's not in cuffs?

17 A No, he's not.

18 Q I mean but he is in investigative detention. However,
19 he's still---

20 A Yeah, he's being detained. I'm detaining him based on
21 my experience, my training, and everything's telling me
22 there's more to this traffic stop than just the driving
23 infraction.

24 Q And, and the impaired driving?

25 A That's correct. Well -- and I'm not -- he's not, he's

Dale Owens - Direct examination
by Solicitor Hunter

1 not being detained because he's impaired. I don't, I don't
2 feel that his impairment is to the point where he would be,
3 I would be justified to take him to jail.

4 Q What do you see right there in the bottom right-hand---

5 A You see the lights pulling up where Investigator
6 Carraway's pulling up.

7 Q So, approximately 31 minutes and 13 seconds into the
8 stop?

9 A That's correct.

10 Q Okay. This is approximately a little bit over 32
11 minutes into the traffic stop?

12 A That's correct.

13 Q What are Mr. -- what is Mr. Carraway alert to you?

14 A Well, through my training and more so my experience, I
15 know that when that particular dog sits, I know that he's
16 alerted to an odor.

17 Q Okay. So, at this point you're gonna search the
18 vehicle?

19 A That is correct.

20 Q What did you find in the front passenger, I believe
21 under the front passenger seat of the vehicle?

22 A A bottle of alcoholic, alcoholic beverage.

23 Q Was the seal broken?

24 A Yes, it was, and you can actually see it on the video
25 here in a minute when you bring it back. It's about half

Dale Owens - Direct examination
by Solicitor Hunter

1 full, three-quarters to half full.

2 Q And that would be consistent with the smell of alcohol?

3 A Yeah, I mean I don't know what that alcohol smells
4 like. I didn't open it and smell it. At this point right
5 here we're placing him under arrest. We've located
6 contraband that's consistent with crack cocaine in two
7 containers that were in the bag, that were in a bag, the
8 only bag in the, in the trunk actually. Along with that,
9 this, these two containers of contraband that's consistent
10 and that has been tested to be positive for cocaine base,
11 there was also a semiautomatic weapon and a bundle of
12 currency as well.

13 Q How much currency did you locate?

14 A It was 4,000 in total.

15 MR. HALL: We have no objection for purposes of the
16 hearing.

17 THE COURT: What are you putting in?

18 SOLICITOR HUNTER: Your Honor, for the purposes of the
19 hearing, we're putting State's Exhibit 3, which is the white
20 off-white, white off-white rock like substance found in the
21 vehicle as well as the .45 caliber gun.

22 THE COURT: All right. Be admitted as marked.

23 (WHEREUPON, the drugs were marked as State's Exhibit
24 No. 3. The gun was marked as State's Exhibit No. 4. Both
25 of the items were received into evidence for purposes of

Dale Owens - Direct examination
by Solicitor Hunter

1 this hearing only.)

2 A And as you saw, the handgun was loaded and had one
3 chambered.

4 Q Okay.

5 A Actually you'll see it right here. When he cocks it
6 back, you'll see that a round has just ejected.

7 Q Fell out.

8 Your Honor, no further questions for Mr. Owens.

9 THE COURT: All right. Mr. Hall, your witness.

10 MR. HALL: Your Honor, he's -- I'm gonna ask him to run
11 the DVD back to the start---

12 THE COURT: Okay.

13 MR. HALL: ---with the sound on. I thought I had sound
14 at the very beginning of it when I listened to mine. I
15 couldn't tell here.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. HALL:

19 Q All right. Deputy Owens, do you still have this system
20 that, with VHS?

21 A Oh, yes, sir, I do.

22 Q And are you still having the problems?

23 A Yes, sir, I do.

24 Q All right. Do you have any records for the Court about
25 the problems you're having when you're getting it fixed?

Dale Owens - Cross-examination
by Mr. Hall

1 A I, I don't have any records, no, sir, I don't. If he
2 bills the county, I have no idea what he does. We go down
3 there, we talk it down there, I don't fill out any
4 paperwork, he takes care of it.

5 Q All right. It's been ten months, almost 11 months.
6 All right. Ten months since this happened.

7 How many times has this gone out?

8 A I've, I've taken it to Shepherd's twice in my year and
9 a half here. We're suppose -- we got new cars sitting down
10 at Shepherd's now we're suppose to have the new camera
11 system in it. So, I'm -- to say they're gonna do any more
12 fixing to it, I don't know.

13 Q All right. Has the audio gone out since Mr. Moore's
14 arrest?

15 A Not that I'm aware of.

16 Q Okay. Cause I thought you said you had it repaired at
17 least twice?

18 A And, and I say twice. I don't remember if it was once
19 before Mr. Moore's and then once after. I, I really -- I
20 know -- I can recall going twice.

21 Q But presumably you had it fixed after this?

22 A Yes.

23 Q If it's working---

24 A Yes.

25 Q ---it's been worked on now.

Dale Owens - Cross-examination
by Mr. Hall

1 All right. Can you put it on the sound?

2 Well, we can wait, we can wait a little bit if we need
3 the speaker.

4 (Pause.)

5 Q But are your blue lights on at this point?

6 A Yes, sir, you can kind of see---

7 Q They just come on?

8 A ---them flashing up at the top right.

9 See them flashing at the top right?

10 Q Yeah, I see.

11 When I asked the question, were they already on?

12 A I'm sorry?

13 Q They, they were on -- they come on when -- that's what
14 activated the video?

15 It wasn't the, the---

16 A No, no.

17 Q What's that we're hearing here?

18 A You got me.

19 Q Cause if it's like mine it's gonna stop in a few
20 seconds when you get out.

21 A I have no idea what it is.

22 Q Might just be the DVD I've got. Okay.

23 A I don't know what's making that sound. I just know it
24 ain't working right.

25 Q So, have you ever heard that type of, on any of your---

Dale Owens - Cross-examination
by Mr. Hall

1 A Not that I, not that I -- no, not that I can recall,
2 no.

3 Q Okay. All right. We can stop that. And -- all right.

4 A Most of time it's like that.

5 Q And you're continuing to use this and then convert the
6 DVD, I mean the, the VHS to a DVD system playback?

7 A That's all I have.

8 Q All right. Do we have the DVD, the VHS today?

9 A I, I don't have the VHS, no. I have it in the office.
10 I, I wasn't aware -- I wasn't advised to bring that today.

11 Q A while ago I wasn't aware of it at all.

12 Now, have you ever, other than in a big criminal
13 interdiction, had somebody get the blinkers, the wrong
14 blinkers to start with and then they change?

15 A I'm sure I have.

16 Q Okay. Don't think you're old enough to have teenage,
17 teenagers, but some---

18 A Close.

19 Q ---some people are almost attached to their phones,
20 aren't they?

21 They talk to girlfriends, friends all the time?

22 I mean there are people who live with their phone, they
23 sleep with their phone?

24 Are you aware of that?

25 A Yes, sir, I am.

Dale Owens - Cross-examination
by Mr. Hall

1 Q Okay. And, some people, I'm going through the
2 indicators you went through, slump in the seat, but it's not
3 unusual, is it, for people to be nervous when they get
4 pulled over?

5 A It's, it's -- no, it's not unusual for them to be
6 nervous, but it is unusual in the demeanor that Mr. Moore
7 had that he was overly nervous, and that continued through
8 the whole stop even after he was advised he was gonna get a
9 warning, even after he was told that he passed the field
10 three, the three field sobriety tests, or two of the three
11 field sobriety tests.

12 Q But you say you, you give him a warning, but you tell
13 them you're gonna keep it, right?

14 A I'm gonna keep it?
15 What do you mean?

16 Q You're gonna keep him there. You're not gonna let him
17 go.

18 A Well, that was after he refused, but I told him I was
19 gonna keep him there.

20 Q All right. Now---

21 A That's -- I think that's my duty---

22 Q You gave a percentage of cars from Atlanta, some
23 90 percent or something, drugs in the car, 90 percent of the
24 car---

25 A Ninety percent of the people that I've arrested in

Dale Owens - Cross-examination
by Mr. Hall

1 major criminal drug cases have come from Atlanta.

2 Q Okay. Do you know how many people, in any given period
3 of time, you pulled over from Atlanta that didn't have
4 drugs?

5 A No, sir, I don't.

6 Q Okay. Pull a lot of cars -- well, you -- is there any
7 way you can tell a car's from Atlanta from---

8 A No, sir, I can not.

9 Q -- that county or anything like that?

10 A Well, I mean you can, you can, on some Georgia
11 vehicles. But if, if, only if they got like Fulton County
12 at the bottom of the tag. I mean that's the only one you
13 can tell for certain. But that doesn't tell you that that's
14 where that vehicle's coming from if it's a rental, you know.

15 Q I understand that.

16 But you don't know how many or how often you pull over
17 cars from Atlanta that don't have drugs in them, that don't
18 end up in a, an interdiction arrest?

19 A No, sir, I don't know exactly. I mean it's a lot. I
20 mean---

21 Q Okay.

22 A But I can say this, they don't have all the indicators
23 I had with your client.

24 Q You said moving his hands.

25 A Moving his hands?

Dale Owens - Cross-examination
by Mr. Hall

1 Q Yeah, you said he---

2 A It's -- yes.

3 Q ---put his hands behind his back.

4 A The positioning of his hands, yes, sir.

5 Q Touching his pockets.

6 A Raising his hands above his shoulders, on his head,
7 behind his head, behind his back, yes, sir.

8 Q Okay. But there's no doubt that you did not have a
9 reason to arrest him for DUI based on your opinion, what you
10 observed, the test and everything else?

11 You said you weren't gonna arrest him for DUI?

12 A Once he completed the test, I, I feel like it would of
13 been an injustice to Mr. Moore if I had arrested him for
14 driving under the influence.

15 Q All right. Now, holding or leaving the car door open
16 for a few seconds when he got out, is that unusual?

17 A Yes, sir, it is. On I-85, yes, sir, it is.

18 Q Now, do you recall if somebody said close it or he
19 turned around and closed it cause it looks---

20 A I don't, I don't recall.

21 Q He pretty much just stepped out?

22 A I don't recall.

23 Q Stepped back and closed the door?

24 A I don't recall.

25 Q All right.

Dale Owens - Cross-examination
by Mr. Hall

1 A He could have very well and then I could have very well
2 told him. I don't, I don't remember.

3 Q But just -- we can't tell from here?

4 A Yeah.

5 Q Now, at one point it looks like he turned to one of you
6 when he did have his hands above you and you could almost
7 read his lips and he said can I put my hands down.

8 Do you remember him saying that?

9 A I don't remember. I never told him to put his hands up
10 there. So, yeah, he could of asked me to pull them down.

11 Q It may of been Corporal Hancock behind him at that
12 point, but he turned and you could see him -- I'm not a lip
13 reader---

14 A I don't know what he said.

15 Q ---a lip reader, but that's what it looked like.

16 A I, I don't know.

17 Q Okay. Now, it's clear from the time he got the warning
18 tickets to know to, to the consent search, he was there for
19 15 or, or 16 minutes waiting on a dog?

20 A That's correct.

21 Q All right. Do you ever pull people or how often, if
22 you can recall, do you pull people from speeding and they
23 say gosh, I didn't know, I thought it was 70 when they were
24 going 70 or 75?

25 That happens a good bit or never or what?

Dale Owens - Cross-examination
by Mr. Hall

1 A That happens a good bit.

2 Q Okay. So, it's not that unusual for people to assume
3 the speed limit's a certain speed---

4 A Well, I, I wouldn't say---

5 Q ---or at least---

6 A It's not a safe measure to assume anything. As to what
7 they assume, I don't know. I mean it's clearly printed on
8 the sign 60.

9 Q Yeah.

10 But a lot of people tell you oh, I thought it was 70---

11 A They do.

12 Q ---or 60?

13 A Yes, they do.

14 Q And I think when you were testifying about it's not 70
15 until --

16 A The 68 mile marker.

17 Q -- the 68 mile marker, you gave 65, 50, or 55?

18 A No, no 55.

19 Q So, from Georgia to 68, it's 55 the whole way?

20 A No, it's 65 until about mile marker 33 or at least it
21 was a year and a half ago, let me say that. I haven't
22 traveled down that way since the last year and a half. If I
23 haven't, I haven't paid it any attention. It use to be
24 around the 33 to 35-mile marker. It changed from 65 to 60
25 as you came through the metropolitan of Greenville, and then

Dale Owens - Cross-examination
by Mr. Hall

1 it changed to 70 at the 68 mile marker.

2 Q So, coming from Georgia, there is some variance in that
3 speed?

4 A It varies.

5 Q It goes down?

6 A It varies. As soon as you hit the state line, it's 65
7 until you get to the 33 mile marker, 33 to 35, somewhere
8 right in that area, and then it changes to 60. And then it
9 stays from 60 from the 33 to the 35 until the 68 mile marker
10 and that's when it changes to 70. He had not reached the 70
11 yet.

12 Q Okay. Be about eight miles when he pulled over, about
13 six miles is what you said, 60 and 62?

14 A It's still not there yet.

15 Q All right. And he cooperated with you during the pat
16 down and all that?

17 In fact, you said it was usual, he raised his hands and
18 kept them up?

19 A He did.

20 Q All right. All right. You know if -- excuse me.
21 Forget that.

22 Now, in this video, you and Corporal Hancock, y'all
23 moved your arms around and adjust your pants and pockets and
24 at times look really exaggerated?

25 That's -- those type of things aren't that unusual, are

Dale Owens - Cross-examination
by Mr. Hall

1 they?

2 A For what?

3 Q I mean somebody standing on the side of the road, just
4 been pulled over by the police, you're saying that these
5 things he did were so indicative of certain nervous behavior
6 that you knew there was something more going on.

7 A Well, I don't think you saw me or Deputy Hancock place
8 our hands on our head, scratch our head, both hands behind
9 our back. I don't think you say that. That's what's
10 consistent to us as criminal behavior, and you don't -- I
11 don't think you saw that from Deputy Hancock or from me. I
12 mean we could watch the videotape again if you wanted to,
13 but that's what your, that's what your client displayed to
14 me, and that's what, through my training and experience,
15 that's what I saw and that's what I detected as nervous
16 behavior.

17 Q I'm saying that you adjusted your pants on this video,
18 did you not?

19 A Well, I'm probably sure I did, but I also got a gun and
20 a, and everything else attached to my belt that pulls my
21 pants down.

22 Q And your, your pants fit?

23 You don't have to worry about baggy pants?

24 Yours -- they fit?

25 A No, sir.

Dale Owens - Cross-examination
by Mr. Hall

1 Q As a uniform, they don't let you wear baggie or pants
2 like is the style today?

3 A They only buy me two pairs a year. So, I get what I
4 get.

5 Q But it's safe to say they're not baggy?

6 A No, sir, they're not.

7 MR. HALL: Okay. Your Honor, no further questions of
8 this witness.

9 THE COURT: Anything further?

10 SOLICITOR HUNTER: Nothing, Your Honor.

11 THE COURT: You may step down.

12 State wish to call additional witnesses?

13 SOLICITOR HUNTER: Yes, the State would call Jason
14 Carraway.

15 THE COURT: Come forward and be sworn, sir.

16 JASON CARRAWAY, having been first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat please and state your name.

19 WITNESS: Jason Carraway.

20 MR. HALL: Your Honor, if we may approach?

21 THE COURT: Beg your pardon?

22 MR. HALL: Approach.

23 (WHEREUPON, a bench conference was held at this time.)

24 DIRECT EXAMINATION

25 BY SOLICITOR HUNTER:

Jason Carraway - Direct examination
by Solicitor Hunter

1 Q I don't, I don't think it's -- we're not arguing
2 whether you showed up or not, but from the point that he
3 called you to the point you showed up was approximately 15
4 to 16 minutes?

5 A Approximately 15 minutes, yes, sir, that's correct.

6 Q When -- you're a, you're a K-9 handler?

7 A Yes, that's correct.

8 Q And how many K-9 handlers does Spartanburg County
9 Sheriff's Office have?

10 A In total, there's a -- they're narcotic K-9's. There's
11 four that's on uniform patrol. The one that I have and the
12 one assigned to narcotics. So, there's six, six in all, but
13 all those are not working at the same time.

14 Q So, at any one time the most K-9's on the road is
15 three?

16 A That's on a good day.

17 Q Okay. And how is that?

18 A Well, the four that are assigned to uniform patrol,
19 they each work separate shifts. So --.

20 Q And how are your shifts broken down?

21 A They're broken down in 12 hour shifts. One shift works
22 7:00 a.m. to 7:00 p.m. The other works 7:00 p.m. to 7:00
23 a.m., and then, then they rotate days with, with two other
24 groups that work those same hours.

25 Q Okay. So -- and, and how is it broken down?

Jason Carraway - Direct examination
by Solicitor Hunter

1 Is it broke down by letters, numbers?

2 A Yes, Alpha, Charlie or Alpha, Bravo, Charlie, Delta.

3 Q So, if Alpha's on duty, that means that it's gonna be
4 daytime shifts and Bravo is off?

5 A That's correct.

6 Q And then someone, either Charlie or Delta, will come on
7 at night?

8 A That's correct.

9 Q Okay. And then whoever comes on at night, the other
10 three are off?

11 A Right.

12 Q Okay. What team are you assigned to?

13 A I'm assigned to the Interstate Criminal Enforcement
14 Team.

15 Q Okay. And who does that consist of?

16 A That's, consist of four members, Corporal Hancock,
17 myself, Deputy Owens, and Deputy Donnie Gilbert.

18 Q Okay. And where do you do all of your investigation
19 and traffic stops?

20 Are you, are you specific to one location?

21 A Mainly we work the interstates.

22 Q So---

23 A We were working 85.

24 Q 85 and 26?

25 A Correct.

Jason Carraway - Direct examination
by Solicitor Hunter

1 Q Okay. And on this particular night, June 30th, who
2 were you assigned with?

3 A I was assigned with the Interstate Criminal Enforcement
4 Team.

5 Q Okay. And who were you actually with that night?

6 A That night, all four of us were working.

7 Q Okay.

8 A I think, at the time, Deputy Gilbert and myself were up
9 on the northern end of the county around the 80 mile marker,
10 and Hancock and Owens were down further south. We generally
11 try to stay in a closer area, but being that they were a two
12 man unit that night, you know, it wouldn't be unusual, since
13 they had a backup there with them, to maybe go a little
14 further away. You know, with traffic stops, it may take a
15 few miles to catch up and stop someone.

16 Q Okay.

17 A It's not uncommon to get separated at times.

18 Q Did you receive a call to bring your dog to this
19 location?

20 A I did.

21 Q Okay. And where -- again, you were located around the
22 80 mile marker?

23 A I was around the 80 mile marker.

24 Q On which side of the road?

25 A On the southbound side.

Jason Carraway - Direct examination
by Solicitor Hunter

1 Q Okay. When you received that call, what did you do?

2 A Immediately proceeded south on the interstate. I had
3 to go, actually go -- if I remember correctly, they were
4 around the 62 mile marker northbound. With there a concrete
5 barrier, I had to go all the way down to Exit 60, which is
6 101, and then turn around and come two miles further north.
7 So, you're looking at about 22 miles that it took me to get
8 to where they were at from where I was at when they called
9 me.

10 Q Did you stay up at the 80 mile marker when you were
11 called?

12 A No, I, I went ahead straight that way once they called
13 me.

14 Q Did you continue down to their location as soon as the
15 call came in?

16 A I did.

17 Q Okay. And it took you approximately 15 to 16 minutes
18 to get there?

19 A That, that sounds about right with that distance, yeah.

20 Q And, again, there were only about two of you, probably
21 at the most three, but at least two of you on the road?

22 A Yeah.

23 Q Can you---

24 A I'm not even sure if the night shift had a dog working
25 that night, but, you know, if they had training or vacation,

Jason Carraway - Direct examination
by Solicitor Hunter

1 there's, there's times that they don't have a dog at all.
2 So, it's quite possible I was the only one that night. But
3 with us working together as a team, you know, we usually --
4 they always use me unless I'm not available for some reason,
5 and they might try and go outside to the shift if they need
6 a dog and I'm not there.

7 Q Was it 15 or 16 minutes normal as far as response time
8 if you're not around them?

9 A It is. I mean even, even if I'm only a few miles away,
10 depending on the time of day with traffic, and if they're on
11 the opposite side, I get off and flip around. It's just not
12 uncommon for it to take 10 to 15 minutes, maybe a little
13 longer sometimes.

14 Q Okay. would you hold on one second?

15 (Pause.)

16 Q what is your K-9's name?

17 A His name's Deuce.

18 Q And what type of training do you and Deuce go through?

19 A We use actually what's called a full patrol dog. He
20 does tracking, handler protection, apprehension, article
21 searches, and he's also trained in narcotics detection.

22 Q And who does this training?

23 A The initial training, I'm his second handler. His
24 original handler left for another job. But they, they go
25 through several several weeks of basic training with the

Jason Carraway - Direct examination
by Solicitor Hunter

1 dog, and then once that dog goes through that training,
2 they're given a certificate, and at a later date he goes to
3 an accredited agency to be certified.

4 Q Who originally certified him?

5 A I believe Charlotte Mecklenburg was the original
6 certifying agency.

7 Q And I believe you said he had to be re -- he had to
8 be---

9 A Annually we go through recertification.

10 Q Okay. And, at this time, has he been certified?

11 A Yes.

12 Q Okay. What type of training do you specifically do
13 with the dog?

14 A On top of the, the original training that we go through
15 and the annual certification, we do monthly maintenance
16 training what we call, which is a minimum of 16 hours a
17 month that we go through just to kind of, you know, what we
18 call maintenance upkeep of the, of the dog, and its
19 performance.

20 Q Now, obviously you trained for the detection of
21 narcotic substances?

22 A Right.

23 Q Do you ever train so that they will not alert when it's
24 a non-narcotic substance?

25 A Yeah, I mean it's common for us, when we go through

Jason Carraway - Direct examination
by Solicitor Hunter

1 training and also certifications, where they put other items
2 out that may be present at times when they are searching
3 vehicles or houses or whatever else to make sure that
4 they're not alerting to that, to make sure they're alerting
5 to the odor of the narcotics and not the odor of, for
6 instance, you know, air fresheners or whatever else may be
7 present at that time.

8 Q Okay. And through your weekly training, your annual
9 certification, and the dog certification, do you keep
10 records of the pass rates or the---

11 A Yes, we do.

12 Q Okay. And what rate does your dog alert to narcotic
13 substances?

14 A Are you, you talking about control or uncontrolled
15 environment?

16 You talking about in training or out on the---

17 Q Okay. Do you keep it for both of them?

18 A We do, yes.

19 Q Okay. And how about the uncontrolled?

20 A The uncontrolled will be in the roadway. I think, for
21 the past two years that I've had him, it's been right around
22 90 percent. I don't have the exact number right in front of
23 me. I have, you know, records at the office that I can---

24 Q So, that 90 percent, 90 percent of the time he alerts
25 there is a narcotic substance---

Jason Carraway - Direct examination
by Solicitor Hunter

1 A That's correct.

2 Q ---found?

3 A Right.

4 Q Okay. And in the controlled environment?

5 A Controlled, he's never -- I've never had a problem with
6 him.

7 Q And how long have you had him?

8 A This past February was two years.

9 Q Okay. So, in the two years in your training, your,
10 and, and off-the-road and not working, he's never not
11 alerted to the substance of narcotics?

12 A That's correct.

13 Q And on this night, what did you do?

14 A That night, they called me to come down. Like I said,
15 it took maybe approximately 15 minutes or so from where I
16 was at. I arrived on scene. I think maybe Deputy Owens may
17 have been standing off to the right-hand side. I don't, I
18 don't recall.

19 Usually, if they have a refusal, they'll, they'll let
20 me know over the radio when they call me that it's a refusal
21 so I know to go ahead and get the dog out when I get there.
22 I think, on that night, I did. I just went ahead and got
23 him out and walked up, and you see in the video I come up. I
24 actually had him start his exterior sniff of the vehicle at
25 the back trunk area, and then work around the

Jason Carraway - Direct examination
by Solicitor Hunter

1 counterclockwise pattern up the passenger side.

2 Q What kind of alert does your dog give?

3 A He's a passive alert. So, he'll sit or lay depending
4 on if it's -- sometimes he'll lay if it's a low, an odor's
5 coming from a low source or whatever. But --.

6 Q And what did your dog do on this location?

7 A He actually---

8 Q Did he hit?

9 A He actually -- he sat near the passenger door.

10 Q And for, for how long?

11 A Until I had him get up and move. He was rewarded with
12 his toy and---

13 Q When he sits, do you try to pull him off?

14 A I do. If you can see, I actually had to -- I started
15 to go around the corner and he stopped, and I actually --
16 the leash was pulled tight and I had to come back toward
17 him.

18 Q And what is that to make sure of?

19 A That let's me know that he's committed to what he's
20 detecting. You know, he---

21 Q So, in other words, he's just not sitting there?

22 A Right.

23 Q He's actually doing his, his alert?

24 A Right.

25 Q Okay.

Jason Carraway - Direct examination
by Solicitor Hunter

1 A That's correct.

2 Q Now, you spoke about reward, what -- explain what that
3 is.

4 A Dogs, whether they're trained, he's, he's searching.
5 He, he associates that odor with looking for a toy, and when
6 he smells that odor, that's how he's rewarded, you know,
7 with that toy. For him, it's just a plastic pipe.

8 Q If they don't smell the odor, are they still rewarded?

9 A No, they're not.

10 Q Okay. Is it possible for him to just alert just so he
11 gets the toy?

12 A No, sir.

13 Q Why not?

14 A Well, outside of him just sitting, he's also -- you
15 also see behavior changes. In the dog before, prior to him
16 doing that, that's -- the change in behavior is actually an
17 alert, and the sit itself is, is what we call the final
18 response or final indication. So, even though a person can
19 train a dog to sit when he smells that odor, you can't train
20 that behavior response into them when they, you know, they
21 get excited, maybe they're -- different dogs do different
22 things.

23 Their breathing changes. Their search pattern changes,
24 things like that. That can't be trained into a dog. That's
25 all that -- it's, it's natural in the dog itself. You know,

Jason Carraway - Direct examination
by Solicitor Hunter

1 the only thing that he's trained to do is to sit.

2 Q Okay.

3 A So, when he's showing me those behavior changes, that's
4 something that he does on his own that I have no control
5 over.

6 Q So, what would you do if he didn't change his behavior,
7 but still sat, would you consider that an alert?

8 A No, I would not.

9 Q Okay. And he alerted on this vehicle?

10 A Yes, he did.

11 Q Robert.

12 CROSS-EXAMINATION

13 BY MR. HALL:

14 Q You were there when the drugs was found?

15 A I was off to the side of the car. I was out of view of
16 the camera, but I was off, off the side there.

17 Q But they weren't found in the passenger compartment,
18 were they?

19 A They were not.

20 Q The dog indicated on the trunk or the passenger, or the
21 passenger door?

22 A He alerted on the passenger door, but there's reasons
23 behind why he may do that.

24 Q I just---

25 A It can be explained.

Jason Carraway - Cross-examination
by Mr. Hall

1 Q Thank you. No further questions.

2 THE COURT: You may step down. You can step down, sir.

3 WITNESS: Oh.

4 THE COURT: Other testimony?

5 SOLICITOR HUNTER: Nothing further from the State, Your
6 Honor.

7 THE COURT: Defense wish to offer any testimony?

8 MR. HALL: May I have a moment with my client, Your
9 Honor?

10 THE COURT: Yes, sir.

11 MR. HALL: I don't know if we can step out.

12 THE COURT: Do you want to confer outside?

13 MR. HALL: Yes, sir, he's -- and he needs to go to the
14 restroom.

15 THE COURT: All right. We'll take about a five, ten
16 minute break.

17 Court's in recess.

18 (WHEREUPON, a short recess was taken at this time.)

19 THE COURT: All right. Mr. Hall, does the defense wish
20 to call any witnesses on this matter?

21 MR. HALL: Your Honor, I've spoke with my client about
22 the possibility of testifying, but he is going to not
23 testify, and because of that, I don't think we will have --
24 I know we won't have any witnesses, and we can, I think, go
25 into---

1 THE COURT: All right. Well, then I'll -- at this time
2 I'll hear from you concerning your motions.

3 MR. HALL: All right. Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. HALL: Let me get the cases.

6 What we have articulated from the deputy basically are
7 common things that could happen to people in a stop. He, I
8 think, attempted to say that it took him a while to stop.
9 But he apparently hit the wrong blinker, but did put the
10 blinker on and pull over. I thought -- you saw the video.
11 Seemed like a reasonable time. It's not unusual for people
12 to be on the phone. I don't know if drug dealers talk on
13 the phone when they're going down the road, but I think it's
14 unfortunately common for a lot of people to talk on the
15 phone, and some people, in our culture, are attached to the
16 phone.

17 What they have to show is some reasonable suspicion,
18 suspicion to keep the detention of my client that we assert
19 is in violation of his rights doing. The things, other than
20 the odor of alcohol, he went through the field sobriety
21 test, and he's okay, decided not to place him under arrest
22 for that. It's the other things, the signal, the using the
23 phone, driving slumped in the seat, looks at his pockets
24 after he's been searched, these are things that, you know,
25 people will do.

1 He held his hands up when he was searched, but that may
2 indicate that he's watched TV or seen that kind of police
3 duty to hold your hands up. That's gonna be the best way to
4 be searched.

5 These things, Your Honor, are not that unusual.
6 Particularly in somebody who's traveling and has been pulled
7 over by the police.

8 The case law lists different things that are to be, you
9 know, to be considered and I know it's a totality of the
10 circumstances, and combination of common place items with
11 other circumstances can arise to suspicion, but I don't
12 think we have the things here.

13 They list things like air fresheners indicating
14 traveling for several days and not having luggage. This is
15 a man who tells them, yeah, I'm going to visit my
16 grandmother before some surgery I think it was. He stood on
17 his right, said I don't want you to search, and, you know,
18 unfortunately, we have something of a tape that was
19 converted to DVD and the audio on it doesn't work. So, we
20 can't hear what's being said, but we can see it.

21 And, Your Honor, he's there in front of the camera for
22 a good portion of the time. I don't -- I couldn't see any
23 sweating, any veins bulging or pulsing, those type things,
24 and saying it, I don't think, is enough. There has to be
25 evidence of it, and unfortunately we can't hear the way he

1 sounds when he speaks. But we certainly can see him.

2 And, Your Honor, on that tape, I don't see the over
3 nervousness other than a man that moves his hands around.
4 When the police are searching, he puts his hands up. He
5 appears to look, asked permission to take his hands down
6 when the search is finished. He checks his pockets after
7 the police have been through his pockets.

8 I think those reasonable behaviors on his part,
9 somebody in his position. I don't think that what has been
10 evidenced here through this video is enough for a reasonable
11 suspicion to keep him detained and wait for the dog, and I
12 understand that the substance here involved in this case is
13 a menace on this society and there's apparently a good deal,
14 deal of it, but it's not what was found or how much was
15 found. It is was the detention lawful, and I think, given
16 the circumstances here, we've had a lot of the buzz words
17 that have been testified, but that's really not backed up on
18 that video except the signal.

19 I think you can see, within, of the lights coming on, I
20 think the first stop was 52 seconds. He's pulled over and
21 the officer's already on the road. That's not long.

22 He did hit the left signal for a second, put it in the
23 right signal, and pulled over. He says he was slumped in
24 the seat. That's not that unusual. Talking on the phone,
25 that's not unusual unfortunately in this day.

1 He put his hands up when the police were patting him
2 down, searching him, and he felt his pockets afterwards. He
3 left the door opened for a second or two, stepped, started
4 to step away, stepped back, closed the door. Unfortunately
5 we can't hear if he was told to do that or if he just did it
6 on his own.

7 Your Honor, there's too many questions left when we
8 don't, we have equipment that malfunctioned. It's not our
9 equipment. It's the State's equipment. There's some
10 questions that could be answered if we could hear, things
11 that we can not hear, and based on all this, Your Honor, I
12 feel that, ask that you find that there's no reasonable
13 suspicion to keep the detention after he had been given the
14 warning ticket and kept for 15 or 16 minutes before the dog
15 got there, that he should of been released after he was
16 given the warning tickets and said no, I don't want you
17 searching my stuff, which is everybody's right.

18 And I ask that you find that there was no reasonable
19 suspicion to keep him detained, and it was a, in any event,
20 any detention was unreasonable and that the evidence that is
21 seized be suppressed.

22 Thank you.

23 THE COURT: Mr. Hunter.

24 SOLICITOR HUNTER: Yes, Your Honor.

25 Reading from State versus I believe it's Provet,

1 obviously lengthening the detention for further questioning
2 of the suspect is acceptable in only two situations. One of
3 those which doesn't apply here, but the one that does is
4 that the officer has an objectively and reasonable
5 articulable suspicion that illegal activity has occurred or
6 is occurring, and the test for that reasonable suspicion is
7 a totality of the circumstances and the Court---

8 THE COURT: Well, now, what's the, what's the
9 difference between objective and subjective?

10 SOLICITOR HUNTER: Objective is fact, fact based.

11 THE COURT: Yes, sir.

12 SOLICITOR HUNTER: Okay. However---

13 THE COURT: There's got to be some facts that you base
14 it on.

15 SOLICITOR HUNTER: Correct. However, Courts must
16 consider the totality of the circumstances and give due
17 weight to common sense judgment reached by officers in light
18 of their experience and training. Obviously this case that
19 I handed up to you earlier, Mr. Owens was the officer in
20 that case as well. So, he's well aware of what the
21 indicators that he needs to articulate reasonable suspicion.

22 THE COURT: Of course, now this one was handed down
23 after---

24 SOLICITOR HUNTER: After the---

25 THE COURT: ---the arrest in this case.

1 MR. HALL: Yes, sir.

2 SOLICITOR HUNTER: This one was handed down after---

3 THE COURT: I mean before, before the arrest in this --
4 no, after the arrest in this case.

5 SOLICITOR HUNTER: It was actually heard before the
6 arrest and handed down after the arrest.

7 THE COURT: Yes, sir, that decision wasn't on record
8 when he made this arrest.

9 SOLICITOR HUNTER: Correct, Your Honor.

10 THE COURT: Okay.

11 SOLICITOR HUNTER: And as to Robert's point---

12 THE COURT: Now, Provet, I'm looking at it, and what
13 happened in that case was you have -- you had a fellow that
14 claimed he was staying at the Holiday Inn with his
15 girlfriend, but the officer in that case had followed him
16 past that exit, knew he didn't stop at that exit, and didn't
17 come from that exit.

18 SOLICITOR HUNTER: Correct.

19 THE COURT: So, he lied. That's, that's something
20 objective. That's a fact you can observe. The car was full
21 of air fresheners. Claimed he had luggage, but there wasn't
22 any -- denied he had luggage. There wasn't any luggage in
23 sight, but he's going on a long trip. I mean there was some
24 factors there that just didn't make any sense at all.

25 SOLICITOR HUNTER: That's correct, Your Honor.

1 However, I believe this case would be more in line with
2 Provet, the Tindall case that Robert, Mr. Hall is urging the
3 Court to consider.

4 THE COURT: Well, I don't---

5 SOLICITOR HUNTER: And I don't---

6 THE COURT: It seems to me in this case what we're
7 talking about is some physical characteristics of somebody
8 like they were, how they held their hands, and, you know, to
9 be honest with you, in listening to it, I'm not sure where
10 he could of put his hands.

11 SOLICITOR HUNTER: However, the Courts have found that
12 the felony stretch is something that officers, in their
13 training, and expertise---

14 THE COURT: Well, I was gonna ask, is there a book
15 somewhere that tells us where people that are involved in
16 this sort of thing put their hands?

17 SOLICITOR HUNTER: I've, I've actually been to the
18 National Criminal Enforcement Association because I---

19 THE COURT: They, they talk about the felony stretch in
20 one of the cases. I mean one of the---

21 SOLICITOR HUNTER: They talk about it in a lot of the
22 cases, Your Honor.

23 THE COURT: And -- yes, sir. So, I saw that.

24 SOLICITOR HUNTER: But that's just one of the factors
25 of many, Your Honor. If I could list them out for the

1 Court.

2 THE COURT: Please do.

3 SOLICITOR HUNTER: All right.

4 THE COURT: Cause I'm listening for something objective
5 and something -- cause that's what -- I'm just reading that,
6 that when -- even the case that goes in your favor, Provet,
7 they say that it's got to be objective, objectively
8 reasonable and articulable suspicion of illegal activity is
9 occurred or is about to occur or has occurred. So, it's --
10 I mean it talks about objective things, things that you
11 don't -- it's not an interpretation by you. Something you
12 observe, a fact that you observe.

13 SOLICITOR HUNTER: I offer, lower down, also under
14 Section B on Page 3, it says the Courts must give due weight
15 to common sense judgments reached by officers in light of
16 their experience and training in, in---

17 THE COURT: Yes, sir, and I would give that some
18 weight, but that's not gonna carry the day in this case
19 because otherwise why have a judge. Leave it up to the
20 officer.

21 SOLICITOR HUNTER: Well, I understand, Your Honor. But
22 if I could list these out.

23 THE COURT: Go ahead.

24 SOLICITOR HUNTER: Okay. Again, he's, he's already
25 noticed the turn left signal on when he's moved right. The

1 long time pullover, which in his common sense and training
2 in 14 years, alerts him to the fact that he may be getting
3 ready to flee. The turn signal stays on. His foot's on the
4 break. He couldn't tell whether the car's in park or in
5 drive, which could give him reason to or give him the
6 opportunity to flee once officer Owens steps out of the car.
7 That's not something that a normal person being pulled over
8 for speeding would do.

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR HUNTER: He explains the reason for the stop.
11 He noticed that there's an odor of alcohol coming from the
12 vehicle, which he testified to that, in his training and
13 experience, could lead them to believe that something other
14 than the driving infraction is going on, that either he's
15 impaired driving or that he's trying to calm his nerves.
16 The smoking of the cigarette both. When he gets out of the
17 car and while he's waiting for the officer with the K-9 to
18 arrive, he continued talking on the cell phone.

19 He testified that when he comes up to the door, the
20 driver is talking on the cell phone at that point and he
21 doesn't hang up. That's not normal for someone whose been
22 pulled over by police at one o'clock in the morning, police
23 knock on the door, that you don't hand up your cell phone.

24 He appeared to be nervous. He has his hands shaking
25 when he hands over the license. His pulse is rapid. His

1 breathing is also heavy. He admits to drinking to the
2 officer. He even tried to pick up his phone once he got out
3 of the car, which, again, alerts the officer that he may be
4 trying to flee. He leaves the door open.

5 THE COURT: Say that again, the last thing you just
6 said.

7 SOLICITOR HUNTER: He tried to pick up his cell phone
8 once the officer asked him to exit the vehicle, and they do
9 a pat down for safety, and here's one of the, one of the big
10 facts. They find a large wad of cash in this man's pocket.
11 He admits he does not have a job. He is unemployed.

12 THE COURT: And he's had somebody else rent a car for
13 him. He didn't rent it.

14 SOLICITOR HUNTER: And actually I'd like to point that
15 out, Your Honor. On this rental agreement, it appears that
16 the car was rented -- if I may pass this up.

17 THE COURT: Yes, sir, please pass it up.

18 SOLICITOR HUNTER: Your Honor, it was rented on
19 June 29th around four o'clock in the morning in North
20 Carolina. According to the story given by the defendant,
21 he's on his way from Lawrenceville, Georgia back up to
22 Morganton, North Carolina. So, if that rental agreement is
23 true, that car's been driven from North Carolina, down to
24 Lawrenceville, Georgia, a hub city known for drug
25 trafficking, as he said 90 to 95 percent of all the major

1 cases he has done on I-85 come out of Atlanta, and then
2 driven back up that night to see his grandmother at one
3 o'clock in the morning.

4 THE COURT: Where is Morganton?

5 SOLICITOR HUNTER: While he's---

6 THE COURT: Well, where is Morganton?

7 SOLICITOR HUNTER: ---been drinking.

8 THE COURT: Where's Morganton?

9 OFFICER: It's, it's on 18 above Shelby.

10 THE COURT: Okay. That's what I'm thinking.

11 MR. HALL: Your Honor, I think his testimony was
12 Marion. He said Morganton.

13 THE COURT: Well, no, he said, he said he's going to
14 Marion, but the car was rented in Morganton.

15 MR. HALL: Yeah. Okay. Okay.

16 THE COURT: And I'm just trying -- is it---

17 OFFICER: Marion's above Morganton.

18 THE COURT: Before you get to Hickory, up that way?

19 OFFICER: Yeah, Marion, Marion's above Morganton.

20 THE COURT: Okay.

21 SOLICITOR HUNTER: But obviously the car was rented
22 that day, driven to Georgia, and back, which means his story
23 was not exactly consistent. He also---

24 THE COURT: And at four o'clock in the afternoon?

25 SOLICITOR HUNTER: The car was rented at four o'clock

1 in the afternoon of that day, and nine hours later he's
2 pulled over after saying he's already coming back up to
3 North Carolina.

4 THE COURT: Go ahead.

5 SOLICITOR HUNTER: It's obviously a third party
6 vehicle. He is on that rental agreement as one of the
7 drivers. However, he did not rent the vehicle. He's the
8 only person in the car. The person who rented the vehicle
9 is not in the vehicle. We don't know where he is.

10 Again, as I said, he's going to his grandmother at
11 1:10 a.m. He's been drinking, and I think one of the big
12 ones I've already stated is they pulled a large wad of cash,
13 which is consistent with drug trafficking especially when
14 someone is unemployed. They continue to see this nervous
15 behavior while they're talking to him.

16 When asked about the illegal products or the illegal
17 activities or illegal products in his car, that's when
18 Deputy Owens testified that he looked at the vehicle, looked
19 down as if he could see what was in the vehicle, but then
20 stated that there was nothing in the vehicle. I think all
21 of these, taken together, while they both, Provet and
22 Tindall, say -- let me get the exact language, and that some
23 items found in the vehicle are common place and consistent
24 with innocent travel. When reviewing the record, they
25 found, the totality of the circumstances, all these things

1 taken together would give him reasonable suspicion not, not
2 just a hunch, but not as much as probable cause, but some
3 type of illegal activity other than those driving
4 infractions and the impaired driving is going on, Your
5 Honor.

6 THE COURT: Anything else, Mr. Hall?

7 MR. HALL: Yes, sir, if I can just reply to some of
8 that. It's -- as far as the rental agreement and the car
9 being in North Carolina, from North Carolina, he never said
10 I rented the car in North Carolina, and my, with my cousin
11 or whatever. He said I'm driving the car. My -- whoever
12 cousin or friend, whoever it was, rented the vehicle. I'm
13 driving it to North Carolina to see my grandmother.

14 THE COURT: Somebody name Edwin Hemphill.

15 MR. HALL: There's noting inconsistent about that. He
16 never said I drove it from North Carolina or I rented it
17 from Georgia. He said I'm driving it from home in
18 Atlanta---

19 THE COURT: Lawrenceville.

20 MR. HALL: ---to North Carolina to visit my
21 grandmother. Your Honor, as far as the brake in park and
22 the phone and fleeing, Deputy Owens was looking in the
23 window. You can see if a car's in park or whatever or you
24 can ask him to cut it off. But it -- I don't think it's
25 unusual for people to sit there with their foot on the

1 brake, but certainly his eyes could of told him whether or
2 not the car was park or drive or whatever.

3 The signal, Your Honor, could be accident. Could be
4 I'm gonna get out of the way of this police officer. Then
5 you realize the police officer's is after him, your turn
6 signal goes the other way, and it's not unusual for people
7 to smoke a cigarette especially in a situation where they're
8 being pulled over. And I think we've already covered over
9 the phone. That's just, unfortunately, a normal thing in
10 our society. People are, feel married to their phone and
11 have to have it and use it all the time.

12 And as far as looking down, I don't know that I
13 wouldn't look down if they said can we search your car for
14 drugs. That's just the, I think a normal reaction someone
15 would have. I still feel that maybe they've got a hunch,
16 but I don't think that was objective reasonable suspicion
17 necessary for the case to go forward, and ask that you
18 suppress the evidence.

19 THE COURT: All right. Anything further, Mr. Hunter?

20 SOLICITOR HUNTER: Just one final thing. If we look at
21 the, in Provet, Trooper Owens, it specifically says they're
22 looking for, excuse me, you're looking for sufficient
23 indicators of criminal activity to justify continued
24 detention, and in the Provet case, one of the indicators was
25 that he was nervous as displayed by the extreme shaking of

1 the hands and accelerated breathing. We have that in this
2 case.

3 The third party vehicle registrations, very common in
4 drug trafficking. We have that in this case.

5 Now, some of the -- it talks about what he, Provet, and
6 Mr. Owens had a conversation, and what that conversation
7 amounted to. Just like here, he had a large amount of cash.
8 He admitted he wasn't working. That's very consistent with
9 drug trafficking. He also had a cell phone.

10 In this case, number six, the presence of numerous fast
11 food bags, a cell phone, and some receipts were in Provet's
12 vehicle. Now, obviously we didn't have the fast food bags
13 and receipts in this vehicle, but the cell phone was there.
14 He was talking on it.

15 We don't have to have the exact six factors that they
16 list out in Provet because there was a couple of cases
17 where---

18 THE COURT: Oh, I didn't say you had to have the exact
19 same facts.

20 SOLICITOR HUNTER: I understand. I understand. I just
21 wanted to get---

22 THE COURT: But it's got to be more, more than just
23 subjective impressions by the police officer too.

24 SOLICITOR HUNTER: It's not just---

25 THE COURT: There's got to be some objective facts.

1 SOLICITOR HUNTER: It's not his, his -- the objective
2 facts that the witnesses, but also what he gleams from the
3 facts based on his training and experience, and we would say
4 that you were specific and articulable facts that rose to
5 the level of reasonable suspicion in this case.

6 THE COURT: All right. I see you in, in get up
7 position, Mr. Hall.

8 Do you want one more time?

9 MR. HALL: Well, Your Honor, if we rely on his
10 experience to that extent, to turn things that aren't, that
11 are subjective into objective, we're also -- he was looking
12 in the car. He couldn't tell whether it was in park or not,
13 you know. So, Your Honor, there's just not enough here.
14 There's -- it's kind of -- I don't want to say read the case
15 and then testified accordingly, but, Your Honor, I just
16 think they have, like I say, subjective things. They try to
17 make them sound objective, but they just don't rise to it.

18 THE COURT: All right. I have reviewed the Tindall
19 case, which I know is a Supreme Court case. I have reviewed
20 the Provet case, which I do acknowledge is a Court of
21 Appeals case. However, they distinguished Provet from
22 Tindall. Tindall had already been decided when the Court of
23 Appeals articulated its reasoning in Provet, and in there
24 they do indicate that you must have -- the officer must have
25 an objectively reasonable and articulable suspicion illegal

1 activity has occurred or is occurring.

2 Particularily because of the -- and it says reasonable
3 suspicion requires particularized and objective basis that
4 would lead one to suspect another of criminal activity. I
5 am required to consider the totality of the circumstances,
6 and give due weight to the common sense judgments reached by
7 officers in light of experience and training.

8 In particular, the problem I have with the or the facts
9 that are revealed by the rental agreement indicate the
10 rental in North Carolina on the evening, afternoon before
11 the stop was made at one o'clock in the morning. I have my
12 doubts that the car was driven from Morganton to
13 Lawrenceville and back to Marion to visit a grandmother.
14 That's a long way to go around to visit your grandmother.
15 Morganton and Marion is a much shorter trip than that.

16 So, it appears that he may of been less than truthful
17 about the purpose of his trip. Also, for someone
18 unemployed, to be carrying such a large amount of cash in
19 their pocket also would obviously give a officer reasonable
20 suspicions. The other factors as noted, I have given those
21 the weight required, and in this case I am going to refuse
22 to suppress.

23 MR. HALL: Thank you, Your Honor.

24 THE COURT: Are you ready to go forward with other
25 motions?

1 MR. HALL: We have no motions at this time, Your Honor.

2 THE COURT: All right. State have anything further?

3 SOLICITOR HUNTER: Nothing, Your Honor.

4 THE COURT: So, we're ready to go forward?

5 MR. HALL: We're ready to go forward.

6 THE COURT: Please bring us the jury.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: There aren't any assigned seats. You can
10 sit anywhere in there right now except for the alternate has
11 to sit in the back corner. Just fill it up, fill it up
12 please.

13 All right. The record will reflect the jury has
14 returned to the courtroom, and at this time I'm going to ask
15 the clerk to please swear the jury panel for me.

16 (WHEREUPON, the jury panel was placed under oath at
17 this time.)

18 THE COURT: Now, if any of the jury failed or refused
19 to take the oath just administered by the clerk, I'd ask
20 that you please stand.

21 (No response.)

22 THE COURT: It appears the jury has been sworn for this
23 case.

24 Now, before we begin the actual trial of this case,
25 and, again, I want to thank you very much for your patience

1 this afternoon. We had some pretrial matters we had to deal
2 with. It took longer than I thought it would, and, again, I
3 apologize to you for that.

4 Before we begin the trial of this case, there are some
5 things I want to go over with you that have to do with the
6 duties and responsibility that we all have in the trial of
7 this case, the participants, the attorneys, myself, and, of
8 course, you as jurors.

9 Probably, for most of you, this is your first
10 experience in actually being selected to serve on a jury in
11 the trial of an actual case. And for those of you for whom
12 this is your first experience, probably most of what you
13 might know about juries and trials and how those things work
14 you would of learned from such sources as television shows
15 you've watched or movies that you've seen or books that
16 you've read or perhaps from your education.

17 And in the case of books and television shows and
18 movies, those are, have interesting plots and interesting
19 story lines. They're -- they follow a script and they're
20 intended for your entertainment. It never ceases to amaze
21 me that, in the case of television, you can have a, an event
22 occur, a trial occur, and a result from the jury in the
23 space of an hour, and you still got time for commercials.

24 So, obviously those forms of information take what we
25 call literary license with what goes on in courtrooms and

1 how cases are actually handled and tried.

2 I can tell you not that what you're engaged in is
3 intended for anything but your entertainment. What you're
4 engaged in is a fundamental part of our democracy. I hope
5 you realize that. Because if you take time to look around
6 this world at the various judicial systems that exist around
7 the world, you'll find that most of those systems don't
8 allow citizens to directly participate in the decision
9 making process that goes on in the courtrooms of those
10 countries.

11 The jury system that we enjoy in the United States
12 began with the, the Magna Carta in the Year 1215. It has an
13 800 year tradition in our juris prudence system. I hope
14 it's a system that we never lose, and that is the right of
15 citizens to directly participate in matters, in this case,
16 the case where the State has accused a citizen of the
17 commission of a crime.

18 So, I do appreciate your willingness to serve. It's my
19 belief that service on the jury panel is the second highest
20 service that citizens can render to your government. Of
21 course, the first being service in the military. And while
22 serving on jury service doesn't require that anyone carry a
23 gun or risk your life, it is an important service, and I do
24 appreciate your willingness to come forward. I realize you
25 got a subpoena, didn't have much choice but to appear, but

1 you did appear voluntarily and you are serving willingly.
2 So, thank you very much for your willingness to do that. If
3 it weren't for good citizens such as yourselves who are
4 willing to come forward and serve on jury panels, our system
5 couldn't function as it was designed by our forefathers to
6 function. So, thank you very much.

7 This courtroom is a place of honor. It's dedicated to
8 the preservation of citizens' rights through that system of
9 justice, our laws, our Constitution, and the system of
10 justice that we operate in this country. It's not a perfect
11 system of justice. It's, it's -- it was conceived and
12 operated by men. But it is an effort to see that justice is
13 done between the parties that come before this Court.

14 Now, the attorneys that are going to appear in this
15 case are here to represent their client's interest, and I
16 can assure you they'll do, do an excellent job in presenting
17 those interests before you, the jury, during this trial.

18 But first and foremost, those officers, those lawyers
19 are also officers of this court. They have appeared at some
20 point in time and taken an oath, and that oath is to assist
21 you in your search for the truth in this case. Therefore,
22 you can expect that they'll act in a reasonable,
23 professional, and an ethical manner in the presentation of
24 their client's cases before you during this trial.

25 You, too, have come before this Court and you, too,

1 have now taken an oath to decide this case based only upon
2 the law and the evidence presented during the trial. You
3 too are expected to act in a reasonable, a professional, and
4 an ethical manner in your discharge of your duties as jurors
5 in this court, and, again, I thank you for your willingness
6 to assume that responsibility.

7 Now, what I'm telling you now is not intended to be a
8 trial for, excuse me, a charge on the law in this case. At
9 the close of the trial, I will go over the law with you at
10 the appropriate time. It is an effort to see to it that you
11 understand the roles and responsibility that we all have in
12 trying this case.

13 Now, at the beginning of this matter I went over with
14 you the indictment in this case, and I'm not gonna read it
15 to you again. I'll do that at the close of the trial when I
16 charge you concerning the law. The indictment is for the
17 drug offense of, of trafficking cocaine and also for the
18 possession of a weapon during the commission of a violent
19 crime. That's the charges that are in the indictment.

20 But I've told you, an indictment doesn't constitute
21 evidence in this case, and it can't be used by a jury in any
22 fashion in determining the guilt or the innocence of someone
23 who's charged in an indictment because the defendant has
24 pled not guilty to that indictment, and under the law and
25 the Constitution of this State and of the United States,

1 that plea places the burden of proof solely upon the State
2 to prove the defendant's guilt beyond a reasonable doubt.

3 It will be your solemn responsibility, at the close of
4 this trial, to determine whether or not the State has met
5 that burden of proof in this case. Again, proof beyond a
6 reasonable doubt, and I'll discuss that in detail with you
7 when I charge you concerning the law at the close of the
8 case.

9 You are to determine whether or not the State has met
10 that burden from the facts and from the testimony and from
11 the evidence that will be presented during this trial.
12 Because, you see, the, the law and the Constitution of our
13 State make the jury the sole judge of the facts in this
14 case. You are to determine the facts from the testimony and
15 the evidence that's presented during this trial.

16 Now, the same law that makes you the sole judges of the
17 facts in this case makes me the sole judge of the law in
18 this case. The law, as I give it to you at the close of the
19 trial, is the only law that you can use in making a decision
20 in this case under the oath that you have taken as jurors.

21 Now, if you came into the courtroom with some notion or
22 idea as to what law is or what it ought to be, you should
23 leave those notions outside of the jury room prior to
24 deliberations. Because, I repeat, under your oath, you're
25 to take the law as I give it to you, apply it to the facts

1 as you find them to be, and that should put you in a
2 position of making a just and a true verdict in this case.

3 Now, until I advise you to begin your deliberations,
4 I've already advised you earlier, and I'll tell you
5 throughout the trial, don't begin any discussions about this
6 case based on partial information or partial facts that you
7 may have received. Again, I want you to keep an open mind
8 throughout the trial until such time as you begin your
9 deliberations in this case, and, also, it is improper for
10 you to try to gather any information outside of the
11 courtroom.

12 Under the oath that you took, you're to decide the case
13 based upon the evidence and the law. The only evidence in
14 this case will be testimony of witnesses who've been sworn
15 to tell the truth who will testify from this witness stand
16 and whatever documents or other evidence comes into the
17 record through that testimony. That's the only evidence
18 that will appear in this case. So, you should not use any
19 other source of information in trying to reach a decision in
20 this case because, under your oath, you are to decide the
21 case solely based on the evidence and the law in this
22 matter.

23 Now, it's important, as I said, for you to keep an open
24 mind and don't try to decide any issue in this case until
25 you've had, received all of the evidence.

1 Now, in a few minutes I'm going to allow the attorneys
2 to start this trial with what's called an opening statement.
3 At the close of the trial, once the evidence is been
4 presented, I'll let the attorneys again address the jury
5 directly through what's called a closing statement. I will
6 tell you now the statements made by lawyers during the trial
7 do not constitute evidence, and can not be used by you in
8 any manner in directly determining the guilt or the
9 innocence of the defendant.

10 At the beginning of the trial they tell you what the
11 case is about. At the close of the trial, they'll sum up
12 the evidence from their client's prospective. But, again,
13 those statements by lawyers don't constitute evidence.
14 Again, evidence is testimony given by witnesses who've been
15 sworn to tell the truth who will testify from the witness
16 stand during the trial of this case.

17 Now, from time to time during the trial, there may be
18 an issue that requires me to discuss that issue with the
19 lawyers such as the introduction of evidence or the
20 appropriateness of a question that might of been asked
21 during a trial. If it's my belief that that discussion may
22 lead to discussion of a matter that I believe may not be
23 admissible under the rules of evidence that govern our
24 courts, during that discussion I may ask you to step back to
25 the jury room. When I've completed the discussion, I will

1 call you back to the courtroom and announce whatever
2 decision I've made on the question that's been presented to
3 me.

4 Please don't take from the fact that I've asked you to
5 step back during that time to the jury room that I have an
6 opinion one way as to how, one way or the other as to how
7 you determine the facts in this case. You see, the law
8 doesn't allow me an opinion on that subject, and I don't
9 have an opinion as to how you determine the facts in this
10 case. That's simply me doing my duty to see to it that you
11 decide the case solely based on evidence that's been
12 properly admitted under the rules that govern the admittance
13 of evidence, and those rules are established and govern our
14 courts and have for years and years.

15 Now -- and I've told you you're the sole judges of the
16 facts, and in deciding the facts you will be the sole judges
17 of the credibility, therefore, of all the witnesses who
18 testify, and credibility simply means believability. I'll
19 tell you to use your own good common sense in making those
20 decisions as to the credibility or believability of the
21 witnesses who will testify. Each of you, everyday in your
22 ordinary lives, make common sensical decisions as to what
23 you choose to believe and what you choose not to believe,
24 and today is no different than any other day.

25 You have the right to observe the witnesses as, as they

1 testify, the way they speak, how they deliver their
2 testimony. You have the right to decide whether or not a
3 witness might have a bias or a prejudice one way or the
4 other. You have the right to determine whether or not the
5 witness had the ability to see or know the facts about which
6 the testimony, the witness testified, and you have the right
7 to decide whether or not a witness might have a stake in the
8 outcome of the case.

9 You can take any of those factors that I just went over
10 with you. Again, use your own common sense and make a
11 determination as to the credibility or believability of the
12 witnesses who will be testifying in this case.

13 As the sole judges of the facts, you have the right to
14 believe all of what a witness tells you, part of what a
15 witness tells you, or none of what a witness tells you. You
16 have the right to believe one witness against all the others
17 who testify. You have the right to believe all the others
18 against one cause, you see, you're the sole judges of the
19 facts. So, you're the sole judges of the credibility or the
20 believability of the witnesses.

21 For that reason, I'm going to ask you to pay close
22 attention to what the witnesses say, the way they testify,
23 how they deliver their testimony. Be in a position, at the
24 close of the trial, to be able to discuss that testimony
25 with your fellow jurors. So, try to pay close attention

1 because it's extremely important that you do your job
2 diligently and conscientiously. Because, under our system
3 of justice, ordinarily there's no means by which an
4 erroneous determination of facts that's been made by a jury
5 can ever be corrected. So, listen carefully to what goes
6 on, pay close attention so that you'll be in a position to
7 enter into meaningful deliberations at the close of the
8 trial. You have the right to consider anything that's in
9 the record of this case that will help you evaluate the
10 evidence that you will hear during the trial of this case.

11 Don't think that because I haven't appointed a
12 foreperson at the beginning of the trial that I've forgotten
13 that fact. I appoint the foreperson at the close of the
14 trial during my deliberations because I want to emphasize
15 something to the jury, and that is that each and every one
16 of you has a, the same say in the outcome of this case. At
17 the close of the trial, I'll instruct you that your verdict
18 must be unanimous. In other words, all 12 jurors who are
19 deliberating must agree upon the verdict before it becomes
20 the verdict of the jury.

21 The foreperson has no greater say in the outcome of the
22 case. I don't appoint them because I don't want you to
23 think that someone is more important than any other juror in
24 the case until we begin the deliberations. Because, when
25 you begin the deliberations, the foreperson will preside

1 over the deliberations, will write any questions back to the
2 Court that you might have during deliberations and, and will
3 write the verdict on the verdict form once the verdict is
4 reached.

5 But, again, each and every juror has the same
6 obligation, to listen to the testimony, and be prepared to
7 deliberate at the close of the trial. So, I'll make the
8 appointment of the foreperson when I charge you concerning
9 the law at the close of the case.

10 Now, I want to be sure that I haven't violated anyone's
11 rights by my comments to you to begin with, is there an
12 objection from the State?

13 SOLICITOR HUNTER: Not from the State, Your Honor.

14 THE COURT: Any objection from the defense?

15 MR. HALL: None from the defense, Your Honor.

16 THE COURT: Now, ladies and gentlemen, I've told you
17 that the State has the burden of proof in this case. For
18 that reason we're going to allow the State to make the first
19 statement to you at the beginning of the trial, followed by
20 the defense. In presentation of evidence, the State will go
21 first, again, followed by the defendant if the defendant
22 wishes to put up any evidence. And then once the evidence
23 has been completed, we will do closing arguments by counsel.
24 After that I will charge you concerning the law. So, that's
25 the process that we're going to follow in presenting the

1 trial to you.

2 So, at this time, Mr. Hunter, you may make your opening
3 statement for the State.

4 SOLICITOR HUNTER: Thank you, Your Honor.

5 May it please the Court?

6 THE COURT: Yes, sir.

7 SOLICITOR HUNTER: I'm gonna try to keep it brief to
8 y'all. The State alleges that Ashley Eugene Moore
9 trafficked, trafficked cocaine over 400 grams.

10 Now, drug crimes in South Carolina are broken down into
11 three separate categories. You have possession charges,
12 which are small amounts located on your person in your
13 constructive or actual possession. He'll actually give you
14 the law. You then have your PWID/distribution/manufacturing
15 charge. It's a little higher than possession charge.
16 That's either you sold it, you're going to sell it, or
17 you're making it.

18 Now, above that there are trafficking charges and
19 trafficking are broken down into amounts. You can be
20 trafficking from, in regards to crack cocaine, between ten
21 to 28 grams, 28 to 100 grams, over 200 grams, 200 to 400
22 grams, or, in this case, over 400 grams.

23 And what the evidence will show is that after a car
24 stop, that Deputy Owens over here -- you'll hear from Robert
25 Rosenburg, an evidence tech, Corporal Hancock, who was also

1 on the scene, Jason Carraway, who is the K-9 handler.
2 You'll also hear from Beth Stuart who's not here today, but
3 she'll be here tomorrow to testify.

4 What you'll hear is that, in the back of his car, was
5 887 grams of crack cocaine. That's almost two pounds of
6 crack cocaine. I believe it's 1.95 pounds.

7 Deputy Owens pulls Mr. Moore over for doing 70 miles an
8 hour in a 60 mile an hour zone. This happened right before
9 the 63 exit in Duncan at 290 coming northbound from
10 Greenville. It happened in Spartanburg County. He pulls
11 him over for speeding and failing to maintain his lane.

12 He's out there for a little while and he feels that he
13 may be impaired. He does a few field sobriety tests. At
14 that point, he'll testify that he didn't think he was
15 impaired enough for him to bring him in. However, they
16 bring a dog out there to do a sniff on the car. The dog
17 alerts on the car, and when they searched the car, they find
18 a .45 caliber gun loaded and 887 grams of crack cocaine.

19 Now, the gun charge which has been read to you is
20 possession of a weapon during commission of a violent crime.
21 Trafficking in crack cocaine is considered a violent crime
22 in South Carolina. So, if a person, in our case, we allege
23 that he possessed that gun while, while committing the crime
24 of trafficking in crack cocaine.

25 In the end I'm gonna come back and ask you for a

1 verdict of guilty. I'm not gonna ask you for it now. But I
2 ask you listen to the facts and listen to the testimony of
3 our five officers, and at the end, I'm confident that you'll
4 come back in my favor. But listen to it. Use your common
5 sense.

6 Thank you.

7 THE COURT: Mr. Hall, for the defense.

8 MR. HALL: Ladies and gentlemen of the jury, I always
9 like to thank a jury for being here. I echo some of the
10 things the judge said. But I know it's an important
11 service. I've dealt with it hundreds of juries over my
12 career. I've listened to a lot of juries when I had a
13 different job cause I've been a judge. So, I know it's an
14 inconvenience. It's a pain. But I thank for you being here
15 because nobody can have a fair jury trial unless we impose
16 on people and bring them in and have them serve.

17 Having said that, I'm gonna be very brief. The State
18 has to prove, beyond a reasonable doubt, that my client
19 knowingly trafficked in crack cocaine, what we talk about
20 here, and that he knowingly had a firearm during that crime.
21 Not that it was there, not that he could have, beyond a
22 reasonable doubt.

23 I ask you to use your common sense too. Look at all
24 the facts. And at the end, consider the evidence, apply the
25 law the judge gives you, and arrive at your true verdict.

1 Thank you.

2 Your Honor, we have one thing we need to address before
3 we get started.

4 THE COURT: You may approach.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: Mr. Hunter, call your first witness.

8 SOLICITOR HUNTER: State would call Deputy Dale Owens.

9 THE COURT: Come forward to my left and be sworn
10 please, sir.

11 DALE OWENS, having been first duly
12 sworn, testified as follows:

13 THE COURT: Have a seat, sir. Once seated, state your
14 name.

15 WITNESS: Dale Owens.

16 THE COURT: Mr. Hunter, your witness.

17 DIRECT EXAMINATION

18 BY SOLICITOR HUNTER:

19 Q Deputy, can you please tell the jury your law
20 enforcement background?

21 THE COURT: Bring the lights up. He's not quite ready
22 for that. I'm sorry.

23 Excuse me, Mr. Hunter.

24 SOLICITOR HUNTER: That's all right.

25 THE COURT: Let's get the lights back up. It takes a

Dale Owens - Direct examination
by Solicitor Hunter

1 second sometimes. Here they are.

2 All right. Mr. Hunter, you may proceed.

3 Q Can you please tell the jury your law enforcement
4 background?

5 A Yes, sir, I started in law enforcement after college at
6 Citadel in '91. I started with the Columbia Airport Police
7 Department for two years, and then I went to the South
8 Carolina Highway Patrol where I worked for 17 years.

9 During my capacity with the Highway Patrol, for 12 of
10 those years, I was assigned to the Aggressive Criminal
11 Enforcement Unit. Nine of those years I was the first line
12 supervisor for the Aggressive Criminal Enforcement Unit
13 assigned to the Upstate region, which involves I-85 and
14 I-26.

15 During that time, I received over, well over a thousand
16 hours in aggressive criminal enforcement and criminal patrol
17 training. I also became an instructor through the South
18 Carolina Criminal Justice Academy in teaching criminal
19 patrol techniques, and aggressive, aggressive criminal
20 patrol enforcement, and then I also was certified through
21 the National Highway Traffic Safety Administration as an
22 instructor for also criminal patrol techniques as well.

23 Q So, your total---

24 A And then the last two years for -- well, actually the
25 last year and eight months I've been assigned -- I gained

Dale Owens - Direct examination
by Solicitor Hunter

1 employment with the Spartanburg County Sheriff's Office,
2 and, and currently assigned with their ICE unit, their
3 Interstate Criminal Enforcement Unit.

4 Q So, your total law enforcement background is how many
5 years?

6 A A little over 20 years.

7 Q Okay. And specifically with your time on the
8 aggressive criminal enforcement, Highway Patrol, your
9 interstate criminal background here in Spartanburg County,
10 what type of jobs or duties did you have?

11 A While I mean it's all to protect and serve, but our
12 main duty was to patrol the interstates looking for all
13 types of a criminal activity. Whether it be drug
14 trafficking, money laundering, kidnapping, murders, you name
15 it, we pretty much did it. That's what our job is to do, to
16 seek, detect, and, and apprehend persons involved in those
17 types of crimes. But mostly drug trafficking, weapons,
18 weapons, and stuff like that.

19 Q Okay. What were you doing on the night of June, or
20 excuse me, the morning of June 30th?

21 A On the morning of the -- the morning of June 30th,
22 slightly after midnight, around one o'clock a.m., I was on
23 routine patrol in Spartanburg County on Interstate 85. At
24 that -- my supervisor at that time was riding with me. Just
25 safety precautions. It's just something we did. Sometimes

Dale Owens - Direct examination
by Solicitor Hunter

1 we do that. We double up just for safety.

2 That evening, Corporal Hancock was riding with me, and
3 we were monitoring the traffic on Interstate 85, and, at
4 that time, we're on the northbound side near exit 60---

5 Q So, what county---

6 A ---which is Highway 101.

7 Q ---is that in?

8 A That's in Spartanburg County.

9 Q Okay. And whose vehicle were you in?

10 A Mine.

11 Q And is your vehicle equipped with a dashboard camera?

12 A Yes, sir, it is.

13 Q Okay. Did you record a video of the incident that
14 we're here for today?

15 A Yes, I did.

16 Q Did you encounter a problem with that video?

17 A Yes, it has a problem with its audio in just the audio
18 portion of it. It has fairly good visual, but no audio.

19 Q Can you explain the set-up of your video within your
20 car?

21 A It's probably one of the older models that we have with
22 the Sheriff's Office. It's a VHS recording. It actually --
23 there's two ways you can activate it. One is by when you
24 turn on the blue lights, the, the actual camera comes on and
25 begins recording and another is by -- we have a remote on

Dale Owens - Direct examination
by Solicitor Hunter

1 our belt, which is the, also the mic remote that you can
2 push a button on it and it will start, begin recording at
3 that time, and that's generally how it operates, and then
4 you have to manually stop it in the car to make it stop.

5 Q Now, you said that there was a problem with the audio
6 on this one?

7 A Yes, sir, I did.

8 Q Have you had that problem before?

9 A I've had it, I know of, on two occasions with this
10 particular camera, and both times, when I've detected it,
11 I've sent it back or I've taken it where my supervisor has
12 told me to take it to repair it.

13 Q Okay. And was it repaired, to your knowledge, both
14 those times?

15 A To my knowledge, yes, sir.

16 Q Okay. And, in fact, when do you realize that the audio
17 may be out?

18 A When you go back and review the tape. When you have an
19 incident or that's when you detect it.

20 Q Is---

21 A That's the only time you -- I don't review the tapes on
22 a, on an occasional basis or anything like that. The only
23 time I review it is when I have a case, when I've made a
24 charge or something like that.

25 Q Okay. So, you wouldn't know that the audio was out

Dale Owens - Direct examination
by Solicitor Hunter

1 until after the incident occurred?

2 A That's correct.

3 Q Okay. What happened about 1:10 that morning?

4 A About 1:10 that morning, I was on -- like I said, I was
5 on patrol on Interstate 85 on the northbound side. I was
6 sitting stationary right there at Exit 60 at 101. During
7 that time, I observed the vehicle that Mr. Moore was driving
8 pass us. It was in the far right-hand line, which we
9 consider the number three lane. When it, went it came --
10 when it approached and passed us, it appeared to be going
11 well above the posted speed limit, in excess of 70 miles an
12 hour. The, the posted speed limit is 60, is 60 in this
13 area.

14 So, then I pulled out on it. As I caught up to the
15 vehicle, I observed the vehicle change lanes from the number
16 three lane to the number two lane, which is the middle lane,
17 without giving a signal, and failed to maintain his single
18 lane. Therefore, changing lanes without giving signals.
19 So, then I got behind him in the middle lane, activated the
20 blue lights, and, at that point, the video camera came on.

21 Q Okay. So, the blue lights activate your camera?

22 A That's correct.

23 Q Have you had an opportunity to review the video?

24 A Yes, sir, I did.

25 Q Okay.

Dale Owens - Direct examination
by Solicitor Hunter

1 MR. HALL: Can we approach, Your Honor?

2 THE COURT: You may.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: Ladies and gentlemen of the jury, there is
6 a matter I'm gonna have to take up with the attorneys
7 outside of your hearing at this point in time. It shouldn't
8 take us very long. But I'm gonna ask you to step back to
9 the jury room. Don't begin any discussions until I've asked
10 you to do so.

11 You may retire at this time.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Mr. Hall, you want to put your---

15 MR. HALL: Yes, sir, and I apologize.

16 THE COURT: ---issue on the record?

17 MR. HALL: Yes, sir. I apologize. It just didn't
18 strike me before. But the testimony earlier in the
19 suppression hearing was that VHS to DVD, and I wasn't aware
20 of that fact until the testimony this afternoon, and I've,
21 obviously, then not had an opportunity to, to look at the
22 VHS to see if there's anything different, if it's, you
23 know -- I'm not alleging that they've done anything, but I
24 don't know. You know, maybe we'll get some sound on that.
25 I have no idea. But, Your Honor---

Dale Owens - Direct examination
by Solicitor Hunter

1 THE COURT: All right. Well, Mr. Hunter, you indicated
2 to me at the sidebar---

3 SOLICITOR HUNTER: I believe, in my speaking with Mr.
4 Owens, the video cassette still is in existence.

5 WITNESS: It is.

6 THE COURT: Okay. All right. I'm gonna -- what I'll
7 do is I'll require he make that available to you, Mr. Hall.

8 MR. HALL: Yes, sir.

9 THE COURT: And you'll have an opportunity, before you,
10 you get to your case and before he rests, to have reviewed
11 it. If it turned out to be something different than what is
12 related here in the Court, I'll take the appropriate action
13 and we'll see that that gets put in the record so you can
14 have that available to you.

15 MR. HALL: All right. Thank you, Your Honor. It's
16 just---

17 THE COURT: All right.

18 MR. HALL: I apologize. I should of said it before,
19 but it was just---

20 THE COURT: That's quite all right.

21 Now, as to the, the DVD that's been presented, is there
22 any objection to that subject to your having reviewed the,
23 the VHS?

24 MR. HALL: No, sir, no objection subject to viewing
25 VHS, yes, sir.

Dale Owens - Direct examination
by Solicitor Hunter

1 THE COURT: All right. Then I'm gonna allow it to come
2 in. And, of course, if the VHS turns out to be something
3 different, it's gonna come in.

4 SOLICITOR HUNTER: I understand.

5 THE COURT: It's gonna come in too.

6 All right. Now, let's bring the jury back.

7 (WHEREUPON, State's Exhibit No. 1 was received into
8 evidence at this time.)

9 SOLICITOR HUNTER: Your Honor, is it okay, I have the
10 video already set up to play here, if I just use the --
11 we've marked the outside cover of the video.

12 THE COURT: Yes, sir.

13 SOLICITOR HUNTER: If we take it out and put it back
14 in.

15 THE COURT: That will be fine.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: All right. The record will reflect the
19 jury has returned to the courtroom.

20 I've admitted the DVD subject to certain restrictions.
21 You may proceed, Mr. Hunter.

22 SOLICITOR HUNTER: Just to clarify, the DVD is now been
23 admitted into evidence?

24 THE COURT: Yes, sir, it has.

25 SOLICITOR HUNTER: Okay.

Dale Owens - Direct examination
by Solicitor Hunter

1 CONTINUED DIRECT EXAMINATION

2 BY SOLICITOR HUNTER:

3 Q When you first pulled him over, was there anybody else
4 in the vehicle other than Mr. Moore?

5 A No, sir, there was not.

6 Q Okay.

7 A The whole time he was the sole occupant of this
8 vehicle.

9 Q And how long did it take him to pull over from the
10 middle lane into the side of the road?

11 A Around twenty---

12 Q Not, not in seconds, but generally.

13 A Forty to fifty seconds, somewhere in there.

14 Q Okay.

15 A Longer than usual.

16 Q Now, that's you driving the vehicle with the dashboard
17 camera?

18 A That is correct, and I'm in an unmarked Crown Victoria.

19 Q And that's Mr. Moore driving the vehicle in front of
20 you?

21 A That is, and I've just now turned on the spotlight
22 cause he's taking a, what I consider an extended period of
23 time to pull over to the right shoulder.

24 Q And can you read this sign that's going right there
25 right now?

Dale Owens - Direct examination
by Solicitor Hunter

1 A I think it said Wellford Duncan exit. I'm not sure.

2 But we're just prior to 290.

3 Q Okay. When you approached the car, what side of the
4 vehicle do you approach on?

5 A On the passenger side.

6 Q Why---

7 A And that's what I teach.

8 Q ---do you do that?

9 A It's, it's -- the biggest advantage is officer safety
10 especially with -- well, it doesn't have as much traffic on
11 it now, but Interstate 85 is a very, has a bunch of traffic
12 on it, and it's much safer on the passenger side for many
13 reasons, and that's what we train our officers to approach.

14 Q What's that on the back right side of his vehicle right
15 now?

16 A Right now he still has his foot on the brake and the
17 signal is staying on. He's left the signal on.

18 Q How long does the signal stay on?

19 A In this particular case, it's stays on the whole time
20 the car's stopped.

21 Q What---

22 A And that's unusual. I mean that's --.

23 Q What was he doing when you approached that side of the
24 vehicle?

25 A He's actually talking on his cell phone and he

Dale Owens - Direct examination
by Solicitor Hunter

1 continues to talk on it even while I'm standing at the
2 passenger, the window.

3 Q Okay. And when you're looking at him, how would you
4 describe his posture?

5 A He's slightly slumped over the wheel and talking on
6 the, on the cell phone.

7 Q Did you notice any smell coming from the vehicle?

8 A Yes, I did. I detected a strong odor of alcoholic
9 beverage coming from inside the vehicle. During that time,
10 I'm also looking at the driver. During that time, I'm also
11 looking at the posture of the driver, looking at his
12 demeanor as well, and also telling him, during this whole
13 time, I'm actually telling him who I am, identifying myself,
14 telling him the reason for the traffic stop, and all those
15 things, and I'm also doing a, a safety scan of the car
16 looking for any potential weapons or anything like that.

17 And during that time, that's when I noticed that, you
18 know, I'm looking at Mr. Moore seeing that his, his
19 breathing's accelerated by, by looking at the rise and fall
20 of his chest, and I can also see the pulse in his neck, the
21 carotid artery. You can see that it's very rapid as well.

22 Q Okay. About the 1:41 mark here, you make a gesture to
23 Corporal Hancock.

24 what is that gesture?

25 You make it here.

Dale Owens - Direct examination
by Solicitor Hunter

1 A It's a, it's a tipping the glass signal --

2 Q Okay.

3 A -- to show that I smell alcohol or that I know that
4 alcohol is -- there's some drinking involved.

5 Q Okay.

6 A It's just a, it's a, just a, to let him know what I'm
7 seeing or smelling.

8 Q Okay. Did you ask him about the alcohol?

9 A I did. He stated that he had had approximately two
10 alcohol beverage drinks that he consumed.

11 Q Okay.

12 A Two drinks.

13 Q So, at this point you're just asking normal license,
14 registration?

15 A That's right. We -- I may even ask him what, you know,
16 where are you coming from or something like that, or if it's
17 not his car, you know, if he, if he's, if it's a rental car
18 or whatever like that, cause I'm asking for those type of
19 documents, your driver's license, your registration, and
20 telling him the reason for the stop. He actually tries to
21 explain to me a justification as to why he was breaking the
22 law.

23 Q Okay. Right here he's about to exit the phone (sic).
24 Did he do anything that raised your suspicion?

25 A Exit the car, just prior to him exiting the car, he

Dale Owens - Direct examination
by Solicitor Hunter

1 picks his phone back up. He picks his phone back up, and
2 then I tell him to put it back down, and then he exits the
3 vehicle, and then you'll also notice, when he exits the
4 vehicle, he actually walks away from the door leaving the
5 door open and then he returns back to close it.

6 Q And what's in his mouth at this point?

7 A He's already lit a cigarette and put a cigarette in his
8 mouth as well.

9 Q At this point, what are you and Corporal Hancock -- do,
10 do normal traffic stops, what do you do coming up right
11 here?

12 A Well, normally what we do, when you have clothes like
13 that, especially with his shirt hanging over his pants, you
14 want to check and make sure he doesn't have any weapons.

15 Q And you just told him to do something right there. He
16 had his hands in his pockets.

17 A Yeah, you want to make sure he don't put his hands in
18 his pockets, but you don't -- we don't, we don't tell them
19 to raise their hands up high or anything like that.

20 That's -- we don't, we don't do that. He did that on his
21 own.

22 Q Now, you were there with Corporal -- you're obviously
23 here or on the right side there where Corporal Hancock is---

24 A That's right.

25 Q ---doing the search?

Dale Owens - Direct examination
by Solicitor Hunter

1 A Right.

2 Q Did you feel anything in the right front pocket?

3 A I felt what, what I knew, through my experience is, I
4 felt what I knew was a good bundle of money in his, in his
5 right front pocket.

6 Q And we're about to see that money come out of his
7 pocket with Corporal Hancock.

8 A Yeah, Corporal Hancock, since he's got the gloves on,
9 he'll, he'll go in there and Mr. Moore consented to that. I
10 mean we asked him could we search his person for weapons.

11 Q But you do that for officer safety?

12 A Oh, most definitely.

13 Q Now, at this point he's close to you as opposed to when
14 you approach on the passenger side of the vehicle.

15 Do you smell anything here?

16 A I continue to smell the, the odor of alcohol coming
17 from, now emitting from his person, what I believe is his
18 person.

19 Q Okay. Did you ask him again about drinking?

20 A I did.

21 Q And what did he state?

22 A He, he continued to stick with the story that he had
23 two, two beverage drinks.

24 Q Now, obviously he's, he's not in handcuffs or anything
25 at this point, is he?

Dale Owens - Direct examination
by Solicitor Hunter

1 A No, sir, he's not.

2 Q That's just him putting his hands behind his back?

3 A Yeah, that's what, that's what we call just releasing,
4 releasing nervous tension.

5 Q Okay.

6 A You'll see him do that during the, putting his hands up
7 there, scratching his neck, scratching his head, that's all
8 him doing that. We're not -- the only thing we don't want
9 him to do is put his hands in his pockets.

10 Q Okay.

11 A Now he's squeezing the money in his pocket again for
12 whatever reason.

13 Q Okay. For these next couple of minutes y'all have a
14 conversation, is that correct?

15 A Yes, sir, I talk -- I've got the rental agreement right
16 there in my hand. It's a rental agreement that he gave to
17 me when I asked for his license and vehicle information.
18 Now he's telling me where he's come from, where he's going,
19 things like that.

20 Q Okay. And where was, did he tell you he was coming
21 from?

22 A He said he was coming from Lawrenceville, Georgia.

23 Q Okay. And are you aware of where Lawrenceville,
24 Georgia is?

25 A Yes, sir, I am.

Dale Owens - Direct examination
by Solicitor Hunter

- 1 Q And where is that located?
- 2 A It's a suburb of Atlanta.
- 3 Q In your experience and training as an officer, what
- 4 does Atlanta have to do with drug trafficking?
- 5 A Well, in the, in the little over 14 years of criminal
- 6 interdiction, I'd say 95 percent of the cases, large cases
- 7 that I've made, and I've made probably 400 or more large
- 8 trafficking cases, 90 percent of them or more come from
- 9 Atlanta.
- 10 Q Okay. Where did he tell you he was going?
- 11 A He said he was going to Marion, North Carolina.
- 12 Q And who was he going to visit?
- 13 A He stated he was going to visit his grandmother.
- 14 Q Okay. And what time of the morning is this or late
- 15 afternoon---
- 16 A This is---
- 17 Q ---or evening?
- 18 A This is at one o'clock in the morning.
- 19 Q Okay. And he's already admitted to you that he was
- 20 drinking?
- 21 A That's correct.
- 22 Q Okay. Did you ask him about his employment?
- 23 A I did.
- 24 Q And what did he state to you?
- 25 A He was unemployed.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q Okay. Did you ask him about alcohol again or any other
2 illegal---

3 A Yeah, I asked him---

4 Q ---substances?

5 A I asked him if he had any alcohol in the car. When I
6 asked him that specific question, he said -- he looked down
7 at the car and back at the car and said no. And then I
8 asked him if he had any illegal narcotics or any illegal
9 contraband or weapons in the car, and I asked him that
10 question as well, he looked down and looks back at the car
11 as well, and I just note that stuff. I mean that's what
12 we're trained to detect. It's not necessarily what your
13 mouth tells us, it's what your body tells us.

14 Q Okay. Did you ask him if he had anything in the
15 vehicle?

16 A I did.

17 Q And what was his response?

18 A His only response is that he had in the vehicle was the
19 luggage bag in the trunk was his.

20 Q Okay. If you want to please play. Let's play it a
21 little while.

22 And, so, the question you just answered, they're all
23 happening now?

24 A Yes, sir.

25 Q Did you ask him about his traffic violations, the

Dale Owens - Direct examination
by Solicitor Hunter

1 failure to maintain, the speeding?

2 A I did, and he'll explain -- well, you'll see him kind
3 of explain it with his hands here in a minute. He was
4 stating that a vehicle was following him too closely prior
5 to me stopping him, and that that was why he was speeding,
6 and that was the reason for his lane change. But there was
7 no vehicle behind him. There was no vehicle between me and
8 him. Actually, if you watch the video again, the first
9 vehicle to pass him is a truck.

10 Q And how would you describe vehicle traffic on---

11 A It's very light.

12 Q ---that night?

13 A I mean very light for Interstate 85. I mean --

14 Q You mean---

15 A -- normally by now you would of had 50 done past you,
16 and we've only had two right then. I mean this is very,
17 very, very light.

18 Q Now, at this point you decide to write a warning
19 ticket?

20 A Well, I'm proceeding with a warning ticket, but I'm not
21 only gonna rely on that when I'm smelling alcohol. So,
22 right now I'm maybe writing down, you know, indicators of,
23 of driving under the influence.

24 Q And the warning ticket was just for the---

25 A Moving infraction.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q The moving -- speeding and the failure to maintain?

2 A The speeding and the failure to main (sic) lane.

3 Q And we just saw him---

4 A And he's -- that was him describing that a car was
5 following him too closely, and he also makes the statement
6 that he thought the speed limit was 70, and it's clearly
7 posted that it is 60.

8 Q And any point on northbound 85 from the Georgia line in
9 South Carolina is the speed limit 70 --

10 A No, sir, it's not.

11 Q -- to your knowledge?

12 A When you, when you change into South Carolina, it does
13 not -- it's not 70 until you get to the 68 mile marker.

14 Q And that's the new 85?

15 A That's correct.

16 Q Business 85.

17 A That's correct.

18 Q Where it splits?

19 Q Yeah, that's just, just below the split, 84 business
20 split.

21 Q What did he just do right there?

22 A He did the same thing I did, talking about drinking.

23 Q So, at this point, with the smelling of alcohol and he
24 admitting to drinking, what is your next step in the
25 investigation?

Dale Owens - Direct examination
by Solicitor Hunter

1 A Well, it's, it's necessary that we do standardized
2 field sobriety tests just to make sure we check his, his
3 level of impairment to see if he's impaired or not impaired.

4 Q Right.

5 A Right there you see Corporal Hancock calling in the
6 traffic information or the license information and tag
7 information.

8 Q And that, and that document in your hand, it kind of
9 waves around, he's trying to grab for it right there, what
10 is that?

11 A That's the rental agreement.

12 Q Did you ask him about the rental agreement?

13 A I did, because he didn't rent it. He didn't rent the
14 car.

15 Q Who did he say rented the vehicle?

16 A His cousin.

17 Q Okay. He was on the rental agreement as an additional
18 driver, but still, the rental agreement didn't match all of
19 his story either. The rental agreement actually would show
20 that he rented the car or his cousin or whoever the name at
21 the top is, he stated his cousin, but it stated that it was
22 rented in Morganton, North Carolina earlier that day at four
23 o'clock, and he was on his way back from Lawrenceville at
24 one o'clock in the morning. So --.

25 Q Can you pause it for a second?

Dale Owens - Direct examination
by Solicitor Hunter

1 At this time the State's gonna show you what is been
2 premarked as State's Exhibit 2.

3 Do you recognize this document?

4 A That's the rental agreement that Mr. Moore provided me
5 on the traffic stop.

6 SOLICITOR HUNTER: Okay. At this time the State would
7 seek to admit State's Exhibit 2 in evidence.

8 THE COURT: Objections?

9 MR. HALL: No objections.

10 THE COURT: Without objection it will be admitted as
11 marked.

12 (WHEREUPON, State's Exhibit No. 2 was received into
13 evidence at this time.)

14 THE COURT: You may proceed.

15 SOLICITOR HUNTER: Can the witness step off the witness
16 stand please?

17 THE COURT: Certainly.

18 (Witness comes down from the stand.)

19 Q If you can show this to the jury?

20 Can you show where the vehicle was rented and where it
21 was rented from?

22 A It was rented from Enterprise Leasing Corporation at
23 1021---

24 THE COURT: Just one second.

25 All right. The lights are up. You can go ahead.

Dale Owens - Direct examination
by Solicitor Hunter

1 A Berkmont Avenue in Morganton, North Carolina, and it
2 was rented on June the 29th at 3:59, around four o'clock
3 in the afternoon.

4 Q Okay. If you could come down here and let the jurors
5 see it over here.

6 A (Witness complies.)

7 Location, rental, time of rental, and the person's name
8 at the top who rented it.

9 Q I think they wanted to see that back. Just hand it
10 back.

11 THE COURT: You can, you can pass it around.

12 Q In fact, they can, we can---

13 THE COURT: Just let them pass it around. There you
14 go.

15 Q Now, on the rental agreement and in your conversations
16 with Mr. Moore, he agreed that he did not rent the vehicle?

17 A That is correct.

18 Q But he is listed as one of the drivers for it?

19 A He is listed down, about half way down that as the
20 additional driver, yes, he is.

21 Q Okay. And his story to you was that, at this time, one
22 o'clock in the morning, he's coming back from Lawrenceville
23 Georgia?

24 A That's what he had stated, yes, and that he was now in
25 route to his grandmother's house in what I believe was

Dale Owens - Direct examination
by Solicitor Hunter

1 Marion, North Carolina.

2 Q Okay. Now, at this point you're gonna do some field
3 sobriety tests?

4 A That is correct.

5 Q Can you -- let's -- why do you turn the blue lights off
6 there?

7 A Why do we do it?

8 Well, it's just our standard procedures with the
9 Sheriff's Office and many law enforcement agencies, when
10 you, when you conduct the standardized field sobriety test,
11 especially this portion right here, the horizontal gaze
12 nystagmus, when you check, when you're checking for
13 involuntary jerking of the eyes, that way the light doesn't
14 effect that test.

15 Q Okay. Now, you performed, I believe, three tests on
16 Mr. Moore?

17 A Yes, sir, they're all standardized field sobriety
18 tests, yes, sir.

19 Q And the first test is the horizontal, horizontal gaze
20 nystagmus test?

21 A That's correct.

22 Q And in your estimation, he, he passed this test,
23 correct?

24 A Yes, he did.

25 Q Okay.

Dale Owens - Direct examination
by Solicitor Hunter

1 A You're looking for six clues in there, and you have to
2 have four to, to fail this test, and I didn't have four of,
3 four of the clues. So, I didn't have four out of the clues
4 to constitute a failure in my opinion.

5 Q Now, not with just this test, let's talk overall about
6 the field sobriety test.

7 What, what are your instructions?

8 How do you go about---

9 A Well, you have an instructional---

10 Q ---what you're doing?

11 A Well, with not necessarily this test, but the other
12 two tests, you have an instructional phase, and then you
13 actually have a performance phase where you're actually
14 performing it, and, you know, this test, what I'm looking
15 for is lack of smooth pursuit. I'm also looking for equal
16 pupil size, and I'm also looking for any jerking of the eyes
17 either at 45 degrees or at maximum deviation, and I didn't
18 see that in this case. And I did, I didn't see enough clues
19 to constitute him failing this test.

20 Q And what was the next test that you performed?

21 A It's the one leg stance.

22 Q Okay. And could you describe that for the jury?

23 A Yes, sir, it's a -- there's an instructional phase
24 where I go through the instructions or the processes of
25 instructing the, Mr. Moore of what to do and how to do it

Dale Owens - Direct examination
by Solicitor Hunter

1 and when to begin. And what I do is basically I go through
2 the process, and I show him how to do it. During that time
3 I'm also telling him how to do it, and then, at the end of
4 the instruction phase, I ask him does he understand the
5 process of it, and I'm, and I also check to make sure that
6 he can perform it, that he doesn't have any problems with
7 either one of his legs, and he so much said that he didn't
8 have any problems with his legs. I felt that he could of
9 performed the test, and he, he attempts that in this case.

10 Q Okay.

11 A He actually fails that test.

12 Q How many times did he attempt to, to stand on the one
13 leg?

14 A And you'll see it on the video. I think it's at least
15 twice, maybe three times.

16 Q Okay. And what, what instructions, as far as how long
17 he has to do it, do you give?

18 A Well, I tell him to keep counting until I tell him to
19 stop, but I'm looking for 30 seconds. I'm not really
20 listening to his counting or anything cause that's -- even
21 if he messes up counting, that's not part of the test.
22 That's not what I'm listening for. I'm actually looking for
23 his balance. I'm looking for him not raising his arms. I'm
24 looking for him not jumping and not putting his foot down,
25 and not beginning before I tell him to begin.

Dale Owens - Direct examination
by Solicitor Hunter

1 Q And based on what you observed that night, and what you
2 observed him do in this video, in your estimation, did he
3 pass or fail this test?

4 A He actually failed the one leg stance. That's the only
5 test that he did fail out of the three standardized tests.

6 Q So, at this point, this is where you're showing him how
7 to do tests?

8 A Yes, sir.

9 Q And that's your right leg lifted off the ground?

10 A Yep.

11 Q And he's---

12 A And I'm telling him eyes pointed at the toe, toe lifted
13 off the ground, yep. Counting 1,001, 1,002, 1,003, and I
14 tell him to continue counting until I tell you to stop
15 because the test is actually for 30 seconds.

16 Q Pretty soon you'll move out of view of this video and
17 you'll see---

18 A Yeah, and I'll let him perform it. Exactly.

19 Q Okay.

20 A He puts his foot down right there. He's lifting his
21 arms. Now he tries his other foot, and he loses and goes
22 there.

23 Q So, he doesn't even last ten seconds?

24 A No, sir.

25 Q So, you're---

Dale Owens - Direct examination
by Solicitor Hunter

1 A So now I'm showing him again how to do the test. See
2 I'm telling him to look down at his toe. He's not looking
3 at his toe. Now when he starts to look at his toe, that's
4 where he loses his balance. That's part of the test. You
5 have to focus on the tip of your toe. Now I'm asking him to
6 stand to the side while I give him another instruction for
7 another test.

8 Q This is the---

9 A Now this is the walk and turn.

10 Q Okay. And I'm not gonna ask you questions about this
11 cause, in your opinion, he, he passed this test based on
12 your training and experience?

13 A That's right, right. That's correct.

14 Q At this time, do you -- what are you asking him?

15 A I basically explained to him, you know, that I don't
16 think that he's to the point where he's impaired to the
17 legal limit. Let's put it that way, and I explained to him
18 that, you know, I'm not gonna arrest him for the actual
19 offense of driving under the influence. I think---

20 Q Are you asking him questions about what's in the
21 vehicle?

22 A I do. I asked him about if he has any alcohol or
23 anything illegal in the vehicle. He looks down and back at
24 the car as if I can see it, and then I ask him about any
25 illegal narcotics, weapons, or anything like that and then

Dale Owens - Direct examination
by Solicitor Hunter

1 it's the same thing he looks down and at the vehicle as if I
2 could see it.

3 Q You asked him for consent to search?

4 A I do.

5 Q And?

6 A He says -- he initially says I don't want you searching
7 my luggage, and then he tells me no cause I asked him again
8 can I search the vehicle.

9 Q At that point, at that point, what did you and Corporal
10 Hancock do?

11 A Corporal Hancock then notifies our drug, our K-9
12 handler and he gets him beginning to come in route to the,
13 to the location.

14 Q Okay. And where do you put Mr. Moore at this, from
15 this point?

16 A I just stand him to the side of the video or to the
17 side of the car, which is to the side of the video. That
18 way he's not between the two cars if someone were to hit it.

19 Q Okay.

20 A Actually I, I stand between -- I kind of keep, for his
21 safety, which isn't much safer, but is it a little safer,
22 keep him out from between the cars from that point.

23 Q Is he in handcuffs?

24 A No, he's not.

25 Q Okay. And is he in your patrol car?

Dale Owens - Direct examination
by Solicitor Hunter

1 A No, he's not.

2 Q He's allowed to stand free out there?

3 A Yeah, he does. He actually, he actually then begins to
4 smoke a cigarette again.

5 Q Okay. Approximately how many minutes before
6 Mr. Carraway and the K-9 come?

7 A It's about 15 minutes.

8 SOLICITOR HUNTER: All right. Your Honor, the State,
9 at this point, would like to fast forward the video for 15
10 minutes.

11 THE COURT: All right. You may do so.

12 Q At this point, why, why are you detaining him further
13 after you've given the field sobriety test?

14 A For my training and experience, I feel that Mr. Moore
15 is involved in some major criminal activity.

16 Q Upon the dog getting there, and Mr. Carraway will
17 testify, but did you search this vehicle?

18 A Prior?

19 Q Did you search -- no, no, no. After the dog gets
20 there.

21 A Yes, I did.

22 Q Did you ultimately search the vehicle?

23 A Yes, I did.

24 Q What did you personally find?

25 A Underneath the passenger front seat, I actually found a

Dale Owens - Direct examination
by Solicitor Hunter

1 bottle of liquor underneath the passenger front seat.

2 Q Was the seal broken---

3 A Yes, it was.

4 Q ---on that?

5 A You can actually see it on video. It's about half to
6 three-quarters full --

7 Q Okay.

8 A -- or empty, whichever way you want to say it.

9 A You personally found the bottle of alcohol?

10 A I did. And then -- when I retrieved that, I brought
11 that back. Deputy Hancock was in the process of searching
12 the trunk, and I walked up to him, and watched him search
13 the trunk, and there was only one bag in the trunk and he
14 was in the process of searching that when I walked back to
15 him.

16 Q Okay. And, again, what, what county did this take
17 place in?

18 A Spartanburg County.

19 Q All right. Thank you. Please answer any questions
20 that Robert may have for you.

21 THE COURT: Mr. Hall, your witness.

22 MR. HALL: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HALL:

25 Q Let's try to get through this.

Dale Owens - Cross-examination
by Mr. Hall

1 How long does it normally take somebody to pull over?
2 You said this 45 to 40 seconds was longer than normal.

3 A Probably 15.

4 Q All right. If he's going 70 miles an hour --

5 A (Witness nods affirmatively.)

6 Q -- and 15 seconds he can---

7 A Yes, sir, he can.

8 Q -- change lanes and pull over?

9 A Yes, sir, he can. That's what's normally consistent.

10 Q Now, you said you didn't tell him to put his hands up.

11 Now, I understand we can only see on the video, but if you
12 looked, and the jury will have this to look at later along
13 with pulling over, it looked like, with your right-hand, his
14 left-hand, you do like this a couple of times and that's
15 when he puts his hands up the first time?

16 A No, I don't---

17 Q Did you see that?

18 A I don't.

19 Q Okay.

20 A And I mean, I mean I could be asking him do you have
21 any weapons on you or anything like that because I'm looking
22 at the length of his shirt and everything and that's the
23 most common place for a weapon to be concealed.

24 Q You're doing like this.

25 A Well, I don't know.

Dale Owens - Cross-examination
by Mr. Hall

1 Q I know you got your hand out like this and you go like
2 that. It's not unusual to go on up.

3 A I don't know.

4 Q That would be reasonable?

5 I mean---

6 A Maybe to you.

7 Q You've got this training, but if somebody's hand
8 putting, going out like that, you do like that.

9 A But he does it several times, Mr. Hall.

10 Q All right. Well, we have the video.

11 Now, do you have those indicators that you said you
12 were writing down?

13 A I don't have them with me.

14 Q Do you -- do they exist?

15 A What?

16 Q You said you were writing the -- you testified, you
17 said---

18 A Oh, you mean over there?

19 Q ---I'm writing down, I'm writing down the indicators.

20 A No, cause I didn't charge him with DUI.

21 Q So, you made notes in this case and you didn't keep
22 them?

23 A I made notes of what he was doing on the test. When I,
24 when he passed those tests, there was no need to keep those
25 notes. I mean those -- when you pass that part of the test,

Dale Owens - Cross-examination
by Mr. Hall

1 I don't see the need in keeping those, those notes of what
2 you're failing or what you're missing.

3 Q So, so, you don't?

4 A I, I didn't keep those, no.

5 Q Do you know if you've thrown them out or whatever?

6 A I didn't keep them. I just jot those on the front of
7 my pad until I need them if I need them.

8 Q All right. So, so, the notes you made in this major
9 case you tossed out.

10 You testified---

11 A I didn't charge him with DUI, Mr. Hall.

12 Q I understand that, but it's still a, notes made in this
13 case.

14 A Well, I guess if I were to charge him with DUI I would
15 of kept those notes, but I didn't charge him with that.

16 Q But the answer to my question is, in this case that
17 we're here on now, you made some notes and you don't have
18 them anymore, you tossed them out?

19 A Of the DUI, right.

20 Q I understand you didn't charge him with DUI.

21 A Right. Those are only notes in regards to DUI.

22 Q Okay. Now, you also just said, again, he's standing
23 free, but he was not free to leave, was he?

24 A At that point, no, sir, he was not free to leave.

25 Q Okay. He made the point, Mr. Hunter made the point of

Dale Owens - Cross-examination
by Mr. Hall

1 he's standing free. He's not in handcuffs, but he's not
2 free to leave now?

3 A No, sir.

4 MR. HALL: Beg the Court's indulgence just a moment,
5 Your Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q Now, when you're -- you approached the vehicle from the
9 passenger side, and you're -- was the window up or down when
10 you approached it?

11 A It was up.

12 Q It was up.

13 Okay. And apparently, from the video, he puts on the
14 brake and the blinker's on, right, from the---

15 A Correct.

16 Q ---video?

17 Did you look and see if the car was in park or tell him
18 to cut the car off or anything?

19 A I, I did not.

20 Q Now, did he roll the window down because you were able
21 to smell the alcohol and then give the sign I guess it's
22 almost the international sign of drinking?

23 So, did the window come down at some point?

24 A Yes, sir.

25 Q Okay. All right. And you had some conversation with

Dale Owens - Cross-examination
by Mr. Hall

1 him and spoke with him at that point?

2 A That is correct.

3 Q Okay. But you didn't say cut it off or put it in park?

4 A No, sir.

5 Q All right. If you had come up on a car like that and
6 they still had it in gear, you would not say just put it in
7 park or anything?

8 A I may if I noticed it's in drive, yeah, I'll tell them
9 to put it in park.

10 Q All right. What kind of car was this?

11 A I, I don't recall.

12 Q This is a small car, two door car?

13 A I guess. Yeah, small to midsize I guess you would say.
14 I'm -- it's not, it's not a large car, no.

15 Q No.

16 A It's a four door.

17 Q It's a four door?

18 A I believe it was.

19 Q Okay. But you couldn't see if the car was in park or,
20 or drive or---

21 A I didn't make note of it, Mr. Hall.

22 Q All right. Well, I mean you -- it's a Cobalt according
23 to this rental agreement.

24 A There's two doors and four doors of those.

25 Q Now, where were you when you noticed the accelerated

Dale Owens - Cross-examination
by Mr. Hall

1 breathing?

2 A I was at the passenger's window.

3 Q Were you looking in?

4 A I was at the passenger's window looking in.

5 Q All right. What does that mean, accelerated from what?

6 A Accelerated. I mean it just looks rapid to me.

7 Q All right. No further questions.

8 THE COURT: Redirect?

9 SOLICITOR HUNTER: Nothing from the State, Your Honor.

10 THE COURT: You may step down.

11 SOLICITOR HUNTER: Can Deputy Owens be excused, Your
12 Honor?

13 THE COURT: Any objections?

14 MR. HALL: I have no objections.

15 THE COURT: You're free to go, sir.

16 WITNESS: Thank you, sir.

17 THE COURT: The State may call its next witness.

18 SOLICITOR HUNTER: State would call Deputy Jason
19 Carraway.

20 THE COURT: Come forward, sir, to my left and be sworn.

21 JASON CARRAWAY, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat, sir.

24 (Witness complies.)

25 THE COURT: State your name.

Jason Carraway - Direct examination
by Solicitor Hunter

1 WITNESS: Jason Carraway.

2 THE COURT: Your witness, Mr. Hunter.

3 DIRECT EXAMINATION

4 BY SOLICITOR HUNTER:

5 Q Please tell the jury your law enforcement experience.

6 A I graduated from the University of South Carolina in
7 2000 with a Bachelor's Degree in Criminal Justice, and
8 immediately, immediately, upon graduating from college, I
9 started with Spartanburg County in 2000. So, I've been
10 there approximately ten and a half years.

11 Q Okay. And how did you first start out?

12 A I started out uniform patrol, answering calls for
13 service, doing routine patrol, that thing. I did that for
14 about two and a half years, and then I moved on into the
15 traffic division, and then when our Interstate Criminal
16 Enforcement Team was started up about six and a half years
17 ago, I started in that and that's where I've been since
18 then.

19 Q Okay. And who's on the Interstate Criminal Enforcement
20 Team?

21 A At this time it's myself, Corporal Hancock, Deputy
22 Owens, and Deputy Gilbert. It's a four member team.

23 Q Now, do you have a K-9?

24 A I do.

25 Q What's his name?

Jason Carraway - Direct examination
by Solicitor Hunter

1 A His name is Deuce.

2 Q And how long have you been working with Deuce?

3 A I've been with Deuce for a little over two years. He
4 had a previous handler. He's seven years old now. So, he's
5 been on the road about five years. But that handler took
6 another job. So, I took over as the handler when he left.

7 Q Okay. And how is your dog certified to do this type of
8 thing?

9 A They -- when they're first trained, they go through
10 their initial training and certification. I believe what he
11 went through is at Charlotte-Mecklenburg school, and then
12 they go through maintenance training every month to do at
13 least sixteen hours of maintenance training with the dog,
14 and then annually we go through certifications through a, a
15 separate organization that's nationally accredited that does
16 our certification for the dog annually.

17 Q And as far as you can remember, on June 30th, 2010,
18 were you and Eagle certified?

19 A Or Deuce?

20 Q Or Deuce.

21 A Yes, we were.

22 Q I'm getting words mixed up. I'm sorry.

23 A That's all right.

24 Q What type of training do you and Deuce do together?

25 A Well, being as that he was previously, had gone through

Jason Carraway - Direct examination
by Solicitor Hunter

1 all his initial training, he was what we call a fully
2 trained dog, I went through a two week course with him, with
3 a, with a certified trainer basically to familiarize me with
4 the dog and get me up to speed with him. He already knew
5 exactly what he was doing. It's just me becoming accustomed
6 to working with him. And then after that we go through a,
7 do monthly training. We actually train on every Wednesday
8 is our training day, and what we try to do is sixteen hours
9 minimum a month maintenance training to make sure that he's
10 performing where he needs to, and I also go through a yearly
11 certification through North Carolina Police Work Dog
12 Association that does certification for trial's force.

13 Q And when you do just your monthly training with Deuce,
14 what -- excuse me. Let me go back.

15 what type of K-9 is he?

16 A He's what we call a full patrol dog. He's -- he
17 tracks. He does handling protection and apprehension. He
18 searches for articles and he also is certified in narcotics
19 detection.

20 Q Okay. And back to your monthly training, what type of
21 narcotics detection task do you perform in your training
22 exercises?

23 A What we do is we a, do a, all different types of
24 things, but we have -- we do vehicle searches, searches in
25 houses, outdoor searches, and the drugs that he's detected

Jason Carraway - Direct examination
by Solicitor Hunter

1 or trained to detect would be marijuana, cocaine, crack
2 cocaine, meth, or heroin, or anything derived from those.
3 so, we put those actual drugs out and have them search for
4 those drugs.

5 Q And in your training, what success rate does he have in
6 detecting narcotic substances that y'all place in the
7 different areas?

8 A He's a hundred percent in training. That's what---

9 Q And on the road?

10 A Training's what we call a controlled environment. We
11 know when drugs have been there and when they haven't.
12 Uncontrolled environment would be out on the road when we're
13 working, and his success rate on the road is approximately
14 90 percent over the past two years that I've had him, him.
15 And the way we figure that out is we use -- every time we
16 get him out of the car and use him for anything, there's a
17 report done.

18 In that report, if there's something that's located, an
19 illegal drug, we note the drug, the amount, or weight, and
20 where it was located, that kind of thing. If there wasn't a
21 drug located, if there was like residue, you know, marijuana
22 shake or whatever else where he could still detect that
23 odor, even though there may not be an arrest made, we would
24 note that in the report.

25 Also, there's times that there's what we call lingering

Jason Carraway - Direct examination
by Solicitor Hunter

1 odor. The best way I can describe that is to say you go to
2 Little Ceasar's and pick a pizza up, put it in the car, you
3 drive home, take the pizza out, you go in and eat it, you
4 may come back out to your car an hour later, it still smells
5 like that pizza inside, but there's no pizza in there.

6 A dog has a much bigger sense of smell than a human
7 does. So, you know, he smells things that we can't smell,
8 you know, that, that odor's still present. So, you know, if
9 I -- if we stop someone and I have him sniff around the car
10 and he alerts, I may ask him, look, has there been anything
11 illegal in there, and they may say yeah, I had a, you know,
12 a joint or I had marijuana in the car a couple of hours ago.

13 And he's, his sense of smell is so good he can still
14 smell it even though I can't. So, that, that still supports
15 his alert that, you know, something has been present. So --
16 and then there's a few times that he may alert that we don't
17 find anything at all, and they may say well, you know, I
18 don't know if there's anything in there or not. I give them
19 the benefit of the doubt and say, you know, nothing was
20 found.

21 So, all those reports are tallied up at the end of the
22 month, and it shows on there if he alerted, what was found,
23 that kind of thing, and there's also times that we run a car
24 that he doesn't alert, and, you know, if he doesn't alert,
25 there's nothing there. You know, that, that proves his

Jason Carraway - Direct examination
by Solicitor Hunter

1 reliability as well.

2 So, that's where that 90 percent comes in.

3 Q So, so, nine times out of the ten, if he alerts, that
4 means you're gonna, you found something---

5 A Right.

6 Q ---in the vehicle?

7 A That's correct.

8 Q So, you only had the ten percent rate where he alerts
9 and there's nothing in the vehicle?

10 A Right, that we can't support anything.

11 Q And on the night of June 30th, where were you
12 located?

13 A I was on I-85 working southbound. I was around the 80
14 mile marker.

15 Q Okay. So, you were on the opposite side of, of the
16 county from---

17 A Right.

18 Q ---from this?

19 A That's correct.

20 Q Okay. And when you got the call, what did you do?

21 A I think it's Corporal Hancock that called. Usually
22 they'll call me and let me know if they need just me to come
23 or if they need me to come because of the dog. I think he
24 may of told me that he had a refusal, and usually if I'm far
25 away, I'll try to tell them, you know, I'm leaving from the

Jason Carraway - Direct examination
by Solicitor Hunter

1 80 mile marker so they know it's gonna be a few minutes
2 before I get there. But as soon as he called, I pull out
3 and start heading that way.

4 Q How many K-9 units are there in the Spartanburg County
5 Sheriff's Office?

6 A They're six that are trained to detect narcotics total.

7 Q Okay. So, that's yours and who else?

8 A I have one. Narcotics has one assigned to them, and
9 then our uniform patrol division has four that are, that are
10 assigned to tell. Each -- they have one dog for each what
11 we call platoon or shift. So, if anytime there's only on
12 platoon working, they'll have one dog assigned to them.

13 Q Okay. So, that's, that's only three dogs on the road
14 at one time at best?

15 A At the most, yeah. Usually it's either one or two at
16 the most.

17 Q Okay. So, on this night you get the call, and can you
18 explain what a priority is?

19 A Yeah, priority for us is where we, where we respond
20 with our lights and siren on.

21 Q It's where a K-9 -- when they call for a K-9, it's
22 where you respond priority?

23 A Yeah, not for a drug sniff. The only time we would --
24 you know, it's like an armed robbery or something like that,
25 and we have to get there quick to run a track or, you know,

Jason Carraway - Direct examination
by Solicitor Hunter

1 something of that sort. But not for just a refusal for a
2 car, for a sniff.

3 Q So, once they call, it takes you about 15 or 16 minutes
4 to get from the top of the county---

5 A Right. I, I actually left -- I was on the south end
6 side. I left from the 80 mile marker, which if you're
7 familiar with Gossett Road area, 221 area, I had to drive
8 south all the way down to Exit 60, which is Highway 101, and
9 I had to go down there and turn around and come back two
10 miles since there's a center wall there. I couldn't cross
11 the median. So, I had to go down and come back two miles to
12 get to where they were at.

13 Q Okay. And your lights weren't flashing or---

14 A No, they weren't. They were not.

15 Q When you get to that location, what do you do?

16 A When I pull up, like I said, I believe Corporal Hancock
17 had already told me that it was a refusal. I usually just
18 go ahead and get the dog out, and come straight to the car,
19 make sure they have everybody out of the car, and at that
20 time I give him his command to begin the exterior sniff of
21 the vehicle.

22 Q I believe in a few seconds, in a few minutes you'll see
23 another set of lights pull up here on the bottom right of
24 the video.

25 Was anyone with you that night?

Jason Carraway - Direct examination
by Solicitor Hunter

1 A No, I was alone. Deputy Gilbert was also working. He
2 was in a separate vehicle. I think he actually arrived
3 around the same time that I did cause he was the only other
4 person that was out working on that team with us that night.
5 You know, Deputy Owens and Corporal Hancock were in the same
6 car. So, when I left to go down, he just came down with me.

7 Q There were no, no other subjects, only police officers?

8 A Right. That's correct.

9 Q Okay. Do you see that light right there?

10 Is that you showing up?

11 A I believe that is, that is me pulling up behind his
12 car.

13 Q What kind of K-9 is Deuce?

14 A He's actually a Dutch Shepherd, and it takes me just --
15 I have to get out and actually get his leash and, and a toy
16 that I use to reward him with.

17 Q But where, where, where do you start the sniff at?

18 A I start at the back, the rear of the car. You'll see
19 me come up in a minute where the trunk's at, and I work
20 around a counter-clock wise pattern. You can do it any
21 number of ways. The reason I choose to do it that way is I
22 want to go up the clean side of the car first, what we call
23 the clean side away from traffic, and you know, if I have --
24 if it doesn't, don't have an alert there, then I can go back
25 down the opposite side, and I'm actually facing into traffic

Jason Carraway - Direct examination
by Solicitor Hunter

1 so I can see if the car is coming. I don't want to have to
2 turn my back to oncoming traffic or somebody in that lane.
3 I think you actually see us coming up in the, in the shadow
4 there now.

5 Q And that's you and the dog?

6 A It is.

7 Q Okay. What type of an alert does your dog do?

8 A He's what is called a passive alert. There's, there's
9 two different kinds. There's what's called aggressive
10 alert, which what they do is when they detect the odor of
11 whatever it is they're trained to detect, they'll scratch.
12 These is what we call passive alert. What he does is when
13 he detects that odor, whatever odor it is he's trained,
14 he's, he's searching for, he'll sit or sometimes if the
15 odor's coming from real low to the ground, he may lay down.
16 But he -- that, that's how he goes---

17 Q What's the actual, what's the actual thing that alerts
18 you that he's alerting to the presence of narcotics?

19 A There's several things that we look for. Obviously,
20 the reason why he sits is because he's trained to sit when
21 he smells that odor. But in the course of his training, you
22 know, he begins to associate his, his toy with the odor or
23 whatever it is he's trained with. That's what's he's, in
24 his mind, he's looking for, which is the reason why we carry
25 a toy to reward him with.

Jason Carraway - Direct examination
by Solicitor Hunter

1 But when he starts to detect that odor or getting what
2 we call a scent call of, of whatever it is he's searching
3 for that he's trained to detect, you'll start to see
4 behavior changes in the dog that we can't train him to do.
5 They, they do it naturally, and, you know, different dogs do
6 different things.

7 With him, you'll have a change in breathing, his search
8 pattern may change, and I may be having him work this way
9 and stop for a second and want to go back to that odor,
10 different things like that that I look for that he does
11 before he even goes into what we call the final indication
12 or response where he actually sits.

13 Q Okay. But -- so, on this night, did he alert on this
14 vehicle?

15 A Yes, he did.

16 Q And approximately where did he alert?

17 A He was up around the passenger door area on the
18 passenger side.

19 Q You said that you reward him.

20 A Right.

21 Q Can, can you make him alert for his, for a reward?

22 A I mean I can make him sit, but he wouldn't have all
23 these behavior changes that he has when he detects one of
24 those odors, marijuana, cocaine, crack, and heroin.

25 Q And, so, if he had alerted in one of the training

Jason Carraway - Direct examination
by Solicitor Hunter

1 sessions in a controlled environment, he would have those
2 and he would sit as well?

3 A Right, the, the behavior changes, in conjunction with
4 the final trained response, which is to sit or to lay, is --
5 and that, after that's when he's rewarded. When we go
6 through out certification, they actually do what's called
7 blind hides which is I don't know where the hides are at.
8 Only the, only the person doing the certifications knows
9 where they are, and there's no way that I can cue him or
10 make him sit in a certain spot and pass that because I don't
11 know where the hides are at.

12 He has to locate them on his, on his own and I have to
13 be able to read him to say yes, he's alerted to a narcotic
14 odor and reward him for that. So --.

15 Q Do you go to traffic stops where he, he doesn't sit or
16 have any changes in behavior?

17 A Yes, I do.

18 Q Okay. And you said in the training he has a hundred
19 percent in a controlled environment?

20 A Yes, no false alerts in training.

21 Q And that includes the blind hides where you don't know
22 where---

23 A That's correct.

24 Q ---the narcotics are?

25 Now, because he alerted on the passenger side of the

Jason Carraway - Direct examination
by Solicitor Hunter

1 vehicle, does that mean that the narcotic substances would
2 of been found there?

3 A Not necessarily. There's several different factors.
4 One thing with this car, the driver, the defendant left the
5 window rolled down on the passenger side. So, even though
6 something's in a different spot, the way the, the way the
7 odor moves around, it's kind of like smoking.

8 I know everybody's seen, you know, trash burning or
9 whatever else. It's gonna go up and it's gonna follow the
10 flow or current of the wind, different things like that, you
11 know, and when the car gets full, if you fill the car with
12 smoke, eventually there's gonna be no more room for it to
13 do. So, it's gonna start coming out door handles, cracks,
14 or out that open window, which is the path of least
15 resistance.

16 So -- and then you, you also have outside wind
17 direction, which, if you've got a car that comes down the
18 road, a big truck, which they're several that pass by during
19 the time of the stop, it's gonna make the wind blow from the
20 back of the car towards the front of the car. So, it's
21 gonna be pushing that odor from back to front and then also
22 it's gonna be coming out that open window, which is, which
23 is where he alerts at.

24 Q In your training and experience, is it uncommon for, to
25 have a dog alert on the side or the front of a vehicle and

Jason Carraway - Direct examination
by Solicitor Hunter

1 actually find a substance on the opposite side?

2 A Not, not at all. There's times that he, that he may
3 alert and it be -- he may alert at the trunk and it's in the
4 trunk or he may alert, in this case, at the driver's door or
5 the passenger door and it's in the trunk. So, there's a lot
6 of factors that depend on how that odor travels or where he
7 picks it up at.

8 Q Okay. Thank you. Please answer any questions that
9 Mr. Hall may have for you.

10 A Yes, sir.

11 THE COURT: Mr. Hall, we're gonna save that till in the
12 morning.

13 Bring the lights up please.

14 I believe one of the jurors needed to pick someone up,
15 and, so, we're gonna let you get out of here a little
16 quicker than we normally would.

17 But at any rate, over the evening, I'm going to ask
18 that you follow the same instructions that I gave you at
19 lunch time today. Again, don't attempt to gather any
20 information outside of the courtroom. Don't listen to,
21 watch, or read any media reports. Don't discuss the case
22 with anyone and don't allow anyone to discuss it with you.
23 We're gonna begin again in the morning at nine o'clock.
24 I'll ask that you be back in the jury room that's in use for
25 this case at that time. I trust everyone will have a good

1 evening and you're free to go.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: I'll instruct the witness, you're in the
5 middle of your testimony. It would be improper for you to
6 discuss that testimony with anyone during the break.

7 WITNESS: Yes, sir.

8 THE COURT: We'll begin again at 9:00 in the morning.
9 The defendant will remain in custody.
10 Thank you very much.

11

12 (WHEREUPON, Court was in recess for the evening.)

13

14

15

16

17

18

19

20

21

22

23

24

25

Tuesday, April 26th, 2011

THE COURT: All right. State ready to proceed?

SOLICITOR HUNTER: Yes, sir, Your Honor.

THE COURT: Defense ready?

MR. HALL: Yes, sir, just briefly before we get started.

THE COURT: Yes, sir.

MR. HALL: I know we have the officer who needs to be down back in training and we'll try to accommodate that.

But after we finish with Carraway, and then her, I'd like to put some things on the record about the video and everything that was attempted to be viewed last night. But I know she needs to get back. So, I'll not -- I would like to take a break or---

THE COURT: It's okay if we take that up later?

SOLICITOR HUNTER: Oh, yeah.

THE COURT: Okay. All right. Thank you, Mr. Hall. Anything else?

MR. HALL: That's it.

THE COURT: Let's get the jury in.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: All right. The record will reflect the jury has returned this morning.

1 I trust everyone had a good evening.

2 Now, is -- was there any juror who had any difficulty
3 in following my instructions when you, that I gave you when
4 you left the courthouse yesterday evening, please stand.

5 (No response.)

6 THE COURT: It indicates then that all jurors have,
7 were able to follow my directions.

8 And when we broke yesterday, the State had completed
9 its direct examination of this witness, and at this time the
10 defense has the right to cross-examine the witness.

11 Mr. Hall, your witness.

12 MR. HALL: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q Deputy Carraway?

17 A Yes, sir.

18 Q You say the aroma the dog alerts on is like smoke or
19 like a smell of a pizza?

20 A No, sir, I was giving that as a comparison to the jury
21 so they could---

22 Q All right. You used that as a comparison.

23 A Right.

24 Q Let me rephrase that.

25 A Yes, sir.

Jason Carraway - Cross-examination
by Mr. Hall

1 Q But you can't tell how long that aroma's been around,
2 can you?

3 A It -- once the whatever it is in question is taken out,
4 I mean it's gonna remain for a period of time and dissipate
5 eventually.

6 Is, is that what you're asking or---

7 Q Yeah.

8 But you can't say how long that was---

9 A No, I don't, I don't know how long.

10 Q But -- so, you're saying that it's not unusual for
11 something to be in a completely different part of the
12 vehicle and the dog alerts somewhere else?

13 A That's correct, because of the flow of air, it's gonna
14 push that odor around depending which way the air's moving
15 inside the vehicle and outside the vehicle. So --.

16 Q Okay. Now, you said something about times the dog does
17 not alert.

18 A Right.

19 Q How do you know that that was correct unless you
20 searched the vehicle?

21 A There are times that consent was given to search the
22 vehicle and we ran the dog beforehand anyway. Of course,
23 there was times in maybe a refusal that, that I ran the dog
24 around the car and he didn't alert. But, of course, you
25 know, there's many reasons that people may refuse. They may

Jason Carraway - Cross-examination
by Mr. Hall

1 be weapons in the car. He's not trained to detect any kind
2 of weapons, bombs, or things like that. He's only detect,
3 trained to detect those odors of narcotics that I named
4 yesterday. So --.

5 Q We're just talking about narcotics.

6 A Right.

7 Q I'm not talking about bombs and those type of things.

8 A Right.

9 Q Dead bodies or anything---

10 A Right.

11 Q ---you use dogs for.

12 But have you ever had the opportunity to be involved in
13 a situation where your dog did not alert, but there was
14 something later found?

15 A Not that I'm aware of. Not -- you talking about on the
16 street or---

17 Q I'm talking about in real life situations that's
18 controlled.

19 A There's, there's been -- not in -- there's been times
20 in training that there was a drug present that he may of
21 missed. He's never alerted and there's not been drugs there
22 at that place. But as far as on the street, I can't, I
23 can't recall a time that's --.

24 Q But does it happen where he doesn't catch the scent
25 and---

Jason Carraway - Cross-examination
by Mr. Hall

1 A Yeah, I mean he's---

2 Q ---there's something there?

3 A Just like us, he's not perfect. There may be a time
4 that there's something there he may miss, but --.

5 MR. HALL: All right. Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q All right. And from your notes or anything, do you
9 have a record of when you got your call to proceed?

10 I know you said you were at the, approximately 80 mile
11 marker and had to go to the 60 and back to 62.

12 A Right. I -- we do a report. It's on -- it's noted on
13 my report. I don't have it up here with me, but it has our
14 times that our dispatcher, that I notify the dispatcher I
15 was in route and also the time that I arrived on the scene.

16 MR. HALL: Your Honor, that's one I think I had. I do
17 apologize. I do have that. I'm sorry. I'm sorry.

18 Let me hand you -- if I may approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q And that reflects the time you got your call or
22 dispatch?

23 A Yes, sir, the dispatch time would be the time that I
24 was requested to respond, and I told him that I was in
25 route, which was 01:23. It was in the morning. 1:23.

Jason Carraway - Cross-examination
by Mr. Hall

1 Q Okay. And this occurred -- this whole event started
2 about 1:10?

3 A 1:10, right.

4 Q That's 13 minutes in?

5 A Yes, sir.

6 Q And how long did it take you to get there?

7 A Looks like it was 13 minutes. I arrived at 1:36 is the
8 time that I called out on scene.

9 Q Roughly 22 miles?

10 A Yes, sir.

11 Q Okay. No further questions.

12 THE COURT: Redirect.

13 SOLICITOR HUNTER: Nothing from the State, Your Honor.

14 THE COURT: You may step down, sir.

15 WITNESS: Thank you, sir.

16 THE COURT: You wish to excuse the witness?

17 SOLICITOR HUNTER: If the defense has no objection.

18 THE COURT: Any objection?

19 MR. HALL: No objection.

20 THE COURT: Sir, you're free to go if you'd like. You
21 can stay also.

22 WITNESS: Thank you.

23 THE COURT: All right. You may call your next witness,
24 Mr. Hunter.

25 SOLICITOR HUNTER: State would call Lieutenant Beth

Beth Stuart - Direct examination
by Solicitor Hunter

1 Stuart.

2 THE COURT: Come forward please, ma'am, over to my left
3 to be sworn.

4 BETH STUART, having been first duly
5 sworn, testified as follows:

6 THE COURT: Have a seat please. Once seated, I'd ask
7 that you state your name.

8 WITNESS: Mary Elizabeth Stuart.

9 THE COURT: Mr. Hunter, your witness.

10 DIRECT EXAMINATION

11 BY SOLICITOR HUNTER:

12 Q Ms. Stuart, what's your official title with the
13 Sheriff's Office?

14 A I'm a forensic chemist with the Sheriff's Office.

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

16 A Eight years.

17 Q Can you go through your law enforcement background?

18 A Sure. Of course, I went to the Criminal Justice
19 Academy, but also, in the chemistry field, I have a
20 Bachelor's of Science in Chemistry, a Bachelor's of Science
21 in Biochemistry from the College of Charleston. I have a
22 Master's Degree in Chemistry from the University of South
23 Carolina. Since I've been in law enforcement, I've been
24 certified in drug analysis, fire degree analysis, and meth
25 labs. I've been the DEA, which is our Federal Drug

Beth Stuart - Direct examination
by Solicitor Hunter

1 Enforcement Administration forensic chemist school, and fire
2 degree school. Also to the DEA meth lab school.

3 We have 40 hours of continuing education every year,
4 which the instruments in our lab have companies that run
5 them and they put on training courses. For the instruments,
6 those are the classes we go to as well as societies that we
7 are members of.

8 MR. HALL: Your Honor, we can stipulate to her
9 qualifications.

10 THE COURT: Do you wish to stipulate?

11 SOLICITOR HUNTER: I'd like the jury to at least hear
12 how qualified she is.

13 THE COURT: All right. You're allowed to do so.

14 And, so, you may proceed and continue to answer the
15 question.

16 Q What type of annual training do you go through?

17 A Sure. The instrumentation that also we have tested and
18 were certified nationally in all areas of forensic science
19 with the American Board of Criminalistics. And, so, we also
20 have to do journal articles, research, and certifications
21 for that.

22 Q Can you explain what the DEA is?

23 A Yeah, it's the Drug Enforcement Administration. It's
24 the federal one.

25 Q Okay. And how long have you been a chemist with the

Beth Stuart - Direct examination
by Solicitor Hunter

1 Spartanburg County Sheriff's Office?

2 A Eight years.

3 Q Okay. And approximately, in that time, how many
4 substances have you tested?

5 A I've tested maybe 3,500 cases, 8,000 items from along
6 those lines.

7 Q Okay. And how many times have you testified in Court
8 as an expert?

9 A Twenty-six.

10 SOLICITOR HUNTER: Okay. Your Honor, at this time the
11 State would seek to offer Ms. Stuart as an expert in the
12 chemical analysis of narcotic substances?

13 THE COURT: No objection I assume?

14 MR. HALL: No, sir.

15 THE COURT: All right.

16 MR. HALL: We were willing to stipulate a few minutes
17 ago.

18 THE COURT: Okay. Ladies and gentlemen of the jury,
19 let me explain to you what we're going through at this time
20 and why we're doing that.

21 Generally, under the rules of evidence that govern
22 testimony by witnesses in Court, witnesses are not allowed
23 to state opinions. They're able to testify concerning
24 things that they, they have observed or seen or experienced.
25 So, they're able to testify concerning factual matters. But

Beth Stuart - Direct examination
by Solicitor Hunter

1 not allowed to give opinions concerning those factual
2 matters. An exception to that general rule is made for
3 witnesses who are designated within some field or profession
4 or calling as an expert within that field.

5 As to those witnesses, when someone's declared to be an
6 expert, they are allowed to state opinions within their
7 field of expertise, and also allowed to state the reasons or
8 the basis for having those opinions.

9 This witness has been presented as an expert witness in
10 forensic chemistry and we're going to certify her as such.
11 That means she'll be allowed to give her opinions concerning
12 matters within that field, and also state the reasons for
13 those opinions. Later on during my charge I'll give you
14 further instructions as to how you can consider the
15 testimony by experts. But, at this time, she has been
16 declared to be an expert.

17 You may proceed, Mr. Hunter.

18 Q Okay. Ms. Stuart, could you please explain to the jury
19 what the policy and procedure are for accepting controlled
20 substances into your lab?

21 A Typically, the officer would place it into what's
22 called a B.E.S.T. Bag. It's called a B.E.S.T. Bag. It
23 stands for Best Evidence Sample Testing, and basically it's
24 just a little plastic pouch and it's just a uniform way that
25 all agencies can submit drugs because we take from everybody

Beth Stuart - Direct examination
by Solicitor Hunter

1 within Spartanburg County. Not just our Sheriff's Office.

2 This bag is tamper evident, which means someone could
3 get into it if they were to cut it and it shows that it's torn.
4 I believe, in this case, the evidence was actually submitted
5 in a brown paper bag that was sealed. Because of the
6 quantity of items, it wouldn't fit down into the little
7 plastic bag.

8 (WHEREUPON, the B.E.S.T. Bag was marked as State's
9 Exhibit No. 5 for identification purposes only at this
10 time.)

11 Q Ms. Stuart, I'm gonna show you what's been premarked as
12 State's Exhibit 5.

13 Do you recognize that?

14 A This is the B.E.S.T. Bag with the corresponding
15 B.E.S.T. Bag number. At the top of each B.E.S.T. Bag is a
16 little S number. It's unique to every bag, and it's a
17 corresponding number that I have in my notes reflected for
18 this case.

19 Q And is that the size of all B.E.S.T. Bags that your
20 office uses?

21 A Yes, this is the only size that we have in these.

22 Q So, you have large amounts of narcotic substances, can
23 they fit into those bags?

24 A No, we train officers to package them differently.

25 Q Okay. How, how were they packaged differently?

Beth Stuart - Direct examination
by Solicitor Hunter

1 A Either in a brown paper bag or in a box or sometimes
2 it's in huge Tupperware containers. As long as it can be
3 sealed. It has to be a good seal before we'll ever accept
4 it. But besides that, however you can get it depending on
5 how much stuff it is.

6 Q I'm gonna show you what's been premarked as State's
7 Exhibit 3.

8 Do you recognize this bag?

9 A I do. It actually has my initials on the front here
10 with the lab number, and the date on it that I received the
11 item and my initials.

12 Q So, that is your handwriting?

13 A Yes, it is, here.

14 Q Okay. Now, when you accept substances from the
15 evidence room, would you accept them -- I know, in this
16 case, we're not in a B.E.S.T. Bag, but do you accept them if
17 the bag appears to have been tampered with?

18 A No, it would have to be sealed across the top like it
19 is now, and someone's initials would be in it, and I would
20 make sure could that you couldn't get a pencil within it.

21 Q Okay.

22 A At that point it's considered sealed and we would
23 accept it.

24 Q So, when you received that bag, what date did you
25 receive that bag?

Beth Stuart - Direct examination
by Solicitor Hunter

1 A I received it on June the 30th.

2 Q Okay. And what date did you test the items in that
3 bag?

4 A Actually tested it on July the 1st.

5 Q Now, if we could -- I want you to take a look inside
6 that bag.

7 A Pull it out?

8 Q Do you recognize the items in that bag?

9 A Yes, because they have my initials all over them. This
10 is the original packaging, and you can see in there every
11 bag gets signed with my initials and a lab number and the
12 date. And then this is how I packaged it up when I was done
13 with it. And this bag has my initials, the date I tested
14 it, and the lab number on it too. I write a lot and sign
15 everything.

16 SOLICITOR HUNTER: Give me one second.

17 THE COURT: Yes, sir.

18 (Pause.)

19 SOLICITOR HUNTER: Your Honor, I believe the defense
20 doesn't have any objection to those bags being considered a
21 part of State's Exhibit 3.

22 THE COURT: All right.

23 MR. HALL: No objection.

24 THE COURT: The record will note that the contents are
25 considered part of the exhibit.

Beth Stuart - Direct examination
by Solicitor Hunter

1 You may proceed.

2 Q Can you briefly explain your testing procedures?

3 A Sure. This originally came in 32 bags. They were all
4 similar in packaging and appearance, could not be
5 significantly distinguished one from the other. At that
6 point, what I do is a chemical test of all of the bags. A
7 chemical test is a color change test. It's called a
8 presumptive test to give me an idea of, of what the items
9 are.

10 They all did the same in the chemical test, and then I
11 took the sample for instrumentation. The instrumentation is
12 called a gas chromatograph mass spectrometer. Big
13 instrument, really expensive. Basically, when you put your
14 sample in there, it gives you a, what we call "a fingerprint
15 read out" of what the drug is that we interpret.

16 Q Okay. And did you do that in this case?

17 A I did.

18 Q What did the presumption test reveal?

19 A The presumptive test showed that it was a cocaine
20 substance.

21 Q Okay. Could you please explain the difference between
22 cocaine and cocaine base or crack cocaine?

23 A Sure. Cocaine is in a powder form. It's very white
24 this powdery and that is the salt form that you can take
25 into your body. It can not be smoked. The crack form is a

Beth Stuart - Direct examination
by Solicitor Hunter

- 1 base form. It's where they mix the cocaine baking soda in
2 order to get it and it's smokable.
- 3 Q Okay. And are crack cocaine and cocaine base the same
4 thing?
- 5 A No.
- 6 Q They're not?
- 7 A Well, I mean they come from the same thing, but they
8 test differently. I mean I can distinguish them in a test.
- 9 Q Okay. Now, in your expert opinion, what is that
10 substance in front of you?
- 11 A It's cocaine crack. Cocaine base.
- 12 Q Okay. And did you weigh the substance?
- 13 A I did.
- 14 Q Okay. And what did it weigh?
- 15 A 887.20 grams.
- 16 Q Okay. And -- I'm sorry. I'm gonna have you do a
17 little math here.
- 18 A Sure.
- 19 Q How many grams are in an ounce?
- 20 A There are -- let's see. 28 grains in a -- okay. So---
- 21 Q They're 28 grams in an ounce?
- 22 A Yes.
- 23 Q Okay. Now, if you multiple that -- do you have a pen
24 up there?
- 25 A No, goodness. I should of brought my calculator.

Beth Stuart - Direct examination
by Solicitor Hunter

1 Q Oh, I think I actually have it written down here.

2 Q Oh, do you?

3 A Do you want to know the number of ounces?

4 Q Well, how many -- they're -- how many bags were
5 present?

6 A Thirty-two.

7 Q Okay. And if you multiply 38, 32 times 28 grams in an
8 ounce?

9 A Okay. Basically, in total, there was 31.29 ounces.
10 So, it was roughly right under an ounce a bag.

11 Q So, it was packed almost exactly the same?

12 A Yes.

13 Q And each bag had almost exactly an ounce?

14 A Yes.

15 Q Okay. Of cocaine base?

16 A Yes.

17 Q Please answer any questions Mr. Hall might have for
18 you.

19 A Sure.

20 THE COURT: Mr. Hall, your witness.

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q Just to clarify something. I'm not gonna ask you to do
24 any math, but I was -- from my past of being at this table
25 years ago, now there's 28.35 grams to an ounce, is that

Beth Stuart - Cross-examination
by Mr. Hall

1 correct, or is it just 28?

2 Have you just rounded that---

3 A It's .34.

4 Q Okay. So, it is a little different from what he said.

5 Well, let's see. Just one second. I have no other
6 questions.

7 THE COURT: Anything further?

8 SOLICITOR HUNTER: Nothing from the State, Your Honor.

9 THE COURT: You may step down, ma'am.

10 Do you wish to excuse the witness?

11 SOLICITOR HUNTER: Yes, sir, please, Your Honor.

12 THE COURT: Any objection?

13 MR. HALL: No objection, Your Honor.

14 THE COURT: Ma'am, you're free to go if you'd like.
15 Thank you very much.

16 You may call your next witness.

17 SOLICITOR HUNTER: I believe we have a subject to take
18 up outside the jury's presence.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, at this time I need to discuss a matter with the
21 attorneys. I'll ask you to step back to the jury room, and
22 don't begin any discussions until I've asked you to do so.

23 You may retire.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Yes, sir, Mr. Hunter.

2 SOLICITOR HUNTER: Well, I believe Mr. Hall.

3 MR. HALL: And, Your Honor, we -- I think Mr. Hunter
4 and I envisioned the trooper being excused yesterday was
5 going to get this, but he waited till the end, and we waited
6 around for him, and we attempted to play it and were able to
7 play it, but the tracking on the equipment the solicitor had
8 flipped the whole time, and they had no way to duplicate it
9 so I could look at it overnight. And, you know, I
10 couldn't -- I can't say I saw anything different, but it was
11 difficult to see cause it was flipping. It's like the old,
12 for some of us that's old enough for the aerial television
13 if you didn't have that thing adjusted just right, that the
14 picture would flip.

15 THE COURT: Have vertical---

16 MR. HALL: And the tracking was off.

17 THE COURT: They had vertical and horizontal holes on
18 those things if you stop them. I remember all that, yes,
19 sir.

20 MR. HALL: And my, my children don't understand why my
21 truck doesn't have automatic windows. I just push them
22 down.

23 THE COURT: I can remember when tin foil made the TV
24 come in better too.

25 MR. HALL: The, the little brother staying behind the

1 TV.

2 THE COURT: Yes, sir, I'm aware of all those things.

3 MR. HALL: We were -- I would like to at least view the
4 tape or have some equipment to view it cause I couldn't
5 reasonable take custody of it. I left it with the solicitor
6 and---

7 THE COURT: Well, is there any equipment here at the
8 courthouse?

9 MR. HALL: This may do it, and I believe the
10 Magistrate's Court still has television and VCR's, and---

11 THE COURT: I don't know where---

12 MR. HALL: Out of an abundance of caution to my
13 client---

14 THE COURT: Well, let's sit here and see what it does.
15 I want you to have a chance to look at it.

16 MR. HALL: Your Honor, while we're doing that -- Your
17 Honor, we did confirm, I think, yesterday that Mr. Hunter
18 didn't have knowledge of this being on VHS until yesterday
19 morning and me yesterday afternoon.

20 THE COURT: Well, let's see if we can't get it to play.

21 SOLICITOR HUNTER: I will -- I did watch it with Mr.
22 Hall last night. It is the same exact video. The tracking
23 is a little bad on it. However, there's nothing that the
24 Court saw yesterday that's any different on this video right
25 here.

1 THE COURT: I think he's interested in sound more
2 than---

3 MR. HALL: Well, there---

4 SOLICITOR HUNTER: There was no sound on it either.

5 MR. HALL: There was a loud buzz, but also my client --
6 I've been able to go over the other, the disk with him. But
7 he's never seen this, and he had some concerns in our
8 conversations about some of the things on there that
9 something wasn't right, and---

10 THE COURT: Okay. Well, we're making every effort to
11 get it played.

12 MR. HALL: I can see if Magistrate's Court has a
13 television that we can have it played.

14 THE COURT: Mr. Bailiff, if you'll come down here
15 please.

16 CLERK: Your Honor, there's a---

17 THE COURT: Is this a TV with VHS on it?

18 CLERK: I think it is. It's up under there. I don't
19 know if it's a VHS.

20 THE COURT: Why don't you, why don't you go with him,
21 Tanya, and see if that's in the jury room?

22 BAILIFF: It's in the other courtroom.

23 THE COURT: Well, Tanya, see if you can find one that
24 works.

25 CLERK: Okay.

1 THE COURT: Thank you, ma'am.

2 (Pause.)

3 SOLICITOR HUNTER: Here we go. There we go. This is
4 the stop before Mr. Moore's.

5 THE COURT: All right.

6 MR. HALL: And it's got automatic tracking.

7 SOLICITOR HUNTER: This is much better quality than
8 what we watched.

9 THE COURT: Okay. Is the sound turned up?

10 MR. HALL: It is. Let's just make sure.

11 THE COURT: Or is there sound?

12 There's no sound on that unless you have that speaker
13 up?

14 SOLICITOR HUNTER: Well, there was no sound on it
15 yesterday either. It's just that loud buzz again.

16 THE COURT: I know.

17 SOLICITOR HUNTER: And as you'll notice, it's off on
18 this stop too.

19 THE COURT: Yeah.

20 Can you fast forward to get on to what we need to see?

21 SOLICITOR HUNTER: Yes, sir.

22 THE COURT: I'm not enjoying seeing the back of that
23 truck. Let's move on.

24 MR. HALL: I think we agree the buzz that we both said
25 we heard at the first of the disk is this noise that we

1 couldn't hear on the disk yesterday. But then it cuts off.

2 (WHEREUPON, the disk was played at this time.)

3 THE COURT: Mr. Hall, is there something in particular
4 we're looking for?

5 MR. HALL: Your Honor, he had a different memory of
6 what transpired before the dog got there, and---

7 THE COURT: Okay.

8 MR. HALL: ---when we reviewed the videotape, he
9 specifically mentioned that a couple of times.

10 THE COURT: Okay. Well---

11 MR. HALL: And, so, we can -- I think the important
12 thing is up to the time that the dog gets there.

13 THE COURT: All right. I mean if there's something in
14 particular, I'll be glad to try to move to that location and
15 see what it is.

16 MR. HALL: Well---

17 THE COURT: But we'll -- it's gonna take a while.

18 MR. HALL: Your Honor, we can -- I think we can fast
19 forward through the field sobriety test. I don't think we
20 need that.

21 THE COURT: All right.

22 MR. HALL: Your Honor, he said that's -- he's signaling
23 to me. But, Your Honor, if we can, this thing is much
24 clearer than the disk we have initially.

25 THE COURT: You want to put it in?

1 SOLICITOR HUNTER: I have no problem with substituting
2 this with, as a, as an exhibit.

3 THE COURT: Well, let's just put it in as an additional
4 exhibit.

5 MR. HALL: And it is the original.

6 THE COURT: Now, it has, it has that other event on it.
7 So, I want to give the State the right to later substitute
8 that videotape of that particular incident, and if we show
9 it to the jury, I can't send it back to the jury room. I'll
10 have to show it in the courtroom because I don't want them
11 heading off on some other incident or whatever they want to
12 see. So, we'll limit it for them to see just what's
13 occurred in this case.

14 MR. HALL: Yes, sir.

15 THE COURT: And that's how much of that videotape will
16 be introduced. The other incident's got nothing to do with
17 this case.

18 MR. HALL: Yes, sir.

19 THE COURT: So, let's mark it.

20 SOLICITOR HUNTER: I'm gonna get it stopped to where we
21 had it yesterday.

22 THE COURT: Okay. Okay. Good idea.

23 (WHEREUPON, the VHS tape was marked as State's Exhibit
24 No. 6 and received into evidence at this time.)

25 MR. HALL: And, Your Honor, the defense will stipulate

1 there's no audio on that.

2 THE COURT: Okay, sir. Now, is the State -- does the
3 State have other witnesses?

4 SOLICITOR HUNTER: The State has two more witnesses,
5 Your Honor.

6 THE COURT: Okay. And, Mr. Hall, are there any other
7 motions in connection with that piece of evidence?

8 MR. HALL: No, sir, not at this time.

9 THE COURT: Okay.

10 MR. HALL: It will be in the closing the State's case.

11 THE COURT: Bring the jury in.

12 Well, let's, let's you -- yeah, let's go ahead and
13 bring the jury in. We'll get a witness in before we take a
14 break.

15 SOLICITOR HUNTER: It's just an evidence technician.

16 THE COURT: All right. Bring the jury in.

17 SOLICITOR HUNTER: It's very short testimony.

18 THE COURT: I understand. I understand.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. The record will reflect that
22 the jury has returned to the courtroom.

23 Ladies and gentlemen, during the break, we were able to
24 locate and produce or the State was able to locate and
25 produce the actual VHS cassette recording of the incident.

1 That has now been reviewed and has been placed into evidence
2 as well as the DVD disk. There was some concern about that.
3 But now they're both into evidence. They will both be
4 available to you to view or if either side wishes to further
5 publish any portions from the actual VHS recording, that
6 will be available to you if that, if either side wishes to
7 publish those items.

8 At this time the State may call it's next witness.

9 SOLICITOR HUNTER: I apologize. Yesterday I called him
10 Robert Rosenberg, but it is actually Jack Westmoreland.

11 THE COURT: Mr. Westmoreland, take the stand please,
12 sir.

13 WITNESS: Yes, sir.

14 JACK WESTMORELAND, having been first duly
15 sworn, testified as follows:

16 THE COURT: Once you're seated, state your name for the
17 record please, sir.

18 WITNESS: Yes, sir, John David Westmoreland.

19 THE COURT: Mr. Hunter, your witness.

20 DIRECT EXAMINATION

21 BY SOLICITOR HUNTER:

22 Q Mr. Westmoreland, how long have you been in law
23 enforcement?

24 A Twenty-seven years eight months.

25 Q And what have your duties been in that time period?

Jack Westmoreland - Direct examination
by Solicitor Hunter

1 A Uniform patrol division, narcotics division, warrant
2 division, evidence, and court division.

3 Q Okay. So, when you say court division, is that what
4 you do right now?

5 A I do.

6 Q Okay. And what does that entail?

7 A The security of a judge.

8 Q Okay. And before court, where were you?

9 A Evidence.

10 Q And how long were you in evidence?

11 A A week less than three years.

12 Q Okay. And were you in evidence on June 30th, 2010?

13 A I was.

14 Q Okay. Briefly explain to the jury how evidence
15 technicians collect and do their job?

16 A Evidence is brought in by two ways. The officer will
17 drop it off or left in a drop box or a locker. It's
18 collected. We bring it into the office, enter it into the
19 computer system, log it in, and then place it into the
20 evidence room, which is secured.

21 Q Specifically with drug evidence, what do you do?

22 A It's brought in, cataloged, and given the case number.
23 It's signed in. We enter it, put to the drug, the drug
24 room.

25 Q Okay. And are drugs usually submitted in a B.E.S.T.

Jack Westmoreland - Direct examination
by Solicitor Hunter

1 Bag?

2 A They are.

3 Q Okay. What happens when the drugs are too large to fit
4 into a B.E.S.T. Bag?

5 A They put them in an evidence envelope or evidence bag
6 and attach the B.E.S.T. Bag to the outside of it.

7 Q Okay. Let me show you what's been premarked as State's
8 Exhibit 5.

9 Do you recognize that envelope?

10 A I do.

11 Q And what is that?

12 A It's a B.E.S.T. Bag envelope.

13 Q Okay. And on June 30th, did you accept any evidence?

14 A I did.

15 Q Regarding this case?

16 A I did.

17 Q And where did you receive it from?

18 A The drop box.

19 Q Okay. What is the drop box?

20 A It's like a box outside the evidence room. It's
21 secured by key access we only have access to. Once you drop
22 it, you can not get it back out until we get it back out.

23 Q Okay. Would you accept evidence that appeared to have
24 been tampered with?

25 A No, I would not.

Jack Westmoreland - Direct examination
by Solicitor Hunter

1 Q And if it's in that brown bag, State's Exhibit 3 I
2 believe, how would you be able to tell if it's been tampered
3 with?

4 A It's sealed on top by the evidence tape.

5 Q Okay. All right.

6 A And it's also initialed.

7 Q And do you recognize State's Exhibit 3 and the contents
8 that have been taken out?

9 A I do.

10 Q And how do you so recognize those?

11 A It's got my writing on the outside of the bag.

12 Q And when did you accept that bag?

13 A On the 30th of June.

14 Q And where did you accept it from?

15 A The drop box.

16 Q Okay. Now, what do you do with the evidence once you
17 receive it, presumably that evidence?

18 A I would enter it in the computer system, place a number
19 on it or a sticker on it, and place it in the drug room to
20 be collected by the chemist.

21 Q And what if there's a B.E.S.T. Bag -- or obviously, in
22 this case, it was too large to fit in a B.E.S.T. Bag.

23 What do you do with the B.E.S.T. Bag?

24 A It's still attached when it's turned in.

25 Q Okay.

Jack Westmoreland - Direct examination
by Solicitor Hunter

- 1 A It will be stapled to it in the envelope, outside of
2 it.
- 3 Q How would you note that when turning it in?
- 4 A When I note the B.E.S.T. Bag?
- 5 Q Correct.
- 6 A It's just on my sheet. I got B.E.S.T. Bag listed.
- 7 Q Okay. And what date did you turn that into the drug,
8 the drug room?
- 9 A The 30th.
- 10 Q And who has access to the drug room?
- 11 A Just evidence officers and the chemist.
- 12 Q Okay. So, only the evidence officers and Beth Stuart?
- 13 A Correct. The only -- the chemists I have is only there
14 when we're there.
- 15 Q Okay.
- 16 A They can't get to it if we're not there.
- 17 Q So, it's only 9:00 to 5:00?
- 18 A 8:30 to 5:00.
- 19 Q And did you follow all procedures and policies of the
20 Spartanburg County Sheriff's Office---
- 21 A I did.
- 22 Q ---in handling this evidence?
- 23 A I did.
- 24 Q Okay. And you do recognize all those items?
- 25 A Yes, sir, it's got my writing on them.

Jack Westmoreland - Direct examination
by Solicitor Hunter

1 Q At this time, answer any questions Mr. Hall may have
2 for you.

3 MR. HALL: No questions.

4 THE COURT: You may step down, sir.

5 WITNESS: Thank you, sir.

6 SOLICITOR HUNTER: I would ask he be excused. He does
7 have to work today. So --.

8 THE COURT: I understand.

9 You may call your next witness.

10 SOLICITOR HUNTER: State would call officer Hancock.

11 THE COURT: Sir, if you'd come forward to be sworn,
12 please.

13 KEN HANCOCK, having been first duly
14 sworn, testified as follows:

15 THE COURT: Be seated please.

16 (Witness complies.)

17 THE COURT: State your name please, sir.

18 WITNESS: I'm Kenneth Hancock.

19 THE COURT: Mr. Hunter, your witness.

20 DIRECT EXAMINATION

21 BY SOLICITOR HUNTER:

22 Q Mr. Hancock, would you go through your law enforcement
23 experience?

24 A Yes, sir. I started with the Sheriff's Office in 1991,
25 August of 1991. I was in uniform patrol on third shift for

Ken Hancock - Direct examination
by Solicitor Hunter

1 a while. After that I went to the academy. Before I went
2 to third shift, then I went to the academy and trained, I
3 became a narcotics officer probably in '93 I guess. Stayed
4 in narcotics for 12 years. Three of those years I was
5 lieutenant over the narcotics unit. Then in January of 2005
6 I took over as team leader of the Interstate Criminal
7 Enforcement Team and put it together for the Sheriff's
8 Office and I've been there ever since. Maybe seven or eight
9 months ago I got promoted as corporal over that team.

10 Q Okay. Can you please explain what the ICE team is?

11 A It's the Interstate Criminal Enforcement.

12 Q And what is your -- what are y'all's duties and goals?

13 A Basically we work the interstates in Spartanburg
14 County, I-26 and I-85. Our number one goal is to protect
15 the motoring public of Spartanburg County on the
16 interstates. The second goal is basically to, to hunt out
17 and seek -- I mean to detect criminal activity on the
18 interstates such as drug activity, illegal money or money
19 laundering, anybody, fugitives, murder suspects, stolen
20 property, counterfeit goods. Any kind of crime you can
21 imagine that somebody would leave another state or come
22 through our state or from Spartanburg, that's the kind of
23 work we're out there to protect against the citizens of the
24 county and the state.

25 SOLICITOR HUNTER: Your Honor, at this time, we're

Ken Hancock - Direct examination
by Solicitor Hunter

1 gonna show the videotape that's been put into evidence as
2 state's Exhibit 6.

3 THE COURT: You may do so.

4 (WHEREUPON, a portion of the videotape was played for
5 the jury at this time.)

6 Q Now, this is the point where we left off yesterday in
7 Jason's testimony.

8 A Can I stand up?

9 Q Yes, you can.

10 (Witness stands.)

11 Q That's you on the left?

12 A It is.

13 Q Okay. And what are you doing at this point?

14 A Basically after the dog's alerted, got a positive
15 alert, that gave probable cause to search the vehicle, and
16 at that time we began searching the vehicle.

17 Q Did you see Officer Owens find anything?

18 A I believe he found a bottle of alcohol underneath the
19 passenger seat. I believe it was under the passenger's
20 seat. It was a bottle of liquor. Matter of fact, it was a
21 bottle of E&J Brandy that he had already, the seal had been
22 broke and some of it had been drank out of it.

23 Q Did you find anything in the passenger compartment of
24 the vehicle?

25 A I wasn't---

Ken Hancock - Direct examination
by Solicitor Hunter

1 Q You yourself.

2 A I wasn't searching the passenger compartment.

3 Q Well, when I say passenger compartment, the -- where
4 passenger, where anybody would be sitting?

5 A No, sir, not as I can recall.

6 Q So then where did you go?

7 A Then to the trunk.

8 Q Is that that bottle you were speaking of?

9 A Yes, sir.

10 Q What did you locate right there?

11 A There was an Enfamil baby food can that you might see
12 at the store when you get powder in it or milk or for making
13 a baby bottle. It was empty. For baby food. But inside of
14 the can was several plastic bags containing crack cocaine or
15 what I, what I presume to be crack cocaine from my years of
16 training. It was individually packaged and the can was
17 pretty much full.

18 (WHEREUPON, the Enfamil can was marked as State's
19 Exhibit No. 7. A baby wipe container was marked as State's
20 Exhibit No. 8. A bag was marked as State's Exhibit No. 9.
21 All of the above exhibits were for identification purposes
22 only at this time.)

23 Q I'd like to show you what's been -- if you'll go ahead
24 and sit down.

25 A (Witness complies.)

Ken Hancock - Direct examination
by Solicitor Hunter

1 Q show you what's been premarked as State's Exhibit 7 .

2 Do you recognize that item?

3 A I do.

4 Q And what is it?

5 A It's a Enfamil General Lease for baby formula.

6 Q You don't have to go into it that specifically.

7 A It's for baby formula.

8 Q And is the same, substantially the same condition as
9 you found it that night?

10 A It is.

11 Q And is that the same box or cannister?

12 A It is.

13 SOLICITOR HUNTER: Okay. Your Honor, at this time, the
14 State would seek to admit State's Exhibit 7 into evidence.

15 MR. HALL: Your Honor, I think he's marked 7, 8, and 9
16 I assume. Other than my previous objection, none, no
17 objection at this time.

18 THE COURT: All right. Subject to the previous
19 objections, it will be admitted as marked.

20 You may proceed.

21 (WHEREUPON, State's Exhibit No. 7 was received into
22 evidence at this time.)

23 Q So, what are you pulling out of the Enfamil can?

24 A Basically those are plastic baggies containing what
25 appeared to be crack cocaine.

Ken Hancock - Direct examination
by Solicitor Hunter

1 Q Is that all you found?

2 A No, sir.

3 Q And what else did you find?

4 A Also inside of the bag, if you'll notice, that's,
5 that's a bag and red canvas bag. Inside of it was a, looks
6 like it's a baby wipe container used to, if you have
7 children, use to wipe babies when they use the bathroom in
8 their diaper or whatever like that. It was, also contained
9 plastic packages of crack cocaine. Also in that canvas bag
10 was a .45 caliber, excuse me, a .45 caliber pistol that was,
11 was loaded, and also about, probably \$4,023 cash, U.S.
12 currency --

13 Q Okay.

14 A -- broke down in different denominations.

15 SOLICITOR HUNTER: Your Honor, at this time, I believe
16 defense has stated they have no objection to Defense Exhibit
17 8 and 9 being admitted into evidence.

18 THE COURT: Subject to your previous objections, is
19 that my understanding?

20 MR. HALL: Yes, sir.

21 THE COURT: They'll be admitted as marked.

22 (WHEREUPON, State's Exhibit No. 8 and 9 were received
23 into evidence at this time.)

24 Q Now, that baby wipe can that you're holding as well as
25 the bags, those are the other substances where the rest of

Ken Hancock - Direct examination
by Solicitor Hunter

1 the crack cocaine or cocaine base was found?

2 A Yes.

3 Q Okay. You also mentioned a weapon.

4 A Yes, sir.

5 Q Let me show you what's been marked as State's Exhibit 4
6 including the contents.

7 Do you recognize what's inside that box?

8 A I do.

9 Do you want me to take it---

10 Q And what's inside that box?

11 A Do you want me to take it out?

12 Q Yes.

13 A It's a .45 caliber handgun, which is Springfield arms,
14 with a clip, and also it was loaded with the rounds inside
15 the clip, and also one in the, one in the pipe as we call
16 it.

17 Q So, you found the gun.

18 Is that in the same or substantially the same condition
19 as when you found it?

20 A It was. It was just loaded.

21 SOLICITOR HUNTER: Okay. At this time the State would
22 seek to admit State's Exhibit 3 into evidence, the gun and
23 the bullets and the magazine.

24 THE COURT: Any objection?

25 MR. HALL: Again, subject to the earlier objections.

Ken Hancock - Direct examination
by Solicitor Hunter

1 THE COURT: All right. It will be admitted as marked.

2 (WHEREUPON, State's Exhibit No. 4 was received into
3 evidence at this time.)

4 Q All right. Now, I want you to watch a little of what's
5 in this tape.

6 When you messed with this weapon, what did you notice
7 about it here in a second?

8 A Right there, I released the magazine out of the weapon,
9 and then, for safety purposes, for our safety purposes, I
10 take and actually clear the weapon, which means I eject the
11 weapon back, and when I ejected it back, as you see on the
12 video, a round comes out of the chamber.

13 Q And what does that mean?

14 A It's means that -- it means the gun was loaded.

15 Q Okay. You can go ahead and take a seat.

16 A (Witness complies.)

17 Q Let me move some of this stuff out of your way.

18 I want you to take a look at State's Exhibit 5, the
19 B.E.S.T. Bag right in front of you.

20 A Yes, sir.

21 Q Do you recognize that item?

22 A I do.

23 Q How do you recognize that item?

24 A It has my name printed on it, K. Hancock, and it also
25 has my signature on, on it.

Ken Hancock - Direct examination
by Solicitor Hunter

1 Q And that is your handwriting?

2 A It is.

3 SOLICITOR HUNTER: Your Honor, at this time the State
4 would seek to admit State's Exhibit 5 into evidence.

5 THE COURT: Any objection?

6 MR. HALL: Again, just subject to the earlier
7 objections.

8 THE COURT: All right. Subject to the earlier
9 objections, it will be admitted as marked.

10 (WHEREUPON, State's Exhibit No. 5 was received into
11 evidence at this time.)

12 Q What is the purpose of the B.E.S.T. Bag?

13 A It's mainly used for drugs such as cocaine, crack
14 cocaine, and heroin, methamphetamine, or pills of some sort
15 other than marijuana, anything other than marijuana as in a
16 drug, as in the drug field. It's also -- it's put in here
17 and sealed up with the seal right here. This seal's very
18 sticky. It's like tape. You pull it off and it's sticky.
19 If you take and you open it up, it looked -- you can --
20 there's -- you'll have to rip the bag apart in order to open
21 it up to show where it would be tampered with. Basically
22 it's to seal this up so that nobody will be able to tamper
23 with it is what it is.

24 Q Okay. And when you have a large amount of drugs, what
25 is the policy of the Sheriff's Office?

Ken Hancock - Direct examination
by Solicitor Hunter

1 A When you have more than would fit into this bag, which
2 like 32 packages, you kind of want to keep the packages the
3 way I always, just for evidence wise, you keep the packages
4 the way -- you keep it sealed the way you found it, which I
5 put in 32 packages of this. When it was bagged up, 32 bags
6 of crack would not fit in this bag.

7 So, I took this bag, which is the larger bag. If you
8 had say, ten or twelve kilos of cocaine or 50 pounds of
9 marijuana, you would take and put it in a box or you would
10 put it in a bag or a box. Even with the cocaine, you take
11 it and put it in this bag, fill the front of this bag out,
12 take your B.E.S.T. Bag and fill it out along with the chain
13 of custody inside the B.E.S.T. Bag. You take, you take this
14 tape, you seal it around the bag, once you fold it over, you
15 seal it around the bag. You put your initials and date on
16 it, you seal it up.

17 I, even after I put this tape on it, I got tape and I
18 staple the top of the bag also cause that way it's got to
19 be -- you can see where it had been ripped if anybody
20 tampered with it. I take the B.E.S.T. Bag itself, which is
21 in the brown envelope, put it on the outside and staple it
22 to the bag and it would look as so when it's dropped into
23 the box.

24 Q Okay. And other than when we opened it today, has it
25 been in the same or substantially the same condition as when

Ken Hancock - Direct examination
by Solicitor Hunter

1 you put it in the drop box?

2 A It is other than the B.E.S.T. bag being attached and
3 you, it being opened and everything, but it's in the same
4 condition.

5 Q Okay. And where did you -- once you left the roadside,
6 where did you take it?

7 A Basically we take the evidence, it stays in my custody,
8 I take it to the Spartanburg County Sheriff's Office. That,
9 that's when we take and put it in this bag. After I sealed
10 it up, fill all the paperwork out and everything, then I
11 took it down to where the evidence room is at. There's what
12 Officer Westmoreland explained as to evidence drop box.

13 To make, make you understand what the drop box looks
14 like, it looks like a huge mailbox. The handle pulls down,
15 but it's, it's a steel door, like steel door, it pulls down,
16 you lay this inside of it, and when you close it, it drops
17 it in there. You can't get it back out unless whoever the
18 evidence guy that's got a key. That's the only way you can
19 do that.

20 Q Did you do that in this case?

21 A I did.

22 Q Okay. In looking at the two packages in front of you,
23 other than the fact that Beth separated them once she had to
24 test them and weighed those substances, are they in the same
25 or substantially the same condition as when you found them

Ken Hancock - Direct examination
by Solicitor Hunter

1 on that roadside?

2 A There is. It's just been broken down.

3 SOLICITOR HUNTER: Your Honor, at this time the State
4 would seek to admit State's Exhibit 3 including the contents
5 of the crack cocaine and the baggies into evidence.

6 MR. HALL: Just as before, Your Honor, over my previous
7 objection.

8 THE COURT: All right. It will be admitted as marked.

9 (WHEREUPON, State's Exhibit No. 3 was received into
10 evidence at this time.)

11 SOLICITOR HUNTER: Permission to publish to the jury,
12 Your Honor?

13 THE COURT: You may.

14 Q So, all of this came in 32 separate bags?

15 A It did.

16 Q Your Honor -- excuse me, Mr. Hancock. If you'd please
17 answer any questions Mr. Hall has for you.

18 THE COURT: Mr. Hall, your witness.

19 CROSS-EXAMINATION

20 BY MR. HALL:

21 Q All right. In the video, it's obvious you were there
22 the whole time?

23 A Yes, sir.

24 Q All right. But to start with, you were back from the
25 car and Owens was up to the car?

Ken Hancock - Cross-examination
by Mr. Hall

1 A Yes, sir.

2 Q All right. But you were up there when he got out of
3 the car, when Mr. Moore got out of the car?

4 A Yes, sir.

5 Q All right. Did you hear Deputy Owens say you know,
6 you've forgot your door or close your door or anything?

7 Do you remember that?

8 A No, sir, I don't, I don't remember. I can't recall
9 that. But I know the door was left open, but I don't
10 remember if he told him to go back and shut it. I don't
11 remember that.

12 Q Okay. Now, have you reviewed this video before you
13 came to court?

14 A No, sir.

15 Q All right. In your report, I assume you reviewed your
16 report?

17 Do you, do you have it?

18 If your -- if I can approach?

19 THE COURT: You may.

20 Q I don't want to mess with it, but you've got a report,
21 and he's got a report, and Detective Carraway has a report.

22 A Okay.

23 Q And yours is labeled five of five and your, in the new
24 paper saving program we have.

25 A Okay.

Ken Hancock - Cross-examination
by Mr. Hall

1 Q All right. You got your report.

2 Now, did you notice the, I think it was accelerated
3 breathing, pulsing neck, or any of that?

4 A When I went up to the car?

5 Q When you were---

6 A No, sir.

7 Q ---around when he went to the car?

8 A Basically, when he came back, standing back there to
9 the back, just from standing off watching Officer Owens do
10 his job, he had mainly most of the contact. I was, I was
11 the contact, the backup officer for Officer Owens. In
12 watching his actions, through doing years of narcotics
13 investigation, traffic stops on the interstate, basically
14 his behavior was different than the regular motoring public
15 that we would get stopped. If you were stopped for a
16 traffic violation, it the, the -- his demeanor was different
17 than that of any of the normal motoring public.

18 Q All right. But that's not included in your report?

19 A Basically, I tell you what this -- Officer Owens wrote
20 this report and this one too. He wrote both of these.

21 Q Oh, but this one reads more like you wrote it?

22 A This one -- basically he wrote this the night of the
23 incident at two o'clock in the morning, signed a warrant,
24 then he went back and made the notes. This is basically
25 technically his notes is basically what this is where he

Ken Hancock - Cross-examination
by Mr. Hall

1 watches the video and does a detailed report.

2 Q When you mentioned the notes, will you look in that
3 file and see if there's any notes of any kind?

4 SOLICITOR HUNTER: Your Honor, can we take up a matter
5 outside the presence of the jury?

6 THE COURT: Yes, you may.

7 Ladies and gentlemen of the jury, I'll ask you to step
8 back to the jury room. As always, I'll instruct you not to
9 begin any discussions until I've advised you to do so.

10 You may retire.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 SOLICITOR HUNTER: Your Honor, at this time I believe
14 he's gonna ask him to take out two pages of the stenopad
15 notes that were written by Deputy Owens. In reviewing the
16 video on Brian's incident report, they're basically a rough
17 draft of the incident report, and I would argue they're work
18 product. Any, anything -- he has no knowledge of those
19 notes. They're not his notes. So, I don't see why Mr. Hall
20 can go into those notes on the---

21 THE COURT: Well, I haven't let him go into them.

22 SOLICITOR HUNTER: Well, that's why I wanted to make
23 sure that, at this point, if he'd like to proffer that at
24 this point I'd be okay with it, but---

25 MR. HALL: Just are there notes in there.

Ken Hancock - Cross-examination
by Mr. Hall

1 WITNESS: Yes.

2 THE COURT: Have you seen those notes, Mr. Hall?

3 MR. HALL: I saw them yesterday the first time that,
4 again, it was another surprise where all of the VHS, the
5 Carraway's report, and these notes.

6 SOLICITOR HUNTER: It was a surprise to all of us, Your
7 Honor.

8 THE COURT: All right.

9 MR. HALL: In fact, Mr. Owens said oh, maybe these are
10 the notes. No, these are my rough draft, but basically
11 they're my notes. I just wanted -- they're some notes. And
12 if they want to go into it after that, that's fine. I'm not
13 gonna go into the contents of it.

14 THE COURT: Well, you know, the report itself is not
15 admissible.

16 MR. HALL: Yes, sir.

17 THE COURT: Now, I'd -- if these are not his notes, he
18 couldn't even use them to refresh his memory cause they're
19 not his.

20 MR. HALL: No, sir, I'm not asking him to. It's just
21 the fact that they exist, and I'm---

22 THE COURT: That's all you want to ask him is are there
23 some notes in there?

24 MR. HALL: And that if they're not his notes, then
25 they're either -- they're involved in this case or they're

Ken Hancock - Cross-examination
by Mr. Hall

1 either Deputy Owens or Deputy Carraway, and if they want to
2 put up Deputy Carraway. But just that they exist, Your
3 Honor.

4 THE COURT: Do you object to him asking---

5 SOLICITOR HUNTER: We'll stipulate that those are Owens
6 notes, but the inference he's trying to draw that those are
7 the notes that he talks about in his testimony. But I, I
8 watched the video. He doesn't actually write notes on the
9 video.

10 MR. HALL: No, I'm not, I'm not inferring.

11 SOLICITOR HUNTER: That's what the jury is gonna infer.

12 MR. HALL: Well, I don't mind if he says these are,
13 these appear to be Owens notes to help him do his report.

14 SOLICITOR HUNTER: We'll stipulate to that.

15 THE COURT: All right.

16 SOLICITOR HUNTER: He can ask that question.

17 THE COURT: Okay.

18 MR. HALL: Yes, sir.

19 THE COURT: He'll let you ask that question.

20 MR. HALL: Yeah, I, I, I know that there's nothing in
21 there with field sobriety notes or anything like that that
22 I'm asking him about.

23 THE COURT: Now, let's -- let me ask about the larger
24 question here to me, and we've gone over the videotape. I
25 didn't hear that there was any change in the evidence that

Ken Hancock - Cross-examination
by Mr. Hall

1 was presented to you in discovery between the two. One's a
2 better quality, but I don't see there's been any alteration
3 or change of the evidence.

4 Is that correct?

5 MR. HALL: Not that I can note, no, sir.

6 THE COURT: All right. And as to the -- what were the
7 other matters that you said you just learned of?

8 SOLICITOR HUNTER: Just the notes.

9 THE COURT: These notes.

10 Have you had a chance to review them?

11 MR. HALL: I had a brief chance to review them
12 yesterday and---

13 THE COURT: Do you need longer to review them?

14 MR. HALL: If I can let my, let my client see them.

15 THE COURT: Oh, certainly.

16 MR. HALL: That's what we need to do.

17 THE COURT: And I'm gonna make Officer Owens available
18 to you if we have to do that after you've seen them---

19 MR. HALL: I don't think that would be necessary.

20 THE COURT: ---to testify concerning them, but --.

21 MR. HALL: And, again, Your Honor, I apologize, but
22 it's, it's something that I haven't had before.

23 THE COURT: Well, that's quite all right. I just
24 wanted to make sure that if there's a problem with discovery
25 we solve it now.

Ken Hancock - Cross-examination
by Mr. Hall

1 MR. HALL: Yes, sir.

2 (Pause.)

3 MR. HALL: Your Honor, we -- I've reviewed them, Your
4 Honor, and pretty much they outline the incident reports
5 now.

6 THE COURT: All right. So, no new information that you
7 see there?

8 MR. HALL: No, sir.

9 THE COURT: All right. And other -- what was the other
10 question you had about something that is here?

11 MR. HALL: No, it was just that we had gotten Deputy
12 Carraway's report yesterday.

13 THE COURT: Well, we excluded that, didn't we?

14 MR. HALL: Well, yeah, he just -- I got that---

15 SOLICITOR HUNTER: He asked him about it though. I had
16 no problem.

17 THE COURT: Yeah, but was there anything in there that
18 would require you to bring that, Officer Carraway back or---

19 MR. HALL: No, sir.

20 THE COURT: Any additional witnesses?

21 MR. HALL: No, sir, not on that.

22 SOLICITOR HUNTER: He had the report in his
23 cross-examination.

24 THE COURT: I understand. I just want to be sure that
25 there's any discovery, anything that this discovery leads to

Ken Hancock - Cross-examination
by Mr. Hall

1 that the defense has an opportunity to get to it. So --.

2 MR. HALL: Well---

3 THE COURT: I want to be sure that that discovery has
4 not created the need for other witnesses or other evidence
5 to be presented.

6 MR. HALL: Yes, sir, at this point, the reports have
7 just caused a few delays here.

8 THE COURT: Okay. Then otherwise it does not require
9 us to take a break while you resolve something?

10 MR. HALL: No, sir.

11 THE COURT: Okay. You can have a seat. Thank you.

12 MR. HALL: And I'm just gonna ask him if those are the
13 notes in there and they---

14 THE COURT: Yeah, and I think his answers gonna be it
15 looks like Officer Owens' notes to prepare the report.

16 MR. HALL: Yes, sir.

17 THE COURT: All right. Bring the jury back.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect that
21 the jury has returned to the courtroom.

22 During our break I was not required to make any
23 rulings.

24 You may proceed with your examination.

25 CONTINUED CROSS-EXAMINATION

Ken Hancock - Cross-examination
by Mr. Hall

1 BY MR. HALL:

2 Q Okay. And you have found some notes?

3 A Yes, sir.

4 Q And what -- just tell the jury what those are, what
5 they appear to be.

6 A What these look like is Officer Owens, when he sits
7 down after the next day, when he's had time to, he can sit
8 down and review the tape and sit down and watch the tape and
9 cut the tape on and off, he would make notes to do his final
10 report and do what we call a supplemental report when you
11 can be very detailed other than at two o'clock in the
12 morning. That's what these look like.

13 Q Okay. I think you can turn those into the file.

14 A (Witness complies.)

15 Q So, you didn't do your own independent report with
16 observations or anything?

17 A No, sir.

18 MR. HALL: Okay. I have no further questions of this
19 witness, Your Honor.

20 THE COURT: Redirect?

21 SOLICITOR HUNTER: Nothing, Your Honor.

22 THE COURT: You may step down, sir.

23 SOLICITOR HUNTER: May Corporal Hancock be excused?

24 THE COURT: Any objection?

25 MR. HALL: No objection, Your Honor.

1 THE COURT: You're free to go if you'd like. Thank you
2 very much.

3 State wish---

4 SOLICITOR HUNTER: State rests, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, I know
6 I've given you a lot of exercise today, and I don't intend
7 to do that. But at this point in time, the State has
8 completed the presentation of its evidence. There are some
9 matters I have to take with you, up with the attorneys at
10 this stage of the proceedings. So, again, I'm gonna ask you
11 to step back to the jury room again. I'm gonna instruct you
12 don't begin any discussions until I've advised you to do so.

13 You may retire.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Any motions from the defense?

17 MR. HALL: Yes, sir, Your Honor, a couple things.

18 We make the motion for a directed verdict cause the
19 evidence is insufficient which they could find my client
20 guilty, the jury could find my client guilty, my client
21 guilty beyond a reasonable doubt. And, secondly, renew my
22 motion on the suppression.

23 There was things that were not disclosed even to the
24 State to start with, the videotape, the clearer videotape
25 played and the notes. We don't know what else it could be

1 in there.

2 But, Your Honor, as I recall your ruling, let me get
3 back, that there was a, the money which I think he testified
4 was a thousand, I think actually was closer to 600. You
5 said he had doubts about his story, and, Your Honor, we just
6 ask that you reconsider that, that those are not
7 quantitative things, substantial things. Just there's
8 really no inconsistency in his story other than he's coming
9 from Georgia and rented a car and going to North Carolina
10 earlier, and we ask that, first, that you -- we renew our
11 motion to suppress the evidence, and we do that in light, if
12 not, then motion for directed verdict.

13 THE COURT: I'll hear from the State.

14 SOLICITOR HUNTER: Your Honor, first, on the directed
15 verdict, I believe the State has presented the case that,
16 viewed in the light most favorable to us, a reasonable jury
17 can find the defendant guilty.

18 As far as the suppression motion, you've already ruled.
19 We basically had the same testimony. I will stipulate that
20 it is \$600 that was found or approximately \$600 found in his
21 pocket. Obviously he had a large amount of cash in his
22 pocket. He's unemployed.

23 We have the Enterprise rental agreement into evidence,
24 which states that an Edward Hemphill, on nine hours
25 previous, at 3:50 p.m. on June 29th rented the car in

1 Morganton, North Carolina, which, after looking up
2 yesterday, is right up a few miles to the north, east of
3 Marion, North Carolina, which is right up 221 past Chesnee a
4 little ways up into North Carolina.

5 So, according to the defendant's story, the car was
6 then rented in North Carolina, driven to Lawrenceville so
7 that he could then visit his grandmother in Marion right
8 where the car was rented. Very inconsistent story. He
9 continued talking on his cell phone. He has an odor of
10 alcohol coming from Atlanta, which is a hub city for drug
11 trafficking, and all the little things that the officers
12 testified that your ruling, your previous ruling on the
13 suppression motion should stay in tact.

14 THE COURT: All right. Well, as to the motion for
15 directed verdict, it would be denied just because I do find
16 there's sufficient evidence in the state's case is
17 sufficiently strong that the case should go to the jury.

18 As to the motion to distress, to suppress, again, the
19 question, as presented in the, I guess it's Provet case
20 talks about the lengthening of a detention period is that,
21 being acceptable under two situations. One, where the
22 officer has an objectively reasonable and articulable
23 suspicion illegal activity has occurred or is occurring.
24 The second basis is a consensual encounter, and that's not
25 our case here.

1 So, we're looking at number one. I found that there
2 were at least two objective suspicions, activities that
3 someone would consider to be suspicious, and that is that
4 the fact that the car was rented in Morganton by a third
5 party. This defendant then told the police he was traveling
6 for Lawrenceville to Marion to visit his grandmother. He
7 was on I-85 heading north indicating he was coming from a
8 southerly location such as Lawrenceville. However, makes
9 little or no reasonable sense for someone to rent a car a
10 short distance from your intended destination and then drive
11 it to Lawrenceville and then back to Spartanburg especially
12 at that hour of the morning.

13 That would cause, I think, any reasonable officer to be
14 suspicious that illegal activity may be occurring, and it
15 requires, again, a particularized and objective basis. The
16 defendant, in just talking during the, the normal traffic
17 stop, indicated that he was unemployed and did have a rather
18 large sum of cash on his person, which is not, again,
19 consistent with someone who's unemployed. Someone to be
20 renting a vehicle, driving it a great distance with a large
21 amount of cash does not seem to be the normal activities for
22 unemployed, unemployed person.

23 Then, given the due weight it says that the Court must
24 give to the common sense judgments reached by officers in
25 light of their experience and training, I'm not gonna go

1 through all those items, but there were numerous items that
2 the officers testified to that led them to a, an experience,
3 excuse me, a suspicion based upon their experience and their
4 training.

5 So, all of those factors, and, again, you must
6 consider, it says here, the totality of the circumstances.
7 I have considered the totality of the circumstances, and
8 it's my finding that the lengthening of the detention was
9 not, was not unreasonable, and, therefore, the later
10 alerting by the dog gave probable cause for the search, and,
11 therefore, I will not suppress the evidence at this time.

12 Now, have you discussed with your client the, his right
13 to testify, Mr. Hall?

14 MR. HALL: Yes, sir, we have, Your Honor, and I think
15 we do need to make sure we satisfy his record. I think I
16 know what his decision's going to be, but I'm not sure
17 what -- I'm trying to get to his criminal history.

18 THE COURT: All right. Well, Mr., Mr. Hunter, can you
19 share with us any criminal history that the Court feels
20 might be relevant in this case?

21 SOLICITOR HUNTER: I'll mark it off here in a second.

22 THE COURT: All right, sir.

23 SOLICITOR HUNTER: If you will, Your Honor, I'll show
24 you his entire criminal record.

25 THE COURT: All right, sir.

1 SOLICITOR HUNTER: It starts in 1998 where he was
2 convicted of assault with a deadly weapon with intent to
3 inflict serious injury, and in 1998 also, sell or deliver
4 cocaine. These are both in North Carolina, or excuse me,
5 yes, in North Carolina.

6 Then in Georgia, he has obstruction or hindering
7 persons making emergency telephone call. That's in 2007.
8 He has aggravated stalking in 2007, and willful obstruction
9 of law enforcement officers by use of force in 2007. He
10 also has a DUI in 2009.

11 THE COURT: All right. Mr. Hall.

12 MR. HALL: Your Honor, 2007 (sic) is more than ten
13 years.

14 THE COURT: Yes, sir, those are remote.

15 MR. HALL: And I apologize, it's -- I'm well versed in
16 reading South Carolina rap sheets, and actually I was hoping
17 Mr. Hunter was gonna go over the penalty cause a lot of
18 these are dismissal without leave.

19 SOLICITOR HUNTER: well, the 1998 assault with deadly
20 weapon with serious injury, he received a confinement of
21 two, two years to 38 months, and a probationary sentence of
22 36 months, and he was convicted, at that time, on
23 April 19th or April 8th of 1998. Even with the two year
24 confinement, that's putting it in about 2000 or the Year
25 2000, April of 2000.

1 THE COURT: So, that's gonna be more than ten years
2 ago?

3 SOLICITOR HUNTER: Correct. And it's the same with the
4 sell and delivery of cocaine. He received a six or eight
5 months. So, the North Carolina ones would be, in light most
6 favorable to the defendant, would be outside the ten years.

7 THE COURT: Yes, sir.

8 SOLICITOR HUNTER: However, all the Georgia charges
9 happened from 2007 on to 2009 which that's obstruction of
10 law enforcement---

11 THE COURT: Would those carry more than one year?

12 SOLICITOR HUNTER: Your Honor, I'm not aware of what
13 the Georgia statutes are. I would assume they're similar to
14 South Carolina. The only one that would be carrying more
15 than one could be obstruction of law enforcement.

16 THE COURT: Yes, sir.

17 MR. HALL: And, Your Honor, it's, like I said, it's not
18 clear on here.

19 SOLICITOR HUNTER: However it is a felony.

20 MR. HALL: And, Your Honor, some of us, not the---

21 SOLICITOR HUNTER: Actually we have the no contact with
22 Claudette Dickson, with Court costs, credit for time served,
23 confinement for eight months with probation for 17 years and
24 four months.

25 MR. HALL: Georgia has a don't report probation, and if

1 you get in any trouble in that period of time, it can
2 violate your probation. But also if you are incarcerated
3 for some other charge, and you get time for that charge,
4 your incarceration time counts towards your probation
5 itself. It's a paper probation. That's what I learned from
6 clients from---

7 SOLICITOR HUNTER: I believe that's the only charge
8 that carries over a year under Rule 609.

9 MR. HALL: And, Your Honor, some of it's similar to a
10 ten year misdemeanor and three year felony in this state.
11 And, so, I don't think the label is and enough. So, Your
12 Honor, I don't, I don't feel any of those would apply.

13 THE COURT: Well, that one does not also, does not
14 involve---

15 SOLICITOR HUNTER: It's not dishonesty.

16 THE COURT: Dishonesty or false statements.

17 MR. HALL: So, I don't think any of these---

18 THE COURT: I would agree it would doubtful that they
19 could be used.

20 MR. HALL: And if I can have a few minutes with my
21 client cause we have discussed this, but I want to go over
22 it with him once again.

23 THE COURT: All right. What we'll do is we'll take our
24 morning break at this point in time.

25 We'll be in recess for about ten to fifteen minutes.

1 That will give you a chance to talk to your client in
2 private. And before you do that, let me go over the rights
3 with him---

4 MR. HALL: Yes, sir.

5 THE COURT: ---so I'm sure he understands that.

6 Please swear the defendant for me.

7 (WHEREUPON, the defendant was placed under oath at this
8 time.)

9 THE COURT: You can be seated, sir.

10 (Defendant complies.)

11 THE COURT: Mr. Moore, at this point in time I'm going
12 to explain to you certain of your rights under the
13 Constitution. If you don't understand what I've gone, what
14 I go over with you, when I finish, I'll give you a chance to
15 ask questions, and I want to be sure you do understand this
16 before we proceed.

17 Do you understand what we're doing, sir?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right. We have reached the stage of
20 the proceedings or this trial where you have the right to
21 present your defense. You also, at this time, have the
22 right to claim the protections that are given to you under
23 the Fifth Amendment to the United States Constitution. That
24 amendment reads in part that no person shall be compelled,
25 in a criminal case, to be a witness against himself.

1 Now, what that means is that you can not be required to
2 testify in this case. You have the right to testify if you
3 choose to do so. However, no one can make you testify.
4 It's sometimes described as a right to remain silent. The
5 right to remain silent is a personal right. No one can give
6 up that right except yourself.

7 Now, I'll advise you that if you decide to testify,
8 you'll be subject to the same rules that govern the
9 testimony of other witnesses. That means you would be
10 examined by your lawyer. Then I would allow the State to
11 cross-examine you as well.

12 We have gone over your criminal record at this point in
13 time. There does not appear to be substantial evidence that
14 could be used to attack your credibility in this case. But
15 I do want you to know that, that the State would have the
16 right to cross-examine you, and do attempt to attack your
17 credibility in any fashion they choose to do it other than
18 the use of your record.

19 Now, if you decide to testify, the decision, on your
20 part, must be made freely and voluntarily and intelligently.
21 That means it's made with knowledge of the protections given
22 to you by the Fifth Amendment and the consequences of your
23 decision to testify.

24 Now, I will advise you that if you decide not to
25 testify in this case, that I will instruct the jurors that

1 they not give the fact that you did not testify any
2 consideration whatsoever. In fact, I'll instruct them they
3 can't even discuss that matter during their deliberations.
4 There would be there -- I will instruct them there's to be
5 absolutely no prejudice to you because you didn't testify.

6 Now, the decision, again, to testify, is left entirely
7 up to you. You have the right, however, to discuss it with
8 your lawyer or anyone else you wish to discuss that decision
9 with, but in the final analysis, the decision is yours, and
10 yours alone.

11 Now, Mr. Moore, do you understand the rights that I've
12 explained to you?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions about this right?

15 DEFENDANT: No, sir.

16 THE COURT: All right. Your attorney's indicated you'd
17 like to discuss the matter with him further, and we're gonna
18 take a short recess and give you the right to do that.

19 Court will be recess.

20 Thank you very much.

21 SOLICITOR HUNTER: Your Honor, just for your knowledge,
22 it's, it's a felony one to five in Georgia.

23 THE COURT: Okay, sir.

24 (WHEREUPON, a short recess was taken at this time.)

25 THE COURT: All right. Now, Mr. Moore, have you had an

1 opportunity to discuss your decision with your attorney?

2 DEFENDANT: Yes, sir.

3 THE COURT: Now, do you recall my discussion with you
4 earlier?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you wish to testify in this case?

7 DEFENDANT: No, sir.

8 THE COURT: All right. Does the defense wish to call
9 any other witnesses?

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

11 THE COURT: So, the defense will be resting?

12 MR. HALL: The defense rests, Your Honor.

13 THE COURT: All right. That means that the defense is
14 not putting any evidence in I don't recall, am I correct?

15 SOLICITOR HUNTER: He gets to go last.

16 THE COURT: Okay. I just wanted to be sure I was
17 correct in that.

18 MR. HALL: And, Your Honor, I'll go ahead and renew my
19 motions for directed verdict in a light most favorable to
20 our side now for the record.

21 THE COURT: And I'm gonna deny the motions. The case
22 will go to the jury.

23 THE COURT: All right. Are we ready?

24 Mr. Hall, are you ready to go forward?

25 MR. HALL: Yes, sir, I'm ready.

1 THE COURT: And are you ready, Mr. Hunter?

2 SOLICITOR HUNTER: Why not?

3 THE COURT: All right. Let's bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect the
7 jury has returned to the courtroom.

8 During the break I inquired of the defense if they
9 wished to call any witnesses.

10 I've been informed, Mr. Hall, you do not wish to call
11 witnesses?

12 MR. HALL: Do not. Defense rests.

13 THE COURT: All right. That completes the presentation
14 of evidence in this case, and I told you that when we
15 reached this stage of the proceeding we would allow the
16 attorneys to make a brief closing or summation argument
17 followed by my charge concerning the law, and in this
18 particular instance, Mr. Hunter is going to, to first.

19 You may proceed for the State.

20 SOLICITOR HUNTER: Your Honor, may it please the Court?

21 THE COURT: Yes, sir.

22 SOLICITOR HUNTER: Ladies and gentlemen of the jury, I
23 asked you, at the beginning of the case, to have an open
24 mind, use your common sense, and at the end I would come
25 back and ask you to find a verdict of guilty on Ashley

1 Moore. This is the time I'm gonna ask for the verdict of
2 guilty.

3 Now, this time for us, as lawyers, is a time to sum up
4 the case. You've been sitting here for the past day.
5 You've watched the video. You've seen the evidence that's
6 been presented, presented, and admitted into evidence, and I
7 just want to go over a few things with you.

8 I tried to explain in trafficking. I may of bumbled it
9 up a little bit when I was speaking to you in openings. But
10 trafficking, all we have to do is, to prove that he was
11 trafficking in cocaine, is that he possessed, knowingly
12 possessed, an amount of cocaine over a threshold amount,
13 amount. That's it. All I have to do is prove that he
14 possessed it. Not that he was driving with it. Not that he
15 was making it. Not that he was intending to sell it. Just
16 that he had it, and just cause he didn't have it on his
17 person doesn't mean he didn't possess it.

18 In this case, the threshold amount is 400 grams of
19 cocaine base, crack cocaine. You've heard from Lieutenant
20 Beth Stuart, eight year veteran of the chemist lab here at
21 Spartanburg County Sheriff's Office, tested this. She
22 doesn't weigh the bags. Just the actual substance. It's
23 887.2 grams of crack cocaine, cocaine base.

24 Now, rough calculation, over a pound -- that's
25 1.95 pounds of crack cocaine. So, I know most, most people

1 don't deal in grams in their every day lives. 1.95 pounds.

2 Now, on the car stop, Deputy Owens, Corporal Hancock
3 see the driver doing 70 miles an hour in a 60 mile an hour
4 zone. He's failing to maintain his lane, and he's getting
5 his turn signals mixed up. They pull him over. And when
6 they first approach the car, you can smell the alcohol in
7 the car.

8 And you saw on the video, after the search of the car,
9 why you could smell alcohol in the car cause there was a
10 half open bottle of E&J Brandy sitting under the passenger's
11 seat.

12 Mr. Moore's talking on his cell phone when the officer
13 approached.

14 Who does that?

15 Please put the phone down. He gets out of the car,
16 leaves his car door opened, goes back to shut it, comes
17 back, starts talking with the officers. Starts explaining
18 where he's coming from, where he's going to.

19 You've seen this rental agreement right here. This
20 vehicle was rented on June 29th, 2010, at 3:59 p.m. He
21 was pulled over on June 30th, 2010. So, later that
22 evening into the morning of the next day. So, approximately
23 nine hours after this car was rented.

24 This car was rented in Morganton, North Carolina, which
25 is if you go up 221 past Chesnee, up into North Carolina,

1 you hit 40, you go over a little bit, and it's gonna be
2 right there on your right.

3 Morganton to Lawrenceville Georgia?

4 It's a drive of approximately four hours. So, that
5 means that the car was rented at 3:59, and that, that's when
6 he's got the paperwork. So, we'll just assume that this car
7 was rented at four o'clock and left the lot at four o'clock.
8 But that car got into Lawrenceville, Georgia approximately
9 at eight o'clock p.m.

10 Mr. Moore was pulled over at 1:10 p.m. right around
11 Duncan, South Carolina, right there at Exit 63. We saw the
12 290 Duncan sign in the video. So, it takes approximately
13 two hours and 20 minutes to get to that point from
14 Lawrenceville, Georgia.

15 So, you go back 1:10 to midnight, an hour and ten
16 minutes, another hour to 11:00, you're looking at 10:50 is
17 when that car approximately, and approximately left
18 Lawrenceville Georgia. That means this rental car was in
19 Lawrenceville, Georgia for two hours and 50 minutes and
20 that's it.

21 Who rents a rental car in North Carolina, drives it to
22 Lawrenceville, Georgia, and then back up to North Carolina
23 to visit your grandmother at 1:10 in the morning while
24 you've been drinking?

25 He's admitted he's been drinking.

1 Use your common sense.

2 Now, we've heard Corporal Hancock talk about once the
3 dog alerted he searched. Now, this case isn't just
4 trafficking in cocaine. You also have a weapon, and you'll
5 have a chance to look at all this evidence when you go back
6 to your room and deliberate.

7 It's a Springfield ST .45 caliber weapon. It's a
8 pretty nice gun, and you saw on the video, or if you didn't
9 see if, you have the chance to watch it again, when he pulls
10 the slide back, what pops out?

11 A bullet.

12 One, two, three, four, five -- one, two, three, four,
13 five, six, seven, eight, nine, ten, eleven, twelve, thirteen
14 in this gun. Twelve in the magazine and one in the chamber.
15 One pull of this trigger and this gun goes off that night.

16 And where was it found?

17 In the bag right next to the 1.95 grams of crack
18 cocaine.

19 I want you to look at this magazine?

20 How many bullets did I count out?

21 I counted 13.

22 How many bullets do you see fit in this magazine?

23 You see the bottom number.

24 Y'all can pass this around after I'm done talking so
25 that y'all can look at it. But you'll see the bottom number

1 and that's how many bullets you can put in there. Thirteen
2 bullets. Slide it in the gun, pull back the slide, and you
3 get 12 in the magazine and one in the chamber.

4 And as I said, you're gonna get to go back and watch
5 this video if you want to. You can come back out and watch
6 it. You don't have to, but you'll get to see this.

7 Now, a lot's been made that some of his actions were
8 something that any normal driver on the side of the road
9 does. Smoking, the hands, and opening the door. But all of
10 those are indicates that they're taught, in their experience
11 and training, that something else is going on especially
12 with this rental agreement.

13 Now, Mr. Carraway brings his dog out to the scene.
14 Drives down from Exit 80, gets to the scene, brings Deuce
15 out. When he does, he goes (Solicitor Hunter sniffed at
16 this time) and stops right at the passenger door. He tries
17 to pull him off, but he won't go. He's alerted to the
18 presence of narcotics in that car.

19 You get to see this when you go back there. Holding it
20 right here, it stinks. That smell emanates out of the
21 trunk. I probably have it on my hands right now. I need to
22 make sure I don't get pulled over when I leave the
23 courtroom.

24 In 32 separate bags. Now, it's not exact. Each one of
25 those would have an ounce, and Robbie even says 28.34 grams

1 in an ounce. Well, when you multiply that out, that weight
2 fits almost perfectly. It's almost 28 grams in each bag.
3 In fact, when we weigh the bags, when Beth doesn't weigh the
4 bags, she only weighs the actual substance, it's almost an
5 ounce a bag. Packaged to sell.

6 They didn't search the car for that long. They didn't
7 have to. You heard Deputy Owens say when he asked Mr. Moore
8 did he have anything in the car, Deputy Owens responded on
9 the stand that he said he had a bag of, this bag. That's
10 the only bag in the trunk.

11 Baby's formula and baby wipes. The only problem is
12 when you open it, no formula, no baby wipes, 1.95 grams, or
13 excuse me, pounds of cocaine base of crack cocaine. And
14 remember, we only have to prove that he possessed over
15 400 grams. That's twice the amount at that threshold
16 amount.

17 You also heard from Jack Westmoreland who I
18 accidentally called Roger in opening statement. Roger's
19 another evidence tech. Jack testifies, as he does in a lot
20 of these cases, how he receives the evidence and how he
21 gives it to the drug room. That's only for the purpose to
22 prove that, when they get these drugs, puts them in these
23 bags and puts them in the evidence room, that they stay in
24 the bag, that this chain from Ken to Jack and ultimately to
25 Beth when she tests the drugs. That chain wasn't broken

1 here.

2 I want to talk a little bit about possession cause this
3 case is a little different in that, obviously, you don't
4 have this in your pocket. You don't have it in your jacket
5 pocket in a pair of pants. You can't. It's too big. But
6 just because it's in the trunk of the vehicle doesn't mean
7 he don't own it.

8 I have golf clubs. I go and play golf. I went and
9 played golf this past weekend, an alumni tournament at
10 Clemson. I can't put those golf clubs on my person. In
11 fact, I couldn't put them in the back seat. I had to put
12 them in the trunk.

13 Does that make them any less my golf clubs?

14 Do I not own and possess those golf clubs?

15 Those are still my golf clubs. Just cause they're not
16 on me doesn't mean they're not mine.

17 Now, I ask again to keep an open mind and use your,
18 your common sense.

19 Officers are out there to protect the motorists of
20 Spartanburg County, and they encounter someone who appears
21 that there's something else going on. And after the dog
22 alerts to the presence of narcotics, they search the
23 vehicle. They find a weapon and they find the crack.

24 where did the drug dog alert?

25 Loaded gun with the drugs.

1 And I urge, when you come back from your deliberations,
2 find the defendant, Ashley Moore, guilty of trafficking
3 cocaine base, crack cocaine over 400 grams. But also guilty
4 of possession of a weapon during the commission of a violent
5 crime because trafficking cocaine in South Carolina is a
6 violent crime.

7 You'll hear from Judge Couch. He'll give you the law.
8 He'll charge you in a little bit after Mr. Hall's done. I
9 want to thank you for your service, and I'm asking you,
10 again, for a verdict of guilty.

11 Thank you.

12 THE COURT: Mr. Hall, you may proceed.

13 MR. HALL: Please the Court?

14 THE COURT: Yes, sir.

15 MR. HALL: Solicitor. Jack.

16 Ladies and gentlemen of the jury, first thing I'm gonna
17 do is I'm sometimes a little clumsy and move my arms around.
18 I'm gonna try to move some of this off so I don't knock
19 anything over on you. Just -- I just know myself, and I
20 don't want to throw anything down on folks.

21 I want to start off by thanking you. You look like
22 you've paid attention. This hasn't been a very long trial.
23 But I do appreciate you being here. Mr. Moore appreciate
24 you being here cause he couldn't have his day in court, and
25 he's been waiting for this since last June to get in court

1 and have his day with open minded, fair, and impartial jury,
2 and he can't have that without you being here. So, I do
3 want to thank you again.

4 Now, Mr. Hunter, as I think pretty much summarized what
5 the law is, what the judge is gonna tell you exactly what
6 the law is, and if I say anything or Mr. Hunter says
7 anything about the law that's different, you have to go with
8 the judge cause he is the judge of the law. I'm just an
9 attorney in this case.

10 But what the State has to prove, like he said, more
11 than 400 grams. It has to be crack cocaine, cocaine base,
12 crack cocaine. That is a violent crime. I think the judge
13 will charge you that. And, if so, if he's guilty of that,
14 and he's got the gun, then he's guilty of that, possession
15 of a firearm during a violent crime. But what you have to
16 do is look at what's presented, determine the facts, and
17 apply the facts to the law as the judge gives to you, and
18 determine whether or not he's guilty of those offenses.

19 Now, we had, in this case, what we don't have in a lot
20 of cases is a video. It turned out it was on a DVD, but
21 then it turned out actually it was on VHS. We finally got
22 that VHS last night, and in this form where you can view if
23 you want to, if you want to look at it cause, to my eye, it
24 seems to be a bit clearer than the DVD. So, that's why we
25 have the introduction of that VHS.

1 A lot of the things that the officer testified to you
2 can kind of see on there, but some of the things you can't.
3 I want you to please, if you will, look at the video, either
4 VHS or the video and see if you see the behavior, namely the
5 behavior on that by Mr. Moore was so suspicious for lack of
6 a better word.

7 Was his neck bulging and pulsing?

8 Was, let's see, his breathing accelerated?

9 You know, it's interesting that Deputy Hancock said he
10 could see that in the car, but he couldn't see if the car
11 was in park while he was looking in that passenger window.
12 I can understand him looking at the person, but he's also
13 saying I'm scared this guy might go. It seems reasonable
14 that the first thing you do, when you look at the person,
15 is, is the car in park or even say shut the car off. I
16 don't know if he did that. I don't think he did. He didn't
17 say it.

18 I don't -- I think if you really look at this video
19 that his reactions are not that unusual, not that
20 suspicious. It's the interstate. He had something to drink
21 a few hours before in Lawrenceville, Georgia. He's getting
22 pulled over for speeding. He was mistaken about the speed
23 limit. Anybody getting pulled over I think is gonna be a
24 little nervous. Maybe if you know the officer's pulling you
25 over you would be more relaxed. Maybe not. I don't know.

1 But that's something for you to look at.

2 Was he that suspicious?

3 Was he acting that unusual for somebody?

4 Was it unusual to drive on down the road, which I think

5 I saw a guardrail, and look at that video, look and see if

6 you see a guardrail. He pulls over after the guardrail.

7 Forty-five, fifty seconds, as opposed to 15 or whatever

8 Trooper, excuse me, Deputy Owens said was normal for people.

9 Makes a point to lifting his hands. He's lifting his
10 hands while we're patting him down. We didn't tell him to
11 do that.

12 Look at that video and see if you don't see an
13 indication form the officer doing like this in his hand.
14 Right hand to Mr. Moore's left.

15 And what did Mr. Moore do?

16 Raises his hands.

17 It's not unusual. That's a signal. Just like this is
18 a signal for drinking, I suggest to you that that can be, at
19 your hand, you're gonna raise your hands if this officer
20 does that to you.

21 Now, we have Ken Hancock who testified, and I don't
22 recall him really testifying to a whole lot of those same
23 things, but he was there in support, but he was there. But
24 fortunately, we don't have audio. We can't hear what's
25 being said. Things keep breaking. At least broken twice.

1 We've got a unit with Spartanburg County Sheriff's
2 Department that's job is to patrol the interstate in looking
3 for major crimes, they're protecting us, but apparently
4 they're given the shottiest equipment they have.

5 The audio doesn't work well. It's still on VHS in 2010
6 when most everything is digitally recorded on disks. At
7 least I think in most of the world, modern world.

8 Now, I submit, from what we can tell from that video,
9 Mr. Moore cooperated with the police. You can see him put
10 his hands up. He didn't try to run. The only thing he
11 tried to do was smoke a cigarette. Touched his pockets. He
12 smoked a cigarette. That's not that unusual for a smoker if
13 any of you smoke or use to smoke. Sometimes, in a situation
14 like that, cigarette's comforting. It doesn't mean you're
15 trafficking in drugs because you smoke a cigarette when
16 you're being pulled over when you're nervous.

17 Now, we have the car rental agreement. You'll have it
18 back there. It said he rented it in Georgia, in North
19 Carolina at about 4:00 p.m. the afternoon before. We don't
20 know that. What we know is somebody else rented that car,
21 signed for it.

22 Most of us know what it takes to rent a car. They
23 don't just hand them out to you and say, hey, I want to rent
24 a car. Proper ID, credit card, those type of things.

25 Nine hours later he's headed to North Carolina from

1 Georgia to visit his grandmother in that car. There's no
2 evidence that he rented the car, that he was in North
3 Carolina the afternoon before. Absolutely no evidence that
4 he was.

5 All we have, at some point, he started, two hours
6 before, from Lawrenceville, Georgia to head to North
7 Carolina to visit his grandmother. That's the testimony we
8 have. In a car rented by somebody else.

9 Comes down to a factor, one word, knowingly.

10 Did the State prove, beyond a reasonable doubt, that he
11 knew that there were, the drugs, the cocaine, crack cocaine,
12 in that car?

13 Did he know that the gun was in the car?

14 Look at everything.

15 I submit to you he wasn't acting that nervous. If I
16 had 887 or so grams and a loaded gun and knew that I had
17 that in the car and the police are there, I'm gonna act real
18 nervous. Maybe you would be able to see my neck pulsing on
19 the video, me sweating, sweating in June. It's June in
20 South Carolina. Notice -- I would be breathing heavy.

21 Do you notice that on the video?

22 Look at it.

23 Does he look like a man on that video that's got
24 roughly two pounds, close to two pounds of crack cocaine
25 that he knows he got in that trunk?

1 You don't have to let police search your car. You
2 don't have to let police search your house. In search
3 situations, they may pat you down. They're out there
4 talking to you, for your safety, for their safety, yeah.
5 You don't have to.

6 Come on, I'm going to see my grandmother. No, you
7 can't search my car. You can give me my warning ticket and
8 let me go. That's not unusual. It's certainly not unlawful
9 to say no, you can't search my car.

10 Watch the video. See if you don't see that guardrail
11 and probably, within ten or fifteen seconds, past the
12 guardrail over on the side of the road. Look at him when
13 he's standing there.

14 All the time he's standing there, is his neck pulsing?
15 Is he breathing heavy?

16 And he's a smoker smoking too.

17 As I recall, a lot of smokers have to breathe a lot
18 heavier, but you see what you see.

19 He didn't rent the car. Somebody else did. There's
20 absolutely no evidence that he was in North Carolina the
21 afternoon before. All you have is he was headed from
22 Georgia to North Carolina to visit his grandmother. Nothing
23 in there that said, shows he knows that anything was in that
24 car, and I submit to you, if you watch him, he doesn't look
25 like a man that knows he's got 887 or approximately two

1 pounds of crack cocaine in the car.

2 Nothing else in there that links him to that stuff in
3 the trunk. He's headed back to where the car was rented
4 from to visit his grandmother. Somebody else rented that.

5 Ladies and gentlemen of the jury, consider everything,
6 review the evidence. Particularity the videos. You can do
7 it on DVD or VHS. The VHS is a little quicker. And ask
8 yourself does that look like a man that's got two pounds of
9 crack cocaine that he knows about in the trunk of the car.
10 That man is headed back to, headed up to North Carolina from
11 Georgia to visit his grandmother.

12 Ladies and gentlemen of the jury, I submit to you that,
13 when you do that, you look at it, and a reasonable doubt, a
14 doubt that you can chase, say that this is why, I doubt that
15 he knew. Find him not guilty.

16 Thank you.

17 THE COURT: Ladies and gentlemen of the jury, that
18 completes the closing statements in the case, and I told you
19 that when we reached this stage of the trial it would be my
20 responsibility to charge you concerning the law in the case.

21 When we began the case earlier I went over with you
22 the, the indictment in the case, and I'm going to do that
23 again. The -- this, again, is the document or the formal
24 charge. It brings the case before this Court, and it
25 informs this Court and informs you of the charges that are

1 to be tried. It informs the defendant of the charges that
2 have been lodged against him.

3 I'll advise you, again, that the indictment is not
4 evidence in this case, and can't be used by you as evidence
5 in this case. But it does represent the charge that the
6 State is required in this case to prove by proof beyond a
7 reasonable doubt. So, I'm going to go over with you the
8 indictments so that you'll have those fresh on your mind.

9 I refer to them as indictments. It's actually one
10 indictment. It has two counts or two charges contained
11 within that indictment.

12 The indictment is Case Number 2010-GS-42-5975. The
13 indictment, in Count Number One, is for trafficking in
14 methamphetamine or cocaine base. That portion of the
15 indictment reads as follows: That Ashley Eugene Moore did,
16 in Spartanburg County, on or about June the 30th of 2010,
17 knowingly sell, manufacture, deliver, purchase, or bring
18 into this state or did provide financial assistance or did
19 otherwise aid, abet, attempt, or conspire to sell,
20 manufacture, deliver, purchase, or bring into this state, or
21 did knowingly, actually or constructively, possess, or did
22 knowingly attempt to become in actual or constructive
23 possession of more than 400 grams of methamphetamine or
24 cocaine base, a Schedule II controlled substance, in
25 violation of Code Section 44-53-375 of the Code of Laws of

1 South Carolina, 1976 as amended. That's the end of Count
2 One.

3 Count Number Two is for the possession of a firearm or
4 knife during the commission or attempt to commit a violent
5 crime. That indictment states or that count states that
6 Ashley Eugene Moore did, in Spartanburg County, on or about
7 June the 30th of 2010, possess or visibly display a
8 firearm or visibly display a knife during the commission or
9 the attempted commission of a violent crime. To wit,
10 trafficking in methamphetamine or cocaine base in violation
11 of Code Section 16-23-490 of the Code of Laws of South
12 Carolina, 1976 as amended, against the peace and dignity of
13 this State and contrary to the statute in such case made and
14 provided.

15 Now, I remind you, the fact that a defendant has been
16 arrested, charged, and indicted in this case is not evidence
17 in the case. It can not be considered by you, the jury, as
18 evidence of guilt in this case. Nor does it create any
19 presumption or inference of guilt. The document is simply
20 the document that brings the case before the Court, and it
21 contains the formal charges which have been lodged in this
22 case.

23 Now, this indictment has two counts in it, and I'm
24 going to explain to you that those counts will stand
25 separately. Each charge or each count is a separate and

1 distinct offense. You will be required to write a verdict
2 or decide each count separately and distinctly from the
3 other count uninfluenced by your decision as to the other
4 count in the case. I will tell you, a defendant may be
5 convicted or acquitted of any or all of the offenses
6 charged, and, again, you'll write separate verdicts as to
7 each count in this case.

8 Now, I indicated at the beginning of the trial, and
9 it's true at this time as well, the defendant has pled not
10 guilty to both counts of the indictment. That plea, under
11 the law and the Constitution of this state, places the
12 burden of proof upon, upon the State, and upon the State
13 alone because a person charged with the commission of a
14 criminal offense in South Carolina is never required to
15 prove himself innocent of that charge.

16 I charge you that it's an important rule of the law
17 that a defendant, in a criminal case, no matter what the
18 seriousness of the crime might be, is always presumed, under
19 the law, to be innocent of the crime for which the
20 indictment has been issued unless guilt has been proven to
21 you, the jury, satisfying you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence is not, doesn't end when
24 you begin your deliberations. It continues into your
25 deliberations until such time as you reach a verdict of

1 guilt based on evidence that satisfies you of that guilt
2 beyond a reasonable doubt.

3 Many people describe the presumption of innocence that
4 a defendant has somewhat like the robe that I wear into the
5 courtroom. That presumption of innocence remains about the
6 defendant's shoulders into the trial, throughout the trial,
7 and into your deliberations. It remains with the defendant
8 into your deliberations until such time as it might be
9 stripped from him by evidence that satisfies you of the
10 defendant's guilt beyond a reasonable doubt.

11 You see, the presumption of innocence is not a mere
12 legal theory and it's not just a legal phrase. It's a
13 substantial right that every defendant is entitled to until
14 such time as that defendant's guilt has been proven by the
15 state by proof beyond a reasonable doubt.

16 Now, you probably can tell that the concept of proof
17 beyond a reasonable doubt is an important concept under our
18 law and our juris prudence, and you might be asking yourself
19 well, just what is meant by a reasonable doubt or what is a
20 reasonable doubt.

21 I will tell you that a reasonable doubt, under the law,
22 is that kind of doubt which would cause a reasonable person
23 to hesitate to act, and the State has the burden of proving
24 the defendant guilty beyond a reasonable doubt.

25 Now, some of you may have been involved in civil cases. I

1 told you earlier that there's a civil side to the Court and
2 a criminal side to the Court. In civil cases, that's where
3 someone's seeking monetary damages like a breach of contract
4 case, a debt is owed by someone, or perhaps an injury is
5 occurred and someone sues for the damages for that injury.

6 That's a civil case, and in civil cases, the standard
7 of proof or the burden of proof is different than it is in
8 this Court, in General Sessions Court, the criminal court.
9 In a civil case, the standard of proof is proof by the
10 greater weight or the preponderance of the evidence.

11 What the means is that, if you visualize in your mind
12 the scales of justice, it means they tilted ever so slightly
13 in favor of either the plaintiff or the defendant. That's
14 the standard of proof in a criminal, in a civil case.
15 That's proof, proof by the greater weight or the
16 preponderance of the evidence.

17 The standard of proof in this court, the criminal
18 court, is more powerful than that. It is proof beyond a
19 reasonable doubt.

20 Now, proof beyond a reasonable doubt would be that kind
21 of proof that would leave you firmly convinced of the
22 defendant's guilt. Now, we realize that there's very few
23 things that go on in this world that can be proven beyond
24 any doubt whatsoever. That is not the standard of proof to
25 which the state is held in this case. The state does -- the

1 law doesn't require the State to prove or give proof that
2 overcomes every possible doubt.

3 I will tell you that if, based on your consideration of
4 the evidence, if you are firmly convinced that the defendant
5 is guilty of the crime charged, then you must find the
6 defendant guilty. However, on the other hand, if you find
7 that there is a real possibility that the defendant is not
8 guilty, then you must give the defendant the benefit of that
9 doubt and find the defendant not guilty.

10 Now, I remind you that, during the trial, you and I
11 have different functions to perform. As the trial judge,
12 it's been my responsibility to preside over the case and
13 rule on certain questions concerning evidence and, and the
14 appropriateness of questions that have, that have been
15 asked, things of that nature. And I will tell you that you
16 should not take from anything that I do in the discharge of
17 my duties, even during the charge, to indicate to you, in
18 any fashion whatsoever, as to how you should determine the
19 facts in this case. The law doesn't allow me an opinion on
20 that subject. I don't have an opinion as to how you
21 determine the facts in this case.

22 I will tell you that, during the trial, and I don't
23 recall this occurring, if there was anything that I ordered
24 stricken from the record, those matters should not be
25 considered by a jury in any fashion in reaching a verdict in

1 this case. I have also the additional duty, as I've told
2 you, of charging you concerning the law in this case, and,
3 as the presiding judge, I've explained I am the sole judge
4 of the law in this case.

5 As jurors, it's your duty, under the oath that you've
6 taken, to take the law now as I charge it to you and apply
7 it to the facts as you find them to be. If you came into
8 the courtroom with any notion as to what the law is or what
9 it ought to be, those notions should be left outside of the
10 jury room because, again, under your oath, it's your duty to
11 accept the law as I give it to you and apply it to the facts
12 as you find them to be. Because, in this courtroom, every
13 case that's tried before a jury, the jury is the sole and
14 exclusive judge of the facts in this, this case.

15 It's your duty, as jurors, to determine the facts in
16 this case. Your duty is also to evaluate the evidence and
17 determine its effect, its value, its weight, and the truth
18 of the evidence that's been presented during the trial.

19 Now, in considering the evidence, I will tell you
20 there's two types of evidence that a jury has the right in
21 this state to consider. The first type of evidence we
22 described as direct evidence.

23 Now, direct evidence is testimony by a witness who
24 claims to have direct knowledge of the facts about which
25 that person testified. That's someone who claims to have

1 been an eye witness, to have been present, or experienced
2 what occurred. They saw it. They heard it. They smelled
3 it. They felt it. They touched it. That's evidence of
4 direct knowledge of the facts given by a witness testifying.
5 That's what we refer to as direct evidence.

6 Now, there's another kind of evidence that juries have
7 the right to consider, and that's evidence that we refer to
8 or call circumstantial evidence.

9 Now, circumstantial evidence is not direct proof of a
10 fact that's sought to be proven. It's proof of a chain of
11 facts or circumstances that indicate the existence of a
12 fact. It's what we described as evidence which immediately
13 proves or describes collateral facts from which a main fact
14 might be reasonably inferred.

15 Now, I like to give a very simple example of what can
16 be meant by proof of a fact by circumstantial evidence.
17 Let's say that last night when you went to bed, you looked
18 outside of your window at your home, the stars were shining.
19 It was, it was a beautiful night, and everything looked
20 good, and you went to bed, and you slept well all night.
21 Didn't wake up at all. The next morning you wake up and you
22 go to the same window you looked out the evening before.
23 The sun might be shining, but outside there's water dripping
24 from all the trees, the grass out in front of the home is
25 wet, the driveway is wet. There could be puddles out there

1 and the road is wet.

2 Now, you don't have direct knowledge of what happened
3 during the night. You didn't see it rain, and you didn't
4 hear it rain. But from the collateral facts that you know
5 to be true, you could reasonably infer that, at some time
6 during the night, it did, in fact, rain. So, that's what is
7 meant by proof of collateral facts from which you can
8 reasonably infer some main or central fact is sought to be
9 proven.

10 So, circumstantial evidence is based on inference.
11 It's not based upon personal knowledge or observation, and
12 the law makes no distinction between the weight or the value
13 that you, the jury, can give to either direct or
14 circumstantial evidence. You should weigh all of the
15 evidence in this case, and if, after weighing all of the
16 evidence in this case, if you are not firmly convinced of
17 the defendant's guilt beyond a reasonable doubt, you must
18 find the defendant not guilty. However, if you are firmly
19 convinced of the defendant's guilt beyond a reasonable
20 doubt, then you must find the defendant guilty.

21 Now, as the sole judges of the fact, I told you at the
22 beginning of the trial it's gonna be necessary that you
23 determine the credibility of the evidence or the testimony
24 that you've heard during this case, and that simply means
25 believability, and I told you to use your common sense. You

1 use your own common sense because it's your duty to analyze
2 and evaluate the evidence and determine which evidence
3 convinces you that it's true.

4 In determining believability of witnesses who testified
5 in this case, I've told you you have the right to believe
6 all of, part of, or none of what a witness may of told you.
7 You can believe one witness against all the others or all
8 the others against one. You have the right to consider
9 whether a witness exhibited to you any interest or bias in
10 the case or a motive or prejudice. You also have the right
11 to consider the appearance or the way in which witnesses
12 delivered their testimony, how they spoke during their
13 testimony. Again, use your good common sense. Determine
14 which evidence convinces you that it was true or
15 believability in this case.

16 Also, I told you about an expert witness during the
17 trial, and we had an expert witness who testified. And I
18 explained the law ordinarily doesn't allow witnesses to
19 offer opinions on subjects, and an exception to that rule is
20 a witness who, because of their education or experience, has
21 become an expert in some art, profession, or science, or a
22 calling.

23 Those witnesses that are described or are found by the
24 Court to be experts have the right to state an opinion as to
25 relevant or material matters within their knowledge. The

1 witness who claims to be a witness, an expert may also give
2 the reasons that they have the opinions that they have.
3 You, the jury, have the right to consider an expert's
4 opinion that's been received into evidence like any other
5 evidence. You give it the weight you think it deserves.

6 If you decide that the opinion of an expert is not
7 based on sufficient education or experience or if you
8 conclude that the reasons given for the opinions stated by
9 the expert are not sound or that the opinion is outweighed
10 by other evidence, you, the jury, have the right to
11 disregard an expert's opinion in its entirety. An expert
12 witnesses testimony is not given any more weight simply
13 because the person is declared to be an expert. Again, you
14 must evaluate the evidence and determine the soundness of
15 the evidence and the credibility of the evidence in the case
16 of all witnesses. That includes experts who might testify
17 in the case as well.

18 Now, I'm going to instruct you and I'm going to
19 emphasize to you that the fact that the defendant did not
20 testify in this case is not a factor to be considered by you
21 in any way in your deliberations and can not be considered
22 by you on the question of guilt or innocence of the
23 defendant. It must not be considered by you in any manner
24 whatsoever.

25 A defendant has a Constitutional right to remain

1 silent, and the assertion of that right must not be
2 considered by you at all in your deliberations. I repeat to
3 you that, under your oath as jurors, you are to draw no
4 conclusions whatsoever from the fact that the defendant did
5 not testify you, testify before you in this case. In fact,
6 you can not even discuss that fact in your deliberations of
7 this case.

8 As I've told you, the only burden of proof in this case
9 is upon the State. The defendant is not required to prove
10 himself innocent, and the burden of proof remains upon the
11 State to prove the defendant's guilt beyond a reasonable
12 doubt.

13 Now, in order to establish criminal liability, criminal
14 intent is always required, and as I charge you later on
15 concerning the actual offenses that have been charged in
16 this case, you should listen to what level of intent is
17 required by that charge for a defendant to have to be guilty
18 of that particular offense. Criminal intent is the mental
19 state or the mental state of mind that a person must have in
20 order for them to be proven guilty of any particular crime,
21 and that might be purpose, intent, knowledge, recklessness,
22 criminal negligence.

23 Criminal intent is a matter though that must be proven
24 by the State beyond a reasonable doubt. Criminal intent is
25 always a matter, however, that must be determined by the

1 jury using what I talked to you earlier, inferences from the
2 evidence, circumstantial evidence.

3 The reason for that is there's no way to look inside
4 someone's head at the moment the event occurs and see what,
5 to be able to determine scientifically what they intended to
6 do. We don't have that science. You can't cut someone's
7 head open and look at their brain and see what they intended
8 to do. So, therefore, criminal intent must always be proven
9 from the facts and circumstances that have been shown to
10 exist at the time of the event. That's how you make a
11 determination as to whether or not the element of a crime
12 which requires intent was present.

13 Criminal intent, I will tell you, is a mental state.
14 It's a conscious wrongdoing. It's up to you to determine
15 what the defendant intended to do based on the circumstances
16 that have been shown to you at the time of the alleged
17 event.

18 Now, certain statements have been made or alleged to
19 have been made by the defendant, and they have been admitted
20 into evidence in this case. And the Court determined that
21 those statements were admissible. And I'll instruct you the
22 ultimate decision as to whether or not the defendant
23 actually made the statements in question, and if the
24 statement, the defendant did make the statement, you must
25 determine whether the statement was made by the defendant

1 voluntarily and of his own free will. This means that the
2 statement, that the statement was not caused by pressure,
3 force, fear, threats, coercion, or intimidation or by hope
4 or promise of leniency or a reward of any kind.

5 In determining whether a statement was voluntarily
6 made, you should consider both the characteristics of the
7 defendant and the details of the questioning that took
8 place. You have the right, again, to consider such factors
9 as the age of the defendant, the defendant's education or
10 lack thereof, the defendant's mental abilities or capacities
11 at that time, the defendant's intelligence, the defendant's
12 background or environment, the length and place or time of
13 the detention, the nature of the questioning. In other
14 words, the way it was carried out, the advice or lack
15 thereof of the defendant of his or her constitutional rights
16 including, but not limited to such rights as the right to
17 remain silent, that any statement could be used against him
18 in a court of law, the right to have a lawyer present, or if
19 he could not afford a lawyer, that a lawyer could be
20 appointed to represent him without any cost, and that he
21 could stop making a statement at anytime. You must
22 carefully consider all of the surrounding circumstances
23 before you give any weight to any alleged statements.

24 Again, the State has the burden of proof, beyond a
25 reasonable doubt, that the statements were voluntarily made

1 and it's up to you to determine whether that did occur. You
2 may give the statements such weight as you choose to give
3 them, or if you've determined that the alleged statements
4 were somehow not freely or voluntarily the statements of the
5 defendant, you should not consider them at all.

6 Now, the defendant is charged in the first count, count
7 of the indictment with trafficking, and the State must
8 prove, in order to prove trafficking, and this must be
9 proven beyond a reasonable doubt, that the defendant
10 knowingly sold, manufactured, cultivated, delivered,
11 purchased, brought into this state, provided financial
12 assistance, or otherwise aided, abetted, attempted, or
13 conspired to either sell, manufacture, cultivate, deliver,
14 purchase, or bring into this state what, or, and was
15 knowingly in actual or constructive possession, knowingly
16 attempted, or knowingly attempted to become in actual or
17 constructive possession of the drug, and in this case, it's
18 described as cocaine base. In other words, crack cocaine.

19 Now, to prove possession of a drug, the State must
20 prove, beyond a reasonable doubt, that the defendant had
21 both the power and the intent to control the disposition of
22 the drug. In this case, cocaine base or crack cocaine.

23 Possession can be either actual or constructive. Let
24 me explain what I mean by possession being either actual or
25 constructive.

1 Actual possession would mean that the cocaine base was
2 actually in the physical custody of the defendant. That
3 means it was on the defendant's person.

4 Constructive possession, on the other hand, means that
5 the defendant had dominion and control over the drug. That
6 means the right to exercise or the right to exercise
7 dominion or control over either the cocaine base itself or
8 the property on which the cocaine base was found.

9 Now, merely being present at a scene where drugs are
10 found is not enough to prove possession. Actual knowledge
11 of the presence of the cocaine is strong evidence of a
12 defendant's intent to control the disposition or its use.
13 The defendant's knowledge and possession may be inferred,
14 that thing about inferred evidence, when a substance is
15 found on property under the defendant's control. However,
16 this inference is simply an evidentiary fact. It should be
17 taken into consideration by you, the jury, along with any
18 other evidence in the case, and it should be given the
19 weight you think it should deserve.

20 Now, in order to prove trafficking, the State must also
21 prove, beyond a reasonable doubt, that the amount of crack
22 cocaine in the actual or constructive possession of the
23 defendant was 400 grams or more.

24 Now, the other count of the indictment is possession of
25 a weapon during the commission of or the intent to commit a

1 violent crime. That's Code Section 16-23-490. The
2 defendant is charged with possession of a weapon during the
3 commission or the attempt to commit a violent crime. The
4 State must prove, beyond a reasonable doubt, that the
5 defendant was in the possession of a firearm during the
6 commission of a violent crime, and my charge concerning
7 possession would also go for this particular possession as
8 well.

9 A firearm means a machine gun, an automatic rifle, a
10 pistol, a revolver, or any weapon which will and is designed
11 to or may be readily converted so as to expel a projectile.

12 Now, in order to find the defendant guilty of
13 possession of a weapon during the commission of a violent
14 crime, you must find, first of all, that the defendant is
15 guilty of either committing or attempting to commit a
16 violent crime, and I will tell you a violent crime, under
17 the laws of the State of South Carolina, includes drug
18 trafficking.

19 Now, ladies and gentlemen of the jury, I told you
20 earlier that I would appoint a foreperson of your jury
21 during my charge, and I'm gonna ask Mr. Harold Blackwell to
22 please raise his hand.

23 (Juror complies.)

24 THE COURT: Sir, that means you're going to be the
25 foreperson of the jury. Now, let me explain to you what

1 that means as far as you're concerned. It will be your
2 responsibility to preside over the deliberations of the
3 jury. That means you will be the moderator or the person
4 who conducts the discussions, and, once a verdict has been
5 reached, I will supply you with a form to be filled out to
6 record that verdict on that form.

7 Now, during deliberations, if the jury has any matter
8 that needs to be communicated to the Court, it will be your
9 responsibility to put that in writing, submit it to the
10 jury, to the bailiff outside of the jury room, the bailiff
11 will hand that to me, and I will consider what response I
12 can make to your request.

13 I will tell you, I'm not allowed to answer each and
14 every question that you have during deliberations because
15 I've already told you, I can't enter into your decisions
16 concerning the facts of the case. I can answer questions
17 concerning the procedure that we follow, the law that I've
18 charged you on. I can answer certain questions about the
19 evidence that's been presented.

20 But I'm not going to ask you to edit any question, Mr.
21 Foreman. What I'm going to ask you to do is to get the jury
22 to agree on the form of the question, how it's to be asked,
23 and then submit it to me and I'll make the decision as to
24 how I'll respond to that question.

25 Also, we have a couple of pieces of evidence, we have a

1 DVD and we have a VHS tape that are in evidence. I will
2 tell you that if you need to view that, you just need to let
3 us know and there are means by which we can do that.

4 Now, the DVD would have to be played in the courtroom
5 as we did before. And because of the nature of the VHS, VHS
6 tape, it has other incidences on that tape. I would have,
7 require that you come back in the courtroom so we only show
8 what went on in this particular case off of that tape.

9 So, both of those would require your returning to the
10 courtroom to view that. And, of course, the jury decides
11 how you wish to consider the evidence. All of the evidence
12 will go back into the jury room with you. It will be
13 available for you to look at to consider in reaching your
14 verdict in this case. But those two items would require
15 that you come back and you'll need to make that request, and
16 we'll make that you, available to you if that's necessary if
17 you'd like to look at that. That's your decision as to how
18 you handle that.

19 Now, your verdict must be unanimous. Each and every
20 one of you must agree upon the verdict before it becomes the
21 verdict of the jury, and only when the jury, jury verdict
22 has become unanimous is the foreperson to record that
23 verdict and submit it to the court.

24 Now, I've gone over a lot of things with you, and I
25 want to be sure that I haven't misspoke during my charge on

1 the law. And, so, I'm going to go over some things with the
2 attorneys. We'll be going over the evidence to be sure that
3 only properly admitted, admitted evidence goes back to the
4 jury room with you. So, there's some things we've got to
5 talk about.

6 Mr. Foreman, I'm gonna ask that you take the jury back
7 to the jury room one more time. Don't allow any discussions
8 until I bring you back and give you the verdict form and
9 give you your final charge concerning this matter.

10 At this time, you may retire to the jury room.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Any objections to my charge from the State?

14 SOLICITOR HUNTER: Just one small thing, Your Honor.

15 THE COURT: Yes, sir.

16 SOLICITOR HUNTER: I know you speak a lot, but I
17 believe just one word. It's the same objection I had last
18 time when you said and after going about deliver, purchase,
19 or bring into the state. You said and actually for
20 constructive possession. It's actually or.

21 THE COURT: All right. Let me take a look at it. Just
22 one second.

23 That's in the charge concerning trafficking?

24 SOLICITOR HUNTER: Yes, Your Honor.

25 THE COURT: All right. I'll make that correction.

1 SOLICITOR HUNTER: That's, that's it for the State,
2 Your Honor.

3 THE COURT: Anything from the defense?

4 MR. HALL: Nothing from the defense, Your Honor.

5 THE COURT: All right. I'll ask you go through the
6 evidence. Let's reach an agreement on what's going to go
7 back to the jury room. When you get a chance, verdict form.

8 (Pause.)

9 THE COURT: Okay. All right. Let's bring the jury
10 back in.

11 SOLICITOR HUNTER: Your Honor, we don't have the VCR
12 anymore.

13 THE COURT: That's all right. I told them they'd have
14 to come back in and see it.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen, I'm gonna
18 go back over my charge concerning trafficking. I want to be
19 sure -- I, I may of misspoken in one location.

20 The defendant in this case is charged with trafficking
21 in cocaine base, and the State must prove, beyond a
22 reasonable doubt, that the defendant knowingly sold,
23 manufactured, cultivated, delivered, purchased, brought into
24 the State, provided financial assistance, or otherwise
25 aided, abetted, attempted, or conspired to sell,

1 manufacture, cultivate, deliver, purchase or bring into this
2 state, was knowingly in actual or constructive possession,
3 knowingly attempted to become in actual or constructive
4 possession of cocaine base. Now -- and, of course, cocaine
5 base includes crack cocaine.

6 Now, Mr. Foreman, I'm going to hand to you a verdict
7 form.

8 Mr. Bailiff, pass this over please.

9 And, Mr. Blackwell, that is the verdict form that we're
10 going to be using in this case, and let me go over it with
11 you so that I'm sure you understand what we're looking for.

12 At the top of that you'll see it indicates the state
13 and county we're located in, and the court that we're in.
14 Below that it has the caption, the State of South Carolina
15 against the defendant in this case, and it indicates it is a
16 verdict form over to the right. Below that, the body of the
17 verdict, there's the first question and the first question
18 is as to the charge or the first count of the indictment,
19 which is for trafficking in, in methamphetamine or crack
20 cocaine. There's two choices under that question, either
21 not guilty or guilty. Now, you'll make a mark, an X or a
22 check, on the blank line adjacent to the appropriate
23 verdict.

24 Now, I'm gonna tell the jury, don't take from the fact
25 that those verdicts are in any particular order that that

1 somehow indicates a preference on my part as to how you
2 determine the case. I will tell you that that's the order
3 they're on my computer. Every case I've tried for the last
4 seven and a half years is in that same order. So, it has no
5 preference as far as this is case concerned.

6 Now, below that, in heavy black print, we've indicated
7 that unless you find the defendant guilty on the first
8 question, if, unless -- if you do find him guilty, then you
9 should answer the second question. If you find the
10 defendant not guilty on the first question, you will not
11 even answer the second question.

12 Now, the second question is as to the possession of a
13 firearm during the commission of a violent crime, and,
14 again, if you get to that location, the choices are either
15 not guilty or guilty, and, again, check the appropriate line
16 next to the appropriate verdict.

17 Now, below that is a place for you to sign once it is
18 completed and the date. Now, once that form has been
19 completed, knock on the door, tell the bailiff a verdict's
20 been reached. You'll be returned to the courtroom in order
21 for the Court to receive the verdict of the jury.

22 Now, Mr. Bailiff, I do note and I'm not unmindful of
23 the fact it's about 12:15. It takes about 45 minutes for us
24 to have lunch delivered to here at the court house. If the
25 jury wishes to make an order for lunch, we're happy to do

1 that. The county will pay for your lunch while you're in
2 deliberations. So, if you wish for the county to do that,
3 tell the bailiff. I'll send a clerk's officer into your
4 jury room to receive your order.

5 Now, while that person's in the room, suspend
6 deliberations. Don't discuss the case while that person's
7 in the room. Just enter your lunch order. Once that person
8 has left, you may resume your deliberations at that point in
9 time. But when there's someone else in the room, you should
10 suspend deliberations until that person is completed their
11 business and left the room.

12 Again, any questions should be submitted in writing to
13 the bailiff outside of the jury room and I'll offer the
14 appropriate responses.

15 We placed all the evidence in the box. That will be
16 coming back to the jury room with you. I will caution you,
17 we've sealed up the illegal substances that are in there.
18 So, you should not try to open the bag. Leave it as it is.
19 You can observe it through the bag.

20 Don't attempt to operate the firearm. It has -- the
21 action is open. There is the wire through the, through the
22 action so it won't operate. But don't attempt to load it or
23 load the magazine. I like to tell the story about 30 or 40
24 years ago Judge Paul Moore had a piece of evidence in his
25 office and the gun went off and shot a hole through the

1 wall. So, even unloaded guns sometimes go off. That
2 happened back in his office.

3 So, let's don't try to load the gun. Don't try to
4 operate it. You certainly can observe all the parts and
5 everything that's there. But don't try to operate the
6 firearm.

7 Again, as to the videos or the DVD, if the jury wishes
8 to see those, you have the right to come back into the
9 courtroom and view that if you'd like to do that.

10 Now, at this point in time I'm going to ask that the
11 jury retire and begin your deliberations.

12 Ma'am, you're the alternate. I'm gonna ask you to
13 remain seated at this time, and the bailiff will take the
14 evidence back.

15 You may retire and begin your deliberations.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury and the alternate juror was dismissed
18 at this time.)

19 THE COURT: All right.

20 MR. HALL: Your Honor, just for the record, I don't
21 think -- you've recharged. I have no objection.

22 THE COURT: Any objections?

23 SOLICITOR HUNTER: Nothing from the State.

24 THE COURT: All right. We'll remain in recess until
25 such time as a verdict is reached.

1 Thank you very much.

2 (WHEREUPON, the jury began deliberations at 12:24 and
3 returned with a verdict at 1:58.)

4 THE COURT: All right. I'm informed by the bailiffs
5 that a verdict has been reached.

6 Is the State ready to receive the verdict?

7 SOLICITOR HUNTER: Yes, Your Honor.

8 THE COURT: Defense ready?

9 MR. HALL: Yes, sir.

10 THE COURT: Bring the jury in.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Mr. Foreman, I've been informed by the
14 bailiff that a verdict has been reached.

15 Is that true?

16 FOREMAN: Yes, sir.

17 THE COURT: Pass the verdict form to the bailiff.

18 (Foreman complies.)

19 THE COURT: Thank you, sir.

20 Madam Clerk, I'd ask that you publish the verdict
21 please.

22 CLERK: In the State of South Carolina, in the Court of
23 General Sessions, the County of Spartanburg, as to
24 Indictment Number 2010-GS-42-5975, Count One, for
25 trafficking methamphetamine or cocaine base, we, the jury,

1 unanimously find the defendant, Ashley Eugene Moore, guilty.

2 As to Indictment Number 2010-GS-42-5975, Count Two,
3 possession of firearm or knife during commission of or
4 attempt to commit a violent crime, we, the jury, unanimously
5 find the defendant, Ashley Eugene Moore, guilty.

6 Signed by the foreperson the 26th day of April, 2011.

7 Ladies and gentlemen of the jury, if this is your
8 verdict and still your verdict, say so by raising your right
9 hand.

10 (All jurors raise their right hand.)

11 THE COURT: Anything further from the jury before I
12 release the jury from the State?

13 SOLICITOR HUNTER: Nothing from the State, Your Honor.

14 THE COURT: Anything from the defense?

15 MR. HALL: We would request polling of the jury, Your
16 Honor.

17 THE COURT: Madam Clerk, please poll the jury.

18 (WHEREUPON, all jurors respond in the affirmative that
19 this was and is still their verdict.)

20 THE COURT: Anything further from the defense before I
21 release the jury?

22 MR. HALL: No, sir, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, the jury was dismissed at this time.)

25 THE COURT: All right. I'll ask you to approach the

1 bar please.

2 (All parties comply.)

3 THE COURT: All right. Mr. Ashley Moore, you have been
4 found guilty by a jury of your peers. At this time the
5 Court will consider sentencing.

6 Mr. Hall, it's your opportunity to speak on behalf of
7 your client.

8 MR. HALL: First of all, Your Honor, I think, just for
9 the record, I need to put on a request for a new trial.
10 Considering all the evidence that was presented that there
11 was not sufficient evidence for a jury decision of guilty.
12 I'm sorry. I should of done that before. I wanted to put
13 that on the record.

14 THE COURT: All right. The motion is noted. Motion is
15 denied.

16 MR. HALL: All right. Your Honor, Ashley is just
17 turned 32 years old.

18 THE COURT: The sentencing sheet indicates 31. I'm
19 gonna make that change unless there's an objection.

20 MR. HALL: Oh, I'm sorry. His birthday is next month.

21 THE COURT: Okay. So, he is still 31.

22 MR. HALL: He's 31. I was glancing down at the---

23 THE COURT: Okay. Well, we've got that straight.
24 Let's go ahead.

25 MR. HALL: But he is from Georgia. Up until

1 approximately three months before this incident he was
2 working for Dan Faust as a painter. They make heating and
3 air conditioning type equipment, and they -- he was on the
4 line, assembly line painting. He had been on unemployment
5 for a few months before this. I think some of this would of
6 come out had we had the audio on the tape that we had.

7 He has two children, 14 and seven years old at this
8 point now. Your Honor, he is worked most of his life.
9 He -- I think was just at a point where he's out of work.
10 Taking this trip visiting his grandmother and these
11 unfortunate events occurred, and he stands before you we
12 understand looking at 25 to 30 years and then five years on
13 the other charge.

14 And on behalf of my client, we ask that you be as
15 lenient as you possibly can. He's gonna serve a substantial
16 amount of time no matter what, and he's gonna be away from
17 his children, and not being a productive citizen. In fact,
18 he'll be a burden on the State of South Carolina.

19 THE COURT: Mr. Moore, you have the right to address
20 the Court concerning this matter.

21 Would you like to say anything at this time?

22 DEFENDANT: I just ask you have mercy on me, Your Honor.

23 THE COURT: Prior record. You've already gone over it
24 with me. I'd ask that you do that again.

25 SOLICITOR HUNTER: Okay. Your Honor, these two come

1 out of North Carolina, and a 1998 conviction for assault
2 with a deadly weapon to inflict serious injury. And also,
3 in 1998, a charge of selling or delivery of cocaine.

4 With this charge, in South Carolina there's no first,
5 second, or third offenses for trafficking over 400. So,
6 that not would affect this charge.

7 He also had some charges out of Georgia including
8 objecting or hindering persons making emergency telephone
9 calls from 2007. He also had aggravated stalking in 2007.
10 And also, in 2007, a willful obstruction of law enforcement
11 officers by the use of threats or violence. And a 2009 DUI
12 in Georgia.

13 THE COURT: All right. Mr. Solicitor, I know that the
14 possession of the weapon carries five years.

15 Is that a mandatory consecutive sentence?

16 SOLICITOR HUNTER: I believe it's mandatory consecutive
17 only if the minimum amount is less than, the maximus is less
18 than five years. It can be run concurrent with this.

19 THE COURT: So, it can be run concurrent with this one?

20 SOLICITOR HUNTER: That's my understanding.

21 THE COURT: Okay. I know under certain circumstances
22 it did have to be run consecutive.

23 All right. Mr. Moore, the sentence of this Court is
24 that you be confined in the State Department of Corrections
25 on the trafficking in cocaine base charge for the period of

1 25 years. Consecutive to, excuse me, concurrently with that
2 sentence I have sentenced you to five years on the
3 possession of a weapon during the commission of a violent
4 crime.

5 Good luck to you, sir.

6 SOLICITOR HUNTER: Your Honor, if I may?

7 I believe the sentence for trafficking also carries a
8 mandatory \$200,000 fine.

9 THE COURT: It does.

10 SOLICITOR HUNTER: Because it's violent and a serious
11 sentence.

12 THE COURT: Yes, sir, I have -- I will mark that as a
13 \$200,000 fine as well.

14 Thank you very much.

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 25th and 26th day of April, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July five, 2011



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of SpartanburgAshley E. Moore

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-42-3555

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Ins. 990
Wisacky Highway Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Court of General
Sessions Spartanburg, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010 - GS - 42 - 5975
 - (b) Trafficking Cocaine, 30 years.

2016 SEP 23 3:26 PM
MAY BE BLENDED
CLERK OF COURT
SPARTANBURG, SC

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 26, 2011, 25 years, sentence
- (b) to run concurrently with 5 years.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appeal from Spartanburg Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Initial brief
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Appeal Denied
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2016 SEP 23 PM 12:26
M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (b) 4th. Amendment violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel was ineffective for failing
- (b) to object to the search and seizure
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Spartanburg Court of General
- ii. Sessions. Spartanburg S.C.
- iii. _____
- iv. _____

CLERK OF COURT
SPARTANBURG, S.C.
2015 SEP 23 PM 12:26
MILPE BLACKLEY

(c) the disposition thereof:

- i. Guilty
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. April 26, 2011
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Court of Appeals. Denied
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

CLERK OF COURT
 STARTED 2016 SEP 23 PM 12:26
 M. HOPE BLACKLEY

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Appeal

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Robert Hall 366 North Church St.
Spartanburg, S.C. 29306
 ii. Dayne Phillips Appellate Defender
Division of Appellate Defense P.O. Box 11589
 iii. Columbia, S.C. 29211-1589

(b) the proceedings at which each such attorney represented you:

i. Trial, Appeal
 ii. _____
 iii. _____

CLERK OF COURT
 SPARTANBURG, S.C.
 2018 SEP 23 PM 12:26
 N. HOPE BLACKLEY

19. State clearly the relief you seek in filing this application:

Applicant seeks reversal and a new trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, Ashley Moore, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ashley Moore

SWORN to and subscribed before me this 16th day of Sept., 2016.

Dorine Pringle (L.S.)
Notary Public

My Commission Expires: 9/27/23

CLERK OF COURT
SPRINGFIELD
2016 SEP 23 PM 12:27
W. HOPE BLACK

2007-09-21, 3:31 PM (M. Hope Blackley)

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ashley Moore, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ashley Moore
Applicant

SWORN or affirmed to and subscribed before me this
16th day of Sept, 2016.

Dorrie Pangle
Notary Public

My Commission Expires: 9/27/23

CLERK OF DISTRICT COURT
2016 SEP 23 PM 12:27
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)		
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT	
	)		
Ashley E. Moore, #345798,	)	2016-CP-42-3555	2017 JUL 11 11:01 AM
	)		CLERK OF COURT
Applicant,	)		
	)	RETURN	
v.	)		
	)		
State of South Carolina,	)		
	)		
Respondent.	)		

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 23, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the October 2010 term of the Grand Jury for Spartanburg County for trafficking in methamphetamine or cocaine base and possession of a firearm or knife during commission of or attempt to commit a violent crime (2010-GS-42-5975, count I & II). On April 25, 2011, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. Applicant was represented by Robert Hall, Esquire. Assistant Solicitor, Eddie Hunter, prosecuted the case. On April 26, 2011, Applicant was found guilty as indicted on both counts. Judge Couch sentenced Applicant to imprisonment of twenty-five (25) years for trafficking in cocaine base, and five (5) years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Dayne C. Phillips, Esquire, of the South Carolina Office of Division of Appellate Defense. The South Carolina

Court of Appeals reversed Applicant's conviction on July 17, 2013. State v. Moore, 404 S.C. 634, 746 S.E.2d 352 (Ct. App. 2013). The State petitioned for rehearing *en banc*. This was denied by order on September 27, 2013. The State then petitioned the Supreme Court of South Carolina for writ of certiorari. On January 27, 2016, in a published opinion, the Supreme Court of South Carolina reversed the court of appeals and reinstated Applicant's convictions and sentence. State v. Moore, 415 S.C. 245, 781 S.E.2d 897 (2016). The Remittitur was returned on February 12, 2016. Applicant petitioned the United States Supreme Court for writ of certiorari, but was denied by order on June 13, 2016.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "4th Amendment violation – Counsel was ineffective for failing to object to the search and seizure."

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.F.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. As the Supreme Court noted, the trial court was presented with evidence of Applicant's delayed stop after blue lights, the odor of alcohol emanating from the vehicle, persistence in talking on the phone during the stop, signs of nervousness, large amounts of cash, and his logic-defying travel itinerary to reach the conclusion that the search and seizure was supported by

reasonable suspicion. See Moore, 415 S.C. at 250. Nevertheless, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

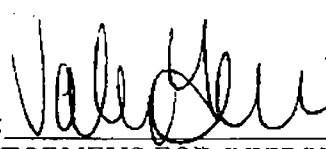
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

June 12, 2017

2017 JUN 16 11 12
FEDERAL ELECTRONIC
RECEIPT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ASHLEY E. MOORE, #345798,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

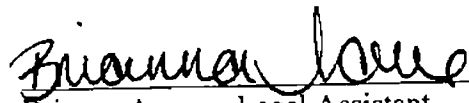
2016-CP-42-3555

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this 12th day of June, 2017.


Brianna Arnone, Legal Assistant
For Respondent

2017 JUN 11 1 12
FILED
CLERK OF COURT
SPARTANBURG, SC



ALAN WILSON
ATTORNEY GENERAL

June 12, 2017

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Ashley E. Moore v. State of South Carolina
2016-CP-42-3555

Dear Ms. Blackley,

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Valerie Garcia Giovanoli
Assistant Attorney General

VGG/ah

Enclosure

PCR Application
Spartanburg County Clerks Records
SCDC Records
Transcript
Appellate Records

cc: Rodney W. Richey, Esquire

2017 JUN 16 10:11 AM
CLERK OF COURT
M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 ASHLEY E. MOORE,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 THE STATE OF SOUTH CAROLINA,) RECORD
8 DEFENDANT.) 2016-CP-42-3555

9
10 September 22nd, 2017
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE GRACE GILCHREST KNIE, Judge.

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

16 RODNEY W. RICHEY
17 ESQ.
18 Attorney for the Applicant

19 VALERIE GIOVANOLI
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22

23

24

25

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
ASHLEY MOORE	
Direct examination by Mr. Richey	7
Cross-examination by Ms. Giovanoli	9
ROBERT HALL	
Direct examination by Mr. Richey	13
Cross-examination by Ms. Giovanoli	17
Redirect examination by Mr. Richey	22
Recross examination by Ms. Giovanoli	23
Certificate	27

P R O C E E D I N G S

MS. GIOVANOLI: May it please the Court?

THE COURT: Yes, ma'am.

MS. GIOVANOLI: We're on the record with Ashley Moore versus the State of South Carolina. Docket Number 2016-CP-42-3555, and we're before the Court on an application for post-conviction relief filed September 23rd, 2016.

Applicant was indicted in 2010 for trafficking in cocaine base, and possession of a firearm or knife during the commission of or -- of or attempt to commit a violent crime.

On April 24th, 2011, Applicant proceeded to trial before the, before the Honorable Roger L. Couch and a jury. Applicant was represented by Mr. Robert Hall, and, on April 26th, 2011, Applicant was found guilty as indicted on both counts. Judge Couch sentenced Applicant to imprisonment for 25 years for trafficking in cocaine base, and five years for possession of a weapon during the commission of a violent crime to be served concurrently.

Subsequently, Applicant filed a notice of appeal and that appeal was perfected by Dayne C. Phillips of the South Carolina Office of -- Division of Appellate Defense. South Carolina Court of Appeals reversed the Applicant's

1 conviction on July 17th, 2013.

2 The State petitioned for rehearing and bond, and this
3 was denied by order on September 27th, 2013. The State
4 then petitions the Supreme Court of South Carolina for Writ
5 of Certiorari. On January 27th, 2016, in an un -- in a
6 published opinion, the supreme Court of South Carolina
7 reversed the Court of Appeals and reinstated Applicant's
8 conviction and sentence. The remittitur was returned on
9 February 12th, 2016.

10 Applicant, thereafter, petitioned the United States
11 Supreme Court for Writ of Certiorari. That was denied by
12 order on June 13th, 2016.

13 Applicant has alleged in his application that counsel,
14 his trial counsel, was ineffective because he failed to
15 object to the search and seizure, which led to the
16 production of the drugs.

17 At this point, the State would move to dismiss or, in
18 the alternative, for summary judgment because that
19 allegation is conclusively refuted by the record such that
20 there is no issue of material fact up for dispute.

21 If you'll look in the transcript, it's on -- a little
22 over -- it's about 300 pages and a hundred of those pages, a
23 third of this transcript, is a motion to suppress based on
24 unlawful search and seizure under the Fourth Amendment. If
25 you'll also notice that the appellate records in this case

1 are equally as thick as the transcript itself because this
2 issue, issue was fully litigated through every Court in
3 South Carolina.

4 The Court of Appeals -- actually counsel did such a
5 good job arguing the motion to suppress that the Court of
6 Appeals agreed with him and reversed Applicant's conviction.
7 However, the Supreme Court, on cert, they found that the
8 Court of Appeals had exceeded its scope of review and
9 reinstated Applicant's conviction. However, at this point,
10 the State would move to dismiss this case. Applicant's only
11 allegation is conclusively refuted by the record.

12 THE COURT: Mr. Richey.

13 MR. RICHEY: Thank you, Your Honor.

14 Your Honor, I would cite to the Court that it's my
15 position that he raised ineffective assistance of counsel
16 about the arguments that were made in this case, and it's
17 his position that, if he prevails in this case or does not
18 prevail, that he would get a second look at the Court of
19 Appeals, the cert issue.

20 I believe, Your Honor, if he alleges ineffective
21 assistance of counsel that he should be entitled to have a
22 hearing on this issue to determine whether there's some
23 other issue that counsel could of raised, some other factual
24 basis, and I do believe that he should be entitled to a full
25 hearing.

1 I will tell the Court that the, the motion to dismiss
2 made today, and I believe that, if we're gonna have a motion
3 to dismiss this case, that motion should of been properly
4 filed and served on us. I think, at this point, we have no
5 notice of that motion.

6 THE COURT: Okay. Thank you, sir.

7 Anything else, ma'am?

8 MS. GIOVANOLI: Just with regard to the oral motion to
9 dismiss, a lot of times, in post-conviction, as you know,
10 allegations arise at the last minute. So, we allow for --
11 time for amendments to be made, and no amendment was added
12 to this allegation of specifically that he failed to object
13 to the search and seizure.

14 So, that's why the State is moved for dismissal of this
15 case.

16 THE COURT: Okay. Thank you, ma'am.

17 Mr. Richey, you know -- you've been in front of me all
18 week, and I have been very liberal in allowing amendments
19 and expansions of position --

20 MR. RICHEY: Yes, ma'am.

21 THE COURT: -- by both sides. And so I will allow the
22 State to make their motion, but I am going to deny that
23 motion at this time and allow you to proceed, sir.

24 MR. RICHEY: Thank you, Your Honor.

25 Your Honor, we call Mr. Moore.

Ashley Moore - Direct examination
by Mr. Richey

1 THE COURT: Hi. I'm gonna ask you to stand for me.
2 So, I need for you to raise your right-hand.

3 ASHLEY MOORE, being first duly
4 sworn, testified as follows:

5 THE COURT: Okay. Thank you, sir. You may have a seat
6 and just pull yourself up to that microphone and get
7 comfortable.

8 okay?

9 THE WITNESS: All right.

10 DIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q Sir, would you state your name please?

13 A Ashley Eugene Moore.

14 Q And, Mr. Moore, are you in the Department of
15 Corrections?

16 A Yes, sir.

17 Q And did -- were you convicted in Spartanburg County?

18 A Yes, sir.

19 Q Okay. And what were you convicted of -- for?

20 A Trafficking cocaine and possession of a firearm.

21 Q And who represented you on those charges?

22 A Robert Hall.

23 Q And, and you filed an application that Mr. Hall did not
24 effectively represent you, correct?

25 A Yes, sir.

Ashley Moore - Direct examination
by Mr. Richey

1 Q And, and this, this basically was a case where you were
2 driving down the road and got stopped, correct?

3 A Yes.

4 Q And, and, pursuant to that stop, the cops allegedly
5 found drugs, correct?

6 A Yes, after the search, yes.

7 Q Okay. And, and you believe that -- and you've heard
8 all the stuff about the Supreme Court and the Court of
9 Appeals and all this appeals, correct?

10 A Yes, sir.

11 Q Okay. You -- do you believe that Mr. Hall effectively
12 argued your case?

13 A Well, he could of objected to some of the things in
14 this case, you know, argued it a little more. So, that's
15 why I say it was sort of like ineffective counsel on some
16 parts of it.

17 Q You believe, on some of the particular arguments in
18 themselves, he could of objected to what the State put
19 forward, correct?

20 A Yes.

21 Q Okay. And, and, essentially, that's pretty much your
22 case, the stop and suppressing these---

23 A Suppressing the evidence.

24 Q ---drugs, right?

25 A Suppressing of the evidence.

Ashley Moore - Direct examination
by Mr. Richey

1 Q Right.

2 A Yes, sir.

3 Q And, and you, you believe that he should of argued more
4 strenuously for you?

5 A Yes, sir.

6 Q Okay. And that -- that's the issue you have cause
7 that's what the case was about, correct?

8 A (Witness nods affirmatively.)

9 Q And you, you got the opinions from the Appeals Court,
10 correct?

11 A Yes, sir.

12 Q Okay. Thank you. Answer any questions the Attorney
13 General has for you.

14 CROSS-EXAMINATION

15 BY MS. GIOVANOLI:

16 Q Okay. So, in this case, you were pulled over for
17 speeding on I-85 at 1:00AM.

18 Is that right?

19 A Yes, ma'am.

20 Q Okay. And what did you tell the officers you were
21 doing at that hour of the---

22 A I was going -- I was heading to my grandmother's house.

23 Q At 1:00AM?

24 A Yes, ma'am.

25 Q And you had been drinking also, correct?

Ashley Moore - Cross-examination
by Ms. Giovanoli

- 1 A Right. Yeah, I had a few drinks in me.
- 2 Q And you passed the sobriety tests?
- 3 A I passed the sobriety tests.
- 4 Q So, the officer didn't---
- 5 A Yes, ma'am.
- 6 Q I'm sorry.
- 7 A Yes.
- 8 Q So, the officer didn't charge you with DUI, did he?
- 9 A No, ma'am.
- 10 Q Okay. And you didn't consent to a search of your
- 11 vehicle in this case, did you?
- 12 A Yes, after he had -- after he didn't -- he gave me a
- 13 citation. He would say he's gonna give me a warning ticket,
- 14 and gave my license to -- back and then he was done with me.
- 15 So -- and then he said he had to do one more search,
- 16 procedure, or something about sniff air test or something
- 17 and then---
- 18 Q He, he specifically asked you if he could search your
- 19 vehicle, didn't he?
- 20 A Yes, and I said there's no need. I didn't give him
- 21 consent to search.
- 22 Q Okay. And then they brought a K-9 dog who sniffed your
- 23 car and alerted---
- 24 A Yes, that's correct.
- 25 Q ---to drugs?

Ashley Moore - Cross-examination
by Ms. Giovanoli

1 Okay. And isn't it true that they found 887 grams of
2 crack in your car?

3 A Yes, they found some drugs in the trunk of the car,
4 yes, ma'am.

5 Q And a .45 semiautomatic gun?

6 A Uh-huh. (Affirmative).

7 Q And your only allegations today is that your attorney
8 did not argue sufficiently the motion to suppress based on
9 an unlawful search and seizure?

10 A Yes, ma'am.

11 Q Okay. How do you think he could of argued that better?

12 A I mean, if they would of suppressed the, the drugs,
13 they probably wouldn't of even had a case really.

14 Q Okay. But, but my question is how could your attorney
15 have argued that motion better?

16 A How could he of argued it better?

17 I can't honestly -- really can't, can't even think on
18 that, but, you know, I feel like he didn't represent me more
19 on it. He could of argued it a little better than what he
20 did.

21 Q But you don't know how he could of done that?

22 You can't give an example?

23 A As -- dang it. I can't think. No, not really right
24 now. I can't give an example right now. No, I can't think.
25 My mind done went blank.

Ashley Moore - Cross-examination
by Ms. Giovanoli

1 Q Okay. You testified on direct that you read the Court
2 of Appeals decision, right?

3 A Yes.

4 Q Okay. And you realize that the majority of that panel
5 agreed with your attorney?

6 A Yeah. Yeah, with the reasonable -- without reasonable
7 suspicion, yeah.

8 Q Okay. So, you're aware that the Court of Appeals
9 agreed with all of the arguments made by your counsel at
10 trial?

11 A Yes.

12 Q Okay. I have no further questions. Thank you.

13 THE COURT: Anything else?

14 MR. RICHEY: No other questions.

15 We call Mr. Hall.

16 THE COURT: Okay. All right. Mr. Moore, you can step
17 down, sir. Watch your step.

18 Okay?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Thank you.

21 Good morning.

22 THE WITNESS: Good morning.

23 THE COURT: All right.

24 ROBERT HALL, being first duly
25 sworn, testified as follows:

Robert Hall - Direct examination
by Mr. Richey

1 THE COURT: Thank you, sir. You may be seated. You
2 might want to pull that chair a little closer to the
3 microphone.

4 THE WITNESS: Okay.

5 DIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q Can you state your name please?

8 A Robert Hall.

9 Q And, Mr. Hall, are you a practicing attorney in
10 Spartanburg County?

11 A Yes, I am.

12 Q And where are you employed?

13 A I am with the Public Defender's Office.

14 Q And how long have you practiced law in Spartanburg
15 County?

16 A Spartanburg and Cherokee County for a little over 30
17 years.

18 Q Okay. And has most of that been criminal law, some of
19 it?

20 A Seven -- a little over seven years as a prosecutor, 14
21 as a magistrate, and over -- a little over nine as a public
22 defender, yeah.

23 Q Do you recall representing Mr. Moore?

24 A Yes, I do.

25 Q And is the facts -- been real brief.

Robert Hall - Direct examination
by Mr. Richey

1 Are the facts essentially what was said in here?

2 He was driving, got stopped, they searched the car,
3 found drugs.

4 Is that the baseline facts of the case?

5 A Yes, sir.

6 Q Okay. And, in this case, you, you argued, I think the
7 transcript reflects that, that you argued this pretty
8 extensively, and you're aware that the Court of Appeals
9 agreed with you, correct?

10 A Yes, I am.

11 Q And you are aware that the Supreme Court did not agree
12 with you?

13 A Yes, I am.

14 Q Okay. Do you believe that there's any other arguments
15 you could of made to make this successful?

16 A I don't know what other argument I could of made. I --
17 it basically was dealing with Dale Owens, former trooper,
18 then a deputy, and I made every argument I could to them
19 that the issues he raised as reasons to have more suspicion,
20 he, I think I'm remember going through it with him cause I
21 had actually practiced stopping on the interstate if you
22 have to stop, you get pulled over, how long it takes you
23 from say oh, I'm getting pulled over to pull over. And I
24 think he said it was 15 seconds, which I went over each of
25 these type things, and that a man in, being nervous,

Robert Hall - Direct examination
by Mr. Richey

1 anybody's gonna be nervous pulling over the cops.

2 Those are pretty standard things, particularly
3 African-American, with a white officer, middle of the night,
4 on the interstate. Went through all those issues.

5 Q So, so, you believe that, that, that the speeding was a
6 pretense to stop his car?

7 Is that what you believed?

8 A I believed that -- well, the officer testified that he
9 was, I think, going 70 or a little over 70 in a 65.

10 THE COURT: Just, just one moment.

11 (WHEREUPON, the Applicant was talking out loud at this
12 time.)

13 Q Okay. Go ahead.

14 THE COURT: Tell you what?

15 Mr. Richey will confer with you, sir, before he
16 concludes his direct of Mr. Hall.

17 Okay?

18 Q Go ahead.

19 A I believe it was, it was for speeding. Then he watched
20 him move, move some in the lane, start like he was going to
21 go to the center of the road, and then went to the right.
22 And, you know, that he -- you know, that's where it started.
23 He was obviously nervous. I think talking on the phone.

24 I think we even went into well, if somebody gets
25 delayed, it's not unusual for them to call, things like

Robert Hall - Direct examination
by Mr. Richey

1 that, but they say that's where drug dealers get on the
2 phone to say -- tell their people hey, I'm getting pulled
3 over. We, you know, put forth, you know, there's other
4 reasons to call. Grandma, I'm not gonna get there when I
5 thought so. I was --.

6 Q And so that was essentially the case, the suppression
7 motion, correct?

8 A Yeah, the stop -- if the stop was valid, then there was
9 no reason to detain him any further---

10 Q Right.

11 A ---and give him -- and let him go. And they didn't
12 think the stop was too long, the detention was too long.
13 So, they could search.

14 Q And that, that's -- basically that's why it wasn't a
15 plea in this case?

16 Y'all were trying to determine whether the stop was
17 gonna be valid?

18 A No, I don't think there's a plea cause I don't think
19 there's much of an offer in the case. I spoke with
20 Mr. Moore and told him what his chances are in a trial.

21 I said this is Spartanburg County. There's almost
22 absolute certainty, with this amount of drugs, you're gonna
23 get convicted. We're gonna -- we can argue the stop, the --
24 how long they detained you, those issues, which are the hot
25 button issues in these type cases, and we argue all those.

Robert Hall - Direct examination
by Mr. Richey

1 I said I think we have a decent chance in the Appellate
2 Court, which apparently we did, but just not in the Supreme
3 Court.

4 MR. RICHEY: Okay. One moment, Your Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q Thank you, Mr. Hall.

8 A All right.

9 THE COURT: Yes, ma'am.

10 MS. GIOVANOLI: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. GIOVANOLI:

13 Q Okay. So, there's approximately a hundred pages of
14 your motion to suppress in which the Court took testimony
15 from officers.

16 Is that correct?

17 A Yes, something like that.

18 Q Okay. And the -- you were discussing the factors that
19 the officers used to base their reasonable suspicion on
20 direct.

21 Is that correct?

22 A That's correct.

23 Q Okay. Your attempts to argue against each one of these
24 factors, I was just gonna address them one-by-one, but the
25 officer testified that the Applicant, who was on his cell

Robert Hall - Cross-examination
by Ms. Giovanoli

1 phone when the officer approached his window, which he found
2 to be suspicious.

3 Is that correct?

4 A That's correct.

5 Q Okay. And you, and you argued that many people this
6 day and age, unfortunately, live on their cell phones.

7 Teenagers, younger, the younger generation, they can't live
8 without their cell phone.

9 A Yes.

10 Q Is that correct?

11 A That's correct.

12 Q Okay. And then the officer also testified that he --
13 that the Applicant was slumped in his seat and that was
14 another factor, factor that contributed to his reasonable
15 suspicion.

16 Is that correct?

17 A I believe so, yes.

18 Q Okay. And you made the argument that many people slump
19 in their seat and drive that way.

20 Is that correct?

21 A That's correct.

22 Q Okay. And then the officer also testified that he
23 noticed the Applicant was overly nervous, had an increased
24 heart rate, I think he could see his pulse in his neck, and
25 his hands were shaking.

Robert Hall - Cross-examination
by Ms. Giovanoli

1 Is that correct?

2 A That is correct.

3 Q And you argued that most people are nervous when they
4 get pulled over. Especially if they've been drinking.

5 Is that correct?

6 A That is correct.

7 Q Okay. And then the officer also said that the
8 Applicant was coming from a suburb outside of Atlanta I
9 believe.

10 Is that right?

11 A Yes, sir.

12 Q Your recollection.

13 And that it was pretty common that people traveling
14 from Atlanta to be carrying drugs, his experience, the
15 officer's experience.

16 Is that correct?

17 A Yes.

18 Q And you also questioned him as to people that come from
19 Atlanta without drugs.

20 Is that correct?

21 A Yes, ma'am.

22 Q Okay. So, you, you pretty much thoroughly kind of
23 hammered each and every factor that the officer relied upon
24 to base his reasonable suspicion to detain him longer than
25 the original stop?

Robert Hall - Cross-examination
by Ms. Giovanoli

1 A Yes, ma'am.

2 Q Okay. And, on, on direct examination, you, you -- that
3 stated you were familiar that the Court of Appeals agreed
4 with you and reversed the Applicant's conviction.

5 That's correct?

6 A Yes, ma'am.

7 Q Okay. But then you said that the Supreme Court did not
8 agree with you, but that's not actually correct. They, they
9 didn't disagree with you.

10 A Yeah, they said the Appellate Court put themselves in
11 the place of the judge, who was the trier of the fact in the
12 motion, and that they were -- they did that too much and I
13 think that's why it was -- the conviction was finally
14 affirmed.

15 Q So, the Supreme Court didn't actually rule on whether
16 or not officers had reasonable suspicion to detain him?

17 A No.

18 Q So, they, in fact, could of agreed with you, your
19 arguments?

20 A I would like to think so, yes.

21 Q Okay. But they actually -- their action -- they were
22 reversed because they felt the Court of Appeals exceeded,
23 exceeded their scope of review?

24 A Yes, ma'am.

25 Q Which was an abuse of discretion.

Robert Hall - Cross-examination
by Ms. Giovanoli

1 Is that right?

2 A Yes.

3 Q And they felt that the Court of Appeals had substituted
4 their de novo judgment for that that the Trial Court -- I
5 think -- I believe I said that backwards.

6 That they, they basically applied a de novo review?

7 A Yes.

8 Q Okay. I'm just gonna briefly -- you obviously reviewed
9 all the discovery in this case?

10 A Yes, I did.

11 Q And did you review it with the Applicant?

12 A Yes, it's been quite a while, but we, we go over this,
13 especially in a case like this where we know what's at
14 stake. Twenty-five years is a long time.

15 Q And, often times, whenever, in a drug case, when a
16 defense attorney loses a motion to suppress, often times
17 an -- a defendant will plead guilty.

18 Is that correct?

19 A Yeah, that happens a good bit.

20 Q Okay. But, in this case, you proceeded to trial cause
21 you felt like your arguments were strong enough to survive
22 on appeal?

23 A I certainly hoped it would be because he wanted a
24 trial.

25 Q Okay. Okay. I have no further questions. Thank you.

Robert Hall - Redirect examination
by Mr. Richey

1 THE COURT: Mr. Richey.

2 MR. RICHEY: Just a couple.

3 REDIRECT EXAMINATION

4 BY MR. RICHEY:

5 Q The Attorney General asked you did the Supreme Court
6 did not rule on you, whether you were right or not.

7 Is that correct?

8 A There was -- they said that -- I think she stated
9 correctly.

10 Q Right.

11 A Their -- they put their -- themselves in the place of
12 the judge, which was improper the way, the way they did it,
13 but---

14 Q So, they didn't -- they -- so, this thing actually
15 never ruled on whether it was reasonable suspicion or not,
16 correct?

17 A Well, the---

18 Q Like the officer---

19 A The Supreme Court said that the judge made his
20 findings.

21 Q Right.

22 A And the Court of Appeals improperly put themselves in
23 that position, reviewed that wrong, and that's why it got
24 affirmed.

25 Q Okay.

Robert Hall - Recross examination
by Ms. Giovanoli

1 Thank you, Your Honor.

2 Thank you.

3 THE COURT: Yes, sir.

4 MS. GIOVANOLI: Just briefly to clarify that Supreme
5 Court issue.

6 RECROSS EXAMINATION

7 BY MS. GIOVANOLI:

8 Q The Supreme Court, their ruling and their finding was
9 that there was evidence in the record to support the Trial
10 Court's ruling, correct?

11 A Correct.

12 Q And that the Court of Appeals had exceeded their scope
13 of review in reversing the Applicant's conviction?

14 A Yes.

15 Q Okay. Nothing further. Thank you.

16 MR. RICHEY: No other questions.

17 THE COURT: Okay. Thank you, Mr. Hall.

18 May Mr. Hall be excused?

19 MS. GIOVANOLI: Yes, no objection from the State.

20 THE WITNESS: Thank you.

21 THE COURT: Okay. Thank you.

22 MS. GIOVANOLI: And, at, at this point, we'll -- the
23 Applicant rests?

24 MR. RICHEY: Yeah.

25 MS. GIOVANOLI: Okay. At this point, the State would

1 move for a directed verdict. I believe, even viewing the
2 evidence presented today in the light most favorable to the
3 Applicant, that he has not proved his burden or met his
4 burden of proof, and that it's pretty clear, from the
5 record, that counsel argued this motion as thoroughly as
6 possible. He then proceeded through the trial, and it was
7 reversed on appeal by the Court of Appeals because they
8 agreed with Mr. Hall's arguments.

9 It was the Supreme Court, on cert, who actually
10 reinstated the Applicant's convictions because they found
11 that there was evidence in the record to support the Trial
12 Court's ruling, and the standard, on review, is to give
13 deference to a Trial Court's ruling, and if there's any
14 evidence in the record to support that Trial Court ruling.
15 And that's what the Supreme Court found. They didn't
16 necessarily find that they disagreed with Mr. Hall's
17 arguments.

18 So, at this point, even viewing the evidence in the
19 light most favorable to the Applicant, he is not met his
20 burden, and I would request a directed verdict for the
21 State.

22 THE COURT: Mr. Richey.

23 MR. RICHEY: Your Honor, I will tell the Court, this is
24 a case that my client believes that the issue was not fully
25 litigated by the Supreme Court. I'd be honest. The purpose

1 of this hearing was to get the case back to the Supreme
2 Court, and that's our motive here today.

3 We think the record outlines the fact that the Supreme
4 Court didn't necessarily rule on reasonable suspicion. So,
5 I will just tell the Court that's our mission here today.
6 In the interest of justice, my client believes that the
7 Supreme Court should get another look. The Supreme Court
8 should look at his case individually.

9 THE COURT: Thank you, sir.

10 MR. RICHEY: Thank you, Your Honor.

11 THE COURT: Okay. Yes, ma'am, I, I am going to deny
12 your motion. Thank you.

13 Is there anything else?

14 MS. GIOVANOLI: No, at this point, the State would
15 rest.

16 THE COURT: Okay.

17 All right. Mr. Richey, anything else?

18 MR. RICHEY: No, ma'am.

19 THE COURT: Okay. Mr. Moore?

20 THE APPLICANT: Ma'am?

21 THE COURT: Sir, I just want you to understand, as well
22 as legal counsel, that I am taking this matter under
23 advisement, and I am -- there's a lot for me to review even
24 though I am familiar with your case only from reading the
25 opinions as they come down from the Court of Appeals and the

1 Court. I have not read the transcript in full yet, and I
2 want to do that, as well as the other documents that have
3 been presented to me.

4 You are my last hearing of the week, and I have several
5 in front of you that I have also taken under advisement. I
6 don't want you to be discouraged if it takes even 30 days
7 for me to rule.

8 okay. Do you understand?

9 THE APPLICANT: Yes, ma'am.

10 THE COURT: okay. I wish you the best of luck, sir.
11 Thank you.

12 THE APPLICANT: Yes, ma'am.

13 MR. RICHEY: Thank you, Your Honor.

14 MS. GIOVANOLI: Thank you, Your Honor.

15

16

17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

18

19

20

21

22

23

24

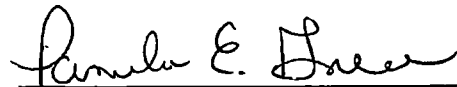
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 22nd day of September, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 31st, 2018



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Ashley E. Moore, #345798

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3555

**ORDER OF DISMISSAL
WITH PREJUDICE**

2017 DEC 19 AM 11:55
M. HOPE BLACKBURN
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Ashley E. Moore (Applicant) on September 23, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on September 22, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the start of the hearing, Respondent moved for summary judgement because the record conclusively refuted Applicant's sole allegation of ineffective assistance of counsel, and therefore no genuine issue of material fact was in dispute. This Court denied Respondent's motion. Thereafter, Applicant testified on his own behalf. Robert Hall ("Counsel") also testified. At the conclusion of Applicant's case, Respondent moved for a directed verdict. This Court denied Respondent's motion. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the October 2010 term of the Grand Jury for Spartanburg County for trafficking in cocaine base and possession of a firearm or knife during commission of or attempt to commit a violent crime (2010-GS-42-5975, count I & II). On April 25, 2011, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. Applicant was represented by Robert Hall, Esquire. Assistant Solicitor, Eddie Hunter, prosecuted the case. On April 26, 2011, Applicant was found guilty as indicted on both counts. Judge Couch sentenced Applicant to imprisonment of twenty-five (25) years for trafficking in cocaine base, and five (5) years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a timely notice of appeal. The appeal was perfected by Dayne C. Phillips, Esquire, of the South Carolina Office of Division of Appellate Defense. The South Carolina Court of Appeals reversed Applicant's conviction on July 17, 2013, agreeing with the arguments made by Counsel that the extended detention of Applicant after a lawful traffic stop was unlawful. State v. Moore, 404 S.C. 634, 746 S.E.2d 352 (Ct. App. 2013). The State petitioned for rehearing *en banc*. This was denied by order on September 27, 2013. The State then petitioned the Supreme Court of South Carolina for writ of certiorari. On January 27, 2016, in a published opinion, the Supreme Court of South Carolina reversed the court of appeals and reinstated Applicant's convictions and sentence, finding that the Court of Appeals had exceeded its scope of review and that there was evidence in the record to support the trial court's finding that the stop was lawful. State v. Moore, 415 S.C. 245, 781 S.E.2d 897 (2016). The Remittitur was returned on February 12, 2016. Applicant petitioned the United States Supreme Court for

writ of certiorari, but was denied by order on June 13, 2016.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "4th Amendment violation – Counsel was ineffective for failing to object to the search and seizure."

TRIAL

On June 30, 2010, at approximately 1:10 a.m., Officer Dale Owens and Corporal Ken Hancock observed Appellant driving on Interstate 85 ("I-85") above the posted speed limit. (R. pp. 8-9.) In addition, Appellant failed to maintain his lane. (R. p. 9.) When Officer Owens first observed Appellant, Appellant was driving in the far right hand lane. (R. p. 14.) However, Appellant eventually moved to the center lane. (R. p. 14.) When Officer Owens turned his blue lights on to pull Appellant over for speeding and failing to maintain his lane, Appellant turned on his left turn signal. (R. pp. 14-15.) Appellant eventually turned on his right turn signal; however, according to Officer Owens, it took Appellant longer than the average time to pull over and come to a stop. (R. p. 15.) In Officer Owens' training and experience, it appeared to him that Appellant was preparing to flee. (R. pp. 15-16.)

After Appellant pulled over, Appellant failed to turn off his right hand turn signal, which, according to Officer Owens, was indicative of criminal behavior. (R. p. 17.) When Officer Owens approached Appellant's vehicle, Appellant was talking on the phone. (R. p. 19.) Officer Owens had to tell Appellant to hang up the phone. Officer Owens testified that, in his experience, most innocent people hang up the phone when they get pulled over. (R. pp. 19-21.) However, drug traffickers often have to answer to a higher person. (R. p. 19.) In some drug trafficking cases, when a drug trafficker gets pulled over, he or she will leave the phone on so

2017 DEC 19 AM 11:25
 H. HOPE BLACKLEY

that the person he or she answers to can hear what is happening during the stop. Sometimes, the drug trafficker will leave the phone on so that in case he or she decides to flee, the person the drug trafficker answers to will know where the drug trafficker is located.

When Officer Owens approached Appellant's vehicle, Officer Owens smelled alcohol coming from inside the vehicle. (R. p. 21.) Officer Owens gave a signal to Corporal Hancock indicating that he smelled alcohol. In Officer Owens training and experience, people who traffic drugs will often drink alcohol in order to calm their nerves. (R. pp. 21-22.)

Officer Owens asked Appellant for Appellant's driver's license and registration. (R. p. 24.) Appellant informed Officer Owens that the car he was driving was a rental car. Appellant provided the rental agreement and his driver's license. Officer Owens noticed that Appellant's hand was shaking heavily. In Officer Owens' report, he noted that Appellant was overly nervous. Additionally, Appellant's breathing was accelerated, and the pulse in his neck appeared to be elevated and pounding.

Moreover, Appellant admitted he had been drinking. (R. p. 25.) At that point, Officer Owens asked Appellant to exit the vehicle. As Appellant exited his vehicle, he tried to pick up his cell phone, which was an indicator to Officer Owens that Appellant might try to flee. (R. p. 26.) When Appellant exited the vehicle, he started walking towards Officer Owens' patrol car; however, Appellant left the door to his rental car open. (R. pp. 25-26.) Appellant started smoking a cigarette, which indicated to Officer Owens that Appellant was trying to calm his nerves. (R. p. 27.)

Thereafter, Appellant consented to a pat down. (R. pp. 27-28.) Appellant raised his hands in the air even though the officers did not ask him to raise his hands. (R. p. 28.) Officer Owens felt like what he perceived to be a large sum of wadded money in Appellant's pocket. Corporal

Hancock took the wad of money out of Appellant's pocket. Appellant continued to keep his hands in the air in the "felony position." (R. p. 28.)

During the suppression hearing, Officer Owens testified that, in his estimation, Appellant had approximately \$1,000 in his pocket. (R. pp. 28-29.) Because Appellant told the officers that he was unemployed, the amount of money in Appellant's pocket alarmed the officers of potential criminal activity. (R. p. 29.) Furthermore, Officer Owens continued to smell alcohol on Appellant even though he was no longer near Appellant's car. Even though the officers told Appellant not to place his hands in his pockets, Appellant placed his hands in his pockets. (R. pp. 30-31.)

Appellant told Officer Owens that he was coming from Lawrenceville, Georgia, which is a suburb of Atlanta, Georgia. (R. p. 32.) According to Officer Owens, Atlanta is a major drug source city. In Officer Owens' fourteen years of experience, approximately 95 percent of the drugs he has found on I-85 came from Atlanta.

Moreover, according to the rental agreement, Appellant was not the one who rented the vehicle Appellant was driving. (R. p. 24; R. pp. 31-33.) According to Officer Owens, a third party rental vehicle is one of the largest indicators of criminal activity. (R. p. 33.) Another thing that raised Officer Owens' suspicion was the fact Appellant told Officer Owens that he was on the way to visit his grandmother. (R. pp. 34-35.) Generally, most people do not visit their grandparents that late at night. (R. p. 35.)

Thereafter, Officer Owens administered three field sobriety tests to Appellant. (R. pp. 38-43.) Officer Owens concluded that Appellant was not impaired. (R. p. 43.) Appellant claimed he did not have any weapons, alcohol, or drugs in the vehicle. (R. p. 43.) After Officer Owens administered the field sobriety tests, he asked Appellant for consent to search Appellant's car;

however, Appellant refused to give his consent. (R. pp. 43-44.) In fact, Appellant told the officers that he did not want them to search his luggage, which was located in his trunk. (R. p. 44.)

Afterwards, Officer Owens gave Appellant a warning ticket.¹ However, Officer Owens advised Appellant that he was detaining Appellant based on his reasonable suspicion that Appellant was involved in criminal activity (other than the traffic violations and impaired driving). (R. pp. 44-45.) Officer Owens informed Appellant that they had to wait for a drug detection unit to come to the vehicle. Appellant was in an investigative detention; however, he was not handcuffed. (R. p. 46.)

Fifteen minutes later, approximately 31 minutes and 13 seconds into the stop, the drug detection unit arrived and the drug dog alerted to an odor. (R. pp. 45-47; R. p. 69.) The officers searched Appellant's vehicle and found an opened alcoholic beverage under the front passenger seat of the vehicle. (R. pp. 47-48.) Moreover, the officers found two containers of crack cocaine, a semiautomatic weapon, and approximately \$4,000 in the trunk of Appellant's vehicle. (R. p. 48.)

After hearing all arguments, the trial judge denied Appellant's motion to suppress the contraband. (R. p. 89.)

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified that he believes Counsel could have objected more to the unlawful search and seizure in his case. Applicant also testified Counsel should have argued more strenuously at the motion to suppress.

¹ According to Officer Owens, most people calm down after he tells them they are only getting a warning for the traffic violation; however, Appellant remained nervous. (R. p. 38; R. p. 53.)

2017 DEC 19 AM 11:25
M. HOPKINS
BLACKLEY

On cross examination, he admitted that he was pulled over at 1:00 AM and had been drinking. He also maintained he was on his way to visit his grandmother. However, Applicant could not articulate how Counsel could have better argued on his behalf or what additional arguments Counsel could have made.

II. Counsel testified to the following:

Counsel testified he has been practicing law for thirty years. Counsel was an assistant solicitor for seven years, a magistrate judge for fourteen years, and a public defender for nine years. He was appointed as an assistant public defender to represent Applicant. Counsel testified he argued extensively that the search and seizure of Applicant was unlawful in a pre-trial motion hearing. Counsel did this by attacking each of the factors relied upon by the officer who extended the original detention of Applicant in order to get a canine out to execute a sniff search. The Court of Appeals even agreed with Counsel's arguments and reversed Applicant's conviction. However, the Supreme Court found the Court of Appeals exceeded their scope of review and re-affirmed Applicant's conviction, finding there was evidence in the record to support the trial court's findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the

Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

It is abundantly clear not only from the testimony presented during the PCR hearing, but especially from the trial transcript and direct appeal records, that Counsel was anything but

ineffective. The pre-trial motion to suppress alone made up one third of the entire trial transcript and the direct appeal records are just as voluminous, if not more so, than the entire trial transcript. Applicant's case was exhaustively litigated through every court in this State based on the thorough arguments and issue presented by Counsel prior to trial.

Not only does the record conclusively refute Applicant's allegations, Applicant has failed to meet his burden of proof in this case. When asked why he thought Counsel could have argued his case better or how he could have done so, Applicant had no response. A vague, blanket allegation that Counsel "could have done better" is not sufficient to prove by a preponderance of the evidence that Counsel was ineffective in his representation nor is that the standard to which Counsel is held. Rather, Counsel's performance is based on a standard of reasonableness given the prevailing professional norms. Applicant has not presented one single argument that Counsel could have made in addition to the arguments actually made by Counsel. Applicant cannot provide one example of how Counsel could have more strenuously objected to the search and seizure. Applicant is simply displeased with the result of his trial and appeal. Unfortunately the blame for that displeasure does not lie with Counsel, but more plainly with the facts of his case.

CONCLUSION

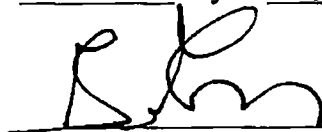
This Court finds that Applicant has failed to prove any deficiencies on the part of trial counsel and further, Applicant has failed to prove any prejudice from any alleged deficiencies in Counsel's representation of him. Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14th day of December, 2017.



GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

2017 DEC 19 AM 11:25
M. HOPE BLACKLEY

WITNESSES

SPTG CO SHERIFF'S OFFICE

1. SENT ON FILE ☒

2. REPORT ENDED ☒

3. CARRIED OVER ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT AND
FINE CARD MADE ☒

Computer

Computer

ARREST WARRANT NUMBER

M423909 and

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 10 22 10

VERDICT

Count 1 Guilty
Count 2 Guilty

Foreperson of Petit Jury

Date: 4/26/11

DOCKET NO.

54775

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

ASHLEY EUGENE MOORE

Indictment for

TRAFFICKING IN METHAMPHETAMINE OR
COCAINE BASE AND POSSESSION OF A
FIREARM OR KNIFE DURING
COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME

SC Code: 44-53-375: 16-23-490

CDR Code:

OCT 26 PM 2:05

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 7 2010

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

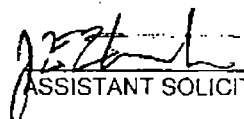
**COUNT ONE – TRAFFICKING IN METHAMPHETAMINE OR
COCAINE BASE**

That Ashley Eugene Moore did in Spartanburg County on or about June 30, 2010, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (400) four hundred grams of Methamphetamine or Cocaine Base a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Ashley Eugene Moore did in Spartanburg County on or about June 30, 2010, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN METHAMPHETAMINE OR COCAINE BASE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR