

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 17 2015

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable G. Edward Welmaker, Trial Judge
The Honorable James R. Barber, III, Post-Conviction Relief Judge

Appellate Case No. 2014-002397

Marshall Heath Collins, ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

ALAN WILSON
Attorney General

ROBERT M. DUDEK
Chief Appellate Defender

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29201

ATTORNEY FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX i

TRIAL TRANSCRIPT.....1

FINAL BRIEF OF APPELLANT 320

FINAL BRIEF OF RESPONDENT 340

COURT OF APPEALS OPINION 353

APPLICATION FOR POST-CONVICTION RELIEF 355

RETURN.....365

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING 371

ORDER GRANTING POST-CONVICTION RELIEF 409

CLERK OF COURT RECORDS 417

S.C.D.C. RECORDS.....424

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSION

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

MARSHALL HEATH COLLINS,

DEFENDANT.

)
)
)
)
)
)
)
)
)
)
)

2010-GS-39-937, 938, 939 AND 2142

DECEMBER 1, 2010

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

PETER THEM, ESQUIRE
ATTORNEY FOR THE STATE

JOHN DEJONG, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Josh Blair				
Them	123		178	
DeJong		148		
Brad Smith				
Them	184			
DeJong		195		
Tabatha Fricks				
Them	199			
DeJong				
Kelly Dickson				
Them	202		208	
DeJong		206		
James Armstrong				
Them	208			
DeJong		213		
Craig Sapp				
Them	224		246	
DeJong		233		
				PAGE
Suppression Hearing				
Josh Blair				
Them	59		93	
DeJong		75		
Craig Sapp				
Them	95			
DeJong		101		
Opening Statements				
Them				114
DeJong				118
Closing Statements				
Them				264
DeJong				278
Charge				288
Certificate of Reporter				319

STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
S-1	Aerial photo	123	123
S-2	Gun	140	222
S-3A	Evidence bag	144	222
S-3B	Drugs	144	222
S-4A	Pills	144	222
S-4B	Pills	144	222
S-4C	Pills	144	222
S-5	Container	144	
S-6	Container	144	223
S-7	Evidence bag	182	223
S-8	Evidence bag	182	223
S-9	Chain of custody document	197	198
S-10	Chain of custody document	197	198
S-11	Chain of custody document	197	198

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

C-1	Email from Peter Them to John DeJong dated November 12, 2010	11	
C-2	Discovery Affidavit - Supplemental	11	
C-3	Defendant's Request for Voir Dire Number 8	15	
C-4	Note from jury	307	
C-5	Note from jury	307	
C-6	Note from jury	309	

JURY VOIR DIRE

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
99	Person, Robert G	W	M				x
86	Morris, Vernon L	W	M			x	
111	Steed, Mary O	W	F				x
8	Aubry, Carling B	W	F			x	
51	Harris, Judy D	W	F				x
14	Brawley, Sheila H	W	F				x
119	Vinson, Cathy S	W	F			x	
3	Adams, Mike E Jr	W	M				x
126	Williams, Nathan S	W	M				x
69	Lackey, Katherine D	W	F				x
39	Finley, Charles A	W	M			x	
6	Alexander, Crystal A	W	F				x
28	Crowe, Martha B	W	F				x
110	Stavish, Leah F	W	F				x
125	Williams, Dennis J	W	M				x
50	Hannah, Douglas W	W	M				x
73	Love, Stephen M	W	M		x		
31	Ellenburg, Charlie E III	W	M			x	
37	Theberge, Sally J	W	F				x

1 THE COURT: All right. This is the case of *State*
2 *v. Marshal E. Collins*. I think we have matters we need to
3 take care of before the jury is qualified.

4 MR. THEM: Yes, sir, Your Honor.

5 THE COURT: All right, Mr. Them.

6 MR. THEM: Your Honor, on indictment number 2010-
7 0937, that's the indictment for trafficking, trafficking in
8 methamphetamine. In the body of the indictment it says
9 that the Defendant was in actual and constructive
10 possession of more than fifteen grams of methamphetamine.
11 As it turns out, when they got to the lab and officially
12 weighed it, it was forty-one hundredths of a gram less than
13 that. The statute talks about ten grams or more. Mr.
14 DeJong was given a copy of the drug analysis reporting all
15 of that. So I would moved to correct that scrivener's
16 error and convert that fifteen to the number ten.

17 MR. DEJONG: No objection to that amendment to
18 the indictment, Your Honor.

19 THE COURT: All right. That indictment will be
20 so noted. I'll make notation of that as well.

21 MR. THEM: I've got some housekeeping matters at
22 an appropriate time, Your Honor.

23 THE COURT: All right. Other than housekeeping
24 matters, Mr. DeJong, anything you have to bring to our
25 attention before the jury is here? Anything from you, Mr.

1 DeJong?

2 MR. DEJONG: Your Honor, I'm a little bit
3 puzzled. I'm looking at the trial docket. I know the
4 original indictments were handed up to you. On the trial
5 docket, I'm looking at trafficking meth. There's no
6 question on that indictment as such, as amended. The next
7 -- well, then it says possession of controlled substance.
8 What I am trying to figure out if I'm moving forward on a
9 possession of controlled substance or a possession with
10 intent to distribute a controlled substance.

11 MR. THEM: It's possession with intent, Your
12 Honor. I think it's a matter of how much we can fit in
13 that little form. Copies of the indictments were given to
14 Mr. DeJong, and that's all taken care of in discovery as
15 far as full disclosure.

16 MR. DEJONG: Well, I understand that, Your Honor,
17 but the State seems to change around on me a little bit
18 from time to time. For example, on a possession of a
19 firearm during a commission of a violent crime, that
20 indictment was just served on my client less than five
21 minutes ago. So he's never been arraigned on that.

22 MR. THEM: A copy of that indictment was given to
23 Mr. DeJong before the presentment to the Grand Jury. I
24 have an email that told him that we were going to try the
25 thing rather than bring his client in to just go through

1 the formalities. I proposed to serve him this morning.
2 His counsel is on more than adequate notice of that charge
3 coming forward. We sent him an actual copy of the
4 indictment after it was returned and I have a signed for
5 receipted discovery situation, Your Honor. And there's no
6 additional discovery associated with that last indictment.

7 MR. DEJONG: Well, Mr. Them, would refer to, I
8 guess, an arraignment as just a mere formality.

9 MR. THEM: I don't oppose the arraignment.

10 MR. DEJONG: I don't reckon you do oppose the
11 arraignment, Mr. Them, but the point of that is, my
12 client's never been arraigned. I think that is more than a
13 mere formality. I think an arraignment takes place more
14 than five minutes before you get into a trial. I mean, if
15 we're going to do this, Your Honor, then we might as well
16 go back to the star chamber. The only difference we're
17 going to do, we're going to round people up off of the
18 street, serve them an indictment that the Grand Jury has
19 handed down on a direct presentment and say, come on, let's
20 go to trial. I don't think that's what the law is about.
21 I don't think it is form. I think it is substance. I
22 think clients' rights are involved. And more particularly
23 in this case, Mr. Collins' rights are involved. And to do
24 that just flies in the face of every law, Constitutional
25 Law and everything else that we have in this country. And

1 I submit to you that it is improper and the State should
2 not be allowed to move forward.

3 MR. THEM: Just one second, let me find some
4 exhibits, Your Honor.

5 MR. DEJONG: And I will concede, Your Honor, for
6 the record, that I was given a copy of the indictment, I
7 think last week. I don't remember which day. Ms. Anthony
8 brought it down to me. I don't think I'm the guy. I'm the
9 mouthpiece. Mr. Collins has the rights, not me.

10 MR. THEM: Your Honor, I notified counsel as
11 opposed to sending deputies out in the middle of the night
12 to arrest this man and take him into custody. We had no
13 court that we could bring him before to do a formal
14 arraignment. I would have been within my rights on that
15 new indictment to go on out and arrest him. I did what I
16 thought was the sensible thing. I noticed counsel. I have
17 here an email that I'd like to make a part of the record
18 today. It's an email to Mr. DeJong from me dated November
19 12, 2010. It says, quote, I will be submitting to the
20 November Grand Jury an additional charge against Mr.
21 Collins. The charge would be possession of a firearm
22 during the commission of a violent crime under Section 16-
23 23-480. I'll put a draft of the proposed indictment in
24 your box today for notice purposes. If the Grand Jury
25 indicts, I will call the case, along with the pending drug

1 charges at the 11/29/10 term. There is no additional
2 discovery to be had as the information previously given
3 over to you on the other cases contains the required
4 information on the proposed weapons charge. Here's a copy
5 of the signed for effect.

6 Now, if Mr. DeJong wants to take this position, he's
7 going to put us in the situation of every time somebody has
8 a new indictment coming down, I guess we're going to have
9 to go out and arrest them, let them stay in jail for a
10 couple of days until they can have some sort of a bond
11 hearing. That just seems like an unreasonable situation.
12 The whole purpose of the arraignment process and all of
13 that is to put the Defendant on notice. I would assume
14 that counsel would discuss those developments with his
15 client. But if it's Mr. DeJong's position that he's not
16 required to do that, we'll start arresting them and
17 bringing them in, Your Honor.

18 MR. DEJONG: I'm not saying I'm not required to
19 do that. That was Wednesday of last week that I got the
20 indictment. And I could be wrong, but if memory serves me
21 correctly, Thursday and Friday of last week were holidays.
22 I believe that was the Thanksgiving Holiday weekend. And
23 perhaps I'm supposed to work on holidays. If that is the
24 case, then I will do that. Nonetheless, those were the
25 holidays. The term of Court started Monday the 29th. That

1 was Monday of this week. The email Mr. Them alludes to was
2 November 12th. Today, I believe is December the 1st. I
3 last met with Mr. Collins on Tuesday of last week, if
4 memory serves me correctly.

5 MR. THEM: Your Honor, my bright young friend
6 here tells me that this case, I don't have the citation of
7 it or the name, that says formal arraignment is not
8 required when adequate notice is given. I maintain
9 adequate notice to the attorney for the Defendant is, in
10 effect, some sense of adequate notice to the client. And
11 he claims he just got that last week. He got the notice of
12 it much earlier than that, and I believe I put those two
13 documents into evidence, didn't I? The emails that I
14 published?

15 THE COURT: I've got one email, acknowledgment of
16 receipt.

17 MR. THEM: I'd like to make those two documents a
18 part of the record.

19 MR. DEJONG: I'm sure that they're accurate, Your
20 Honor, but before he does that, may I see them? I gather
21 those are being marked Court's Exhibits?

22 MR. THEM: They would be.

23 (WHEREUPON, Court Exhibit Numbers 1 and 2 were marked
24 for identification.)

25 THE COURT: Well, we can arraign him now and then

1 -- let's have an arraignment right now, and then I'll have
2 some follow-up questions. If you would come forward, Mr.
3 Collins, with your attorney.

4 (WHEREUPON, Mr. DeJong and the Defendant approached
5 the bar.)

6 THE COURT: Do you have the indictment.

7 THE CLERK: Marshall P. Collins, if you answer to
8 that name, please raise your right hand.

9 MR. COLLINS: (Raises his hand).

10 THE CLERK: You may put your hand down.

11 Indictment number 2010-GS-39-2142 charges you with the
12 offense of possession of a weapon during the commission of
13 a crime. How do you plead?

14 MR. COLLINS: Not guilty.

15 THE CLERK: How will you be tried?

16 MR. DEJONG: By jury.

17 THE COURT: All right. Mr. DeJong, I will ask my
18 questions of your client through you. This is a charge
19 that was, by the indictment, was only brought forth by our
20 Grand Jury in Pickens County on the 23rd of November. I've
21 heard argument of counsel about the notice and so forth,
22 that there was no more discovery. Are you ready for trial
23 on this charge as well as being ready for trial on the
24 other charges?

25 MR. DEJONG: My focus in preparing for trial was

1 not on this charge, Your Honor.

2 THE COURT: Do you need more time to be prepared
3 to defend your client for this particular charge involving
4 a weapon?

5 MR. DEJONG: That is difficult to say because I
6 never really talked to Mr. Collins about that particular
7 charge. As I recall, we talked about the trafficking in
8 meth. We talked about the PWID controlled substance. I
9 don't know that -- I can't recall that we ever talked about
10 that. We may have. I don't know. Do you recall if we had
11 any discussion about that, Mr. Collins?

12 MR. COLLINS: No, sir.

13 THE COURT: Well, let's take a break now. You
14 have a discussion with him. And we'll be at ease.

15 MR. DEJONG: May I go to my office to do that,
16 please, sir?

17 THE COURT: You certainly may. Take your client
18 with you.

19 MR. DEJONG: Thank you, Your Honor.

20 (WHEREUPON, the court stood at recess for a short
21 break.)

22 THE COURT: Have you had an opportunity to talk
23 with your client?

24 MR. DEJONG: I have, Your Honor.

25 THE COURT: All right. Is he prepared and you

1 prepared to go forward on this particular charge today, the
2 charge -- the weapon charge?

3 MR. DEJONG: Yes, sir. And it was part of the
4 discovery. It just -- I can try.

5 THE COURT: All right. You're prepared to ---

6 MR. DEJONG: However, for the record, I still
7 object to it, Your Honor.

8 THE COURT: Yes, sir.

9 MR. DEJONG: And I appreciate the time to talk to
10 my client, but I want the record very clear that I do
11 object to it. I do not think that this is appropriate nor
12 do I think it's the proper way of doing it. I'm not trying
13 to be disrespectful to Your Honor.

14 THE COURT: Yes, sir. And, again, the holiday
15 and I know all of those extenuations, but you did receive
16 the notice on the 12th or whenever that was by ---

17 MR. DEJONG: I think I actually got the
18 indictment on the 24th, Your Honor.

19 THE COURT: But you had the notice that there was
20 going to be an indictment.

21 MR. DEJONG: Well, I got the notice.

22 THE COURT: You did not know whether or not the
23 Grand Jury would indict him, but you knew that if they did
24 -- all right. You can return to your seat.

25 MR. DEJONG: Thank you, Your Honor.

1 MR. THEM: Might I make a document a part of the
2 record, Your Honor?

3 THE COURT: Yes, sir.

4 MR. THEM: Your Honor, this is a copy of Defense
5 request for voir dire number eight that was just given to
6 me by Mr. DeJong. It says, quote, has any member of the
7 jury panel or a member of their immediate family been the
8 victims of crime in which a gun or other weapon was
9 involved. I'd like that to be a Court's Exhibit in support
10 of the argument that the Court just ruled on.

11 THE COURT: All right.

12 MR. DEJONG: I don't have any objections, Your
13 Honor. But I think Your Honor needs to ask that question.

14 (WHEREUPON, Court Exhibit Number 3 was marked for
15 identification.)

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

18 MR. THEM: Yes, sir, Your Honor. In a rare
19 moment of mutual agreement, Mr. DeJong and I have swapped
20 voir dire questions. The subject matter that he seeks to
21 uncover in voir dire I think is appropriate. I think a lot
22 of that's covered probably in your normal questions, but I
23 have no objection to the subject matter as stated.

24 I'd also like to hand up a copy of State's Number 1,
25 which I have just shown to Mr. DeJong, and he leads me to

1 believe he has no objection to that. I'm basically just
2 asking has any member of the panel or close family member
3 ever been represented by Mr. DeJong or have any association
4 with his investigator, Johnny Duncan.

5 MR. DEJONG: I apologize, Your Honor, I didn't
6 know we were going to get into voir dire right now. I'll
7 hand mine up.

8 THE COURT: Okay. I haven't seen either one of
9 them.

10 MR. THEM: Well, I thought you'd do that before
11 we pick the jury.

12 THE COURT: Well, we will, in time. I think
13 there were some -- are there any other matters from the
14 State now?

15 MR. THEM: None that I can think of, Your Honor.

16 THE COURT: All right. What did he just hand
17 you?

18 COURT REPORTER: His copy.

19 THE COURT: Yeah.

20 MR. DEJONG: Your Honor, I don't want to argue
21 anything for the State -- I'm sorry. I didn't mean to
22 interrupt.

23 THE COURT: Yeah. I'm still getting the voir
24 dire together. All right.

25 MR. DEJONG: I apologize, Your Honor.

1 THE COURT: Yes, sir, Mr. DeJong.

2 MR. DEJONG: Mr. Them mentioned to me coming into
3 the courthouse this morning, that there may be a 404(b)
4 issue. And I'm curious about that because if we're going
5 to have a 404(b), I would like to deal with that issue at
6 this point in time rather than have to wait until we come
7 up into the trial itself.

8 MR. THEM: I do have a 404(b) issue, but Mr.
9 DeJong has some sort of motion, which I haven't seen. I'm
10 lead to believe he has some sort of argument about the
11 search. I don't know exactly what his points are. But the
12 testimony in the two motions would overlap so much, we
13 would need to address both of them at the same time. And I
14 thought we were going to pick the jury, cut the panel
15 loose, and then do those motions before we got into the
16 trial. But I have no idea what the schedule ---

17 THE COURT: Well, we're going to do the motions
18 now if we can. The jury's not coming until ten fifteen.
19 We need to ---

20 MR. THEM: Oh, okay. I wasn't aware of that.

21 THE COURT: We need to be working in the
22 meantime. So do you need the 404 resolution before we do
23 the suppression, or can we do the suppression, select the
24 jury and then ---

25 MR. DEJONG: Well, I would like, if he's got a

1 404(b) issue, to resolve that before we get into the trial
2 itself.

3 THE COURT: Yeah. We'll do that.

4 MR. DEJONG: Because that certainly would have
5 some bearing on how I approach the Defense in this case,
6 Your Honor.

7 THE COURT: Okay. We'll do that. And you remind
8 me. I'd like for us to do as much work as we can between
9 now and ten fifteen on the suppression so we don't keep the
10 jury waiting out in the hall too long. And then we'll
11 certainly address that issue. We'll get our jury selected.
12 Then when they're back, before we have opening statements,
13 we can certainly get that done.

14 MR. THEM: If the Court would allow me three or
15 four minutes of cross examination in his suppression
16 motion, I can put up everything that I'm going to put up in
17 the 404(b).

18 THE COURT: Okay. Well, that'll help us then.
19 All right. Do you have a suppression motion, Mr. DeJong?

20 MR. DEJONG: Your Honor, I do. I would move the
21 Court to suppress the what is alleged to be
22 methamphetamine. I would further move the Court to
23 suppress what is alleged in the two indictments, possession
24 with intent to distribute controlled substance. And I
25 would further move to suppress the weapon that is alleged

1 in the indictment that my client was just arraigned on.

2 The basis of that, Your Honor, is I contend that the -- all
3 of those items were the result of an illegal search in
4 violation of my client's Fourth Amendment Rights.

5 THE COURT: All right. What's the State's
6 position on that, Mr. Them?

7 MR. THEM: The State's position is that this
8 gentleman was stopped for a lawful traffic stop, that mid-
9 way through that traffic stop the Defendant jumped from his
10 car at one-thirty in the morning in Gravely Insurance
11 Company parking lot, and started running up towards the
12 Post Office with a backpack on. As he rounded the corner
13 where the Post Office was, he evidently was looking over
14 his shoulder or not paying attention or who knows what, but
15 he ran head-long at full speed into an oak tree and was
16 knocked to the ground.

17 The police officers who were pursuing him came up, got
18 him under control. While he was still wearing the
19 backpack, they handcuffed him behind his back, and as part
20 of a search incident to arrest, they looked in the backpack
21 and searched his person and found the gun. I am informed
22 that the backpack was removed from the Defendant's back and
23 placed on the ground right next to the Defendant where they
24 were trying to subdue the -- excuse me, placed right next
25 to the Defendant, and the contents of the backpack were

1 inventoried, etcetera, and the drugs were found at that
2 point in time. So I take the position that if they had
3 just cause to stop him for the traffic stop, everything
4 else, of course, follows.

5 THE COURT: All right. How many officers were
6 involved in the stop?

7 MR. THEM: One officer was involved in the stop
8 and another officer arrived after the Defendant was taken
9 into custody and participated in the search, Your Honor.

10 THE COURT: Mr. DeJong, is your issue with the
11 search of the person and the backpack?

12 MR. DEJONG: Yes, sir.

13 THE COURT: All right.

14 MR. DEJONG: The issue there appears, Your Honor,
15 if you care to hear it.

16 THE COURT: Yes, sir, I do.

17 MR. DEJONG: I thought you might. The issue
18 there is there was a traffic stop. I don't think there's
19 going to be any controversy over that. My argument is a
20 traffic stop is not an arrest. The man was never told he
21 was under arrest. It was a traffic stop for the --
22 probably the most favorite traffic stop there is anymore,
23 no tag light. The officer goes back to his car, according
24 to the discovery I have, to check information. Before that
25 information is ever checked, my client runs.

1 Now, I take the position -- And I don't know if the
2 Supreme Court has ever ruled on that, that case that came
3 out of the Court of Appeals. I can't remember the name of
4 it. I argued it, I think, in a case not too long ago about
5 resisting arrest. And that really doesn't have a major
6 bearing on this case because my client is not charged with
7 resisting.

8 However, he did not move his vehicle so it's not a
9 failure to stop. If he was not under arrest and it was
10 merely a traffic stop, then I know of no law that says it
11 is illegal for him to leave that scene. That is not
12 perhaps what we would consider the norm in our society, but
13 we're not dealing with norms. We're dealing with law. And
14 I know of no law -- if you are not under arrest, have not
15 been placed under arrest, you leave your vehicle there. It
16 is parked. It was not blocking anything and you leave. I
17 don't believe that is a crime. So he leaves. And they do
18 ultimately catch up with him after he runs full tilt into a
19 tree. They handcuff him. And I think there we get into,
20 pretty much into a *Gantt* situation, with the exception that
21 *Gantt* was an automobile search, and not a search of the
22 person. But I think you can't -- and the State cannot say
23 at this point in time that they -- that under *Gantt* that
24 they were doing a *Terry* search because, obviously, my
25 client was subdued at that point in time.

1 Now, search incident to arrest. Arrested for what?

2 That's my whole issue. What was he arrested for? Granted,
3 they chased him down and grabbed him and handcuffed him,
4 but what was the crime that he had committed at that point
5 in time? I don't think that flight from his vehicle -- if
6 he had gotten back in his vehicle and left, it would be
7 arguable -- I would not concede it, but it would be
8 arguable it would be a failure to stop. But that's not
9 what we have here. He didn't move his vehicle. He just
10 left. Maybe at a high rate of speed, but he left. I
11 submit, Your Honor, that is not a crime. So when they did
12 get him, what was he under arrest for? And that's my whole
13 point. And, if he was not under arrest, then certainly it
14 doesn't fall into one of the exceptions of the search and
15 seizure law of search incident to arrest.

16 THE COURT: Mr. Them, be glad to hear from you in
17 response.

18 MR. THEM: Your Honor, defense counsel -- not
19 necessarily Mr. DeJong -- but defense counsel in general
20 love to argue both sides of the question. At the point in
21 time that they pulled over, his liberty has been
22 restricted. Even a traffic stop if you delay it too long,
23 he's technically under arrest or he has problems with that
24 situation. What happened in this case is when they pulled
25 him over, there was some indication that he had violated

1 the law with the tag light. Then when the officer went up
2 to speak to him, he acted very suspiciously. He would not
3 look at the officer when he talked to him. If you were at
4 the front of my car, he stared straight ahead, where the
5 officer was right here asking questions. That raised the
6 officer's suspicion level about what was going on here, not
7 to mention one-thirty in the morning with a guy riding
8 around with a backpack on. So he asked the Defendant for
9 his name. And he gave his name and a birth date, but he
10 did it in such a way that it further raised the officer's
11 suspicion. So he goes back to his car to check it out.

12 And then the Defendant bolts and runs. The officer at that
13 point in time, I think, has restricted his liberty when he
14 pulled him over with the blue light a blipping.

15 And I don't know of any case that's ever held that you
16 can be charged with failure to stop for a blue light if you
17 continue to run as opposed to drive. But I mean, arguably
18 speaking the same sort of reasoning would apply. The
19 officer at that point in time, I think, has an obligation
20 to investigate what's going on, why this fellow is acting
21 suspicious. The officer did not have a chance, because of
22 the Defendant's quick departure from the scene, to find out
23 from the computer entry that he was driving under
24 suspension. As it turns out, there's all sorts of other
25 problems associated with it. So when he starts fleeing

1 from the officer in a situation like that, I think the
2 officer has a lot more than an articulable suspicion. He
3 probably has probable cause that something is afoot that
4 ain't right. So when he chases the fellow, he's in effect
5 trying to get him to stop. The man won't stop. Had he not
6 fled the scene he would have been arrested, could have been
7 arrested for driving without a license, driving under a
8 suspended license, and of numerous other things. There was
9 an open container in the car. So at the point in time that
10 he flees like that and runs into that tree, he's already
11 shown that he's a flight risks and a potential danger. So
12 the officer handcuffed him with the backpack on his back.
13 At that point in time, he is in at least investigative
14 detention, if not under arrest. Maybe the formal words,
15 you're under arrest, were not used, but certainly I would
16 think after a police chase and you're on the ground and an
17 officer has pointed a taser at you and they have handcuffed
18 you behind your back and are getting ready to put you in a
19 police car, that is the functional equivalent of arrest.
20 So at that point in time, they're authorized to do a search
21 incident to arrest. The testimony will be that they
22 actually looked in the bag while it was on his back, and
23 his handcuffs were handcuffed this way. I'm led to believe
24 that the gun was found in the lower portions of the
25 backpack and could have been accessible. At that point in

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Jury Voir Dire

25

1 time, they took the backpack off him. And I'm led to
2 believe the backpack was still within arms reach of him.
3 And they looked in the backpack and found all of the drugs
4 and everything else.

5 So I maintain that they had enough to stop him with
6 the tag light problem. And when he bolted the way he did
7 after giving what the officer felt was potentially a bogus
8 identification, I think that heightens the officer's
9 suspicion to chase him. And so I would maintain that
10 everything the officer did is appropriate.

11 THE COURT: Mr. DeJong, do you believe there
12 would be a distinction if he walked away instead of ran
13 away? Would that make any difference that he walked ---

14 MR. DEJONG: No.

15 THE COURT: -- that if he had walked instead of
16 run?

17 MR. DEJONG: I don't think it makes any
18 difference whatsoever. Under the law ---

19 THE COURT: Does it create an exigent
20 circumstance of any kind? You don't think there's any
21 exigency involved in any manner in this?

22 MR. DEJONG: No, sir. And I would -- Your Honor,
23 I should have done it in my main argument, but I would
24 invite the Court's attention to a fairly recent Court of
25 Appeals case, *State versus Brown* -- I hate when my computer

1 blanks out -- I believe it's 608 SE2d 811. Again, Your
2 Honor, it's not directly on point, but it's an automobile
3 search. That case came up out of Horry County where a
4 policeman thought he saw somebody drinking a beer in the
5 car so he pulls them over. Basically, in that
6 investigative situation exactly like Mr. Them talked about,
7 and in that case the police officer was trying to -- saw a
8 duffle bag, I believe, between the what turned out to be
9 the Defendant's legs. And before anything else was done,
10 the officer said he wanted to take a peek into the duffle
11 bag. Well, he took a peek into the duffle bag, found a
12 bunch of drugs. They ultimately charged him with
13 possession with intent to distribute, trafficking, I'm not
14 sure which it was.

15 And in that case the South Carolina Court of Appeals
16 said, no, that was not a good search. Now, just very
17 briefly, I don't think there was any question of once my
18 client hit the tree that he was in custody, but I think
19 that still begs the issue, what was he in custody for?
20 What law had he violated at that point in time that he was
21 arrested for? There has to be probable cause for the
22 arrest before you can have a search incident to the arrest.

23 And that State -- I believe I just cited it as *State*
24 *versus Brown*, says that -- and we all know it was a very
25 elementary principal of law that searches and seizures by

1 police are per se unreasonable unless they fall within one
2 of the recognized exceptions. These exceptions include,
3 one, search -- and I'm quoting -- search, incident to a
4 lawful arrest. Two, hot pursuit. Three, stop and frisk.
5 Four, automobile exception. Five, plain view doctrine.
6 Six, consent. And seven, abandonment.

7 THE COURT: Is this not hot pursuit?

8 MR. DEJONG: I don't think that's what the Court
9 of Appeals was talking about in hot pursuit.

10 THE COURT: Well, what do they mean by hot
11 pursuit?

12 MR. DEJONG: The alarm goes off down here at Bank
13 of America, they find somebody running into a car out of
14 the Bank of America, they chase that car. I think that is
15 hot pursuit. I don't think in this case -- and I think
16 even in a hot pursuit, Your Honor, there has to be some
17 probable cause that a crime has been committed. That's
18 what would lead to the hot pursuit. I mean, pursuit, if
19 that's the case, then anytime someone fails to stop for a
20 blue light, I don't think that gives the officers, under
21 the hot pursuit exception, the right under -- or as an
22 exception to the Fourth Amendment to search the vehicle
23 when they stop, or their person.

24 Now, we can get into the *Terry*, but I'm not getting
25 into *Terry* on this one, Your Honor. I just -- my

1 contention was if there was an arrest, it was not a valid
2 arrest. And then that would be the only exception that I
3 see under the seven exceptions set forth that they would
4 have a right to search him, and especially his backpack.
5 His person might be a little different, but I don't think
6 the backpack is.

7 THE COURT: Yes, sir.

8 MR. THEM: Your Honor, it's not written in the
9 incident report, but the officers just told me that when
10 the Defendant started to flee, he told the Defendant to
11 stop. Stop or words to that effect. So, in effect, he
12 disobeyed a lawful police officer, a lawful order of a
13 police officer. I think if a police officer stopped you at
14 one-thirty in the morning in a situation like this, and
15 while that police officer is checking to see whether the
16 name and birth date you gave him is bogus -- and if we can
17 look at it in hindsight -- he knew it was bogus. And he
18 knew what was going to come up. And he knew he was going
19 to get in trouble. And he knew he was going to get
20 arrested for that. And he knew he was going to get
21 searched. And he knew he'd be in the situation he was in
22 right here. So he decided to run. The officer had
23 probable cause to stop that fellow, to find out what was
24 going on. He ordered him to stop and he did not. So
25 technically, we have the tag light situation that he could

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Jury Voir Dire

29

1 have arrested, but I believe his testimony is going to be,
2 had it been nothing but a tag light, he probably would have
3 written him a warning and sent him on his way. He would
4 not have arrested him. But he could have arrested him for
5 the tag light. But at the point in time he bolts after
6 giving a name and address, and then fails to obey a lawful
7 police officer's -- a police order to stop, that is
8 something that he could arrest him for. That's the
9 linchpin, those two things there.

10 THE COURT: All right. Any other motions from
11 the Defendant?

12 MR. DEJONG: No, Your Honor.

13 THE COURT: All right. We'll still address the
14 404(b) later. Let's take a short break. I want to do a
15 little research on this. We'll go ahead -- we'll let the
16 jury come in. We'll go ahead and qualify our jury. And
17 once we get a jury picked, we'll revisit this, and also
18 revisit the 404(b).

19 MR. DEJONG: Thank you, Your Honor.

20 THE COURT: We'll take about a fifteen minute
21 break. The jury can come in. We're probably going to need
22 a lot of seats for the jury because we've got over forty
23 coming in, I think.

24 (WHEREUPON, the court stood at recess for a short
25 break.)

1 (WHEREUPON, the jury panel entered the open court at
2 approximately 10:36 p.m.)

3 THE COURT: Thank you very much. Please be
4 seated, ladies and gentlemen. Thank you for your patience.
5 We're now ready to select a jury for the trial of the next
6 case. We need to select jurors who are fair and impartial.
7 The State of South has brought a charge against Mr.
8 Marshall Heath Collins. These indictments that I have
9 before me are the charging papers by which the case is
10 brought before this court. Certainly it's no evidence of
11 guilt. It's not any inference of guilt. Guilt of the
12 Defendant, of course, has to be established by the State of
13 South Carolina with proofs beyond any reasonable doubt,
14 satisfying a jury of that guilt.

15 The indictments I have before me state that here in
16 Pickens County on or about October the 2nd of 2009 that Mr.
17 Collins was in possession of an illegal drug with the
18 intent to distribute the same, that substance being
19 Alprazolam and that not being authorized by law.

20 I also have an indictment that says on or about the
21 same day he was in possession with intent to distribute a
22 quantity of controlled substance, Oxycodone. Again, not
23 authorized by law.

24 On the same date of October the 2nd, 2009 there's also
25 an indictment that says that Mr. Collins knowingly sold or

1 manufactured, delivered or brought into the State or either
2 provided financial assistance to aid and abet, otherwise
3 sale or manufacture or deliver into the State or was in
4 actual or constructive possession of more than ten grams of
5 methamphetamine, this constituting the offense of
6 trafficking in methamphetamine, a controlled substance.

7 And on that same date there's another indictment that
8 says that Mr. Collins was in possession of a pistol during
9 the commission of a crime designated as a violent crime,
10 that being trafficking the methamphetamine.

11 All these indictments have been presented to this
12 Court, bringing those charges. He's entered a plea of not
13 guilty to each of these charges. That places the burden on
14 the State to prove his guilt.

15 I'm going to be the Judge of the law in this case and
16 decide what law is applicable and how the law applies. We
17 need to find twelve fair and impartial jurors to be the
18 judges of the facts in this case, determine what the facts
19 are. You've been qualified already, ladies and gentlemen,
20 to serve as jurors this week. I need to ask you some
21 additional questions about this particular case to
22 determine your eligibility to serve in this matter.

23 First of all, is there any member of the jury panel
24 have any prior knowledge directly or indirectly through
25 media or otherwise about this alleged incident that

1 allegedly occurred on or about October 2nd, 2009 here in
2 Pickens County in the City of Pickens. If you have any
3 prior knowledge from any source, would you please stand?

4 (No response.)

5 THE COURT: Thank you. There is no response.

6 Is there any member of the jury panel related by blood
7 or marriage to Mr. Marshall Heath Collins. If so, would
8 you please stand?

9 (No response.)

10 THE COURT: Is there a member of the jury panel
11 who has a close business, a social or personal relationship
12 with Mr. Collins. If so, would you please stand?

13 (No response.)

14 THE COURT: Potential witnesses in this case
15 would include from the Pickens Police Department Josh
16 Blair, Craig Sapp, Brad Smith, Samuel Byers. From the
17 Greenville County Crime Lab would be potentially Kelly
18 Smoak, James Armstrong, Tabatha Fricks. Is there any
19 member of the jury panel related by blood or marriage to
20 any of these possible witnesses? If so, please stand.

21 (No response.)

22 THE COURT: Is there any member of the jury panel
23 who has a close business, a social or personal relationship
24 with any of these potential witnesses? If so, would you
25 please stand? Yes, sir, your name, please?

1 THE JUROR: Thomas Coleman.

2 THE COURT: And which of the witnesses do you
3 know?

4 THE JUROR: Brad Smith. I go to church with him.

5 THE COURT: All right. Do you see him on a
6 regular basis then?

7 THE JUROR: Yes. And he was the leader of my
8 college career group.

9 THE COURT: Okay. I don't want to put you in an
10 awkward position. I'm going to excuse you from the trial
11 of this case. Again, your name, please, sir.

12 THE JUROR: Thomas Coleman.

13 THE COURT: All right, sir. If you would just be
14 seated. Yes, sir.

15 THE JUROR: My name is Ronnie Owens. I'm good
16 friends with Josh Blair's daddy. I don't know Josh
17 personally.

18 THE COURT: Okay. The fact that you are friends
19 with his father, you don't know this particular officer who
20 may be called upon to testify, would that affect your
21 ability to be a fair juror in this case? In other words if
22 he were to testify, you'd be selected as a juror and you'd
23 be under an oath to weigh all the evidence fairly and
24 equally with both sides. And if that relationship in any
25 way would cause you any pause in serving as juror, then we

1 have other jurors available. But if you feel like you
2 could be fair and impartial to both sides in light of this
3 relationship, then obviously you'd be eligible to serve.
4 But if you believe that you could be fair to both sides,
5 you think that that relationship with his father would
6 interfere with your ability?

7 THE JUROR: No, sir.

8 THE COURT: You could be fair to the State and
9 you could be fair to the Defendant as well?

10 THE JUROR: Yes, sir.

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

13 Is there any member of the jury panel who has
14 expressed or formed an opinion in any way about the facts
15 in this case? If so, would you please stand?

16 (No response.)

17 THE COURT: Is there any member of the jury panel
18 aware of any bias or prejudice that you would -- that would
19 interfere with you in any way if you were selected as a
20 juror in this case? If so, would you please stand?

21 (No response.)

22 THE COURT: Is there any member of the jury panel
23 who is a contributing member of any organization whose
24 primary concern is the promotion of law enforcement or
25 victims' rights, such as the Sheriff's Association, MADD,

1 SADD, CAVE, PARR, any such organization. If you're a
2 contributing member, would you please stand?

3 (No response.)

4 THE COURT: Thank you. There is no response.

5 Is there any member of the jury panel or a member of
6 your immediate family involved in law enforcement or work
7 for any law enforcement agency? If you or a member of your
8 immediate family has been involved or is involved in law
9 enforcement, please stand.

10 All right. We'll start with you. Your name, please?

11 THE JUROR: Leah Stavish.

12 THE COURT: And what relative?

13 THE JUROR: My mother was the victim's advocate
14 at Clemson for a few years.

15 THE COURT: All right. If you'd remain standing
16 a moment, please?

17 Yes, ma'am, your name for the record, please?

18 THE JUROR: Cathy Vinson.

19 THE COURT: All right. And what relative did you
20 have?

21 THE JUROR: My husband.

22 THE COURT: Okay. And he's now retired?

23 THE JUROR: He's retired. He's currently the
24 Interim Prison Director at the Pickens County Prison.

25 THE COURT: All Right. And what agency did he

1 work for again?

2 THE JUROR: The City of Easley.

3 THE COURT: All right. If you'd remain standing.

4 Your name, please, ma'am?

5 THE JUROR: Martha Crowe.

6 THE COURT: All right, ma'am, and what relative
7 did you have?

8 THE JUROR: My deceased husband was a magistrate
9 in Pickens County and my son-in-law is a Deputy Sheriff in
10 Anderson County.

11 THE COURT: Is he active now or he was both in
12 the past?

13 THE JUROR: Yes, sir.

14 THE COURT: All right. If you'd remain standing.
15 Yes, sir, your name, please?

16 THE JUROR: Robert Person. And I'm not sure if
17 immediate applies to grandfather as well. Forty years ago,
18 my grandfather was a policeman.

19 THE COURT: All right, sir. Where was he a
20 police officer?

21 THE JUROR: Atlanta.

22 THE COURT: Yes, ma'am, your name, please?

23 THE JUROR: Dodie Nealy.

24 THE COURT: All right.

25 THE JUROR: And my father-in-law is Robert Nealy.

1 THE COURT: All right. Those of you who are
2 standing, you have relatives involved in law enforcement or
3 is a judge or in victims' advocacy. We need to select
4 jurors who are fair and impartial in this case who can
5 listen to all of the evidence and weigh all of the evidence
6 fairly for both the State and for the Defendant, make a
7 decision on the evidence that you hear in this courtroom,
8 the law that I give you and that alone.

9 Is there any member of the jury panel that are now
10 standing up, any of you believe that because of this
11 relationship you have with relatives that you could not be
12 fair in this particular case? I'll ask if you believe you
13 could not be fair to remain standing. If you believe you
14 could be fair, please be seated at this time.

15 Let the record reflect that all the jurors have been
16 seated.

17 Is there any member of the jury panel or a member of
18 your immediate family ever been the victim of a drug
19 related crime or accident? If you or a member of your
20 family have been a victim of a drug related crime or an
21 accident, would you please stand?

22 (No response.)

23 THE COURT: Thank you. There is no response.

24 Is there any member of the jury panel ever been or a
25 member of your immediate family who's ever been a victim of

1 a crime in which a gun or a weapon was involved. If so,
2 would you please stand?

3 (No response.)

4 THE COURT: Thank you. There is no response.

5 At this time, I'll ask the attorneys if you would,
6 please stand and introduce yourselves to the jury. Mr.
7 Them.

8 MR. THEM: My name is Peter Them. I work in the
9 Solicitor's Office.

10 THE COURT: Mr. DeJong.

11 MR. DEJONG: Thank you, Your Honor. May it
12 please the Court. I'm John DeJong. I practice law here in
13 Pickens County. Seated here is my client, Mr. Collins.
14 Also seated at counsel table is Mr. Johnny Duncan. He is
15 my investigator.

16 THE COURT: Is there any member of the jury panel
17 related by blood or marriage to any of these -- either of
18 the attorneys or the other folks who've been introduced.
19 If so, would you please stand?

20 (No response.)

21 THE COURT: Is there any member of the jury panel
22 who has a close business, a social or personal relationship
23 with either of the attorneys or to Mr. Johnny Duncan? If
24 so, would you please stand?

25 (No response.)

1 THE COURT: Is there any member of the jury panel
2 ever been involved in any litigation in which you or the
3 opposing side was represented by either Mr. Them or Mr.
4 DeJong? If you've been involved in litigation and either
5 of these attorneys represented you or the opposing side,
6 would you please stand?

7 (No response.)

8 THE COURT: Thank you. There is no response.

9 The State of South Carolina and Mr. Marshall Heath
10 Collins desire to have fair and impartial jurors to hear
11 this case to resolve the factual dispute that is there, to
12 make sure that the State meets its burden of proof. Not
13 only is that their desire, but they -- each side deserves
14 to have fair and impartial jurors to hear this case. Is
15 there any member of the panel aware of any reason
16 whatsoever that in this particular case you believe you
17 could not be fair to both the State of South Carolina, to
18 Mr. Collins, and if you're selected render a verdict that
19 would speak the truth based upon the evidence that you hear
20 in this courtroom, the law that I give you and that alone.
21 If for any reason you believe you could not be a fair
22 juror, would you please stand?

23 (No response.)

24 THE COURT: Thank you. There is no response.

25 Any other questions from the State?

1 MR. THEM: Nothing on behalf of the State, Your
2 Honor.

3 THE COURT: From the Defense?

4 MR. DEJONG: Your Honor, are you declining to
5 propound my request number nine?

6 THE COURT: I thought I had covered them all.

7 MR. DEJONG: You might have. I just apologize.
8 I didn't hear it.

9 THE COURT: Well, maybe I didn't include that at
10 all. I think -- I covered the attorneys and the parties
11 here. Is there any member of the jury panel related by
12 blood or marriage to anyone who works in the Solicitor's
13 Office or in the Public Defender's Office? If so, would
14 you please stand?

15 Again, your name for the record?

16 THE JUROR: Dodie Nealy.

17 THE COURT: And Ms. Nealy, you're related to ---

18 THE JUROR: Robert Nealy.

19 THE COURT: And he works in the Solicitor's
20 office?

21 THE JUROR: (Affirmative nod.)

22 THE COURT: You've indicated that you could be
23 fair in this case, make a decision on the evidence and the
24 law and that alone?

25 THE JUROR: Yes.

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Jury Voir Dire

1 THE COURT: Do you still have that position?

2 THE JUROR: Yes.

3 THE COURT: You do?

4 THE JUROR: Yes.

5 THE COURT: All right. Thank you. You may be
6 seated. Any other questions.

7 MR. THEM: Nothing on behalf of the State, Your
8 Honor.

9 MR. DEJONG: None on behalf of Mr. Collins, Your
10 Honor.

11 THE COURT: All right. Let's empanel a jury.

12 MR. DEJONG: Five and five, Your Honor?

13 THE COURT: Five and five. And we'll get one
14 alternate.

15 MR. DEJONG: Thank you, Your Honor.

16 THE CLERK: When I call your name, please stand
17 up.

18 Juror number 99, Robert G. Person. What says the
19 State?

20 MR. THEM: Present the juror.

21 THE CLERK: The Defense?

22 MR. DEJONG: Please swear the juror.

23 THE CLERK: Please come around and be seated.

24 Juror number 86, Vernon L. Morris. What says the
25 State?

1 MR. THEM: Present the juror.

2 THE CLERK: The Defense?

3 MR. DEJONG: Please excuse this juror from the
4 trial of this case.

5 THE CLERK: You may be seated.

6 Number 111, Mary O. Steed. What says the State?

7 MR. THEM: Present the juror.

8 THE CLERK: Defense?

9 MR. DEJONG: Please swear the juror.

10 THE CLERK: Please come around and be seated.

11 Juror Number 8, Carling B. Aubry. What says the
12 State?

13 MR. THEM: Present the juror.

14 MR. DEJONG: I'm sorry, Madam Clerk. What
15 number?

16 THE CLERK: Number 8.

17 MR. DEJONG: 8? Thank you, ma'am.

18 THE CLERK: Number 8, Carling B. Aubry.

19 MR. DEJONG: Please excuse this juror from the
20 trial of this case.

21 THE CLERK: Number 51, Judy D. Harris. What says
22 the State?

23 MR. THEM: Present the juror.

24 MR. DEJONG: Please swear the juror.

25 THE CLERK: Please come around and be seated.

1 Number 14, Sheila H. Brawley. What says the State?

2 MR. THEM: Present the juror.

3 MR. DEJONG: Please swear the juror.

4 THE CLERK: Please come around and be seated.

5 Number 119, Cathy S. Vinson. What says the State?

6 MR. THEM: Present the juror.

7 THE CLERK: Defense?

8 MR. DEJONG: Please excuse this juror from the
9 trial of this case.

10 THE CLERK: Number 3, Mike E. Adams, Jr. What
11 says the State?

12 MR. THEM: Present the juror.

13 THE CLERK: Defense?

14 MR. DEJONG: Please swear the juror.

15 THE CLERK: Please come around and be seated.

16 Number 126, Nathan S. Williams. What says the State?

17 MR. THEM: Present the juror.

18 THE CLERK: Defense?

19 MR. DEJONG: Please swear the juror.

20 THE CLERK: Please come around and be seated.

21 Number 69, Katherine D. Lackey. What says the State?

22 MR. THEM: Present the juror.

23 THE CLERK: Defense?

24 MR. DEJONG: Please swear the juror.

25 THE CLERK: Please come around and be seated.

1 Number 39, Charles A. Finley. What says the State?

2 MR. THEM: Present the Juror.

3 THE CLERK: Defense?

4 MR. DEJONG: Please excuse this juror from the
5 trial of this case.

6 THE CLERK: Number 6, Crystal A. Alexander.

7 MR. THEM: I'm sorry, you said number 6?

8 THE CLERK: Yes, sir.

9 MR. THEM: Thank you, ma'am. Present the juror,
10 please.

11 THE CLERK: Defense?

12 MR. DEJONG: Please swear the juror.

13 THE CLERK: Please come around and be seated.

14 Number 28, Martha B. Crowe. What says the State?

15 MR. THEM: Present the juror.

16 THE CLERK: Defense?

17 MR. DEJONG: Please swear the juror.

18 THE CLERK: Please come around and be seated.

19 Number 110, Leah F. Stavish. 110. What says the
20 State?

21 MR. THEM: Present the juror.

22 MR. DEJONG: Please swear the juror.

23 THE CLERK: Please come around and be seated.

24 Number 125, Dennis J. Williams.

25 MR. THEM: Present the juror.

1 THE CLERK: Defense?

2 MR. DEJONG: Please swear the juror.

3 THE CLERK: Please come be seated.

4 Number 50, Douglas W. Hannah. What says the State?

5 MR. THEM: Present the juror.

6 MR. DEJONG: Please swear the juror.

7 THE CLERK: Please come be seated.

8 THE COURT: All right. We'll have one alternate.

9 The strikes are one and two.

10 THE CLERK: Number 73, Steven M. Love. What says

11 the State?

12 MR. THEM: Please excuse the juror.

13 THE CLERK: Please be seated.

14 Number 31, Charlie E. Ellenburg, III. What says the

15 State?

16 MR. THEM: Present the juror.

17 THE CLERK: Defense?

18 MR. DEJONG: Please excuse this juror from the

19 trial of this case.

20 THE CLERK: Number 37, Sally J. ---

21 THE JUROR: Theberge.

22 THE CLERK: -- Theberge. What says the State?

23 MR. THEM: Present the juror.

24 THE CLERK: Defense?

25 MR. DEJONG: Please swear the juror.

1 THE CLERK: Please come around and be seated.

2 THE COURT: Any matters we need to take care of
3 from the State as far as the selection of the jury in this
4 matter?

5 MR. THEM: Nothing on behalf of the State, Your
6 Honor.

7 THE COURT: From the Defense?

8 MR. DEJONG: Nothing on behalf of Mr. Collins,
9 Your Honor.

10 THE COURT: All right. Thank you very much.

11 Ladies and gentleman, thank you for being with us for
12 this selection process. You're free to go for the day. I
13 need you to please call back tonight after six o'clock.
14 There will be an instruction for you then as to whether or
15 not you need to report back or to call back at some time
16 tomorrow for perhaps another trial to start. I don't know
17 how long this one will take and so forth, but I need for
18 you to call back tonight after six o'clock. You're free to
19 leave at this time.

20 Everyone else please remain seated while the jury
21 leaves.

22 (WHEREUPON, the jury panel exits the open court at
23 approximately 11:12 a.m.)

24 THE COURT: Ladies and gentlemen, you've seen the
25 selection process, maybe more than once in the times you've

1 been here this week. You've seen the confidence that the
2 attorneys have placed in you by selecting you to serve on
3 this particular case that we're about to begin. I'm
4 honored to get to work with you, to be a fellow judge with
5 you.

6 I, as I stated earlier, will be Judging the law in
7 this case and deciding what the law is. And you'll be
8 judging the facts in the case. Where you're sitting right
9 now may give you some pause about the situation you find
10 yourselves in, maybe never having served as a juror before.
11 Some of you have not had that experience, I'm confident.
12 And you're sitting there in a jury box wondering, well, how
13 did this happen to me? And why am I here? I cannot
14 possibly be a juror in this case. You have the skills that
15 you need, believe me, ladies and gentlemen, because you
16 have the good common sense that you've been blessed with.
17 You have the everyday experiences that you enjoy in your
18 home life and your work and your social activities,
19 whatever it may be. And that common sense and everyday
20 experiences are what's going to serve you well as you
21 listen to this case, listen to the testimony that is given
22 and to make a decision that will be based on that common
23 sense to decide what the facts are.

24 You've committed to both sides to be fair and
25 impartial, to make a decision on the law and the evidence

1 and that alone. And I'm grateful that we have jurors who
2 are willing to do this. It makes me proud that you've
3 accepted that responsibility. I'll be giving you the law
4 of the case at the end of the trial, after all the evidence
5 is in and arguments are made. Under your duties as jurors
6 you're to accept that law and apply the law as I state it
7 to you.

8 Let me give you a little idea of how we'll be
9 operating. We'll normally try to go for an hour, an hour
10 and fifteen, sometimes an hour and thirty minutes before we
11 take a break. We'll normally try to break for lunch around
12 one o'clock, and depending on what other matters might be
13 going on, whether there are some other responsibilities I
14 have during the lunch break, we'll decide an hour an hour
15 and a half, an hour and fifteen minutes for lunch.

16 Please know that your comfort is vitally important.
17 To be a good listener it's essential to be a good fact
18 finder. If anytime you're uncomfortable and need to take a
19 break and I haven't called for a break, please let me know.
20 Let one of the bailiffs know. You'll perhaps this week
21 have a chance to meet them. Ms. Wright over to your left
22 is here. And at the back door is Mr. Hendricks. He'll
23 certainly, though, be glad to help you. We also have Mr.
24 Wilson over here helping us today. So any of these
25 bailiffs will certainly get word to me that you need to

1 take a break or any other needs that you have. Mr.
2 Welborn's out today because of a health issue with his
3 wife. He has his valued deputy clerk, Ms. Watson here.
4 She'll be working with us this week. You certainly can get
5 her attention if you need to at any time. I've introduced
6 already Ms. Hanks. Ms. Danette Hanks is the court
7 reporter. She's taking down the things that are said
8 during the course of the trial. She's keeping a record, a
9 full record of everything that takes place during the
10 course of these proceedings. Lindsay Builder is seated
11 beside me. He's a recent law school graduate. He's my law
12 clerk for this year. I'm glad to have him, but he'll
13 certainly be of assistance to you and to me, a valuable
14 assistance to me as the case develops.

15 In a few moments the attorneys will have a chance to
16 make an opening statement to you. They'll give you an
17 overview of what they feel is important in their own
18 perspective of what you need to be listening for as the
19 case develops. After that, there will be an opportunity to
20 -- for the State to present its evidence. There will be
21 witnesses who will be sworn in to tell the truth. They
22 will be examined and cross examined by the attorneys.

23 Sometimes in the course of a trial there may be an
24 objection to made to -- these lawyers are trained in
25 procedural matters and rules of evidence. They may feel

1 that a question is improper, an exhibit is improper.
2 They'll make an objection. My job, of course, is to -- one
3 of my jobs is to rule on those objections, to either
4 sustain it or overrule it. Sometimes just in the course of
5 a trial there are matters that come up that involve the law
6 only and don't involve your participation as fact finders.
7 When those stages of the trial come up or whether there's
8 another legal matter that has to take place, then it might
9 necessitate you being removed from the court room back into
10 your jury room.

11 As the judge of the law, I want to make the very best
12 decision I possibly can as the law giver. I'm sure you do
13 as the fact finder. Sometimes that will require me to do
14 some legal research for a while. If it looks like it's
15 going to be extensive, I'll certainly let you know and you
16 can take a more extensive break. It may require me to hear
17 argument of counsel or hear some testimony that would not
18 be presented before a jury, things of that nature. I hope
19 you don't feel like that you're being put upon or things
20 are being hidden from you while you're back there and we're
21 out here working, but I hope you understand it's the
22 difference in our roles as judges. As the Judge of the
23 law, I've got to sometimes hear those matters. You as the
24 judge of the facts -- and when you determine what those
25 facts are at the end of the case, after I've explained the

1 law to you and you're back in your jury room, I'm a fellow
2 Judge like you are, but I'm not going to be back there with
3 you giving you any ideas about what the facts are, because
4 I'm not going to have any idea about the facts. The law of
5 South Carolina prohibits me from having opinions about the
6 facts or giving any opinions about the facts. So my focus
7 is just on the law. Your focus will be on the facts and
8 while I won't be back there with you helping you in your
9 factual findings, you sometimes will not be out here
10 assisting me in my legal determinations. After all the
11 evidence is in, the attorneys will, again, have a chance to
12 address you in a closing statement. I'll then instruct you
13 on the law, and the case will be yours to decide.

14 Only after all the evidence is in should you be
15 discussing the case. We'll take a break in a few moments.
16 You shouldn't be talking about the case or speculating.
17 You haven't heard anything at all about the case. I've
18 read to you some allegations from an indictment. That's
19 not evidence and until all the evidence is in, you should
20 not discuss the case. Don't let anyone else discuss the
21 case with you.

22 I mentioned before that serving as a juror is a high
23 calling and it's something that you perhaps want to share
24 with your loved ones and business associates and share the
25 experience that you've had as a vital part of the judicial

1 system. But the time for that sharing of your experiences
2 is when the case is over, completed, not while it's going
3 on. The commitment you're making to these parties is that
4 you're going to decide the case from what takes place here
5 in this courtroom and that alone, not from what your spouse
6 may think or what some news article may say.

7 I don't know whether there will be any news coverage
8 of this case or not, but if that were to be the case in the
9 morning paper, you should make sure you don't read any
10 articles about it or listen to anything on television or
11 radio about it. Your loved ones can clip any news articles
12 or tape any television or radio announcements. You need to
13 fulfil the commitment you've made. The purity of the
14 process is very important because of the commitment you've
15 made. And I want to make sure you understand that.
16 Likewise, I need to state to you that the Supreme Court of
17 South Carolina through our Chief Justice has issued an
18 order that Trial Judges are required to give to jurors
19 about the -- a violation of the law if you do any
20 independent research whatsoever about the case you're
21 hearing. It would be improper for you in any way, during
22 breaks or lunch breaks or in the evening, to do any
23 research and find out about some words, the meaning of a
24 legal phrase or a definition of something that you perhaps
25 didn't know or try to go to a library and find out anything

1 about the case or check on the internet. That would be
2 highly improper for you to do that and against your oath
3 and against my instruction to you. I say that not to tempt
4 you in any way, because we're curious by nature, but all
5 those curiosities can be fulfilled after the trial is over.
6 These fine attorneys, I'm confident, are going to give you
7 all of the information you need to make a good sound, valid
8 decision in this matter. Your commitment is to do justice
9 to both sides and I'm grateful that you've accepted that
10 responsibility.

11 The last juror selected will occupy the alternate's
12 seat. We have an alternate just in case some emergency
13 were to come up, some illness befall one of the jurors, we
14 won't have to start the trial all over again. We can
15 proceed with that alternate. She's every bit as much a
16 part of the jury as anyone else, because if that need
17 happens, she'll just step into the shoes of the juror who
18 has to be replaced. She'll always occupy that alternate
19 seat. We also need to have a foreman. The foreman will
20 occupy the seat on the front row, closest to the jury -- to
21 the witness stand here. A foreperson is an individual who
22 will somewhat be the liaison with the Court. Sometimes
23 when you're back in your room you may have a special need
24 that you have. The temperature might need adjusting, that
25 you don't know how to handle. The snacks might have run

1 out. Whatever the need is, it might be a legal question
2 for me. It might be a question for the Clerk's office and
3 their staff. The foreperson, on behalf of whoever has a
4 need -- it might be to call to pick up a child or whatever
5 it may be as the case may develop, that foreperson would
6 write that note out, give it to one of the bailiffs.
7 They'd get it to the appropriate person. We'd get that
8 taken care of for you.

9 Sometimes in the course of a trial there might be
10 exhibits that are offered into evidence or a document or a
11 picture or whatever it may be that a lawyer might want to
12 pass it around to the jury. They would show it to the
13 foreperson and let the foreperson look and pass it around
14 to others. The foreperson would also be the one that when
15 all of the evidence is in and I've instructed you on the
16 law and you're ready to begin your deliberations, that
17 foreperson would make sure that all of the jurors have an
18 opportunity to fully discuss their views of the evidence,
19 and on behalf of the entire jury would sign the verdict
20 form and present it back to the Court for publishing. I'm
21 going to ask of the first twelve of you that a foreperson
22 be selected. If you would, just write that name on a piece
23 of paper and give it to the bailiff and when you come back
24 out -- we're going to take a short break -- you can -- the
25 foreperson can take that seat. The alternate will have her

1 seat. The rest of you, sometimes you like to stay in the
2 same seat that you've had. Sometimes you might want to
3 move around and get on one end or the other, or back row or
4 front row, you're free to do that any way you see fit. But
5 those two will always occupy those designated seats.

6 We had some legal matters to take care of this morning
7 earlier. There's a little bit of time left on that. I
8 don't think it'll take us a very long time for you to take
9 a break and go out and about, but I think by the time you
10 select a foreperson and take a -- we're all going to take a
11 short break, we'll be ready to proceed with this trial. So
12 we're going to be working on some legal matters while
13 you're back there. If you would, just select a foreperson
14 and we'll call you back as soon as we can.

15 Let me remind you again not to discuss the case. You
16 may retire to your jury room.

17 (WHEREUPON, the jury exited the open court at
18 approximately 11:27 a.m.)

19 THE COURT: All right. On the suppression
20 motion, I think it would behoove me, to make a valid
21 decision on that, to hear a little bit of testimony. I'd
22 like to do that. Also, I need to rule on the 404(b). Do
23 you want to take a break on the front-end or the back-end?
24 I'll be glad to work with y'all either way. We can ---

25 MR. THEM: Your Honor, I've got some serious

1 scheduling problems with the Greenville Crime Lab people.
2 With budget cuts and all of that, they're down to two lab
3 techs and I've got one of them on standby to come over
4 here. I've taken the lead chemists and the number two
5 chemists and bringing them over here. And I've got them on
6 hot standby, and they're on hot standby someplace else.

7 What I'd like to be able to do, I would think that by
8 the time we do motion hearings and arguments and things of
9 that nature and opening arguments, we would easily be at
10 the lunch break, assuming we get the opening arguments in
11 before the lunch break. I would hate to do the opening
12 arguments and then immediately break for lunch. Hopefully,
13 we could break early and come back early and start early.
14 But I'd like to be protected. I've got the main arresting
15 officer witness. I've got the back-up officer. I've got
16 the ID officer and potentially one other officer that I
17 think would pretty much occupy the afternoon. I'd like to
18 be able to be protected at the end of the day that I
19 wouldn't have to drag those people over here, just bring
20 them over here and have them sitting here and just wasting
21 time, from Greenville. I'd like to be protected well
22 enough that I could call them first thing, nine o'clock
23 tomorrow morning. I can get them in and get them out and
24 get them back to work.

25 THE COURT: Well, let's see how we progress this

1 afternoon. We may go -- they need to -- if they need to go
2 to another Court or other obligations, I mean, are they --
3 have they got an obligation for the whole afternoon or are
4 they -- or can they still -- I mean, they can get over here
5 in an hour and a half, surely.

6 MR. THEM: Yeah. They can get over here in an
7 hour and a half, but my problem is, I've got them coming
8 here at one o'clock because I thought we'd be gone further.

9 THE COURT: Well, did you want to put them up
10 first?

11 MR. THEM: It doesn't fit logically that way.

12 THE COURT: Well, why don't you tell them we
13 won't need them at one o'clock. But, you know, they can --
14 you can let them know at one o'clock whether we would need
15 them this afternoon, I hope.

16 MR. THEM: Thank you, sir.

17 MR. DEJONG: I understood you were asking about a
18 break now or at the end. With all due respect, Your Honor,
19 I should not drink water. Coffee, I can do fine with, but
20 water does not work well. If we could have a little break
21 right now.

22 THE COURT: All right. Let's take a ten minute
23 break and then we'll hear from the officer about the
24 circumstances surrounding this matter and I'll make a
25 ruling on that, and then we'll get into the other. Is

1 there anything else out there other than the 404(b) and my
2 ruling on the suppression.

3 MR. DEJONG: I can't -- unless I think of
4 something during this trial.

5 THE COURT: All right. Let's take about a ten
6 minute break and then we'll be ready to proceed with the
7 testimony.

8 (WHEREUPON, the court stood at recess for a short
9 break.)

10 THE COURT: All right, let's get started now.
11 Mr. Them, are you ready? Are you ready to call your first
12 witness, Mr. Them?

13 MR. THEM: The Court takes the position the
14 burden is on me to establish rather than Mr. DeJong for his
15 motion?

16 THE COURT: Well, we need to -- I would like to
17 know how -- I want you to call a witness to tell me the ---

18 MR. THEM: That's fine.

19 THE COURT: I need to have a factual background
20 to make a ---

21 MR. THEM: I understand.

22 THE COURT: -- valid decision as to whether or not
23 it should be suppressed.

24 THE CLERK: Place your left hand on the bible and
25 raise your right hand, please. Do you solemnly swear or

1 affirm the testimony you're about to give in this case be
2 the truth, the whole truth and nothing but the truth, so
3 help you God?

4 WITNESS: I do.

5 THE CLERK: State your full name for the record.

6 WITNESS: Joshua Adam Blair.

7 THE CLERK: Please be seated.

8 JOSHUA ADAM BLAIR,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE COURT: You may proceed, sir.

11 MR. THEM: Thank you, sir.

12 DIRECT EXAMINATION

13 BY MR. THEM:

14 Q. Where are you employed, sir?

15 A. I work for the Pickens Police Department.

16 Q. And how long have you been employed there?

17 A. About a year and a half now.

18 Q. Okay. You're certified in the State of South
19 Carolina?

20 A. I am, sir.

21 Q. Any prior law enforcement experience before Pickens?

22 A. Yes, sir.

23 Q. What?

24 A. Various -- I've worked at the Department of
25 Corrections for Perry Correctional Institution and I also

1 worked for Greenville County Detention Center.

2 Q. Okay. Let me call your attention to the night of --

3 or early morning of, whichever you choose to call it,

4 October 2nd of 2009. Were you employed at the Pickens

5 Police Department then?

6 A. I was.

7 Q. Were you on duty?

8 A. I was.

9 Q. What shift were you working?

10 A. I worked a night shift, twelve hours, six p.m. to six

11 a.m.

12 Q. Okay. What is the general level of activity on the

13 streets of the City of Pickens during that time shift?

14 A. In that area or that time of the year, it usually dies

15 off a little early, somewhere around ten thirty to eleven

16 o'clock p.m.

17 Q. After midnight, is it almost a ghost town?

18 A. It is. We have a running joke. We roll the sidewalks

19 up.

20 Q. Okay. And this may seem a stupid question, but how

21 often do you see a car after midnight, if you're riding up

22 and down Main Street patrolling?

23 A. To see another civilian car, it takes me, you know,

24 sporadically once every twenty minutes or so.

25 Q. Would you tell me the first thing that you saw that

1 night and where it was and what caught your eye that has
2 anything to do with this case?

3 A. Okay. Do you mind if I refer back to my notes for a
4 time?

5 Q. Sure, sure, go ahead.

6 A. Exact times. Thank you, sir. I've got it listed here
7 at around one thirty-three in the morning, which, you know,
8 it's probably around that time frame, maybe a few minutes
9 before, I was traveling down Main Street, going towards
10 Tony's.

11 Q. Tony's Restaurant?

12 A. Tony's Restaurant, yes, sir.

13 Q. Okay.

14 A. I got to right at the hill crest area of that major
15 hill right near the Presbyterian Church, I noticed a
16 vehicle pull up and stop at the stop sign and the road that
17 was coming up to Florence Street.

18 Q. Now, the sign at the intersection they pulled up, was
19 that on the right-hand side or the left-hand side?

20 A. That would be on my right side.

21 Q. Okay.

22 A. I noticed the vehicle had plenty of room to turn in
23 front of my vehicle or perceivably to me, they had plenty
24 of room in turn of my vehicle. But it seemed like they
25 were kind of lagging for something, and it just kind of

1 seemed suspicious or odd to me because usually people will,
2 if they have enough room at that time of day, they'll just
3 pull on out, which, you know, I didn't think much of. It
4 kind of noted me a little bit, you know, I was like that --
5 I'm going to keep an eye on that. As I approached the hill
6 and passed his vehicle, he went ahead and pulled out. And
7 so I went ahead and turned around and went back to the
8 vehicle.

9 Q. When he pulled out, did he go in the same direction as
10 you were going or ---

11 A. No, sir.

12 Q. -- or back towards the center of town?

13 A. No, sir. He turned left going back towards the main
14 center of town, towards the courthouse area. As I turned
15 around, I noticed -- I didn't quite see the tag by
16 illumination so it appeared to me the tag light was out.
17 So I went ahead and approached the vehicle, pulled up
18 behind them to a point as he turned right onto South
19 Catherine Street. South Catherine Street is where the
20 Village Inn Restaurant is there in town.

21 Q. Okay.

22 A. Again, when he turned to the right, I didn't really
23 catch up enough time for me to completely see, but I didn't
24 see a tag light, again. So I went ahead and got behind him
25 and turned right as well.

1 Q. You did see a tag light?

2 A. I did not see a tag light.

3 Q. Did not. Thank you.

4 A. I went ahead and pulled back around behind him again
5 on South Catherine Street, as he had his left blinker on
6 turning left at West Cedar Rock, which is right over there
7 where the old NAPA Store was. As he turned, I waited for
8 him to complete the majority of his turn. I still did not
9 see an illumination by his tag, and the reason why I waited
10 was because my headlights were directly behind him. I
11 wanted to make sure it wasn't illuminated by my headlight
12 or if it was by a tag light. So I did see him turn, did
13 not see a tag light. So as I pulled out left behind him to
14 go ahead and issue a traffic stop, I turned my lights on
15 halfway through the turn.

16 Q. Your blue lights?

17 A. Yes.

18 Q. Okay.

19 A. My blue lights on my vehicle. He approached the
20 Gravely Law Firm at the corner of 178 and West Cedar Rock.

21 Q. The exact corner from where we are right now?

22 A. Exactly.

23 Q. Okay.

24 A. At that point, he pulled into the parking lot and I
25 pulled behind him as I was shown to do at the Academy.

1 Criminal basic, just pull behind him. Not block him
2 completely but just pull behind him. As I got out of the
3 vehicle and approached his -- I'm sorry.

4 Q. What were your intentions at that point? Were you
5 able to determine at that point, prior to speaking to
6 anyone, whether or not the tag light was working?

7 A. Oh, no, sir. No. At that point, it still looked like
8 it had been blown out, like anybody else's tag light that
9 was out. I mean, it just looked to me like it was
10 completely out.

11 Q. Okay.

12 A. As I approached the vehicle, I got maybe, I don't
13 know, four to six feet away from his trunk. I mean,
14 outside of my vehicle and approach his. That's when I
15 could see a very faint glow of a tag light. I mean, it was
16 not enough to illuminate the tag at any point. At that
17 point, I went ahead and walked up to the -- approached the
18 driver's side of the window and asked the young man inside
19 -- it appeared to me to be a young man, for his license,
20 registration and insurance. And I told him the reason why
21 I stopped him.

22 Q. Did you notice anything unusual about the man when you
23 were talking to him at that initial encounter?

24 A. Yes. What was strange to me, and it's, you know, it's
25 something, you know, it's something that just kind of

1 heightened me up a little bit, was he had his window
2 cracked just a little more -- maybe a couple of inches, an
3 inch or two.

4 Q. He didn't roll it all the way down?

5 A. Right. He didn't roll the window all the way down.
6 And to me that seemed a little suspicious, a little odd.
7 And that is one thing they have told us in the past to look
8 for, for possibly trying to mask the smell of an odor of
9 alcoholic beverage. So I thought maybe ,if nothing else,
10 maybe he had had a few drinks, you know. I asked him for
11 his license and registration and proof of insurance. At
12 that point, he told me he didn't have his license on him,
13 or his wallet, he left it at home.

14 Q. When he was talking to you, where was he looking?

15 A. He was looking dead straight a head out the window --
16 out the windshield. Didn't veer his head towards me. If
17 he did, he just kind of cocked his head over, not really
18 turning his head and eyes in my direction.

19 Q. All right.

20 A. Again, that seemed very strange to me. So I asked him
21 for his ID, registration and insurance information, to
22 which he replied that he didn't have his driver's license
23 on him, but he did give me the name and the date of birth
24 to run by DMV. Again, all of this adding together seemed
25 kind of suspicious to me. I didn't do the normal, just get

1 on the radio and call in the name of date of birth. I went
2 back to my vehicle and pulled up our access on our computer
3 and was going to put in this information so I could get a
4 picture ID to verify if this was the person who gave me the
5 ID.

6 Q. Did you have to get in your car to do that or are you
7 doing that outside of your car?

8 A. I had to get into my car to do it.

9 Q. Okay.

10 A. And as I pulled up the information and started typing
11 in name and date of birth that he gave me, again, I was
12 trying to watch him as best I could because something just
13 didn't seem right. I noticed him get out of his vehicle
14 very quickly with a backpack in his hand and start running
15 down the road, down West Cedar Rock towards CVS at a pretty
16 high rate of speed. In the process of him running away, he
17 did sling the backpack onto his shoulder.

18 Q. Let me stop you for a second.

19 A. Yes, sir.

20 Q. Could you have written a ticket for improper tag
21 light?

22 A. Absolutely.

23 Q. Assuming everything would have checked out on the
24 driver's license and all that, would you have done that or
25 a warning ticket or what?

1 A. Honestly speaking, I had stopped numerous cars that
2 night and I'd just been writing warning tickets for that.
3 And that's probably what would have happened in that
4 instance.

5 Q. At the point in time he told you he did not have his
6 driver's license in possession, could you have written a
7 ticket at that point in time?

8 A. Yes, sir, I could have.

9 Q. Could you have taken him into custody at that point in
10 time?

11 A. Yes, sir, I could have.

12 Q. Okay. So you went back to check, you told us what
13 happened. What did you do when you saw him running?

14 A. I quickly exited my vehicle. Got on the mobile radio
15 that I have, the walkie talkie, and called for backup and
16 told my dispatcher that he was running on foot away from
17 me, and gave her the description, the description of him
18 and the direction that he ran.

19 Q. Okay. And did you continue to pursue him?

20 A. I did.

21 Q. Did you ever apprehend him?

22 A. Eventually, I did.

23 Q. How?

24 A. Well, after running approximately two blocks, he
25 decided he was going to cut down -- looked like he was

1 going to cut through between two houses or a house and a
2 business, and I remember him kind of looking over his right
3 shoulder and when he turned back around, he did strike a
4 water oak tree at full speed.

5 Q. Head-on?

6 A. Yes, sir. And at that point, he did fall to the
7 ground and I was able to catch up to him and apprehend him.

8 Q. Okay. When you got to him, did he resist in any way?

9 A. No, sir, he did not.

10 Q. Was he conscious?

11 A. He was conscious, although disoriented.

12 Q. Okay. And what did you do at that point in time?

13 A. I did have my taser drawn down on him, ordering him to
14 comply with my orders as far as lying on the ground,
15 putting your arms up.

16 Q. What about your weapon, did you ever draw your weapon?

17 A. I did not draw my primary weapon. I had my taser
18 drawn on him.

19 Q. Tell me what you said to him?

20 A. Well, during the actual chase itself, I did yell
21 numerous times for him to stop, get on the ground. Stop,
22 get on the ground. I repeated myself numerous times, as
23 well as trying to get onto the walkie talkie and let my
24 backup know where I was and what area to come look for me.

25 Q. Let me interrupt you a second.

1 A. Uh-huh (affirmative).

2 Q. When you gave him the order to stop, in your mind, did
3 you consider that a lawful police order?

4 A. Absolutely.

5 Q. Could you have arrested him for that?

6 A. Yes, sir, for disobeying a police officer.

7 Q. Okay. Go ahead.

8 A. At the point that he finally did comply with the
9 order, while he was on the ground, I did proceed to him, to
10 tell him, you know, get on the ground, arms out, and he did
11 do those orders. At that time my partner for that night
12 actually arrived on scene.

13 Q. Your partner's name?

14 A. Craig Sapp.

15 Q. Okay.

16 A. He arrived on scene. Officer Sapp assisted me by
17 placing him in handcuffs and we helped him up off the
18 ground and walked him back maybe twenty feet to our car
19 where it was located.

20 Q. Where was the backpack when you handcuffed him?

21 A. The backpack was on his person still, on his back.

22 Q. Okay. When he got off the car, you said he had in his
23 hand and as he was running put it on. Did he put both arms
24 in the backpack ---

25 A. Yes.

1 Q. -- or just one or what?

2 A. Both arms were in the backpack. It was fully on.

3 Q. Okay. And when you handcuffed him, did you handcuff
4 him in the front or in the back?

5 A. No, sir. It's our department policy to always
6 handcuff in the rear.

7 Q. He still had the backpack on?

8 A. He still had the backpack on, leaving his hands right
9 there at the backpack.

10 Q. When you took him over to the car, what was your
11 intention at that point in time?

12 A. That he was under arrest.

13 Q. Okay. And what did y'all then do?

14 A. We did a Terry frisk search of his person, his pants,
15 where his hands could have been and everywhere his hands
16 could have reached still to make sure there were no weapons
17 that could harm us at that point.

18 Q. And what, if anything, did you find in that search?

19 A. Well, in the search of his front right pocket, I
20 believe it was front right, one of his front pockets of his
21 shorts, we did find a pocket knife that we immediate
22 displaced from him. And in the lower portion of his
23 backpack, the smaller zippered pouch of his backpack, we
24 did find a silver twenty-five auto handgun.

25 Q. Was the hand -- excuse me. Was the knife that he had

1 an illegal weapon?

2 A. No, it was not an illegal weapon. It was just a
3 regular pocket knife.

4 Q. All right. The handgun that he had, did you seize
5 that gun?

6 A. We did. We cleared the weapon to make sure it was not
7 loaded in the chamber and made it safe and we did seize
8 that weapon at that point in time.

9 Q. Was there a clip in the weapon?

10 A. There was a magazine in the weapon.

11 Q. Were bullets in the clip?

12 A. Yes, there were.

13 Q. Was there a bullet or a cartridge in the chamber ready
14 to fire?

15 A. No, there was not.

16 Q. Okay. Now, were you able to get the serial number of
17 that gun?

18 A. I was unable to get the serial number of that gun
19 because it appeared to have been filed off. There were
20 tool marks where the serial was once located.

21 Q. All right. What did y'all do with the Defendant after
22 you found the gun in the backpack?

23 A. We placed him in the back of the car, making sure his
24 handcuffs, of course, were double locked for his safety.
25 Placed him in the back of the car. And at that point began

1 to inventory the backpack to make sure there was no other
2 dangerous weapons or anything that might harm either of us
3 in transport to the jail.

4 Q. Did you find any weapons or anything that you thought
5 could harm either one of y'all?

6 A. We did not find weapons. However, in this process, we
7 did find several hypodermic needles inside of a nylon case,
8 along with some other illicit or illegal drugs.

9 Q. Okay. Did you seize those drugs?

10 A. We did. We did seize those drugs.

11 Q. Now, when you take someone into custody, you handcuff
12 them and put them in a car and you go to separate them from
13 their belongings, what is the policy of the Pickens Police
14 Department about what, if anything, are your obligations to
15 safeguard those belongings?

16 A. First and foremost we inventory whatever objects we
17 are looking for to make sure that in case something does
18 happen to that, and we are responsible for it, we make sure
19 we know what's there so it can't come back to be destroyed
20 or stolen or misplaced or whatever.

21 Q. How many different kinds of things that could be
22 construed as drugs did you seize?

23 A. Quite a few things in my ---

24 Q. Let's talk about drugs first and then we'll talk about
25 other stuff later.

1 A. Okay. We did seize a -- we found a baggie, like a
2 sandwich style baggie, clear in plastic color. It had a
3 large quantity of a white crystal-like substance in it.
4 That was believed to be methamphetamines.

5 Q. Don't identify it.

6 A. Okay.

7 Q. You can describe it, but don't identify in front of
8 the jury.

9 A. I've got you. I've got you. We saw that substance
10 and we also found a green leafy substance, a small amount
11 of that, and we also found several pre-packaged -- it
12 appeared to be pre-packaged, different types of pills. And
13 the reason why I say pre-packaged, each individual pill was
14 broken down by color and by type and they were all in their
15 own packaging.

16 Q. How many different kinds of pills did you seize?

17 A. Lord. I'll have to resort back to my ---

18 Q. Please do.

19 THE COURT: Do we need this for the purpose of
20 this hearing?

21 MR. THEM: Yes, sir. Because that's what I
22 believe is evidence of his intent. The sheer volume of
23 drugs that he had as well as the different quantities I
24 think clearly shows his intent to distribute.

25 THE COURT: But for the purpose of the

1 suppression hearing, do we need that?

2 MR. THEM: No, I thought we were combining the
3 both of them, I'm sorry.

4 THE COURT: No, sir. Why would we -- we just
5 need to have enough for the suppression hearing.

6 MR. THEM: Okay, sir.

7 Q. And the person that you stopped that night and chased,
8 that had the gun in the thing and the other things, do you
9 see that person in the courtroom today?

10 A. I do.

11 Q. Would you point him out, please?

12 A. The Defendant, Mr. Marshall Heath Collins.

13 Q. And did all of this happen within the city limits of
14 Pickens?

15 A. It did, sir.

16 Q. Okay. Had you not searched the book bag at the scene
17 and taken it back to the police station, would you have
18 inventoried it there if you hadn't previously inventoried
19 it?

20 A. I would have definitely done that. However, it is our
21 practice to inventory on the scene.

22 Q. So would you have discovered the same thing in the bag
23 at the police station that you discovered at the so-called
24 crime scene?

25 A. Absolutely.

1 Q. Okay. Thank you, sir.

2 MR. THEM: I have no further questions.

3 THE COURT: Cross examination.

4 MR. DEJONG: Thank you, Your Honor. May it
5 please the court.

6 CROSS EXAMINATION

7 BY MR. DEJONG:

8 Q. Officer Blair, ---

9 A. Yes, sir.

10 Q. -- that was about one thirty in the morning?

11 A. Yes, sir.

12 Q. What day of the week was it, do you remember?

13 A. If I'm not mistaken, it was -- again, I can't recall a
14 hundred percent, but I believe it may have been on a
15 Thursday. A Thursday or Friday morning.

16 Q. All right. Not much to do, is there?

17 A. No, sir.

18 Q. Drive around?

19 A. Drive around a lot of property, yes, sir.

20 Q. Yes, sir.

21 Q. And so you see a black car about one thirty in the
22 morning, right?

23 A. I'm sorry?

24 Q. You see a black car about one thirty in the morning?

25 A. Yes, sir.

1 Q. Okay. No erratic driving?

2 A. No, sir.

3 Q. Nothing to draw your attention to that car, other than
4 it was one thirty in the morning, right?

5 A. And like I said earlier, about his waiting for me to
6 pass him before he turned.

7 Q. Yes, sir.

8 A. As was perceived by myself.

9 Q. All right. So when you first see that car, y'all are
10 going in opposite directions?

11 A. No, sir. I'm heading towards the west end of town or
12 Tony's Restaurant area.

13 Q. Right.

14 A. He was stopped at a stop sign here, well before I got
15 to that area.

16 Q. Coming into the Main Street area?

17 A. Correct. He was turning onto Main Street, either left
18 or right at the time.

19 Q. Do you remember what street he was turning from?

20 A. Yes. That was Florence Street.

21 Q. Okay. And so you go by him, I gather, right?

22 A. Yes. At a slow rate of speed.

23 Q. Pardon me?

24 A. I was driving -- it's a twenty-five mile an hour
25 zone.

1 Q. Right.

2 A. I was, of course, driving at a slow rate of speed.

3 Q. So he would have turned off of Florence Street and
4 been behind you, correct?

5 A. He would be turning opposite of me. He would be
6 turning left. I was going in the other direction.

7 Q. He turned left off of Florence Street?

8 A. Correct. Back towards the main part of town, toward
9 the courthouse. He was heading in that direction, I was
10 heading in the opposite.

11 Q. Okay. So he was on the other side?

12 A. Right. Right.

13 Q. Okay. All right. So you're driving a marked car, I
14 presume, right?

15 A. Absolutely.

16 Q. Okay. And did you have any turn signals on that you
17 were going to turn?

18 A. No, sir. I was traveling straight ahead.

19 Q. So then at some point in time you turn around?

20 A. Yes, sir.

21 Q. And how quickly, how soon do you turn around?

22 A. As soon as he turns behind my vehicle to where I could
23 see his tag in my rearview mirror.

24 Q. You had to look at that in the rearview mirror, didn't
25 you?

1 A. Uh-huh (affirmative).

2 Q. These rearview mirrors have little flipper jiggers on
3 them for nighttime or daytime and all of that, right?

4 A. I would assume so, yes, sir.

5 Q. Which one was your on?

6 A. Sir, I honestly I don't know. The same setting it was
7 when I got in the car to begin with. I never moved it.

8 Q. Well, when you flip that rearview mirror, it dims
9 lights, does it not?

10 A. Again, sir, I'd have to take your word for that. I
11 don't use those.

12 Q. All right. Well, we'll leave that for the time being.
13 At any rate, you go down -- what is that? Is that
14 Catherine Street where the Village Inn and the old NAPA
15 Store is?

16 A. Yes, sir. South Catherine, yes, sir.

17 Q. And that's more or less where you catch up with him?

18 A. Yes, sir.

19 THE COURT: Can I see the attorneys just for a
20 minute up here.

21 Mr. DeJong: Yes, sir.

22 THE COURT: If I could just ---

23 (WHEREUPON, Mr. Them and Mr. DeJong approached the
24 bar.)

25 THE COURT: If you would, just step down there

1 for a moment.

2 WITNESS: Not a problem, sir.

3 THE COURT: Harry, could you get our jury in
4 here, please?

5 (WHEREUPON, the jury entered the open court at
6 approximately 12:10 p.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen,
8 one of my jobs as a Judge of the law is to -- not only the
9 things I've told you about before, is to rule on the law
10 and preside during the trial and schedule things, part of
11 my job also is to anticipate time that it may take to do
12 things, and sometimes I succeed and sometimes I don't.

13 The legal matter we're resolving, that we will
14 resolve, I don't want to keep you waiting back there any
15 longer. I'm going to let you have an earlier lunch today.
16 And we're going to get that resolved and that way you won't
17 have to keep waiting on us. If you'll be back at one
18 thirty, that would give you somewhat over an hour, about an
19 hour and twenty minutes for your lunch. We're going to
20 finish up what we have and get a sandwich ourselves real
21 quick and be ready to start this case at one-thirty.

22 I'll remind you again not to discuss the case with
23 anyone. Don't let anyone discuss the case with you. I
24 can't imagine while you're out and about eating -- you
25 know, be careful. You sit in a restaurant and you hear

1 somebody at another table talking about the case or
2 whatever, just excuse -- move to another table as best you
3 can. It's very important that you maintain that innocence
4 about anything about this case. That's vital to the
5 parties and to your service as a juror. I can't imagine
6 anyone would come up to you and want to give you
7 information or share information with you about the case.
8 If that were to happen, please let the person know that you
9 are a juror and you can't be discussing the case with
10 anyone. If that individual were to persist and want to
11 give you information or ask you questions, please excuse
12 yourself as quickly as you can. If possible, get the name
13 of that person, report it back to me and I'll certainly
14 take care of that. I don't think anything like that will
15 happen, would not anticipate it happening, so I just want
16 you to be aware of the importance of you not hearing any
17 information about this case while you're out and about.

18 Have a good lunch, ladies and gentlemen. I'll see you
19 back at one-thirty, if you'll be back in your jury room
20 then.

21 (WHEREUPON, the jury exited the open court at
22 approximately 12:13 p.m.)

23 THE COURT: All right. Office Blair, you can
24 come back up to the witness stand. I'll remind you, you're
25 still under oath.

1 You may continue your cross examination, Mr. DeJong.

2 Mr. DEJONG: Thank you, Your Honor. May it
3 please the Court.

4 Q. Does your car have a video in it?

5 A. Yes, sir. It does have a video camera in it. Or that
6 particular one did, yes, sir.

7 Q. Did it have a video camera in it on October the 2nd of
8 2009?

9 A. It did.

10 Q. Was it working?

11 A. No, sir, not to my knowledge at that point. No, sir.

12 Q. Was that one of those cameras when you activate the
13 blue lights, the camera comes on?

14 A. Yes, sir. Whenever it's working, yes, sir.

15 Q. Did you ever check to see if it was working that
16 night?

17 A. Yes, sir. I believe either earlier that evening or a
18 night or two before or something like that, the video tape
19 had gone out. I don't know if it had ran out or what the
20 issue was.

21 Q. All right. Well, the bottom line is you pulled Mr.
22 Collins for a bad tag light, right?

23 A. I'm sorry. I couldn't quite hear you.

24 Q. You pulled Mr. Collins because you said he had a bad
25 tag light?

1 A. Because I couldn't see his tag, yes, sir.

2 Q. Right.

3 A. By illumination, right.

4 Q. And there's no doubt about it, that is a traffic stop,
5 right?

6 A. Yes, sir.

7 Q. That is not an arrest, is it?

8 A. No, sir, not that I'm aware of. It's a traffic stop.

9 Q. Right. And you go back to your car to check
10 information and Mr. Collins leaves his car, right?

11 A. Yes, sir, he does.

12 Q. Right. And you had never told him he was under
13 arrest, did you?

14 A. No, sir. I had not told him he was under arrest.

15 Q. Right. And his car wasn't blocking traffic?

16 A. No, sir. It was pulled into a parking lot.

17 Q. And, indeed, at some point in time, you told him to
18 turn the car off, didn't you?

19 A. I don't recall.

20 Q. Well, was it off or on?

21 A. Honestly, sir, I don't recall if the car was actually
22 turned on or not.

23 Q. All right. But he left the scene. And that was
24 before you had ever checked any information, correct?

25 A. Yes, sir. I was in the process of, yes, sir.

1 Q. Had no response? Let's put it that way.

2 A. Right.

3 Q. So as far you knew at that point in time, he was the
4 person that he said he was?

5 A. Yes, sir.

6 Q. Correct? So he runs. He hits the tree. What did you
7 arrest him for?

8 A. Well, I detained him at first because number one, he
9 just ---

10 Q. Because of what?

11 A. I said, number one, he had just ran from me and I
12 wanted to find out why.

13 Q. All right. If somebody runs from you and they are not
14 under arrest, as a police officer, what would you charge
15 them with?

16 A. I'm not real sure, sir.

17 Q. Well, what would you arrest them for?

18 A. Well, it kind of depends on what I found out from
19 there.

20 Q. From what?

21 A. From the investigative point from there.

22 Q. No, sir. At that point in time when you put cuffs on
23 him ---

24 A. Uh-huh (affirmative).

25 Q. -- what were you arresting him for?

1 A. I didn't. I placed him in investigative detention at
2 that point in time.

3 Q. Yes, sir. So he was not under arrest?

4 A. No, sir. But he also wasn't free to go until I
5 completed my investigation.

6 Q. Right. At that point in time?

7 A. Right.

8 Q. But you didn't have a clue what he was under arrest
9 for?

10 A. I hadn't made my mind up what I was charging him with.
11 I had plenty of things I could have at that point.

12 Q. Could have?

13 A. Such as disobeying a police officer.

14 Q. You could have, but you didn't?

15 A. Not at that point, no, sir.

16 Q. No, sir. Now you put handcuffs on him, right?

17 A. Yes, sir.

18 Q. And you say his book bag or backpack's on his back?

19 A. Yes, sir, it was.

20 Q. You take the backpack off, you handcuff him?

21 A. No, sir. When he was handcuffed the backpack was
22 still on.

23 Q. All right. Well, a moment ago, as I understood it at
24 some point in time you took the backpack off?

25 A. I did, yes, sir.

1 Q. And you didn't look in the backpack until after you
2 took the backpack off, did you?

3 A. No, sir, that's not entirely true. As I stated, we
4 check that small portion of the bag where we did find the
5 handgun.

6 Q. All right. But nonetheless, then you took it off?

7 A. Yes, sir.

8 Q. And now Mr. Collins is sitting back in the back of
9 your car and he's in the back of your car and the book
10 bag's over here, right?

11 A. Yes, sir.

12 Q. He couldn't get to the book bag, could he?

13 A. No, sir. We did inventory the bag.

14 Q. But he wasn't under arrest?

15 A. Okay. I understand what you're saying, I think. So
16 could you redirect the question? Is there a question
17 there?

18 Q. Yes, sir. I'll redirect the question. You didn't
19 inventory the backpack at that time, you searched it?

20 A. No, sir. We were inventorying it.

21 Q. Why?

22 A. Because as we talked to him, as we found his wallet
23 that he stated he did not have, I found an ID card in there
24 that was ID only.

25 Q. Where was his wallet?

1 A. In his back pocket.

2 Q. That wasn't in the backpack, was it?

3 A. It was in his back pocket.

4 Q. Yes, sir.

5 A. Okay.

6 Q. It was not in the backpack?

7 A. No, sir. But at that point, we found out his license
8 was indeed suspended and that's what he was with it there
9 as well.

10 Q. You're standing under the oak tree?

11 A. No, we was actually -- well, yes, sir, right near the
12 Oak Tree, yes, sir.

13 Q. And that's when you find his license are suspended?

14 A. Yes, sir.

15 Q. And now you're telling me you found out his license
16 were suspended before you inventoried the book bag?

17 A. It was right around that time frame, yes, sir.

18 Q. Do you care to look at your report?

19 A. I can.

20 Q. Please do.

21 A. Okay. What was the question again, sir? I'm sorry.

22 Q. What you just testified to is not the chronology that
23 is in your report, is it?

24 A. In my report it does state that we found his
25 identification by his ID card in his wallet. He and his

1 backpack he was wearing was searched incident to arrest.

2 So, yes, sir, we did find his wallet before we searched his
3 backpack incident to arrest.

4 Q. Correct. I'm not arguing that point.

5 A. Okay. So what was the question again, I'm sorry. I'm
6 having a hard time ---

7 Q. The point is, you had already, quote, inventoried, end
8 quote, his backpack before you found out his license were
9 suspended?

10 A. No, sir. According to my report, in chronological
11 order as you stated, it was we found the wallet and ID and
12 then, at that point we found his license were suspended.
13 Then we search the ---

14 Q. Let's look at the chronology there, shall we? Let's
15 go down about -- well, you say you found his wallet on his
16 hip, right?

17 A. Yes, sir.

18 Q. Not a backpack that he was wearing?

19 A. Yes, sir.

20 Q. Were searched incident to arrest, right?

21 A. Yes, sir, that is in there.

22 Q. And then you go over here and then you come back over
23 here and you put in what you found in the backpack, right?

24 A. Yes, sir.

25 Q. That's the chronology, right? Then you talk about

1 even a beer can that was found in the car, right?

2 A. Yes, sir. Except we made it back to my car.

3 Q. And then you say it was also discovered that his
4 license was suspended indefinitely for failure to pay a
5 traffic ticket?

6 A. That's when I actually got a positive identification
7 as far as what actually what it was suspended for. I did
8 call his number out and they told us it was suspended on
9 the scene, before he got there.

10 Q. From you car?

11 A. No, from the scene where he hit the tree. Where he
12 was apprehended.

13 Q. Okay. One last time.

14 A. Yes, sir.

15 Q. Before you searched that backpack, what was he under
16 arrest for?

17 MR. THEM: Objection. Asked and answered three
18 or four times, now, Your Honor.

19 THE COURT: Overruled.

20 Q. What was he under arrest for?

21 A. That's when we found that his license was suspended.
22 That's what he was under arrest for.

23 Q. Did you tell him that?

24 A. He told me his license were suspended as well as me
25 checking it. So at that point, I ---

1 MR. DEJONG: Well, wait a minute, Your Honor.

2 We've got another issue here now. If he's making
3 statements now after being placed under arrest, we might
4 need a *Jackson v. Denno*.

5 A. No, sir, he was actually in investigative detention at
6 that point.

7 Q. Well, make up your mind. Was he under arrest or was
8 he in detention?

9 A. He was in investigative detention. And I, of course,
10 as I figure most officers would, I said, what did you run
11 for? And he stated, my license are suspended. About that
12 time is when -- I'm not going to speculate exactly when
13 time-wise, but we found his wallet in his back pocket while
14 we were doing a *Terry* frisk.

15 Q. Did you find his wallet before or after you
16 inventoried/searched the backpack.

17 A. Before. Before we inventoried his backpack.

18 Q. Before?

19 A. Yes, sir.

20 Q. Who actually inventoried the backpack?

21 A. Myself and Officer Sapp.

22 Q. You say there were pills found in the backpack?

23 A. Yes, sir.

24 Q. You say there was green plant-like material?

25 A. Yes, sir.

1 Q. Some crystal-like substance?

2 A. Yes, sir.

3 Q. And a gun, correct?

4 A. Yes, sir.

5 Q. What else did you find in the backpack?

6 A. We found needles, all such as that, those kind of
7 things being related to paraphernalia.

8 Q. What paperwork, if any, did you find in the backpack?

9 A. Sir, honestly, I don't believe I actually read any of
10 the paperwork that was in his backpack. That wasn't
11 addressed to me.

12 Q. Did you take the backpack and all of its contents into
13 evidence?

14 A. No, sir. We took the items that were illegal for him
15 to have and we put his backpack, along with some of the
16 contents, I'm sure -- I'm sure as far as the paperwork that
17 you're discussing went back into his property and evidence
18 at Pickens County Law Enforcement Center.

19 Q. When Mr. Them was asking you questions, part of what I
20 understood you to say was you put Mr. Collins in the back
21 of your car or Sapp's car or somebody's car, right?

22 A. Yes, sir, we did.

23 Q. And then you wanted to look in the backpack to see if
24 there was anything else in there that could be used to
25 injure an officer, right?

1 A. Anything that would be detrimental for us to get out
2 of there, yes, sir, as far as ---

3 Q. Anything detrimental what?

4 A. Anything that would be -- that we needed to get out of
5 there that might harm us. Yes, sir, that's what I said.

6 Q. Well, did you think there was bomb in there?

7 A. At this point, I don't know Mr. Collins. I don't the
8 subject who it was. I didn't ---

9 Q. I didn't ask you if you knew Mr. Collins.

10 MR. THEM: Objection, Your Honor. He needs to
11 let the witness finish.

12 THE COURT: Let him answer it the way -- you can
13 follow up with a question, Mr. DeJong.

14 MR. DEJONG: I'm sorry, Your Honor.

15 Q. Go ahead.

16 THE COURT: Answer your question.

17 A. As I was saying, I don't know Mr. Collins or anything
18 about him. So, no, sir, I wasn't going to assume there was
19 a bomb in there, but I wasn't going to assume there wasn't
20 one either. So ---

21 Q. Well -- I'm sorry.

22 A. I just wanted to make sure that was the end. I didn't
23 know if you needed me to ---

24 Q. I just want to know if you're finished. I don't want
25 to interrupt you.

1 A. Yes, sir, I'm good.

2 Q. Basically, what you're telling me is you were doing a
3 Terry frisk of the bag, right?

4 A. That, along with inventory, I sure, because we were
5 inventorying because he was under arrest for driving under
6 suspension.

7 Q. Well, as far as a Terry frisk and weapons, he was
8 already handcuffed in the back of your's or Sapp's car,
9 wasn't he?

10 A. Okay. I'm sorry. I'm going to have to ask for
11 clarification. I'm sorry. Do you mean after the backpack
12 was taken from him or before, before he was -- I'm getting
13 confused on this. I'm sorry.

14 Q. You say he was in the back seat of your car when y'all
15 inventoried, searched or Terry frisk or whatever you did to
16 the backpack?

17 A. Okay. Yes, sir, he was when we inventoried the
18 backpack, yes, sir.

19 Q. And looking for things that could hurt an officer,
20 that's basically a Terry frisk, isn't it?

21 A. Well, that and I'm ---

22 MR. THEM: Objection. That calls for a legal
23 conclusion on behalf of the witness, Your H0onor.

24 THE COURT: Overruled.

25 Q. That's a Terry frisk?

1 A. We were inventorying the bag, is what I was doing,
2 okay? I'm not sure exactly what you're trying to ---

3 Q. Well, what I'm trying -- I'm sorry.

4 A. -- get at.

5 Q. Done?

6 A. Yes, sir.

7 Q. All right. Were you inventorying the bag or were you
8 looking for things that could hurt a police officer?

9 A. We were inventorying the bag. The initial reason we
10 got into his backpack as far as before he even got in the
11 car, was to remove any objects that might harm us.

12 Q. And he's handcuffed behind his back?

13 A. Where the gun was found, yes, sir.

14 Q. And not under arrest for anything?

15 A. At that point?

16 Q. Yes, sir.

17 A. We had detained him.

18 Q. Huh?

19 A. And we found that his license was suspended.

20 MR. DEJONG: Nothing further for purposes of this
21 hearing, Your Honor.

22 THE COURT: Any redirect?

23 MR. THEM: Yeah.

24 **REDIRECT EXAMINATION**

25 **BY MR. THEM:**

1 Q. When you took him up to the car and you look in the
2 bag and you find a gun, he's handcuffed and he's put in the
3 back of a police car, correct?

4 A. After we found the weapon and everything, yes, sir.

5 Q. Yeah. Is he free to leave at that point in time?

6 A. No, sir, he was not.

7 Q. He's under arrest -- is he under arrest?

8 A. He is under arrest for driving under suspension.

9 Q. Did you use the magic words, you're under arrest or
10 what?

11 A. Honestly, sir, I can't recall if I stated you are
12 under arrest for this particular crime or what? I don't
13 remember exactly how it came about.

14 Q. Had he tried to leave your car with the handcuffs like
15 he jumped out of his car without them, what would you have
16 done?

17 A. We would have chased him and detained him again at
18 that point, and he would have been under arrest still.

19 Q. Did he have any freedom of movement as far as leaving
20 the scene ---

21 A. No, sir.

22 Q. -- after you handcuffed him and put him in the car?

23 A. No, sir, not at all.

24 MR. THEM: Thank you.

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

1 step down.

2 MR. THEM: Officer Sapp.

3 THE CLERK: Place your left hand on the bible and
4 raise your right hand, please. Do you solemnly swear or
5 affirm the testimony you're about to give in this case be
6 the truth, the whole truth and nothing but the truth, so
7 help you God?

8 WITNESS: I do.

9 THE CLERK: State your full name for the record.

10 WITNESS: Joseph Craig Sapp.

11 THE CLERK: Please be seated.

12 CRAIG SAPP,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. THEM:

16 Q. Are you employed as a police officer within the City
17 of Pickens at this time?

18 A. Yes, sir. At the time I was a full-time police
19 officer, yes, sir.

20 Q. Okay. Going back to October the 2nd of 2009, were you
21 employed as a full-time police officer then?

22 A. Say that again, sir. I'm sorry.

23 Q. Were you a full-time officer, a reserve officer, or
24 what in October of 2009?

25 A. I was full-time, sir.

1 Q. Okay. And did you happen to be on duty at one thirty-
2 three in the morning on October the 2nd of 2009?

3 A. Yes, sir, I was.

4 Q. Did you have the occasion, along with Officer Blair,
5 to investigate someone who had allegedly run from Officer
6 Blair?

7 A. Yes, sir.

8 Q. Okay. At what point -- let me back up. Were you in
9 Court and heard Officer Blair testify?

10 A. Yes, sir.

11 Q. At what point in that chase proceedings and all of
12 this stuff did you get to the scene?

13 A. I got to the scene and the subject was already on the
14 ground and Officer Blair had his taser out, pointed at the
15 man's back and his arms was out and his feet was out.
16 That's when I arrived in my patrol car.

17 Q. And what did you do when you got there?

18 A. I got out of my patrol car and I cuffed Mr. Collins,
19 put him in handcuffs and we helped him up and walked him to
20 the back of my patrol car.

21 Q. Behind his back or in front, as far as handcuffing?

22 A. Behind his back, sir.

23 Q. Did he -- did you see a book bag?

24 A. Yes, sir. He had a book bag on, both straps was on
25 while he was on the ground. At that time, when I first got

1 -- we didn't -- I didn't know what was going on. I

2 instantly cuffed him with the backpack still on his back,

3 yes, sir.

4 Q. Okay. And where did you take him after you got him up
5 on his feet?

6 A. I walked him to my patrol car, sir.

7 Q. Okay. And what, if anything, did you do at your
8 patrol car with the gentleman?

9 A. I did a quick pat-down, Terry frisk of the subject.

10 Q. You say Terry frisk?

11 A. Yes, sir.

12 Q. What are you looking for in a Terry frisk?

13 A. Checking for any weapons or anything that might injure
14 us or himself or anything.

15 Q. Okay. And what, if anything, did you find?

16 A. Like Officer Blair stated, we did find a pocket knife
17 in one of his front pockets. Located the wallet. The
18 wallet, got it out and got it -- seen it was ID. And then
19 at that time, his hands were behind his back still in reach
20 of the backpack, so I opened up the closest compartment to
21 his hands he could still access, get his hands to, and I
22 located a small pistol. And it was actually inside of a
23 cell phone-like holder. It was small it was like inside of
24 a cell phone holder. And I took that out of the backpack
25 and while it was still on his back and handed it to Officer

1 Blair to clear.

2 Q. And what happened after that?

3 A. After that, we -- instead of uncuffing the subject,
4 since we just found the weapon, we undid the straps off the
5 book bag and took it off of him, set the bag on the trunk
6 of the car, put Mr. Collins in the back of my patrol car
7 and inventoried the bag.

8 Q. Was Mr. Collins free to leave after you handcuffed him
9 behind his back, took off his backpack and put him in the
10 backseat of your car? Was he free to leave?

11 A. No, sir.

12 Q. Okay. And then what did you do?

13 A. At that time, we inventoried the bag because, in my
14 opinion, he was under arrest for, you know, the driving
15 under suspension. We just found a loaded gun in his
16 backpack, you know. So we inventoried the bag because he
17 was heading to LEC. And we always, you know, inventory
18 purses, bags, so we can get any contraband to keep from
19 going inside the police department or detention centers.

20 Q. Did you hear anybody use the magic words or anything
21 like you're under arrest?

22 A. I don't recall a hundred percent, sir, but I -- if we
23 put somebody in cuffs and find a gun, we're going to tell
24 them they're under arrest, yes, sir, I believe so.

25 Q. Okay. All right. And also as part of an inventory

1 search, do you look for items of value?

2 A. Yes, sir. We also look for items of value, necklaces,
3 rings, watches, anything -- so like Office Blair stated, we
4 are responsible for them items because they're in our
5 custody at that time, so we list them down if there's
6 anything of value, for safekeeping.

7 Q. And what, if anything, did you find in the search of
8 that bag?

9 A. We found a bag containing contraband. We found the
10 drugs and the ---

11 Q. No, sir.

12 A. Yes, sir.

13 Q. Don't make the conclusion that it was contraband and
14 drugs. Describe to me what you found?

15 A. Yes, sir. We found an individual little pack, a bag
16 inside the big compartment of the book bag. And inside it
17 was a white little baggy of a crystal-like substance.

18 Q. Okay.

19 A. Also, another individual white bag of a green leafy
20 type substance.

21 Q. Okay.

22 A. And then different kind of pills that was packaged
23 separately.

24 Q. Okay. How many different kinds of pills did you see?

25 A. At the actual time, you know, everything's going on so

1 fast that I just noticed a bunch of different pills.

2 Q. Okay. And the person that you put the cuffs on that
3 was in the back of your car, that you did the inventory
4 search on his book bag, is that person in the courtroom
5 today?

6 A. Yes, sir, he is.

7 Q. Would you point that person out, please?

8 A. He's sitting right there, the Defendant.

9 Q. Okay. Did you have any involvement in this case up
10 until you drove up to the scene where Mr. Collins was at
11 least in the physical custody of your partner?

12 A. No, sir. I was just on regular patrol myself and just
13 heard the radio call come across.

14 Q. Other than putting him in handcuffs and in the car and
15 searching his book bag, did you have any further
16 involvement in this matter?

17 A. No, sir. Except I helped -- we went back to the
18 police department after taking him to LEC, me and Officer
19 Blair went back to the police department and worked on the
20 report together and, you know, he logged in all the
21 evidence into evidence there and we wrote our report.

22 Q. Thank you, sir.

23 MR. THEM: I have no further questions.

24 THE COURT: Mr. DeJong.

25 MR. DEJONG: Thank you, Your Honor, may it please

1 the Court.

2

CROSS EXAMINATION

3 **BY MR. DEJONG:**

4 Q. You got a call from Blair, right? Or a call went out
5 over the radio?

6 A. Yes, sir.

7 Q. What was that call?

8 A. It come across the radio as a ten zero on foot, which
9 means pursuit on foot. And it's a chase now.

10 Q. Somebody's running?

11 A. Yes, sir. That's right, yes, sir.

12 Q. And when you got to the scene where you saw Mr.
13 Collins, did Blair tell you what he was under arrest for?

14 A. At that time, no, sir. I just took it upon myself to
15 get out and put him in cuffs.

16 Q. Cuff him and take him to your car and inventory the
17 book bag, right?

18 A. Pat him down and got his ID and seen the ID and all
19 that, yes, sir.

20 Q. Boom, boom, boom, just like that. Is that right?

21 A. Sir?

22 Q. Boom, boom, boom, just like that. That's the way it
23 happened, right?

24 A. I don't know if it happened like that. Everything
25 goes pretty quick when you're out on the scene, yes, sir.

1 Q. Absolutely. Yes, sir. A lot quicker than radio
2 transmissions, doesn't it?

3 A. Sir? Not necessarily, sir.

4 Q. Did you cuff him?

5 A. Yes, sir, I did.

6 Q. Once you got him in the back of the car and got the
7 backpack, book bag off of it, you separated them, didn't
8 you. You separated him from the backpack, right?

9 A. Yes, sir.

10 Q. It's so unclear. I don't know if we've clarified
11 that. Was there only one person involved in that, that
12 being Mr. Collins?

13 A. Yes, sir.

14 Q. You weren't aware of anybody else around, were you?

15 A. No, sir.

16 Q. All right. So you have Mr. Collins in the back of
17 your car and the book bag someplace else, right?

18 A. Yeah. It's in the trunk, yes, sir.

19 Q. Mr. Collins couldn't get the book bag at that point in
20 time, could he?

21 A. No, sir.

22 MR. DEJONG: Thank you, sir. No further
23 questions.

24 MR. THEM: Nothing further, Your Honor.

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

1 step down. Any further witnesses from the State?

2 MR. THEM: Nothing. I'm sorry. Nothing on
3 behalf of the State, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. DEJONG: Nothing from the Defense, Your
6 Honor.

7 THE COURT: Okay. Any other additional argument
8 that either of you wish to make?

9 MR. THEM: I think I've just about made
10 everything, Your Honor.

11 THE COURT: All right.

12 MR. DEJONG: Your Honor, I'd just go back to
13 *State versus Brown*. Again, that was an auto search. These
14 officers can't figure out if this was an inventory search
15 or a *Terry* frisk. Well, let's take the *Terry* frisk first.
16 If you look at the *Gantt* case, there's no way in God's name
17 when they searched that bag, beyond the gun, that it could
18 have been a legal *Terry* frisk. Separating the Defendant
19 from a bag he had no access to that bag, at that point in
20 time there was no threat to the officers from this man
21 getting something out of that bag. So certainly if it was
22 a *Terry* frisk, that wouldn't -- that's not a *Terry* frisk,
23 is what I'm saying, even under *Gantt*.

24 Now, if they want to say it was an inventory search,
25 it belies the question, it evades the question of what they

1 could have put him under arrest for or anything else. But
2 I go back to *Brown*, even for the inventory search for it to
3 be a search incident to arrest, there must be probable
4 cause for the arrest. Now, Your Honor can take their
5 testimony when they found about the driver's license
6 suspension for purposes of this motion. That's certainly
7 your prerogative. But I take the position he was in
8 custody because he ran. That search was not incident to
9 arrest. Thank you.

10 THE COURT: What's your citation on the *Brown*
11 case that you said earlier?

12 MR. DEJONG: I'm sorry, Your Honor, bear with me.
13 I have the -- I'm still trying to get used to West Law.
14 I'm not used to it. The citation I have is 608 SE2d at
15 811, I believe.

16 MR. THEM: That's what it looks like to me, too,
17 Your Honor.

18 THE COURT: I can find the page number.

19 MR. THEM: I think it's 698, isn't it?

20 MR. DEJONG: Could be. It is 698.

21 THE COURT: Okay. All right.

22 MR. THEM: Excuse me. Might I respond to his
23 *Brown* argument, Your Honor.

24 THE COURT: Yes, sir. Yes, sir.

25 MR. THEM: *Brown* is a horse of an absolutely

1 different color. It may not even be a horse. In *Brown*,
2 the kid's riding down the road in a car with other people,
3 drinking a beer. The police officer stops him, decides to
4 arrest him for the beer. I can't understand why they
5 wouldn't give him a courtesy summons. But they arrested
6 him, and then the police for some reason, wrongfully, took
7 his bag out of the car from the custody of his friends and
8 compatriots that would have protected it, and decided to do
9 some sort of search of some sort. Clearly erroneous.

10 In this situation, the Defendant is by himself, in the
11 car, with the backpack on his back. Somebody had to
12 inventory that backpack to find out what was in there. It
13 could have been a laptop. It could have been any number of
14 things or it could have been what we found, all of these
15 drugs. So the *Brown* case is as different from the factual
16 situation as we're talking about here as anything. In
17 *Brown*, all the fellow did was just take a sip of beer while
18 riding down the road. He wasn't even driving. In this
19 case, this is a man who has lied about a driver's license,
20 didn't have one in his possession by his own admission,
21 runs from a police officer and when told to stop, disobeyed
22 a lawful order.

23 Whether or not somebody used the magic words, you're
24 under arrest, I don't think is material to the issue. It's
25 was his freedom of movement restricted and such as to the

1 point that it was the functional equivalent of arrest. I
2 don't know how much more arrested you can get than being
3 handcuffed behind your back and put in the back of a police
4 car, Your Honor.

5 THE COURT: All right. What have we got on the
6 404(b)? What evidence do you have?

7 MR. THEM: Essentially, the evidence presented by
8 the officer here, but he would add a couple of other items.
9 I needed probably two minutes more of testimony. If I
10 could put him back up, I would -- and if I could
11 incorporate the testimony that he gave about what he found.

12 MR. DEJONG: For purposes of this, Your Honor,
13 I'll take the Solicitor's summary of it. If I have a
14 problem with it, I'll let you know.

15 MR. THEM: In the incident report he talks about
16 seizing a set of digital scales, a small glass pipe with
17 white residue, a small spoon, a red plastic zip baggie, a
18 black pouch with three needles and one spoon. And then he
19 talked about the various drugs that he found or things that
20 he assumed to be drugs, which the chemists, when they
21 testify, will say that they are.

22 I take the position that when you have all of the
23 paraphernalia or accoutrement that goes with being a drug
24 dealer, that has some bearing on establishing your intent.
25 This guy was a walking drug store. I mean, he was like a

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Suppression Hearing

107

1 smorgasbord or a cafeteria drug store, had everything in
2 the world. Marijuana, Clonazepam, Alprazolam, Oxycontin,
3 lots of meth. He's got all of the stuff that you use.
4 That shows intent on his part to distribute. The sheer
5 amount and weight of what he's got and the sheer selection
6 that he has for his various customers.

7 So I maintain that all of that stuff that was seized
8 from him is circumstantial evidence of his intent to
9 distribute the pills, and if I'm correct, the way I
10 understand the pill law, there is no weight sort of
11 situation for Alprazolam, Clonazepam, all those sort of
12 things because it depends on how they're dosed out. On
13 things like marijuana and meth and crack and all of that
14 can very easily be weighed and all of that. There are some
15 weight numbers, but there are no weight numbers. So for me
16 to establish his intent to distribute all on the two
17 controlled substances, I need to get into scales. I need
18 to get in the pipe. I need to get in just the sheer volume
19 of what it was, Your Honor. And I think that is evidence
20 of intent by proving other crimes. Now, he's not charged
21 with those crimes in this Court. To my knowledge, he is
22 charged with possession of all of that stuff at the Town
23 Court. And I don't believe that those charges have been
24 disposed of as of yet.

25 THE COURT: Thank you, sir. Mr. DeJong.

1 MR. DEJONG: Well, Mr. Them and I agree on one
2 thing. He's not being tried in this Court for most of
3 those charges. We've got a trafficking charge. We've got
4 two PWID pills and we've got a weapons charge. The scales,
5 needles, I think there was something else, have nothing to
6 do with pills. That has to do with meth.

7 Now, having said that, I will concede this, if the
8 Solicitor will agree with me right now, if he brings that
9 in, if he believes that intent is necessary or intent to
10 distribute is necessary for the trafficking charge, then if
11 he does that, then I'm entitled to a lesser included of
12 possession with Intent to Distribute when it comes time to
13 charge the jury. I don't think any of those accouterments,
14 as Mr. Them calls them, has one thing to do with possession
15 with intent to distribute pills. I don't think there's a
16 drug expert or probably even an illegal drug expert that
17 would say that scales -- or pills are ever weighed or
18 hypodermic needles used or anything else. If anything,
19 he's trying to get in the character of my client back door
20 or show the intent to distribute the meth, I'm not sure
21 which. But I don't think under a trafficking charge intent
22 is necessary.

23 So I don't see why that is imperative that he bring
24 that in. And I would submit to Your Honor that it is not

1 proper to bring that in in this particular case under the
2 fact scenario as the State presents it.

3 MR. THEM: I will not make that stipulation. I'm
4 going primarily on weight. But the other two charges,
5 possession with intent to distribute those two controlled
6 substances, this stuff is relevant to establishing his
7 intent. And all of this is relevant to establish that he's
8 trying to make himself a full-service drug store.

9 THE COURT: All right. Let's take a lunch break.
10 See you back at one-thirty.

11 MR. DEJONG: Thank you, Your Honor.

12 (WHEREUPON, the court stood at recess for a lunch
13 break.)

14 THE COURT: All right. I've reviewed the motions
15 made by both parties. As far as the State's request under
16 404(b) to bring out evidence of other wrongs or acts or
17 crimes, I'm denying that motion based on the relevance
18 based upon the charges that we have before us, as well as
19 the 403 analysis is -- prejudicial effect outweighing any
20 probative value.

21 And as far as the motion of the Defendant to suppress
22 the evidence that was acquired in this case, I want to try
23 to articulate as best I can, not only for the benefit of
24 these fine attorneys, but for the benefit of any Appellate
25 Court that may look at this to somewhat have an idea as to

1 where I'm going. We've got a lot of words that we have
2 used in arguments of automobile exception and what does
3 apply, *Terry* versus arrest, and reasonable suspicion. My
4 analysis is primarily based upon the South Carolina -- a
5 recent South Carolina case of *State v. Brannon* and also the
6 United States Supreme Court case of *Michigan v. Chesternut*.

7 I believe there where our Court noted that there was a
8 important distinction between an arrest and a seizure, I've
9 obviously used the law and I've also used the testimony
10 that I've heard as a basis, and I've got to view it in the
11 totality of all the circumstances. In light of the -- what
12 reasonable people would do under the same circumstances, I
13 find that there was a legitimate traffic stop, that once
14 that stop was made, there was a seizure of the person for
15 the benefit of the investigation stop that the officer was
16 making. As our Court says -- itself has said, that a
17 seizure of a person doesn't always result in a trip to the
18 jailhouse, and a prosecution for a crime in the traditional
19 sense, but I think there was a seizure of the person at
20 that time. I believe under the analysis that the law gives
21 me and from what I've heard that a reasonable person would
22 not have considered himself free to leave that scene of
23 that traffic stop as was done in this case. I think the
24 officer had a reasonable suspicion for the stop, and also
25 for the investigation that he conducted thereafter. Not

1 only on the stop itself, but on the actions and the -- to
2 effectuate the stop, but the actions of the Defendant, the
3 time that this all occurred, the traffic patterns of that
4 shift, the actions of the Defendant, not just in driving
5 but in the staring in the window and the officer was an
6 experienced officer. I think once the inquiry was being
7 made by the officer and the Defendant chose to flee the
8 scene, I certainly think that the officer had sufficient,
9 and then enhanced, perhaps suspicion of criminal activity
10 to follow him and ultimately apprehend.

11 After the apprehension, he acquired knowledge through
12 the wallet and through -- I thought I heard through
13 dispatch that -- even there not going back to the car, his
14 car, he found out there was a suspended driver's license,
15 that he acquired proper cause for an arrest. And I think
16 certainly the pat-down of the individual immediately on the
17 cuffing of him for the weapon was proper for the safety of
18 the officers. Also, the inventory search, I think, was
19 proper as well. The officer testified that it was
20 established policy that the Defendant was going to be taken
21 to the Pickens County Law Enforcement Agency for retention,
22 that they would need to do, as established policy, an
23 inventory search before arriving there or simultaneously
24 arriving there, rather than passing that off to others. I
25 think the inventory search was proper based upon the

1 circumstances, be it in the field or at the station.

2 Again, I think under the total circumstances that I've
3 heard the behavior and the activities of both the Defendant
4 and the officer, that the drugs and the paraphernalia, the
5 weapon and all were properly seized after a proper search.
6 So I will deny your motion to suppress this evidence, Mr.
7 DeJong.

8 MR. DEJONG: I'm sure my exception is noted for
9 the record, Your Honor.

10 THE COURT: Yes, sir. It's noted for the record.
11 All right. Anything before the jury comes in?

12 MR. THEM: Yes, sir.

13 THE COURT: Yes, sir.

14 MR. THEM: Throughout my questioning of my
15 witnesses, I referred to the Defendant as a gentleman, as
16 Mr. So and So, and I noticed throughout Mr. DeJong's cross
17 examination of my witnesses, he would not use any title for
18 them. He just called them by their last names, Jones,
19 Smith, Brown. I'd ask the Court to admonish him that if
20 he's going to talk about my witnesses that way, that he
21 give them proper respect and address them as either Mister
22 or Officer or something.

23 THE COURT: I'll deny your request. You know,
24 Mr. DeJong, he's an experienced lawyer. He certainly knows
25 that the jury has the ultimate call on this case and I'm

1 sure he'll not do anything to jeopardize his client in the
2 -- before the jury. And I'll let him try his case as he
3 sees fit and I think he -- obviously, if he gets out of
4 line and makes derogatory remarks toward any witness, I'll
5 certainly call his hand on that, but I don't expect that
6 from him, Mr. Them. But thank you very much for bringing
7 that to our attention.

8 MR. THEM: Nothing further on behalf of the
9 State, Your Honor.

10 MR. DEJONG: Nothing further on behalf of Mr.
11 Collins, Your Honor,

12 THE COURT: All right. Let's have our jury come
13 in if they're ready. You can swear them in, Madam Clerk.

14 (WHEREUPON, the jury entered the open court at
15 approximately 2:00 p.m.)

16 THE COURT: Mr. Foreman, ladies and gentlemen,
17 thank you very much for being patient with us. Again, I
18 perhaps get a bad grade in my estimation of time. I
19 apologize for that again. That's my fault for not being
20 able to anticipate our timing as well, but we've got all of
21 our matters taken care of now. We're ready for the
22 participation by you.

23 At this time, I'm going to ask Ms. Watson to
24 administer an oath to you. I urge you to listen carefully
25 as you hear the oath and take it to heart. It's a time-

1 honored oath that has been around for probably as long as
2 our country has been in existence and even back before that
3 in the common law. Listen carefully to the oath and once
4 you take that oath, we'll then be ready for the attorneys
5 to make their opening statements to you. Ms. Watson.

6 THE CLERK: Please stand and raise your right
7 hand. After I administer the oath, please say I will.

8 You shall well and truly try the issue joined in this
9 case of The State versus Marshall Heath Collins and a true
10 verdict render according to the law and evidence, so help
11 you God.

12 (WHEREUPON, the jury was duly sworn.)

13 THE COURT: Mr. Them, you may address the jury in
14 your opening statement.

15 MR. THEM: Thank you, sir.

16 **OPENING STATEMENT**

17 **BY MR. THEM:**

18 Good afternoon. I'm still Pete Them with the
19 Solicitor's Office. It's my job to present the evidence to
20 you on behalf of the State of South Carolina. The
21 Defendant is charged with four separate crimes. The first
22 and most serious of those crimes is trafficking in
23 methamphetamine. It's a key bit of evidence that you'll
24 want to look for in whether or not we prove to you that the
25 Defendant was in knowing actual or constructive possession

1 of more than ten grams of methamphetamine. Actual
2 possession is something -- this pen is actual possession,
3 what I have in my pocket considering I had my coat off
4 during the lunch break, is constructive possession because
5 it's not knowing or actual sort of stuff. It's whatever's
6 on this desk is in my constructive possession. Actual
7 possession is in your hand or on your person, something
8 like that.

9 He's also charged with possession of a controlled
10 substance with intent to distribute two different drugs.
11 The first drug is Oxycodone. The second drug is
12 Alprazolam. We will present to you evidence that he
13 possessed a quantity of those drugs. There is no magic
14 quantity of an ounce or two grams or ten grams. It's
15 looking at the facts and determining whether or not you're
16 satisfied beyond a reasonable doubt that he possessed these
17 things with the intent to distribute them.

18 And, finally, he's charged with possession of a weapon
19 during the commission of a violent crime, that violent
20 crime being one declared by the legislature to be
21 trafficking in methamphetamine.

22 Let me give you a brief roadmap as to where we're
23 going with this case. There's an old saying, I guess you
24 could even call it a joke, that a lot of small country
25 towns roll up their sidewalks at night, they're so quiet.

1 Well, this occurred in the City of Pickens, and Pickens is
2 a little bit like that. You'll hear testimony from the
3 officer that made this case that the later you get in the
4 evening, this town turns into a ghost town. And the
5 slightest little bit of activity, because there's nothing
6 competing with it, will attract your attention. Cars
7 coming. I mean, that's almost a big deal at one o'clock in
8 the morning, as a police officer, to see a car riding down
9 the road through Pickens. So you pay attention to things
10 that you normally would not pay attention to, because
11 there's no competition. And if you see something that
12 piques your interest that you think requires a little bit
13 more looking into, you start to do that. And then in that
14 process if you see other things that pique your interests,
15 you go a little further.

16 Well, eventually, this Defendant was stopped by the
17 officer directly across the street over here at the Gravelly
18 Insurance Company parking lot, right next to the --
19 actually on the corner from the parking lot, catty-cornered
20 from the courthouse. When the officer went up to speak to
21 the Defendant, he saw other things that keyed him that
22 there might be something a whole lot more serious than what
23 was -- started out as a broken tag light. He spoke to the
24 Defendant, got some information from the Defendant. And
25 when he was in the process of checking out that information

1 from the Defendant, the Defendant jumped out of the car.
2 He was left in his car while the officer went back to his,
3 grabbed the backpack, put the backpack on and started
4 running up the street. The officer gave chase and you'll
5 hear what happened as a result of the chase. We'll also
6 call the officer that was called to assist him and he will
7 tell you what he did, said, heard and saw.

8 Finally, we'll call another police officer, Brad
9 Smith, who's the evidence custodian and criminalist. I
10 guess you could call him the CIS. Although, the people
11 that do that work in real life don't like to be called that
12 because it sounds like television. He's the evidence
13 custodian and he handles all the evidence and sees to it
14 that it's properly accounted for and gets to the right
15 place, and the property is stored and untampered with.

16 The next group of witnesses we'll go into will be from
17 Greenville. They work for the Department of Public Safety
18 over there. And one of them works for property and
19 evidence control in Greenville County. That is the
20 forensic chemists -- chemical testing laboratory that's
21 used by a lot of local police departments in Greenville and
22 Pickens and probably some other counties. And you'll hear
23 some expert testimony from witnesses about things that they
24 tested and things that they identified and what they were.
25 You'll hear weights and names and things of that nature.

1 Now, we may end up in kind of an awkward situation
2 when we get to the Greenville witnesses because with budget
3 cuts, they're a little short on staff so their time is real
4 important, and if we tie them up over here ---

5 MR. DEJONG: Your Honor, I'm going to object to
6 this.

7 THE COURT: I sustain. Just get into the opening
8 statement.

9 MR. THEM: Okay. We will call them at the
10 appropriate time.

11 Now, at the conclusion of this case, you're going to
12 have to answer four questions. Is the Defendant guilty of
13 the four charges? Let me tell you now in a loud and clear
14 voice, if you're not satisfied beyond a reasonable doubt as
15 to their guilty, you should vote him not guilty. But on
16 the other hand, if you are satisfied, if you're firmly
17 convinced, clearly shown guilt beyond a reasonable doubt,
18 you should vote him guilty and let him be held accountable
19 before the law for the crimes that he's accused of
20 committing. Thank you very much.

21 THE COURT: Mr. DeJong, you may address the jury.

22 MR. DEJONG: Thank you, Your Honor. May it
23 please the Court, Mr. Prosecutor.

24 **OPENING STATEMENT**

25 **BY MR. DEJONG:**

1 Rights are kind of like warranties. We all have
2 warranties, and then we find how useless they are when we
3 need them. Warranties are like rights in that regard.
4 They're not any good until we need them. A substantial
5 right afforded every citizen in Pickens County, South
6 Carolina, the State of South Carolina, the United States of
7 America, in a criminal case is what we call the presumption
8 of innocence.

9 And I'm going to ask you, ladies and gentlemen, to
10 look at Mr. Collins seated there at counsel table. He's
11 got on blue jeans. I believe he's got on a plaid flannel
12 shirt. This presumption of innocence, that very
13 substantial right afforded every citizen, we sometimes say
14 it is like a cloak that is draped about the shoulders of a
15 Defendant in a criminal case. I would take that one step
16 further. It is not just a cloak that is draped over the
17 shoulders of a criminal defendant. It is like a garment, a
18 suit, a jumpsuit. And that jumpsuit, ladies and gentlemen,
19 covers Mr. Collins from the top of his head to the very
20 soles of his feet. And that garment has no seams in it, no
21 tears, no rivets. And you might well say, well, it must
22 have a rip in it someplace because wasn't Mr. Collins
23 arrested for these offenses? He sure was. Some magistrate
24 issued arrest warrants. But you see, ladies and gentlemen,
25 those arrest warrants don't even make a wrinkle in the

1 seamless suit called presumption of innocence. Because
2 being arrested for a crime, arrest warrants being issued,
3 is no evidence whatsoever of guilt. And that should not
4 even be considered by you. And then you could very well
5 say, well, there's got to be a large, large tear in this
6 seamless suit because His Honor read us indictments that
7 were handed down by the Pickens County Grand Jury. And,
8 again, ladies and gentlemen, it doesn't even make a wrinkle
9 in that suit. Because the fact that Mr. Collins was
10 indicted by the Pickens County Grand Jury, just like the
11 arrest warrants, are no evidence whatsoever of guilt and
12 should not be considered by you.

13 Indeed we could take the arrest warrants, we could
14 take the indictments but for the fact that we still keep a
15 paper trail -- I'm sure one of these days it's going to be
16 an electronic trail, but right now we keep a paper trail,
17 and that is a paper trail of the case, but it is not
18 evidence. Indeed and in fact you have not even heard any
19 evidence up until this point in time. That comes from the
20 witness stand.

21 Mr. Collins has pled not guilty to these charges. And
22 by doing so, ladies and gentlemen, that puts him under no
23 burden whatsoever to prove anything on this case. The
24 burden of proof lies entirely on the State of South
25 Carolina. It rests on this table. It is not over there on

1 that side of the courtroom. Whether Mr. Collins testifies
2 or not at this point in time, I don't know and we'll
3 address that issue when we get back together in closing
4 this case.

5 So those are two fundamental principals of our
6 judicial system, of our law in this country, and as we move
7 through this trial I would ask you to remember. And that
8 seamless garment, getting back to that for a moment, excuse
9 me, does not leave Mr. Collins, nor is it ripped, nor is it
10 torn after the first witness testifies or the second
11 witness testifies or the third witness testifies. It's
12 still there. Indeed, that seamless garment, not Mr.
13 Collins but the garment itself, covers him and goes with
14 you into the jury room later on when you start your
15 deliberations.

16 On behalf of Mr. Collins, ladies and gentlemen, I
17 would like to thank you for being here this afternoon,
18 being here all day I guess we could say at this point in
19 time, because you thirteen people sitting in the jury box
20 at this moment in time are the very foundation of our
21 judicial system. The great late Winston Churchill is
22 credited for one time having said that jury duty is the
23 highest service a citizen can render to their community in
24 peacetime. None of us would probably get into any long
25 drawn out debate as to whether we're in peacetime or not

1 right now. But I think maybe we paraphrase Mr. Churchill
2 just a little bit and say that it is the greatest service
3 that you can provide for your community as noncombatants.
4 Certainly, the very cornerstone of our society. I'm not
5 going to belabor you with my thoughts anymore at this point
6 in time. We'll get back together when this case is over.
7 I do not want to discuss alleged facts with you, testimony
8 at this point in time. We'll hear those together and I
9 will have an opportunity to discuss those with you at the
10 close of the case. I would ask you to listen, pay
11 attention, which I know you will. You've been more than
12 attentive so far. And at the close of this case bring back
13 a verdict, all of which are not guilty. Thank you.

14 THE COURT: Solicitor, you may call your first
15 witness.

16 MR. THEM: Patrolman Joshua Blair.

17 THE CLERK: Place your left hand on the bible and
18 raise your right hand, please. Do you solemnly swear or
19 affirm the testimony you're about to give in this case be
20 the truth, the whole truth and nothing but the truth, so
21 help you God?

22 WITNESS: I do.

23 THE CLERK: State your full name for the record.

24 WITNESS: Joshua Adam Blair.

25 THE CLERK: Please be seated.

1 JOSHUA ADAM BLAIR,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 (WHEREUPON, State Exhibit Number 1 was marked for
4 identification.)

5 MR. DEJONG: If Mr. Them is offering the map,
6 Your Honor, as evidence, it is without objection.

7 MR. THEM: Move to ---

8 THE COURT: Without objection then, exhibit 1
9 will be admitted into evidence.

10 (WHEREUPON, State Exhibit Number 1 was admitted into
11 evidence.)

12 MR. THEM: Josh, grab that ---

13 OFFICER BLAIR: Yes, sir.

14 MR. THEM: Place the easel there if you would,
15 please. Okay. Stay up there with me for a moment if you
16 would.

17 DIRECT EXAMINATION

18 BY MR. THEM:

19 Q. Where are you employed?

20 MR. DEJONG: Mr. Them, I don't mean to interrupt
21 you, may I be at ease to stand up in the corner over
22 there.

23 THE COURT: Yes, sir. You may stand so you can
24 see the exhibit, Mr. DeJong.

25 MR. DEJONG: Thank you, Your Honor.

1 THE COURT: Officer Blair, you don't have a
2 microphone with you there. You need to make sure the court
3 reporter can hear what you have to say. And the jury has
4 got to hear what you have to say, so make sure, with your
5 back to them, that they're able to hear what you have to
6 say sir, okay?

7 OFFICER BLAIR: Yes, sir.

8 Q. Where are you employed, sir? If you would face the
9 jury while you're talking.

10 A. I work for the Pickens Police Department in Pickens,
11 South Carolina.

12 Q. How long have you worked there?

13 A. I have worked there for about a year and a half.

14 Q. Okay. Are you a Certified Police Officer in the State
15 of South Carolina?

16 A. I am.

17 Q. Have you attended the Criminal Justice Academy in
18 Columbia and completed the course of study down there?

19 A. Yes, sir, I have.

20 Q. Prior to coming to work for the Pickens Police
21 Department, did you have any other law enforcement
22 experience?

23 A. Yes, sir, I have two types of prison or jail
24 experience. I worked at Perry Correctional Institution for
25 the Department of Corrections. And prior -- also, I'm

1 sorry, after working at the Department of Corrections, I
2 went to work for Greenville County Detention Center in
3 Greenville County, South Carolina.

4 Q. How long did you work for the Department of
5 Corrections?

6 A. I worked there for approximately a year and a half.

7 Q. And for Greenville County?

8 A. About two and a half years. So I've got a total of
9 four years at that time.

10 Q. Let me call your attention to October the 2nd of 2009.
11 Were you employed by the Pickens Police Department at that
12 point in time?

13 A. Yes, sir, I was.

14 Q. Were you working that day or that night?

15 A. Yes, sir, I was working that evening.

16 Q. What shift were you working?

17 A. I worked the evening shift, which is a twelve-hour
18 shift that starts at around six o'clock, sometimes a little
19 earlier, and ends at six o'clock in the morning, and so you
20 work six p.m. to six a.m.

21 Q. Six in the late afternoon to six in the morning?

22 A. That's correct, yes, sir.

23 Q. And what would be your general responsibilities on a
24 shift like that?

25 A. At that time, we did a lot of traffic enforcement.

1 Well, we still do a lot of traffic enforcement. We answer
2 calls for service, whether it be criminal or sometimes it
3 can be a civil calls for service. Basic law enforcement
4 duties.

5 Q. All right. Let's talk generally about what it's like
6 out there. Is there a change in traffic flow or the number
7 of cars and activities that you see starting at six o'clock
8 going into the night, and then picking up in the morning?

9 A. Absolutely. At six o'clock p.m., it's usually quite
10 busy, as you would imagine. I don't know if any of you
11 drove through Pickens, but it's very, very busy. As it goes
12 on into the night it does sporadically get worse as far as
13 lighter traffic, till along about ten o'clock or eleven
14 o'clock at night, it actually gets so sparse that you might
15 see one car every twenty minutes or so.

16 Q. Let me call your attention to early in the morning of
17 October 2nd at about one-thirty. Where were you then, do
18 you remember?

19 A. Yes, sir, I do. May I position this map a little
20 differently?

21 Q. Sure. Position it the way you want to.

22 A. Okay.

23 Q. All right. How about orient us a little bit. Can you
24 show us where the courthouse is on that map?

25 A. Absolutely. The courthouse is actually -- hang on a

1 minute. Let me find it for myself, make sure I'm not going
2 to tell you wrong. The courthouse is right here in this
3 parking area right here. I'm sorry. This is the parking
4 area for the courthouse. This is actually the courthouse,
5 itself.

6 Q. Okay. And what is this area over here?

7 A. This is our parking lot for the courthouse, as -- I'm
8 not sure if everybody parked there or not.

9 Q. And what is this over here?

10 A. That would be the Post Office.

11 Q. Okay. And the convenience store that's across the
12 street, where is that?

13 A. I'm sorry. I wasn't correct. That is the Post Office
14 you see up here. I'm sorry.

15 THE COURT: Mr. Them, you might be blocking some
16 of the jurors as well. Maybe if you can rearrange that so
17 that everybody can see it as the officer is talking.

18 MR. THEM: Okay.

19 Q. Show me where that convenience store is, if you would?

20 A. The convenience store, I'm sorry?

21 Q. The Jetco, right across the street.

22 A. The Jetco convenience store is right here.

23 Q. Okay. Now, this is Main Street up here?

24 A. It is. It is East and West Main Street.

25 Q. What's out this way?

1 A. That's the high school and football stadium actually
2 where that dirt plot is there.

3 Q. And out this way?

4 A. That's where Blue Ridge Co-op, Tony's Restaurant,
5 Tony's Italian Restaurant.

6 Q. Where were you at about one-thirty that morning?

7 A. About one-thirty that morning, I was actually
8 patrolling the Main Street area. I was riding around this
9 area, actually it's off the screen of the actual picture
10 itself, right around Florence Street. That's the road just
11 past the intersection where Pace and Reed's filling station
12 is.

13 Q. Okay. And how fast were you -- well, I'm sorry. Were
14 you driving?

15 A. I was driving a car, yes, sir.

16 Q. How fast were you driving?

17 A. The speed limit on the road is twenty-five miles per
18 hour. I may have been going twenty-five, somewhere around
19 that area.

20 Q. Did there come a point in time when you were riding at
21 about one-thirty that you saw something that caught your
22 eye?

23 A. I did. At the intersection of Florence Street at Main
24 Street, which would be over here on this top side, I noticed
25 a black Honda. It appeared to be a Honda car, a four-door

1 car, sitting there at the stop sign as I was approaching.

2 Basically, I was heading over here towards Tony's area. I
3 noticed that it had plenty of time in front of me to have
4 turned in front of me; however, it sat there and waited on
5 me to go past, which kind of struck me a little odd. As I
6 passed that vehicle's lane of travel, went ahead and turned
7 heading towards the main courthouse area.

8 Q. So y'all were going in opposite directions?

9 A. Correct. I continued to drive in this direction. He
10 turned out left and went toward the courthouse area. As he
11 did that I looked in my rearview mirror and noticed the tag
12 light didn't appear to be on. I couldn't see the tag at
13 all. It was not illuminated. So I actually turned around
14 to approach the vehicle and see, you know, if that's
15 correct, that the tag light was actually on or not. When I
16 caught up with the vehicle, he was going -- the vehicle was
17 traveling south on Catherine Street, basically which means
18 he turned right onto South Catherine, which is where the
19 Village Inn is located on South Catherine Street. So he was
20 going in that direction, heading south. So as he turned, I
21 went ahead and got behind him going onto South Catherine. I
22 still couldn't see the tag light very well. I could see the
23 tag, but I didn't know if it was because of my headlights or
24 if it was because of his tag light might not have been
25 working. When I got behind him a little more, he decided to

1 turn to the left onto West Cedar Rock, which you see here.

2 Q. Okay. If you would, start showing us the path of what
3 happened and things of that nature.

4 A. Well, he turned left at South Catherine and West Cedar
5 Rock, the old NAPA store was there. Somewhere in the
6 middle of that turn, I initiated my blue lights to initiate
7 a traffic stop because I still could not see his tag light.
8 I couldn't see his tag at all, unless my headlights were
9 hitting it. He proceeded to go in an eastern travel, this
10 direction, and when he started to stop, he decided to stop
11 here, in this parking area here, which is the Gravely -- the
12 insurance agency. I've got to try it a little darker.

13 Q. Let me see if I can get you a better marker.

14 A. That's the Gravely Insurance Agency where he stopped.

15 Q. Try this and see if that'll work better.

16 A. Okay. Thank you.

17 Q. Okay. And what did you do? All right. You had the
18 blue light on?

19 A. Uh-huh (affirmative).

20 Q. He pulled in there. What did you do?

21 A. I actually proceeded there in a very similar fashion.
22 I was behind him and stopped my vehicle right about there.

23 Q. Okay.

24 A. That's so I could get out and be close enough to the
25 vehicle and not have to walk, you know, two blocks to get to

1 him before ---

2 Q. Okay. And what did you notice when you got out of the
3 vehicle about that tag light?

4 A. When I approached the vehicle, it probably -- I got up
5 about four feet from the trunk, four to six feet, I noticed
6 there was a faint glow on his tag light. So, yes, it was
7 on. However, it wasn't enough to make the tag where you
8 could read it at a distance. You had to have your
9 headlights blasting on it before you could actually see what
10 was on it. Which, you know, it's one of those we still like
11 to stop them and want to know, hey, you know, the tag
12 light's out or whatever.

13 Q. Had everything gone smooth from there, was that
14 something you would write a ticket for, or what?

15 A. Usually, I would write them a warning ticket, which
16 would be just a contact, public contact saying, hey, you
17 need to get this thing worked on.

18 Q. Is there any fine or points associated with these
19 warning tickets?

20 A. No, not with a warning ticket. Nothing at all.

21 Q. So what did you do when you noticed that tag light?

22 A. Well, I approached the vehicle, up to the driver's
23 side. And I noticed the window was cracked maybe two to
24 four inches at most about, you know, that much. I tried to
25 engage a conversation with the driver. At that time, I

1 asked for his license, registration, and insurance as I
2 normally do on any traffic stops to just go ahead and make
3 sure everything is verified and make sure everything's okay.
4 I noticed something very peculiar about him, because he was
5 looking straight at the windshield, would not look at me at
6 all when talking to me.

7 Q. If he's looking straight out the windshield, where
8 would you have been?

9 A. I was on the passenger's side. If this is the side of
10 his car, he would be looking toward that wall constantly.
11 Would not look at me, which is unusual because most people
12 whenever they get pulled over they still like to look at the
13 officer and ---

14 MR. DEJONG: Your Honor, I'm going to object as to
15 what is usual and not usual. I don't think that's relevant
16 in this case.

17 THE COURT: I sustain the objection. Just ---

18 MR. DEJONG: And move to strike.

19 THE COURT: That will be struck.

20 MR. DEJONG: Thank you, Your Honor.

21 A. I also noticed the window was only cracked a little
22 bit, which is kind of unusual because I know when I asked
23 for his license and registration, it would be kind of hard
24 for him to hand it out the crack. So that struck me as odd.
25 So when he gave me his name and date of birth, he said his

1 wallet wasn't on him, he didn't have his wallet.

2 Q. What name did he give you?

3 A. He gave me the name of Brent Wiggins.

4 Q. Did he give you a birth date?

5 A. He did give me the date of birth, which also seemed odd
6 to me, a 7/17 of 1973. That's a lot of sevens in there,
7 just struck me as odd. Instead of running it off of my
8 walkie talkie to the dispatch to find out exactly, you know,
9 if his license came back as good or not, I decided to go
10 back to my car and use -- we have an internet based computer
11 in there. We can actually look up and see a picture ID on
12 their driving record versus just hearing, yes, they are
13 clear to drive or no, they're not. And I wanted that ID to
14 make sure this was the right person. So I approach back to
15 my car and actually sat in my vehicle leaving him in his to
16 get my ---

17 Q. Where is his vehicle when you're sitting in your
18 vehicle?

19 A. His vehicle was actually -- you can kind of see --
20 basically right where my black mark stops that's where his
21 vehicle was and right around where my red mark starts is
22 where my vehicle was . So it was fifteen feet at most from
23 the front of his car to the front of mine.

24 Q. Is your vehicle facing his head-on?

25 A. No. No, it's not. It's actually off a little bit.

1 Q. Okay. And then what happened? Did you get the
2 information that you were looking for from the computer?

3 A. No, sir, as I was actually entering it into the
4 computer system, I looked up trying to keep my eye on the
5 car ahead of me. I looked up and saw him exit the vehicle
6 with a backpack in his hands and started running towards the
7 CVS area. As he was running, he threw the backpack on his
8 shoulders and actually continued running. You know, both
9 shoulders were in the backpack.

10 Q. Okay.

11 A. As he ran, he actually ran across this little small
12 grassy section here and ran all the way towards South Lewis
13 Street. It was in this process when he was running, that I
14 continued to yell for him to stop because I actually chased
15 him by foot. I'm sorry. I continued to tell him to stop,
16 get on the ground. Stop, get on the ground. And all at the
17 same time, I was trying to convey my position to my partner
18 and dispatch, let them know what was going on so they could
19 try to get this man subdued.

20 Q. When you initially stopped him, did you ask for his
21 driver's license and registration?

22 A. I did.

23 Q. Was he able to produce one?

24 A. No, he was not.

25 Q. So that's why you got a name and birth date?

1 A. Exactly.

2 Q. So you were chasing him down the street here. And this
3 is the distance of what?

4 A. About two blocks.

5 Q. Okay. Then what happens?

6 A. At that time, I continued to yell for him to stop, get
7 on the ground, to stop running. And he decides to cut down
8 South Woods Street, and there -- at the time there was a
9 house here as it's shown and the Post Office. And I
10 believed, as it perceived to me, that he was going to try to
11 cut through that area and continue running on. When he
12 rounded this corner, I continued to yell stop, get on the
13 ground, stop, get on the ground, he ran in this direction
14 and cut through the parking lot and actually impacted that
15 tree.

16 Q. When you say impacted the tree ---

17 A. He hit the tree, meaning with his body he ran into the
18 tree.

19 Q. What part of his body hit the tree?

20 A. That I could tell at the time, his head area.

21 Q. Okay. Now, when he's running this way, has he crossed
22 the street or is he still on the same side of the street
23 from where he parked?

24 A. He'd actually crossed over the street into exactly
25 where that tree was.

1 Q. Okay. And what happened to him when he hit the tree?

2 A. When he hit the tree, he became very disoriented. He
3 actually fell to the ground. I also, of course, was right
4 there behind him and I pulled my taser and ordered him to
5 ---

6 Q. You pulled your taser. What is a taser?

7 A. A taser is a immobilizing device we have. What it
8 does is actually launches an electronic charge into you
9 through a probe or by being touched with it, which
10 immobilizes your body from movement. It doesn't have any
11 long-lasting effect. It just immobilizes you. You can't
12 move.

13 Q. Were you also armed with a service weapon?

14 A. I was.

15 Q. A pistol?

16 A. I was also armed with a service weapon.

17 Q. Okay.

18 A. And I left that in my holster at that point.

19 Q. Did you use the taser in any way?

20 A. No, I did not deploy the taser. I just had it on his
21 person to cover him.

22 Q. Why did you get it out?

23 A. Just to make sure that he was down on the ground. Make
24 sure, make sure that he complies because he had already run
25 once. I wanted to make sure I get him compliant.

1 Q. What's going on with you after this chase as far as
2 what are your concerns with what he's doing?

3 A. My concerns were heightened because I wondered why it
4 is that he ran. And, of course, I was just started with a
5 basic stop that, you know, it wasn't even probably going to
6 be a ticketable offense. This would be one of those, I was
7 going to give him a warning ticket, and then he took off
8 running from me so I was curious as to what, you know, what
9 his intentions were from there.

10 Q. Was anybody with you or backing you up in real close
11 connection with you prior to him rounding the corner and
12 running into the tree?

13 A. There was someone within a couple of blocks from me.
14 That was Officer Sapp.

15 Q. And were you calling for help?

16 A. I was. When I called, I gave the radio call that I was
17 actually on foot pursuit of the subject, a young man and
18 gave the description.

19 Q. After the Defendant hit the tree and went to the
20 ground, you said you got your taser out?

21 A. Uh-huh (affirmative).

22 Q. What, if anything, did you do to further subdue him?

23 A. My partner actually got on the scene as soon as the
24 young man hit the ground. And from there he actually exited
25 his vehicle and placed him in handcuffs.

1 Q. Any blows or hits or anything, scuffling, fighting?

2 A. Absolutely not. We actually put him in handcuffs quite
3 easily and assisted him, you know, helped him up and put him
4 in the car, just that easily.

5 Q. When y'all put the handcuffs on him, was he on the
6 ground or standing up?

7 A. He was still on the ground when we put the handcuffs on
8 him.

9 Q. Where was the backpack?

10 A. On his back.

11 Q. Was it on both shoulders still?

12 A. It was. It was on both shoulders on his back.

13 Q. Okay. All right.

14 A. At that point, we got him to -- after we got him up off
15 the ground, we actually walked him back to the patrol car,
16 which was rather close there, to my partner's patrol car.
17 It was actually parked -- I believe it was right around
18 here. At that point, we went ahead and did a pat-down of
19 his body to be sure he didn't have any weapons.

20 Q. All right. Tell us the purpose of this pat-down
21 search?

22 A. The pat-down search is to make sure he doesn't have any
23 weapons that can harm the officer or himself. The main
24 thing if you're going to put them in the car behind you, you
25 don't want him shooting from behind if he had a weapon on

1 him. You pat him down and find it.

2 Q. Did you find any weapons on his person?

3 A. We found a pocket knife, which wasn't that big a thing,
4 that's unusual, because most people in the Pickens area
5 carry pocket knives.

6 Q. It was a legal knife?

7 A. Yes, it was actually legal.

8 Q. Okay. All right.

9 A. Now, we did further search the lower part of the
10 backpack that he had on, which his hands were accessible to.
11 They were right there at his backpack. In that lower
12 portion of the backpack we did locate a silver handgun, very
13 small handgun.

14 MR. THEM: Your Honor, at this point in time, I
15 would propose to get out the weapon. And it's been disabled
16 and has a lock on it.

17 THE COURT: All right, sir. You can get it out
18 for the identification. Who disabled the weapon? This
19 officer, or did someone else do it?

20 MR. THEM: It has a lock. The police officer did
21 it, Your Honor.

22 THE COURT: All right. It has been examined and
23 fully disabled?

24 MR. THEM: Yes, sir.

25 THE COURT: All right.

1 MR. THEM: Would you mark this as Exhibit 2 for
2 identification only at this point.

3 (WHEREUPON, State Exhibit Number 2 was marked for
4 identification.)

5 Q. I'm going to hand you this small pistol marked State's
6 Exhibit Number 2 for identification and ask you have you
7 ever seen that pistol before?

8 A. It's very similar to the pistol we found in his
9 backpack.

10 Q. Does it appear to be the one you took from him?

11 A. It does appear to be the one. Of course, it's hard to
12 identify without any markings or serial number markings on
13 it.

14 Q. How come there's no serial number marking?

15 A. I do not know. The weapon that we on this -- in his
16 backpack also had no serial number. It appeared that it had
17 been filed off, had tool marks. It appeared that it may
18 have been filed off.

19 Q. The weapon that you're looking at here, does it have a
20 serial number that you can see?

21 A. No, sir, it does not. The serial number would actually
22 be here, underneath the trigger guard.

23 Q. And what does it appear happened to the serial number?

24 A. It also appears that there's some tool marks, that it
25 may have been ground off or filed off.

1 Q. All right. What happens to the whole process when you
2 find a gun?

3 A. It heightens a lot. I mean, at that point, it's
4 something that myself and my partner as we discussed, we
5 hadn't expected to see. This really bumped the level of
6 intensity up at that point.

7 Q. Would you have a seat up in that chair now?

8 A. Thank you, sir.

9 Q. Okay. You got him up, you searched the bottom portion
10 of the pack, what happens next?

11 A. Well, as I stated earlier, we did do a pat-down of his
12 body as well. In that pat-down search we found his wallet
13 that had an ID card in it, so it helped us identify who he
14 was.

15 Q. And what did the wallet identification card reflect?

16 A. It reflected the name of Marshall Heath Collins.

17 Q. Okay. The person that you took that wallet from that
18 had that ID card in his wallet, do you see that person in
19 Court today?

20 A. I do.

21 Q. Would you point him out?

22 A. It's Mr. Collins here, the Defendant.

23 MR. THEM: Let the record reflect that the witness
24 is pointing at the Defendant.

25 Q. Is that the same person you chased?

1 A. It is.

2 Q. Okay. Did you handcuff him?

3 A. Yes. My partner handcuffed him, yes, sir.

4 Q. All right. Now, after y'all got him handcuffed what
5 did you do?

6 A. At that point, we had him handcuffed we took the straps
7 off of his backpack to separate that from his person. The
8 reason, we just didn't want to unhandcuff him. We'd just
9 chased the guy two blocks. It was just -- we wanted to keep
10 him stationary. As we unthreaded the straps at the bottom,
11 we took the backpack off. We placed him into his car -- or
12 into the back of my partners car, rather.

13 Q. Did you thoroughly search his person after you took
14 that backpack off?

15 A. Yes. Well, we had already searched his person.

16 Q. Okay. All right.

17 A. He didn't have any pocket on his shirt that I knew of.

18 Q. Now, had you made a decision at that point in time as
19 to whether or not you were actually going to take this man
20 into custody and eventually take him to the Pickens County
21 Jail?

22 A. Absolutely.

23 Q. Okay. And what was that decision?

24 A. Well, the fact that I had seen him -- well, on the
25 scene, after we had the man taken to -- after we had

1 apparently searched and found his ID, we did run his ID
2 through South Carolina Department of Motor Vehicles through
3 dispatch. Our dispatcher did let us know that his license
4 were suspended. And since I had also seen him driving, that
5 did give us a valid and a rather nice charge at that, of
6 driving under suspension. And I'm not sure exactly what
7 offense that is now. It's actually in a different Court.

8 Q. Okay. All right. Now, when you -- was he in the car
9 by himself?

10 A. He was in the car by himself.

11 Q. When you take a person into custody and their car is
12 going to in effect be abandoned, isn't it?

13 A. It is.

14 Q. What about their personal belongings, their valuables?

15 A. You need to inventory those things.

16 Q. Okay. And did you inventory the contents of the
17 backpack?

18 A. We did inventory the contents of the backpack.

19 Q. Okay. And what if anything did you find that would be
20 relevant to what we're doing here today?

21 A. We had found numerous nylon packages, like pouches.
22 Inside those -- one of those pouches we actually found a
23 clear plastic bag, a sandwich style bag, that contained a
24 white crystal-like substance. And it was a decent amount of
25 that. We actually weighed that on the scene, using an

1 additional scale that we did find, and that weight actually
2 come out to be just around fifteen grams. I think it was a
3 little under.

4 Q. One moment, please.

5 A. Yes, sir.

6 MR. THEM: Just one moment, please, Your Honor.

7 Would you mark these next in order, A and B.

8 (WHEREUPON, State Exhibit Numbers 3A and 3B were marked
9 for identification.)

10 MR. THEM: And mark these next in order, A, B, and
11 C.

12 (WHEREUPON, State Exhibit Numbers 4A, 4B and 4C were
13 marked for identification.)

14 MR. THEM: Separately, next in order.

15 COURT REPORTER: Not A and B?

16 MR. THEM: No, separately.

17 COURT REPORTER: 5 and 6?

18 MR. THEM: Yes, ma'am. Thank you.

19 (WHEREUPON, State Exhibit Numbers 5 and 6 were marked
20 for identification.)

21 Q. Let me show you a couple of items here, sir. I'm going
22 to hand you a container of some sort marked State's Exhibit
23 Number 6 for identification, and State's Exhibit Number 5
24 for identification. Have you ever seen those items before?

25 A. Yes, sir.

1 Q. Where?

2 A. They were located inside the backpack that we took off
3 Mr. Collins.

4 Q. I want to show you item 3B and ask you have you ever
5 seen that before?

6 A. Yes, sir, I have.

7 Q. Okay. Does it have any markings on it that would clue
8 you that that's what you saw?

9 A. It has the marking on the back as far as weight.

10 Q. Now, what is item 3A?

11 A. This is an evidence bag that we use to place our
12 evidence in when it's sent to be tested.

13 Q. All right. When you say we use, you mean individual
14 officers?

15 A. Yes.

16 MR. DEJONG: Excuse me, Your Honor. I can't see
17 the witness. Mr. Them is blocking him and that's cutting
18 down on my ability to hear.

19 THE COURT: Just move around as you need to.

20 MR. DEJONG: Thank you, Your Honor.

21 Q. Now, I'm going to show you this collection of items
22 here and I want to talk about item number 4 here and ask you
23 -- well, that's marked State's Exhibit 4A. Have you ever
24 seen that before?

25 A. I have.

1 Q. Where did you see that?

2 A. That was also in the backpack.

3 Q. Okay. I'm now going to show you item number 3, which
4 is marked 4B, and ask you have you ever seen that before?

5 A. Yes, sir. I have.

6 Q. Okay. And where?

7 A. It was also in the backpack.

8 Q. Okay. Now, was there more than one container of items
9 -- never mind. Scratch that. Now, is there any connection
10 between these items here, State's 4 A, B, and C and these
11 items here, State's Exhibit Number 6 and State's Exhibit
12 Number 5, which are the containers?

13 A. Yes, sir, there are. Those pills were actually found
14 in these containers that were also inside a nylon pouch
15 inside the backpack.

16 Q. Okay. Can you tell me which numbers were found in
17 which ones?

18 A. Not explicitly, sir. I don't quite remember. It's
19 been a while.

20 Q. Okay. Now, when you see stuff like this, what do you
21 do with it at the end of your shift or when you return to
22 the station?

23 A. What we do with that is we actually take a chain of
24 custody form, give a brief description of the substance we
25 found, place it in the evidence bag as you were showing

1 earlier and send it into an evidence locker and actually
2 lock that evidence locker once everything's filled out
3 completely. And those evidence lockers, when they're
4 locked, there's only one person who has a key that can open
5 that.

6 Q. When you say the evidence bag, you're talking about the
7 State's 3A?

8 A. Absolutely.

9 Q. Okay. Now, when you put that evidence into this
10 evidence locker, who has access to that evidence locker?

11 A. That would be our evidence collection officer, Officer
12 Brad Smith.

13 Q. How are people prevented from getting to it from the
14 same side where you put it in?

15 A. It's actually a locker set up like a traditional
16 locker, smaller in size, and there is another hefty lock
17 that's actually locked in and it's just with one key, you
18 know. Only that one officer has that one key.

19 Q. Do you know this gentlemen?

20 A. I do.

21 Q. Who is this gentleman?

22 A. This is our evidence collections officer, Brad Smith.

23 Q. Okay. Do you know where he retrieves the evidence
24 from?

25 A. He retrieves ---

1 Q. Does he go in the same way as you or does he go in a
2 different ---

3 A. No, he retrieves it from the same door we actually
4 close and lock it.

5 Q. Okay. The area that we're talking about on that map,
6 is that in the City of Pickens?

7 A. It is in the City of Pickens.

8 Q. Is it in Pickens County?

9 A. It is.

10 MR. THEM: Just one second, please.

11 Q. After you put these seized items in that evidence
12 locker, did you ever exert any control over them in the
13 future?

14 A. Oh, no, I did not.

15 Q. Who's had these to your knowledge?

16 A. Officer Smith had them and Greenville County Testing
17 Lab had them.

18 Q. Okay. Thank you very much.

19 MR. THEM: I have no further questions.

20 THE COURT: You may cross examine the witness, Mr.
21 DeJong.

22 MR. DEJONG: Thank you, Your Honor. May it please
23 the Court.

24 CROSS EXAMINATION

25 BY MR. DEJONG:

1 Q. I note, Mr. Blair, when Mr. Them was asking you about
2 these various exhibits, what pills came out of what, you
3 said it's been a long time, a good while back, you can't
4 remember, can you?

5 A. Correct, sir.

6 Q. And actually this event, since you say all of this
7 happened has been thirteen plus months ago, right?

8 A. Yes, sir, that's correct.

9 Q. All right, sir. And you are a certified police
10 officer, right?

11 A. Yes, sir, I am.

12 Q. And by certified that simply means you've been to the
13 Academy, right?

14 A. Yes, sir, I have.

15 Q. When did you go to the Academy?

16 A. I went to the Academy, I believe it was -- the
17 beginning date was March the 8th of 2009 until I graduated
18 on May the 8th, 2009.

19 Q. On May the 8th of 2009, you graduated?

20 A. Yes, sir, I believe that's the date.

21 Q. All right. Now, when you worked for the Department of
22 Corrections or the Greenville County Detention Facility,
23 that didn't require you to go through the Academy, did it?

24 A. Not the same Academy. They had their own.

25 Q. Right.

1 A. Yes, sir

2 Q. The Police Officer Academy is totally different,
3 right?

4 A. Correct. Correct.

5 Q. And as a police officer and part of going through the
6 Academy, part of that is writing reports, is it not?

7 A. Yes, sir, it is.

8 Q. In particular, incident reports?

9 A. Yes, sir.

10 Q. All right, sir. And part of that is, is that cases get
11 old before they go to trial, right?

12 A. Yes, sir.

13 Q. And I note that it appears as you were answering Mr.
14 Them's questions, you were glancing down at notes, correct?

15 A. Yes, sir.

16 Q. And you were using your incident report to supposedly
17 refresh your memory?

18 A. Yes, sir.

19 Q. All right. Now, did they also teach you at the academy
20 to check and maintain your equipment?

21 A. Yes, sir. Most of the vital equipment, yes, sir.

22 Q. All right, sir. Well, let's start out here. On
23 October the 2nd of 2009, did you have a video camera in your
24 car?

25 A. Not to my knowledge, no, sir. I know I don't have this

1 incident on my camera.

2 Q. The question was, did you have a video camera in your
3 car?

4 A. Oh, yes, sir. I'm sorry. My apologies.

5 Q. All right, sir. So you had a video camera in your
6 car?

7 A. Yes, sir.

8 Q. And that is a video camera that when you activate your
9 blue lights the video camera comes on, right?

10 A. Yes, sir, it does.

11 Q. And did you activate or turn on your blue lights in
12 this case?

13 A. I did.

14 Q. Did your camera come on?

15 A. No, sir, it did not.

16 Q. Well, when's the last time you checked the operability
17 of your camera?

18 A. Sir, I really don't remember. I know that it did not
19 record that incident and that's all I can tell you.

20 Q. Did you check the film in that camera?

21 A. Not before -- I'm not sure. I'm not going to tell you
22 that I did or I didn't because I don't want to perjure
23 myself on that, you know.

24 Q. So if they teach you how to maintain your equipment at
25 the Academy, you didn't do it that day, did you?

1 A. I checked most of my vital equipment, sir.

2 Q. Did you check your camera that day?

3 A. No, sir, I don't think I did check my camera at that
4 incident, at that time.

5 Q. Had you checked it, we might have a picture here of
6 what that tag light really looked like, wouldn't we?

7 A. It's possible.

8 Q. Yes, sir.

9 A. The way they're positioned in my car, I'm not sure
10 though, sir.

11 Q. All right. Now, you were patrolling in the City of
12 Pickens about one-thirty on the morning of October the 2nd?

13 A. Yes, sir.

14 Q. Gets a little boring, doesn't it?

15 A. Yes, sir. It can.

16 Q. Very boring?

17 A. It can, yes, sir.

18 Q. Yes, sir. So boring to the point that you start
19 looking for something to do?

20 A. No, sir. Actually, I -- personally, at that point in
21 time in the night, I just look for six o'clock in the
22 morning to get there.

23 Q. All right, sir. Well, now, you're going down a main
24 street towards Tony's, Six Mile, whatever direction you want
25 to call it, right?

1 A. Correct.

2 Q. And do you have your headlights on?

3 A. Yes, I did.

4 Q. Other traffic have their headlights on?

5 A. What traffic I saw, yes, sir, they did.

6 Q. Do you have a rearview mirror in your vehicle?

7 A. I do.

8 Q. Okay. Pretty much standard rearview mirror like all of
9 us have?

10 A. Yes, sir, I believe so.

11 Q. All right. So you're coming down on Main Street, going
12 towards in the direction of Six Mile and you see what you
13 say is a black Honda?

14 A. What appeared to be a black Honda, yes, sir.

15 Q. By the way, who did that car belong to?

16 A. Honestly, sir, I don't have that in my records right
17 now. I was actually looking at that just a moment ago.

18 Q. Did you ever run a check on it?

19 A. Yes, sir. We ran a -- the license plate to see who it
20 comes back to automatically when we're stopping a car.

21 Q. So if they teach you how to write reports in the
22 Academy, you didn't do that either, did you?

23 A. Well, sir, it's one of those events that unfolded at
24 that point in time, if I wrote down every particular detail,
25 my report would be three or four pages long. So I tried to

1 condense it and put what I felt to be the most important
2 parts in. It appears to be an oversight on my part.

3 Q. Well, the fact that you say this black, what appeared
4 to be a Honda, was pulling out of Florence Street and waited
5 for you to go by, do you think that's a pretty important
6 point?

7 A. That was an officer observation, so ...

8 Q. You say that's what piqued your interest, right?

9 A. It is what piqued my interest, yes, sir.

10 Q. So that's pretty important, right?

11 A. I guess it is.

12 Q. Look in your report and read it to me.

13 A. It's not in there, sir.

14 Q. So as you shared with the Solicitor a while ago, it's
15 been a pretty long time ago?

16 A. Yes, sir.

17 Q. And now you can remember that it's not in your report?

18 A. I know it's not in my report because I have it right in
19 front of me, sir.

20 Q. Yes, sir. But now you say you can remember?

21 A. Oh, I can remember that, yes, sir.

22 Q. I see.

23 A. Can I remember exactly what pills were in what
24 container? No, sir, I don't.

25 Q. Did you meet with the Solicitor preparing for this

1 trial?

2 A. Yes, sir, I did.

3 Q. All right, sir. Did you talk about your testimony?

4 A. Yes, sir.

5 Q. All right, sir. Now, you're going towards six mile,
6 this black, what appears to be a Honda, turns left out of
7 Florence and goes the opposite direction, right?

8 A. Yes, sir.

9 Q. So the only way at that point in time I believe that
10 you could have seen a tag light would have been in your
11 rearview mirror.

12 A. That's correct, sir.

13 Q. Now, did your rearview mirror have one of those flipper
14 jiggers on it for the night thing, so when cars come up
15 behind you their lights aren't so bright?

16 A. Yes, sir, it does.

17 Q. Which one was yours on?

18 A. Honestly, sir, I can't tell you because I never messed
19 with it.

20 Q. All right. Would -- you've messed with before, I
21 assume, haven't you?

22 A. I can't attest to that. Honestly, I never really mess
23 with those things.

24 Q. Well, are you aware of the fact that if you turn it on
25 the nighttime, it makes things appearing in your rearview

1 mirror, lights to be dimmer?

2 A. I am aware of that, yes, sir.

3 Q. But you don't know which one yours was on?

4 A. No, sir, because I never adjusted mine.

5 Q. All right, sir. So whatever it was -- well, how far
6 away were you from Florence Street when you saw this what
7 appeared to be a black Honda?

8 A. I'm not really a hundred percent sure. I don't even
9 think I'd made it to the red light yet. Because you can see
10 through South Catherine Street. I think it was maybe a
11 block away.

12 Q. Okay. And it's one-thirty in the morning?

13 A. Uh-huh (affirmative).

14 Q. Now, the car you were driving, so we are clear, has got
15 the bubble lights on top, it says Pickens City Police
16 Department. All of that good stuff, right?

17 A. Yes, sir, it does.

18 Q. Pretty busy?

19 A. Yes, sir.

20 Q. And people just aren't prone to pull out in front of
21 you, are they?

22 A. It's happened quite a few times, yes, sir. Especially
23 when they have that much room.

24 Q. All right. But you thought at one-thirty in the
25 morning, somebody letting you come on by, you thought that

1 was suspicious?

2 A. Because there was no other traffic on the road, yes,
3 sir, I did.

4 Q. All right. So you move on down the road a ways going
5 still towards Tony's or Six Mile, right?

6 A. Yes, sir.

7 Q. How far do you go down the road before you, I presume,
8 you turn around?

9 A. I'd just crested the hill before I turned around, so it
10 was right at the Presbyterian Church, right there before or
11 right around that area.

12 Q. Well, now do you get behind what appears to be a black
13 Honda?

14 A. Yes, sir, I do.

15 Q. Was it a black Honda?

16 A. If you can give me just one moment. My report says it
17 was a small black car. It was something to that effect. A
18 small black Honda, small black Toyota, something like that.
19 Something of that effect.

20 Q. Any erratic driving?

21 A. No, sir, no erratic driving.

22 Q. Turned -- I guess they turned right off of Main Street
23 onto Catherine, right?

24 A. Absolutely, yes, sir.

25 Q. Turn signal?

1 A. Yes, sir. I did see a turn signal; however, again, I
2 didn't see a tag light visible at that point.

3 Q. All right. No bad driving?

4 A. None.

5 Q. None at all?

6 A. Not that I could tell, no, sir.

7 Q. So now you follow this car, I guess somewhere this side
8 of the Presbyterian Church. You follow it, turn right with
9 it on Catherine?

10 A. Yes, sir, I do.

11 Q. And now this small black car that you describe turns
12 left, I guess, on -- what is that?

13 A. It's West Cedar Rock Street.

14 Q. Okay. Well, where do you turn on your blue light?

15 A. Somewhere in that turn. He turned. I do not see the
16 tag light again, because I waited until my headlights were
17 clear of his tag, to make sure it wasn't my tag illuminating
18 his -- or my lights illuminating his tag. Somewhere in that
19 turn, I was already engaged in the turn when I initiated my
20 blue lights.

21 Q. So actually Catherine ---

22 A. It's actually in that area.

23 Q. -- South Catherine's back over here?

24 A. Yes, sir. That area's not actually on the map.

25 Q. Okay. So you follow that vehicle ---

1 A. About two blocks. From ---

2 Q. Including Catherine?

3 A. Well, yes, sir. Catherine's all over there. So --
4 actually, if you can tell -- if I may?

5 Q. Sure.

6 A. This area here, this little section in the bottom is on
7 this side of Catherine Street. So you've got a whole
8 'nother block on that side. So you've got one, two blocks,
9 somewhere in there, two and a half. So somewhere around in
10 that area.

11 Q. And then a couple of blocks from Catherine is where the
12 Gravelly Agency is, right?

13 A. Yes, sir.

14 Q. All right. Now, when you activated your blue lights,
15 did that vehicle pull over?

16 A. Yes, it did. They looked for a parking area, I'm sure,
17 and just pulled over.

18 Q. Did they pull over safely?

19 A. Yes, sir, they did.

20 Q. Pull off the road blocking no traffic?

21 A. Right. They pulled into a parking area.

22 Q. Turned the car off or leave it running or do you know?

23 A. Obviously -- I mean, honestly, I don't know at that
24 point in time if they left it on or not.

25 Q. Did you ever ask the driver to turn the car off?

1 A. No, not that I'm aware of, no.

2 Q. So now you get out of your car -- well, let's make sure
3 of one thing. What you stopped him for, as you say, was you
4 had, I guess, some question about the tag, correct?

5 A. Yes, sir.

6 Q. So the tag light was operative, but not bright enough
7 to suit you, right?

8 A. Not bright enough to see the tag at all, sir.

9 Q. All right. But it was operating?

10 A. Very, very dimly, yes, sir.

11 Q. Yes, sir. So you get out of your vehicle and you go to
12 the driver's side or the passenger's side?

13 A. To his driver's side.

14 Q. Okay. And he rolls down the window?

15 A. Cracks the window, yes, sir.

16 Q. Cracks the window. This was in October?

17 A. Yes, sir, it was.

18 Q. What was the weather like?

19 A. The first part of October it really wasn't that bad
20 that I can recall. I know after running I was sweating
21 profusely, so that's about the best I can tell you.

22 Q. Raining that night?

23 A. No, sir, it wasn't. It was dry.

24 Q. So he cracks the window and he's looking straight
25 ahead?

1 A. Yes, sir, he's looking straight out the windshield.

2 Q. People are nervous around police officers, aren't
3 they?

4 A. I imagine some people are, yeah.

5 Q. Right. And it's certainly not unusual that someone
6 would be nervous around a police officer?

7 MR. THEM: Objection. Calls for a conclusion on
8 the part of the witness, Your Honor.

9 MR. DEJONG: I withdraw the question.

10 THE COURT: All right. Sustained.

11 Q. The point of that is he was looking straight ahead.
12 That was it, right?

13 A. Right.

14 Q. Just didn't bother looking at you, did he?

15 A. No, he didn't look at me at all.

16 Q. Right. And when you asked him his name, he gave you a
17 name?

18 A. Yes, sir, he did give me a name.

19 Q. And you heard it?

20 A. Yes, sir.

21 Q. Even though he was looking straight ahead, you didn't
22 have any problem hearing him, did you?

23 A. I asked him -- actually, I asked him to repeat it in
24 the process to make sure I got everything down correct, yes,
25 sir.

1 Q. And a date of birth?

2 A. And a date of birth, yes, sir.

3 Q. Now, in a traffic stop he was not under arrest, was
4 he?

5 A. No, sir, not at that time.

6 Q. Right. In a traffic stop you write a ticket?

7 A. You can write a ticket, yes, sir.

8 Q. All right.

9 A. And you could actually take someone in custody, yes,
10 sir, because that is a jailable offense in South Carolina.

11 Q. Well, at this point in time, though, you had no intent
12 of taking Mr. Collins into custody, did you?

13 A. No, I needed to investigate further.

14 Q. All right. So you go back to your vehicle with this
15 name and birth date and you start punching it in the
16 computer, right?

17 A. Yes, sir, I did.

18 Q. Now, nothing comes up on your computer screen in
19 response to that, does it?

20 A. No, sir. I didn't finish that ---

21 Q. Right.

22 A. -- that search, no, sir.

23 Q. So he's certainly not under arrest at that point in
24 time when Mr. Collins decides to leave, right?

25 A. Yes, sir, in a quick hurry.

1 Q. Right. And his car's still parked safely, not blocking
2 traffic?

3 A. Right.

4 Q. Nothing wrong with that. Were his lights on or off or
5 do you remember?

6 A. I don't even remember if his lights were on.

7 Q. So now you don't know if he's Christopher Wiggin, John
8 Adams or Collins, right?

9 A. Right. I don't know who he is.

10 Q. Don't have a clue. And you chase him?

11 A. Yes.

12 Q. And would you say -- was he running fast?

13 A. Yes, sir, he was running very fast. Fast enough I had
14 a hard time keeping up with him, yes, sir.

15 Q. Swinging those elbows and he was getting with it,
16 right?

17 A. He was quick, yes, sir.

18 Q. Now, in the meantime you say he had a backpack and in
19 the running fast, opened his arms as people do, he puts the
20 backpack on. That's your testimony, right?

21 A. Right.

22 Q. Okay. So who's winning the foot race, him or you?

23 A. He was quite a bit ahead of me.

24 Q. Yes, sir. And it didn't make you particularly happy to
25 have to go chase him down, did it?

1 A. It made me want to figure out why he was running.

2 Q. Exactly. So now you -- he hits the tree. Where's
3 Officer Sapp at that point in time?

4 A. He's still in his vehicle approaching where I'm at.
5 He's still trying to find us.

6 Q. He's not there yet?

7 A. No, he's not on scene yet, no, sir.

8 Q. All right. So Mr. Collins hits the tree. I believe
9 you said he hit his head portion with the tree, right?

10 A. Yes, sir. That was where the main impact was that I
11 could tell.

12 Q. Did you ever offer him medical treatment?

13 A. Yes, sir, I did on the scene. I asked him do you want
14 to call EMS? He said, no.

15 Q. Did you?

16 A. Yes, I did.

17 Q. Okay. And was Sapp there at that point in time?

18 A. I can't attest to that. I know I asked him, though.

19 Q. Pardon me?

20 A. I can't attest to -- I can't tell you if he was there
21 or not, but I do know that I asked him if he wanted medical
22 treatment and he said, no, just get me up.

23 Q. Okay. That's not in your report either, is it?

24 A. No, sir, it's not.

25 Q. And I believe you said at this point in time after he

1 hit the tree, Mr. Collins was disoriented, right?

2 A. He appeared to be disoriented, yes, sir.

3 Q. Disoriented to the fact that he was laying on the
4 ground, right?

5 A. Well, that and the fact that I told him to get on the
6 ground. He tried getting up a couple of times before I
7 ordered him to the ground.

8 Q. Is it pretty dark out there?

9 A. It's -- there's a couple of street lamps around.

10 Q. Okay.

11 A. It's not like totally dark, no, sir.

12 Q. One-thirty in the morning?

13 A. Oh, the atmosphere is. I'm sure it was dark. But, I
14 mean, because of the street lamps that are around there's
15 enough lighting for you to see what's going on.

16 Q. Correct. All right. So Mr. Collins is on the ground?

17 A. Yes, sir.

18 Q. Once Mr. Collins hits the ground, how long does it take
19 for Sapp to get there?

20 A. Well, I actually ordered him to lie still on the
21 ground, and maybe three, four seconds later Patrolman Sapp
22 showed up on the scene.

23 Q. All right. So Sapp gets out and he handcuffs him?

24 A. Yes, sir.

25 Q. Now, you're standing there with your taser on him,

1 right? Is that right?

2 A. Yes, sir.

3 Q. And Officer Sapp is handcuffing him behind the back?

4 A. Yes, sir.

5 Q. What prevented anybody from taking that backpack off at
6 that point in time?

7 A. Oh, the reason why Patrolman Sapp actually ---

8 Q. I didn't ask you the reason why. I asked you why
9 didn't you?

10 A. Why didn't ---

11 Q. Or what prevented you from doing it? I'm sorry.

12 A. I wanted him in custody. I couldn't do it at the time
13 because I was physically trying to catch my breath and
14 incapacitated at the time, because I'm going to be honest,
15 I'm out of shape. So it took me a little longer to get my
16 breath than ---

17 Q. But now Officer Sapp's there now. He handcuffed him,
18 right?

19 A. Yes.

20 Q. So what prevented Officer Sapp from taking the backpack
21 off at that point in time?

22 A. Because immediately we want him in custody, in control,
23 in handcuffs. That's immediate. That's the first thing we
24 want done.

25 Q. You said when he hit the ground he complied with your

1 verbal command?

2 A. He did.

3 Q. Did he ever give you any indication that he wasn't
4 going to comply with your verbal command?

5 A. Yes, when he ran initially. That was enough for me to
6 gain the understanding that that was going to happen.

7 Q. I'm sorry. My question wasn't clear. After he hit the
8 ground and you told him to lay there and you had your taser
9 pointed at him, did he ever give you any indication that he
10 wasn't going to comply?

11 A. No, sir.

12 Q. All right. Did you ever struggle?

13 A. I'm sorry?

14 Q. Ever struggle?

15 A. Did we ever struggle as in ---

16 Q. With him?

17 A. Did I ever physically struggle with him?

18 Q. Yeah.

19 A. Like wrestling with him?

20 Q. Yeah.

21 A. No, sir, I did not.

22 Q. Okay. So he was totally compliant at that point in
23 time, wasn't he?

24 A. Yes, sir.

25 Q. So you're out of breath?

1 A. Absolutely.

2 Q. Now you've got two police officers there. Officer
3 Sapp, I assume he was in uniform, right?

4 A. Yes, he was.

5 Q. And he carries all of this stuff around him that you've
6 got on you, right?

7 A. Yes, he does.

8 Q. But you can't take the backpack off of him at that
9 point in time?

10 A. It's not a question of can we not. It's a question of
11 that's the first thing we want to do is put him in handcuffs
12 and get him detained.

13 Q. All right. So now you pat him down. Who pats?

14 A. My partner, Colonel Sapp does.

15 Q. Okay. Well, at that point in time, when you took him
16 in custody there, what was he under arrest for?

17 A. Well, at the time we actually put him in handcuffs he
18 was still in investigative detention. It's not necessary
19 for us to put him under arrest at that place -- at that
20 time. We're still trying to gather facts to find out what's
21 going on.

22 Q. So you've got the taser on him, Sapp handcuffs him, you
23 get him up and you put him in -- you take the backpack off
24 then?

25 A. We search the area where his hands are most readily

1 available to that backpack because his hands were still
2 behind his back at that point, as well as the backpack. His
3 hands could still reach the lower compartment of that
4 backpack.

5 Q. In handcuffs?

6 A. Yes. So we get that area secured and make sure there's
7 no weapons in the area where he's readily -- his hands were
8 right there at it where he could get a hold of it very
9 quickly.

10 Q. Was it in a zipper pouch?

11 A. It was in the bottom zipper section of his backpack.

12 Q. And that zipper -- by the way, do you have the
13 backpack?

14 A. No, I don't have the backpack. I placed it in his
15 evidence -- in his property rather at the Pickens County Law
16 Enforcement Center.

17 Q. The backpack that you say he was wearing, you didn't
18 take into evidence?

19 A. No, sir, I did not.

20 Q. Well, backpacks. Someone is cuffed behind the back,
21 their hands are basically like this, right?

22 A. Yes, sir.

23 Q. All right.

24 A. Yes, sir.

25 Q. Now, that backpack had zippers on it, right?

1 A. Right.

2 Q. And those zippers would have to come, if it was like a
3 half moon, those zippers would have to come up way up around
4 here someplace, wouldn't they?

5 A. Yes, sir, I would imagine they would.

6 Q. And you say that's readily available?

7 A. Sir, I don't know how flexible Mr. Collins was at that
8 time.

9 Q. All right.

10 A. He very well could have been able to do that. I don't
11 know.

12 Q. But it was zipped?

13 A. Yes, it was zipped.

14 Q. All right. On his person you say you found a pocket
15 knife?

16 A. Yes, I did find a pocket knife in his pocket, yes, sir.

17 Q. His wallet, where did you find his wallet?

18 A. In his back pocket.

19 Q. Not in the backpack?

20 A. Right.

21 Q. In the backpack, describe what you took from the
22 backpack, all right? Did you take any paperwork from that
23 backpack?

24 A. No, we did not.

25 Q. Was there any paperwork in the backpack?

1 A. Not that I can recall. And if there was, it didn't
2 have my name on it so I didn't, of course, go through that.

3 Q. Are you telling this jury there may have been and you
4 didn't take into evidence?

5 A. What, the paperwork?

6 Q. Yes.

7 A. Yes, that's exactly what I'm telling them. I don't
8 know if there was any paperwork in that backpack and I
9 didn't take any of that paperwork.

10 Q. Okay. So now we're at the point we're doing the pat-
11 down, you're doing the pat-down of -- you say for officers'
12 safety?

13 A. Uh-huh (affirmative).

14 Q. But you already have him in custody at that point in
15 time, don't you?

16 A. Yes, sir, I do.

17 Q. So now he's cuffed behind his back, after having hit a
18 tree, and according to your testimony he's disoriented, you
19 put him in the back of Officer Sapp's vehicle. Now you take
20 the backpack off, right?

21 A. Well, we take it off before we put him in the back of
22 the vehicle.

23 Q. You and Sapp both doing that?

24 A. Yes. Actually, both of us were taking the straps off.

25 Q. Okay.

1 A. As he was still detained in the handcuffs, yes, sir.

2 Q. And now you separate Mr. Collins from his backpack?

3 A. Uh-huh (affirmative).

4 Q. There's no officer safety issues now, is there?

5 A. Not at that point, no. We've already searched him and
6 make sure that he was in custody. You're right.

7 Q. And the backpack?

8 A. And the backpack was removed.

9 Q. And you searched it?

10 A. We inventoried the backpack.

11 Q. I don't know, maybe I'm missing something. Is there
12 any difference between searching and inventorying, other
13 than the spelling?

14 A. You're asking me, sir?

15 Q. Yes, sir, I'm asking you.

16 A. Okay. The inventory, what we do for that, it's
17 department policy that we make sure that in case there's
18 any type of valuables in there that it's not broken, stolen
19 or whatever. Because if we take it back to his car, as we
20 inventoried the car as well, take it back to the car or put
21 it in his property and then he comes back two days later
22 saying, I had ten thousand dollars in my backpack, now we
23 can show -- well, at the time, we saw no money in the
24 backpack. It keeps our department covered from any type of
25 lawsuit coming back.

1 Q. Well, what was he under arrest for then?

2 A. At that time, driving under suspension. We had gained
3 information from our dispatch that stated his license was
4 suspended, via the ID that we found in his wallet.

5 Q. You wrote a report in chronological order, right?

6 A. To my knowledge, yes.

7 Q. Actually, you and Officer Sapp wrote the report
8 together, didn't you?

9 A. Yes, sir.

10 Q. Two heads better than one?

11 A. Supposedly.

12 Q. Right. The search of the backpack in that report comes
13 way before you saying anything about his license being
14 suspended, doesn't it?

15 A. In my report, I stated what his license was suspended
16 for after I obtained what kind of items we found in his
17 backpack, yes, sir.

18 Q. I'm sorry, Officer Blair, obviously my question was not
19 clear. I'll try to make it a little more clear. Looking at
20 your report, ---

21 A. Uh-huh (affirmative).

22 Q. -- the search of that backpack comes way before, in
23 your report, way before you say anything about his driver's
24 license being suspended?

25 A. Yes, before anything is written in there about his

1 license being suspended, yes, sir.

2 Q. And actually, the fact that his driver's license is
3 suspended almost came in there as an afterthought, didn't
4 it?

5 A. Meaning in the report?

6 Q. Yes, sir.

7 A. Yes, sir, I guess it does read like that.

8 Q. It was also discovered that his license were suspended,
9 right? Is that what your report says?

10 A. That's what it says, yes, sir.

11 Q. Yes. That's after all about backpacks and searching
12 backpacks and all of that?

13 A. Yes, sir, it is after it's listed out the items that
14 were taken from the backpack.

15 Q. Well, now, you say when you were running after him that
16 you were yelling for him to stop and all of that good stuff,
17 right?

18 A. Yes, sir.

19 Q. That's not in your report either, is it?

20 A. No, sir, it's not.

21 Q. There's nothing in your report that you ever told him
22 to stop, is there?

23 A. No, sir.

24 Q. You say that, when you were answering Mr. Them's
25 questions, that you would have given him a warning ticket,

1 right?

2 A. Yes, as I'd done numerous times that night to various
3 drivers, yes, sir.

4 Q. Mr. Collins didn't know that, did he? You didn't tell
5 him that, did you?

6 A. No, sir, I didn't need to tell him that. I hadn't
7 gotten to that point yet.

8 Q. Exactly. And as it turned out, his driver's license
9 was suspended, wasn't it?

10 A. Yes, sir.

11 Q. And people run when their driver's license are
12 suspended?

13 A. I didn't know what was wrong with him until later on.
14 Just as he didn't know I was going to give him a warning.

15 MR. DEJONG: One moment, please, Your Honor.

16 Q. Did you inventory the car?

17 A. Yes, sir, we did. Before it was towed by the tow
18 company. If you'll give me one second, I'll pull that
19 information for you.

20 Q. Do you have an inventory sheet?

21 A. I do.

22 Q. May I see it?

23 A. Yes, sir. It looks the people who towed the vehicle --
24 I'm not even sure who it was. I'm sorry. I think another
25 officer actually did that for me. I did a hard copy, I

1 believe it was.

2 Q. This says towed vehicle report. Is this report
3 generated by you or by the towing company?

4 A. That's by the officer. If I can hold that one second,
5 I'll actually see who it was that actually did it. I'm not
6 exactly sure which officer it was that actually did this
7 copy.

8 Q: You didn't?

9 A. I'm not sure if I did this one or not. I believe that
10 I did a hard copy. It's a triplicate form. And I believe
11 they actually took the triplicate form that I did and
12 plugged everything into the computer. Set it up, printed it
13 out, so it's virtually the same information.

14 Q. Have you got that hard copy with you?

15 A. No, I do not.

16 Q. Well, when you inventory things, you say that's for
17 valuable things?

18 A. Right.

19 Q. And you said you inventoried the car, right?

20 A. I do remember inventorying the car.

21 Q. Well, where is your inventory sheet of what was in the
22 vehicle?

23 A. As I said, it was all plugged into the computer.

24 Q. Do you do that from memory?

25 A. No, sir. It was all plugged into the computer

1 information. It was all entered in from there, my copy that
2 I had.

3 Q. Well, my question is, do you do an inventory sheet at
4 the scene?

5 A. Yes, sir, we do. We do it all on a computer as well.

6 Q. My next question -- I'm sorry. Go ahead.

7 A. I'm trying to answer your question. If we do the hard
8 copy, we take that and put it into the computer. If we do
9 it on the computer initially, we have -- on our car
10 computer, we do it right there on the scene and we print it
11 off. This is actually a different print-off of the one that
12 I usually do, because of the heat paper and things of that
13 nature as well. I mean, this is actually a regular paper
14 printer copier, versus the copy we do on the scene and hand
15 to the tow truck driver because it's actually done on like a
16 thermal paper. And we do all of our tickets on that same
17 setup. So it's not the exact same copy. This is a printed
18 copy from the printer -- from the computer.

19 Q. So that is not the report that you generated, to the
20 best of your knowledge?

21 A. This is a printed -- this comes out of the computer,
22 same set -- same thing.

23 Q. But you don't know where the hard copy is?

24 A. I imagine it's with the tow truck company.

25 Q. Pardon me?

1 A. I imagine it's with the tow truck company who actually
2 towed the vehicle. And that would be Smith's automotive.

3 MR. DEJONG: Where's the gun?

4 MR. THEM: Huh?

5 MR. DEJONG: Where's the gun?

6 MR. THEM: On the table.

7 MR. DEJONG: Oh, there it is.

8 Q. If the serial number was filed off this gun, you don't
9 know who filed it off?

10 A. No, I do not know who filed it off.

11 Q. You don't know who the gun belonged to, do you?

12 A. No. There's no way I could find out because the serial
13 number was not on the weapon.

14 MR. DEJONG: Thank you, Mr. Blair.

15 THE COURT: Any redirect?

16 MR. THEM: Yes, sir. May we approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, Mr. Them and Mr. DeJong approached the
19 bar.)

20 THE COURT: Mr. Them.

21 **REDIRECT EXAMINATION**

22 **BY MR. THEM:**

23 Q. Mr. DeJong asked you a question about who the car
24 belonged to. And I believe you told him you didn't
25 remember?

1 A. Yes, sir.

2 Q. Let me show you this group of documents. Just look at
3 them and tell me whether or not you recognize them, a simple
4 yes or no?

5 A. Yes, sir, I do.

6 Q. All right. Did you record those -- did you fill out
7 those -- whose signature is on those documents?

8 A. It's my name that's on those documents.

9 Q. And when did you fill out these documents?

10 A. These documents were filled out on the date of the
11 incident.

12 Q. And do these documents reflect the information you had
13 at that point in time as to who the vehicle belonged to?

14 A. Yes, sir, it does.

15 Q. And does looking at that those documents refresh your
16 memory as to who the vehicle belongs to?

17 A. It absolutely does.

18 Q. Who does the vehicle belong to?

19 A. It belonged to a Matthew Durham.

20 Q. Okay. Now, let's talk about the backpack.

21 A. Yes, sir.

22 Q. Was there -- at least in your mind, is there anything
23 illegal about that backpack?

24 A. Not from looking at it on the outside, no.

25 Q. Is it the contents of the backpack that's illegal as

1 opposed to the backpack?

2 A. The contents.

3 Q. So when the Defendant was released on bond, he was able
4 to retrieve his backpack?

5 A. Yes, sir.

6 Q. Did you seize the car too?

7 A. I believe we did, yes, sir.

8 Q. And was the car returned to him?

9 A. Yeah. It was returned to the registered owner, yes,
10 sir.

11 Q. Was anything illegal about the car other than the bogus
12 taillight thing, the tag, like it wasn't working?

13 A. No. Nothing else was wrong with the car.

14 Q. Was there any reason in your mind for holding that
15 backpack and car because it contained the things that the
16 drugs were found in?

17 A. No, sir. To me that seemed a little unreasonable at
18 the time.

19 Q. Okay. The cruiser that you were driving that night,
20 did it have outside mirrors or just the inside mirror?

21 A. It had outside and both side views and rearview.

22 Q. Okay. When you looked in the rearview mirror to
23 determine whether or not the tag light was operating
24 properly, do you remember which mirror you looked in? Did
25 you look in the side mirror or all three or what?

1 A. I remember looking in my rearview mirror more than
2 anything. I can't really tell you if I looked only in the
3 rearview mirror or if I looked in the side.

4 Q. Okay. The rearview mirror is what you call the one
5 inside the car, up over the ---

6 A. Correct. Correct.

7 Q. Okay. These inventory sheets that Mr. DeJong was
8 curious about, did anybody serve a subpoena on you to bring
9 those?

10 A. No, sir.

11 MR. DEJONG: Objection, Your Honor. That's
12 totally burden shifting.

13 MR. THEM: He's making a point of ---

14 THE COURT: I sustain the objection.

15 MR. THEM: Can I be heard on that, Your Honor?

16 THE COURT: You've asked the question and I think
17 that's sufficient. No, sir.

18 MR. THEM: I have no further questions of this
19 witness, Your Honor.

20 THE COURT: All right. Thank you, Officer Blair.
21 You may step down.

22 OFFICER BLAIR: Thank you.

23 THE COURT: Mr. Foreman, ladies and gentlemen, I
24 think this would be a good time for you to take a break, for
25 us to take a break. I'll ask you to go back to your jury

1 room and we'll take a short break. I remind you again not
2 to discuss the case. We'll call you back in just a few
3 moments. You may be excused at this time.

4 (WHEREUPON, the jury exited the open court at
5 approximately 3:32 p.m.)

6 THE COURT: All right. Let's take about a ten
7 minute break.

8 Mr. Richardson, could I see you just a minute about our
9 schedule for tomorrow. Do you know what tomorrow looks
10 like? I need to let the Clerk know about our jury.

11 (WHEREUPON, the court stood at recess for a short
12 break.)

13 (WHEREUPON, State Exhibit Numbers 7 and 8 were marked
14 for identification.)

15 MR. THEM: Your Honor, before the jury comes back
16 in the room, can I ask you something about some evidence?

17 THE COURT: Yes, sir.

18 MR. THEM: I hold in my hand State's Exhibit 4A, B
19 and C. It is a series of four sealed pouches that contain
20 various drugs, but either consent or pre-trial ruling,
21 whichever, item number 2, which is the Clonazepam will not
22 be coming into evidence, but we couldn't figure out how to
23 clean up the packs after he undid them. Down here is item
24 number 1, which is some of the Alprazolam. What I propose
25 to do is to cut completely through the Clonazepam window,

1 preserving the integrity of the 4C Exhibit so we'll have A
2 and B together and then C off to one side and the jury will
3 never know the Clonazepam was even here. But I feel like I
4 need Court permission to do it since it's already been
5 marked and belongs to the Court Reporter at this point.

6 THE COURT: That's with the consent of the
7 Defendant?

8 MR. DEJONG: No objection, Your Honor.

9 THE COURT: All right. Let's make sure we've got
10 a record of the Exhibits.

11 MR. THEM: We have done what we said we were going
12 to do, Your Honor.

13 THE COURT: Is there any objection from either one
14 of you if I have the bailiff just let the jury know before
15 we start back that we may be going beyond five o'clock this
16 evening, that if they need to make any calls about picking
17 up children or otherwise, they can do that. Just tell them
18 that we won't be late, but we probably won't finish at five
19 tonight. We'll be beyond five.

20 MR. THEM: Your Honor, I tried to explain it
21 briefly in my opening statement and got voted down. Would
22 you explain to them we might have to stay late and explain
23 the problems very briefly over in Greenville. I just don't
24 want them to think that, you know, we're abusing them.

25 THE COURT: Well, we're telling them that now,

1 that we're going to stay here a little late. We'll -- they
2 don't mind us working late. I'm sure they don't mind
3 working with us.

4 Anything we need to take care of before the jury comes
5 back?

6 MR. THEM: Nothing, Your Honor.

7 MR. DEJONG: Not on behalf of Mr. Collins.

8 THE COURT: All right. If the jury's ready, you
9 can have them come in.

10 (WHEREUPON, the jury entered the open court at
11 approximately 3:56 p.m.)

12 THE COURT: Mr. Them, you may call your next
13 witness.

14 MR. THEM: I call Officer Brad Smith.

15 THE CLERK: Place your left hand on the bible and
16 raise your right hand, please. Do you solemnly swear or
17 affirm the testimony you're about to give in this case be
18 the truth, the whole truth and nothing but the truth, so
19 help you God?

20 WITNESS: I do.

21 THE CLERK: State your full name for the record.

22 WITNESS: Michael Bradley Smith.

23 THE CLERK: Please be seated.

24 MICHAEL BRADLEY SMITH,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. THEM:

3 Q. Where are you employed, Officer Smith?

4 A. I am currently employed with the Pickens Police
5 Department.

6 Q. What are your primary responsibilities now?

7 A. My primary responsibility for the police department, I
8 am a school resource officer here in the city at Pickens
9 Middle School.

10 Q. Okay. Do you have any other additional duties?

11 A. I do. I am an evidence custodian for the police
12 department also, along with narcotics investigation.

13 Q. What are the duties of an evidence custodian?

14 A. The duties of an evidence custodian to begin with, if
15 an officer brings in the evidence, I am to retrieve it out
16 of the lock box. What I do is basically I take the
17 evidence, bring it into the evidence room, log it in as what
18 it is, store it until time for it to be sent to another lab
19 as far as Greenville or for the Law Enforcement Division for
20 other items.

21 Q. Is part of your duties preserving the integrity of the
22 evidence after it gets to you?

23 A. That's correct. It is.

24 Q. Who has access to where you keep this evidence?

25 A. I'm the only person that has access to the evidence.

1 Q. When an officer makes a case that he seizes evidence
2 and he wants to turn that evidence over to you and you're
3 not on duty, what does he do with it?

4 A. At our police department, an officer will bring it in
5 to the police department and there is a lockbox with
6 multiple separations. It's against the wall with a master
7 lock on it. The officer will take the items, place them
8 into the evidence locker and lock the master lock back on
9 it until I arrive the next morning or the afternoon,
10 whenever.

11 Q. Are there multiple lockers stacked on top of each
12 other?

13 A. They are. There's multiple lockers stacked and there's
14 also one large locker for larger weapons.

15 Q. Do they have separate padlocks on them?

16 A. Yes, sir, they do.

17 Q. Who has keys to those padlocks?

18 A. Only I do.

19 Q. Say, for example, I was a police officer and I went
20 there and put something in the box, in the lockbox and
21 locked it ---

22 A. Uh-huh (affirmative).

23 Q. ---and then I thought, oh, my goodness, I forgot
24 something, is there any way I can get in that box?

25 A. Absolutely not. They would have to either contact me

1 and me come in physically to unlock it for them.

2 Q. Okay. Let me call your attention to on or about
3 October 3rd, 2009. Did you have the occasion to get
4 involved in the handling of the evidence in this case?

5 A. I did.

6 Q. Tell me what you did and how you first got involved?

7 A. Well, first I got involved on the night of the
8 incident. The evidence was placed into the locker at one-
9 thirty. The next morning I did remove the items from the
10 evidence locker. At that point, they were sealed by me.
11 They were placed into a manilla envelope. They were sealed
12 with my initials and they were placed in a perfected place
13 as to whether they were going to Greenville or they were
14 being stored for the Court use.

15 Q. Why did they go to Greenville?

16 A. We use Greenville a lot of times. Mostly all of our
17 drug cases are sent to Greenville. Number one, due to the
18 time restraints on it. Greenville is a lot quicker than
19 SLED, so we're able to get our drugs back and the analysis
20 done quicker.

21 Q. How do the drugs get from you to Greenville and back?

22 A. The drugs are transported by me. I do a chain of
23 custody sheet. I will log the drugs out of the police
24 department and take them to Greenville and pick up all
25 drugs.

1 Q. All right. I'm going to show you some items and ask
2 you if you've ever seen them before. First of all, I want
3 to show you a clear plastic envelope marked State's Exhibit
4 3 and ask you have you ever seen that before?

5 A. Yes, I have.

6 Q. What is that?

7 A. This is an evidence bag that one of the items we can
8 use to put any type of evidence that's been collected. For
9 instance, drugs, any kind of small items that could be
10 placed into evidence.

11 Q. Who would put an item in the bag?

12 A. The officer themselves could. We have some available,
13 but on these bags, most of them were done by me. The
14 officer just puts the item in itself, as the original
15 container, then I will seal it in the bag.

16 Q. Are you able to determine who sealed that bag?

17 A. On this bag, no, sir, because it was placed into a
18 manilla envelope. I did not seal this bag because it was
19 sealed through the manilla envelope.

20 Q. I'm going to hand you a manilla envelope marked State's
21 Exhibit Number 8 that I have pulled from an envelope, clear
22 plastic envelope that has Blair 094723, and ask you, have
23 you ever seen State's Exhibit Number 8?

24 A. Yes, sir, I have.

25 Q. Where have you seen that?

1 A. That is my evidence envelope that I use when -- anytime
2 I receive evidence.

3 Q. Did you use it in this case?

4 A. Yes, sir, I did.

5 Q. What items were in there?

6 A. In this particular one, the methamphetamine -- excuse
7 me. The crystal substance was placed into the bag. And at
8 that point, I placed the bag into the manilla envelope and
9 sealed it.

10 Q. Would that be State's 3B?

11 A. That is correct.

12 Q. Can you show me how you assembled that to take it over
13 to Greenville?

14 A. Sure. I would have placed the item in the bag. I
15 would, of course, then -- the item has a seal on it where
16 you peel off and it seals it correctly at that point.

17 Q. Okay.

18 A. I would place it into the envelope with an evidence
19 seal or with some type of thick masking tape, packing tape,
20 with my initials, I would seal it and place it over there.

21 Q. Did you do that in this case?

22 A. Yes, sir, I did.

23 Q. Okay. Now, let me have that if I may.

24 A. Sure.

25 Q. I'm now going to hand you another one of those manilla

1 envelopes marked as State's Exhibit Number 7 that was sealed
2 in a bag with the initials KLS31110 and nothing else on the
3 bag and ask you have you ever seen that before?

4 A. Yes, sir, I have. This is what I used to seal the
5 pills in at this point.

6 Q. Okay. And let me show you State's Exhibit Number 4A,
7 4B, and 4C, and ask you have you ever seen them before?

8 A. Yes, sir. Those were the pills that I took into my
9 custody on that day, on -- that I received from Officer
10 Blair.

11 Q. Did you also take those to Greenville?

12 A. Yes, sir, I did.

13 Q. How were they packaged when you sent them over to
14 Greenville?

15 A. When I packaged them, they were packaged in the
16 containers. There were two containers they were packaged
17 in. At that point, I would place the container into the
18 envelope and I would seal the envelope with my initials as
19 to the seal, the integrity of the seal.

20 Q. Let me show you State's Exhibit Number 5 and State's
21 Exhibit Number 6 and ask if you've ever seen them before?

22 A. Yes, sir. Those were the items that the pills were
23 in.

24 Q. And when you sent that over to Greenville, were the
25 pill looking things in these two containers?

1 A. The pills were in the actual containers, yes, sir.

2 Q. And the containers were in the envelope?

3 A. That's correct.

4 Q. Now, I hand you this weapon marked State's Exhibit
5 Number 2 and ask you if you've ever seen that?

6 A. Yes, sir, I have.

7 Q. Tell me where you first saw that?

8 A. That was removed from the locker, an individual locker,
9 the same date as all the other items were removed.

10 Q. And was any testing done on that?

11 A. No, sir. No testing was done on this.

12 Q. Okay. Now, when you got it ---

13 A. Yes, sir.

14 Q. -- was there a clip with it?

15 A. There was. Or there is a clip, yes, sir.

16 Q. And did the clip have cartridges in it or bullets?

17 A. Yes, sir, it did.

18 Q. Do you have that with you?

19 A. I do. It's in my book bag.

20 Q. And where has that pistol been since you retrieved it
21 from that locker?

22 A. The pistol has been, from the day I retrieved it, has
23 been in the evidence room until today.

24 Q. In your custody?

25 A. In my custody, yes, sir.

1 Q. Where did I get that from when I started using it
2 today?

3 A. You got this weapon from me.

4 Q. Who disabled it with that lock?

5 A. I did.

6 Q. Okay. The two canisters, three packets of pills, a
7 packet of the crystalline substance, were they all taken to
8 Greenville for testing?

9 A. Yes, sir, they were.

10 Q. Now, when you get to Greenville, what sort of procedure
11 do you go through over there when you turn in something for
12 testing?

13 A. Okay. The procedure I go through is they will also
14 check the integrity of the seal. We will ---

15 Q. Integrity of what seal?

16 A. The seal that I have sealed.

17 Q. Okay.

18 A. And I will turn it over to them into their custody and
19 at that point, we have a chain of custody sheet that they
20 will sign-off on, taking full custody of all the items that
21 I've placed into their custody.

22 Q. And was that done in this case?

23 A. Yes, sir, it was.

24 Q. Did you take all of the stuff that we've talked about,
25 right here that's in front of you, over to Greenville?

1 A. Yes, sir. Everything but the gun, of course.

2 Q. And who did you give it to?

3 A. It was given to Tabatha Fricks on 3/10 of 2010 at nine-
4 fifty in the morning.

5 Q. Did she sign for it?

6 A. She sure did, yes, sir.

7 Q. And you've maintained that document?

8 A. That's correct. And she sealed it.

9 Q. That's the original document?

10 A. Yes, sir. Also, she wrote on the thing and confirmed
11 that she sealed it.

12 Q. When do these clear plastic envelopes that hold your
13 envelopes come into play? Where do they come from?

14 A. They come into play on 4/8 of 2010, or when I --
15 whenever I pickup the item, when I pick up items from
16 Greenville, they heat seal the plastic around my original
17 container, plus the -- whatever item I've taken with it. So
18 they do a double -- another seal, and they give it back to
19 me that way.

20 Q. During the time this property has been under your care
21 and control ---

22 A. Yes, sir.

23 Q. -- has it been in any way tampered with or altered or
24 anything happen to it?

25 A. Absolutely not, no, sir.

1 Q. Is it in substantially the same condition that it was
2 when you retrieved it from that locker?

3 A. That is correct.

4 Q. And who put the stuff in the locker according to your
5 chain of custody form?

6 A. According to my chain of custody, Josh Blair is the
7 officer that put the items into my custody.

8 Q. Now, at some later point in time, were you notified by
9 the Greenville Public Safety people that the lab work had
10 been done?

11 A. Yes, sir. We have a -- probably once every month and a
12 half or so, we'll do a routine go-by-to-check to see if we
13 have anything.

14 Q. Okay.

15 A. And on 4/8 of 2010, the items were picked up at nine
16 hundred, oh nine hundred, from Greenville County.

17 Q. Did you pick up each and every item that you had
18 previously taken over there?

19 A. I did. I did.

20 Q. And those are the items that are in front of you?

21 A. That is correct.

22 Q. And where have they been since then?

23 A. They have been in the evidence room locked up under my
24 custody since then.

25 Q. Under the same conditions and safeguards that we've

1 previously talked about?

2 A. That is correct.

3 Q. Thank you very much.

4 A. Yes, sir.

5 MR. THEM: I have no further questions.

6 THE COURT: You may cross examine the witness, Mr.
7 DeJong.

8 MR. DEJONG: Thank you, Your Honor. May it please
9 the Court.

10 **CROSS EXAMINATION**

11 **BY MR. DEJONG:**

12 Q. Mr. Smith, ---

13 A. Yes, sir.

14 Q. --- I guess it was an oversight. I don't think I got a
15 copy of this chain of custody thing you're talking about
16 here. May I take a look at that?

17 A. Sure. Let me give you all the ones for -- that's the
18 other, other items, also.

19 Q. Who fills these forms out?

20 A. I filled two of those forms out. The two right here
21 from Greenville County, it's my responsibility to fill them
22 out.

23 Q. So you use Greenville County Forms for Pickens City?

24 A. I did at the time, yes, sir.

25 Q. All right. These evidence lockers, in this case,

1 though, were supposedly two containers, I guess we can call
2 them plastic containers?

3 A. Yes, sir.

4 Q. And for the record -- let me be a little more clearer
5 on that -- would be what has been marked, I guess for
6 identification at this point in time, State's Exhibit 5 and
7 6?

8 A. That's correct.

9 Q. These lockers, are they kind of like a mailbox or ---

10 A. Yes, sir, you could say it was a mail box. It's
11 probably a two by two square.

12 Q. They just open it up and drop them in there?

13 A. Actually, they open it up and then they have to put a
14 lock over the -- there's -- I'm trying to think. They put a
15 lock on it and it locks the door, basically.

16 Q. All right. Now, in this case, just those two
17 containers were just dropped in, right?

18 A. Well, they were -- yes, they were -- well, they were
19 locked in along with all the other items.

20 Q. Okay. They weren't in bags or anything?

21 A. No, sir.

22 Q. And they were dropped in with the weapon as well,
23 right?

24 A. They were in the lockers, yes, sir.

25 Q. Well, they were all in the same locker, weren't they?

1 A. No, not necessarily in the same locker. We have
2 multiple stacking lockers that are on top.

3 Q. Well, I understand you say not necessarily. Were they
4 in the same locker or weren't they in the same locker?

5 A. I couldn't -- at this point I couldn't tell you,
6 couldn't remember which locker, which actually numbered
7 locker they were in.

8 Q. Thank you, Mr. Smith.

9 THE COURT: Any redirect?

10 MR. THEM: Yes, sir. Would you mark these as the
11 next ---

12 (WHEREUPON, State Exhibit Numbers 9, 10 and 11 were
13 marked for identification.)

14 MR. DEJONG: Your Honor, may I have just a moment.
15 I believe these were inadvertently left out of my pack.

16 THE COURT: Yes, sir. You may look them over.

17 MR. THEM: While he's doing that, Your Honor,
18 could I stand down with the people from Greenville for about
19 two minutes to acquaint them with some of the matters we
20 have previously discussed earlier in the day?

21 THE COURT: Yes, sir. We'll be at ease for a
22 couple of minutes.

23 (WHEREUPON, the court stood at recess for a short
24 break.)

25 MR. DEJONG: Without objection, Your Honor.

1 MR. THEM: We move State's 9, 10, and 11 into
2 evidence, Your Honor.

3 THE COURT: All right. Without objection,
4 Exhibits 9 through 11 are admitted into evidence.

5 (WHEREUPON, State Exhibit Numbers 9, 10, and 11 were
6 admitted into evidence.)

7 MR. THEM: I have no further questions of this
8 witness, Your Honor. Excuse me.

9 THE COURT: You may cross examine the witness.

10 MR. DEJONG: I think that was redirect.

11 THE COURT: Do you have anything in ---

12 MR. DEJONG: Nothing, Your Honor.

13 THE COURT: -- recross? All right. Thank you.
14 You may step down, Officer Smith.

15 You may call your next witness.

16 MR. THEM: I call Tabatha Fricks.

17 THE CLERK: Place your left hand on the bible and
18 raise your right hand, please. Do you solemnly swear or
19 affirm the testimony you're about to give in this case be
20 the truth, the whole truth and nothing but the truth, so
21 help you God?

22 WITNESS: I do.

23 THE CLERK: State your full name for the record.

24 WITNESS: Tabatha Fricks.

25 THE CLERK: Please be seated.

1 **TABATHA FRICKS,**

2 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

3 **DIRECT EXAMINATION**

4 **BY MR. THEM:**

5 Q. Where are you employed, Ms. Fricks?

6 A. The Greenville County Department of Public Safety.

7 Q. In what capacity?

8 A. I work down in property and evidence.

9 Q. Okay. When people from various law enforcement
10 agencies bring items over to Greenville County to go to the
11 people in the chemistry labs and all of that, who do they
12 turn it in to?

13 A. Just one of the available representatives that work
14 down in property and evidence.

15 Q. In the section you work in?

16 A. Yes.

17 Q. Let me see if I can get you to identify some items for
18 me. I'm handing you a copy of State's 9 and 10. And I ask
19 you to look at those and tell me whether or not you
20 recognize any of the signatures on there as your own?

21 A. Yes, I do.

22 Q. Okay. Now, when an officer, say, from Pickens brings
23 you something, how is it normally packaged?

24 A. We don't take anything from other agencies for drug
25 testing unless it's sealed.

1 Q. Okay. Let me show you these items and ask if you've
2 ever seen these before?

3 A. Yes, sir.

4 Q. Okay. Where have you seen those items before?

5 A. They match the same items that are presented on the
6 sheets where I signed it.

7 Q. Now, when you get materials to be tested in those
8 manilla envelopes, what do you do with it?

9 A. What I do first is I assign a case number to it through
10 our system. And after signing for the custody, I take the
11 pills and put them in a staging area to be tested.

12 Q. Okay. Do you repackage them in any way?

13 A. No.

14 Q. Do you put the sealed envelope that you got from the
15 police officer in any other sort of container or just the
16 sealed envelope?

17 A. No, just in the sealed envelope.

18 Q. Okay. Let me call to your attention if I might to --
19 will you look at that and tell me what day you returned that
20 stuff to Officer Smith from Pickens?

21 A. On one sheet he picked it up on April 8th of 2010. And
22 the second one on May 24th, 2010.

23 Q. Okay. And did you return to him basically the same
24 items that he brought you?

25 A. Yes, we did.

1 Q. Okay. And when these items are brought to you, how are
2 they stored or preserved or kept prior to the people in the
3 chemistry labs needing them?

4 A. They're put in individual staging boxes and then the
5 lab comes down and we take those boxes and hand them to them
6 to allow them to sign stuff out.

7 Q. The people from the lab that are actually doing the
8 testing come down?

9 A. Yes.

10 Q. Okay. And you give them to them?

11 A. Yes, sir.

12 Q. When they finish testing or do whatever they do, do
13 they bring it back to you?

14 A. Yes, sir, they do.

15 Q. Is it sealed at that point in time?

16 A. Yes, sir.

17 Q. Is the type of sealing different than it would have
18 been from the manilla envelopes that went upstairs?

19 A. Yes, sir.

20 Q. Okay. Let me show you these two clear plastic
21 envelopes that have some writing on them and ask you, have
22 you ever seen the outer envelope that holds State's Exhibit
23 Number 8 and the outer envelope that holds State's Exhibit
24 Number 7?

25 A. Yes, I have.

1 Q. Where have you seen those before?

2 A. This is how they bring us back the packaging once
3 they've tested them.

4 Q. Okay.

5 MR. THEM: I have no further questions of this
6 witness, Your Honor.

7 MR. DEJONG: No questions of this witness, Your
8 Honor.

9 THE COURT: Thank you, Ms. Fricks, you may step
10 down.

11 THE CLERK: Place your left hand on the bible and
12 raise your right hand, please. Do you solemnly swear or
13 affirm the testimony you're about to give in this case be
14 the truth, the whole truth and nothing but the truth, so
15 help you God?

16 WITNESS: I do.

17 THE CLERK: State your full name for the record.

18 WITNESS: Kelly Dickson.

19 THE CLERK: Please be seated.

20 **KELLY DICKSON,**

21 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MR. THEM:**

24 Q. And where are you employed, ma'am?

25 A. Greenville County Department of Public Safety in the

1 crime lab.

2 Q. In what capacity?

3 A. I test drugs.

4 Q. Okay. Would you tell me something about your education
5 and training, please?

6 A. Yes. I have a Bachelor's Degree in Biology from
7 Southern Wesleyan University. And I have completed my in-
8 house training under a lab supervisor at Greenville County.

9 Q. Have you received any certifications as a result of
10 this training?

11 A. I have a marijuana certification from SLED.

12 Q. Okay. Now, I want you to look at these items right
13 here. I'm handing you State's 4A, 4B, and 4C, as well as
14 State's 6 and 5, and asks you, have you ever seen them
15 before?

16 A. Yes, I have.

17 Q. Where have you seen them before?

18 A. I got them from evidence when I was testing them.

19 Q. Okay. And what did you do with them when you got
20 them?

21 A. The way that we determine what pills are what, we have
22 a database that we look at. We only go ---

23 Q. A computer database?

24 A. Yes.

25 Q. Okay.

1 A. We go based on the markings of what's on the tablet.

2 Q. Okay. And is that commonly accepted in your profession
3 as a way of identifying what drugs are what drugs?

4 A. Yes, sir.

5 Q. Does that only work for prescription type drugs?

6 A. Yes, sir.

7 Q. A homemade drug wouldn't work that way, would it?

8 A. No.

9 Q. As a result of that searching that you did in that
10 computer -- is that computer database generally accepted to
11 be good solid information in your profession?

12 A. Yes, sir.

13 Q. And as a result of looking at that computer database,
14 were you able to identify the three items in State's Exhibit
15 4A, which is, I believe, your item number 4; State's Exhibit
16 4B, which I believe is your item number 3; and State's 4C,
17 which I believe is your item -- I'm going to let you tell me
18 what item it is.

19 A. It's item number 1.

20 Q. Okay. Tell me what they are by item. If you could,
21 talk in terms of 4C, 4B, and 4A and tell me what your
22 findings were?

23 A. Okay. 4A was found to be a bag containing eight white
24 tablets and it was found to be Oxycodone.

25 Q. Okay.

1 A. 4B was a bag containing four white tables, which was
2 found to be Alprazolam. And 4C was one and one portion of
3 another white tablet that was found to be Alprazolam.

4 Q. Why are the Alprazolam tablets shaped differently?

5 A. Different tablets are different sizes, shapes and
6 colors?

7 Q. Different manufacturers?

8 A. Could be.

9 Q. And when you finish with that work-up, what do you do
10 with it?

11 A. We generate a report and then we -- well, first we seal
12 everything back up. We generate a report and take that
13 evidence back down to property and evidence.

14 Q. Do you separately bag each item?

15 A. We usually do.

16 Q. Okay. In this case was it done?

17 A. Yes.

18 Q. Okay. Is each individual substance assigned a specific
19 number for your purposes in your report?

20 A. Yes.

21 Q. And do the numbers on your written report line up with
22 the numbers that you wrote on the bags?

23 A. Yes.

24 Q. And when you finish working with this stuff, how do you
25 repackage it, or do you repackage it for integrity purposes

1 and return to whoever sent it to you?

2 A. Could you rephrase the question?

3 Q. Do you put it in any kind of sealed container?

4 A. We seal it back up for the purposes so that we can
5 recognize it and it's sealed back because it is drugs.

6 Q. Okay. And do these appear to be the same sealings that
7 y'all would have done?

8 A. Yes.

9 Q. Do you see any reason to believe that the integrity of
10 that has been violated in any way?

11 A. No.

12 Q. Is that the same drugs that you tested and examined?

13 A. Yes.

14 Q. Thank you very much, ma'am.

15 THE COURT: Any cross examination?

16 MR. DEJONG: Thank you, Your Honor, may it please
17 the Court.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. DEJONG:

21 Q. Ms. Smoak?

22 A. I was Ms. Dickson. I got married in May.

23 Q. I apologize, ma'am. I've got a fan roaring back here.

24 It's hard to hear. And you are what with the Greenville

25 County Crime Lab? What is your position?

1 A. I'm a drug chemist.

2 Q. Drug chemist. All right. Now, Ms. Dickson, to say
3 that you tested these items would not be accurate, would
4 it?

5 A. We indicate what they are based on the markings on the
6 tablet.

7 Q. But to say that you tested them would not be accurate?

8 A. I did not take any samples from them and run them
9 through our machines, no.

10 Q. You did no chemical testing?

11 A. No.

12 Q. No kind of testing at all?

13 A. No.

14 Q. All right. So what you do is you get into a computer
15 database and visually compare what you see on the screen to
16 what you're looking at?

17 A. Yes, sir.

18 Q. And as to the actual substance of that, aside from
19 those markings, you have no idea what they are, do you?

20 A. No, sir.

21 Q. Okay. Are you familiar that there are counterfeit
22 drugs?

23 A. Yes, sir.

24 Q. Okay. And counterfeit drugs could certainly bear the
25 same markings, could they not?

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Kelly Dickson - Redirect Examination by Mr. Them
James William Alexander - Direct Examination by Mr. Them

208

1 A. Yes, sir.

2 Q. Thank you, ma'am.

3 MR. DEJONG: No further questions.

4 **REDIRECT EXAMINATION**

5 **BY MR. THEM:**

6 Q. Do you have any reason to believe whatsoever that the
7 items that you had there are counterfeit drugs?

8 A. No, sir.

9 Q. Do they appear to be genuine?

10 A. Yes, sir.

11 Q. Thank you very much, ma'am.

12 THE COURT: Thank you. You may step down, Ms.
13 Dickson.

14 MR. THEM: I call James Armstrong.

15 THE CLERK: Place your left hand on the bible and
16 raise your right hand, please. Do you solemnly swear or
17 affirm the testimony you're about to give in this case be
18 the truth, the whole truth and nothing but the truth, so
19 help you God?

20 WITNESS: Yes, ma'am, I do.

21 THE CLERK: State your full name for the record.

22 WITNESS: James William Armstrong.

23 THE CLERK: Please be seated.

24 **JAMES WILLIAM ARMSTRONG,**

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Kelly Dickson - Redirect Examination by Mr. Them
James William Alexander - Direct Examination by Mr. Them

209

1 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MR. THEM:**

4 Q. Where are you employed, sir?

5 A. I'm employed at the Greenville County Department of
6 Public Safety, forensics division, crime laboratory.

7 Q. And what are your duties there?

8 A. I have a dual responsibility as a firearm examiner and
9 a forensic drug chemist.

10 Q. Okay. Would you tell me your educational and
11 experience background as a forensic chemist?

12 A. Yes, sir. I have a Bachelor of Science Degree in
13 Chemistry from Erskine College. I trained in the area of
14 drug identification approximately one year under the
15 direction of our lab supervisor. I've attended numerous
16 instrumental analysis schools concerning instruments I use
17 in my analysis. I've attended the Drug Enforcement
18 Administration's Forensic Chemist Seminars sponsored by DEA
19 in Washington, DC. I've testified at least a hundred and
20 thirty-five times as an expert in the area of drug
21 identification in Federal, State and Local Courts.

22 Q. Thank you very much.

23 MR. THEM: Your Honor, I would move to qualify Mr.
24 Armstrong as an expert in the field of Forensic Chemistry.

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Kelly Dickson - Redirect Examination by Mr. Them
James William Alexander - Direct Examination by Mr. Them

210

1 MR. DEJONG: No voir dire as to expertise, Your
2 Honor.

3 THE COURT: Very good. Any objection to his
4 qualifications?

5 MR. DEJONG: None, Your Honor.

6 THE COURT: All right. You may proceed.

7 Q. When drugs are delivered to you personally from -- let
8 me back up. Scratch that. Where do you get drugs that you
9 test? In other words, where are they when you get them?

10 A. The drugs are stored in our property and evidence room
11 for storage. When I'm going to receive items for testing, I
12 go down to our property and evidence room and asks them to
13 bring a box of substances for me to sign out by way of a
14 property and evidence sheet. Once they bring me the box, I
15 sign the sheets and take the evidence back to my office for
16 testing.

17 Q. Okay. And after you finish testing, how would the
18 things that you test get back to property and evidence?

19 A. Once I've completed my test and everything is sealed, I
20 generate a report of my findings. The evidence is then
21 transported back to the property and evidence room, where
22 they notify the agency to come pick up their evidence.

23 Q. Okay. And did you do any testing in this case?

24 A. Yes, sir, I did.

25 Q. This would be case -- I'm sorry. Which of these

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)

Kelly Dickson - Redirect Examination by Mr. Them

James William Alexander - Direct Examination by Mr. Them

1 numbers is y'all's case number, the eleven or ---

2 A. The eleven case number is ours.

3 Q. I'm referencing case number 11-10-000089.

4 A. Yes, sir.

5 Q. And is there a corresponding name associated with that
6 number of a Defendant?

7 A. The Defendant's name is Marshall Collins.

8 Q. Okay. And have you ever seen State's Exhibit 3B?

9 A. Yes, sir, I have.

10 Q. You have?

11 A. Yes, sir.

12 Q. Where did you see it?

13 A. I saw it in my office.

14 Q. Did you retrieve that from property and evidence like
15 we talked about?

16 A. Yes, sir, I would have.

17 Q. Did you test it?

18 A. Yes, sir, I did.

19 Q. Did you use commonly accepted procedures that are done
20 within your field?

21 A. Yes, sir, I did.

22 Q. And are these procedures respected in your field?

23 A. Yes, sir, they are.

24 Q. Okay. And what were the results of those tests?

25 A. Let me refer to the item Exhibit 3B, which is my item

1 1, was a bag containing a rock substance. I found that bag
2 to contain methamphetamine with a weight of fourteen point
3 six zero grams.

4 Q. Okay. And when you finished testing, what do you do
5 with it?

6 A. I seal the item up and then generate my report and
7 transport the evidence back to our property and evidence
8 room.

9 Q. Okay. Let me show you State's Exhibit Number 10, and
10 ask you does the transaction where you picked up that
11 package from Ms. Fricks show up there?

12 A. Yes, sir, it does.

13 Q. And underneath that, does it show you picked it up?

14 A. It has my name under Ms. Fricks' and then where I
15 returned it.

16 Q. Is that signature?

17 A. That's my printed name and signature, yes, sir.

18 Q. Okay. And are those drugs that you've identified as
19 methamphetamine, do they appear to be in substantially the
20 same condition today as they were when you tested them?

21 A. This package appears to be. However, it is not in the
22 same condition when I last saw it. When I last saw it, it
23 was in a double heat sealed pouch with the original bag.

24 Q. Okay. Are these the type double heat sealed bags
25 you're talking about?

1 A. Yes, sir, they are.

2 Q. Would you tell me -- I'm handing you the double heat
3 sealed bag that contains State's Exhibit Number 7, and ask
4 if you see any identifying marks on that?

5 A. The marks on here correspond to Ms. Dickson's
6 initials.

7 Q. And who is Ms. Dickson?

8 A. Ms. Kelly Dickson. She works in my office.

9 Q. Oh, I'm sorry. And would this be how you would have
10 packaged it for return?

11 A. I would have put it in a similar package of my own with
12 my initials and the date and put a double heat seal above
13 and below my initials.

14 Q. Okay. Thank you very much, sir.

15 MR. THEM: I have no further questions.

16 THE COURT: You may cross examine, Mr. DeJong.

17 MR. DEJONG: Thank you, Your Honor. May it please
18 the Court.

19 **CROSS EXAMINATION**

20 **BY MR. DEJONG:**

21 Q. So what you say is in State's Exhibit 3B is fourteen
22 point six grams, right?

23 A. Yes, sir.

24 Q. All right, sir. That's weighed on your scale?

25 A. Yes, sir.

1 Q. What kind of scale?

2 A. We have a Mettler Toledo balance, a balance which is
3 calibrated every day before we use the balance on in-house
4 measurements. And we also have it certified by a company
5 that comes and verifies our balances at least twice a year.

6 Q. When was the last times the company certified the scale
7 before you weighed these?

8 A. They usually come in April and October, and I received
9 these items on April 26, 2010. They would have come in just
10 before I received these items.

11 Q. Do you have records of that?

12 A. They are in our office, yes, sir.

13 Q. All right. A gram isn't very much, is it?

14 A. One gram is approximately the weight of a small
15 paperclip.

16 Q. Okay. Can you equate that to ounces?

17 A. I can if you give me a moment. For fourteen point six
18 grams or ---

19 Q. How much of an ounce is a gram?

20 A. One ounce is twenty-eight point three-five grams.

21 Q. Twenty-eight point three-five?

22 A. Yes, sir.

23 Q. Okay. So what we're saying then this is -- you said
24 that weighed fourteen point six?

25 A. Yes, sir.

1 Q. And we're saying that that's less than ounce, correct?

2 A. That is less than ounce, yes, sir.

3 Q. When you test these things, I know you know that
4 they've come from a police department, but as to ownership
5 or anything else, you don't know that, do you?

6 A. I have no idea. No idea.

7 Q. And what kind of test did you perform in this case?

8 A. On the particular in item 3B, I performed a chemical
9 and a gas chromatography/mass spectrometer test.

10 Q. All right. The chemical, you just kind of take some
11 and put chemicals on it. Is that color reaction?

12 A. Yes, sir. It's a presumptive test. It just gives us
13 an idea of what we may or may not have so we know which
14 instrument to run the unknown substance on.

15 Q. And then you go to the gas chromatography?

16 A. It's a GMCS we call it for short. It's gas
17 chromatography and the mass spectroscopy altogether, one
18 instrument combined.

19 Q. They're the same?

20 A. The two combined as one, yes, sir.

21 Q. All right. Well, that's done by a computer, right?

22 A. Yes, sir.

23 Q. Okay. So it's not something that you perform as such,
24 correct?

25 A. Correct.

1 Q. And this computer doesn't shout out to you that this is
2 meth, right?

3 A. It prints out what we call a chromatogram and we
4 compare it to knowns that we have actually run on the
5 instrument ourselves for that comparison to make our
6 results.

7 Q. So what you do is you have to take one and compare it
8 to the other, right?

9 A. Well, we can do that manually as well as we have a
10 computer program which can also run the unknowns and compare
11 it to our knowns in a database.

12 Q. Which one did you do here?

13 A. Well, I do both.

14 Q. You do both?

15 A. Yes, sir.

16 Q. Okay. And actually the computer doesn't necessarily
17 just give you one response, does it?

18 A. It depends on the sample.

19 Q. Yes, sir. Well, in this one did it give you one
20 response or five?

21 A. This one gave me a possible list of three.

22 Q. What were the possible lists?

23 A. On the list were methamphetamine, phentramine, and
24 psilocybin.

25 Q. What was the last one?

1 A. It's called psilocin or psilocybin. It's one compound
2 commonly found in mushrooms.

3 Q. Oh, okay. So it may be mushrooms, huh?

4 A. Far from mushrooms. No, sir.

5 Q. So the computer said it could be meth or it could be
6 mushrooms?

7 A. Well, it only prints out three just based on some
8 mathematical formulation. However, when you look at the
9 actual chromatogram of the spectrum of the known compared to
10 the unknown, there is no doubt that it was methamphetamine.
11 And nowhere possible, anywhere linked to psilocybin.

12 Q. Nowhere possible. But the computer still gives that as
13 a possibility?

14 A. The computer prints out only based on one part of the
15 mass spectrum. It only looks at what is known as the 58
16 peak. That 58 peak is common to sillasine. It is not --
17 the other mass waves of the compound where it breaks apart
18 in the instrument are not common to sillasine. The only
19 mass place this one are only common and specific to
20 methamphetamine.

21 Q. And what you look at are basically peaks and valleys,
22 right?

23 A. No, sir. These are actually masses of the compounds
24 when they are fragmented inside the mass spectrum.

25 Q. Okay. So then what are you comparing?

1 A. I'm comparing the masses of the compound. When it
2 breaks down in the instrument, it breaks and it forms like
3 what we call a fingerprint of that compound molecule. And
4 from there we can identify it from the way it breaks.

5 Q. Are you identifying that on the computer?

6 A. That is the way it breaks up, yes, sir.

7 Q. So there is some subjectivity on your part, is there
8 not?

9 A. Actually on this right here, sir, it's pretty much cut
10 and dried. Either it is or is not.

11 Q. There is some subjectivity on your part?

12 A. Not in this particular case, no, sir.

13 Q. Other than analyzing drugs, are you involved in the
14 drug trade at all?

15 A. No, sir.

16 Q. I mean as far as law enforcement, okay?

17 A. Only when I'm called out to do something, yes, sir.

18 Q. All right. But as far as the, for want of a better
19 term, the drug world packaging and all of that, are you
20 familiar with any of that?

21 A. The packaging from pharmaceutical products? Yes, sir.

22 Q. Okay. Well, how about drug dealers? Do you know
23 anything about that?

24 A. I'm familiar with some, especially from where I've been
25 seeing it for the last fourteen and a half years.

1 Q. Well, would -- let me just ask you and we'll find out,
2 okay? People who have an addiction sometimes rather than
3 going to a mom and pop operation, they go to Sam's Wholesale
4 so they can buy in bigger quantity, right?

5 MR. THEM: Objection, Your Honor. I don't know if
6 this witness is qualified to testify in that situation, Your
7 Honor.

8 MR. DEJONG: I think he can answer. He can say he
9 can or he can't.

10 THE COURT: I'll allow him to answer it if he
11 knows the answer.

12 A. It depends on what they're looking for.

13 Q. Yes, sir. But overall, an addict, if you're going to
14 buy it in larger quantities, usually goes to a discount, do
15 they not?

16 A. Yes, sir.

17 Q. All right. And even when you buy in large quantities,
18 a dealer may have a package in smaller quantities to sell.
19 That question was not very clear. Did you understand the
20 question?

21 A. I think I know where you're going. I've seen packages
22 come in anywhere from little small bags, which may only hold
23 one hundredth of a gram, up to -- anywhere up to four or
24 five kilos of a substance. It all depends on the size
25 packaging.

1 Q. Right. So, again, and I realize you did the meth, but
2 I'm talking about the pills a little bit too, okay?

3 A. Okay.

4 Q. The same thing would apply to pills if you buy in
5 quantity, you can get them less expensively than if you buy
6 them one at a time.

7 A. Now, on the pills it depends on the schedule of the
8 drugs.

9 MR. THEM: Objection, Your Honor. I questioned
10 this witnesses on his basis of knowledge. He's qualified as
11 a chemist.

12 MR. DEJONG: He qualified him as an expert.

13 THE COURT: Well, he apparently knows the answer.
14 I'll allow him to answer the question.

15 A. On the controlled substance part, it depends on the
16 controlled substance on how much you can purchase at a time.
17 Certain schedules, they'll only allow you to purchase one
18 month of a prescription. Some of them you can actually
19 purchase up to three months. However, if there are certain
20 schedules you are limited to what you can purchase.

21 Q. Okay. But if you were purchasing from a dealer, is
22 what I'm saying, you might have to go to two or three
23 dealers to get a certain amount of pills, right?

24 A. Well, I would assume, yes, sir.

25 Q. Do you know anything about the tolerance levels of

1 taking any drugs?

2 A. No, sir.

3 Q. Thank you, Mr. Armstrong.

4 THE COURT: Any redirect?

5 MR. THEM: Nothing further, Your Honor.

6 MR. DEJONG: Your Honor, no objection to these
7 folks from Greenville being excused.

8 MR THEM: Thank you.

9 THE COURT: Without objection, you may be excused.
10 Could I see the attorneys here just for a moment.

11 (WHEREUPON, Mr. Them and Mr. DeJong approached the
12 bar.)

13 MR. THEM: Your Honor, at this point in time, I
14 want to do a mass introduction of evidence. State's Exhibit
15 Number 1 is already in evidence, which is the map. At this
16 time, I would move to admit State's Exhibit Number 2, which
17 is the pistol. You want to do these one at a time or do you
18 just want me to rattle them all off.

19 MR. DEJONG: Your Honor, may I stand over here.

20 THE COURT: Yes.

21 MR. THEM: Sure, please.

22 MR. DEJONG: I can't remember all the exhibits.
23 Go ahead.

24 MR. THEM: I'm moving number 2 into evidence.

25 MR. DEJONG: Without objection.

1 THE COURT: Without objection. Exhibit Number 2
2 is into evidence.

3 (WHEREUPON, State Exhibit Number 2 was admitted into
4 evidence.)

5 MR. THEM: Moving Exhibits 3A and 3B, which is a
6 packaging container as well as an item that has been
7 identified as methamphetamine.

8 MR. DEJONG: And, Your Honor, when I say no
9 objection, of course, that is subject to the prior argument
10 I had.

11 THE COURT: Right.

12 MR. DEJONG: Yes, sir. No objection on the latter
13 two that he mentioned.

14 THE COURT: All right.

15 (WHEREUPON, State Exhibit Numbers 3A and 3B were
16 admitted into evidence.)

17 MR. THEM: I'm then moving Exhibits, 4A, 4B, and
18 4C, which are two packages of Alprazolam and one package of
19 Oxycontin.

20 MR. DEJONG: Without objection.

21 THE COURT: All right.

22 (WHEREUPON, State Exhibit Numbers 4A, 4B, and 4C were
23 admitted into evidence.)

24 MR. THEM: Items 5 and 6, which are -- have been
25 testified to as containers from which items 4A, 4B, and 4C

1 came from.

2 MR. DEJONG: May I have a moment, please, Your
3 Honor?

4 THE COURT: Yes, sir.

5 MR. THEM: Mr. DeJong has reminded me of an
6 agreement we had. I'm not going to seek to admit items 6
7 and 7.

8 THE COURT: Was it 5 and 6 or 6 and 7?

9 MR. THEM: I am not going to move to admit number
10 5, but I am moving to admit number 6.

11 THE COURT: All right. Exhibit 6 is admitted.

12 MR. DEJONG: No objection.

13 (WHEREUPON, State Exhibit Number 6 was admitted into
14 evidence.)

15 MR. THEM: Item 7 and 8, which are the bags
16 containing the bags or the envelopes by which the stuff was
17 delivered to Greenville for testing.

18 MR. DEJONG: No objection.

19 THE COURT: Without objection.

20 (WHEREUPON, State Exhibit Numbers 7 and 8 were admitted
21 into evidence.)

22 MR. THEM: State's 9, 10 and 11, which are the
23 chain of custody documents.

24 MR. DEJONG: No objection.

25 THE COURT: Without objection, 9 through 11 are

1 into evidence. I think those are already in perhaps.

2 (WHEREUPON, State Exhibit Numbers 9, 10 and 11 were
3 admitted into evidence.)

4 MR. THEM: Your Honor, I have one short witness.

5 THE COURT: All right. You may call your next
6 witness, Mr. Them.

7 MR. THEM: Thank you, sir. I call Officer Sapp.

8 THE COURT: Mr. Sapp, if you would come around,
9 please, and place your left hand on the bible and raise your
10 right hand. Do you swear or affirm the testimony you're
11 about to give the Court will be the truth, the whole truth
12 and nothing but the truth, so help you God?

13 WITNESS: I do, sir

14 THE COURT: If you would, please have a seat and
15 state your full name for the record.

16 WITNESS: Joseph Craig Sapp.

17 **JOSEPH CRAIG SAPP,**

18 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MR. THEM:**

21 Q. Mr. Sapp, where are you employed, sir?

22 A. Right now I'm a reserve officer for Pickens City Police
23 Department.

24 Q. All right. Prior to being a reserve officer, were you
25 at one time a full-time police officer?

1 A. Yes, sir, I was.

2 Q. When did that change?

3 A. May of 2010, I become a reserve.

4 Q. Okay, sir. Were you employed by the City of Pickens as
5 a patrol officer on or about October the 2nd, 2009?

6 A. Yes, sir. I was a full-time officer at that time
7 period.

8 Q. Okay. Were you certified at that point in time by the
9 Criminal Justice Academy?

10 A. Yes, sir.

11 Q. Full blown police officer?

12 A. Yes, sir.

13 Q. Okay. Now, were you on duty at approximately one-
14 thirty in the morning on October the 2nd, 2009?

15 A. Yes, sir.

16 Q. Did you have the occasion to come to the aid of Officer
17 Blair?

18 A. Yes, sir, I did.

19 Q. Tell me what happened?

20 A. I was on patrol just riding around town, logging
21 property, just doing regular patrol work. I heard Officer
22 Blair make a traffic stop over the radio. Didn't think
23 nothing about it, just a routine traffic stop. The next
24 thing I know, he come across the radio and said he was on
25 chase on foot. He's in a foot chase and gave his location,

1 where he was, you know, initially started off down --
2 heading down West Cedar Rock Street. I go to that area.
3 I'm, you know, looking. When I found Officer Blair, he's at
4 -- do you want me to show the map or ---

5 Q. Please. Step up to the map.

6 A. When I located him, I come down West Cedar Rock Street,
7 which is the last remarks I heard over the radio where he
8 was, Officer Blair. So I drove my patrol vehicle down East
9 Cedar Rock Street and I was looking the whole time, looking
10 for anybody running, to see if I could see anything. I did
11 turn here and ---

12 Q. You say you turned here. Turned where?

13 A. I turned, it would be right on South Lewis Street.

14 Q. Is that the Street where the Post Office is?

15 A. Yes, sir.

16 Q. Okay. Go ahead.

17 A. And I saw Officer Blair had his taser out. And it has
18 a laser and like a flashlight on it. And I'd seen it
19 illuminating. And seen a gentleman on the ground at that
20 time. I didn't know anything else.

21 Q. Okay. Have a seat if you would. All right. What, if
22 anything, did you do?

23 A. I instantly got out of my patrol vehicle and just went
24 straight up to the gentleman on the ground and cuffed him,
25 put him in custody, put handcuffs on him.

1 Q. You trust him?

2 A. Say again?

3 Q. You went up to the man on the ground and what now?

4 A. Put him into custody. Put handcuffs on him.

5 Q. Okay. Put him into custody, okay.

6 A. Yes, sir.

7 Q. When you handcuffed him, did you handcuff him in the
8 front or the back?

9 A. Back, sir. Our department policy is always cuff in the
10 back for safety issues.

11 Q. Do you remember whether or not there was any unusual
12 clothing item or container associated with the Defendant ---

13 A. Yes, sir, I noticed he had a ---

14 Q. -- at that time?

15 A. Oh, I'm sorry, sir. Yes, I noticed he had a backpack
16 on. I just went ahead and cuffed him with the backpack
17 still on his back, sir.

18 Q. Why wouldn't you take the backpack off first?

19 A. I didn't know anything. I didn't know what was going
20 on. I knew the gentleman just run on Officer Blair, so my
21 first instinct then was just to get the guy under control,
22 which is put them in handcuffs.

23 Q. The period of time you were there, did you see any
24 violence or fighting or scuffling on either party?

25 A. No, sir.

1 Q. Did you see whether or not your partner had his weapon
2 drawn?

3 A. Like I stated before, he had his taser drawn.

4 Q. Okay. Was the taser used while you were there?

5 A. No, sir.

6 Q. All right. After you got the man cuffed -- well, let's
7 back up. Do you see the man in Court today that you cuffed
8 that night?

9 A. Yes, sir.

10 Q. Point him out to me, please.

11 A. It would be Mr. Collins, the Defendant, who's sitting
12 over there.

13 MR. THEM: Let the record reflect the witness is
14 talking about the Defendant.

15 Q. Well, after you got the Defendant cuffed, what did you
16 do with him?

17 A. I helped the Defendant up and walked him to the back of
18 my patrol car.

19 Q. Okay. What did you do with him then?

20 A. I did a quick pat-down of his person, his pants and
21 stuff like that, did a check for weapons. At that time I
22 found a pocket knife on -- I'm not sure what side -- one of
23 his front pockets.

24 Q. The pocket knife was a legal knife, wasn't it?

25 A. Yes, sir. It was.

1 Q. There was nothing wrong with that knife?

2 A. No, sir.

3 Q. Okay. Go ahead.

4 A. But we did take the knife, you know.

5 Q. Okay.

6 A. You know, to keep it away from him at the time.

7 Q. Sure.

8 A. There was a wallet in the back. Did take the wallet
9 out. Officer Blair stated that he didn't know who the
10 subject was, so we got the wallet out, did a check for an
11 ID or something. Found an ID, which did have a picture and
12 Marshall Heath Collins on it. And went ahead and called
13 that in to dispatch and everything, let dispatch know who
14 we're out with now that we know who, you know, who it is.

15 Q. While you were at the scene that night, did y'all get a
16 response back from dispatch about his driver's license?

17 A. Yes, sir, I'm not sure of the exact time frame, but it
18 did come -- she did get it back to us while we were still at
19 my patrol car, before we drove back to ---

20 Q. And what was that response you got from dispatch?

21 A. It come back that it was suspended.

22 Q. Okay. All right. Now, after you searched the
23 Defendant, did you search the backpack?

24 A. Yes, sir. His hands, like we stated, was still behind
25 his back, right there accessible to the backpack. I

1 personally unzipped the -- there's a middle -- not the big
2 console, it was like a little zipper part closest to his
3 hands. I unzipped it and the very first item I found was a
4 weapon, and it was actually in a cell phone like holder that
5 people have to hold their cell phones. It was like inside
6 it. But there's no mistaking it was a gun. So ---

7 Q. Does that appear to be the weapon involved?

8 A. Yes, sir, it does.

9 Q. Okay. And then what happened?

10 A. I handed that weapon to Officer Blair to clear and make
11 safe.

12 Q. Okay. Then what?

13 A. At that time me and Officer Blair undid the straps to
14 the backpack and sat it on the trunk of my patrol vehicle
15 and at that time, we put Mr. Collins in the back of my
16 patrol car.

17 Q. Was he handcuffed when he went in the back?

18 A. Yes, sir, he was.

19 Q. Had anybody said the magic words, you're under arrest
20 or anything like that?

21 A. I'm not sure if we actually stated you're under arrest.
22 Usually we do under that circumstance. There was a lot of,
23 you know, emotion going. It -- you know, everything was
24 going on pretty quick, but we put cuffs on him and put him
25 in the back of the car, yes, sir.

1 Q. When you take a person into custody and there's no one
2 there to drive their car or take control of their property,
3 under y'all's departmental policy, do you have any
4 obligation to try to safeguard that property?

5 A. Yes, sir. There's usually two concerns we have when
6 someone is in our custody or going to jail or under arrest.
7 Just, say, a woman with a purse or a man with a backpack or
8 whatever, we inventory that item before it goes to either
9 the county jail or back to our police department. You
10 know, because if it goes to county, you want to get any kind
11 of contraband out of it before it gets in the jail system.
12 And if it's in our custody, we're responsible for it. So we
13 might look for rings, watches, money and, you know, that way
14 we can have a record of anything that we're responsible for,
15 yes, sir.

16 Q. Was the book bag searched?

17 A. Yes, sir, it was.

18 Q. By whom?

19 A. Myself and Officer Blair after we put Mr. Collins
20 inside the car.

21 Q. You see the items spread in front of you?

22 A. Yes, sir, I do.

23 Q. Have you ever seen those items before?

24 A. Yes, sir, I have.

25 Q. Do those appear to be the items that y'all found in the

1 backpack?

2 A. Yes, sir.

3 Q. Was there anything illegal about the backpack itself or
4 was it just the contents?

5 A. Just the contents, sir.

6 Q. Did you see any kind of papers or anything that struck
7 you as illegal?

8 A. Nothing that brought us -- you know, made us aware of
9 anything other than what's sitting here before us today.

10 Q. Other than the gun and the drugs that are spread in
11 front of you, did you seize anything else from the
12 Defendant?

13 A. No, sir.

14 Q. What happened to his book bag? Did it go into the
15 county jail with him?

16 A. Yes, sir, I believe it went back to county jail with
17 wallets and things of that nature.

18 Q. All that stuff -- did you have any objection to any of
19 that stuff being returned to him, put a hold on it?

20 A. Say again, sir?

21 Q. Did you put a hold on any of stuff or was it okay to
22 return it to him when he got out of jail?

23 A. Yeah. It was okay to return it when he got out of
24 jail, sir.

25 Q. Just one second, please.

1 A. Yes, sir.

2 Q. I have nothing further, sir. Would you answer any
3 questions Mr. DeJong might have?

4 A. Yes, sir.

5 **CROSS EXAMINATION**

6 **BY MR. DEJONG:**

7 Q. How much money was in Mr. Collins wallet?

8 A. I don't recall, sir. It would be -- all of that is
9 listed at the County. The County has records of all of
10 that, sir.

11 Q. I understand that.

12 A. Yes, sir.

13 Q. But you tell this jury you are so concerned about
14 inventorying what was in that backpack because you needed to
15 know if there was watches, rings or money in there that you
16 had to reserve, but you didn't fill anything out how much
17 money was in his wallet?

18 A. I took it to the jail and they kept track of that,
19 sir.

20 Q. Well, you could have taken the backpack to the jail
21 too, couldn't you?

22 A. Yes, sir.

23 Q. Right. But you chose to do an inventory on that, but
24 not on his wallet?

25 A. We're required to, sir.

1 Q. Well, you're not required to do an inventory on his
2 wallet?

3 A. We did, sir. We opened it up and got the ID out.

4 Q. Did he have credit cards in there?

5 A. I don't recall, sir. Most people do.

6 Q. Is there an inventory sheet?

7 A. No, sir, not of the wallet or anything.

8 Q. Well, then how in the world do you know what was in the
9 wallet if Mr. Collins came back and said, I had ten thousand
10 dollars in that wallet, you took it. Prove to me that there
11 wasn't ten thousand dollars in that wallet. Show me your
12 documentation.

13 A. I don't have any, sir.

14 Q. Well, then why is it so important that you inventory
15 the backpack and not a wallet?

16 A. I inventoried the wallet, sir. I opened it up and got
17 the ID out of there, sir.

18 Q. Yes, sir. And that's what you were looking for, wasn't
19 it?

20 A. It was what I was looking for. But, I mean, I would
21 notice ten thousand dollars sitting there in somebody's
22 wallet. There's nothing out of the ordinary in somebody's
23 wallet, sir.

24 Q. Well, how much money was in the wallet?

25 A. I can't recall.

- 1 Q. Credit cards?
- 2 A. Sir?
- 3 Q. Credit cards?
- 4 A. I don't recall, sir.
- 5 Q. Debit cards?
- 6 A. I don't know.
- 7 Q. Pictures?
- 8 A. I can't recall.
- 9 Q. When you got to this area just above the Post Office
- 10 there ---
- 11 A. Yes, sir.
- 12 Q. When you got there, Officer Blair already had Mr.
- 13 Collins on the ground, didn't he?
- 14 A. Yes, sir, he was on the ground, sir.
- 15 Q. Face down?
- 16 A. Yeah. I mean his face was to the -- he was on his
- 17 stomach, yes, sir.
- 18 Q. Had his taser pointed at him?
- 19 A. Yes, sir, he did.
- 20 Q. Close range?
- 21 A. He was a few feet away, yes, sir.
- 22 Q. Right.
- 23 A. For his safety, we're trained to stay back a few feet
- 24 away, yes, sir.
- 25 Q. Now you've got two officers there now, right?

1 A. Yes, sir.

2 Q. And so you handcuffed him, right?

3 A. Yes, sir.

4 Q. And you've got him handcuffed behind his back, right?

5 A. Yes, sir, behind his back.

6 Q. And now, once he's handcuffed, under control, according
7 to your words, right?

8 A. Yes, sir.

9 Q. Now you're worried about officer safety?

10 A. We're worried about officer safety the whole time we're
11 on duty, sir.

12 Q. How far down did that book bag come on his back?
13 Here?

14 A. Further down towards his butt area. I'm not a hundred
15 percent sure, sir.

16 Q. Did you take the book bag into evidence?

17 A. No, sir, I didn't.

18 Q. How many zippers did it have on it?

19 A. I don't know a hundred percent. I believe two.

20 Because I remember going to the closest one towards his
21 hands, sir.

22 Q. How many compartments did it have in it?

23 A. I'm not a hundred percent sure, sir.

24 Q. Well, if I understood your testimony a while ago, you
25 said kind of the middle compartment, kind of where his hands

1 were, right?

2 A. Well, the one closest is the one I went to first and
3 that's why I located the weapon, sir.

4 Q. What kind of zipper was it?

5 A. Just a normal zipper, sir.

6 Q. Pardon?

7 A. Just a zipper. It wasn't nothing special.

8 Q. What direction -- did it go in an arc or come in the
9 bottom?

10 MR. THEM: Objection, Your Honor, relevance.

11 THE COURT: Overruled.

12 A. Yes, sir, it was one of the kind of roundish moon, a
13 horseshoe almost shape.

14 Q. Well, at that point in time when you put handcuffs on
15 him, what was he under arrest for?

16 A. When I first put the handcuffs on him, he wasn't under
17 arrest at that time.

18 Q. When you searched the book bag or backpack, what was he
19 under arrest for?

20 A. Well, when I very first searched and found the weapon,
21 he wasn't under arrest. It was officer safety. It's right
22 there at his hands.

23 Q. All right. Well, we'll come back to that. He's cuffed
24 behind his back, regular handcuffs?

25 A. Yes, sir.

1 Q. You can't move your hands much this way, can you?

2 A. A little bit, sir.

3 Q. Well, a little bit. A little bit means different
4 things to different people. Can I move them six inches?

5 A. I wouldn't think so, sir.

6 Q. Can I move them three inches?

7 A. Yes, sir.

8 Q. I can move that much?

9 A. Probably, sir.

10 Q. Three inches?

11 A. As far as your hands are moving now, I believe you
12 could. There's a chain in between there that's probably
13 three inches, if not more, sir.

14 Q. All right. Come down here and show me on my back where
15 that zipper was.

16 A. I don't know a hundred percent. I mean, I can't tell.
17 Everybody's a different size and stuff, but it was the
18 closest one to his hands.

19 Q. How close to his hands?

20 A. I can't recall. It's on his back and it's right there
21 at his hands, sir.

22 Q. Well, if you can't recall then how do you know if it
23 was even for officer safety?

24 A. Sir, we could have turned our back for one second and
25 anything could have happened. I mean, he could have got in

1 there.

2 Q. Even if you don't know if he could reach the zipper or
3 not?

4 A. I mean it's right there at your hands.

5 Q. And you didn't bring the book bag in to show -- the
6 backpack to show this jury, did you?

7 A. No, sir.

8 Q. Now, you take -- you get him in the car. Well, before
9 we get to the car, when you got there Officer Blair has him
10 face down on the ground with a taser pointed at him and a
11 flashlight?

12 A. There's a light on there, yes, sir.

13 Q. Pardon me?

14 A. There's a light on the ---

15 Q. Okay. A flashlight or either -- whatever. It was
16 illuminating the area a little bit, wasn't it?

17 A. A little bit, yes, sir.

18 Q. Okay. Mr. Collins struggling?

19 A. Not at that time, sir.

20 Q. Okay. Did he ever when you were there?

21 A. While I was there, no, sir.

22 Q. All right. Was he thrashing about?

23 A. No, sir.

24 Q. Was he kicking?

25 A. No, sir.

1 Q. Was he flailing his arms?

2 A. No, sir.

3 Q. Wasn't doing anything?

4 A. No, sir.

5 Q. Were you there when he hit the tree?

6 A. No, sir.

7 Q. Would you say he was disoriented when you got there?

8 A. When I got there, he was on the ground. I didn't know
9 what kind of condition he was in, sir.

10 Q. Okay. Was there anything to prevent you from taking
11 the backpack off of him at that time, just totally taking it
12 off?

13 A. While he was still on the ground?

14 Q. Yes, sir.

15 A. That is the least concern as an officer when you arrive
16 on a scene, something like that, sir. I didn't care about
17 the backpack. I cared about getting him in custody.

18 Q. Well, wasn't he under control with a taser pointed at
19 him?

20 A. Not necessarily. He could have got up and ran again
21 for all we know.

22 Q. Well, yes, we could speculate a lot.

23 A. Yes, sir.

24 Q. You're a police officer?

25 A. Yes, sir.

1 Q. If you had a taser pointed at you, would you get up and
2 run?

3 MR. THEM: Objection to relevance.

4 MR. DEJONG: I think it's very relevant, Your
5 Honor.

6 THE COURT: I sustain the objection.

7 Q. There was nothing to indicate when you got there that
8 he was going to run?

9 A. No, sir.

10 Q. Nothing to indicate that -- when you got there, that he
11 was going to do anything to attempt to hurt either you or
12 Officer Blair?

13 A. I didn't know nothing about the situation, sir.

14 Q. My question is, did you see anything from Mr. Collins
15 that you would consider an attempt to hurt you or Officer
16 Blair?

17 A. No, sir.

18 Q. Now you handcuffed him behind his back, then you go
19 take the backpack off of him, right?

20 A. After I located the weapon, sir. Yes, sir.

21 Q. Yeah. Okay. But now once you take the backpack off of
22 him, there's certainly no officer safety issues, are there?

23 A. Not at that time, sir. No, sir.

24 Q. You wanted to search the backpack, didn't you?

25 A. I inventoried the bag, yes, sir.

1 Q. No, you wanted to search it. What time of the night
2 was it?

3 A. I believe it was about one-thirty in the morning.
4 Somewhere -- probably after that by the time I got there.

5 Q. Not much to do at one-thirty in the morning in Pickens
6 City, is there?

7 A. Not too much, sir.

8 Q. When you get him up off the ground, you and Sapp --
9 excuse me -- you and Officer Blair get him up off the
10 ground?

11 A. Yes, sir.

12 Q. And the ID is found in his wallet?

13 A. Yes, sir.

14 Q. And then you and Officer Blair take him to his car --
15 to your car, correct?

16 A. I mean, not after we found the wallet, no, sir. I
17 mean, after we found the ID, while he's still cuffed, got
18 the ID, ran it and then found the weapon.

19 Q. All right. The point of that is is you searched the
20 backpack before you ever got a radio transmission back on
21 the ID. Is that not true?

22 A. It come across sometime in -- I believe before we went
23 back to Officer Blair's car. I mean, it come across because
24 we ran it as soon as we found it and it don't take but a
25 minute to come back.

1 Q. I'm sorry.

2 A. Yes, sir.

3 Q. I understand that.

4 A. Yes, sir.

5 Q. You searched the backpack at your car?

6 A. Yes, sir, at the -- near the Post Office, yes, sir.

7 Q. Well, I'm sure there were a number of things that
8 happened before you went back to Officer Blair's car, wasn't
9 there?

10 A. A few, yes, sir.

11 Q. By the way, you went to the Academy, didn't you?

12 A. Yes, sir.

13 Q. Write reports?

14 A. There was a little training on it. Most of our
15 training on report writing is done in-house, sir.

16 Q. And did you write a separate report on this case?

17 A. No, sir, I didn't.

18 Q. So after all was said and done you and Officer Blair
19 kind of put your heads together and wrote the report?

20 A. Yes, sir.

21 Q. And in writing this report, was it written in a
22 chronological order?

23 A. We wrote it the best we could -- you know, we sit down
24 and we wrote the report, yes, sir, in the order that stuff
25 happens.

1 Q. Right. Do you have a copy of it up there with you?

2 A. Yes, sir, I do.

3 Q. And it was almost added as an afterthought, was it not?

4 It was also discovered that his license was suspended.

5 A. Yes, sir. It does come across that way in the report,

6 yes, sir.

7 Q. I know what I wanted to ask you. I almost forgot. How

8 long you been a police officer?

9 A. At that time or now?

10 Q. Let's start with now.

11 A. Well, I was full-time. I went to the Academy with

12 Officer Blair. We went to the Academy together. We started

13 at the same time, which was -- I got hired February 4th,

14 2009.

15 Q. All right.

16 A. And I was full-time until May 2010, and I've been a

17 reserve officer since.

18 Q. You deal with drug cases?

19 A. Sir?

20 Q. You deal with drug cases?

21 A. Yes, sir. Many of them.

22 Q. Generally?

23 A. A lot, sir. Yes, sir.

24 Q. Yes, sir. And dealt with people that deal drugs,

25 right?

1 A. Sir? Yes, sir, I have.

2 Q. Dealt with people who are drug addicts, right?

3 A. I would say so, yes, sir.

4 Q. And dealt with drugs packaged in different ways,
5 right?

6 A. I've seen some different ways, yes, sir.

7 Q. You're basically what we would call a street cop,
8 right?

9 A. A patrolman, yes, sir.

10 Q. Yes, sir.

11 A. Answer calls.

12 Q. That's an old man's saying, okay?

13 A. Okay.

14 Q. You've got cars now. But basically, a street cop?

15 A. Yes, sir.

16 Q. We'll put it another way. You work down at the level
17 of the people, right?

18 A. Yes, sir.

19 Q. All right. If you know, people buying drugs, do they
20 get a discount if they buy in quantity?

21 MR. THEM: Objection, Your Honor. He's got to
22 qualify this man in some sense as an expert and got to move
23 him as an expert, because if he's going to do that, I've got
24 a bunch of questions I'd like to ask him about his expertise
25 in the field of drugs.

1 THE COURT: I'll allow the question as it was
2 phrased.

3 A. Could you repeat the question, sir?

4 Q. I don't know if I can now or not. Let me see how we
5 could do this. In your dealings as a police officer or a
6 patrol officer, dealing with addicts, dealing with drug
7 dealers, if you know, do people that buy drugs get a
8 discount if they buy in quantity?

9 A. I'm not sure, sir.

10 Q. Okay. Thank you, Officer Sapp.

11 **REDIRECT EXAMINATION**

12 **BY MR. THEM:**

13 Q. In your experience as a police officer, do people that
14 are violating the law or people that are carrying guns, do
15 they always carry them like cowboys do in a holster or the
16 way you do?

17 A. No, sir.

18 Q. They sometimes tuck them in the front of their belt
19 like you see in the movies?

20 A. Yes, sir.

21 Q. Sometimes like they do in the back, where you see in
22 those gangster movies?

23 A. Yes, sir.

24 Q. Sometimes under their arms?

25 A. Yes, sir.

1 Q. What about ankle holsters?

2 A. Yes, sir. They're popular.

3 Q. Any number of places a person could have a weapon
4 hidden, correct?

5 A. Yes, sir.

6 Q. So when you arrived on the scene, all you know -- let
7 me back up. Was it all you know that the Defendant had took
8 off running when he'd been stopped for a routine traffic
9 violation?

10 A. Yes, sir.

11 Q. Did that raise your level of concern about who he was
12 and what was going on with him, you know?

13 A. Definitely, sir.

14 Q. Okay. When you're out there on the streets, do you
15 feel an obligation to try to protect your partner?

16 A. Yes, sir.

17 MR. THEM: I have nothing further, Your Honor.

18 THE COURT: Thank you, sir. You may step down.

19 OFFICER SAPP: Thank you.

20 THE COURT: You may call your next witness,
21 Solicitor.

22 MR. THEM: With that, Your Honor, the State rests.

23 THE COURT: Ladies and gentlemen of the jury,

24 we're at a stage in the trial where we need to take care of
25 some legal matters. Rather than keeping you here much later

1 this afternoon, we'll work a while longer, but I'm going to
2 excuse you for the evening. If you would, be back at nine
3 o'clock in the morning, we'll be ready to proceed with the
4 trial of the case at that time. I remind you again, it
5 would be improper for you to do any kind of discussion about
6 this case with each other as you get in the jury, with
7 family, with friends, with anyone else. It would be
8 improper for you to do any kind of independent research.
9 That would be against your oath, against my instructions to
10 you.

11 These attorneys are going to present everything to you
12 you're going to need. You've committed to them you're going
13 to decide the case on what takes place here and here alone.
14 With that in mind, you're excused for the day. If you'll be
15 back at nine o'clock in the morning in your jury room, we'll
16 be ready to proceed at that time. Have a good evening,
17 ladies and gentlemen. Everyone else remain seated, please,
18 while the jury retires.

19 (WHEREUPON, the jury exited the open court at
20 approximately 5:21 p.m.)

21 THE COURT: Yes, sir, Mr. DeJong.

22 MR. DEJONG: Thank you, Your Honor. May it please
23 the Court. At this point in time I would move for a
24 directed verdict on behalf of Mr. Collins. Looking at the
25 evidence in a light most favorable to the State, Your Honor,

1 Mr. Collins on that night was driving a vehicle that did not
2 belong to him, by the State's own testimony. The State can
3 put the Defendant purportedly, for purposes of this
4 argument, in possession of a backpack. There was no
5 indication that that backpack belonged to Mr. Collins.

6 Now, in one sense you can say, well, that doesn't
7 particularly mean anything because he was possession of the
8 backpack. And for purposes of this argument, I won't deny
9 that. However, the State has to show more than that he was
10 in possession of the backpack, Your Honor. They must show
11 that he had knowledge of the contents of the backpack. They
12 must show that he, even under constructive possession or
13 actual possession, I'm not sure which they're going under,
14 but they have to show that he had knowledge of what was in
15 the backpack. I would submit to the Court that there has
16 been a total failure of proof on the part of the State to
17 show either knowledge or intent with the items as to the
18 backpack, Your Honor.

19 THE COURT: Mr. Them, I'll be glad to hear from
20 you in response.

21 MR. THEM: There can be no question that the
22 Defendant was in actual possession. Obviously, the issue is
23 knowing possession. Probably the best indication of knowing
24 possession would be that when he chose to flee from the car
25 he immediately grabbed his drug stash and ran with it. It

1 was not like it was somebody -- it was somebody else's car,
2 but would he take a child's book bag with him to run when
3 he's running from the police at night? Or would he take the
4 one that just so happens to contain the gun, just so happens
5 to contain his drug store, all of his meth. That is clear
6 evidence of his knowing and actual possession of the matter,
7 Your Honor.

8 THE COURT: I respectfully deny your motion, Mr.
9 DeJong. I think there is sufficient evidence on this issue
10 for a jury to make a determination of it, viewing all the
11 evidence in the light most favorable to the State, as I
12 must. I deny your motion.

13 MR. DEJONG: Thank you, Your Honor. Do you wish
14 to voir dire my client about testifying?

15 THE COURT: Let's do this evening and then -- if
16 you'd come forward, please, Mr. Collins.

17 (WHEREUPON, Mr. DeJong and the Defendant approach the
18 bar.)

19 THE COURT: If you would, stand with your attorney
20 and raise your right hand. Do you swear or affirm the
21 testimony you're about to give me will be the truth, the
22 whole truth, nothing but the truth, so help you, God?

23 DEFENDANT: Yes, sir. THE COURT: Mr.
24 Collins, we've reached a stage in the case I need to explain
25 certain rights to you. You've perhaps had a chance to talk

1 to your attorney about these rights already. I want to make
2 sure in my own mind that you understand them, however, and
3 I'm going to explain them to you. If you have any
4 questions, please don't hesitate to ask me. Raise your
5 hand, let me know. I'll stop at any time and try to explain
6 it further.

7 The Constitution in South Carolina, the Constitution in
8 the United States provides that no person can be compelled
9 in any criminal case to be a witness against himself. This
10 means you can't be required to testify in this case. You
11 have a right to testify in your own behalf if you choose to,
12 but nobody can make you testify. It's a personal right that
13 you enjoy. Nobody can waive that right except you. You may
14 take the option to testify and if that's the case, you'll be
15 subject to the same rules that govern any other witness.
16 You can be examined and cross examined on any relevant issue
17 in the case. In addition to that, if you have convictions
18 in your past that involve false statements or dishonesty or
19 any crimes that could be punishable by imprisonment for more
20 than one year, and the Court determines that the probative
21 value of admitting this evidence would outweigh any
22 prejudicial effect to you, the Solicitor would be able to
23 introduce your record, to attack your credibility.

24 Now, deciding to testify has got to be a decision made
25 by you freely and intelligently, voluntarily by you without

1 -- with the knowledge of the protections given you by the
2 Fifth Amendment to the United States Constitution, Article I
3 of our State Constitution. You need to be aware and
4 intelligently make a decision and freely make that decision
5 about the consequences of your decision to testify. You may
6 decide not to testify in the case. If you do so, I'll
7 instruct the jury that they cannot give the fact that you
8 chose not to testify any consider whatsoever in their
9 deliberations. There can't be any prejudice towards you
10 because you chose to exercise your right not to testify.
11 I'll tell them they can't even talk about that in the jury
12 room.

13 Now, whether to testify or not testify is left entirely
14 up to you. You can talk with family. You can talk with
15 friends. You can certainly consult with your attorney or
16 anyone else, but the final decision lies with you and you
17 alone. Do you understand what I've explained to you?

18 MR. COLLINS: Yes, sir, Your Honor.

19 THE COURT: Okay. Do you have any questions about
20 what I've explained to you?

21 MR. COLLINS: No, sir, Your Honor. I thank you.

22 THE COURT: Does the State have any impeachable
23 offenses to which they would use to impeach Mr. Collins if
24 he chose to testify?

25 MR. THEM: Yes, sir, I do.

1 THE COURT: What are those?

2 MR. THEM: I have a possession of crack from 2007.

3 And it looks like a possession of ice and crack in 2004,

4 Your Honor.

5 THE COURT: Any question from the Defense vis-a-
6 vis subject to impeachment?

7 MR. DEJONG: May I have just a moment, please,
8 Your Honor.

9 THE COURT: Yes, sir.

10 MR. DEJONG: The only 2004 I see on the NCIC that
11 was served on me -- okay. Yeah, he had that and -- I only
12 see one impeachable offense, Mr. Them.

13 MR. THEM: If you'll look here, sir.

14 MR. DEJONG: All right.

15 MR. THEM: On this page right here.

16 THE COURT: You can return to your seat.

17 MR. THEM: This is a 2004 possession of less than
18 one -- he got fifteen months.

19 MR. DEJONG: Convicted in '06.

20 MR. THEM: Huh? Conviction in '06. Okay, based
21 on the '05 thing. Now, here we have possession with intent
22 ---

23 MR. DEJONG: That was a probation violation.

24 MR. THEM: It's not indicated as a probation
25 violation. It just shows it as another charge. But we can

1 argue.

2 MR. DEJONG: That's where he went into custody
3 status on that, which this was the same thing as they had
4 before, is my contention. We'll have to look at that.

5 THE COURT: All right. Y'all can maybe get those
6 resolved overnight. I'm going to give you and your client a
7 chance overnight to talk about that. Y'all can see if y'all
8 can get those impeachable offenses resolved. We'll be ready
9 to start back at nine o'clock either with his testimony or
10 with the argument and charge.

11 MR. DEJONG: Perhaps one other issue we need to
12 address, Your Honor, that is whether or not you're taking my
13 client into custody overnight.

14 THE COURT: We will.

15 MR. DEJONG: I would ask you not to do that. He's
16 been more than cooperative with me. Shown up every time on
17 short notice that I've asked him to show up. He was
18 certainly here this morning, back here promptly after the
19 lunch break. He was early. I would simply ask you to allow
20 him to remain out.

21 THE COURT: Well, the bond is no longer in force.
22 If the State has a position on it, I'll be glad to hear from
23 the State.

24 MR. THEM: I take the position when the jury is
25 about to get a case that can send him to prison for thirty

1 years, that you're a substantial flight risk, Your Honor.
2 You're not a substantial flight risk when you come to, you
3 know, a show-up or a court appointment or something like
4 that. But when the jury's got your -- the jury's just about
5 to get your case, I think you're a flight risk. And I'm
6 entitled to have some sort of guarantee that if he doesn't
7 show that something can be done.

8 THE COURT: Well, if he had a bondsman or anyone
9 else to back that up, otherwise I think I'm compelled to
10 keep him in custody tonight, Mr. DeJong. I'm sorry.

11 MR. DEJONG: Very well.

12 THE COURT: All right. We'll be ready to start
13 back at nine o'clock in the morning. If any of you have any
14 requests for charge of any particular, I'll be glad to look
15 at them. It will be my standard charge that you're
16 accustomed to.

17 MR. DEJONG: Thank you, Your Honor.

18 (WHEREUPON, court stood at recess for the day at
19 approximately 5:45 p.m.)

20 **DECEMBER 2, 2010**

21 (WHEREUPON, court convened with all parties present and
22 the following proceedings were had.)

23 THE COURT: Mr. DeJong, does your client intend to
24 testify?

25 MR. DEJONG: Your Honor, I spoke with him briefly

1 this morning down in the holding cell and now again at
2 counsel table, and he advises me that he wishes not to
3 testify.

4 THE COURT: All right. Thank you. When we have
5 the jury back out, I'll call upon you, you can rest and then
6 we'll be ready for our arguments then.

7 MR. DEJONG: In doing that, Your Honor, on the
8 record right now I would like to rest and renew my motion
9 for a directed verdict ---

10 THE COURT: All right, sir.

11 MR. DEJONG: -- on the same basis that I argued at
12 the end of the State's case, Your Honor.

13 THE COURT: You are now rested. We'll let you do
14 it for the jury as well. And your motions are respectfully
15 denied.

16 MR. DEJONG: Thank you, Your Honor.

17 MR. THEM: Your Honor, I'm assuming that we would
18 go directly into closing arguments at that point?

19 THE COURT: Correct.

20 MR. THEM: I've handed up a notation from a form
21 book we have about arguing flight. I just want to bring it
22 up that I'd plan to argue flight. I'm certainly not
23 entitled to a jury charge on the issue of flight, but I am
24 entitled to argue it.

25 THE COURT: Mr. DeJong, do you have any position

1 on that. I'm certainly not going to charge flight.

2 MR. DEJONG: Yes, sir. And I think -- very
3 candidly, I have not looked at that case. Mr. Them handed
4 me this about five minutes ago. Certainly I haven't had any
5 time to research that issue, but in my past experience I
6 think what the Solicitor proposes is -- not that I like it,
7 but I guess that it is appropriate or accurate, Your Honor.

8 MR. THEM: Also, Your Honor ---

9 THE COURT: All right. Well ---

10 MR. THEM: -- so as to avoid an interruption
11 during my argument, Mr. DeJong, in questioning one of the
12 witnesses yesterday, tiptoed into the area that there's
13 some sort of potential argument that the Defendant is a
14 drug user or a drug addict, that bought a large quantity of
15 this stuff so that he could get a discount. I maintain
16 that at the point in time that he went into that area, I'm
17 entitled to comment to the jury, there's absolutely no
18 evidence before this jury that this Defendant is an addict
19 or anything like that. Look at him. And that would be my
20 statement to that issue.

21 MR. DEJONG: I think certainly I asked questions,
22 but I didn't make any reference to my client being an
23 addict. That was cross examination on a general issue of
24 knowledge of the police officer as to just the general
25 practices of drug usage, drug dealers and addicts in

1 general. I don't think it was directed at my client. I
2 don't think I tiptoed around it as to my client. Those
3 were general questions and I don't think that opened the
4 door, Your Honor.

5 THE COURT: Do you have something else you want to
6 say, Mr. Them?

7 MR. THEM: If he would agree that he would not
8 argue that, I won't argue it. Otherwise, I want a ruling,
9 with all due respect, sir.

10 THE COURT: Do you intend to go there in your
11 argument, Mr. DeJong?

12 MR. DEJONG: Yes, sir. And I might forget when I
13 get there, but that's my intent right now to be very honest
14 with the Court. Yes, sir.

15 THE COURT: Mr. Them, I'll allow you to address
16 that. Just -- you understand the burden shifting ---

17 MR. THEM: I understand.

18 THE COURT: -- and the fact that he's not required
19 to put up any evidence.

20 MR. THEM: Yes, sir.

21 THE COURT: You need to walk gingerly on that
22 discussion.

23 MR. THEM: What I told you a moment ago is pretty
24 much quote as to what I plan to say. And if you could tell
25 me whether or not that would stand the test.

1 THE COURT: Well, if you word it that way, that
2 will stand the test.

3 MR. THEM: Thank you.

4 THE COURT: But nothing about the requirement of
5 the Defendant to put anything up.

6 Is there any particular requests for charge?

7 MR. THEM: Nothing, Your Honor. I should have
8 said this a moment ago, and I'm sorry. For the record, I
9 met with Mr. DeJong this morning before he published his
10 decision about whether or not his client was going to
11 testify and we came to an agreement that there was only one
12 charge on this man's record that was an impeachable charge,
13 and that was possession of methamphetamine, in the past.

14 THE COURT: All right. Thank you for bringing
15 that to our attention. Yes, sir, Mr. DeJong.

16 MR. THEM: As to requests to charge, Your Honor,
17 with regard to the two possession with intent to distribute
18 controlled substance, I would ask for the lesser included of
19 possession.

20 THE COURT: Is the State in agreement with that?

21 MR. THEM: No, sir. I would ask what evidence he
22 bases -- what testimony he uses that gives him a scenario
23 of facts, other than the jury could just decide no. I
24 think he needs to have some evidentiary support in the
25 record to get a -- to go ahead and get the reduced

1 sentence.

2 THE COURT: I disagree with you.

3 MR. THEM: Okay.

4 THE COURT: I'll give a, on the verdict, an
5 option, and I'll charge a lesser included offense with the
6 possession with intent to distribute.

7 MR. DEJONG: On the trafficking charge, Your
8 Honor, I am going to ask you for a lesser included of
9 possession with intent to distribute and a lesser included
10 of possession. I'm familiar with the *Matthews* case, Your
11 Honor. I think we discussed that peripherally at the
12 opening of this case. I don't know if that was on the
13 record or not. I really don't remember. My problem in
14 reading *Matthews*, I understand what the Court of Appeals or
15 the Supreme Court said in terms of *Matthews* about
16 legislative intent, but the thing that concerns me about
17 *Matthews*, whether it was legislative intent or not, to
18 construe the statute that way, I think that makes it
19 unconstitutional in that -- not so much the statute, but in
20 the interpretation of lesser included, makes it
21 unconstitutional in that it then becomes a burden shifting
22 type situation. The burden shifting is that -- in reading
23 *Matthews* they said if there is no -- I don't know if they
24 used dispute as the word or what, but as to the quantity,
25 then the legislative intent was that it is trafficking.

1 Well, if there has to be a dispute over the quantity,
2 that puts the Defendant in a position of having to present
3 evidence and testimony to put that amount in dispute. I
4 don't know of any other way that we could put that into
5 dispute, other than having to call some expert or whatever.
6 And I think that becomes burden shifting on the part of the
7 Defendant to put that issue in dispute. I think that, yes,
8 the burden of proof is totally on the State. I understand
9 that. I understand what the trafficking statute says. But
10 now when you read *Matthews* and they interpret it that there
11 has to be a dispute over the actual weight to get a
12 possession with intent to distribute, I think that is wrong
13 and I think that is unconstitutional, in that it is burden
14 shifting to the Defendant, Your Honor.

15 I would, therefore, respectfully asks for two lesser
16 includes, both PWID and possession.

17 THE COURT: I'll be glad to hear from the
18 Solicitor on that argument.

19 MR. THEM: Your Honor, I would think that *Matthews*
20 is dispositive of that issue. And I would also point out
21 that there is no evidence in the record that I know of that
22 supports a lesser included. The only evidence that I know
23 that's in the record is fourteen point six grams, and the
24 statute clearly says knowing actual or constructive
25 possession of more than ten grams. Nothing in the record to

1 indicate any less than ten grams.

2 May I move the lectern while we're standing down?

3 THE COURT: Excuse me?

4 MR. THEM: Can I move the lectern?

5 THE COURT: Yes, sir.

6 All right. I've checked the *Matthews* case and some of
7 its prodigy.

8 Mr. DeJong, I find your -- and obviously, your argument
9 has not been raised before on the Constitutional issue, but
10 I think the law binds me to not charge the lesser included
11 on the trafficking. As much as I think that it might need
12 to be charged, I think I'm bound by the law on that, so I'll
13 respectfully deny your motion.

14 MR. DEJONG: And I respect Your Honor's decision.

15 THE COURT: Any other matters? I'll have a
16 verdict form. The verdict form basically -- well, we'll
17 have it ready before. You can look at it before I send it
18 back to the jury, but basically it would be a charge of
19 trafficking, one piece of paper, yes or no or guilty or not
20 guilty. The weapon, guilty, not guilty. And then there'll
21 be a separate one for each of the drugs with the lesser
22 included of the possession, rather than the PWID. So we'll
23 have four forms for them to look at. But I'll let you see
24 those before they go back to the jury.

25 MR. DEJONG: Your Honor, my memory's a little

1 short sometimes. You did say you were going to charge the
2 lesser included on the controlled substances?

3 THE COURT: Correct.

4 MR. DEJONG: All right. Thank you.

5 THE COURT: All right. Anything else?

6 MR. THEM: Nothing on behalf of the State, Your
7 Honor.

8 MR. DEJONG: Nothing on behalf of Mr. Collins.

9 THE COURT: If the jury's ready you can have them
10 come in, Mr. Wright.

11 There is no ammunition into evidence, is there? No
12 bullets?

13 MR. THEM: Excuse me, Your Honor.

14 THE COURT: Yes, sir.

15 MR. THEM: May we approach?

16 THE COURT: Yes, sir.

17 (WHEREUPON, Mr. Them and Mr. DeJong approached the
18 bar.)

19 (WHEREUPON, the jury entered the open court at
20 approximately 9:43 a.m.)

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 thank you for your patience with us. We're now ready to
23 proceed with the trial of the case.

24 At this time, Mr. DeJong, you may call your first
25 witness.

1 MR. DEJONG: The defense rests, Your Honor.

2 THE COURT: Ladies and gentlemen, you've heard all
3 the evidence now that's to be offered. We're now at the
4 stage where the attorneys will have an opportunity to
5 present their closing statements to you. I told you at the
6 opening statements that what they have to say to you is not
7 evidence. You've heard the evidence. I'll instruct you on
8 the law.

9 In spite of the fact that what they're going to share
10 with you is not evidence, I urge you to listen carefully to
11 them. I'm confident that each of them can give you some
12 insights to perhaps help you in your deliberations that will
13 take place in just a few moments after I instruct you on the
14 law. After that, the case will be yours to decide.

15 Mr. Them, you may address the jury in your closing.

16 MR. THEM: Thank you, sir. May it please the
17 Court, Mr. DeJong.

18 **CLOSING STATEMENT**

19 **BY MR. THEM:**

20 On behalf of the people of Pickens County, I want to
21 thank you for your service. We worked you pretty hard
22 yesterday, short on breaks and ran a little late, but you
23 can see the benefit of that today with the case being
24 presented to you first thing in the morning.

25 What this case is about is a vigilant, conscientious

1 police officer riding around in a small town with nothing
2 going on to distract him. And as he comes to the crest of
3 the hill going down, he sees a car pull up to the
4 intersection at the right. I think we all know from driving
5 that the average person is going to try to muscle their way
6 out or to try to shoot across quickly, and it's unusual to
7 find a conscientious, seemingly conscientious and safety
8 motivated driver who would wait to let a twenty-five mile an
9 hour car go by. That attracted this officer's attention.
10 He looked in the rearview mirror and saw no tag light.
11 You're required under the laws of the State of South
12 Carolina to have a tag light. He turned around, got behind
13 him and started to try to catch up with him on the way into
14 town. The Defendant turned right on a little street and
15 then turned left and the question arose in the officer's
16 mind, was he taking evasive action. He didn't decide it,
17 but it was just something else that didn't make him feel
18 comfortable.

19 So as he approached the car and talked to the
20 Defendant, the Defendant had the window rolled down about
21 that far and would not talk to him. It would be like me
22 addressing the jury like this and I would never look you in
23 the eye. That raised the concern and the suspicions of the
24 officer substantially. He asked for the Defendant's
25 driver's license and he said he had no driver's license, he

1 didn't have it with him or something to that effect. And so
2 he asked him for his name and his birth date, and call it
3 intuition, gut feeling, whatever it was, the officer wasn't
4 comfortable with that. He told you why he wasn't
5 comfortable. So rather than just use his voice activated
6 MIC right here about can you run a license tag on Jimmy
7 Jones, so and so, he went back to his car to check him on
8 the computer, because on the computer he could see a picture
9 of the Defendant.

10 So at that point in time what he knows is he's got a
11 man with a defective tag light, and he's told us that
12 probably what would have happened is he would have given him
13 a warning. Maybe the guy didn't know it. Who knows. So he
14 knows he's got a defective tag light. He knows he's got no
15 driver's license and the guy's just acting strange. So
16 before the information can come up on the computer, the
17 Defendant jumps out of the car, grabs the knapsack, and as
18 he's running puts it on, and leads the officer on a two-
19 block chase. I'm certainly not trying to make a joke, but
20 it is almost humorous, like in a children's cartoon, to
21 imagine someone running from someone and looking over their
22 shoulder to see if they're coming and to run head-long into
23 an Oak tree.

24 At that point in time, obviously winded and self-
25 confessed in not so good physical shape, the officer gets to

1 the Defendant. He's on the ground and what does he know at
2 that point? He knows that there's something going on here
3 that I don't know about yet. I don't know what it is, but
4 it's something to cause me serious concern. So he gets
5 behind the Defendant, subdues him on the ground. There's no
6 force or blows or violence or anything. But because he's
7 there by himself with this Defendant, and the Defendant is
8 somewhat getting his wits about him, he draws his taser,
9 which is an electric shock weapon. He didn't draw a
10 revolver or a pistol, lethal force. And he was able to hold
11 the Defendant in check until his partner got there.

12 When his partner got there, they got him handcuffed,
13 they got him up, walked him to the car. Now our law allows
14 a police officer, when they have a confrontation of some
15 sort or a meeting of some sort with someone in a situation
16 that realistically raises concerns about that officer's
17 safety, to do a pat-down search. They call it a Terry
18 search, T-E-R-R-Y. And what they're looking for is weapons.
19 There are as many ways to hide a weapon as there is
20 imagination in the human mind. Shoulder holsters, side
21 holsters, hip holsters, pancake holsters, just every place
22 in the world. And when you add to that the backpack, it's
23 almost like an item of clothing. I could hide a gun in my
24 coat pockets here and my pocket here. I've got pockets
25 everyplace, but my backpack has much larger pockets.

1 So when they get him to the car and have him
2 handcuffed, the backpack is still on his back now. He's
3 handcuffed with the backpack. They want to get him up on
4 his feet where the two of them can be sure to control him
5 because he's already shown that he'll run like a rabbit if
6 he has a chance. So they search him, they find a perfectly
7 legal pocket knife. But in looking in the bag, where they
8 have every right to search, they find a gun with a filed-off
9 serial numbers. Now, all of a sudden, we're talking about a
10 very, very different matter than no tag light. He is
11 handcuffed. He is thoroughly searched after the backpack is
12 removed before he's put in the back of the car where the
13 search can be done without any interference with the
14 backpack. And at that point in time, he's about as under
15 arrest as you can be. When you're handcuffed and put in the
16 back seat of a police car, you're under arrest. Nobody
17 could tell you, the police officers that they used the magic
18 word, you're under arrest for anything, but he was
19 functionally under arrest. His freedom of movement was
20 gone. He was subdued in cuffs.

21 Our law at that point in time also allows them to do an
22 inventory search of the bag. True, there's an additional
23 benefit if you want to call it that, that if, while doing
24 the inventory search they find contraband, they can charge
25 him with the contraband. Well, that's what happened in this

1 case. They find one and a half times as much
2 methamphetamine as you need to establish a trafficking
3 charge. They find two other drugs, two separate drugs, two
4 kinds of one of those drugs in various packages. And at
5 that point in time, it comes over the radio that he's
6 driving under suspension. At that point in time, the police
7 officers have decided they're going to take him to jail.
8 When they take him to jail, they make a decision about
9 whether or not to return his wallet. Now, his wallet
10 contains evidence as to what his true identity is because at
11 that point in time, he is guilty of having the improper tail
12 light, no driver's license in possession, giving false
13 information to police, as well as the gun and the drugs. So
14 technically, they could have held the wallet. But you
15 don't hold somebody's wallet for nine, ten months or
16 something like that. There's too much important stuff in
17 it. Same thing with the bag. There's no crime in wearing a
18 bag or anything. The bag is not part of the crime, other
19 than it was the receptacle in which the drugs were found.
20 It would be like a lady's purse. You wouldn't take the
21 lady's purse and seize it. You'd take the drugs out of the
22 purse and return the purse to her when she would leave. So
23 whether or not the bag -- backpack was seized or not is
24 unimportant.

25 Now, we are required under the law to methodically

1 prove to you and to the Judge, to admit into evidence any
2 items of evidence like this, that it was carefully and
3 properly handled. The testimony was that Officer Blair got
4 the stuff, put it in a bag, sealed it, put it in one of
5 those locked lockers at the Pickens Police Department so
6 when it's locked, nobody else can get in there but Officer
7 Smith, the evidence custodian, who came in later, retrieved
8 it, bagged it in those manilla envelopes and kept it in his
9 evidence locker where no one else has access other than him.
10 At some point in time when he had enough of that type of
11 stuff that needed to be tested to justify a trip to
12 Greenville, he took that, along with other items, to
13 Greenville where he came in contact with Ms. Fricks, the
14 lady who works in property and evidence. She took the items
15 from them, rebagged them, resealed them, etcetera, and kept
16 them in close and secure storage until, at some later point
17 in time, Ms. Smoak, the lady that testified about the
18 identity and the content of the pills and Mr. Armstrong, the
19 chemist that testified about the methamphetamine, came
20 downstairs, signed for them, took them upstairs, tested them
21 and returned them. Officer Smith goes back, picks up, signs
22 for them, inspects, takes the stuff back to his locker. He
23 maintains careful control of that until it's brought to
24 Court.

25 You may remember yet today when that evidence was

1 produced to be identified, I had to get it from Officer
2 Smith. So there is an unbroken chain of evidence that was
3 taken from the backpack on the Defendant's back, all the way
4 through that process to here. So the evidence that you saw
5 that was testified to is exactly the same, unadulterated,
6 untampered with evidence that was seized from the Defendant.

7 Now, there is one word that will somewhat hinge the
8 most serious of the charges, trafficking in methamphetamine.
9 I have to prove that the Defendant was in knowing actual or
10 constructive possession. Knowing. Now, how do we prove
11 knowing? That's a question of trying to prove somebody's
12 intent. It came out in the evidence that the car that he
13 was in was a borrowed car. When the Defendant was stopped
14 by the police officer who went back to his car, he may have
15 had some premonition that he was going to look at a picture.
16 I think most people know that most police cars are computer
17 equipped now. So in the Defendant's mind he knows, I don't
18 have a driver's license, I've got this little tag light
19 problem, but I'm driving under suspension and I've given
20 false information to a police officer because I gave him a
21 bogus name and all that. So I'm probably going to get
22 arrested. If I get arrested, they're going to impound the
23 car, an inventory search of the car. They're going to bust
24 me with a gun, drugs, meth, all this sort of stuff. He then
25 makes the decision to run. And he makes the worst decision

1 of his life as criminal when he decides to grab the
2 backpack. But he can't leave it there. That's valuable
3 stuff. I mean, that's either his inventory or his personal
4 use stuff, but it's well over the limit. So he takes it
5 with him. He wasn't stealing Johnny's homework or Billy
6 Bob's lunch or Mary Sue's history book. He was stealing the
7 bag that was in the car that contained his drugs and his
8 gun.

9 Now, what a different case this would be had he not
10 picked up that stuff and ran with it. Driving a borrowed
11 car. I didn't know what was in the bag. It was some kids
12 book bag. I didn't know anything about it. I was scared
13 and I ran because, you know, I didn't have a driver's
14 license. It was suspended. No, he picked up the bag.
15 Would he have you believe that he stole the bag from the car
16 because it had some special value to him or it was something
17 pretty that he wanted to carry? And then as he ran from the
18 police officer, he still could not bear to turn loose of the
19 drugs and the guns, so he didn't throw the bag away when he
20 rounded corners and had places. That is knowing possession.
21 What on earth other reason would he have for grabbing the
22 bag and running with it and carrying it with him if he
23 didn't know the contents of it, the value of the contents of
24 it. That's knowing possession. When it's weighed out, it
25 comes out at just shy of fifteen grams.

1 Let me talk about that trafficking in meth indictment
2 for a moment. His Honor will read it to you again. When
3 cases go to the Grand Jury, work continues to be done on the
4 cases so when you indict, you generally use the entire
5 language in the Statute. The indictment in this case reads
6 that the Defendant did knowingly sell, manufacture, deliver
7 or bring into the State of South Carolina or did knowingly
8 provide financial assistance or otherwise aid, abet, attempt
9 or conspire to sell, manufacture, deliver or bring into the
10 State, or -- and this is the important one -- was knowingly
11 in actual or constructive possession of more than ten grams
12 of methamphetamine.

13 Let me make your job easy. We have presented no
14 evidence to you that he was selling, manufacturing, bringing
15 into the State, providing financial assistance, aiding,
16 abetting, manufacturing or bringing into the State. But we
17 do have proof of actual and constructive possession. Now,
18 it is up to you to determine why he was in that actual
19 possession. Under the statute, if you go with the last
20 statute, the mere fact that he had it establishes the crime,
21 if it's knowing possession. Knowing being the key word.
22 But isn't it also possible that he was making a delivery?
23 Isn't it also possible from the evidence that this was his
24 inventory of his traveling drug store?

25 Something else that you should consider in determining

1 the Defendant's guilt or innocence is flight. Would a
2 fellow jump out of a car, put on a backpack, run from a
3 police officer that stopped him because he was driving under
4 suspension? When you do something like that, you take a
5 chance that an overzealous police officer may draw his
6 weapon and fire at you. You don't run from a police officer
7 like that in the middle of the night with a backpack on over
8 a driving under suspension charge. You do it because of the
9 value of what's in the backpack.

10 Hence, I want to talk now about some things that I
11 won't get another opportunity to talk to you about. When I
12 finish speaking, I'm finished. I don't get to come back.
13 Mr. DeJong gets to respond to what I say and he gets to say
14 whatever he deems appropriate and I don't get a chance to
15 respond to it. So I somehow have to be Swami and try to
16 figure out what he may or may not talk about and I may tell
17 you things that he's not going to talk about. I don't know.
18 But I think I have to say it.

19 In some questions that Mr. DeJong asked of the chemist,
20 as I recall, he talked about drug addicts buying large
21 quantities of drugs so that they could get discounts and
22 things like that. A question is not evidence. An answer is
23 evidence. There is no evidence in this record that talks
24 about the Defendant's addiction. Look at him. Does he look
25 like he's addicted to methamphetamine to you? Healthy,

1 hail, hearty, strong. No.

2 We then get to the smoking mirrors defense, for lack of
3 anything better. I'm not talking about whether or not the
4 Defendant did possess the stuff. Did he? No, no, no. Did
5 he knowingly do it? We're talking about attacking the
6 police. Were they overzealous in what they did? That's
7 for you to decide. But isn't that what we want our police
8 officers to do? They didn't chase this guy at gunpoint or
9 slap him around or anything. They saw something that they
10 thought they needed to address. The easy thing for this
11 guy to do would be just ride down the road and say, to heck
12 with it. But that's not his job. His job is to protect
13 and defend, serve the people. That's what we pay him for.
14 We pay him to follow up on things. And what he was going to
15 do was a minimal intrusion into this man's life because of
16 the light. Probably a warning ticket, but then it
17 escalated.

18 We can talk about reports. I guess if you got ten
19 people together and let them watch something and asked each
20 one of them to write a report, you'd probably get ten
21 different reports in chronological order, or things that
22 they thought were important, or things that weren't.
23 Somebody else might add something that I wouldn't think was
24 important, or I might add something. So when we get to the
25 reports, what the reports are designed to do is to firm up

1 in this officer's mind exactly what happened. Because here
2 we are some thirteen, fourteen months later and he's being
3 asked to go into detail. He needs those reports. His
4 superiors need those reports to evaluate what he's doing.
5 He decides what is important and what is not.

6 Now, Mr. DeJong in his opening argument spoke
7 very eloquently about the presumption of innocence, one of
8 the most important constitutional right that ever single
9 defendant has when they come into this courtroom. Wouldn't
10 have it any of other way. Thousands of people have died
11 defending those constitutional principals in various wars
12 and things with Russians and all these kind of people like
13 that. But the presumption of innocence is not absolute and
14 can never be attacked. You start out with the promise or
15 the premise, the belief, that the Defendant is innocent.
16 It is up to the State to move the evidence over this way to
17 convince you beyond a reasonable doubt that he's guilty.
18 So does not the evidence in this case rip that shroud or
19 that cloak or that cape of innocence from the Defendant and
20 leave him buck naked and standing in front of you with
21 almost fifteen grams of meth and two or three packets of
22 drugs and a gun.

23 Now, on the gun, it is a separate crime to be engaged
24 in what is defined by our legislature as a, quote, violent
25 crime. The Judge will talk to you about that and will tell

1 you what charges are violent crimes. Trafficking in
2 methamphetamine is a violent crime, and having a gun while
3 you're doing it, is an even more -- it's not even more, but
4 a very serious crime because this means you've got a large
5 quantity of drugs that are worth a lot of money, and you've
6 got a gun. So what happens if you get caught with them?
7 Are you going to shoot it up with the police? What happens
8 if somebody comes after your or something? Are you going to
9 kill people with it? That's why the firearm while you're
10 committing a violent crime is so serious, because you've
11 already shown you'll do a violent crime, by trafficking in
12 Meth. So the gun just facilitates you doing an even more
13 violent crime.

14 In the final analysis, it is up to you to determine
15 what were the Defendant's intentions and motivations and
16 what he did. If you look at the evidence carefully and
17 digest it and you are satisfied beyond a reasonable doubt,
18 or as we sometimes say in the law, firmly convinced that the
19 Defendant is guilty, you should vote him so. If, on the
20 other hand you're not firmly convinced, if you have a
21 reasonable doubt, you should vote him not guilty because
22 that's your obligation.

23 Now the Judge will go into a great amount of detail
24 about what's a reasonable doubt. The long and the short of
25 it is, it's something that would cause an honest and decent

1 person to hesitate before they act. If you have a question
2 as to whether or not he knew that those drugs were in that
3 backpack that he grabbed out of the car and he strapped on
4 his back and ran, you should vote your conscience.

5 I thank you very much for your attention.

6 THE COURT: Mr. DeJong, you may address the jury
7 in your closing.

8 MR. DEJONG: Thank you, Your Honor. May it please
9 the Court, Mr. Prosecutor.

10 **CLOSING STATEMENT**

11 **BY MR. DEJONG:**

12 I posed a question to you, ladies and gentlemen, at the
13 very beginning, does the end ever justify the means? On
14 October 2nd of 2009, a young police officer -- I do not mean
15 it in a pejorative or insulting manner -- but a rookie, had
16 been out of the Academy some five months, is patrolling in
17 Pickens City at one-thirty in the morning. And according to
18 two young and rookie cops, as I recall the testimony, it's
19 pretty boring out there at one-thirty in the morning. So
20 this young police officer looks in his rearview mirror --
21 well, let's back up a little bit. The young police officer
22 sees somebody pull into an intersection up to a stop sign.
23 And the police officer is driving a police car, bubble
24 lights on top of it, all the markings. And granted traffic
25 was not heavy in Pickens City on October the 2nd at one-

1 thirty in the morning. And as His Honor shared with you in
2 his opening comments, you bring your common sense into the
3 jury box with you. One-thirty in the morning, no traffic on
4 the road and you see a cop car coming down the road, are you
5 going to pull out in front of it? I submit that's not what
6 most people would do. But this young police officer said,
7 well, that raised his suspicions. Raised his suspicions
8 only to the extent that now he looks in his rearview mirror,
9 which in the rearview mirror, according to his testimony,
10 like in all of our vehicles, where you have the night/day
11 shift on. He doesn't remember where his was. And that can
12 certainly dim lights. Says he believed that the tag light
13 was out. So he travels down the road for a piece and turns
14 back around and he still can't decide now, because he's
15 behind -- or he is behind the vehicle and he still can't
16 decide whether or not the tag light's out. So he follows
17 him further and finally then, when this what appears --
18 well, he said it was a black car, turns right onto Catherine
19 Street, then makes a left onto, I believe, Cedar Rock
20 Street. And the State would have you believe -- lead you to
21 believe that is some evasive action. Well, the police
22 officer testified that the driver of that black car wasn't
23 driving erratically. Giving turning signals and everything.
24 He stops the guy, gets information -- well, actually, even
25 after he stops the guy he said, well, that tag light -- now

1 he says it was kind of working. But nonetheless, he goes
2 and gets information from the driver of that vehicle. The
3 driver of that vehicle gives him a name and gives him a date
4 of birth.

5 Now, jumping way back to the other end for a moment.
6 It's pretty much undisputed that Mr. Collins was driving
7 under suspension on that particular night. And
8 parenthetically, he was driving a borrowed vehicle. Whether
9 the officer knew that it was borrowed, I don't know. That's
10 for you to decide. But the police officer now says that he
11 has all of this suspicion, leaves the driver of that car and
12 goes back to his vehicle, at which time, the officer says
13 the driver of that vehicle runs.

14 Well, first, at this point in time, ladies and
15 gentlemen, I would ask you to consider what was this police
16 officer's, young police officer's, real intent in stopping
17 this vehicle? Police officer's, candidly, ladies and
18 gentlemen, have a job I would not have. But if you're
19 going to do the job, then you must do the job properly,
20 under the law, under the laws of the Constitution that I
21 believe they swear to uphold when they are sworn in. Not
22 to rouse citizens, not to stop them unnecessarily, not to
23 delve into their personal effects. That is not what police
24 officers, as I understand, are meant to do. Does the end
25 justify the means?

1 And I would submit to you, and I think there was even
2 testimony from one of the officers that it's not unusual
3 for people to run if they have a suspended driver's
4 license. Is it the right thing to do? No, probably not.
5 And even the question there, I would submit to you was Mr.
6 Collins, later identified as Mr. Collins, free to leave at
7 that point time? His car was parked safely, he was not
8 obstructing traffic, was not under arrest and he left.

9 Then we kind of get to the meat of the case, as I see
10 it. Mr. Collins runs. The police officer says he takes
11 the book bag with him or backpack. I'm sorry. I keep
12 calling it a book bag. I think this was a backpack. Don't
13 know what the difference was. Spelling, I guess. Kind of
14 like a search and kind of like an inventory, okay? But
15 nonetheless, he takes the backpack with him, takes off,
16 then he ultimately hits a tree.

17 Now, at that point in time, Officer Sapp is called and
18 he arrives on the scene. And I think this is where it gets
19 really critical in here. Does the end justify the means or
20 does the means justify the end? Am I saying that right? I
21 don't know. I'll let y'all -- I think you know what I'm
22 trying to say. But this is where it becomes critical.
23 Now, Officer Sapp arrives and here is Officer Blair with
24 his taser drawn, with the laser on it, pointed at Mr.
25 Collins who has just ran full-tilt into a tree, and no, it

1 is not funny. But I have to agree with the Solicitor on
2 that one, it does kind of make you grin a little bit. I
3 don't think we can help that. Okay. Disoriented. He hit
4 the tree. Disoriented. Officer Sapp comes and puts him in
5 handcuffs behind his back. And now a very critical point,
6 an officer standing there with a taser on him, handcuffed
7 behind his back and they say, oh, we had to search him for
8 weapons for officer safety. Hog wash. They were salivating
9 like Pavlov's dog to search that backpack. And was he
10 under arrest at that point in time? Granted, he was in
11 handcuffs. But what was he under arrest for? Running? He
12 wasn't under arrest before he ran.

13 So then they say they find a gun. And I would ask you
14 to think, ladies and gentleman, for this officer safety
15 thing and the first step, you're handcuffed behind your
16 back and you may have a backpack on. Unfortunately, law
17 enforcement didn't see fit to put the backpack in property
18 and evidence so you thirteen people could see that
19 backpack. Certified police officers who've been to the
20 academy to make cases, just don't see any necessity with
21 that. But think about a man handcuffed behind his back.
22 We had some discussion in how much play was in those
23 handcuffs. Getting into a zippered bag to retrieve a
24 weapon. You know what backpacks are, I'm sure. Most of you
25 have worn one.

1 Now, even after that, I would ask you, what is he
2 under arrest for? They're still salivating to search that
3 backpack. They take the backpack off of Mr. Collins,
4 remove it from him, and then have the audacity to sit here
5 and tell you, a jury, that they are still worried about
6 officer safety and that's why they have to search the
7 backpack. That was one reason. The other reason I almost
8 find amusing was they had to inventory it. Well, if you
9 think about that for a moment, I don't know if it was
10 Officer Blair or Officer Sapp, I asked them about
11 inventorying his wallet. There seemed to be such a mad
12 rush out there in the dark at one-thirty something in the
13 morning on October the 2nd to inventory his wallet -- excuse
14 me -- that book bag, backpack, because there might be
15 valuable things in there. And they're accountable for them.
16 And a man who had a wallet on his hip, and they don't bother
17 inventorying that? See if I can get it right. Does the end
18 justify the means? Police officers called to -- they are
19 called to enforce the law. They must enforce the law within
20 the parameters of the law.

21 Two officers, recent graduates from the Police Academy,
22 get their heads together and write a report. Part of what
23 they do at the Academy. That's what they're supposed to
24 do. And one of the officers, when being questioned by Mr.
25 Them, I forget what the question was but the response of the

1 officer was, I can't remember because that's been a good
2 while back. Well, that's why they write reports. But isn't
3 it amazing, at least I find it amazing, that they can come
4 into Court some thirteen to fifteen months after the fact,
5 things that are not in that report, that suddenly they want
6 to come and tell you, the jury, that happened out there.
7 Their job is to write reports, detailed. Details are
8 important for a police officer. Such details as I've got a
9 video camera in my car, but it doesn't have any film in it.
10 Or I don't know if it was working. I don't remember the
11 last time I checked it. These are police officers. If that
12 video was working when he activated the blue lights, we
13 would have had a video to see if that tag light -- what the
14 status of that tag light was. Whatever it was. But a
15 police officer sees fit, for whatever reason, not to check
16 his equipment. And he's out there, according to the
17 solicitor, to protect and to serve. But not checking his
18 equipment.

19 It finally came out that the vehicle that Mr. Collins
20 was driving did not belong to Mr. Collins. Details.
21 Officer, did you ever run a check on the vehicle? Well, I
22 think I did. I don't know. I don't have it. So finally
23 the Solicitor rehabilitates him on redirect, oh, yeah, the
24 car actually belonged to a -- I believe it was a Matthew
25 Durham. And they are so concerned about valuables that

1 might be in that book bag, that backpack, that they
2 immediately had to inventory it. What about what's in the
3 vehicle? Did you ever hear what was in the vehicle? Did
4 you ever hear an inventory of the vehicle? Not even after
5 he was finally arrested did you ever hear of an inventory
6 from the vehicle. But we had to inventory that backpack
7 because it may have had valuable things in it. If I'm
8 saying it correctly, and if I'm wrong you can fix it for
9 me, does the end justify the means?

10 Now, Mr. Collins is charged with four offenses. On the
11 trafficking in methamphetamine His Honor will charge you
12 that there's only two possible verdicts on that one. That
13 is guilty or not guilty. And that is factually for you,
14 ladies and gentlemen, to decide. Interestingly enough, not
15 necessarily as an aside, but part of that, when they had the
16 inventory of his book bag, backpack, because there might be
17 valuables in it, they couldn't tell me anything else, or you
18 more importantly, anything else that was in the backpack.
19 They didn't know if there were papers in there. I never
20 heard anything of any identification in that backpack, who
21 it belonged to, who it may not have belonged to, anything
22 else. We found drugs in the backpack. At any rate, His
23 Honor will charge you that.

24 On the two indictments, the separate charges of
25 possession with intent to distribute, His Honor will give

1 you the law on that. I'm not going to give you the law on
2 that because I'm not the law giver. His Honor is the law
3 giver. But he will charge you on that under the law on two
4 -- well, it will be three possible verdicts. Not guilty,
5 period. And then from there, there are two other possible
6 verdicts. One would be guilty of possession with intent to
7 distribute, and one would be what we call basically simple
8 possession.

9 Now, in any criminal offense, ladies and gentlemen, be
10 it trafficking, be it possession with intent to distribute,
11 be it possession of a weapon in a violent crime, the burden
12 is on the State. And when we say the burden is on the
13 State, there are what we call elements of a crime. And His
14 Honor will go over those with you. But the State must
15 prove each and every, each element beyond a reasonable
16 doubt. I'm not again going to belabor the point on
17 reasonable doubt. His Honor will charge you as well on
18 that.

19 And then, thirdly, we have the indictment of possession
20 of a weapon. Now, in talking with -- I think it was either
21 one of the officers or Mr. Armstrong from the Greenville
22 County Crime Lab, we talked a little bit about drug usage,
23 how people buy drugs, they buy in quantities. I don't
24 particularly remember all those answers that were given.
25 I'm going to leave that up to you. You've been a very

1 attentive jury. I deeply appreciate that. But I think
2 there was some testimony that, yes, some people will buy in
3 bulk because it is cheaper to buy in bulk. Much like going
4 to Sam's or Costco's or whatever. I don't really say that
5 to be funny. There's a point to be made there. When you
6 buy in bulk, it is usually cheaper and that is something for
7 you to consider.

8 So, it is up to you, again, ladies and gentlemen, to
9 look at the whole picture. Now, when you get to the
10 indictments, each indictment is a separate charge. And I
11 would ask when you get back there to start deliberating
12 there will only be the twelve of you, and I ask you and
13 implore you to look at each indictment separately. Each
14 indictment requires a separate verdict that you must weigh
15 the facts and the evidence in this case on each indictment
16 separately. It is not -- if you say guilty on one, that
17 doesn't automatically make it guilty on everything anymore
18 than if you say not guilty on one does it make it not guilty
19 on everything. So I am asking you to weigh and look at each
20 indictment separately.

21 I've already taken a good bit of your time. I'm going
22 to try to wind down here. But one thing I would ask you not
23 to consider. What I'm asking you not to consider is the
24 fact that Mr. Collins did not testify at this trial. His
25 Honor is going to charge you on that. And I think it's

1 going to be something -- not the whole charge -- but
2 something along the lines that the fact that Mr. Collins
3 did not testify at this trial is not to be considered by you
4 or talked about by you during your deliberations. And even
5 if the thought were to tiptoe across your mind and say, boy,
6 if I was in that position, I'd get on the witness stand,
7 you're considering that. So please do not in any way
8 consider the fact, not because I am asking you, but because
9 that is simply the law, that no one can ever be required to
10 testify at a trial. The burden of proof is solely, solely,
11 on the State to prove each and every element of every crime
12 beyond a reasonable doubt.

13 I would simply ask you again, if I'm saying it
14 correctly, does the end justify the means? And having
15 looked at that, ladies and gentlemen, looked at the total
16 picture here, as citizens of the United States that you are,
17 as much as this man sitting next to me for the last two
18 days is a citizen of the United States of America, our
19 rights. The great late Clarence Darrow, who was probably
20 one of the greatest defense lawyers in the United States of
21 America of all time, one time said, ladies and gentlemen,
22 our rights are no safe unless we guarantee them to those who
23 are accused of the most heinous crimes. That warranty is
24 not worth the paper it's written on until you need it. And
25 I asks you to return verdicts of not guilty on all charges.

1 Thank you so much.

2 CHARGE

3 BY THE COURT:

4 Mr. Foreman, ladies and gentlemen, it is now my
5 responsibility to instruct you on the law of the case. As
6 you know, we have four separate indictments here charging
7 the Defendant with four separate offenses. I remind you the
8 fact that the Defendant in this case has been arrested and
9 charged and indicted is not evidence in the case. It cannot
10 be considered by you as evidence in the case. These
11 indictments are simply the formal written instrument by
12 which the charges are made against the Defendant and brought
13 before this Court. There's four separate and distinct
14 offenses.

15 Each of these indictments that have been discussed are
16 separate and distinct one from another. The law to each has
17 its application to each one. And it should be uninfluenced,
18 your decision should be uninfluenced by one indictment
19 versus another. In other words, the Defendant could be
20 convicted or acquitted on any or all of the separate
21 charges. You'll be asked to write a separate verdict form
22 of guilty or not guilty for each of those indictments.
23 Again, I remind you throughout when I'm giving you the
24 principals of law that apply to each indictment separate and
25 distinct unto itself.

1 Each of these indictments that have been presented,
2 the Defendant has entered a plea of not guilty to them.
3 And that plea places the burden on the State to prove his
4 guilty. A person charged with committing a criminal
5 offense in South Carolina is never required to prove
6 himself innocent. That's an important rule of law, but in
7 a criminal trial no matter how serious the offense may be,
8 the Defendant will always be presumed innocent of the crime
9 for which that indictment was issued, unless guilt has been
10 proven by evidence satisfying you of that guilty beyond a
11 reasonable doubt.

12 Presumption of innocence doesn't end when you begin
13 your deliberations. It accompanies the Defendant throughout
14 the trial, until you've reached a verdict of guilt based on
15 the evidence satisfying you of that guilt beyond any
16 reasonable doubt. Presumption of innocence isn't a legal
17 theory. It's not a legal phrase that's tossed about. It
18 is a substantial right to which every defendant is entitled
19 unless, you the jury, are satisfied from the evidence of
20 that Defendant's guilt beyond a reasonable doubt.

21 You may be asking yourself, what is a reasonable doubt
22 in the law. A reasonable doubt is the kind of doubt that
23 would cause a reasonable person to hesitate to act. The
24 State has the burden of proof beyond a reasonable doubt.
25 Some of you may in the past have had an opportunity to

1 serve as a juror in a civil case where a Judge told you
2 that it was only necessary to prove a fact by what was
3 called the greater weight of the evidence or the
4 preponderance of the evidence.

5 In criminal cases the State's proof is more serious,
6 more powerful than that. It must be proof beyond a
7 reasonable doubt. That would be proof that leaves you
8 firmly convinced of the Defendant's guilt. There are very
9 few things in this world that we know with absolute
10 certainty. And in criminal cases, the law doesn't require
11 proof that overcomes every possible doubt. If, based upon
12 your consideration of the evidence, you're firmly convinced
13 of the Defendant's guilt of the crimes charged, then you
14 must find the Defendant guilty. If, on the other, you think
15 there's a real possibility that the Defendant is not guilty,
16 you must give the Defendant the benefit of that doubt and
17 find him not guilty.

18 Now, during the trial you and I have had certain duties
19 to perform. As the trial Judge, it's been my responsibility
20 to preside over the case and to rule on the admissibility of
21 evidence that has been offered during the trial. You're to
22 consider only the competent evidence before you. If there's
23 any testimony to which objection was made and sustained or
24 ordered stricken from the record in this case, then you must
25 disregard that testimony. You're to consider only the

1 testimony that has been presented from the witness stand,
2 the Exhibits that have been made a part of the record and
3 that alone. My job also is to charge you the law applicable
4 to the case. It's your duty as jurors to accept that law
5 and apply the law as I state it to you. You may already
6 have an idea of what the law is. You may have an idea or a
7 notion about what the law ought to be in a case such as
8 this. But if you have such a notion and it's not in
9 agreement with what I now tell you the law is, you must
10 abandon that idea because you're sworn to accept the law and
11 apply the law exactly as I state it to you.

12 Every case that's tried in this courtroom before a
13 jury, that jury becomes the sole exclusive judge of the
14 facts in a case. A trial Judge can't intimate or state or
15 comment on or make any statement whatsoever to a trial jury
16 about the facts in the case. Since you are the sole judge
17 of the facts, you're not to infer from what I've said during
18 the progress of the trial, any rulings I've made upon the
19 admissibility of evidence or otherwise, anything I say to
20 you now during the course of this instruction to you, that I
21 have an opinion about the facts in the case, I don't have an
22 opinion about the facts. Our Constitution in South Carolina
23 prohibits me from having an opinion about the facts. It's a
24 matter solely for you to determine. And as a jurors, it's
25 your duty to decide the effect, the value, the weight and

1 the truth of the evidence presented during this trial.

2 There's two types of evidence that are normally
3 presented. There's direct evidence. There's circumstantial
4 evidence. Direct evidence is testimony of a person who
5 claims to have actual knowledge of a fact, such as an
6 eyewitness. It's evidence which would immediately establish
7 the main fact to be proved. Circumstantial evidence, on the
8 other hand, is proof of a chain of facts and circumstances
9 that indicate the existence of a fact. It's evidence which
10 immediately establishes collateral facts from which the main
11 fact may be inferred. It's based on inference and not on
12 personal knowledge or observation.

13 Now, ladies and gentlemen, the law makes absolutely no
14 distinction between the weight or value to be given either
15 direct or circumstantial evidence, nor is a greater degree
16 of certainty required for circumstantial evidence than of
17 direct evidence. You should weigh all the evidence in the
18 case and after weighing that evidence, if you're not
19 convinced of the guilt of the Defendant beyond a reasonable
20 doubt, you must find the Defendant not guilty.

21 Necessarily, you must determine the credibility of
22 witnesses who testified in the case. Credibility simply
23 means believability. It's your duty as jurors to analyze
24 and evaluate the evidence, determine which evidence
25 convinces you of its truth. In determining the

1 believability of witnesses who've testified, you can believe
2 one witness over several witnesses. You can believe several
3 witnesses over one witness. In your discretion, you can
4 believe part of the testimony of a witness, reject the
5 remaining part of the testimony of that very same witness.
6 You can believe the testimony of a witness in its entirety.
7 You can reject the testimony of a witness in its entirety.
8 You can consider whether that witness exhibited to you any
9 interest or bias or prejudice or other motive in the case,
10 consider the appearance of the witness, the manner, the
11 demeanor of the witness while on the witness stand.

12 Now, the rules of evidence ordinarily would not permit
13 a witness to testify to opinions or conclusions, but there
14 is an exception for a rule that we call that relating to
15 expert witnesses and a witness who by education and
16 experience has become an expert in some art or science or
17 profession or calling may state an opinion as to relevant
18 and material matters in which that witness claims to be an
19 expert and can state the reasons for the opinion.

20 Now, you should consider any expert opinion received
21 into evidence in this case and like all other evidence give
22 it the weight that you think it deserves. If you decide
23 that the opinion of the expert witness is not based on
24 sufficient education and experience or if you conclude that
25 the reasons given for support of that opinion are not sound

1 or that the opinion is outweighed by other evidence, you may
2 disregard the opinion entirely. The expert witness
3 testimony is to be given no greater weight than that of any
4 other witness simply because the witness is an expert.
5 Further, you're not required to accept an expert's opinion,
6 even though it may be uncontradicted.

7 In order to establish criminal liability, criminal
8 intent is required and must be proven by the State beyond a
9 reasonable doubt. Criminal intent's always a matter that
10 must be determined by the jury from the circumstances
11 surrounding the situation. There is no way to prove intent
12 to a mathematical certainty. Of course, there's no way that
13 medical science can dissect a person's brain and determine
14 what that person had in mind, so the law says that criminal
15 intent may be inferred from the circumstances shown to have
16 existed. It's not necessary to establish intent by direct
17 and positive evidence, but intent may be established by
18 inference in the same way as any other fact by taking into
19 consideration the acts of the parties, all of the facts and
20 circumstances in the case. In other words, criminal intent
21 is a mental state, it's conscious wrongdoing. It's up to
22 you to determine what the Defendant intended to do based
23 upon the circumstances shown to have existed.

24 I instruct you, ladies and gentlemen, and emphasize to
25 you the fact that the Defendant chose not to testify in this

1 case is not a factor to be considered by you in any way in
2 your deliberations, in any consideration of the question of
3 the guilt or the innocence of the Defendant. It should not
4 be considered by you in any manner whatsoever. A Defendant
5 has a constitutional right to remain silent. The assertion
6 of this right must not be considered by you in your
7 deliberations. I repeat, under your oath you're to draw no
8 conclusion whatsoever from the fact that he chose in this
9 case not to testify. That fact that he did not testify
10 should not even be discussed by you in the jury room. As
11 I've stated to you, the burden of proof is on the State.
12 The Defendant's not required to prove his innocence. That
13 burden of proof remains on the State to prove guilt beyond a
14 reasonable doubt.

15 Now, ladies and gentlemen, in this case we've discussed
16 that there's different and distinct charges. The Defendant
17 is charged with trafficking in methamphetamine. The State
18 must prove to your satisfaction beyond a reasonable doubt
19 that the Defendant knowingly sold or manufactured,
20 cultivated, delivered, purchased or brought into the State
21 or that the Defendant provided financial assistance, or
22 otherwise abetted or aided or attempted or conspired to sell
23 or manufacture or cultivate or purchase or bring into the
24 State, or that the Defendant was knowingly in actual or
25 constructive possession or attempted to become in actual or

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Charge

297

1 constructive possession of the illicit drug. The State must
2 also prove beyond a reasonable doubt that the amount of the
3 methamphetamine was ten grams or more.

4 Now, the Defendant in this case is also charged with
5 possession with the intent to distribute Alprazolam and
6 Oxycodone. Again, these are separate and distinct. I'll
7 be discussing the elements of possession and so forth of all
8 of these, but each, as I remind you, is a separate and
9 distinct charge.

10 Now, the State, to prove the possession with intent to
11 distribute these drugs, must prove beyond a reasonable doubt
12 that the Defendant possessed them with the intent to
13 distribute the drugs. To prove possession, the State must
14 prove beyond a reasonable doubt that the Defendant had both
15 the power and the intent to control the disposition or use
16 of the drugs. Possession can be either actual or
17 constructive. Actual possession means that the drugs were
18 in the actual physical custody of the Defendant.
19 Constructive possession means that the Defendant had
20 dominion and control or the right to exercise dominion or
21 control over either the drugs themselves or the property in
22 which the drugs were found. Mere presence at the scene
23 where drugs are found is not enough to prove possession.
24 Actual knowledge of the presence of the drugs is strong
25 evidence of the Defendant's intent to control the

1 disposition or use of the drugs.

2 The Defendant's knowledge and possession may be
3 inferred when a substance is found on the property under
4 that Defendant's control. This inference is simply an
5 evidentiary fact to be taken into consideration by you,
6 along with other evidence in the case and be given the
7 weight that you decide it should have. The State must also
8 prove beyond a reasonable doubt that the Defendant intended
9 to distribute the drugs. Distribute means to deliver or --
10 other than means of administering or dispensing a drug.
11 Intent may be shown by acts and conducts of the Defendant
12 and other circumstances from which you may naturally and
13 reasonably infer intent. In determining whether the
14 Defendant had the intent to distribute the drugs, you may
15 consider the circumstances surrounding the Defendant's
16 alleged possession. You may consider the amount of the
17 substance alleged to have been possessed, the manner in
18 which it was allegedly possessed, the place where it was
19 allegedly possessed and other factors which you consider to
20 be important. You must find that the Defendant did not
21 intend to have the drug solely for his own use.

22 Now, as to the charges of the possession with intent to
23 distribute both the Alprazolam and the Oxycodone, you must,
24 as I've stated, find that the Defendant would be guilty of
25 those with the intent to distribute. But if you find the

1 State has failed to prove beyond a reasonable doubt that the
2 Defendant is guilty of the intent to distribute either of
3 these drugs, you may consider whether the State has proved
4 beyond a reasonable doubt that the Defendant is guilty of
5 simple possession of the drugs. Simple possession, in other
6 words, would not require an intent to distribute those
7 substances.

8 To prove the possession of the drugs, of course, the
9 State must prove beyond a reasonable doubt that the
10 Defendant knowingly and intentionally possessed these drugs.
11 Knowingly means with the knowledge, consciously and not
12 accidentally. Intentionally means willfully, intending the
13 results which actually occurs, not accidentally or
14 involuntarily. Intent may be shown by acts and conducts of
15 the Defendant and other circumstances from which you may
16 naturally and reasonably infer intent.

17 Possession of Alprazolam and Oxycodone is a crime
18 unless the drugs were obtained directly from or through a
19 valid prescription or order of a practitioner acting in the
20 course of professional practice. A practitioner is a
21 physician, a dentist, a veterinarian, a podiatrists, a
22 scientific investigator, a pharmacy, a hospital or other
23 person and institutions licensed, registered or otherwise
24 permitted to distribute, dispense, conduct research with
25 respect to or administer a controlled substance in the

1 course of professional practice of research in this State.

2 In this particular matter, ladies and gentlemen, the
3 Defendant is also charged with possession of a weapon during
4 the commission of or the attempt to commit a violent crime.
5 The State must prove beyond a reasonable doubt that the
6 Defendant was in possession of a firearm during the
7 commission of a violent crime. Firearm means any rifle or
8 machine gun or revolver, a pistol, any weapon which will or
9 is designed to or may be readily converted to expel a
10 projectile. In order to find the Defendant guilty of
11 possession of a weapon during the commission of a violent
12 crime, you must, of course, first find the Defendant guilty
13 of either committing a violent crime or attempting to commit
14 a violent crime. Under the laws of South Carolina
15 trafficking in methamphetamine is considered a violent
16 crime.

17 Now, Mr. Foreman, and ladies and gentlemen, I have
18 verdict forms for you. I believe they'll be self-
19 explanatory. Each of those has a separate finding for you
20 to make as far as the trafficking in the methamphetamine,
21 the possession of the weapon, the controlled substance, each
22 of those with the intent to distribute on each of those
23 verdict forms. Of course, on the distribution with the
24 intent -- or the possession with intent to distribute, I
25 have, as I've stated, if you find the State failed to meet

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Charge

301

1 its burden of proof of that intent, then you can then decide
2 whether or not it's met its burden of proof of the
3 possession of the illicit drugs, on each of those both of
4 the Oxycodone and for the Alprazolam.

5 All twelve of you must agree upon a verdict and your
6 verdict must be unanimous. It can't be based upon sympathy
7 or passion, prejudice, emotion, any other consideration not
8 in evidence in the case.

9 When you have agreed upon a verdict on each of the
10 charges, Mr. Foreman, I'll ask if you would, please, sign
11 the verdict form, date it. On behalf of your fellow jurors,
12 check the appropriate block, either guilty or not guilty.
13 There is certainly no significance in the order in which
14 they're listed. One has to be listed above the other. You
15 may then let the bailiff know that you have reached a
16 unanimous verdict and we'll receive your verdict back here
17 in the courtroom.

18 I remind you, Mr. Foreman and ladies and gentlemen,
19 that you're free to ask me any questions relating to the
20 law. Remember, however, it's impermissible for me to answer
21 any questions you have regarding the facts of the case.
22 That's your duty, solely your duty as the fact finders.

23 At this time, I'm going to ask, if you will, retire to
24 your jury room. Don't start your deliberations just yet.
25 There's one final matter of law I need to take care of with

1 the attorneys. In just a few moments, hopefully we'll have
2 the verdict forms back there for you. We'll have the
3 evidence back there for you.

4 I remind you that among the evidence that we have in
5 this case is a firearm. I've been assured that that firearm
6 is unloaded. There's no ammunition with it. It's been
7 secured by disabling it anyway. That will be back with you.
8 If for any reason any of you would not like to have the gun
9 back there, we can secure it out here. If you'd just let us
10 know that, Mr. Foreman.

11 If you will, go back to your jury room. Don't start
12 your deliberations. I'll give you further instructions in a
13 few moments. You may retire.

14 (WHEREUPON, the jury exited the open court at
15 approximately 10:58 a.m.)

16 THE COURT: Any exceptions to the charge from the
17 State?

18 MR. THEM: Nothing on behalf of the State, Your
19 Honor.

20 THE COURT: From the Defense?

21 MR. DEJONG: Your Honor, at this time, I would
22 renew my request for a lesser included of PWID and
23 possession on the trafficking charges.

24 THE COURT: Again, I respectfully deny your
25 request.

1 MR. DEJONG: Thank you, Your Honor.

2 THE COURT: If y'all will make sure all the
3 Exhibits are in proper form. I'll let you take a look at
4 the verdict forms, make sure they're in proper order. Mr.
5 Them, you haven't taken a look at the verdict forms?

6 MR. THEM: Yes, sir.

7 THE COURT: Okay. Let the record reflect that
8 both attorneys have reviewed the verdict form and find it in
9 proper order.

10 (WHEREUPON, the verdict form and Exhibits were
11 delivered to the jury and deliberations were begun at
12 approximately 11:02 a.m.)

13 THE COURT: Just have the alternate come out, if
14 you would.

15 Hello, again. You're not needed on this trial
16 obviously because the other twelve are deliberating. You
17 won't have that opportunity. We have a panel outside who's
18 coming back in. You've done a lot of work this week.
19 You're free to go unless you want to be a part of the next
20 panel, which means you may get selected again. I'm going to
21 leave that up to you. I feel like you've done enough this
22 week, but if you want to continue, we'd love to have you. I
23 don't know if you've got other things to do. If you just
24 want to hang around and watch or whatever you want to do.

25 THE JUROR: Your Honor, I'd like to stay and watch

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Charge

304

1 because I'd kind of like to see how this comes out as well.

2 THE COURT: You're excused for the rest of the
3 week then. We'll can get your badge back and you can come
4 and go as you like and you can come back tomorrow if you
5 want to. Whatever suits you. Whatever I tell the jury as
6 far as -- they're going to be coming in in a minute. We're
7 going to be qualifying a jury for another case.

8 THE JUROR: Uh-huh (affirmative).

9 THE COURT: So you can sit with them, of course.
10 Don't talk to them about any cases you've heard or anything
11 going on this week.

12 THE JUROR: Right.

13 THE COURT: But if you want to just watch. We're
14 going to hopefully start another trial. And I'll leave you
15 out of that group. So if I'm asking questions about, you
16 know, do you know any of these people, you don't even need
17 to respond.

18 THE JUROR: Oh, okay.

19 THE COURT: You're here the rest of the week as a
20 non-juror, okay?

21 THE JUROR: Okay.

22 THE COURT: Your jury service is over.

23 THE JUROR: I'll just turn this in.

24 THE COURT: Turn that in. We'll get it over here.

25 THE JUROR: Oh, okay.

1 THE COURT: Cheryl will get it and you can --
2 you're free to do whatever you need now. Thank you for your
3 service. But if you want to stay or go or whatever.

4 THE JUROR: I'm going to, like I said, I'm going
5 to sit back here and listen.

6 THE COURT: Okay.

7 THE JUROR: This has been the most interesting
8 week I think I've ever had.

9 THE COURT: Well, good.

10 (WHEREUPON, the alternate juror was dismissed.)

11 THE COURT: All right. We'll be at ease until we
12 hear from our jury or until we're ready for this one. I'm
13 going to excuse myself, Mr. Hendricks, and then you can let
14 the jury in to have a seat. Let me get out of here first,
15 just for a minute. Hang on just a minute.

16 MR. HENDRICKS: Yes, sir.

17 (WHEREUPON, the court stood at recess awaiting the
18 verdict of the jury.)

19 (WHEREUPON, the jury entered the open court at
20 approximately 12:42 p.m.)

21 THE COURT: Mr. Foreman, ladies and gentlemen of
22 the jury, you have made inquiry concerning a couple of
23 questions. I have discussed these with the attorneys.
24 Obviously, I can't comment on the facts. I've told you
25 before you're the fact finder. You've heard all the

1 evidence that's presented in this case. And from that
2 evidence you're going to have to determine what the facts
3 are. If you have any questions whatsoever about the law
4 that I instructed you on, I'll be glad to repeat any part of
5 that. If you need to hear any other testimony, we could
6 certainly accommodate you there. But I'm prohibited from
7 making any comment whatsoever on the facts of the case.

8 You've also made an inquiry as to whether or not the --
9 two of the charges, if you're able to reach some decision on
10 those, about the other two. As I stated to you, each of
11 these are distinct and separate, one from another. Each
12 stands on its own, so to speak. If you reached a
13 determination on two of those, then, of course, you need to
14 continue your deliberations on the other two until you can
15 reach a determination. And those -- what you do on any one
16 does not affect the others. Each of them are separate and
17 distinct charges. I hope that amplifies that for you,
18 clears it up for you.

19 I think the clerk is -- my instructions, had mentioned
20 to you about any lunch. If you do need lunch, just bear in
21 mind it'll take a little while to get it here for you. You
22 can just let the bailiffs know if you do need something to
23 eat. With that, I'll ask you if you would go back to your
24 jury room, continue your deliberations and let us know when
25 you have reached a verdict or if we can help you in any

1 other way.

2 (WHEREUPON, the jury exited the open court at
3 approximately 12:46 p.m.)

4 THE COURT: All right. The notes in question,
5 I'll have those marked as Court Exhibits. We might already
6 have a Court Exhibit in this, don't we? I think we do. I
7 think there was on -- about your notice, the emails and all.

8 MR. THEM: Well, I put some notices, about three
9 things in there.

10 THE COURT: The next number Court Exhibit will be
11 the first note that we got, the other one will be the second
12 note. Both attorneys have had a chance to read these. And
13 I discussed what I intended to charge. Are there any
14 exceptions from either side as to the charge that I gave to
15 the jury?

16 MR. THEM: Nothing from the State at this time.

17 THE COURT: All right, sir. From the Defense?

18 MR. DEJONG: Nothing on behalf of Mr. Collins.

19 THE COURT: These will be marked as the next two
20 Court Exhibits.

21 MADAM COURT REPORTER: 4 and 5.

22 THE COURT: 4 and 5. That's -- 4's on top, 5's
23 the one below.

24 (WHEREUPON, Court Exhibit Numbers 4 and 5 were marked
25 for identification.)

1 MR. THEM: I'll be back in Judge Miller's Court.

2 THE COURT: And we'll be back in touch when we
3 hear something from our jury. We'll be at ease until we
4 hear from our jury or until 2:30.

5 (WHEREUPON, the court stood at recess awaiting the
6 verdict of the jury.)

7 THE COURT: All right. We've received a note from
8 the jury that states, we have completed our deliberations.
9 I've discussed at the bench with the attorneys when they
10 were last here and left the note, they indicated they had
11 resolved two of them, but not the other two. I don't know
12 what completing the deliberations totally means. Obviously,
13 I haven't talked to the jury. Whether they've found a
14 verdict on all or a verdict on two.

15 The attorneys have agreed that if it's only two and not
16 the four, that rather than an *Allen* charge on the other two,
17 that we'll proceed with accepting the verdicts on those two
18 with the State having the right to prosecute further the
19 other two. If it's all four verdicts then, of course, we'll
20 accept all four verdicts that they have. Is that the
21 understanding that we have?

22 MR. THEM: That's my understanding of our
23 discussions, Your Honor.

24 THE COURT: All right.

25 MR. DEJONG: On behalf of Mr. Collins, that's my

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Charge

309

1 understanding.

2 THE COURT: All right. And I'll make this a Court
3 Exhibit 7.

4 MADAM COURT REPORTER: 6.

5 THE COURT: 6.

6 (WHEREUPON, Court Exhibit Number 6 was marked for
7 identification.)

8 THE COURT: All right. Have the jury come in if
9 they're ready, please, Ms. Wright.

10 (WHEREUPON, the jury entered the open court at
11 approximately 2:14 p.m.)

12 THE COURT: Mr. Foreman, I understand the jury has
13 reached a verdict. Is that correct?

14 MR. FOREMAN: Yes, sir.

15 THE COURT: Is it a unanimous verdict?

16 MR. FOREMAN: On two counts, it's unanimous, yes,
17 sir.

18 THE COURT: All right, sir. And on the others,
19 there's not a verdict? On two counts you have not reached a
20 verdict?

21 MR. FOREMAN: That's correct, yes, sir.

22 THE COURT: All right. If you would, please, hand
23 the verdict forms, all of the verdict forms to the bailiff
24 or to the Clerk, please.

25 (WHEREUPON, the verdict forms were handed up to the

1 Court.)

2 THE COURT: All right. Madam Clerk, you may
3 publish the verdicts.

4 MADAM CLERK: In the case of the State versus
5 Marshall Heath Collins, 2010-GS-39-2042, we the jury by
6 unanimous consent find the Defendant Marshall Heath Collins,
7 as to the charge of possession of a weapon during the
8 commission of a violent crime, guilty.

9 2010-GS-39-937, we the jury by unanimous consent find
10 the Defendant Marshall Heath Collins, as to the charge of
11 trafficking more than ten grams of methamphetamines, guilty.

12 Foreperson, Robert G. Person. If this is your verdict
13 and still your verdict, so say you all by raising your right
14 hand.

15 (WHEREUPON, all jurors' right hands were raised.)

16 MADAM CLERK: Thank you.

17 THE COURT: All right. Is there anything we need
18 to take care of with the jury before they're discharged in
19 this case? Anything from the State?

20 MR. THEM: Nothing on behalf of the State, Your
21 Honor.

22 THE COURT: From the Defense?

23 MR. DEJONG: Nothing on behalf of Mr. Collins,
24 Your Honor.

25 THE COURT: Thank you very much.

1 Ladies and gentlemen, thank you very much for your
2 service with us this week and on this case. You're now free
3 to go for the week. We have another jury in place now,
4 ready to start another trial. That one will occupy the rest
5 of our week, I'm sure. We won't need your services. You're
6 certainly free to stay with us this week if you'd like to.
7 I hope it's been an enjoyable week for you and an
8 educational week. You've certainly performed a valuable
9 service for your community by serving as a juror.

10 As I told you on Monday, our system would falter badly
11 if we didn't have the citizens sitting where you are to make
12 these decisions to determine whether or not the -- what the
13 facts are. We, as Judges, we're trained in the law, but
14 you're a much better fact-finder, I assure you, than a Judge
15 who is just trained in the law and perhaps doesn't have the
16 combined experiences of twelve good, fair citizens of our
17 community.

18 You've actively participated in your government this
19 week. You've been a judge. You've been an active part of
20 the Judicial Branch of Government by being a judge of the
21 facts. It's not always that we as citizens get an
22 opportunity to serve our governments. If you get elected
23 mayor of your town or Governor of South Carolina, you'll get
24 to execute the laws that have been passed by legislators.
25 Same if you get elected to county council or city council or

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Charge

312

1 the State or the United States Senate, you can pass laws,
2 but we as citizens normally don't get to participate in
3 those activities of either enacting laws or executing the
4 laws. But from the third branch of government, the judicial
5 branch, you've been an active part this week and I
6 appreciate it so much. You've been a delight for me to work
7 with and I appreciate the conscientious effort that you have
8 set forth in these and other cases that we've had this week.

9 Some of you may need a statement for your employer. If
10 that's the case, please stop by the Clerk's office. They'll
11 provide that for you to show that you have performed jury
12 service this week. Otherwise, you're free to go.

13 I will ask the Foreman if you would, please, sir, if
14 you'd meet the clerk back in the hallway before you leave.
15 There's one additional paper or two additional papers I need
16 for you to sign.

17 Thank you very much ladies and gentlemen. You're free
18 to go at this time. I appreciate your service this week.

19 (WHEREUPON, the jury exited the open court at
20 approximately 2:21 p.m.)

21 THE COURT: All right. Any matters we need to
22 take care of before sentence is imposed?

23 MR. THEM: Nothing on behalf of the State, Your
24 Honor.

25 THE COURT: From the Defense?

1 MR. DEJONG: Nothing on behalf of Mr. Collins,
2 Your Honor.

3 THE COURT: All right. Do you have a sentencing
4 sheet prepared?

5 MR. THEM: Your Honor, I'd also like to hand up at
6 this point in time two true copies of -- I mean, a true copy
7 and another copy of a document down in the Clerk's office
8 showing the Defendant has two prior possessory drug
9 offenses. That would make this trafficking a third
10 offense.

11 THE COURT: While we're again reviewing the
12 number, I need to verify we have our CDR -- have y'all
13 talked among each other or between each other about the CDR
14 Code, the 3039. Are you sure that's right?

15 MR. THEM: It's a function of when the indictment
16 took place versus the change was made. I believe it's
17 correct, Your Honor.

18 THE COURT: My information leads me to believe
19 that's a PWID rather than a trafficking.

20 MR. THEM: How about 0452?

21 THE COURT: Well, that's ---

22 MR. THEM: Do you have that for anything?

23 THE COURT: We'll, we're not shopping. I want to
24 make sure we get the right one down.

25 MR. THEM: I have two or three.

1 THE COURT: So that if he's in the Department of
2 Corrections, they need to make sure that he's sentenced
3 under the proper CDR code.

4 MR. THEM: That's another draft of it that ---

5 THE COURT: Okay. 0452.

6 MR. THEM: That's probably the new number there,
7 Your Honor.

8 THE COURT: All right. The Solicitor has
9 presented to me the prior sentencing sheet showing the prior
10 offenses.

11 MR. THEM: Yes, sir.

12 THE COURT: And Mr. DeJong has had a chance to
13 review those?

14 MR. DEJONG: I have, Your Honor.

15 THE COURT: All right, sir. That's the only prior
16 offenses?

17 MR. THEM: That's the only prior offenses that
18 would be important for this proceeding, Your Honor.

19 THE COURT: Okay. All right. Is there anything
20 else the State would like to offer by way of -- before
21 sentencing? Then I'll be glad to hear from Mr. DeJong and
22 his ---

23 MR. THEM: Just the mandatory minimum situation.

24 THE COURT: Unfortunately, that's what it is.

25 Mr. DeJong, I'll be glad to hear from you, sir.

1 MR. DEJONG: Thank you, Your Honor. And I agree
2 with you. Unfortunately, that's what it is. Mr. Collins is
3 thirty-five, Your Honor. He is now married and has two
4 children, ten and two. The two year old lives with he and
5 his wife. The ten year old he is under a court order to pay
6 a hundred dollars per week child support. Twelfth grade
7 education. Been working with his dad who is present in the
8 courtroom, along with his mother and his wife, Your Honor.
9 His dad's in the surveying business here in Pickens County.

10 I guess, Your Honor, I'm a little puzzled in one
11 regard -- not that I guess really has anything to do as
12 such, the Legislature in the sentencing reform act took out
13 a Schedule II for enhancement purposes, but left in
14 Schedules I through V, which puzzles me a little bit. Took
15 marijuana out as an enhancer, but left pills in. It's my
16 understanding, Your Honor, that under the third is a twenty-
17 five to thirty range. I would certainly ask Your Honor to
18 go with the minimum. It's an obviously non-parolable
19 eighty-five percent, making that charge concurrent, thirty-
20 five. Under the current state of the law, Mr. Collins is
21 going to be an old man before he gets out anyway, even at
22 twenty-five.

23 THE COURT: Thank you, Mr. DeJong.

24 Mr. Collins, is there anything you'd like to tell me
25 before I impose sentence?

1 MR. COLLINS: I just beg for your mercy, Your
2 Honor. I realize I've done some boneheaded things, but I
3 just hope you do me the best that you can, sir, please?

4 THE COURT: When you started using drugs, how old
5 were you first used drugs?

6 MR. COLLINS: When I first used drugs, eighteen.

7 THE COURT: Any drug?

8 MR. COLLINS: Eighteen.

9 THE COURT: Marijuana?

10 MR. COLLINS: Yes, sir.

11 THE COURT: When did you start using meth?

12 MR. COLLINS: I started using meth in the year
13 2004. I lost everything that year, Your Honor. I lost the
14 first mother of my child, my house, both of my grandparents.
15 It's a terrible, terrible thing.

16 THE COURT: Did you attend school here in Pickens
17 County?

18 MR. COLLINS: I'm from Hendersonville, Your Honor,
19 and I lived here my senior year in high school, and I
20 graduated, Your Honor.

21 THE COURT: So you didn't use any drugs in
22 Hendersonville before you got eighteen?

23 MR. COLLINS: No, sir.

24 THE COURT: You didn't have any marijuana, beer?
25 I bet you had some beer or something.

1 MR. COLLINS: I might have drank a beer, Your
2 Honor.

3 THE COURT: You didn't start using marijuana until
4 you were eighteen?

5 MR. COLLINS: Yes, sir.

6 THE COURT: Of course, I take an oath to uphold
7 the law and I'm bound by the law. Certainly, I'm sure you
8 can appreciate that. I'm certainly sympathetic with the
9 plight you're now in. Drugs -- I obviously don't fully know
10 the legislative thought of our representatives in Columbia,
11 but crimes do -- or drugs do a lot of damage to our society,
12 as I'm sure you're aware, sir.

13 MR. COLLINS: Yes, sir, Your Honor, I am aware.

14 THE COURT: Well, I'm grateful that you have a
15 family support. That will certainly continue to help you.
16 It's not everyone that appears in court that has a loving
17 family behind them to support them in their activities.

18 MR. COLLINS: Yes, sir, Your Honor.

19 THE COURT: I know you're blessed to have a
20 supportive family.

21 This is case 2010-GS-39-937, the sentence of the Court
22 is the Defendant be committed to the State Department of
23 Corrections for a period of twenty-five years.

24 Case 2010-2142, it's a five year sentence to be
25 concurrent to that previously imposed.

State of South Carolina -vs- Marshall Heath Collins (2010-GS-39-937, 938, 939 and 2142)
Charge

318

1 MR. DEJONG: Thank you, Your Honor.

2 THE COURT: I wish you the very best, Mr.

3 Collins.

4

5 (END OF REQUESTED TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 1st day of December, 2010.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 24, 2011

Danette P. Hanks

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARSHALL HEATH COLLINS,

APPELLANT

FINAL BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Assistant Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
STATEMENT OF FACTS	5
STANDARD OF REVIEW	9
ARGUMENT	9
1. The trial court erred by refusing to suppress the items seized from Collins's backpack where the traffic stop was not legitimate due to it lasting longer than was necessary to effectuate the purpose of the stop because the State failed to prove in the suppression hearing that Collins's license plate light was not sufficiently illuminated as prescribed by state statute	9
2. The trial court erred by refusing to suppress the handgun seized from Collins's backpack where the police officers went beyond what was necessary to determine if Collins had access to a dangerous weapon because the protective patdown search of Collins's person had already been conducted and the police officers did not perform a plain feel test on the backpack prior to the search and seizure.....	13
CONCLUSION	17
CERTIFICATE OF COUNSEL	18

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Johnson</i> , 555 U.S. 323 (2009).....	10
<i>Florida v. Royer</i> , 460 U.S. 491 (1983).....	11, 12
<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005)	11, 12
<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961).....	10
<i>Minnesota v. Dickerson</i> 508 U.S. 366 (1993).....	14, 16
<i>Pennsylvania v. Mimms</i> , 434 U.S. 106 (1977).....	14
<i>Sibron v. New York</i> , 392 U.S. 40 (1968).....	14
<i>State v. Fowler</i> , 322 S.C. 263, 471 S.E.2d 706 (Ct. App. 1996)	14
<i>State v. Tindall</i> , 388 S.C. 518, 698 S.E.2d 203 (2010)	9
<i>State v. Woodruff</i> , 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001).....	14, 15, 16
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	10, 14, 15, 16, passim
<i>Texas v. Brown</i> , 460 U.S. 730 (1983).....	15
<i>United States v. Arvizu</i> , 534 U.S. 266 (2002).....	10
<i>United States v. Martinez–Fuerte</i> , 428 U.S. 543 (1976)	13, 14
<i>United States v. Mendenhall</i> , 446 U.S. 544 (1980)	13, 16
<i>United States v. Risher</i> , 966 F.2d 868 (4th Cir. 1992).....	10, 11
<i>Whren v. United States</i> , 517 U.S. 806 (1996).....	10, 11
<i>Wilson v. Arkansas</i> , 514 U.S. 927 (1995).....	10

Constitutional Provisions

U.S. Const. amend. IV	10

Statutes

S.C. Code Ann. § 44-53-375 (1976).....	4
S.C. Code Ann. § 56-5-4530 (1976).....	9, 11, 12, 13

STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err by refusing to suppress the items seized from Appellant's backpack where the traffic stop was not legitimate due to it lasting longer than was necessary to effectuate the purpose of the stop when the State failed to prove in the suppression hearing that Appellant's license plate light was not sufficiently illuminated as prescribed by state statute?

2.

Did the trial court err by refusing to suppress the handgun seized from Appellant's backpack where the police officers went beyond what was necessary to determine if Appellant had access to a dangerous weapon when the protective patdown search of Appellant's person had already been conducted and the police officers did not perform a plain feel test on the backpack prior to the search and seizure?

STATEMENT OF THE CASE

On June 15, 2010, Marshall Collins was indicted by the Pickens County Grand Jury for trafficking methamphetamine in the amount of fifteen grams or more. R. 173. This indictment was corrected pre-trial to reflect, “ten grams or more,” the amount indicated in the state statute. R. 6, l. 6-16; S.C. Code Ann. § 44-53-375 (1976). Collins was also indicted on June 15, 2010, for possession of controlled substance or possession with intent to distribute. R. 7, l. 9-10.

On November 23, 2010, Collins was indicted for possession of a firearm during the commission of a violent crime. R. 171; R. 8, l. 11-14.

On December 1, 2010, Collins proceeded to trial before the Honorable G. Edward Welmaker and a jury, where he was represented by John Dejong. R. 1. The State was represented by assistant solicitor Peter Them. R. 1.

On December 2, 2010, the jury found Collins guilty of trafficking more than ten grams of methamphetamine and possession of a weapon during the commission of a violent crime. R. 163, l. 5-11. Judge Welmaker sentenced Collins to twenty-five years imprisonment for trafficking more than ten grams of methamphetamine and five years imprisonment for possession of a weapon during the commission of a violent crime to run concurrently with the prior sentence. R. 171; R. 170, l. 21-25.

This appeal follows.

STATEMENT OF FACTS

Joshua Blair, a police officer for the Pickens County Police Department, testified that at 1:30 am on October 2, 2009, he noticed a black car at a stop sign waiting for him to pass before continuing to drive in the opposite direction. R. 70, l. 10-20; 73, l. 23-74, l. 5. Officer Blair claimed that the black car's hesitation at the stop sign struck him as odd, so he checked his rearview mirror and saw that the license plate didn't appear to be illuminated. R. 74, l. 10-13. Officer Blair then turned his car around to verify if the black car's license plate light was working properly. R. 74, l. 13-15. Officer Blair stated that he "could see the tag, but [he] didn't know if it was because of [his] headlights." R. 74, l. 22-23. When the black car took a turn and Officer Blair's headlights were not directly shining on the black car, he "initiated his blue lights" for "a traffic stop" because he "could not see [the black car's] tag light." R. 75, l. 6-7.

However, neither the illumination of the license plate or the events that unfolded during the traffic stop were recorded because the camera in Officer Blair's patrol-car did not turn-on when he activated his blue lights. R. 96, l. 1-97 l. 3. Officer Blair claimed that as he approached the black car he noticed that the license plate light "was on," but in his opinion, "it wasn't enough to make the tag where you could read it at a distance." R. 76, l. 6-8. Officer Blair testified that as he engaged a conversation with the driver of the black car, Collins, the window was only down a couple inches and that Collins would not look at him. R. 76, l. 22-77, l. 6. Officer Blair stated that when he asked Collins for his license and registration, Collins told him that he did not have his wallet and provided the name of Brent Wiggins and his date of birth as July 17, 1973. R. 77, l. 22-78, l. 3. Officer Blair maintained that the surrounding circumstances also "struck him as odd." R. 77, l. 24-78, l.

6.

While Officer Blair was in his patrol car attempting to verify the information provided to him by Collins, he saw Collins run away from the vehicle and throw a backpack onto his shoulders. R. 79, l. 3-9. Officer Blair began to chase Collins, yelling for him to stop running and to get on the ground; during this time, he also called dispatch for assistance. R. 79, l. 14-18. The chase ended when Collins ran head-first into a tree knocking him to the ground. R. 80, l. 13-81, l. 3.

When Officer Blair caught-up to Collins, he pulled out his taser and ordered Collins to stay on the ground. R. 81, l. 4-24. Officer Craig Sapp was only a few blocks away and responded to Officer Blair's call for assistance. R. 82, l. 13-18. When Officer Sapp arrived, he placed Collins in handcuffs without taking the backpack off Collins. R. 82, l. 23-83, l. 12. Officer Blair further testified that "at the time [Officers Blair and Sapp] actually put [Collins] in handcuffs, [Collins] *was still in investigative detention*" because it was "not necessary for us to put him under arrest...at that time" because "[w]e're still trying to gather facts to find out what's going on." R. 113, l. 15-21.

Officers Blair and Sapp then walked Collins back to Officer Sapp's patrol car and conducted a protective "patdown" search of Collins's body to make sure that he did not have any weapons. R. 83, l. 14-19. The only weapon that was found on Collins's person was a legal pocket knife. R. 84, l. 2-8. After searching Collins's person and without conducting a "plain feel" search of the backpack, Officers Blair and Sapp decided to search the middle compartment of the backpack, which was zipped closed. R. 84, l. 9-11; 87, l. 13-16; 115, l. 2-5; 141, l. 1-18. Officers Blair and Sapp's rationale for searching the backpack was that Collins's "hands were accessible to" the middle compartment of backpack and they did not

“know how flexible [Collins] was at that time.” R. 84, l. 9-13; 115, l. 7-8. In the middle compartment of the backpack, Officers Blair and Sapp found a “very small handgun.” R. 84, l. 11-13. Moments later, however, Officers Blair and Sapp “unthreaded the straps at the bottom” of the backpack and removed it without taking the handcuffs off Collins. R. 87, l. 6-15; 141, l. 13-16. Collins was then put in the back of Officer’s Sapp’s patrol car. R. 87, l. 11-12.

During the protective “patdown” search, Officers Blair and Sapp also found a wallet that contained Collins’s driver’s license, which they subsequently learned was suspended. R. 88, l. 1-6. Officer Blair testified upon learning that Collins’s license was suspended, he and Officer Sapp conducted an inventory search of the backpack. R. 88, l. 16-18. During the inventory search, Officers Blair and Sapp found nylon packages in the larger compartment of the backpack: (1) one of the packages contained a crystal-like substance and (2) another package which contained pills. R. 88 l. 21-25–91, l. 13-15. During cross-examination, Officer Blair confirmed that the arrest report indicated that the inventory search of the backpack occurred “way before” Officers Blair and Sapp learned that Collins’s license was suspended. R. 118, l. 1–119, l. 14.

Pre-trial, defense counsel moved to suppress Collins’s possession of: (1) fourteen point six grams of methamphetamine; (2) the controlled substances, alprazolam and oxycodone; and (3) the handgun; because those items “were the result of an illegal search in violation of [Collin’s] Fourth Amendment Rights.” R. 5, l. 17-20; 9, l. 18–10, l. 4. The assistant solicitor stated that “if [Officer Blair] had just cause to stop [Collins] for the traffic stop, everything else, of course, follows.” Supp. R. 1, l. 2-4. Judge Welmaker denied defense counsel’s motion to suppress the previously stated evidence. R. 66, l. 2-7.

Furthermore, Judge Welmaker found that there was a legitimate traffic stop because Officer Blair had reasonable suspicion for the stop and that the “patdown” search was proper for the safety of the officers. R. 65, l. 12–65, l. 19.

During trial, defense counsel renewed his prior suppression argument to Judge Welmaker when the assistant solicitor entered the seized items into evidence. R. 133, l. 8–10. Judge Welmaker presented four charges to the jury: (1) trafficking methamphetamine in the amount of ten grams or more; (2) possession with intent to distribute alprazolam and oxycodone; (3) knowing and intentional illegal possession of alprazolam and oxycodone; and (4) possession of a weapon during the commission of or the attempt to commit a violent crime. R. 159, l. 15–160, l. 16. The jury only reached a verdict on two of the four charges, so defense counsel and the assistant solicitor decided to proceed rather than have the judge give an *Allen* charge on the other two charges. R. 161, l. 7–162, l. 1. Collins was found guilty of trafficking more than ten grams of methamphetamine and possession of a weapon during the commission of a violent crime. R. 163, l. 4–11.

STANDARD OF REVIEW

On appeal from a motion to suppress based on Fourth Amendment grounds, the Supreme Court of South Carolina has applied a deferential standard of review and will reverse if there is clear error. *See State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence. *Id.*

ARGUMENT

1. **The trial court erred by refusing to suppress the items seized from Collins's backpack where the traffic stop was not legitimate due to it lasting longer than was necessary to effectuate the purpose of the stop because the State failed to prove in the suppression hearing that Collins's license plate light was not sufficiently illuminated as prescribed by state statute.**

Despite Officer Blair's insufficient testimony¹ concerning the illumination of Collins's license plate light and the state statutory requirement which specifies that the illumination of a license plate should "render it clearly legible from a distance of fifty feet to the rear," Judge Welmaker found at the conclusion of the suppression hearing "that there was a legitimate traffic stop" and denied defense counsel's motion to suppress the items seized from Collins's backpack. R. 64, l. 13–66, l. 2-7; S.C. Code Ann. § 56-5-4530 (1976). Consequently, Judge Welmaker erred by refusing to suppress the items rendered from the "illegal search in violation of [Collins's] Fourth Amendment Rights." R. 10, l. 2-4.

¹ (Suppression Hearing: R. 13, l. 14–48, l. 25) and (Direct Testimony: R. 74, l. 10–76, l. 9)

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable.” *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995). The Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643 (1961).

Furthermore, when a police officer stops an automobile and detains the occupants briefly, the stop amounts to a seizure within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10 (1996); *see also United States v. Arvizu*, 534 U.S. 266, 273 (2002) (noting that the Fourth Amendment's protection against “unreasonable searches and seizures” extends to “brief investigatory stops of persons or vehicles”). “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren*, 517 U.S. at 810. However, a traffic stop typically ends when the police officer has “no further need to control the scene, and inform[s] the driver and passengers they are free to leave.” *Arizona v. Johnson*, 555 U.S. 323 (2009).

Traffic stops are reviewed under the standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), because a traffic stop is more analogous to an investigative detention than a custodial arrest. *See also United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992). Consequently, *Terry* outlines a two prong test for analyzing the constitutionality of a traffic stop: (1) whether the police officer's action was justified at the inception of the traffic stop and (2) whether the police officer's subsequent actions were reasonably related in scope and duration to the circumstances that justified the stop. *Rusher*, 966

F.2d at 875.

Furthermore, the second prong requires that the seizure must also be limited both in scope and duration. *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). With regard to the scope component, “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.” *Id.* With regard to the duration component, a traffic stop may become “unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); *Royer*, 460 U.S. at 500 (noting that the scope of a seizure “must be carefully tailored to its underlying justification,” and that the government bears the burden to “demonstrate that the seizure it seeks to justify ... was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.”).

With regard to the first prong under *Terry*, Officer Blair’s decision to conduct a traffic stop was not “reasonable” because the State failed to prove that Officer Blair had “probable cause” to believe that Collins had committed a “traffic violation” by not having a sufficiently illuminated license plate. *Whren*, 517 U.S. at 810; *See* S.C. Code Ann. § 56-5-4530 (provides in pertinent part that the illumination of a license plate should “render it clearly legible from a distance of fifty feet to the rear.”). R. 74, l. 22–75, l. 7. Thus, Officer Blair’s decision to conduct a traffic stop was not justified at its inception. *Rusher*, 966 F.2d at 875.

With regard to the second prong under *Terry*, the subsequent investigative detention and inquiry by Officer Blair was excessive in scope and duration. R. 76, l. 2–77, l. 25; S.C. Code Ann. § 56-5-4530. Officer Blair’s decision to continue the

investigative detention exceeded the scope the of the initial traffic stop because the State failed to prove that he confirmed his initial suspicion that Collins's license plate light was not sufficiently illuminated, the purpose of the traffic stop. *Royer*, 460 U.S. at 500.

For example, Officer Blair testified that when he was "four to six feet" away from Collins's license plate, he saw that the light "was on," but he failed to provide at approximately what distance the license plate would have become illegible. R. 76, l. 5-8; *See* S.C. Code Ann. § 56-5-4530. Officer Blair did, however, provide the overbroad statement that "it wasn't enough to make the tag where you could read it at a distance." R. 76, l. 5-8. Thus, the State did not meet its burden to demonstrate that the subsequent seizure of the items in Collins's backpack was "sufficiently limited in scope...to satisfy the conditions of an investigative seizure" because of Officer Blair's insufficient testimony² concerning the illumination of Collins's license plate light. *Royer*, 460 U.S. at 500.

As to the duration component, the traffic stop became "unlawful" because Officer Blair "prolonged his investigation beyond the time that was reasonably required" to verify whether or not Collins's license plate light was working properly because the State failed to prove that Collins's license plate was did not meet the state statutory illumination requirement. *Caballes*, 543 U.S. at 407; *See* S.C. Code Ann. § 56-5-4530. Consequently, the State also did not meet its burden to demonstrate that the subsequent seizure of the items in Collins's backpack was "sufficiently limited in . . . duration to satisfy the conditions of an investigative seizure." *Royer*, 460 U.S. at 500.

² (Suppression Hearing: R. 13, l. 14-48, l. 25) and (Direct Testimony: R. 74, l. 10-76, l. 9)

Because the State failed to prove in the suppression hearing that Collins's license plate light was not sufficiently illuminated to render it "clearly legible from a distance of fifty feet to the rear," Judge Welmaker erroneously held that there was a legitimate traffic stop" and his decision to deny defense counsel's motion to suppress the items seized from Collins's backpack was clear error. R. 64, l. 13-66, l. 2-7; S.C. Code Ann. § 56-5-4530. Therefore, Officers Blair and Sapp conducted an "illegal search in violation of [Collins's] Fourth Amendment Rights." R. 10, l. 2-4.

2. **The trial court erred by refusing to suppress a handgun seized from Collins's backpack where the police officer went beyond what was necessary to determine if Collins had access to a dangerous weapon because the protective patdown search of Collins's person had already been conducted and the police officer did not perform a plain feel test on the backpack prior to the search and seizure.**

Although Officers Blair and Sapp went beyond what was necessary to determine if Collins had access to a dangerous weapon, Judge Welmaker found that "the weapon . . . [was] properly seized after a proper search." R. 66, l. 4-6. Judge Welmaker should have suppressed the handgun seized from Collins's backpack because the Officers had already conducted a "patdown" search of Collins's person and did not perform a plain feel test on the backpack prior to their search of the middle compartment of the backpack which contained the handgun "in violation of [his] Fourth Amendment Rights." R. 10, l. 2-4; 84, l. 9-11; 87, l. 13-16; 115, l. 2-5; 141, l. 1-18.

"The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980) (quoting *United States v. Martinez-*

Fuerte, 428 U.S. 543, 554 (1976)). Applying its decision in *Terry*, the United States Supreme Court ruled in *Pennsylvania v. Mimms*, 434 U.S. 106, 111–12 (1977), subsequent to a valid *Terry* stop for a traffic violation, a police officer may search the individual for weapons where the officer has reason to believe the person is armed and dangerous.

In assessing whether a suspect is armed and dangerous, “[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Terry*, 392 U.S. at 27. Accordingly, “[t]he purpose of this limited [patdown] search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. . . .” *Minnesota v. Dickerson* 508 U.S. 366, 373 (1993); see *State v. Fowler*, 322 S.C. 263, 471 S.E.2d 706 (Ct. App. 1996) (noting that a reasonable person in officer's position must believe the frisk was necessary to preserve officer's safety.).

Furthermore, a protective “patdown” search that is permitted without a warrant and based on reasonable suspicion must be strictly “limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.” *State v. Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296 (Ct. App. 2001) (citing *Terry*, 392 U.S. at 26). If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed. *Sibron v. New York*, 392 U.S. 40, 65–66 (1968). Based on that rationale, the United States Supreme Court and the Supreme Court of this State have recognized and applied the principle that police officers are not granted under *Terry*, “a general warrant to rummage

and seize at will” and that any evidence seized from an unlawful detention must be excluded as “fruit of the poisonous tree.” *Woodruff*, 344 S.C. at 549, 544 S.E.2d at 296-97 (citing *Texas v. Brown*, 460 U.S. 730, 748 (1983) (Stevens, J., concurring) (the United States Supreme Court “has been sensitive to the danger . . . that officers will enlarge a specific authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will.”)).

In this case, if this Court finds that the traffic stop was legitimate, then Collins does not dispute that the inventory search or Officers Blair and Sapp’s decision to conduct a protective “patdown” search was proper; however, because the Officers exceeded the bounds established by *Terry* when they searched the backpack and seized the handgun, the handgun should be suppressed for three reasons. R. 113, l. 15-21; *Terry*, 392 U.S. 1.

First, although a protective “patdown” search is a “limited search of the outer clothing,” Officers Blair and Sapp failed to conduct a “plain feel” test on Collins’s closed backpack before searching the middle compartment of the backpack. R. 84, l. 9-11; 87, l. 13-16; 115, l. 2-5; 141, l. 1-18; *Id.* at 31; *see also Texas v. Brown*, 460 U.S. at 748 (Stevens, J., concurring) (the United States Supreme Court “has been sensitive to the danger...that officers will enlarge a specific authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will.”).

Second, moments after searching the middle compartment of the backpack, Officers Blair and Sapp removed the backpack from Collins’s person without taking off his handcuffs. R. 87, l. 6-15. This proves that Officers Blair and Sapp were not under any immediate threat because they could have easily removed the backpack before taking the time to walk Collins to Officer Sapp’s patrol car to search the backpack and further

illustrates that the search was nothing more than a mere “fishing expedition.” R. 87, l. 6-15-141, l. 13-16; *Woodruff*, 344 S.C. at 553, 544 S.E.2d at 298; *see also Mendenhall*, 446 U.S. at 553-54 (noting that “the purpose of the Fourth Amendment...is to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.”) (Internal citation omitted).

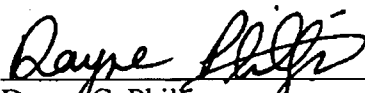
Third, when viewing the prior two reasons the “patdown” search exceeded the bounds established by *Terry* together, the limited purpose of a *Terry* search was satisfied when Officers Blair and Sapp conducted the search of Collins’s person. *Dickerson* 508 U.S. at 373 (noting that “[t]he purpose of this limited [patdown] search is...to allow the officer to pursue his investigation without fear of violence....”). Consequently, Officers Blair and Sapp acted outside the “strictly circumscribed” search for weapons authorized in *Terry* and its progeny. *Terry*, 392 U.S. at 26.

Because Officers Blair and Sapp went beyond what was necessary to determine if Collins had access to a dangerous weapon, Judge Welmaker erroneously found that “the weapon...[was] properly seized after a proper search.” R. 10, l. 2-4; 66, l. 4-6; 84, l. 9-11; 87, l. 13-16; 115, l. 2-5; 141, l. 1-18. Therefore, Officers Blair and Sapp conducted an “illegal search in violation of [Collins’s] Fourth Amendment Rights” and the fruit of that search, the handgun, should have been suppressed. R. 10, l. 2-4.

CONCLUSION

For the foregoing reasons, Collins respectfully requests that this Court reverse his convictions and remand this case to the Pickens County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dayne Phillips", is written over a horizontal line.

Dayne C. Phillips
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of January, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 17, 2012



Dayne C. Phillips
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARSHALL HEATH COLLINS,

APPELLANT

CERTIFICATE OF SERVICE

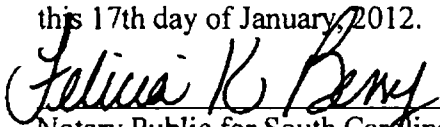
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of January, 2012.



Dayne C. Phillips
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARSHALL HEATH COLLINS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
ARGUMENT	
I. <u>The trial court's finding on the legitimacy of the traffic stop is supported by the record.</u>	3
II. <u>The defendant demonstrates no error admitting the handgun into evidence.</u>	6
CONCLUSION	8

TABLE OF AUTHORITIES

Cases:

<u>State v. Floyd</u> , 295 S.C. 518, 369 S.E.2d 842 (1988)	6
<u>State v. King</u> , 349 S.C. 142, 561 S.E.2d 640 (Ct.App. 2002)	6
<u>State v. Moultrie</u> , 316 S.C. 547, 451 S.E.2d 34 (Ct. App. 1994)	7
<u>State v. Muquit</u> , 381 S.C. 114, 118, 671 S.E.2d 643 (Ct. App. 2009)	6
<u>State v. Pichardo</u> , 367 S.C. 84, 97, 623 S.E.2d 840 (Ct. App. 2005)	5

Other Authorities:

S. C. Code § 56-5-4530	5

STATEMENT OF ISSUES ON APPEAL

1. The defendant says that the traffic stop was not legitimate since it lasted longer than was necessary to effectuate the purpose of the stop when the state failed to prove in the suppression hearing that his license plate light was not lawfully illuminated. The defendant then asks whether items seized from his backpack should have been suppressed. (Appellant's Statement of Issues on Appeal 1).

2. The defendant says, after a pat-down search, police exceeded concern for his having access to a dangerous weapon when they seized a handgun from his backpack without an initial, plain feel test. The defendant then asks whether the handgun should have been suppressed. (Appellant's Statement of Issues on Appeal 2).

STATEMENT OF THE CASE

The defendant faced charges of [1] having unlawful possession of a drug (Alprazolam) with the intent to distribute, [2] having unlawful possession of a controlled substance (Oxycodone) with intent to distribute, [3] trafficking in more than ten grams of methamphetamine, and [4] possessing a pistol during the commission of a violent crime (trafficking methamphetamine). The defendant and his counsel came to trial on December 1, 2010 before the Honorable G. Edward Welmaker, Judge, and a jury. (ROA. pp. 1 and 11-12). Rather than asking the jury to continue deliberations, the defendant agreed to accept two available verdicts with the state having the right to further prosecute the other two. The jury found the defendant guilty of trafficking more than ten grams of methamphetamine (2010-GS-39-937) and possession of a weapon during the commission of a violent felony (2010-GS-39-2142). The court sentenced the defendant to imprisonment for twenty-five years for trafficking and five years concurrent for the weapon offense. (ROA. pp. 161-163 and 170). The defendant served opposing counsel a timely notice of appeal.

ARGUMENT

I.

The trial court's finding on the legitimacy of the traffic stop is supported by the record.

The defendant says the traffic stop was unlawful since, in the suppression hearing, the state failed to prove that his license plate light was not lawfully illuminated, and the defendant then asks whether items [subsequently] seized from his backpack should have been suppressed. (Appellant's Statement of Issues on Appeal 1).

How the Issue was Raised at Trial

Officers Blair and Sapp testified in camera. On October 2, 2009 at about 1:33 AM Blair saw a vehicle lingering at a stop sign. He turned around, and thought that the tag light was "out." In further investigation and insuring that the officer's headlights were not obscuring the tag light, the officer stopped the vehicle and found that the tag light was only a faint glow and "not enough to illuminate the tag at any point." (ROA. pp. 13-18). After making the stop, the officer saw suspicious circumstances: the defendant opened the window only a little (the officer understood that was consistent with an attempt to mask the odor of an alcoholic beverage), and the defendant did not look at him. The defendant did not have his [driver's] license, and the officer noted could have taken the defendant into custody. While the officer was in his patrol vehicle checking the name and date of birth information provided and, at the same time, trying to watch the defendant, the defendant ran while slinging a backpack onto his shoulder and continued running despite the officer's directives to stop and to get on the ground. The defendant ran into a tree and fell to the ground wearing - fully with both arms - his backpack. Blair and his backup officer placed the defendant into

handcuffs - “leaving his hands right there at the backpack” and “in reach of the backpack” - Blair considered him under arrest. Searching to insure that there were no weapons to harm them, the police found a knife in the front pocket of the defendant’s shorts and a loaded, automatic handgun in a zippered pouch of the backpack that was still accessible by the handcuffed defendant. Pursuant to their policy of making an inventory at the scene, the officers then took off the backpack, checked it for dangerous matter before transporting the defendant, and found hypodermic needles and illegal drugs. (ROA. pp. 19-28; p.39; pp. 51-52).

The court denied the defendant’s motion to suppress finding that the lawful traffic stop was followed by an investigative seizure of the defendant. The officers were justified in pursuing and apprehending the defendant and, immediately upon handcuffing him, checking for a weapon was proper as a matter of safety for the officers. The defendant noted his objection to the ruling. (ROA. p. 63, line 21 - p. 66, line 11).

At trial Officer Blair repeated substantially his in camera testimony including the circumstances of the dim tag light that was not bright enough to see the tag at all, the defendant’s not rolling down his window and avoiding looking at him, not producing any license and registration, and - while the officer was trying to verify identification - fleeing the scene with both shoulders in a backpack. The defendant ran into a tree. Blair and a backup officer secured and handcuffed him and found a knife in his pocket and a very small handgun (State’s Exhibit No. 2 for identification) in the backpack “which his hands were accessible to.” The officers found that the defendant had been driving under suspension. After removing the backpack, they made an inventory pursuant to department policy and found suspicious substance. (ROA. pp. 74-88; p. 105, lines 6-10; pp. 113-114; p. 117).

The pistol (State's Exhibit No. 2) was introduced into evidence without objection. (ROA. p. 132, line 11 - p. 133, line 4).

Defendant's Position on Appeal

The defendant says if the appellate court finds that the traffic stop was legitimate, the defendant does not dispute either the inventory search or the protective pat-down. The defendant says the handgun should be suppressed for three reasons: [1] the officers did not do a preliminary plain feel of the backpack before searching the middle compartment; [2] the officers searched the middle compartment of the backpack and then removed it from the defendant's person without taking off his handcuffs – the defendant feels that this proves that the officers were not under any immediate threat, and the defendant, with the benefit of hindsight, imagines a way that the officers could still have protected themselves; Terry only allowed the search of the defendant's person. The defendant concludes that the handgun should have been suppressed. (IBOA pp. 15-16).

Discussion

A vehicle registration plate must be illuminated with a white light sufficient to make it clearly legible from a distance of fifty feet to the rear. S. C. Code § 56-5-4530 (Westlaw 2011). A police officer testified to stopping the defendant's vehicle after observing that the tag light did not illuminate the tag. The officer's observation demonstrated probable cause to believe that the vehicle was in violation of the traffic statute, and the officer's stop and investigation cannot be seriously challenged. "Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se." State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840 (Ct. App. 2005).

II.

The defendant demonstrates no error admitting the handgun into evidence.

The defendant says, after a pat-down search, police exceeded concern for his having access to a dangerous weapon when they seized a handgun from his backpack without an initial, plain feel test. The defendant then asks whether the handgun should have been suppressed. (Appellant's Statement of Issues on Appeal 2).

After the in limine ruling (ROA. p. 63, line 21 - p. 66, line 11), the pistol (State's Exhibit No. 2) was introduced into evidence without objection. (ROA. p. 132, line 11 - p. 133, line 4). There is no issue for the appellate court to consider. In limine motion hearings are for the purpose of preventing prejudicial matter coming before the jury, but they are not final rulings on the admissibility of evidence. State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct.App. 2002)(where defendant moved in limine to suppress evidence, the trial court denied the motion, and defendant did not renew his objection at trial when the evidence was actually introduced; recognizing that raising no objection when evidence is introduced at trial preserves no matter for appeal).

Parenthetically, Respondent notes that - after the defendant's failure to identify himself, odd behavior, and wearing his backpack while attempting to leave his vehicle and to flee the scene of the late night traffic stop - the search of the backpack's compartment that remained accessible to the handcuffed defendant was entirely reasonable. (Please see factual summaries in Argument I). Checking the accessible compartment of the backpack for a weapon was one of a number of reasonable means for the officers to satisfy concern for their personal safety. The authority to search an arrested person derives both from the need to disarm and the need to preserve evidence for later use at trial. State v. Muquitt, 381 S.C. 114,

118, 671 S.E.2d 643 (Ct. App. 2009). The existence of probable cause for an arrest justifies a search incident to arrest irrespective of a police officer's classification of the search. State v. Moultrie, 316 S.C. 547, 451 S.E.2d 34 (Ct. App. 1994).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 30, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARSHALL HEATH COLLINS,

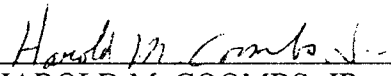
Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Dayne C. Phillips, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 30th day of December, 2011.


HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARSHALL HEATH COLLINS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 30, 2011

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Marshall Heath Collins,

Appellant.

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2012-UP-356
Submitted May 1, 2012 – Filed June 13, 2012

AFFIRMED

Assistant Appellant Defender Dayne C. Phillips, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior
Assistant Deputy Attorney General Salley W. Elliott,
and Senior Assistant Attorney General Harold M.

Coombs, Jr., all of Columbia; and Solicitor W. Walter Wilkins, III, of Greenville, for Respondent.

PER CURIAM: Marshall Heath Collins appeals his convictions of trafficking more than ten grams of methamphetamine and possession of a weapon during the commission of a violent crime, arguing the trial court erred in (1) refusing to suppress the items seized from his backpack after a traffic stop and (2) refusing to suppress the handgun seized from his backpack when police did not perform a plain feel test first. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in refusing to suppress the items seized from the backpack: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

2. As to whether the trial court erred in refusing to suppress the handgun: State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("[M]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced."). Even if the issue were preserved, we would affirm. See State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994) ("A warrantless search that precedes a formal arrest is nonetheless valid if the arrest quickly follows." (footnote omitted)).

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

CLERK OF COURT
PICKENS COUNTY-
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

2012 JUL -6

IN THE COURT OF COMMON PLEAS

Marshall Heath Collins, 322086
Full name and prison number (if any) of Applicant.

2012-CP-39-993

v.

State of South Carolina

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 Broad River CI; 4460 Broad River Rd, Cola., SC 29210
2. Name and location of Court which imposed sentence General Sessions, Pickens Cnty., SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 10-GS-39-937 (trafficking >10 grams Meth)
 - (b) 10-GS-39-2142 (poss/weapon, during commission of violent crime)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12-1-10 / 25 yrs
 - (b) 12-1-10 / 5 yrs, concurrent

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x _____
- (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. S.C. Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 6-13-12 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpub. Opin No. 2012-UP-356 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Sixth Amend violation - INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) Fifth & 14th amend. violation - VIOLATION OF DUE PROCESS OF LAW CLAUSES
- (c) ABUSE OF COURT'S DISCRETION: Right to Fair Trial, 6th amend. violation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) (PLEASE SEE ATTACHED PAGES)
- (b) (PLEASE SEE ATTACHED PAGES)
- (c) (PLEASE SEE ATTACHED PAGES)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- 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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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? _____
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. John DeJong, Esq. _____
- ii. Dayne C. Phillips, S.C. Appellate Defense _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial _____
- ii. Direct appeal _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Judgment/conviction Vacated: Reversed & Remanded / Retrial _____
20. Are you now under sentence from any other court that you have not challenged?
no _____

STATE OF SOUTH CAROLINA
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

VERIFICATION

County of Pickens

Marshall H. Collins

2012 JUL -6 P 12: 48

I, Marshall H. Collins, 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.

Marshall H. Collins
Marshall Heath Collins, 322086

SWORN to and subscribed before me this 5th
day of July, 2012.

A Susan H. Frye (L.S.)
Notary Public My Commission Expires

March 5, 2018

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

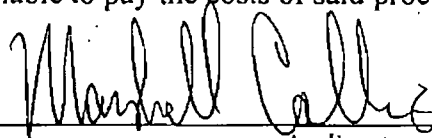
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Marshall H. Collins

2012 JUL -6 P 12:48

I, , 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.


Applicant

Marshall Heath Collins, 322086

SWORN or affirmed to and subscribed before me this

5th day of July, 2012


Notary Public

My Commission Expires: _____ My Commission Expires
March 5, 2018

Attachment Page 1

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Marshall H. Collins v. The State

2012 JUL -6 P. 12: 48

Item #11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) "Sixth Amend violation - INEFFECTIVE ASSISTANCE OF COUNSEL"

The facts which supports this grounds for relief are as follows:

- (i) Trial counsel was ineffective for failure to contemporaneously object to the trial court's refusal to either suppress the items seized from the backpack which was alleged to be in it without first securing a search warrant, or that counsel was ineffective for failing to obtain an actual ruling on the merits of the objection, or to request a curative instruction on the issue. See State v. Southerland, 316 S.C. 377, 383, 447 S.E.2d 862, 8866 (1994),
- (ii) APPELLATE COUNSEL was ineffective for failure to raise, argue and preserve for further review the trial judge's refusal to actually rule on trial counsel's objection regarding the suppression of items seized was ineffective assistance of APPELLATE COUNSEL. See Kimmelman v. Morrison, ___ U.S. ___.

Therefore, to the extent trial and appellate counsel failed to raise and argue the merits of the preceding claims in the first instant acted to deprive applicant of appellate review, then trial and appellate counsels were ineffective. Assuming also that trial and appellate counsel's failures have acted in such a way so as to procedurally bar the matter being raised, then trial and appellate counsel were constitutionally ineffective.

Attachment page 2

Marshall H. Collins v. The State

Item #11. (Continued from Page 1)

(b) "Fifth & 14th amend. violation - VIOLATION OF DUE PROCESS OF LAW CLAUSES"

(i) Applicant alleges as grounds for relief that his Fifth & 14th amendments to the U.S. Constitution's rights to Due Process of Law were violated when the trial judge refused to suppress or render a ruling pertaining to the exclusion of evidence obtained pursuant to an illegal search & seizure.

As the facts are that police had no legitimate grounds to search a backpack when there was no articulated reasons for suspecting he was in possession of a dangerous weapon. See Florida v. Royer, 460 U.S. 491, Minnesota v. Dickerson, 508 U.S. 366, State v. Woodruff, 344 S.C. 537, Terry v. Ohio, 392 U.S. 1, U.S. v. Rusher, 966 F.2d 868.

Attachment page 3

Marshall H. Collins v. The State

Item #11. (Continued from Page 2)

(c) "ABUSE OF COURT'S DISCRETION: Right to a Fair Trial, 6th amend. violation"

(1) Applicant alleges as grounds for relief that the trial judge abused his discretion and denied applicant a fair trial when he refused or neglected to rule on the defense's objection that illegally seized evidence be allowed for the jury to consider, when it was apparent that the items seized were the "fruit of the poisonous tree". See Wong Sun v. U.S.

The facts supporting this claim are that the trial judge refused to suppress items seized from applicant's backpack without first obtaining a search warrant. Further, since there was no reasonable articulated or exigent circumstances justifying the warrantless search, anything discovered as a result thereof should have been suppressed or excluded at trial. Thus, the trial judge abused his discretion when he admitted "poisonous" evidence during the trial for the jury to consider during deliberations: a violation to the right to a Fair Trial.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-39-0993
COUNTY OF PICKENS	)	
	)	
Marshall Heath Collins	)	
S.C.D.C. No. 322086,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed July 6, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the June 2010 term of General Sessions for trafficking methamphetamine (2010-GS-39-0937) and at the November 2010 term for possession of a weapon during commission of a violent crime (2010-GS-39-2142). John W. DeJong, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty.¹ On December 1, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of twenty-five years for trafficking methamphetamine (10-28 grams), third offense and five years

¹ The State also brought to trial indictments for possession with intent to distribute Alprazolam and Oxycodone (2010-GS-39-0938, -0939). After the jury indicated they could not reach a verdict on those two charges, the parties agreed to accept the verdicts on the other two charges only.

for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Collins, Op. No. 2012-UP-356 (S.C. Ct. App. filed June 13, 2012).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to contemporaneously object to the denial of the suppression motion.
 - b. Failed to request a curative instruction.
2. Ineffective assistance of appellate counsel;
 - a. Failed to raise the issue regarding the denial of the suppression motion.
3. Abuse of trial court's discretion.

III.

The Respondent asserts the Applicant's allegation that his trial attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Respondent asserts the Applicant's allegation that his appellate attorney was ineffective is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000). .

V.

The Applicant argues the trial court abused its discretion. The Respondent submits the Applicant has not raised issues that are cognizable in a PCR action. Rather, these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial** or **on appeal**. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised these issues on appeal. The failure to do so has waived these allegations as grounds for relief.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

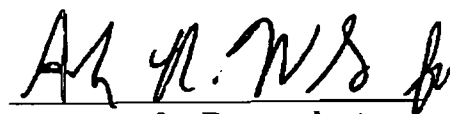
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

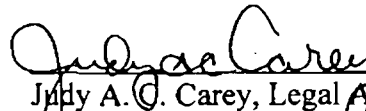
February
~~January~~ 12, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2012-CP-39-0993
	)	
MARSHALL HEATH COLLINS, 322086	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Marshall Heath Collins, 322086
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29212**

DATED this 12th day of February, 2013.


Judy A. Carey, Legal Assistant
For Respondent

IN THE COURT OF COMMON PLEAS

MARSHALL H. COLLINS,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-39-00993

AUGUST 25, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE JAMES R. BARBER, III, JUDGE

APPEARANCES:

JOHN M. MUSSETTO, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Marshall H. Collins Mussetto Ratigan	5	20		
John William DeJong Ratigan Mussetto	24	33		
				PAGE
Certificate of Reporter				38

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

D-1	Letter to Robert L. Newton dated 5/24/10	12	12

COURT'S EXHIBITS

	(NONE)		

1 **AUGUST 25, 2014**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: Are you ready?

5 MS. RATIGAN: Yes, Your Honor. Thank you.

6 May it please the court.

7 This is the case of Marshall Collins versus the
8 State of South Carolina. The Docket Number is 2012-CP-
9 39-0993. Mr. Collins was indicted for trafficking
10 methamphetamines, possession of a weapon during the
11 commission of a violent crime, possession with intent
12 to distribute Alprazolam and possession with intent to
13 distribute Oxycodone. He was represented on these
14 charges by Mr. DeJong. The case was brought to trial
15 back in December of 2010 before Judge Welmaker. I will
16 note that the PWID charges for Alprazolam and
17 Oxycodone, those were -- the jury indicated they could
18 not reach a verdict on those two charges. So the
19 parties agreed to accept the verdicts on the other two
20 charges only. The jury did ultimately find Mr. Collins
21 guilty of both trafficking methamphetamine and
22 possession of a weapon during the commission of a
23 violent crime. Judge Welmaker sentenced him to
24 concurrent terms of twenty-five years for trafficking
25 third and five years for the weapons charge. The case

1 was appealed. The Court of Appeals affirmed his
2 convictions and sentences in June of 2012. This
3 application was timely filed. We're ready to proceed.

4 THE COURT: All right.

5 MR. MUSSETTO: Please the Court, Your Honor.
6 John Mussetto for the Appellant, and I call Mr.
7 Marshall Collins.

8 THE CLERK: Place your left hand on the bible
9 and raise your right hand, please. Do you solemnly
10 swear or affirm the testimony you're about to give in
11 this case will be the truth and the whole truth and
12 nothing but the truth, so help you God?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: State your full name for the
15 record.

16 THE WITNESS: Marshall Heath Collins.

17 THE CLERK: Please be seated.

18 **MARSHALL HEATH COLLINS,**

19 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

20 **DIRECT EXAMINATION**

21 **BY MR. MUSSETTO:**

22 Q. Mr. Collins, good morning.

23 A. Good morning.

24 Q. When were you arrested on these charges?

25 A. It was October the 2nd in 2009.

1 Q. Okay. And at what point did you apply for a
2 public defender?

3 A. I had applied originally for a public defender
4 while I was in the county. I think it was in February
5 of 2010. And while I was in there, I was appointed a
6 public defender by the name of Mr. Newton. While I was
7 in the county, apparently Mr. Newton had relinquished
8 his time with the public defender service. So when I
9 was released in August, I reapplied here at the
10 courthouse on August the 30th, somewhere probably
11 around the beginning of September, and I was appointed
12 Mr. DeJong.

13 Q. So from your arrest date in October of 2009 until
14 the following Septmeber, you had applied for a public
15 defender, but you had never been visited by one?

16 A. Yes, sir.

17 Q. Is that correct?

18 A. Yes. I was never visited by a public defender.

19 Q. Okay. Then at what point did you first either
20 speak with a public defender or one of their
21 investigators?

22 A. I had spoke with an investigator at the LEC
23 during, I'd say February or March. That was the first
24 time I had any contact with anybody from the public
25 defender's office. That was ---

1 Q. Was that when the application was made?

2 A. The first time, yes, sir.

3 Q. Okay.

4 A. And the next time I was called, I come to the
5 public defender's office and applied, paid the money
6 that was supposed to be provided for, and I was called
7 back into the public defender's office October, I want
8 to say, the 19th.

9 Q. And what happened at that meeting?

10 A. At that meeting I was called into Mr. DeJong's
11 office and we went over some bare bone facts of the
12 case, and I provided him my side of the story. And we
13 went over the facts that happened that night, what
14 transpired and just pertinent information dealing with
15 the case.

16 Q. Do you know if Mr. DeJong had received any
17 discovery in your case yet?

18 A. He said he was still working on it at the time.
19 He was waiting on items from discovery to be delivered
20 to him. That's the information that I was -- received
21 from him.

22 Q. And approximately how long did that meeting last?

23 A. That meeting probably lasted fifteen, twenty
24 minutes.

25 Q. At that point was there any idea of when your

1 trial was going to be?

2 A. No, sir.

3 Q. At that point was any plea offer presented to
4 you?

5 A. No, sir. He was still waiting on, I guess, my
6 case file from court -- from Mr. Newton's office, I
7 presume.

8 Q. When was the second time that you met with Mr.
9 DeJong?

10 A. The second time I met with Mr. DeJong was in the
11 earlier part of November. And I want to say it was on
12 maybe a Tuesday or a Wednesday. And it was, it was to
13 go over the discovery that he had received from Mr.
14 Newton's office.

15 Q. Okay. So the early part of December. Do you
16 have an approximately time frame?

17 A. No. It was the early part of November.

18 Q. Excuse me. November. Do you have an approximate
19 time frame of when that occurred in November?

20 A. I want to say the first week of November.

21 Q. Okay. And how long did that meeting go?

22 A. About twenty minutes to the max, maybe thirty
23 minutes. But during this time when we were going over
24 certain aspects of the case and he was asking me
25 questions about my record, in between questions, it

1 kind of seemed like maybe his assistant was nowhere
2 around because there was a mirage of phone calls that
3 come at the time and he was fielding phone calls from
4 the jail.

5 Q. Were you in Mr. DeJong's office?

6 A. Yes, sir.

7 Q. And so during the time that you were meeting with
8 him, he was accepting phone calls during this time?

9 A. Yes, sir.

10 Q. How many time, approximately, was your meeting
11 interrupted with Mr. DeJong?

12 A. I would say at least six to eight times from
13 probably the same person.

14 Q. Okay.

15 A. That's what I gathered from it.

16 Q. Do you feel like his attention was on you during
17 this meeting?

18 A. I didn't think that his attention was directed
19 solely on my behalf at the moment. It seemed like his
20 caseload was overbearing and he was kind of juggling
21 two things at one time.

22 Q. And did he go over the discovery with you then?

23 A. Yes, he did.

24 Q. Did you receive copies of it?

25 A. Yes.

1 Q. At that point were you notified of any court
2 dates?

3 A. He asked me of a plea agreement and he showed me
4 a plea agreement, the one that I had showed -- that I
5 had give you at a meeting. It was a plea agreement
6 that was made out to Mr. Newton. And I think it was
7 made out in May.

8 Q. I'm going to hand you a document. Please review
9 this document. Please tell the court what that
10 document is.

11 A. This document is a plea offer for State versus
12 Marshall Collins. It's addressed to Mr. Newton. It
13 says, I'm willing to make the following proposal to
14 your above-referenced client in order to dispose of
15 these charges by way of a guilty plea.

16 Q. And what was the date of that letter?

17 A. The date is 5/26/2010.

18 Q. Was this letter ever conveyed to you ---

19 A. No, sir.

20 Q. --- before your meeting with Mr. DeJong in
21 November?

22 A. No, sir.

23 Q. And are there charges listed on here that you
24 have absolutely no idea about?

25 A. Yes, sir. There is.

1 Q. For example, let's go down this. What charges
2 did you know that you had and what charges did you not
3 know that you had?

4 A. I didn't know that they was charging me with the
5 child neglect and the legal custodian neglect of a
6 helpless person.

7 Q. Do you have any idea what that charge is about?

8 A. Yes, I do have some aspects of that charge. It
9 was something that me and my current wife was involved
10 in and she was the one that was charged and convicted
11 of this crime.

12 Q. Okay. Do you know -- why is the second page
13 missing of this letter?

14 A. I have no idea. That's why I was kind of, kind
15 of suspect to this whole plea agreement. I can see
16 nobody's signature and there is actually no amount of
17 time on this plea agreement.

18 Q. And Mr. DeJong is the one that gave you this
19 letter?

20 A. Yes.

21 MR. MUSSETTO: Your Honor, at this point I
22 would like to move this in as Applicant's Number 1.

23 MS. RATIGAN: I have no objection, Your
24 Honor.

25 THE COURT: Admitted.

1 (WHEREUPON, Applicant Exhibit Number 1 was marked
2 and admitted into evidence.)

3 Q. Do you know if Mr. DeJong asked the prosecutor if
4 this offer was still in effect?

5 A. When he asked me about this, he asked me why I
6 haven't had any knowledge of this and I told him that,
7 I told him that I never met with Mr. Newton. I didn't
8 even know that he was my public defender at the time.
9 And the reason of this being drawn up in May, I was at
10 the County Stockade at that time, and like I said,
11 nobody ever showed me this plea agreement right here.

12 Q. At that meeting in November with Mr. DeJong, did
13 he go over your specific charges with you and what you
14 were facing?

15 A. He went over my specific charges. The first
16 offense trafficking, he said he was going to try to get
17 it knocked down from fourteen grams to ten grams or
18 more. But it was a first offense. And never in there
19 did he tell me the fact that I was facing a third
20 offense.

21 Q. Okay. We're going to get to that in a minute.
22 Let's talk more about when you first learned of your
23 trial date. Tell the court when that was?

24 A. I received a letter approximately a week before
25 Thanksgiving that gave a court date for December the

1 1st. And when I called Mr. DeJong and asked him about
2 this court date, he said, yes, sir, he said, they'll be
3 picking a jury for your case. And I assumed that that
4 meant we were going to trial.

5 Q. Okay. So did you show up to court on the day you
6 were notified of?

7 A. Yes, sir.

8 Q. And what happened then?

9 A. Whenever I showed up to court, I was sitting in
10 the court lobby and I was presented with a weapons
11 charge of possession of a weapon during the commission
12 of a violent crime. And I thought that struck me kind
13 of odd because I didn't know nothing about it.

14 Q. When you said that you were presented with this
15 charge, how were you presented with the charge?

16 A. It was a direct presentation by a Pickens City
17 Police Officer. He walked up to me and my mother and
18 my father and asked my name. I affirmed my name. And
19 he said, consider yourself served. And I said, well,
20 what is this? He said, this is an additional charge
21 that we will try you on today.

22 Q. So prior to that you had no knowledge that you
23 were going to be on trial for ---

24 A. No, sir, not for no firearm.

25 Q. And at that point, you and Mr. DeJong hadn't

1 talked about that new charge?

2 A. No, sir.

3 Q. So once you learned about that new charge did you
4 and Mr. DeJong have any conversations about that
5 charge?

6 A. I told him about it. And he said that he thought
7 that maybe they was going to try to slip that in the
8 backdoor on us. And I kind of thought it was odd why
9 he wouldn't say that to me earlier, but I just let it
10 be handled the way it was. I think he mentioned that
11 in the record.

12 Q. And when you showed up for court that day, you
13 eventually learned that you would be going to trial
14 that day?

15 A. Yes.

16 Q. And prior to showing up for court that day, did
17 you know that you would be going to trial?

18 A. No, sir.

19 Q. Okay. You thought it might have been a roll call
20 day?

21 A. That's what I was assuming it was, was a roll
22 call day.

23 Q. Okay. At that point had you talked with Mr.
24 DeJong about what witnesses you wanted to bring to
25 trial and what kind of defenses you had to these cases

1 -- or charge?

2 A. Not really. There was -- you know, he went over
3 some of the stuff that was in the discovery and the
4 fact the videotape -- there was no videotape involved.
5 And I kind of stressed the fact that I thought it was a
6 bogus traffic stop from the beginning.

7 Q. After the trial started did you tell Mr. DeJong
8 that you think you might need a continuance to be able
9 to build a defense for the new firearm charge?

10 A. I told him I was not comfortable.

11 Q. Do you know if he made any sort of request to the
12 court to postpone this case now that you have the new
13 charge?

14 A. I think he stressed on the record that he
15 objected to having to try this without proper time to
16 prepare for it. And on the record, I think Mr. Them
17 said that he had supplied him with an email earlier in
18 the month of November, and Mr. DeJong said that he
19 didn't receive said email. And then there was -- I
20 think there was some kind of discussion about somebody
21 signed for the indictment to receive it before it went
22 to the Grand Jury.

23 Q. Okay. What other issues do you have with Mr.
24 DeJong during the trial regarding his ineffective
25 assistance of counsel?

1 A. I think that -- I think there was some points
2 that should have been raised that wasn't. Like --
3 well, I don't know if that was done in the trial.
4 There was actually a suppression hearing that I had
5 problems with.

6 Q. Okay. Let's talk about Mr. DeJong. What issues
7 did you have at the suppression hearing?

8 A. Do you mind if I refer to my notes on it?

9 Q. Please do.

10 A. You'll have to excuse me. I'm not use to these
11 circumstances, so I'd like to be able to read right
12 from this. Trial counsel had rendered ineffective
13 assistance of counsel upon not sufficiently challenging
14 the state to prove in the suppression hearing that
15 probable cause had been established that Officer Blair
16 had reasonable suspicion for the traffic stop. And
17 also, ineffective assistance of counsel upon not
18 challenging the state's case when the state had
19 asserted in trial that the vehicle's license plate was
20 not sufficiently illuminated as described by state
21 statute South Carolina Code 5 -- or 56-5-4530. I felt
22 that challenging the stop was a major leg in my case,
23 and I just don't think -- I don't think the man was
24 prepared for my case.

25 Q. Okay.

1 A. I think that he was handed my case like a hot
2 potato and that's what it was treated like. I'm not
3 discrediting his ability as an attorney. I'm sure he's
4 a fine attorney. But I just think maybe his caseload
5 was overburdening him.

6 Q. Do you have an issue with the suppression
7 hearing. Is there any other issues you have with the
8 trial?

9 A. No, sir.

10 Q. You were eventually found guilty?

11 A. Yes, sir.

12 Q. Now, at what point did you learn that this was
13 going to be an enhancement?

14 A. At the end of the first day when Mr. Them said,
15 obviously we're going to be holding him overnight
16 because he's a severe flight risk and the fact of he's
17 going to be facing twenty-five to thirty years because
18 we are going to be going for the impeachable charges on
19 his record. And I was kind of in question about that.
20 That's why I asked Mr. DeJong. He said they was going
21 to try to enhance my first offense to a third offense.

22 Q. Did Mr. DeJong seem to have any knowledge about
23 that?

24 A. He said to me, he said, I must have missed
25 something somewhere because I was under the offense

1 that this was your first.

2 Q. And when did this conversation occur?

3 A. At the end of day one of our trial.

4 Q. Was this conversation in the courtroom with you?

5 A. Yes, sir.

6 Q. At your table?

7 A. Yes, sir.

8 Q. And what was your response to that?

9 A. I really didn't have a response. That kind of
10 took my breath away, the fact that I was facing twenty-
11 five to thirty years, when originally I was told that
12 it was a charge that would carry anywhere from ten to
13 fifteen years.

14 Q. Okay. And that was at the end of your trial that
15 you first learned about your possible sentencing?

16 A. The end of the first day, yes, sir.

17 Q. Okay. Had your family been made aware of that
18 enhancement?

19 A. No. Absolutely not.

20 Q. Okay. What other issues -- we've touched on the
21 big issues. Are there any other issues that you want
22 the court to know about regarding Mr. DeJong?

23 A. The only other issue I had was the fact that
24 there was a jury member that I had a legal binding
25 agreement with, and I informed him of that. And he
26 said, is it something that the man would probably hold

1 against me? I told him, I couldn't attest to that
2 because it was in a situation where I had owed the guy
3 a sum of money for a while. So I figured any
4 businessman might hold a grudge against me if I owed
5 him some money.

6 Q. And this conversation was held during jury
7 selection?

8 A. Yes, sir.

9 Q. And was that individual picked for the jury?

10 A. Yes, sir.

11 Q. Mr. DeJong knew who that individual was?

12 A. Yes, sir.

13 Q. Okay.

14 A. I have a copy of a legal binding agreement, and I
15 did not bring it today, but I do have that.

16 Q. And you felt that this individual should not have
17 been picked for your jury?

18 A. I had a feeling that if the jury was hung on the
19 other two charges that maybe they -- there was a chance
20 that I might have been hung on the two that I was
21 charged with.

22 Q. And you told Mr. DeJong that you didn't think
23 that this individual should be on the jury?

24 A. Yes.

25 MR. MUSSETTO: No further questions, Your

1 Honor.

2 MS. RATIGAN: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. RATIGAN:

5 Q. So, Mr. Collins, how many meetings did you have
6 in person with Mr. DeJong before the trial? Was it
7 two?

8 A. Two. Yes, ma'am.

9 Q. And did you have any phone calls with him?

10 A. I think I contacted him by phone maybe twice.

11 Q. And you bonded out in about August; is that
12 right?

13 A. Yes, ma'am.

14 Q. So both these meetings happened while you had
15 already -- after you had already bonded out?

16 A. Yes, ma'am.

17 Q. Okay. And when you met with him, you talked
18 about the different charges -- aside from the gun
19 charge, you talked about all the charges with Mr.
20 DeJong?

21 A. Yes, ma'am.

22 Q. Okay. And when he got the discovery materials
23 from the state, did y'all go over them?

24 A. Yes.

25 Q. And you told Mr. DeJong your version of what had

1 happened that night about the stop and the chase?

2 A. Yes, ma'am.

3 Q. And your testimony today is that these two
4 meetings you had with Mr. DeJong were too brief really
5 to discuss the case?

6 A. In my opinion, yes, ma'am.

7 Q. Did you try and make additional appointments to
8 meet with him while you were out on bond?

9 A. No, ma'am, I didn't.

10 Q. And why is that if you felt like you didn't have
11 enough time to talk about your case with him during
12 these two meetings?

13 A. Well, I figured that the man had a pretty busy
14 caseload, and I wasn't going to be a gnat in his hair,
15 so to speak. He told me that he would be in contact
16 with me, so I took that as he was working on my case.
17 Each time that I was at his office, there was a fairly
18 large amount of people waiting to see a public
19 defender. I'm not sure if it was just him or the other
20 ones that are in the office.

21 Q. And I believe you testified you first learned of
22 the trial date in mid-November. Does that sound about
23 right? Right before Thanksgiving?

24 A. Yes, ma'am. It was the week before Thanksgiving.

25 Q. And when you say you learned about this, was it a

1 letter? Was it a bond card? Do you recall?

2 A. It was a letter.

3 Q. Okay. And what did the letter say?

4 A. It said that I had a -- it had a summons for me
5 to appear in court December the 1st.

6 Q. So it was a court date; you just didn't know that
7 was the trial date?

8 A. I didn't know that was a trial date.

9 Q. When you met with Mr. DeJong or you called him,
10 did you ever ask him to engage in plea negotiations
11 with the state?

12 A. He said that he was going to check the status of
13 the proposed plea and see if he could come up with a
14 solution. And whenever I'd ask him about it, he said
15 that he was still waiting to hear from the solicitor's
16 office.

17 Q. Now, when you asked him that, was that during
18 that first meeting or that second meeting?

19 A. The second one.

20 Q. Okay. Did you tell Mr. DeJong you wanted to
21 plead guilty or did you tell him you wanted a trial or
22 ...

23 A. I told him I wanted more information before I
24 done anything.

25 Q. So would it be fair to say the day of trial that

1 you were not pleased with the amount of work that Mr.
2 DeJong would have done on your case?

3 A. Yes, ma'am.

4 Q. Why didn't you tell the judge at trial that you
5 needed a continuance or you wanted to relieve Mr.
6 DeJong or that he had not performed good services for
7 you?

8 A. To be honest with you, ma'am, everything happened
9 so fast, I was scared to death.

10 Q. But you had been in court before; hadn't you?

11 A. Yes, ma'am, I have. Not on trial, though.

12 Q. But you didn't think -- even though you thought
13 Mr. DeJong had not spent enough time with you or with
14 the case, you didn't think it was a good idea to bring
15 it up to the judge?

16 A. I thought that I was already in a motion to where
17 I didn't really have a choice.

18 MS. RATIGAN: That's all I have, Your Honor.

19 THE COURT: Anything?

20 MR. MUSSETTO: No, Your Honor.

21 THE COURT: All right. Thank you, sir. You
22 may step down.

23 MR. MUSSETTO: That's my client's case, Your
24 Honor.

25 THE COURT: All right.

1 MS. RATIGAN: The state would call Mr.
2 DeJong.

3 THE CLERK: Place your left hand on the bible
4 and raise your right hand, please.

5 Do you solemnly swear or affirm the testimony
6 you're about to give in this case is the truth and the
7 whole truth and nothing but the truth, so help you God?

8 THE WITNESS: I will.

9 THE CLERK: Please be seated. State your
10 full name for the record.

11 THE WITNESS: John William DeJong. Last name
12 is spelled D-e-J-o-n-g.

13 JOHN WILLIAM DEJONG,

14 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. RATIGAN:

17 Q. Mr. DeJong, do you recall representing Mr.
18 Collins on these charges?

19 A. I do.

20 Q. And where are you employed?

21 A. Pickens County Public Defender's Office.

22 Q. And were you appointed as a public defender in
23 this case?

24 A. I was.

25 Q. Were you the first attorney appointed to

1 represent Mr. Collins?

2 A. I was not. The appointment came in, and I think
3 Mr. Robert Newton, at that point in time, was one of
4 our contract lawyers, and the case was initially sent
5 to Mr. Newton for representation.

6 Q. But subsequently it ended up back at the Public
7 Defender's Office?

8 A. It did. And again, just looking at my interview
9 sheet -- let me back up a little bit. Back in those
10 days when a case was sent to one of the contract
11 attorneys, we did not open a file. The contract
12 attorneys were managing their own files at that point
13 in time. Looking back at my file, it would appear the
14 first contact we had with Mr. Collins would have been
15 October the 14th of 2010. I say that, indeed this one
16 is in my handwriting. Well, not all of it. Some is in
17 my investigator's handwriting. But I can only believe
18 that's approximately when the case came back from Mr.
19 Newton.

20 Q. Do you know if Mr. Newton had filed for discovery
21 already?

22 A. I don't know the answer to that question, Ms.
23 Ratigan.

24 Q. Did you file for the usual discovery motions?

25 A. I did.

1 Q. Did you receive those materials, to the best of
2 your knowledge, from the state?

3 A. I'm sorry, ma'am?

4 Q. To the best of your knowledge did you receive
5 those materials from the state?

6 A. To the best of my knowledge I did, yes, ma'am.

7 Q. Was Mr. Collins at the jail or was he out on bond
8 when you represented him?

9 A. I believe he was initially in jail when Mr.
10 Newton was appointed to represent him. And then he
11 made bond. And I believe by the time I actually picked
12 up representation, he was out on bond.

13 Q. Does your file reflect how many times you would
14 have had an in-person meeting with Mr. Collins while he
15 was out?

16 A. It would not. And quite candidly, I'm trying to
17 remember the date of this file. It appears, according
18 to the transcript, December the 1st. So if my first
19 meeting was with him on October the 14th, I would have
20 to say in all candor that there were not that many
21 meetings between myself and Mr. Collins. I'm not
22 trying to make excuses, but unfortunately, the case got
23 old while Mr. Newton was handling it, and God rest
24 Peter Them's soul, he could rush into trials at some
25 point.

1 Q. But you did have some meetings with Mr. Collins?

2 A. Oh, yes, ma'am, indeed.

3 Q. Did you review the discovery materials with him?

4 A. I did.

5 Q. Did you review the charges, the elements of the
6 penalties?

7 A. As I recall, I did. The case kind of sticks out
8 in my mind. I think Mr. Collins probably would have
9 made a get-away, but a tree jumped out in front of him.
10 He ran full tilt into a tree and that's when the cops
11 got him.

12 Q. Did Mr. Collins tell you his version of what
13 happened that night?

14 A. Yes, ma'am.

15 Q. And did you discuss with him challenging the
16 probable cause of the stop?

17 A. Yes, ma'am. I think the transcript reflects
18 that.

19 Q. But that was something you would have discussed
20 with Mr. Collins?

21 A. Yes, ma'am.

22 Q. Now, this gun charge, Mr. Collins testified, and
23 the transcript reflects, he was just served with that
24 charge that morning; is that your recollection?

25 A. That is not necessarily my recollection, but

1 according to the transcript and the arguments I made,
2 that would be the case, Ms. Ratigan.

3 Q. Did Mr. Them put you on notice prior to that that
4 he was going to tack that one on at trial?

5 A. That's one of those -- I always consider the
6 Grand Jury to be an independent body; maybe
7 fallaciously, I don't know, but he had told me that he
8 was going to send the case to the Grand Jury as a
9 direct presentment. I believe, again, that is
10 reflected in the transcript. And obviously, he did.
11 Again, the indictment was not served on my client, I
12 think, until the morning that the trial actually
13 started. I believe I raised an objection on that. And
14 nonetheless, in spite of or because of my objection, we
15 moved forward on the charge.

16 Q. Did the discovery materials indicate that a gun
17 had been recovered? If you recall?

18 A. I honestly don't recall, Ms. Ratigan.

19 Q. When you were speaking with Mr. Collins about his
20 charges, did you discuss his prior drug convictions?

21 A. I'm sure we went over his prior record. I have
22 no independent recollection of that.

23 Q. Would you have told Mr. Collins that he was
24 facing a sentence enhancement due to his priors?

25 A. I think I would have.

1 Q. Did you inform Mr. Collins of the date of his
2 trial? Do you recall?

3 A. I think the letter here we're referring to was
4 probably a letter that came from my office. Usually
5 when the trial docket is published and we see that we
6 have a client on the trial docket, we immediately send
7 them a letter with an appointment date and time. I
8 don't specifically know that that said he was scheduled
9 for trial or not.

10 Q. Do you recall Mr. Collins saying that morning --
11 did he express any surprise that his case was going
12 forward that day?

13 A. Yeah, somewhat he did. He was a bit disgruntled,
14 to say the very least.

15 Q. Do you recall when you were picking a jury, Mr.
16 Collins informing you of a potential issue with a
17 juror?

18 A. I do not recall that. I cannot say it did not
19 happen, but I do not recall it.

20 Q. If a client had told you, Juror X, I have a
21 legally binding agreement with him, is that something
22 you would have taken into consideration in jury
23 selection?

24 A. It's something I would have taken into
25 consideration. Well, not to belabor the point, but

1 when we get into jury selection, sometimes, depending
2 on how many strikes we have left or whatever, we might
3 take somebody that's somewhat less desirable simply
4 because of the fear someone more undesirable will come
5 up. But again, I don't recall that.

6 Q. And the record reflects y'all had a suppression
7 hearing prior to the trial?

8 A. We did.

9 Q. Can you think -- obviously this is a Monday
10 morning quarterback question. Can you think of
11 anything else you could have argued differently at the
12 suppression hearing?

13 A. I cannot.

14 MS. RATIGAN: May I approach, Your Honor?

15 THE COURT: You may.

16 Q. Mr. DeJong, I'm handing you what's been admitted
17 as Applicant's 1.

18 A. Yes, ma'am.

19 Q. Do you -- does that letter look familiar?

20 A. It does. Actually I have a copy of that -- well,
21 ---

22 THE COURT: Can I see that?

23 THE WITNESS: Yes, Your Honor. I'm sorry.

24 A. Actually I guess that is the original. But
25 that's fine, I don't need it. You're welcome to it.

1 Q. Is that something you would have received from
2 Mr. Newton? Or how did you end up with that? Do you
3 recall?

4 A. I'm not sure. I suspect Mr. Them re-sent that.
5 I do not have one addressed to me. Sometimes that will
6 happen. Sometimes it won't.

7 Q. Uh-huh (affirmative).

8 A. That apparently was sent to Mr. Newton on May the
9 26th of 2010; looking at the date. And again, I don't
10 know that it makes any difference, but that plea offer
11 actually expired before I ever talked to Mr. Collins.
12 And of course, he only presented the first page.

13 Q. What does the second page say?

14 A. The second page -- excuse me. The second page
15 states, the state will make the following
16 recommendations/negotiations. Plead trafficking, third
17 offense; possession of meth, third offense; and
18 unlawful neglect of a child, for an aggregate of
19 fifteen years at eighty-five percent. Please contact
20 me as soon as possible with your client's response as
21 plea negotiations must be concluded and the guilty plea
22 entered before 6/21/2010 or this and any other offers
23 are automatically withdrawn. If your client does not
24 plead guilty at this date, the cases will be placed on
25 a trial calendar for disposition without further

1 negotiation. Yours very truly, Peter Them, Assistant
2 Solicitor. There is a handwritten notation on that
3 second sheet. The handwriting I'm not sure. It simply
4 says, Collins 8/26/10.

5 Q. Do you recall giving this letter, whenever you
6 received it, do you recall giving it to Mr. Collins?

7 A. Again, I don't know that I gave him that or Mr.
8 Newton gave him that. I feel certain we talked about
9 it. And at that point in time, I feel certain I shared
10 with Mr. Collins that I would get back with Mr. Them to
11 see if that offer still was open or not.

12 Q. And do you recall whether in fact you did call
13 Mr. Them and ask if that was still ---

14 A. I believe I did.

15 Q. And his answer would have been?

16 A. I honestly don't recall his answer, Ms. Ratigan.

17 Q. While you had the case, did you ever engage in
18 any independent plea negotiations with the state?

19 A. I'm sorry?

20 Q. While you had the case, did you ever engage in
21 any independent plea negotiations?

22 A. I can't honestly say we did because of the short
23 duration that I was actually involved in the case.

24 Q. Did Mr. Collins ever tell you that morning of the
25 trial that he wanted a continuance or he wanted new

1 counsel or he was unsatisfied with your representation
2 at that point?

3 A. I do not recall that.

4 Q. If he had asked you to request a continuance is
5 that something you would have done?

6 A. I'm sure I would have.

7 MS. RATIGAN: That's all I have, Your Honor.

8 THE COURT: Anything?

9 MR. MUSSETTO: Yes, Your Honor.

10 **CROSS EXAMINATION**

11 **BY MR. MUSSETTO:**

12 Q. Good morning. Do you feel that you had enough
13 time to prepare Mr. Collins for trial?

14 A. Yes. I think so. It was not -- without trying
15 to take any of the importance away from Mr. Collins
16 case or his trial, it was not a complicated case.

17 Q. During your meetings with Mr. Collins, he said
18 that you were answering phone calls. Do you admit to
19 -- do you admit to that?

20 A. I'm sure I probably did.

21 Q. Okay. So you had approximately two months to
22 prepare Mr. Collins for trial?

23 A. That is correct.

24 Q. As far as the court date goes, you previously
25 said that you did believe that you had the case for a

1 very short duration. Did you ever meet with Mr.

2 Collins about requesting a continuance so you could

3 have more time on this case?

4 A. Don't recall such a meeting.

5 Q. At any point did you go over with Mr. Collins

6 what his specific charge were -- charges were and

7 specifically that he was facing an enhancement should

8 this go to a trial?

9 A. I know we went over the charges. Now, whether or

10 not we went over the enhancement, I cannot sit here and

11 honestly say.

12 Q. When you first learned of the firearms charge, it

13 was the morning of the trial; correct?

14 A. That is correct.

15 Q. And you requested a continuance to the judge?

16 A. No. I tried to keep it out. I did not ask for a

17 continuance.

18 Q. Why didn't you request a continuance if that was

19 a new charge that was being presented that morning?

20 A. Can't honestly answer that. I don't know.

21 Q. In retrospect, do you think you should have

22 requested a continuance?

23 A. I don't know that I would have because, although

24 the firearm obviously carried a five-year penalty, it

25 certainly was not the major problem we were facing.

1 Q. And as far as the plea offer goes, you said that
2 you did speak with the solicitor about the
3 negotiations?

4 A. I feel certain that I did. I have nothing in
5 writing that I did. But again, it is in my file, so I
6 can only believe that the solicitor had forwarded it to
7 me. And I know my practice is if I have an offer, I go
8 over that offer.

9 Q. But you don't recall specifically in this case?

10 A. Have no independent recollection.

11 MR. MUSSETTO: No further questions, Your
12 Honor.

13 MS. RATIGAN: I have no redirect, and the
14 state would rest, Your Honor.

15 THE COURT: Do you have anything in your file
16 to reflect that this was a third offense, minimum
17 twenty-five?

18 THE WITNESS: The only thing I would have on
19 that, Your Honor, just his prior record. If that
20 answers your question. In other words, I would have
21 had an NCIC rap sheet.

22 THE COURT: But you had nothing to indicate
23 what the charges were against him other than a
24 possession of meth?

25 THE WITNESS: Trafficking.

1 THE COURT: Trafficking?

2 THE WITNESS: That's that I was -- or what we
3 were appointed on, was trafficking, Your Honor.

4 THE COURT: So without knowing that it was a
5 third, you wouldn't have discussed the third?

6 THE WITNESS: Probably would not have, other
7 than if we went over his NCIC report.

8 THE COURT: And you say you got this case
9 October the 14th?

10 THE WITNESS: I'm basing that on the date on
11 my interview sheet; yes, sir.

12 THE COURT: He's indicated the 19th, and you
13 believe it was the 14th?

14 THE WITNESS: Yes, sir.

15 THE COURT: And it was tried six weeks later?

16 THE WITNESS: I can share with Your Honor,
17 not to interrupt you, I know I talked to him on the
18 14th, not only as my interview sheet is dated that, but
19 I also went over his rights with him on that day.

20 THE COURT: On the 14th. That would be six
21 weeks later would be December 1st?

22 THE WITNESS: Yes, sir.

23 THE COURT: And when you would have received
24 any notice of a prior plea offer, it would have been
25 substantially after June 1 of 2009, when it expired?

1 THE WITNESS: That's correct, yes, sir.

2 THE COURT: And you have nothing in your file
3 indicating any contact between the prior return and
4 this ---

5 THE WITNESS: No, sir.

6 THE COURT: All right. Thank you. You may
7 step down.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Anything further?

10 MS. RATIGAN: No, Your Honor.

11 THE COURT: I'll take it under advisement.

12 MR. MUSSETTO: Thank you, Your Honor.

13 MS. RATIGAN: Thank you, Your Honor.

14

15 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Pickens County, South Carolina, on the 25th day of
10 August, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 January 10, 2015

16

17

18

19

20



Circuit Court Reporter

2014 OCT 23 PM 2 35

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

MARSHALL HEATH COLLINS
S.C.D.C. NO. 322086,

Applicant,

v.

THE STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. NO. 2012-CP-39-0993

**ORDER GRANTING POST-CONVICTION
RELIEF**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by the Applicant on July 6, 2012. A hearing in this case was held on August 25, 2014, at which Karen C. Ratigan, Esquire, appeared on behalf of the Respondent and John M. Mussetto, Esquire, appeared for the Applicant. The Applicant testified on his own behalf, as did his trial counsel, John DeJong, Esquire. The Court had before it the trial transcript, the application for PCR, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the June 2010 term of the Pickens County Grand Jury for trafficking methamphetamine (2010-GS-39-0937) and at the November 2010 term for possession of a weapon during commission of a violent crime (2010-GS-39-2142). He was represented by John W. DeJong, Esquire.

After the State called the case to trial, the Applicant was found guilty.¹ On December 1, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of

¹ The State also brought to trial indictments for possession with intent to distribute Alprazolam and Oxycodone (2010-GS-39-0938, -0939). After the jury indicated they could not reach a verdict on those two charges, the parties agreed to accept the verdicts on the other two charges only.

twenty-five years for trafficking methamphetamine (10-28 grams), third offense and five years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Collins, Op. No. 2012-UP-356 (S.C. Ct. App. filed June 13, 2012). The remittitur was sent on October 17, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to contemporaneously object to the denial of the suppression motion.
 - b. Failed to request a curative instruction.
2. Ineffective assistance of appellate counsel;
 - a. Failed to raise the issue regarding the denial of the suppression motion.
3. Abuse of trial court's discretion.

At the hearing, the Applicant specifically alleged that Mr. DeJong was ineffective because Mr. DeJong (1) did not have enough time to prepare the Applicant for trial and failed to request a continuance to allow for more preparation time; (2) failed to provide Applicant with a plea offer that was made by the State; (3) failed to request a continuance after the Applicant was served with an indictment on the morning of the trial for the charge of possession of a weapon during commission of a violent crime; (4) never informed the Applicant of the consequences of an "enhanced" third drug conviction; (5) failed to inform the Court about the Applicant's prior business relationship with a juror; and (6) failed to sufficiently challenge the probable cause or the traffic stop at the suppression hearing.

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 and arguments presented at the PCR hearing. This Court has also had the opportunity to observe each witness and to closely pass upon their credibility, and has weighed their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required under S.C. Code Ann. § 17-27-80 (2003).

In an action for PCR, the Applicant bears the burden of proving "his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For an applicant to prevail in his PCR action based on an allegation of ineffective assistance of counsel, he must show (1) his counsel failed to render reasonably effective assistance under prevailing professional norms and (2) his counsel's ineffective performance resulted in prejudice to him. *See Strickland v. Washington*, 466 U.S. 668, 1044 S.Ct. 2052 (1984); *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006).

To show prejudice, the Applicant must show that "but for counsel's errors, there is a reasonable probability the result would have been different." *Glaze v. State*, 366 S.C. 271, 621 S.E.2d 655, 656 (2005). This Court reviews applications must on a case-by-case basis to determine whether prejudice is shown. *Beckett v. State*, 278 S.C. 223, 294 S.E.2d 46 (1982).

The Applicant stated he was arrested in October 2009 and his first attorney was appointed in February 2010. The Applicant stated his first attorney "left" for reasons unknown to the Applicant. The Applicant was appointed another attorney in August or September 2010. The Applicant stated he first met with trial counsel in October 2010.

The Applicant stated they had a total of two meetings and two phone conversations before trial. The Applicant testified that during the first meeting, trial counsel only discussed the Applicant's contact information. The Applicant testified that during the second meeting, trial

counsel was busy taking other client's phone calls.

The Applicant stated at the second meeting in November 2010, trial counsel showed him a plea recommendation letter² that had been sent to his first attorney in May 2010 and stated he had never seen the letter. The plea offer expired on June 21, 2010. Trial counsel testified that he did not make any effort with the State to determine whether new negotiations could be reached. The Applicant also testified that the plea offer contained charges he was not aware of. Trial counsel testified that he subsequently learned that some of those charges were dismissed, other charges were plead to by other defendants and other charges were taken to trial.

The Applicant stated he learned of the trial date in mid-November and did not believe trial counsel was prepared for trial. The Applicant stated he was "directly given" the charge of possession of a weapon during commission of a violent crime on the morning of his trial and had no notice of this charge.

The Applicant stated he did not know the trafficking charge would be enhanced until after the jury returned a guilty verdict. The Applicant stated he told trial counsel that he had a legally binding agreement with one of the jurors. The Applicant stated trial counsel failed to sufficiently challenge the probable cause or the traffic stop at the suppression hearing.

Trial counsel confirmed he was not the first attorney to represent the Applicant and explained the first attorney had been a contract attorney and he was appointed after that attorney was relieved. Trial counsel also confirmed his first contact with the Applicant was on October 14, 2010. Trial counsel testified he did not have many meetings with the Applicant.

Trial counsel confirmed the Applicant was served with the weapons charge the morning of trial but that he was aware the solicitor was going to directly present the indictment.

This Court finds the Applicant has meet his burden of proving trial counsel should have

² Applicant's Exhibit 1.

requested a continuance based on the fact that the Applicant was served with an indictment for possession of a weapon during commission of a violent crime the morning of trial. Neither trial counsel nor the Applicant had sufficient time to prepare a defense for the new charge that carried significant and substantial penalties.

This Court finds the Applicant has demonstrated trial counsel should have requested a continuance in this case. Trial counsel only represented the Applicant for six weeks before the case went to trial. The Applicant faced a significant amount of time in prison and trial counsel only briefly met with the Applicant on two occasions prior to trial. This Court find the Applicant demonstrated he suffered prejudice from the lack of a continuance.

This Court finds the Applicant has meet his burden of proving trial counsel did not properly handle the issue of the expired plea recommendation. Applicant's Exhibit 1 indicates the assistant solicitor sent a plea recommendation to the Applicant's first attorney on May 26, 2010. Trial counsel testified he did not represent the Applicant until October 2010 and that the 15-year recommendation had expired on June 21, 2010. Trial counsel testified he was unsure that he discussed this expired offer with the assistant solicitor prior to trial. The offer had expired by the time trial counsel represented the Applicant. The Applicant testified that he was unaware of many of the charges listed on the plea offer. Additionally, other defendants plead guilty to some of the charges listed on the plea offer and other charges had been dismissed.

The Applicant has demonstrated trial counsel was deficient in this matter. The Applicant said he was unsure about many of the charges contained in the offer and that he "wanted more information" before he could have made an intelligent decision as to whether he should have accepted the offer.

This Court finds the Applicant has failed to meet his burden of proving trial counsel did

not advise him that the trafficking charge would be enhanced to a third offense. The Applicant stated trial counsel never advised him of such. Trial counsel testified, however, that he was certain they would have discussed the enhancement of this charge to a third offense. This Court finds trial counsel would have had the Applicant's prior criminal history, would have been well aware that the charge at issue was a third offense, and would have advised the Applicant.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the inclusion of a certain juror on his jury. While the Applicant stated he told trial counsel a juror had a "legally binding agreement" with him, trial counsel testified he did not recall this. This Court finds trial counsel's testimony is credible. This Court further finds the Applicant has failed to demonstrate he suffered any prejudice in this instance, as he failed to present any evidence that such an agreement even existed. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding a PCR applicant bears the burden of proving the allegations in their application); cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly argue his motion to suppress. The Applicant stated trial counsel failed to raise "points" during the suppression hearing to challenge the probable cause and vehicle stop. Trial counsel testified he would not have argued the motion to suppress any differently. This Court has examined the trial transcript and finds trial counsel made a proper motion to suppress and that a thorough hearing was held on the matter. This Court notes the Applicant failed to demonstrate any deficiency, as he did not articulate what points or issues or arguments trial counsel should

have made. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814. Further the Applicant has failed to demonstrate any additional argument on the suppression motion would have resulted in a different outcome. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

Accordingly, this Court finds the Applicant met the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant presented specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has proved the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has met his burden of proving counsel failed to render reasonably effective assistance.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has established constitutional violations and/or deprivations before or during his trial and sentencing proceedings. Counsel was deficient and the Applicant was prejudiced by counsel's representation. Therefore, this PCR application is granted.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be granted; and
2. That the Applicant be given a new trial.

AND IT IS SO ORDERED this 16th day of October, 2014.



James R. Barber, III
Presiding Judge
Thirteenth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Marshall Heath Collins

AKA:

Race: W Sex: M Age: 35

DOB: [REDACTED]-1975 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Greenville, SC 29601

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 3rd offense

in violation of § 44-53-0375(C)(1)() of the S.C. Code of Laws, bearing CDR Code # 0450-3034-0452

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Them, Peter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

417

INDICTMENT/CASE#: 2010GS3900937

A/W#: 1336042

Date of Offense: 10/2/2009

S.C. Code § 44-53-0375(C)(1)()

CDR Code #: 0450

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375(C)(1)() of the S.C. Code of Laws, bearing CDR Code # 0450-3034-0452

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Them, Peter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (06/2010)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2137

Sentence Date: 12-2-2010

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

COUNTY OF PICKENS)

At a Court of General Sessions, convened on

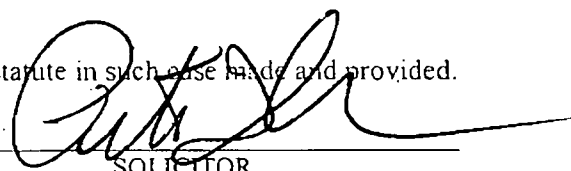
JUN 15 2010

the Grand Jurors of Pickens

County present upon their oath:

That MARSHALL HEATH COLLINS did in Pickens County, on or about the 2nd day of October, 2009, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 15 grams of Methamphetamine. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Josh Blair

Pickens ~~County Sheriff's Office~~ **Police Dept.**

10/2/2009

ARREST WARRANT NUMBER

1336042

ACTION OF GRAND JURY

TRUE BILL

JUN 15 2010

[Signature]
Foreperson of Grand Jury

VERDICT

[Signature]
Foreperson of Petit Jury

Date: 2/20/2010

DOCKET NO. 2010-GS-39-PT 0937

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010 TERM 2010

THE STATE

vs.

MARSHALL HEATH COLLINS

0452

Indictment for

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375(C)(1)(A)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

420COUNTY OF PickensSTATE VS.Marshall Heath CollinsINDICTMENT/CASE#: 2010GS3902142A/W#: 2010GS3902142Date of Offense: 10/2/2009S.C. Code § 16-23-0490CDR Code #: 0549

AKA:

Race: W Sex: M Age: 35DOB: 1975 SS# [REDACTED]Address: [REDACTED]City, State, Zip: PICKENS, SC 29671DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death.in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Peter
Them, Peter5516
SC Bar#

Defendant

John W. DeJoy
Attorney for Defendant001620
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/2/10☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk Cheryl WatsonCourt Reporter: Danette Parks

SCCA/217 (06/2010)

Presiding Judge

Judge Code: 2137Sentence Date: 12-2-2010

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on

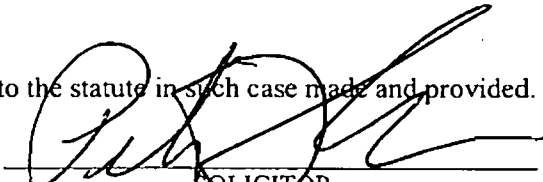
NOV 23 2010

the Grand Jurors of Pickens

County present upon their oath:

That MARSHALL HEATH COLLINS did in Pickens County, on or about the 2nd day of October, 2009, possess or visibly display a pistol during the commission or attempted commission of a violent crime, to wit: Trafficking Methamphetamine. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Josh Blair

Pickens County Sheriff's Office

10/2/2009

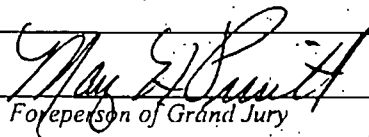
ARREST WARRANT NUMBER

DIRECT PRESENTMENT

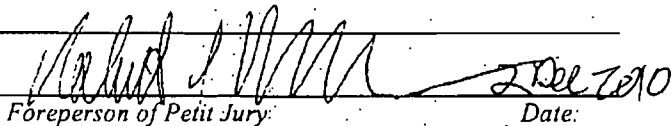
DOB: 08-09-1975

SS# 238-21-6185

TRUE BILL ACTION OF GRAND JURY
Date NOV 23 2010


Foreperson of Grand Jury

VERDICT


Foreperson of Petit Jury Date: 2 Dec 2010

DOCKET NO. 2010-GS-39-PT 2142

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 23 2010 TERM 2010

THE STATE

vs.

MARSHALL HEATH COLLINS

Indictment for

0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

V716

422

ARREST WARRANT

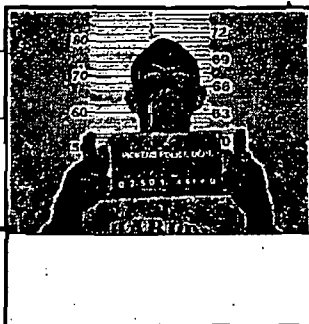
I-336042

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
PICKENS

THE STATE

against



MARSHALL HEATH COLLINS

Address: [REDACTED]
EASLEY SC 29640

Phone: (864) [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5-10 Weight: 155

DL State: SC DL#: [REDACTED]

DOB: [REDACTED]/1975 Agency ORI#: SC0390500

Prosecuting Agency: CITY OF PICKENS

Prosecuting Officer: JOSH BLAIR

Offense: TRAFFICKING METH

Offense Code: 0450

Code/Ordinance Sec. 44-53-0375 (C) (1) (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant MARSHALL HEATH COLLINS
on 10-2-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

PICKENS MUNICIPAL COURT

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

PICKENS

Personally appeared before me the affiant JOSH BLAIR

who

being duly sworn deposes and says that defendant MARSHALL HEATH COLLINS

did within this county and state on 10/02/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of PICKENS)

in the following particulars:

DESCRIPTION OF OFFENSE: 44-53-0375 (C) (1) (A) / TRAFFICKING METH

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID COMMIT THE OFFENSE IN THAT: ON 10/02/09 THE DEFENDANT WAS DRIVING A BLACK 1994 HONDA ACCORD WHEN HE WAS PULLED OVER FOR A TAG LIGHT VIOLATION. DURING THE TRAFFIC STOP THE DEFENDANT GAVE THE OFFICER FALSE ID AND WHEN OFFICER PROCEEDED TO HIS CAR TO CHECK ID DEFENDANT GOT OUT OF CAR AND FLED THE SCENE ON FOOT WITH A GREEN BACKPACK. WHEN DEFENDANT WAS APPREHENDED AND SEARCHED INCIDENT TO ARREST HE WAS WEARING A GREEN EASTPAK BACKPACK WHICH CONTAINED A BLUE NYLON POUCH. INSIDE THIS POUCH CONTAINED A CLEAR BAGGIE OF CRYSTAL LIKE SUBSTANCE BELIEVED TO BE METH AND WEIGHED 15 GRAMS. ALSO FOUND IN BACKPACK WAS A SAID AMOUNT OF MARIJUANA, CONTROLLED SUBSTANCE PILLS, DRUG PARAPHERNALIA, AND A .25 SILVER -BLACK LOADED AUTO PISTOL. THIS INCIDENT DID TAKE PLACE WITHIN THE CITY LIMITS OF PICKENS, S.C. INCIDENT REPORT AND CASE #2009-04723 ARE ON FILE AT PICKENS POLICED DEPARTMENT.

Signature of Affiant

Affiant's Address PO BOX 217
PICKENS SC 29671
Affiant's Telephone (864) 878-6421

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

PICKENS

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 10/02/2009 defendant MARSHALL HEATH COLLINS

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of PICKENS) as set forth below:

DESCRIPTION OF OFFENSE: DRUGS / TRAFFICKING IN METH. OR COCAINE BASE - 10 G OR MORE,
BUT LESS THAN 28 G - 1ST OFFENSE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 10/02/2009

MELANIE DAVIS

Judge Code: CJ/MRD

Judge's Address PICKENS CITY HALL, P. O. BOX 217
PICKENS SC 29671

Judge's Telephone 864-878-6421

Issuing Court:

☐ Magistrate

☒ Municipal

☐ Circuit

ORIGINAL

Case: 2009-04723

OCT 19 2009

423

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/23/12
 OMCOMITA RELEASE DATE SCREEN C051123
 SCDC# > 00322086 LOC: BROAD RIVER
 COLLINS, MARSHALL HEATH SCDC CLASSIFICATION..: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N
 SEXUAL PREDATOR..: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT..: N
 PREA DECISION....:
 CURRENT SENTENCE: 025-00-000 CONSECUTIVE SENTENCE ..: N
 025-00-000 CURRENT SENT START DATE: 11/30/2010
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 11/24/2035 CURRENT EWC ..: 3 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000141 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE..: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 000593 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

4-0 1 Sess-1 167.7.50.33 SCDC1710 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/23/12

C0511

COLLINS, MARSHALL HEATH FBI # 458118WA7 SID# SC00970291 SCDC # 00322086

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 25 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: MO0163A

RACE....:W SEX...:M

PROJ MAXOUT DATE: 11/24/2035

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: FOOD SERVICE AIDE

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: CAFETERIA

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 36 DATE OF BIRTH...: [REDACTED] 75

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START V/NV	CATEGORY
TRAFFICKING IN CRACK COC	25 0 0	PICKENS	11/30/2010 V	4
FIREARMS PROVISION	5 0 0	PICKENS	11/30/2010 N	3

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START V/NV	CATEGORY
MARIJUANA POSSESS	1 0 0	PICKENS	5/23/20 7 N	2
POSS-IMITATION CNTRL SU	1 0 0	PICKENS	4/ 9/20 7 N	2
POSS METH/COC BASE 1ST	1 0 0	PICKENS	4/ 9/20 7 N	2

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
1/31/11	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/ 7/10	KIRKLAND	INCARCERATED	R&E PROCESSING
12/ 7/10	PERRY	INCARCERATED	NEW ADMISSION
11/ 1/ 7	UNK	RELEASE	EXPIRATION OF SENTENCE
10/29/ 7	PICKENS CO	AUTH ABSENCE (AWL)	TO COURT
7/ 2/ 7	ALLENDAL	INCARCERATED	ADMINISTRATIVE
5/31/ 7	KIRKLAND	INCARCERATED	R&E PROCESSING
5/31/ 7	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
FOOD SERVICE AIDE	02/01/11	0/ 0/ 0		YF5
HORTICULTURIST (GRND	08/30/07	11/ 1/ 7	RELEASED/PAROLED	YF5
FOOD SERVICE AIDE	07/03/07	8/29/ 7	INMATE REQUEST	YF5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Marshall Heath Collins

AKA:

Race: W Sex: M Age: 35

DOB: -1975 SS#:

Address:

City, State, Zip: Greenville, SC 29601

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 3rd offense

In violation of § 44-53-0375(C)(1) of the S.C. Code of Laws, bearing CDR Code # 0450-3-034-0452

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ 817-2543The charge is: ☒ Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Them, Peter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Finc:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-386 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Finding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Clerk of Court/Deputy Clerk

Court Reporter:

002/002

Dec 7 2010 09:19am

Dec 7 2010 08:21am

IN THE C AT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3900937

A/W#: 1336042

Date of Offense: 10/2/2009

S.C. Code § : 44-53-0375(C)(1)

CDR Code #: 0450

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSThe charge is: ☒ Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Them, Peter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Finc:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-386 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Finding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Clerk of Court/Deputy Clerk

Court Reporter:

002/002

Dec 7 2010 09:19am

Dec 7 2010 08:21am

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2137

Sentence Date: 12 2 2010

Received:

427

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Marshall Heath Collins

AKA:

Race: W Sex: M Age: 35

DOB: 1975 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: PICKENS, SC 29671

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3902142

A/W#: 2010GS3902142

Date of Offense: 10/2/2009

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] SC Bar# [REDACTED] Defendant [Signature] John W. DeJoy 201620 Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/2/10
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$3.90
TOTAL		\$132.90

Clerk of Court/Deputy Clerk

Court Reporter:

2001004

Dec 7 2010 09:15am

Dec 7 2010 10:27am

Fax:

Presiding Judge

Judge Code: 2137

Sentence Term:

Sentence Date: 12 2 2010

Received: