

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

R. Scott Sprouse, Circuit Court Judge

RECEIVED

MAY 18 2016

SC SUPREME COURT

JEFFREY B. FALLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001935

APPENDIX

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1 THE COURT: All right. I'll give credit for eight
2 days.

3 SOLICITOR McCARTY: And then, Your Honor, incarceration
4 for last night as well. So, I think nine days in total I
5 believe.

6 THE COURT: All right. For my information, can you
7 give me his prior record?

8 SOLICITOR McCARTY: Your Honor, for purposes of this,
9 as was stated earlier, the record that I show conviction for
10 is out of Charlotte Mecklenburg County. It was a 1992
11 conviction, Your Honor, and it does say trafficking in
12 cocaine. Your Honor, I can read the general statute which
13 it alleges from North Carolina. It says 90-95(H)(3).

14 THE COURT: All right.

15 All right. Mr. Falls, the sentence in this case is as
16 required by law, that sentence is 25 years. I'll give you
17 credit for the nine days you've served.

18 Good luck to you, sir.

19 SOLICITOR McCARTY: Thank you, Your Honor.

20 THE COURT: And the fine is \$100,000.

21

22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

23

24

25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Spartanburg County, South Carolina, on the 10th, 11th, and
10 12th day of August, 2011.

11 I do further certify that I am neither of kin, counsel
12 nor interest to any party hereto.

13
14 January 27th, 2012

15
16 
17

18 PAMELA E. GREEN, Court Reporter
19
20
21
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23
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25

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable Roger L. Couch, Presiding Judge

Case No. 2007-GS-42-2111

State of South Carolina,

Respondent,

Jeffrey Bernard Falls,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT OF GENERAL SESSIONS CLEARLY ERR IN DENYING THE APPELLANT'S MOTION TO SUPPRESS?

STATEMENT OF THE CASE

On May 17, 2007, a grand jury sitting in Spartanburg County South Carolina issued an indictment charging the Appellant with one count of trafficking in more than 200 grams, but less than 400 grams, of cocaine powder. Prior to trial, the Appellant filed a motion to suppress evidence discovered as a result of a traffic stop that occurred on February 20, 2007.

The Appellant's jury trial began on August 10, 2011. Prior to the taking of testimony before the jury, the Court conducted an evidentiary hearing on the Appellant's motion to suppress evidence. (R. pgs. 25-190). The Court ultimately denied the motion to suppress, finding that the arresting officer had reasonable suspicion to continue the detention of the Appellant after the traffic stop for purposes of having a canine sweep the vehicle. (R. pgs. 188-189). The Appellant's jury trial resumed the following day. (R. pg. 191).

On August 12, 2011, the Jury returned a verdict of guilty against the Appellant for trafficking cocaine. (R. pg. 499). The Appellant was then sentenced to 25 years imprisonment and a fine of \$100,000. (R. pg. 501). A timely notice of

appeal was served on the Respondent State of South Carolina and the Appellant herewith files his initial brief.

FACTS

On February 20, 2007, at approximately 9:00 p.m., the Appellant was driving a rental car on I-85 in Spartanburg County when he was pulled over by South Carolina Highway Patrol Officer D.G. Wilson. (R. pg. 52). The reason for the traffic stop was given by Officer Wilson that the Appellant had driven over the fog line¹ on several occasions as Officer Wilson was observing him. (R. pg. 53). Specifically, Officer Wilson testified that he observed the Appellant's vehicle failing to maintain its lane as he was driving beside it for approximately two miles. (R. pg. 52-53). Officer Wilson turned on his emergency lights and got behind the Appellant's vehicle at exactly ten seconds before 9:00 pm. (R. pg. 63).

At 9:04 pm, Officer Wilson had the Appellant's paperwork in his hand and was having a discussion with the Appellant at the side of the Appellant's vehicle. (R. pg. 64). Thirty-seven seconds later, at exactly 9:04:37pm, Officer Wilson informed the Appellant that he was going to get a warning. (R. pg. 66). Exactly 4 minutes and 47 seconds had elapsed from the time Officer Wilson initiated the

¹ The white line on the right side of the traffic land between the traffic lane and shoulder of the road.

traffic stop until he informed the Appellant that he was going to receive a warning. (R. pg. 63-66). In his report, Officer Wilson wrote that he had been patrolling the highway at 9:57 pm when he encountered the Appellant. (R. pg. 66). Officer Wilson explained this discrepancy by testifying that his watch could have been off that evening. (R. pg. 66).

Officer Wilson wrote in his report that the Appellant's hands were shaking and he had a nervous look on his face when he handed over his driver's license and rental agreement. (R. pg. 69). Officer Wilson did not smell alcohol or marijuana on the Appellant. (R. pg. 70). After informing the Appellant that he would receive a warning at exactly 9:04:37, Officer Wilson did nothing for a substantial period of time, at least several minutes, in the way of actually writing the warning. (R. pg. 71-72). At 9:07 pm, Officer Wilson was still writing the warning citation. (R. pg. 81). At 9:07:25 pm, Officer Wilson issued the warning citation. (R. pg. 82). Officer Wilson did not hand the warning citation over to the Appellant at that time, 8 minutes into the traffic stop, although he had completed it. (R. pg. 83). There were a total of nine actual words on the citation. (R. pg. 83). At exactly 9:07:27pm, Officer Wilson returned to his cruiser, possibly to get the GPS coordinates of their location, and still had not handed the warning citation to the Appellant. (R. pg. 85). While back at his cruiser, Officer Wilson asked over the

radio about other units in the area. (R. pg. 86). Almost 10 minutes into the stop, at approximately 9:10 pm, Officer Wilson had not finished writing out the warning ticket. (R. pg. 93).

Officer Wilson then told the Appellant to "drive careful and to be safe out there", and put the warning citation into the Appellant's hand. (R. pg. 94). Then Officer Wilson asked the Appellant for permission to search his car. (R. pg. 94). Officer Wilson had his hand on one side of the warning citation, and the Appellant had his hand on the other. (R. pg. 95). When the Appellant declined to give consent to search the vehicle, Officer Wilson took the warning citation back. (R. pg. 95). The Appellant asked if he said no to the search, could he leave. (R. pg. 96). At that point, Officer Wilson informed the Appellant that he had a K-9 unit coming. (R. pg. 96). Officer Wilson testified that he called for backup, which he knew to be a K-9 unit, at 9:07 pm (R. pg. 96-97). Officer Wilson testified that the Appellant was not free to leave. (R. pg. 98).

Officer Wilson then informed the Appellant that he was going to have the K-9 run around the car, and if the dog alerted to the car he would not need the Appellant's permission to search it. (R. pg. 99). This conversation about the dog and the permission to search took place at 9:11 pm. (R. pg. 99). Officer Wilson testified that by this point he had decided he was going to search the Appellant's

car. (R. pg. 99-100). Officer Wilson then testified that he had made up his mind to search the car in the first three or four minutes of the stop. (R. pg. 101). Although Officer Wilson later testified that the totality of the circumstances of the stop and the conversation he had with the Appellant led him to believe something was not right, (R. pg. 101-108). Officer Wilson testified that during the initial minute or so of the traffic stop as he approached the vehicle that he saw the Appellant's head drop from view as if he had leaned over to hid something under the seat. (R. Pg.70, 92, 100, 237 & 276). The video of the traffic stop does not support Officer Wilson's testimony and at no point during the video does the Appellant's head disappear from view or appear to hide something under the seat.

The K-9 unit arrived at 9:13:28 p.m., exactly 13 minutes and 38 seconds after the stop was initiated, and approximately 3 minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (R. pg. 110). The K-9 sniff began at exactly 9:14:18 pm., which was exactly 14 minutes and 28 seconds after the stop was initiated, and approximately four minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (R. pg. 111). The canine alerted to the presence of contraband in the vehicle, and Officer Wilson and the canine officer searched the vehicle and discovered just over 200 grams of

cocaine powder. (R. pg. 111).

The video of the traffic stop recorded on Officer Wilson's dash camera which was introduced into evidence in its entirety as the State's Exhibit #1 provides the most clear and accurate depiction of the facts of the traffic stop and such video is submitted by the Appellant as part of the record in this appeal and is incorporated herein by the Appellant as part of the facts of the case and the Appellant urges the Court to view the video in its entirety. Reference to testimony in the trial transcript highlighting testimony of witnesses will never be as clear and accurate as the depiction of the facts of the traffic stop as shown on Officer Wilson's dash camera video.

ARGUMENT

I. THE COURT OF GENERAL SESSIONS CLEARLY ERRED IN DENYING THE APPELLANT'S MOTION TO SUPPRESS.

In Fourth Amendment cases, the trial court's factual rulings are reviewed under the "clear error" standard. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). "[T]his 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." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). The Appellant submits that his conviction directly resulted from an illegal seizure and vehicle search that was accomplished in violation of the United States Constitution and the Constitution of the State of South Carolina. The Appellant contends that the Spartanburg County Court of General Sessions clearly erred in denying his motion to suppress evidence, which was based on a legitimate violation of his Fourth Amendment rights. The Fourth Amendment to the United States Constitution provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

U.S. Const. amend. IV. "The basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." Michigan v. Tyler, 436 U.S. 499, 504; 98 S.Ct. 1942, 1947 (1978). The reach of this Amendment "extends beyond the paradigmatic entry into a dwelling by a law enforcement officer in search of fruits or instrumentalities of crime. *Id.* The Fourth Amendment:

Protects two types of expectations, one involving 'searches,' the other 'seizures.' A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A 'seizure' of property occurs where there is some meaningful interference with an individual's possessory interests in that property.

United States v. Jacobsen, 466 U.S. 109, 113; 104 S.Ct. 1652, 1660 (1984).

Similarly, the South Carolina Constitution provides protection against unlawful searches and seizures. *See* S.C. Const. art. I, §10. Evidence seized in violation of the Fourth Amendment is excluded in both state and federal court. *See* Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

If evidence is seized illegally by the police, the exclusionary rule will generally apply and any evidence obtained as a result of such search will be barred

from admission at a defendant's trial. The Supreme Court has held that even evidence *indirectly* obtained through an illegal search or an illegal arrest may be excludable "as fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 484-87, 83 S.Ct. 407, 415-17, 9 L.Ed.2d 441 (1963); *see also* State v. Greene, 330 S.C. 551, 559, 499 S.E.2d 817, 821 (Ct. App. 1997) ("The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded."). The *Wong Sun* Court stated:

We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has come at by exploitation of that primary illegality or instead by means sufficiently distinguishable to be purged of primary taint.

Id. at 487-88, 83 S.Ct. at 417-18.

The Supreme Court has often observed that searches and seizures "conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well delineated exceptions." Thompson v. Louisiana, 469 U.S. 17, 20, 105 S. Ct. 409, 410, 83 L. Ed. 2d 246, 250 (1984)(per

curiam)(quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967)); *see also* Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)(Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside judicial process, without prior approval by magistrate or judge, are per se unreasonable, subject only to specifically established exceptions); State v. Woodruff, 344 S.C. 537, 545, 544 S.E.2d 290, 295 (Ct. App. 2001).

One of the circumstances in which a warrantless search will be held valid is under the automobile exception, provided the automobile is readily mobile and the law enforcement officials have probable cause to believe that the vehicle contains contraband. Pennsylvania v. Labron, 518 U.S. 938, 940 (1996). Under the automobile exception to the warrant requirement, a vehicle may be searched without a warrant, so long as officers have probable cause to believe the vehicle contains contraband or evidence of criminal activity. Chambers v. Maroney, 399 U.S. 42, 52 (1970). Under the doctrine of Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968), police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity “may be afoot,” even if the officer lacks probable cause. In Terry, the Court recognized the precarious balance between a

citizen's right to privacy and law enforcement's personal safety interests. Terry, 392 U.S. at 21. However, the Court explained that harassment carried out indiscriminately based on social stereotypes, race, gender or other irrelevant personal characteristics must be discouraged. Therefore the detaining officer must be able to point to specific articulable facts which, when taken together with rational inferences from those facts, reasonably warrant the detention. Id. The Terry Court emphasized that these facts must amount to something more than an "inchoate and unparticularized suspicion or hunch." Id. at 27.

The officer in the instant case had no reasonable facts to warrant the continued detainment of the vehicle beyond the point when he handed the Appellant the warning citation. The K-9 unit arrived at 9:13:28 p.m., exactly 13 minutes and 38 seconds after the stop was initiated, and approximately 3 minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe-out there. (R. pg. 110). The K-9 sniff began at exactly 9:14:18 pm., which was exactly 14 minutes and 28 seconds after the stop was initiated, and approximately four minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (R. pg. 111).

The video, which has been made part of the record in this matter, is very

informative, and the Rial Ranscript does not do it justice. Nothing in the video would lead the viewer to believe that the Appellant was making any movements that would or could indicate that he was attempting to hide something within the vehicle. Likewise, nothing in the video would lead the viewer to believe the Appellant was acting nervously in any way. In fact, the only thing the video leads the viewer to believe is that Officer Wilson unnecessary delayed the traffic stop to insure the K-9 would be able to sweep the vehicle, when there was no actual reason for Officer Wilson to believe a crime was being committed. What the video portrays is a text book case of an officer purposefully delaying a Traffic stop and preventing a driver from leaving the scene after the purpose of the Traffic stop had concluded, so that a K-9 sweep of the vehicle could be conducted in violation of the driver's Fourth Amendment rights.

The video shows that the Traffic stop was initiated at 8:59:33 pm. (Video 20:59:33). The Appellant's head remains in view throughout this part of the video, and there is nothing that would indicate the Appellant was moving around the vehicle like he was concealing something. (Video 20:59:33- 21:01:00). At 9:01, Officer Wilson asks the driver to pull the car farther forward passed a guard rail, so that the stop can be conducted further off the roadway away from Traffic. (Video 21:01:00). At 9:01:28, the vehicle stops exactly where Officer Wilson instructed,

and it sounds like Officer Wilson calls in either a license plate number or driver's license number. (Video 21:01:28). At 9:04, Officer Wilson returns to the passenger side of the vehicle, and notably, the driver's head is in clear view, as it has been for the entire video, and does not appear to move in a way that would indicate the driver is moving around inside the vehicle, again as it has been for the entire video. (Video 21:04:06). About thirty seconds later, the driver exits the vehicle at Officer Wilson's request, and Officer Wilson informs the Appellant that he is writing him a warning. (Video 21:04:30). Notably, the Appellant did not appear nervous at all. (Video 21:04:30). At exactly 9:11, Officer Wilson hands the Appellant the warning citation and simultaneously asks if he can search the Appellant's vehicle, to which the Appellant responds "If I say no can I leave?" (Video 21:11:00). Again, the Appellant does not appear nervous during this exchange, but does clearly appear as if he is being unnecessarily inconvenienced by the officer. (Video 21:11:00). Also during this exchange, Officer Wilson informs the Appellant that he is not free to leave because a K-9 officer is coming to run a dog around the vehicle. (Video 21:11:00-21:11:50). At exactly 9:11 and 50 seconds, Officer Wilson tells the Appellant to "hang on a second I got a K-9 coming". (Video 21:11:50). Almost a minute later, Officer Wilson tells the Appellant "just a second the officer is coming". (Video 21:12:45). A minute and

15 seconds later, the K-9 officer finally arrives on the scene and begins the sweep. (Video 21:14:00).

The officer did not have a basis for believing that the Appellant was engaged in criminal activity even if he appeared nervous, notwithstanding that the video clearly shows the Appellant does not appear nervous. Likewise, the officer did not have a basis for believing that the Appellant was engaged in criminal activity simply because he was driving a rental car, had been to Atlanta, and was suffering from dry mouth (if in fact Officer Wilson could detect such a condition as “dry mouth”). Notably the video does not make it seem as if the Appellant is suffering from dry mouth. Two of these justifications provided by the officer are completely irrelevant. People rent cars and Ravel to and from Atlanta every day. While Atlanta may be a city that is a source of drugs, so is every other city in the country with a population in excess of 5000 residents. The drugs in question were not grown and cultivated in Atlanta. They came from South America. Since these justifications provided by the officer are both red herrings, we must look to the Appellant’s alleged nervousness and the alleged dry mouth that was probably caused by the alleged nervousness. It should be noted that the Appellant contends, and the video makes clear, that the Appellant was not nervous and not suffering from “dry mouth” or “cotton mouth”. Nervousness alone is not sufficient to

support reasonable suspicion of “some other crime.” State v. Pichardo, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005) (citing United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998)).

An automobile stop is considered a seizure of persons, making the Fourth Amendment applicable. Whren v. United States, 517 U.S. 806, 809 116 S.Ct. 1769 (1996). Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose constitutes a seizure of persons within the meaning of the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391 (1970). “An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” Id. at 810. The burden is on the state to demonstrate that the detention was sufficiently limited in scope and duration. Florida v. Royer, 460 U.S. 491 (1983). Of course, it has been held that a drug dog sniff is not a search for Fourth Amendment purposes. United States v. Cortez Foreman, 369 F.3d 776, 781 (4th Cir. 2004). This idea has developed as the canine sniff of the *exterior* of personal property, in and of itself, is “so limited both in the manner in which the information is obtained and in the content of the information revealed” that no search can be deemed to have occurred. United States v. Place, 462 U.S. 696, 707, 77 L.Ed.2d 110, 103 S.Ct. 2637 (1983). Still, the United States Supreme Court has

held that “[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *see also* Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”); *and* Tindall, 388 S.C. at 522, 698 S.E.2d at 205 (2010) (because officer did not gain a reasonable suspicion of criminal activity during the stop to further detain Tindall for questioning, Tindall’s subsequent consent to search the vehicle was held to be invalid as part of the unlawful second detention).

The Appellant submits that there were two detentions that occurred as a result of the Traffic stop in question. The first detention was arguably justified based on the alleged Traffic violation, and the Appellant does not dispute the validity of that first detention in this appeal. However, that first detention concluded when the warning citation was written and handed to the Appellant at approximately 9:10 pm and lasted just over ten minutes. Notwithstanding the fact that the first detention was concluded when the warning ticket was handed to the Appellant at approximately 9:10 p.m., the Appellant contends that even that period of time was excessive for the purpose of Officer Wilson writing a warning citation

that contained only nine words entered on it. In any event, the first detention clearly ended when the warning citation was presented by Officer Wilson to the Appellant. The second detention began when the Officer Wilson asked to search the Appellant's vehicle and jerked the warning citation back from the Appellant and advised him that he was not free to leave. The second detention, which began when the Appellant was handed the warning citation, was unlawful and accomplished for the sole purpose of delaying the Appellant's departure so a canine could be brought in to do a sweep of the vehicle's exterior. This second stop lasted approximately four and a half minutes, which is the time between the Appellant being handed the warning citation and the K-9 being driven in to the scene and brought over to the vehicle to conduct the sweep.

This second detention was illegal, and resulted directly in the discovery of the contraband in the Appellant's vehicle. Since the continued detention of the Appellant for four and half minutes to accomplish the K-9 sweep was unlawful, and was undertaken for the sole purpose of sweeping the car with a canine without probable cause to believe a crime was being committed, any subsequent search of the vehicle was also illegal and in violation of the Fourth Amendment to the United States Constitution and the parallel provision of the South Carolina Constitution.

The officer who issued the Appellant a warning citation delayed the completion of that citation for as long as possible in order to give the canine unit time to arrive on the scene. (R. pgs. 70-76, 80-88, 92-95). Not only did he take ten minutes to write a warning citation that contained less than ten words, he delayed the Appellant's departure an additional four and a half minutes so the K-9 sweep of the Appellant's vehicle could be accomplished. When his attempts to delay the Appellant's departure by slowly filling out the warning citation proved insufficient to allow the canine unit to arrive, he handed the Appellant the citation and simultaneously asked the Appellant for consent to search the vehicle. (R. pgs. 95-96). When the Appellant failed to affirmatively give consent to search, the officer pulled the warning citation back from the Appellant, and detained him an additional four and a half minutes until the canine unit arrived and performed its sweep. (R. pgs. 95-99, 108-09).

There cannot be a more clear case of an unreasonably prolonged or extended Traffic stop for purposes of conducting a canine sweep than this one. The K-9 unit arrived at 9:13:28 p.m., exactly 13 minutes and 38 seconds after the stop was initiated, and approximately 3 minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (R. pg. 110). The K-9 sniff began at exactly 9:14:18 pm., which was exactly 14 minutes

and 28 seconds after the stop was initiated, and approximately four minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (R. pg. 111). The officer did not snatch the citation back from the Appellant and prolong the roadside detention until it became clear that the Appellant would not consent to a search and the canine unit would not arrive in time to perform a sweep of the vehicle before the Appellant lawfully left the scene. Furthermore, the officer had not yet developed a reasonable suspicion or probable cause to believe that contraband was in the car or that the Appellant was in the process of committing a crime. Such suspicion must be supported by some minimal level of objective justification. United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989).

“The moment at which a Traffic stop concludes is often a difficult legal question, not readily discernible by a layperson. It is not sound to categorically impute to all drivers the constructive knowledge as to the precise moment at which, objectively, an initially lawful Traffic stop terminates, i.e., the time at which the driver may depart.” State v. Williams, 351 S.C. 591, 601, 571 S.E.2d 703, 709 (Ct. App. 2002)(quoting Ferris v. State, 355 Md. 356, 735 A.2d 491, 503 (Md. 1999)). The Traffic stop “ends” when the “purpose” of the stop has ended. See State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009). The issuance

of the citation and return of driver's documentation are factors the court should consider. Id.; *see also* State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011) (holding initial stop ended when the officer issued the ticket); Tindall, 388 S.C. 518, 698 S.E.2d 203 (holding the initial stop ended when the officer had finished running the registration and informed the occupant he would receive a ticket). In this case, the Appellant was told he would receive a warning citation 4 minutes and 37 seconds after the stop was initiated. (R. pg. 66). He was then detained an additional ten minutes by the police so that a K-9 nose could be brought within smelling distance of his vehicle. (R. pg. 111). He was asked for consent to search the vehicle and clearly indicated he would rather leave than have to stay at the scene of the Traffic stop any longer. (R. pg. 96).

Extending the Traffic stop for further questioning or other investigation beyond that tangentially related to the initial stop is permitted in two situations: "(1) the officer may detain the driver for questioning unrelated to the initial stop if he has an objectively reasonable and articulated suspicion illegal activity has occurred or is occurring or (2) the initial detention has become a consensual encounter." Provet, 391 S.C. at 494, 706 S.E.2d at 516 (citing Pichardo, 367 S.C. at 99, 623 S.E.2d at 848). Neither of these situations occurred during the Appellant's Traffic stop. The officer was operating on nothing more than a mere

hunch or suspicion and there was not an objective justification for detaining the Appellant longer for the sole purpose of accomplishing the dog-sniff. Therefore, applying the totality of the circumstances analysis, the evidence discovered should be suppressed. Here, there was no evidence or any indications, whatsoever, of any observations by the officer made during the stop that would have provided a basis for a reasonable articulable suspicion.

In State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011), this Court of Appeals held that the continued detainment of a vehicle for purposes of a canine sniff was justified because the officer had reasonable suspicion that a crime was being committed. However, the officer in that case had many more reasons to be suspicious of Mr. Wallace. Id. at 55, 707 S.E.2d at 455. Like the Appellant in this case, Wallace was Raveling from Atlanta and appeared nervous during the stop. Id. That is where the similarities between the Appellant's case and that of State v. Wallace end. Wallace also: (1) drove erratically when pulling over, (2) fumbled with his paperwork for an excessive amount of time, (3) had a passenger that sweated on a cool day who stared straight ahead and refused to acknowledge the officer's presence all while appearing visibly nervous, (4) gave a different account of their trip than his passenger, (5) changed his story about where he was and for how long, and (6) was Raveling with another vehicle that appeared to be acting as

a “decoy” vehicle. Id. There can be little doubt that the officer in Wallace had reasonable suspicion to extend the stop for a canine sniff. The same cannot be said about the extension of the Appellant’s Traffic stop.

The officer involved in the Appellant’s Traffic stop had returned the Appellant’s documentation and handed him his citation. Clearly the Traffic stop ended at that point. The Traffic stop then was extended and developed into a second detainment when the Appellant declined to consent to a search. The Appellant, like a reasonable person, did not and could not have felt free to leave at that point, because the officer specifically indicated he was not. When the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen, we may conclude that a seizure has occurred. State v. Rodriguez, 323 S.C. 484, 491, 476 S.E.2d 161 (S.C. App. 1996) (citing Terry, 392 U.S. at 19 n. 16).

Since the officer in this case prolonged the detainment of the Appellant beyond the time necessary to issue the warning citation, and indeed beyond the time it actually took to issue the citation, and did so without first developing reasonable suspicion, the evidence found as a result of the subsequent dog sniff should have been suppressed. As was noted by the Sixth Circuit in United States v. Richardson, 385 F.3d 625, 631 (6th Cir. 2004), the temptation “to let the end

justify the means” must be resisted, even though drugs were ultimately found in this case. Evidence which was discovered as a result of the extended Traffic stop, second detainment for a canine sweep, and impermissible search of the Appellant’s vehicle, should have been suppressed as fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. at 487-488.

For the foregoing reasons, the Appellant submits that the evidence obtained as a result of a search of his vehicle should have been suppressed as having been obtained in violation of the Fourth Amendment to the United States Constitution and the Constitution of the State of South Carolina. In denying his motion to suppress, the Spartanburg County Court of General Sessions erred, resulting in great prejudice to the Appellant. This error affected the Appellant’s substantial Fourth Amendment rights. This in turn certainly affected the fairness and integrity of the judicial proceedings, as well as the public reputation thereof, as the courts must not permit such violations of individuals’ constitutional rights. Therefore, the Appellant respectfully requests that this Court vacate the convictions which directly resulted from this violation. Without the illegal search of his vehicle, there is no evidence to uphold the conviction. Without the illegal second detainment and the illegal search of the vehicle that followed, the Appellant would not have been convicted.

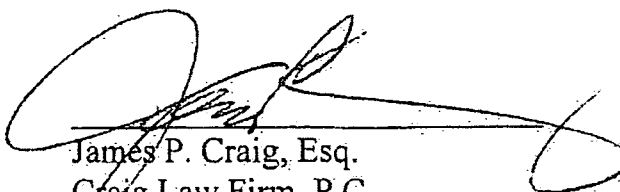
CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Court of General Sessions, and remand this matter for further proceedings.

Respectfully submitted:

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April 19, 2013



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2007-CS-42-02111

State of South Carolina

Respondent,

v.

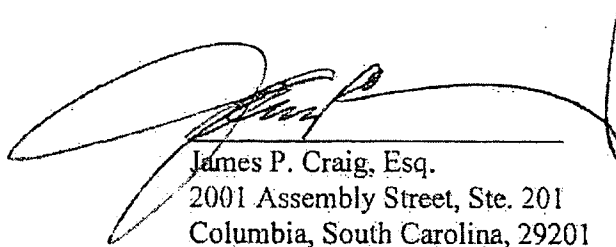
Jeffrey Bernard Falls,

Appellant.

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CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Appellate on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 19, 2013, addressed to its attorney of record, David Spenser, Esq., P.O. Box 11549, Columbia, South Carolina 29211.



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April 19, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BERNARD FALLS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in denying Appellant's motion to suppress and the issue is not preserved for review as Appellant did not renew the objection when the narcotics were admitted into evidence before the jury.

STATEMENT OF THE CASE

Appellant Falls was indicted for trafficking between 200 and 400 grams of cocaine. The matter was called to trial on August 10, 2011. The Honorable Roger L. Couch heard Falls' *in limine* motion to exclude the seized cocaine and found the cocaine admissible. Falls was then convicted as charged by a jury on August 12, 2011. Judge Couch sentenced Falls to twenty-five years imprisonment and a \$100,000 fine.

STATEMENT OF FACTS

Sargent Darren Wilson was on patrol on Interstate 85 in Spartanburg County at about 9 p.m. on February 20, 2007, when he observed a vehicle driven by Appellant Falls cross the fog line several times. The vehicle's right side would completely cross the line. Wilson testified at the suppression motion that he considered this a violation of S.C. Code § 56-1-1900. Falls was also driving slowly. Wilson initiated a stop out of concern that the driver was fatigued, intoxicated, or suffering from a medical condition. Falls pulled his vehicle over so that the vehicle was positioned on the fog line, which required Wilson to go over to the passenger side as opposed to the driver side window of the vehicle. Wilson testified that through his training, he was aware that this was a common tactic known as white-lining which is done to keep law enforcement from that side of the vehicle. Wilson would not have been able to walk on the driver's side of the stopped vehicle without stepping into traffic. Falls was wearing a work uniform. Falls initially indicated that he was coming home from work, but then indicated that he was returning from Atlanta.¹ The vehicle was a rental vehicle and Wilson considered it unusually clean and noted there were no items in the vehicle. The vehicle did not look lived-in, even though Falls had the vehicle for almost seven days. There was no luggage in the vehicle. Wilson testified drug traffickers commonly use rental vehicles so their own vehicles are not forfeited. Falls' hands shook uncontrollably when he handed his driver's license and the rental agreement to Wilson. Wilson testified that he asked about

¹ Wilson testified "when I asked him how long he stayed at Atlanta, he looked away from me for a brief moment and paused and then he looked back and then he stated, stated for a few hours." ROA. p. 239, lines 21-24.

and collected the rental agreement to determine whether the vehicle might be overdue. Wilson found Falls more nervous than is typical for a traffic stop. ROA. p. 76; pp. 115-116; p. 119; pp. 225-236; p. 269.

The stop was initiated at 2059:50 (8:59:50 p.m.). ROA. p. 63; State's Exhibit #1 (Video, on file with the Court).

Wilson requested Falls move his vehicle further up the road past the guardrail. Falls repositioned his vehicle accordingly, and Wilson pulled up behind him. Wilson explained that this was for safety reasons, as it was a bad location to pull over because of the guard rail. Wilson wanted more open space. Falls' vehicle came to rest this second time at about 2101:30. ROA. pp 234-235; State's Exhibit #1.

Wilson called in the license number to the dispatcher at 2101:37. ROA. pp. 234-235. Wilson waited a couple of minutes in the patrol car for feedback, but did not receive it. ROA. p. 275. Wilson would not receive a response back during the stop. ROA. p. 258. This may be due to Wilson missing a digit when calling in the license number. ROA. pp. 281-283.

Wilson returned to Falls' vehicle, and as he reached the side window, he saw Falls lean forward and place something under his car seat.² Wilson then called English, his partner, for backup at 2104:10. English is also a K-9 handler. Wilson asked Falls to step out of his vehicle at 2104:29, because he wanted to get Falls away from whatever he might have put under the car seat. Wilson advised Falls he was going to give a warning

² Falls argues in his brief that this is not visible during the stop, but Wilson was viewing Falls from a different vantage point than the camera, which was positioned directly behind Falls' vehicle.

at 2104:37. He did this to try and put Falls at ease until English arrived; Falls was already getting nervous and typically individuals start to calm down when they are advised they will receive only a warning. Instead, Falls started to engage in nervous chatter³, an indicator of nervousness. ROA. pp. 119-121; p. 237; p. 248.

Falls seemed to ramble and change topics, which indicated to Wilson he was trying to distract Wilson and take over the traffic stop. Falls indicated that he drove down to Atlanta, visited his cousin for only a couple of hours to plan a birthday party, and then started back to Charlotte.⁴ By Wilson's estimation, Falls would have traveled four hours to Atlanta, stay for only two hours, and be three hours into the return trip. Wilson testified that the short turnaround for such a lengthy trip was suspicious. Further, Wilson felt that "it appeared that he was trying to put . . . a story together as we were talking" whereas a normal motorist would know what they had just been doing.⁵ Falls indicated that he arrived, shot the breeze with his cousin, they talked with some girls, and he started back to Charlotte. Falls hesitated when asked how long he had been in Atlanta. Wilson testified Atlanta is a source city for narcotics, with large amounts of drugs coming into and out of the city. Wilson asked Falls his cousin's name, Falls initially ignored the direct question, hesitated, and said "Black". He again hesitated

³ Wilson explained: "For people to just come out and just start, you know, telling their life story so to speak or just start talking without being asked a question, being overly friend[ly], trying to take control of the traffic stop" was in indicator of nervousness. ROA. p. 121, lines 17-23.

⁴ Wilson testified that he was seeing how long Falls was on the road that day in determining whether Falls was tired. ROA. p. 69, lines 3-10.

⁵ ROA. 122, lines 14-15.

when asked the cousin's first name, and replied "Antwan". Wilson felt Falls was searching for a fictitious name to provide Wilson. Wilson asked Falls where his cousin lived and Falls did not seem to know. Wilson asked Falls where he met his cousin and Falls pondered the question a moment before replying exit 240, "he believes." Wilson found it suspicious that Falls did not know where his cousin lived. Further, Falls claimed he had to call his cousin to find where to meet him. In Wilson's experience, not arranging the meeting place until the courier is close to arrival is common for drug transactions. ROA. p. 113; pp. 121-122; pp. 133-37; pp. 238-244; pp. 253-54. Wilson felt Falls was being dishonest with him. Wilson testified as follows: ". . . again I believe that he was creating a story as we went along, he just trying to give me an answer that would fit the question that I was asking him and I could see his nervousness continue to grow." ROA. p. 254, lines 13-16. Wilson further noted: "Again, having the look of nervousness in his face. I could visibly see that he was nervous and at one point here he became unsteady on his feet and had to lean on my vehicle." ROA. p. 254, lines 21-24.

Wilson indicated to Falls that he was going to give him a warning ticket at 2105. Falls did not ask anything about the warning, but instead engaged Wilson "about something that wasn't asked." Wilson took several minutes to write and explain the warning ticket because he was engaged in conversation with Falls and had difficulty understanding him over the noise. Wilson was trying to give Falls his attention. They were having trouble understanding each other. Wilson had to ask Falls to repeat himself several times. ROA. p. 82; pp. 93-95; p. 241; p. 255; p. 308 (quote at p. 255, lines

11-21).

Wilson observed Falls develop cotton-mouth and Falls licked his lips as he kept looking back at his vehicle. Wilson testified "his mouth [was] constantly sticking together and trembling, having a nervous look."⁶ He was unsteady on his feet, having to lean against the patrol car. Falls asked Wilson for water, something which never happened to Wilson before during a stop. Falls wanted to go back to his vehicle for his hat. Wilson called for backup again at 21:08.⁷ ROA. pp. 105-106; p. 128-129; p. 132; pp. 245-247.

Based on his conversations with Falls, Wilson formed the firm belief that Falls was engaged in criminal activity. When Wilson asked for consent to search, Falls stuttered and said he had not been anywhere. Falls asked if he said no, would he be free to leave. Wilson told Falls that a drug dog was coming. Falls was not free to leave at that point. ROA. p. 93-98; p. 259.

During the State's examination in the motion *in limine*, Wilson explained how Falls' travel plans deviated from normal innocent travel:

. . . [F]irst of all, with the normal motoring public doesn't just make a turnaround trip, and the fact he was going to visit his cousin, had to call him to meet him, didn't know exactly where he lived. Once he got to Atlanta he had called and find someone to meet. Through my training and experience, we see that commonly with drug, drug transactions.

⁶ Direct quote at ROA. p. 105, line 24 - p. 106, line 2.

⁷ Wilson testified he was not going to let Falls go back to his car for safety reasons: ". . . I've already seen him make a movement under the seat and I was not gonna allow him to return to the vehicle without me clearing the vehicle before he reentered." ROA. p. 247, lines 14-25.

ROA. p. 113, lines 15-21.

Wilson explained the warning citation, then about two and a half minutes later, at 2113:32, Trooper English arrived with a drug dog. ROA. p. 260. When walked around the vehicle, the dog promptly alerted at the front passenger side door. State's Exhibit #1. At 2118:52, English found cocaine in a plastic bag. ROA. pp. 262-263. The cocaine recovered weighed 254 grams. ROA. p. 216.

Wilson agreed with the solicitor that from the time of the initial stop to when Wilson explained the traffic ticket was about ten minutes and fifty-three seconds. Wilson testified that ten minutes was within the average length of a normal traffic stop for him. This time frame included the time taken to reposition the vehicles, the length of time Wilson waited for a result of the license check, and the conversation in which Wilson needed to ask Falls to repeat several of his answers. ROA. pp. 135-139. An average traffic stop, without anything else unusual, typically takes five to seven minutes depending on the speed of dispatch. ROA. p. 136, lines 5-15.

Sargent Wilson testified to being with the South Carolina Highway Patrol for nine years and was a supervisor on the Aggressive Criminal Enforcement Team. He received training and attended seminars throughout the United States, including training in the area of interdiction, trends in the trafficking of illegal drugs and contraband, how narcotics are concealed and also interviewing techniques. Wilson was awarded trooper of the Year in the State of South Carolina in 2003 and Trooper of the Year for the U.S. and Canada in 2004. He estimates he has made thousands of traffic stops in the past nine years.

ROA. pp. 220-223.

ARGUMENT

The trial court did not err in denying Appellant's motion to suppress and the issue is not preserved for review as Appellant did not renew the objection when the narcotics were admitted into evidence before the jury.

Appellant Falls complains that the trial court erred in denying the motion to suppress the seized narcotics, arguing that Falls was detained beyond the time necessary to complete the original purpose of the stop.⁸ Falls argues that the time for Sargent Wilson to complete the warning ticket was excessive at ten minutes, and that once he completed the warning ticket, he engaged Falls in a second detention that was unlawful. However, Sargent Wilson saw Falls appear to place something under the seat about two and half minutes after Falls repositioned his vehicle and for safety purposes, was waiting for back up to arrive. Further, Falls' suspicious conduct led Wilson to find reasonable suspicion of criminal activity, justifying continued detention until a drug dog arrived. Finally, the issue is not preserved for review, as Falls did not renew his motion to suppress the narcotics after the trial court made an *in limine* ruling that found the narcotics admissible.

The issue should not be reviewed by this Court because Falls did not renew his objection when the narcotics were admitted into evidence at trial – the defense indicated it had no objection to the contraband being admitted into evidence. See ROA. p. 266.

⁸ Falls does not contest the validity of initiating the traffic stop. Brief of Appellant p. 16.

A ruling *in limine* is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion *in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary, and is subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). An *in limine* motion to suppress drugs must be renewed at the time drugs are admitted into evidence where court's ruling was not obtained immediately prior to admission. State v. King, 349 S.C. 142, 149-50, 561 S.E.2d 640, 643-44 (Ct. App. 2002). In the instant case, since Falls failed to renew his objection, and instead indicated he had no objection to the narcotics, the issue is not preserved for review.

Further, the trial court's ruling was not erroneous. In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

In Fourth Amendment search and seizure cases, the appellate court is limited to

determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). The appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. However, "[t]he 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, 553-554 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, a traffic stop is reasonable *per*

se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002). The reasonableness of a stop or detention “is measured in objective terms by examining the totality of the circumstances.” Ohio v. Robinette, 519 U.S. 33, 39 (1996).

Once a lawful traffic stop is initiated, an officer may order the driver out of the vehicle and “may request a driver’s license and vehicle registration, run a computer check, and issue a citation.” Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); See United States v. Allegree, 175 F.3d 648, 650 (8th Cir. 1999) (“a reasonable investigation following a justifiable traffic stop may include asking for the driver’s license and registration, asking the driver to sit in the patrol car, and asking about the driver’s destination and purpose”). Such an investigatory stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848.

The Fourth Circuit Court of Appeals recently opined as follows:

While conducting the tasks associated with a traffic stop, a police officer’s questions or actions need not be solely and exclusively focused on the purpose of that detention. . . . Rather, a police officer may ask questions unrelated to the purpose of the stop, provided that the unrelated questioning does not extend the encounter beyond the period reasonably necessary to effectuate the purposes of the lawful detention.

United States v. Digiovanni, 650 F.3d 498, 507 (4th Cir. 2011) (internal quotations and citation omitted).

Even if a traffic stop is initially lawful, the detention “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v.

Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). But, further detention for questioning subsequent to the conclusion of the purpose for the initial stop is not automatically unconstitutional. Pichardo, 367 S.C. at 98-99, 623 S.E.2d at 847-48. “An officer’s inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.” Arizona v. Johnson, 555 U.S. 323 (2009). Continued questioning beyond the scope of the initial traffic stop is lawful and permissible if: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848.

Reasonable suspicion consists of “ ‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). The reasonable suspicion standard “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. . . .” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). “Reasonable suspicion is more than a general hunch but less than what is required for probable cause.” State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (“Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.”).

In order for an officer to have reasonable suspicion regarding the presence of illegal drugs, the officer is required to have a particularized and objective basis arising from the totality of the circumstances that would lead an individual to suspect drugs are located in a lawfully stopped vehicle. State v. Banda, 371 S.C. 245, 254, n. 4, 639 S.E.2d 36, 41 (2006); *see, e.g.*, United States v. Sokolow, 490 U.S. 1, 9 (1989) (finding factors, which might be innocent by themselves, can equate to reasonable suspicion when considered as a whole).

“In applying the concept of reasonable suspicion to the various facts of the case, [i]t is the entire mosaic that counts not single tiles.” State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011) (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)); *see also* United States v. Branch, 537 F.3d 328 (4th Cir. 2008) (judicial review of evidence offered to demonstrate reasonable suspicion must be commonsensical, focus on the evidence as a whole, and be cognizant of both context and the particular experience of police officers).

Factors consistent with innocent travel can give rise to reasonable suspicion of criminal activity when considered together and in context. Sokolow, 490 U.S. at 9. While individual factors standing alone may be insufficient to establish reasonable suspicion, in concert they may raise more than a simple hunch that criminal activity is afoot. United States v. Arvizu, 534 U.S. 266, 277 (2002) (“A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct”); Branch, 537 F.3d at 339; United States v. McCoy, 513 F.3d 405 (4th Cir. 2008); United States v. Foreman, 369 F.3d 776, 785 (4th Cir. 2004). The Fourth Circuit recently noted

the following:

... But just as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion. Indeed, it is often noted that the existence of reasonable suspicion is a case-specific inquiry, based on the totality of circumstances. Thus, each factor contributing to reasonable suspicion might be consistent with innocent travel but when taken together, might give rise to reasonable suspicion.

United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (internal quotations and citations omitted). In State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011), this Court noted: "the combination of the commonplace items (i.e., numerous air fresheners, fast food bags, and several receipts) together with the surrounding circumstances (i.e., traveling two days without any luggage and inconsistent stories about where he was coming from and going to) eliminate a substantial portion of innocent travelers." Id., 391 at 505, 706 S.E.2d at 519.

"Courts are not remiss in crediting the practical experience of officers who observe on a daily basis what transpires on the street." Foreman, 369 F.3d at 782 (quoting United States v. Lender, 985 F.2d 151, 154 (4th Cir.1993)).

In the instant case, Wilson, an experienced and highly successful patrolman, articulated a number of factors which led Wilson to formulate reasonable suspicion of criminal activity: (1) Falls parked the vehicle on the fog line preventing Falls from gaining access to the driver side of the vehicle; (2) Falls originally claimed to have just left work, but then said he was coming from Atlanta; (3) the car was unusually clean and barren of any items including luggage; (4) Falls was driving a rental vehicle, which

Wilson testified was common for traffickers because they do not want to risk their own vehicles being seized by law enforcement; (5) Falls' hands shook uncontrollably as he handed Wilson the rental agreement and driver's license; (6) Wilson observed Falls move forward as if placing something under the car seat; (7) Falls would ramble, discuss things Wilson did not ask about, and change topics, indicating to Wilson an attempt to distract Wilson or control the stop; (8) Falls indicated he drove from Charlotte to Atlanta and stayed only two hours before returning – Wilson found the short turn around time highly suspicious and not well explained; (9) Falls routinely hesitated when asked questions, appearing to make items up as he went along; (10) Atlanta is a major drug hub; (11) Falls appeared to give a fictitious name for the cousin he was allegedly visiting in Atlanta; (12) Falls did not know where his cousin lived; (13) Falls did not seem to remember where he met his cousin during the visit; (14) Falls had to call when he arrived in Atlanta to find where to meet his cousin, which Wilson testified was a common method of transacting narcotics; (15) Falls was unsteady on his feet and had an extremely nervous look on his face; (16) Falls had dry mouth or cotton mouth, licked his lips nervously while looking back at his vehicle, and asked for water; (17) Falls repeatedly attempted to return to his vehicle by asking to retrieve a hat.

In Foreman, the Fourth Circuit reversed the district court's suppression of evidence based on a lack of reasonable suspicion to perform a drug dog sniff. Foreman found the following factors supported reasonable suspicion: (1) Foreman explained he traveled from Norfolk, Virginia to New York City (a major drug source) and back in a single day to visit a brother purportedly evicted; (2) Foreman had a tense position while

driving; (3) Foreman displayed physical signs of extreme nervousness throughout the stop; (4) there were multiple air fresheners hung from the rearview mirror; and (5) in the officer's experience, the highway had become a frequented corridor for illegal narcotics from New York City and other northern points to the Tidewater area of Southeastern Virginia. Id., at 784-85. The Fourth Circuit concluded: "In our opinion, the factors cited by the United States eliminate a substantial portion of innocent travelers and, therefore, amount to reasonable suspicion that Foreman was engaged in drug trafficking." Id., at 785.

In Mason, the Fourth Circuit upheld the search and seizure where Mason did not pull over his vehicle immediately when the officer activated his blue lights, but drove erratically as he engaged in conversation with the passenger suggesting they were contemplating whether or not to comply with a traffic stop. The officer was immediately struck with the strong odor of air fresheners when he approached Mason's vehicle. He observed only one key on Mason's key ring and also noted the men were coming from the direction of Atlanta, which the officer testified was the third largest distributor of drugs in the country. He noted that day's newspaper on the car seat with a Radisson Hotel sticker. Based on his observations, the officer believed that the two men were on a "turn-around" trip to Atlanta, which the court noted was a known source city for drugs. The officer noted Mason was unusually nervous and his nervousness only became more pronounced as the stop continued. Finally, the two men were asked separately about their travel plans and gave conflicting answers. Mason, at 129. The Fourth Circuit concluded that the officer articulated a reasonable suspicion because "all

of the factors coming together at a single place and point in time to create a suspicion that each individual factor might not have created.” Id.

In United States v. Williams, 271 F.3d 1262 (10th Cir. 2001), the Tenth Circuit found law enforcement had sufficient reasonable suspicion where the officer determined the car was rented, where he observed a walkie-talkie type of short range radio, where Williams indicated unusual travel plans, and where he exhibited extremely nervous behavior that never dissipated. The Officer determined that the rental agreement was in another individual’s name and the car was rented from Phoenix, Arizona, even though Williams was a resident of Chicago, and was purportedly driving to Kansas City to pick up his sister to go to an Easter gathering in Denver. Id., at 1262-1265.

Williams argued that the district court erred in relying on the officer’s observations of nervousness. The Tenth Circuit disagreed, noting the following:

The district court found that the specific and detailed testimony of the officer regarding Mr. Williams’ trembling hands, shaky voice, and twitching lip displayed uncommon and extreme nervousness. We have held consistently that nervousness is of limited significance in determining whether reasonable suspicion exists. . . . Extreme and continued nervousness, however, is entitled to somewhat more weight. . . .

Williams, at 1268 (internal quotations and citations omitted).

In Wallace, the Court of Appeals noted Wallace appeared to get progressively more nervous instead of relaxing, and when the officer discussed a prior alcohol related violation, Wallace went into detail about the event and engaged in “nervous chatter”.

Wallace, 392 S.C. at 53, 707 S.E.2d at 454.

The Eighth Circuit Court of Appeals examined the propriety of canine sniffs during traffic stops, finding as follows:

A canine sniff of the exterior of the car conducted during a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner does not infringe upon a constitutionally protected interest in privacy. . . . Such a dog sniff may be the product of an unconstitutional seizure, however, if the traffic stop is unreasonably prolonged before the dog is employed. . . . Once an officer has decided to permit a routine traffic offender to depart with a ticket, a warning, or an all clear, the Fourth Amendment applies to limit any subsequent detention or search. . . . We recognize, however, that this dividing line is artificial and that dog sniffs that occur within a short time following the completion of a traffic stop are not constitutionally prohibited if they constitute only de minimus intrusions on the defendant's Fourth Amendment rights.

United States v. Alexander, 448 F.3d 1014, 1016 (8th Cir. 2006) (citations omitted).

The Eighth Circuit concluded that the appellant's detention was at most extended four minutes from the time he was notified he would receive a warning ticket to the time the dog sniff was completed, and found that the search was lawful. Id., at 1017. In the instant case, Falls complains that the stop was extended four minutes from the time the warning was issued. The stop was approximately fourteen and a half minutes to the time the sniff dog arrived. However, by this point, Wilson had reasonable suspicion of criminal activity to continue detention for the de minimus amount of time before the sniff dog arrived. See also, United States v. Purcell, 236 F.3d 1274, 1279 (11th Cir. 2001) (Fourteen minute stop was not an unreasonable length of detention during the traffic stop and the three minutes that the stop was prolonged while the officer waited for a computer check on the defendant's criminal history was de minimus under the totality of

circumstances); United States v. Jeffus, 22 F.3d 554, 556-557 (4th Cir. 1994) (fifteen minutes was not an unreasonable length of traffic stop).

In the instant case, the stop was not unreasonably prolonged. The stop lasted only fourteen and a half minutes from the initial stop to when the dog sniff began. In the meantime: (1) Wilson required Falls to reposition his vehicle for safety purposes, which took approximately two minutes; (2) Wilson waited two and a half minutes on a license check, before exiting his patrol car a second time; (3) Wilson saw Falls make a movement as if he was placing something under the car seat, which led Wilson to request backup for safety reasons; (4) Falls rambled and engaged in nervous chatter once he was told he would be given a warning, so much of the conversation consisted of volunteered information; and (5) Wilson had difficulty understanding Falls due to the noise on the highway and asked Falls to repeat several answers. The dog sniff occurred only four minutes after Falls was handed his warning.

Further, Wilson articulated a number of factors that amounted to reasonable suspicion to believe criminal activity was afoot. Falls positioned his vehicle on the fog line, consistent with a tactic Wilson knew as white lining, done to limit an officer's ability to access the driver side of the vehicle. Falls' nervousness did not dissipate, but instead continued to grow and was uncommon and extreme. Contrary to Falls' assertions in the brief, Falls appears quite nervous in the video and Wilson several times asks him if he is alright or if he has something on his mind. Falls appeared to place something under the car seat. He hesitated when asked questions and seemed to be telling a story when he explained why he was making a turn-around trip to Atlanta, a

large drug source; and he was in an unusually clean rental vehicle. Wilson testified that Falls' arrangement with his cousin, in which Falls called as he arrived to Atlanta to find out where to meet his cousin, was typical of how drug transactions are arranged. As discussed above, a number of factors distinguished him from the majority of innocent travelers. Therefore, Wilson had reasonable suspicion to detain Falls for the short time that it took a sniff dog to arrive.

Once the sniff dog alerted, law enforcement had probable cause to search the vehicle. Mason, at 130 (finding dog's alerts "indicated that the dog perceived a narcotics odor while outside the car, thereby creating probable cause to believe that narcotics were present even prior to the dog's entry into the vehicle").

Accordingly, evidence supports the trial court's ruling and therefore, the denial of the suppression motion should be affirmed. Khingratsaphon; Pichardo.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General
Bar # 68571

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
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ATTORNEYS FOR RESPONDENT

March 29, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BERNARD FALLS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

By: 
DAVID SPENCER

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ATTORNEYS FOR RESPONDENT

March 29, 2013

**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.

Jeffrey Bernard Falls, Appellant.

Appellate Case No: 2011-198091

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2013-UP-420
Submitted October 1, 2013 – Filed November 20, 2013

AFFIRMED

James P. Craig, of Craig Law Firm, P.C., of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Griffin*, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) (stating a
ruling in limine is not final and unless an objection is made at the time the

evidence is offered and a final ruling procured, the issue is not preserved for review); *State v. King*, 349 S.C. 142, 148-50, 561 S.E.2d 640, 643-44 (Ct. App. 2002) (holding the trial court's ruling to deny defendant's motion in limine to suppress drug evidence on the grounds that the search was within the confines of the Fourth Amendment was not preserved for review when defense counsel failed to renew his objection at trial when the drugs were actually entered into evidence).

AFFIRMED.¹

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

561
OG
Crim



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 06, 2013

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State, v. Jeffrey Bernard Falls
Lower Court Case No. 2007GS4200211
Appellate Case No. 2011-198091

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Returned are the following exhibits: State's Exh. #1 (Traffic Stop Video), and Def. Exh.#1 (Warning Ticket). Please sign below acknowledging receipt of these exhibits and return the acknowledgement to this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: James P. Craig, Esquire
David A. Spencer, Esquire

ALLIANCE BETWEEN 2 OFFICES

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)
 Jeffrey B. Falls, 347321)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2014-CP-42-0129

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 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 herein 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 to 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.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 808 JAN -9 PM 12:18
 JENNIFER BLAKEY

1. Place of detention McCormick CORR. INST 386 Redemption Way McCormick S.C. 29899
2. Name and location of Court which imposed sentence Spartanburg South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2007-GS-42-2111
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 12, 2011 Sentence imposed
 - (b) Term of sentence 25 years

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina 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. _____ November 20, 2013
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results: 2013-49-420
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____ N/A
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL.

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 JAN -9 PM 12:18
 M. NUFF BLACKLEY

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel Failed to Function as THE STATES Adversary in any sense of the word.
- (b) Counsel Failed to do the necessary Factual investigations on my behalf.
- (c) Counsel Failed to Function as the Counsel that the Constitution Sixth Amendment Guarantees.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof:

- i. _____ N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____ N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____ N/A
- iii. _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 JAN -9 PM 12:18
 M. HOPE BLACKLEY

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:

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CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN -9 PM 12:18
M. HOPE BLACKLEY

CANNOT RAISE INEFFECTIVE ASSISTANCE O.V DIRECT APPEAL

- (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? N/A
- (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. CHRISTOPHER THOMPSON, V. (ADAMS LAW FIRM)
- ii. ADDRESS: 1082 BOILING SPRINGS ROAD, SPARTANBURG S.C. 29303
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. CHRISTOPHER THOMPSON TRIAL
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE, NEW TRIAL.

20. Are you now under sentence from any other court that you have not challenged?

NO

FILED
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 SPARTANBURG COUNTY
 2014 JAN -9 PM 12: 18
 M. HUFF BRACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of MSCUMACK)

I, JEFFREY B. FALLS # 347321, 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.

Jeffrey B. Falls

SWORN to and subscribed before me this 06 day of Jan, 2014.

JCA (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED
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SPARTANBURG COUNTY
2014 JAN -9 PM 12:13
M. HUPF-BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

JEFFREY B. FALLS # 347321

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.

Jeffrey B. Falls
Applicant

SWORN or affirmed to and subscribed before me this

30 day of Jan, 2014.

J. Frankles
Notary Public

My Commission Expires: 12-16-2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN -9 PM 1:15
M. HOPE BLACKLEY

FORM 5

STATE OF SOUTH CAROLINA)

County of McCORMECK)

Full name and prison number (if any) of Applicant)
JEFFREY BERNARD FALLS #347321)
v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-42-1419

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 McCORMECK CORR. INST 386 Redemption Way
McCORMECK S.C. 29899
2. Name and location of Court which imposed sentence Spartanburg County
Seventh Judicial Circuit
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-420211
 - (b) _____

2014 FEB -8 PM 2:32

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) SENTENCE DATE: 8/12/11 TERMS: 25 YRS.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA 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. NOVEMBER 20, 2013

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NO: 2013-UP-420

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL, VIOLATION OF THE UNITED STATES CONSTITUTION'S SIXTH AMENDMENT.
- (a) COUNSEL FAILED TO DISCHARGE HIS PROFESSIONAL RESPONSIBILITY WHILE HANDLING MY CASE.
- (b) MY DEFENSE COUNSEL FAILED TO GIVE ME HIS COMPLETE LOYALTY.
- (c) HE NEGLECTED THE NECESSARY INVESTIGATIONS AND PREPARATION OF MY CASE.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): MY DEFENSE ATTORNEY DID NOT CONSCIENTIOUSLY GATHER ANY INFORMATION TO PROTECT MY RIGHTS.
- (a) _____
- (b) MY DEFENSE ATTORNEY KNOWING I WAS ILLITERATE IN LAW, NEVER ASKED WHETHER OR NOT I ACTUALLY UNDERSTOOD OR COMPREHENDED ALL OF THE ISSUES THAT WERE INVOLVED WITH MY CASE.
- (c) MY DEFENSE ATTORNEY NEVER PROPERLY CONSULTED WITH ME OR KEPT ME INFORMED WITH WHAT WAS GOING AS FAR AS MY CASE WAS CONCERNED.
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? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? 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. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

N/A

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: CANNOT RAISE INEFFECTIVE ASSISTANCE OF COUNSEL
 (a) ON DIRECT APPEAL.
 (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? N/A
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. TRIAL COUNSEL: CHRISTOPHER THOMPSON
 ii. DIRECT APPEAL COUNSEL: JAMES P. CRAIG
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL COUNSEL CHRISTOPHER THOMPSON
 ii. DIRECT APPEAL COUNSEL: JAMES P. CRAIG.
 iii. _____

19. State clearly the relief you seek in filing this application:

NEW TRIAL, AND OR ANY RELIEF DEEMED AVAILABLE.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
County of McCORMICK)

VERIFICATION

I, Jeffery B. Falls, 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.

Jeffery B. Falls

SWORN to and subscribed before me this 25 day of March, 2014

Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2015

2014 APR -8 PM 2:32

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jeffrey Falls, 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.

Jeffrey Falls
Applicant

SWORN or affirmed to and subscribed before me this 25 day of March, 2014.

J. Frankles
Notary Public

My Commission Expires: 12-16-2019

2014 APR -8 PM 2:32

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
Jeffrey B. Falls, #347321,)	Case No. 2014-CP-42-0129
Applicant,)	Case No. 2014-CP-42-1419
v.)	
State of South Carolina,)	
Respondent.)	

ORDER OF MERGER

Applicant in the above-captioned matters has filed two Applications for Post-Conviction Relief. The first was filed January 9, 2014 (2014-CP-42-0129), and the second was filed April 8, 2014 (2014-CP-42-1419). An applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction. (See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90). Thus, this Court finds that the two proceedings be merged. The application for post-conviction relief filed April 8, 2014 (2014-CP-42-1419) will be considered an amendment to the initial application for post-conviction relief filed January 9, 2014 (2014-CP-42-0129).

The Clerk of Court is therefore ordered to merge the two cases, with docket number 2014-CP-42-0129 being the surviving case. Hereafter, the word "Application" will refer to docket number 2014-CP-42-0129; the word "Amendment" will refer to docket number 2014-CP-42-1419, which will be considered as an amendment to the application for post-conviction relief.

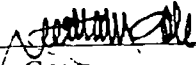
IT IS THEREFORE ORDERED that the Spartanburg County Clerk of Court merge docket number 2014-CP-42-1419 into docket number 2014-CP-42-0129, with file 2014-CP-42-0129 being the surviving file and all future pleadings bearing docket number 2014-CP-42-0129.

* 1

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 28th SEP - 8 PM 3: 07
 M. HOPKINS BLACKLEY

✓

AND IT IS SO ORDERED this 2nd day of September, 2014.



J. DERHAM COLE
Chief Judge for Administrative Purposes
Seventh Judicial Circuit *OK*

_____, South Carolina

* 2

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 SEP - 8 PM 3:07
M. HOPE BLAUCKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Jeffrey B. Falls, #347321,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2014-CP-42-0129

RETURN

Respondent, making its Return to the application for post-conviction relief (PCR) filed January 9, 2014, and amendment filed April 8, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the May 2007 term of the Spartanburg County Grand Jury for trafficking in cocaine (2007-GS-42-2111). The Applicant was represented by Christopher P. Thompson, Esquire. On August 12, 2011, the Applicant proceeded to trial where he was found guilty of the charge by a jury. The Honorable Roger L. Couch sentenced Applicant to twenty-five years and a fine of \$100,000.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Falls, Op. No. 2013-UP-420 (filed November 20, 2013). The Remittitur was returned on December 6, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, the trial transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application and amendment, the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to function as the State's adversary in any sense of the word,
 - b. Counsel failed to properly consult with or communicate with Applicant as to the status of the case,
 - c. Counsel never ascertained whether or not Applicant fully understood all of the issues involved with the case,
 - d. Counsel failed to do the necessary factual investigations and preparation for trial on Applicant's behalf,
 - e. Counsel failed to function as the counsel that the Constitution Sixth Amendment guarantees,
 - f. Counsel failed to provide Applicant with his complete loyalty.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

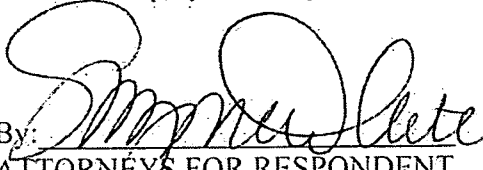
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

October 9, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 JEFFREY B. FALLS, #347321)
)
 Applicant,)
))
 vs)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

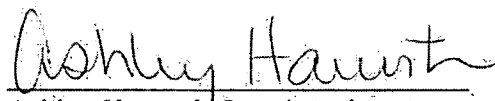
2014-CP-42-0129

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 9TH day of October, 2014.



 Ashley Haworth, Legal Assistant
 For Respondent

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I N D E X

Witnesses

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E x h i b i t s

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

For the Applicant:

Marked	Description	I.D.	Admitted
1	Form B Rule 6	70	

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Jeffrey B. Falls - Direct

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:49 a.m.)

4 THE COURT: Yes, ma'am.

5 MS. WHITE: May it please the Court. This is the
6 case of Jeffrey Falls versus the State. It's case
7 number 2014-CP-42-0129. Mr. Falls was represented at
8 trial by Chris Thompson. He was indicted May of 2010
9 for trafficking in cocaine more than 200 but less than
10 400 grams. He proceeded to trial and was found guilty
11 by a jury, sentenced to 25 years and a fine of
12 \$100,000.

13 There was an appeal. Conviction and sentence were
14 affirmed. He's represented today by Mr. Brandt Rucker.
15 Application was filed January 9, 2014, and amended
16 April 8, 2014. He alleged ineffective assistance of
17 counsel and that counsel failed to function as the
18 State's adversary, failed to properly consult with the
19 defendant as to the case status, never ascertained
20 whether the defendant understood all the issues, failed
21 to do the necessary investigation and preparation for
22 trial, failed to function as counsel guaranteed by the
23 Sixth Amendment, and failed to provide the defendant
24 with his complete loyalty.

25 At this time I'll turn it over to Mr. Rucker.

1 MR. RUCKER: Your Honor, I call my client,
2 Mr. Falls, to the stand.

3 JEFFREY BERNARD FALLS,
4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: State your name for the record.

6 THE WITNESS: My name is Jeffrey Bernard Falls.

7 THE COURT: Mr. Rucker.

8 MR. RUCKER: May it please the Court.

9 DIRECT EXAMINATION

10 BY MR. RUCKER:

11 Q Mr. Falls, you heard the sentence that you were
12 given announced by the attorney general. Is that
13 correct, the correct sentence?

14 A Yes, sir.

15 Q All right. And, specifically, what relief are you
16 asking from the judge today?

17 A A reversal.

18 Q Are you asking for a new trial?

19 A Yes, sir.

20 Q What do you believe your attorney did -- and we're
21 going to work through it, but as an overview, what do
22 you believe your attorney did incorrectly in your case?

23 A I believe that prior to the case he didn't do a
24 pretrial investigation. He didn't consult with me
25 about the motion he put for -- before the trial for the

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Jeffrey B. Falls - Direct

1 suppression hearing. I had no idea. I have no
2 understanding of that, the motion he put before --
3 okay.

4 Q Well, I can give you some time because we already
5 have a lot to go over. What do you mean you don't
6 understand his pretrial -- did he file a motion --
7 first of all -- strike that.

8 A Motion to suppress at the beginning of the trial.

9 Q And what don't you understand about the motion to
10 suppress?

11 A Well, he said that one of the motions to suppress
12 was illegal stop, did the officer have the right to
13 conduct the stop, the length of the stop and the seize.
14 I understand about the seizing stuff, but by being a
15 highway patrol who pulled me over, I guess I didn't
16 understand the verification of the motion.

17 Q Okay. But you understand that you're not an
18 attorney and you paid him money, and you're relying on
19 him to file proper motions in this case, correct?

20 A Correct.

21 Q And to your knowledge, did he file the proper
22 motions to suppress at the beginning of the case?

23 A No, I don't believe so.

24 Q What did he not do, in your understanding?

25 A I believe he should have filed a motion to

1 suppress. If he would have filed a pretrial
2 arrangement, me and him had went over all the evidence,
3 and we had -- we had a clear view of that tape, that it
4 would surely show that my head never moved or anything
5 whatsoever in the tape. So it would have automatically
6 opened up grounds where, when he say the length of the
7 stop wouldn't have been prolonged.

8 Q All right. And to clarify for the judge, and he
9 will have all the evidence before him. And I believe
10 Mr. Thompson has been subpoenaed to bring all that
11 evidence as well if the judge doesn't have it, and
12 he'll have the entire case to review. But basically
13 tell the judge what happened that day, where you were,
14 how the police encountered you at first.

15 A The police encountered me because I had went and
16 visited my cousin down in Atlanta.

17 Q Where are you from?

18 A I'm from Charlotte.

19 Q So you were driving through Spartanburg County to
20 get to Atlanta?

21 A I drove through Spartanburg between 11:00 and
22 12:00. I drove down to Atlanta, spoke to my cousin. I
23 got with him for two hours, talked about my daughter
24 moving to Atlanta and stuff, that he was going to look
25 out and make her his assistant. And he introduced me

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Jeffrey B. Falls - Direct

1 to a couple of people that he was going to introduce to
2 her later. Then I left out around about 4 o'clock. I
3 left back -- no, I left back here, coming back through
4 this way, at 6:00.

5 Q Was that 6:00 a.m. or 6:00 p.m.?

6 A 6:00 p.m.

7 Q Were you on Interstate 85?

8 A Interstate 85.

9 Q Were you pulled over at some point?

10 A I was pulled over at landmark 62 and a half.

11 Q Okay. Who pulled you over, what agency?

12 A The highway patrol.

13 Q Okay. Do you recall the names of the troopers?

14 A Officer Wilson.

15 Q And why did he say that he was pulling you over
16 when he approached the car?

17 A I asked him why you stopped me. He said, well,
18 you driving kind of slow. I'm just checking on you.

19 Q How fast were you going?

20 A I was going roughly 55, 60 miles.

21 Q And what was the speed limit, posted speed limit?

22 A 60 miles.

23 Q Was all this on the videotape, the in-car video
24 from the highway patrol?

25 A All of it -- not him following me but, him pulling

1 me over is on the video.

2 Q Okay. And your conversation with him in which he
3 says --

4 A Yes, it was on there.

5 Q -- you were driving kind of slow, so he pulled you
6 over?

7 A Driving kind of slow. I'm just checking on you.

8 Q Did he state any other reason for pulling you over
9 such as broken taillights?

10 A Nothing.

11 Q You weren't weaving in your lane, nothing like
12 that?

13 A No. I didn't do any of that.

14 Q What did the trooper ask you for at that point?

15 A He asked me for my license and registration.

16 Q Did you provide that for him?

17 A Yes, I did.

18 Q And as a result of that, what did the trooper do?

19 A He went back to his car, and he asked me to pull
20 up because, like he say, I was close to the guardrail.
21 So for officer safety or whatever, to pull up a little
22 further up so he can have more room. So I moved the
23 vehicle up probably about a quarter of a mile, I guess.
24 Not that far up the road.

25 Q How long after he pulled you over did he allow you

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Jeffrey B. Falls - Direct

1 to drive again?

2 A Probably a minute.

3 Q Did you feel like you were able to leave at that
4 point?

5 A No, I wasn't weaving at all.

6 Q No. It might be my accent. I'm sorry. Did you
7 think you were able to leave at that point?

8 A Oh, no.

9 Q Did he have his blue lights on?

10 A Yes, sir.

11 Q He was in a state patrol car?

12 A Yes, sir.

13 Q And he had a uniform on?

14 A Yes, sir.

15 Q With a gun?

16 A Yes.

17 Q And the whole hat and the whole thing?

18 A The whole uniform.

19 Q So you stopped again. Did he then pull up behind
20 you?

21 A Yes, sir.

22 Q And what happened then?

23 A And then he approached the car. Probably it was
24 like 9:04. He asked me -- he wanted to speak to me,
25 asked me to get out of the car, and he was going to

1 explain the ticket.

2 Q All right. And did he tell you what the ticket
3 was for?

4 A He didn't tell me what it was for until I got to
5 the back of the car.

6 Q Let's go back. I want to make sure all of this is
7 very crystal clear, what's happening in sequence.

8 A Okay.

9 Q He's already asked for your license and insurance
10 paperwork, and he still has that when he asks you to
11 move up?

12 A Yes, sir.

13 Q And how long does that whole process take when
14 he's back in the car running those numbers, you assume?

15 A He stopped me right before 9:00, and he came close
16 to my car around about 9:04.

17 Q So you were detained, you were there at least four
18 minutes, if not probably more, right?

19 A A little over.

20 Q Did he tell you what the ticket was for at that
21 point once he came back to the car?

22 A No. He returned my license and my registration to
23 me when he returned to the car, and he asked me to step
24 out of the car, he was going to explain the ticket.

25 Q It will be obvious on the tape, but kind of

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Jeffrey B. Falls - Direct

1 explain what your car looks like, the windows, if
2 they're tinted, those kinds of things?

3 A It was a white Lincoln Town Car.

4 Q Were the windows tinted in the car?

5 A Maybe slightly. I couldn't -- I don't remember.

6 Q What was the date of the stop, do you recall?

7 A February 20, 2007.

8 Q Was it dark by then?

9 A Yeah, 9 o'clock at night.

10 Q So when the trooper then brought you to the back
11 of the car, did he -- he then showed you the ticket
12 that he was going to write or he had already written?

13 A No. When he brought me back to the car, I started
14 stating like I was having -- the truck was bothering me
15 because when we was coming up, it was like six to eight
16 cars, and we seen the trooper on the side of the road,
17 so everybody like slowed down. And as the
18 tractor-trailer double wheeled, double --

19 Q 18-wheeler?

20 A Yeah. Double tractor trailer right beside me, so
21 he was like weaving. It was like real windy. So I
22 really don't like driving beside a tractor-trailer, so
23 I had two choices, either pass him or slow down a
24 little bit to let him pass me. So as I was slowing
25 down to let the tractor trailer pass me, the trooper

1 came up behind me. I was thinking the whole time he
2 was going to stop the tractor trailer.

3 Q Let's be clear. This was the initial stop?

4 A Initial stop, yes. I'm thinking he's going to
5 stop the tractor trailer, but he got behind me.

6 Q Then you go through the sequence we have already
7 discussed, and then he tells you he's writing the
8 ticket. What's the ticket for?

9 A He say improper lane movement.

10 Q So did he say that you did not signal?

11 A No.

12 Q Was this different from what he said when he
13 initially pulled you over?

14 A Different. Totally different. He said I was
15 driving kind of slow. He was just checking on me at
16 the stop.

17 Q When the 18-wheeler pulled in front of you or near
18 you, how slow did you go?

19 A I just went -- I just slowed up enough just to let
20 him pass, you know, get past me.

21 Q You had talked about all this with your defense
22 attorney, Mr. Thompson, correct?

23 A Yes. Mr. Thompson, yes.

24 Q Once he gave you the ticket, what happened? Not
25 Mr. Thompson, I'm sorry, the trooper. Once the trooper

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
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1 gave you the ticket --

2 A He never gave me the ticket.

3 Q So you were never furnished a ticket?

4 A No, never, through the whole stop.

5 Q Did he pat you down at that point?

6 A No, he didn't pat me down.

7 Q All right. What did he do?

8 A He start -- went through a lot of lines of
9 questioning.

10 Q And what questions was -- first of all, how long
11 had you been in his -- detained by him at that point?

12 A He detained me from the time I stopped at right
13 before 9 o'clock all the way to 9:14 before the canine
14 unit got there.

15 Q Okay. And we're going to get to the canine. So
16 before the canine got there, at least ten minutes he's
17 questioning you?

18 A Yes, sir.

19 Q Did he tell you you were free to go?

20 A No, sir.

21 Q He, in fact, had not given you the ticket at this
22 point?

23 A No, sir.

24 Q All right. Once he starts questioning you, what
25 is he asking you?

1 A He asked me where I went. He at first asked me
2 did I work that day. And I said I had worked earlier.
3 I left from Charlotte. I had worked earlier, left from
4 Charlotte between 11:00 and 12:00, drove to Atlanta.

5 Q Did you notice a lot of police officers on the
6 interstate at that point?

7 A Yeah. Every exit coming down, it seemed like cars
8 were pulling over. Like eight, nine cars coming down,
9 everything was pulled over.

10 Q When you say coming down, was that --

11 A I mean going to Atlanta.

12 Q I'm sorry. Go ahead.

13 A Yes. Heading towards Atlanta, as I say going
14 down.

15 Q When you were coming back, were there police cars,
16 did you see a lot?

17 A Yes, sir.

18 Q Okay. Once he is finished questioning you or
19 during the questioning, did he tell you you could go at
20 any point?

21 A No, sir. He said I couldn't leave. He said he
22 had a canine unit on the way.

23 Q Did he tell you why he was bringing the canine
24 unit in?

25 A No. He never stated why he was bringing the

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1 canine in.

2 MS. WHITE: Your Honor, I would just object. I
3 think there is a pretty substantial pretrial
4 suppression hearing, and it appears as if we're just
5 kind of going back through retrying the pretrial
6 suppression motion. I would object to the line of
7 questioning, ask that we actually get to counsel's
8 effectiveness.

9 MR. RUCKER: Your Honor, I'm not trying to delay,
10 obviously. I'm just trying to get the foundation here
11 to give you understanding.

12 THE COURT: Move it along. I'm going to let you
13 lay the foundation for the bases of his claim.

14 BY MR. RUCKER:

15 Q How long did he detain you before the canine unit
16 got there?

17 A 14 minutes.

18 Q And he never told you why the canine unit was
19 being called?

20 A No.

21 Q Okay. Did at some point he tell you you were free
22 to go?

23 A Never.

24 Q All right. So what happened when the canine unit
25 got there?

1 A Him and another officer went to the side of the
2 patrol car, and I guess they communicated -- they say
3 they did hand signals. On the statement he said they
4 had communicated, but they didn't. I couldn't hear
5 them say a word.

6 Q All right. So you didn't hear the canine unit
7 indicate, meaning he didn't bark or make a motion or
8 anything?

9 A No. I'm saying they was talking before they
10 brought the dog out, the officers was.

11 Q All right. And did Mr. Thompson go through all
12 this in a suppression motion?

13 A Yes, sir.

14 Q All right. Do you think any of that fact pattern,
15 that part we're talking about, was missed by
16 Mr. Thompson during that suppression motion?

17 A The thing that was missed mostly is that the video
18 recording tape had been cleared up. Both officers
19 testified during the motion that that tape was dark,
20 they couldn't see. The tape stopped playing twice
21 during that, stopped playing. It had to be replayed
22 during the motion, and it stopped playing during the
23 trial, had to be replayed. So the tape was having
24 trouble playing during the whole process.

25 Q Okay. Is that the tape that's in evidence that

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1 was published to the jury --

2 A Yes.

3 Q -- and the judge?

4 A They had to change the tape out twice.

5 Q And that's in the clerk's office?

6 A Yes.

7 Q So based on that, did your attorney make any
8 objections to the problems with the tape?

9 A No. He stated that he was on his third tape
10 himself, that he had been having trouble with the tape
11 himself.

12 Q Do you think something was altered on the tape?

13 A I think it was made darker where you couldn't see
14 what's really going on clearly.

15 Q Okay. So, I mean, there were clear errors within
16 it, and it could have been tampered with?

17 A Yes.

18 Q Did your attorney address any of that?

19 A No.

20 Q How much did you pay your attorney in this case?

21 A I can't remember. Probably about -- it's been
22 about seven years ago. Probably about 3- to \$5,000.

23 Q Did he ever talk to you about trying to get an
24 expert to go over the tape and see if the tape had been
25 altered?

1 A He did mention that, yes, sir.

2 Q All right. And did you follow up on that? What
3 happened with that situation?

4 A It never came to bear because next time I seen
5 him, first time we got a tape that showed clearly was
6 on August 3rd. I met him after he came from court,
7 around after 5:30, me and my brother came up, and he
8 tried to view the tape, and then he had trouble himself
9 getting it to play. The secretary was on the way out
10 the door, but she got it to play to a certain degree on
11 his laptop.

12 Q Okay. So was it the device that was the problem
13 with playing the DVD or what?

14 A I think the DVD was defective.

15 Q Did you ever -- did y'all ever get an expert to
16 testify on your behalf at trial?

17 A No.

18 Q Did Mr. Thompson ever discuss with you how much
19 that would cost to get an expert to come in?

20 A No.

21 Q Would you have been prepared to pay even large
22 amounts of money if y'all could show that the tape --

23 A Yes. Any amount. For my freedom, any amount
24 that's necessary.

25 Q So you could have paid for whatever expert that he

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1 needed?

2 A Yes.

3 Q Now, with the motion to suppress, you believe
4 other than the issues we just talked about, he
5 addressed everything he was supposed to in what we call
6 the motion in limine or the motion before the hearing,
7 right?

8 A No. I believe that me and Mr. Thompson went over
9 motion of discovery. We never really went over that,
10 motion of discovery. He gave me my motion of discovery
11 at the roll call one day. He asked me, do I understand
12 it. I say, yeah, I pretty much understand it. I can
13 read. He say if I have any problem with it, call him
14 and let him know and he will explain to me if I had any
15 problem. But I never really went over the motion of
16 discovery because I was waiting on him to receive a DVD
17 that works.

18 Q How many times did you meet with him?

19 A I met with him three times in his office.

20 Q How long between when you were arrested and when
21 you went to trial?

22 A Four and a half years.

23 Q Okay. So during that time you met three times
24 with him?

25 A Yes, sir.

1 Q All right. So at any time were you able to go
2 over the video, the full video, with him without any
3 problems with the video?

4 A Never.

5 Q Did he talk about the other aspects of the case
6 that y'all needed to address?

7 A No. We never talked about anything else. The
8 second time I met with him, he had an offer from the
9 prosecutor for a plea arrangement.

10 Q What was the offer?

11 A I think it was 18 years.

12 Q And I assume you were not willing to take that
13 offer?

14 A No.

15 Q Why not?

16 A I'm not about to plead guilty for a crime I didn't
17 do.

18 Q Now, did they find drugs inside your car or no?

19 A They allegedly found drugs.

20 Q And when you say -- why do you say "allegedly"?

21 A Because the process of them going with the canine
22 unit, the man, Mr. English, who's the canine handler,
23 he came out and he had a toy rope in his hand. And he
24 guided that dog around that car and he commanded that
25 dog to jump on the car. His statement say that, "My

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1 dog is very aggressive. He scratch, he bark, and he
2 bites." There was never a scratch mark on that car.
3 There was never a bite mark or nothing. That dog
4 jumped on the car. He said during training, the dog
5 will jump on cars without contraband on it. He say but
6 the master handler would tell the dog, he will quickly
7 correct the dog.

8 Q Okay. So you don't believe the dog actually
9 sounded?

10 A No. I believe the dog jumped at that toy he had
11 in his hand at that time. That's why it's so important
12 to get that tape clear. If you could see a clear tape,
13 you will see that toy in that train -- that dog's
14 hand -- I mean in the handler's hand.

15 Q So the tape, if the judge looks at the tape now
16 and if he's able to in the next week or so, it will
17 show the interactions with the handler?

18 A Yes. He should see the toy in the handler's hand.
19 That dog was following that toy. That dog never
20 struck. He never barked. He say he get real excited,
21 he bark and everything. The whole time that judge, if
22 you view the tape, there ain't no time on that tape
23 that that dog ever barked. He was never excited or
24 none of that stuff.

25 Q Now, do you believe that, the material that was

1 found in your car, should have been suppressed by the
2 trial judge?

3 A Yes.

4 Q Was it suppressed at the initial hearing, the
5 preliminary hearing -- I mean the motion in limine
6 hearing?

7 A No.

8 Q All right. And did your attorney renew that
9 objection during the trial?

10 A No.

11 Q All right. And, in fact, was that why your appeal
12 was dismissed, because it was not preserved, that issue
13 was not preserved?

14 A Yes, sir.

15 Q Is it your belief that if it would have gone to
16 the court of appeals properly preserved that they would
17 have remanded it because of the problem with the
18 suppression?

19 A Yes, sir.

20 Q Why do you think the judge in the underlying case
21 got that issue wrong?

22 A I believe that, for one thing, the judge's
23 reference to *Provet* case, and when considered --
24 compared to my case, the *Provet* case didn't have -- the
25 dispatcher never called back. So they was waiting on

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1 the dispatcher to call back. My case --

2 Q Hold on one second. You're talking about case
3 law. Did you go over this case law with Mr. Thompson
4 beforehand?

5 A No. I never ran over any case law until I got
6 behind bars or in prison.

7 Q Did Mr. Thompson ever argue the point you're
8 arguing now about *Provet*?

9 A He argued -- yeah, he argued it. He argued for
10 *Tindall*. My case was similar to him. He said when
11 they returned all the documents and he put the ticket
12 in my hand during the stop -- the officer had put the
13 ticket in my hand around about ten minutes after 9:00,
14 and he asked can he search at the same time. I said
15 no. "If I said no, can I leave?" He snatched the
16 ticket back out of my hand.

17 Q Was that preserved on the tape?

18 A Yes, sir. It's preserved on the tape.

19 Q And so based on that, you think the judge got that
20 wrong, but your attorney failed to preserve that issue
21 for appellate review, right?

22 A Yes.

23 Q What other issues do you have with Mr. Thompson's
24 representation of you?

25 A I believe if he had researched the case that Judge

1 Couch -- I mean the solicitor had mentioned as far as
2 Gomez. I can't pronounce it right. They had stated
3 that they had seen a case previous as far as Rolling
4 Thunder came before him.

5 Q Let's go over. What is Rolling Thunder?

6 A Rolling Thunder is an operation. For a whole week
7 they saturate the streets with out-of-town police
8 officers, and they stop every car, out of state,
9 whatever, for whatever reason they can find and do
10 roadside searches.

11 Q The trooper that pulled you over, was he from
12 Spartanburg County?

13 A No.

14 Q Where is he -- based on what you heard during
15 testimony and in the transcript, where was he based out
16 of?

17 A He say he was based off lower level, 95 from
18 Georgia line, all the way to North Carolina line.

19 Q But that's on a different interstate in a whole
20 different part of the state?

21 A Yes.

22 Q Did Mr. Thompson raise objections to that as well,
23 about him being involved up here in that Rolling
24 Thunder?

25 A Yes. He made an issue of that.

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1 Q Did the judge rule on that?

2 A Ruled against him.

3 Q And did he preserve that -- did Mr. Thompson
4 preserve that issue for the appeals court?

5 A None of it was preserved.

6 Q Okay. What other objections do you have to what
7 he did?

8 A Let me get myself together. Let me think. I
9 think he should have challenged the verification of
10 the chain of custody.

11 Q All right. Is it your argument that he didn't or
12 your belief that he did not challenge that there was an
13 issue with the chain of custody and he didn't challenge
14 it?

15 A Yes, sir.

16 Q What was that issue with the chain of custody?

17 A My chain of custody, allegedly Officer English was
18 the canine handler. He did all the search of the
19 vehicle. He allegedly found the drugs. He allegedly
20 put the drugs on the car. So chain of custody should
21 start with him. But on the chain of custody paper,
22 Officer Wisner stated that he got drugs from Jeffrey
23 Falls.

24 Q So it's your testimony that the second trooper did
25 not actually take the drugs off you?

1 A Right. He didn't take nothing off me but my
2 money.

3 Q He didn't take anything out of the vehicle either?

4 A He never even touched the vehicle, never searched
5 the vehicle.

6 Q So there was not a complete chain of custody
7 established at trial?

8 A That's right.

9 Q Did your attorney waive that -- any argument to
10 that chain of custody?

11 A Had he said no objection.

12 Q In addition to that, the drugs were used against
13 you to get the trafficking weight, correct?

14 A Correct.

15 Q What other issues do you have that the judge
16 should consider?

17 A As far as that chain of custody, too, I challenge
18 that lab lady, Ms. Stewart or whatever her name is.
19 She stated from February 20th she received the drugs
20 from Officer Wilson, and she had them in her custody
21 until the 28th until the lab work was completed. But
22 on February the 26th they had a banquet for
23 appreciation for all the officers who participated in
24 that, and all the drugs and money that was seized was
25 presented at the hotel on camera, on picture where

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1 everybody to see. So that means between the 10th --
2 between the 20th and 28th when she stated that she had
3 custody of it, if the chain of custody was broke and
4 there ain't no paperwork, any whatsoever. They never
5 turned over anything else that it was ever checked out.
6 So by never checking it out, her incident report is
7 incorrect, incomplete.

8 Q So it was in the possession of somebody at that
9 hotel for two days?

10 A For a day.

11 Q But you don't know where it was en route there or
12 after?

13 A Right. It's not signed out nowhere on the
14 paperwork.

15 Q Had she performed the test of that, the alleged
16 drugs before that?

17 A No. She say she did the test on the 28th after it
18 was out.

19 Q Did your attorney ever ask to have the drugs
20 tested separately by anybody else, by a chemist?

21 A No.

22 Q Would you have been willing to pay for a chemist
23 to do that testing?

24 A Yes, because I filed the papers since I was at
25 McCormick to say that and ask them, did they have any

1 tests done on this case. They gave me a case number
2 and say they have no record whatsoever on my case.

3 Q You're talking about SLED, the South Carolina Law
4 Enforcement Division?

5 A Yes, sir.

6 Q But you would have been willing to pay for a
7 chemist to analyze that at the time before trial,
8 correct?

9 A Yes, sir.

10 Q Any other issues that you want the judge to know
11 about?

12 A Let me think. Trial preparation for me.

13 Q Okay. How did he not prepare you properly for
14 trial?

15 A We never had no discussion for me as far as
16 testifying, get me prepared for all my documents. I
17 had my business license, my receipts. I had all my
18 companies who I work with through my Road Runner Towing
19 service. By me not being prepared, the solicitor's
20 office had put a motion April 18, 2007, requesting that
21 all material be turned over that we was going to
22 present at the trial. Mr. Thompson never told me he
23 needed that information. So at trial when I had that
24 information, it was never admitted into trial. I think
25 it would have made a big difference because if that

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1 information would have been presented, they would have
2 seen that I made pretty well on my towing service
3 business.

4 Q How would that affect the jury, though? Why would
5 that matter to the jury?

6 A Because it would prove income. It would prove
7 that it wouldn't matter that he allegedly found that I
8 had drugs, but I'm telling them I didn't need the drugs
9 because I made enough money working.

10 Q Did you testify in this case?

11 A Yes, sir.

12 Q Did the money found on you at the time come from
13 drugs or did it come from your own work?

14 A From my own. I have receipts. I own my business.
15 Because I had -- my original truck was in the shop, put
16 a motor in it. It cost me \$900. And I had to pay for
17 that rent a car was \$250. So the money I had on me
18 personally was to pay for my truck to get out of the
19 shop and to pay for the rental car. The rental car was
20 due in the next day.

21 Q Are there any other issues? I know I'm asking you
22 generally, but I want to make sure we're covering them.

23 A Okay. I got an issue with the photo and the bag
24 the drugs were allegedly packed in. It was never
25 turned in. It was destroyed. We never had access to

1 any picture. On Officer Wilson's incident report, he
2 stated on this report it was turned in April 10, 2007,
3 that it's no picture. But on the video recording tape,
4 when you see the tape, the officer's clearly taking
5 pictures. Even the jury requested where is the picture
6 in the bag for this stop. And then the judge told them
7 that they cannot make a decision on evidence not
8 presented in court.

9 Q Did your attorney object to that?

10 A No, sir.

11 Q It's your belief that absence of evidence is just
12 as important to juries as actual evidence, correct?

13 A Yes. I believe that picture would have showed
14 that it's not even in there. They had control of these
15 pictures the whole time. The officer got on the stand
16 and testified he don't know what happened to them. He
17 never turned them in. He say it was his personal
18 camera. He made all kind of excuses in the world for
19 not turning them in, but if it was to benefit the
20 prosecutor, I bet you he would have turned them in.

21 Q All right. And your attorney just simply did not
22 object to the judge's instruction?

23 A No. He didn't object to it.

24 Q What other issues do you have?

25 A Let me see. I object to Officer Wilson's

1 testimony through the whole trial. I think he
2 fabricated and perjured himself through the whole trial
3 because what he testified do not -- if you look at a
4 clear tape, do not equal the same thing.

5 Q We're specifically attacking what Mr. Thompson did
6 based on your ineffective assistance of counsel. What
7 did Mr. Thompson do incorrectly with that testimony?

8 A He didn't bring it to the attention that he was
9 perjuring himself. He knew that he -- like at the
10 beginning, he say that he received the information that
11 the dog -- on his incident report, he say the dog
12 jumped on the driver's side. And he say he received
13 that information from the other officer, Officer
14 English. But when Officer English testifies, he say he
15 never told Officer Wilson that the dog jumped on the
16 driver's side.

17 Q So it's your testimony that your trial counsel did
18 not submit the prosecution's evidence, adversarial
19 testing, as far as that trooper went?

20 A Yes. I believe that he should have made them say
21 that -- it shouldn't have been admitted. He perjured
22 himself. One of them is lying. One say I said it.
23 The other said I didn't say it.

24 Q Mr. Thompson did not cross-examine on those
25 points?

1 A No.

2 Q Do you have other specific issues?

3 A I've got issue with -- I think I already brought
4 that up, with the judge ruling -- judge ruled that
5 Rolling Thunder, I got -- he had ruled earlier in
6 January 28, 2010, on the Rolling Thunder, that there
7 had to be a signed agreement.

8 Q Okay. And how did you know about that signed
9 agreement with Rolling Thunder?

10 A They mentioned the case in the prehearing,
11 suppression hearing, and Mr. Thompson said that he was
12 entitled to that information, and he don't that have
13 information. But I believe that if he had the
14 information with that ruling on it, not only would he
15 have got the information that Judge Couch himself
16 stated that it must be a signed agreement between the
17 agency and the sheriff to participate in Rolling
18 Thunder, it also, in one of these statements that
19 officer -- I mean Sheriff Chuck Wright stated to
20 Republican Kelly, Keith Kelly, he said as soon as he
21 got that report in his hand, he say, "I wish the
22 legislature that challenged this would spend more time
23 worrying about fixing the economy in this state and
24 getting the budget under control than how I'm trying to
25 catch drug dealers."

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1 Q Judge Couch had already ruled on the Rolling
2 Thunder issue before, and Mr. Thompson did not test
3 issue as far as having the contract available; is that
4 what you're saying?

5 A Yeah. He ruled on that at the suppression
6 hearing. I believe that if Mr. Thompson had gathered
7 this information, he could have at least -- that's two
8 different rulings. Judge Couch ruled that there must
9 be a signed agreement, January 2010, and then he turn
10 around and ruled that in my case it's okay for them not
11 to have a signed agreement.

12 Q Now, let's get to specifically about this signed
13 agreement. Was that to allow out-of-jurisdiction
14 police officers to come in and operate within
15 Spartanburg County?

16 A It states the multiunit task force to participate
17 in it, they say it must be a signed agreement.

18 Q It's your view that's required by law?

19 A By law, statute.

20 Q And Mr. Thompson did not preserve that issue
21 either at trial, did he?

22 A No.

23 Q Okay. Do you have any other issues?

24 A I already did the driver's license, right? That's
25 about it.

1 Q Now, specifically, though, about the driver's
2 license, do you recall if the testimony of the trooper,
3 that they put in the wrong number and that caused a
4 delay because the wrong number was sent to dispatch?

5 A Yes.

6 Q Was there an audio recording of him requesting it?

7 A Audio.

8 Q You have to say out loud yes or no.

9 A Yes, there is an audio recording of it.

10 Q And was he correct in what he said or was he
11 misleading the jury when he said that?

12 A Misleading the jury.

13 Q And in what way was he doing that?

14 A He called in the wrong number, and on his report
15 he stated the number he called in verified me. But he
16 called in a six-digit number, and my license is a
17 seven-digit, so he called in the wrong number. Judge
18 Couch, on his motion to continue -- to allow motion to
19 suppress, one of the issues said that the trooper was
20 waiting on the dispatch to call back. If you called in
21 the wrong number, and he called the canine unit twice
22 between that time he called in the wrong number, he
23 called the wrong number twice. But he never called the
24 dispatch to check and see why they haven't got back to
25 him. During the whole ten-minute stop, he never asked

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1 for the dispatcher why he never got a response back.

2 Q Did you discuss that with Mr. Thompson before the
3 trial?

4 A No.

5 Q All right. Did Mr. Thompson investigate that
6 because -- could he hear on the video that he was
7 getting the wrong number when he was calling it in?

8 A I discovered it during trial that he called in the
9 wrong number. Then I spoke to Mr. Thompson. I told
10 him that he is calling in the wrong number.

11 Q All right. Did Mr. Thompson investigate that
12 before trial --

13 A No.

14 Q -- to your knowledge?

15 A No, never investigated it.

16 Q Did he make an objection to that issue at trial?

17 A He tried to, but Couch -- Judge Couch cut him off.
18 He said that -- he said that he was going to make one
19 more motion, and Judge Couch cut him off and said
20 that -- he say if it wasn't for the officer who called
21 in the wrong number, it would have speeded up the
22 process. But Judge Couch say that would be assuming on
23 your part. I heard no testimony stating that that
24 would actually happen. I know he called in a wrong
25 number, but you never put a dispatcher on to prove

1 that.

2 Q And that was in the motion to suppress hearing,
3 correct?

4 A No, that's during the trial.

5 Q But he never brought that up at the motion to
6 suppress -- Mr. Thompson --

7 A No. He never brought it up at the motion to
8 suppress.

9 Q That issue was never brought up during the motion
10 to suppress? I want to make sure the record is clear.

11 A No. Never.

12 Q Is that all your issues?

13 A Yes.

14 MR. RUCKER: Nothing further, your Honor.

15 THE COURT: Thank you, Mr. Rucker.

16 Ms. White.

17 MS. WHITE: Thank, you, your Honor.

18 CROSS-EXAMINATION

19 BY MS. WHITE:

20 Q Mr. Falls, just a couple questions. There was a
21 pretty substantial pretrial suppression motion argument
22 before your trial, wasn't there?

23 A I don't know the meaning of "substantial" in
24 court. I mean, in every --

25 Q I'm sorry. Let me clarify. Your attorney argued

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1 and presented testimony from the trooper, the highway
2 patrolman that had pulled you over, Mr. Wilson; is that
3 right?

4 A True. Yes, sir.

5 Q Okay.

6 A Yes, ma'am. I'm sorry.

7 Q No, that's fine. And he presented testimony -- he
8 asked him about the time. Y'all went through the time
9 frame of the stop minute by minute, did you not?

10 A To my recollection, yes.

11 Q Okay. He went through every question that the
12 highway patrolman asked you, didn't he?

13 A I don't know if he went through every question,
14 but he stated that he fired off 16 questions to me.

15 Q Okay. And your attorney brought up the issue of
16 him handing you the warning ticket and then asking if
17 he can search the car, calling Trooper English who had
18 the dog in his car; is that right?

19 A Yes.

20 Q Okay. So a lot of that information came out
21 pretrial, and as we said, Judge Couch denied all the
22 pretrial motions regarding Rolling Thunder,
23 jurisdiction, and regarding the illegal stop or
24 delaying the stop; is that right?

25 A Yeah, with the information that came out. But the

1 information as far as my wrong driver's license didn't
2 come out until the trial, and the tape not being clear
3 didn't come out until after the trial.

4 Q Okay. And the information that -- your attorney
5 talked about the fact that he was on his third DVD,
6 that they were having problems with that running
7 correctly in a pretrial motion, didn't he?

8 A Yeah. He mentioned it to Judge Couch.

9 Q Okay. All of those motions, unfortunately for
10 you, were denied, though, right?

11 A Yes.

12 Q Okay. And so you proceeded to trial. You said
13 that your attorney failed to properly cross-examine the
14 trooper as to the inconsistent statements? You said
15 that Trooper English made a comment about the one dog?

16 A Yes. Yes. He say Trooper English stated that the
17 dog jumped on the passenger side. Trooper Wilson
18 stated that the dog jumped on the driver's side door.

19 Q Did your attorney not cross-examine the troopers
20 as to the fact that they gave different statements
21 about that?

22 A He cross-examined both of them, but he didn't make
23 no motion, like I felt like it could have been mistrial
24 or whatever because of contradictory statements.

25 Q Okay. So in the transcript on page 354 and -55

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1 when your attorney is asking Trooper English about
2 whether or not he had indicated the dog hit on the
3 driver's side door versus the passenger side door, you
4 recall that he did ask the trooper about that?

5 A Yes. I remember that. Yes, sir -- yes, ma'am.

6 Q And so your attorney asked him about the length of
7 the stop, the training of the dog, the questions that
8 were asked, whether or not you were free to leave,
9 those were all asked before the jury, were they not?

10 A I don't recall. I don't know if it was just
11 before the judge or the jury.

12 Q Okay. So if the transcript reflects that there
13 were questions -- your attorney cross-examined both
14 Trooper Wilson and Trooper English; is that right?

15 A Yeah, he did.

16 Q Okay. And he talked to both of them. He talked
17 specifically to Trooper Wilson about the length of the
18 stop; is that right?

19 A Yeah.

20 Q Because he was the one that originally stopped
21 you?

22 A Yes.

23 Q And he was a highway patrolman; is that right?

24 A Yes.

25 Q So this wasn't a deputy from another county, this

1 was a highway patrolman?

2 A Yes.

3 Q And, in fact, during the testimony, as you said
4 earlier, the entire length of the stop was found to be
5 about 14 minutes; is that right?

6 A Yeah. But he stated on his -- on direct that he
7 said that his normal stop for just a warning is five to
8 seven minutes.

9 Q Okay. And, in fact, the testimony was presented
10 that he, upon asking you why you were traveling in the
11 rental car and where you had met your cousin in
12 Atlanta, that he began to become suspicious; is that
13 what he testified to?

14 A He allegedly -- he said that I made -- got
15 suspicious because he alleged that I went under the
16 seat, disappeared completely, my head disappeared out
17 of sight. He said that's what got his suspicion, made
18 him call for a canine unit. And the canine unit -- he
19 said he was in fear for his life, like I placed a gun
20 or a weapon under my seat, but then later found out
21 that the dog is not trained. He said he knew the dog
22 that he called was strictly a drug dog.

23 Q Okay. And your attorney addressed the fact that
24 on the video they can't really see your head drop down
25 as he said to maybe put something below the seat?

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1 A He said he couldn't -- he said that he seen my
2 head right there, but the officer say no, that wasn't a
3 head. That was my headrest.

4 Q So the question of whether or not you had leaned
5 down to put something under the seat, that was raised
6 to the jury as well?

7 A Yes.

8 Q Okay. And, in fact, when you testified, you
9 testified that you had not moved?

10 A Yes.

11 Q And that there had not been any putting anything
12 under the seat. And they didn't find a gun under the
13 seat; is that right?

14 A That's true.

15 Q Okay. All of this information was presented to
16 the jury through the officer's testimony and your
17 testimony, right?

18 A Yes.

19 Q And did your attorney go over the fact with you
20 that it was going to be the jury's determination as to
21 who they believed as to whether or not you were found
22 guilty?

23 A No. I believe that if we had had a clear tape
24 from the beginning where it would state that my head
25 never moved, then him saying that I put something under

1 the seat, it would have been perjury. It would have
2 been plain sight, I mean, that I never moved. And then
3 if you would have cleared that tape up and proved that
4 I never moved, he had no reason to ever even call a
5 canine. And then by him calling the wrong number and
6 delay, I mean, the judge rewarded him for calling in a
7 wrong number and saying that he's waiting on the
8 dispatcher.

9 Q The officer testified that it came back that you
10 had no suspensions, no warrants or anything; is that
11 right?

12 A He put that in his report, but on trial he
13 testified he was waiting on the dispatcher to call
14 back. They never responded back. During the whole
15 time he say he was waiting on them to call back.

16 Q Okay. And even with all of the testimony that was
17 presented, you said that, obviously, and the court of
18 appeals found, that it wasn't properly preserved; is
19 that right?

20 A Correct.

21 Q But your argument is had this been properly
22 preserved and presented to the court of appeals, your
23 conviction would have been overturned?

24 A Yes.

25 Q Okay.

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1 MS. WHITE: Your Honor, I think that's all I have
2 at this time.

3 MR. RUCKER: Nothing further your Honor.

4 THE COURT: Thank you, Mr. Falls. You can step
5 down.

6 MR. RUCKER: Nothing further, your Honor.

7 THE COURT: All right. Thank you, Mr. Rucker.

8 MS. WHITE: Your Honor, the State would call Chris
9 Thompson.

10 CHRISTOPHER THOMPSON,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE COURT: Please state your name for the record.

13 THE WITNESS: Christopher Paul Thompson.

14 THE COURT: Ms. White, your witness.

15 MS. WHITE: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MS. WHITE:

18 Q Mr. Thompson, if you can, just give us a brief
19 history. How long had you been practicing law at the
20 time of this trial in 2011?

21 A I believe seven years. Seven-plus years.

22 Q And during that time have you handled mostly
23 criminal cases, civil, family law?

24 A Very briefly I did some real estate stuff, but
25 that was only for like the first few months of my

1 practice, or as an attorney, and then since then I've
2 been involved with criminal matters.

3 Q So would you say one hundred percent criminal
4 matters?

5 A I do family law, too, but criminal is probably
6 more of what I do.

7 Q And during that seven-year period, had you had the
8 opportunity to handle any drug trafficking charges or
9 possession with intent to distribute?

10 A Several of those. Now, that being said, most of
11 those cases work out into pleas.

12 Q Did you ever receive any plea offers in this case?

13 A Mr. McCarty offered -- and Jeff's right, it was
14 18 years he offered. I believe he had to reduce maybe
15 the weight to get it to 18 because of this mandatory 25
16 on second offense trafficking 100 to 200, I believe.

17 Q Okay. And, in fact, this was the applicant's
18 second offense. This wasn't an initial trafficking
19 charge, was it?

20 A No. Yes, it was second offense.

21 Q Okay. In regards to -- obviously the main issues
22 that the applicant has are with the argument over the
23 delayed or prolonged stop in the pretrial suppression
24 motion. What kind of preparations did you do in
25 regards to research or investigation for that pretrial

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1 suppression motion?

2 A Extensive. There were just a number of cases I
3 pulled. And, quite frankly -- and I think Jeff would
4 agree with me -- I personally believe Rolling Thunder
5 is unconstitutional. It is illegal in my
6 interpretation of the Fourth Amendment. And so I
7 believe that it needed to be -- it needs to end. It
8 still goes on today. And I aggressively researched
9 various cases. And he's right. I think the State
10 argued maybe *Provet* on one and *Tindall* was the one I
11 argued. And, I mean, I cut down and chopped up every
12 issue and I researched it, I felt, thoroughly.

13 Q And, in fact, if you can just briefly, for the
14 record, Rolling Thunder, is that, as he stated, a
15 multi-jurisdictional or week-long --

16 A It's an annual sting, I would call it, whereby the
17 county sheriff will have officers from various
18 jurisdictions -- I think even maybe out of state. I'm
19 not a hundred percent sure. They will come here and
20 patrol I-26 and I-85, and the number of traffic stops
21 are far more, far exceed what the normal rate of
22 traffic stops are. And that they are -- I think
23 Officer Wilson may have testified that it was a drunk
24 driver motive and other things, to get weapons and
25 drugs off the streets. But that, in my understanding,

1 is the focus of the sheriff's department and it's an
2 annual occurrence.

3 Q Okay. And Officer or Trooper English and Trooper
4 Wilson, they were actually with the highway patrol; is
5 that right?

6 A Yes.

7 Q And was the argument from the State that they kind
8 of had statewide jurisdiction or do you recall?

9 A Jeffrey was pulled over in 2007 and he hired me
10 shortly thereafter. I was with Turnipseed law firm, so
11 he hired the firm. And I began to look into it, and I
12 did raise the issue that these guys were here and the
13 agreement was not proper.

14 Now, prior to Jeffrey's case going to trial, Keith
15 Kelly, Judge Kelly, was a defense attorney and did
16 argue the same issue, and it happened to be before
17 Judge Couch, too. So, but I did raise that issue, but
18 I knew full well that Judge Couch had already ruled
19 that the Rolling Thunder agreement or association was
20 proper.

21 Q Okay. And that's what he did, obviously, in this
22 case, as well?

23 A And I believe I raised an issue wanting to have
24 the written agreement presented to the Court, and I
25 don't know that -- I think he basically ruled that

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1 wasn't necessary.

2 Q Okay. In regards to the delayed stop, obviously
3 your argument was that the trooper improperly delayed
4 or prolonged the stop in order to get the drug dog
5 there?

6 A Yes. And it started off Jeffrey was pulled over,
7 I believe the officer's wording was he crossed over a
8 fog line. I never heard of that term. And so I felt
9 that was improper. I argued that. But Jeffrey is
10 right. He brought it to my attention I think the day
11 before trial or close to trial that the officer called
12 in a six-digit driver's license number. And he's
13 right. Judge Couch said, "I've had no testimony
14 provided to me that that delay did -- I mean that
15 calling in the number improperly did result in the
16 delay." I think I countered with that the officer
17 admitted that it was a delay, that it delayed the
18 process.

19 Q In all of the testimony and the arguments, did you
20 feel like you had, I guess, a good argument or a shot
21 at winning that?

22 A I felt like the suppression motion should have
23 been granted. And I think I went through the fact that
24 you can see the officers just -- he just taps on the
25 pad pretending to write. I even went in and counted.

1 I think it was 15, 16 words that they wrote on the
2 warning ticket. I think Jeffrey said it was
3 14 minutes. I don't remember how much time went by,
4 but I would say it was probably accurate, what Jeffrey
5 testified to.

6 Q So the 14 minutes total was probably, you believe,
7 accurate?

8 A I believe that was accurate. And I believe it was
9 an *Illinois v. Caballes* -- I believe I brought that up
10 in the suppression motion -- indicated that would be
11 too long.

12 Q Okay. Do you recall Mr. Falls testified that you
13 met about three times during the four and a half years
14 from arrest to trial; is that accurate?

15 A I believe we met more than that. I would say we
16 met five, maybe six times. If we didn't -- we either
17 watched the video together or I gave him a video. We
18 may have watched it together, but there were problems
19 with the video, and that's not uncommon with criminal
20 cases. I don't recall him ever telling me the video
21 was not an accurate portrayal or that it needed to be
22 cleaned up.

23 Q So there was no indication on the video or from
24 Mr. Falls, maybe, that it appeared to have been altered
25 or anything?

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1 A He never brought that up, no. His objection was
2 mainly -- same as I had, that he was improperly stopped
3 and detained far too long.

4 Q Was the video, as he mentioned, too dark to
5 clearly see? I mean, obviously, it was 9:00 p.m. at
6 night.

7 A I guess I'm a bit biased, but if you read these
8 police reports, they know what they need to say in
9 here. And I don't believe -- in the video I don't see
10 Jeffrey reach down and do anything. But that was the
11 officer's testimony. That's what he observed.

12 Q And that was questioned at the trial, was it not?

13 A It was. I believe it went in, and, in fact, I
14 believe Trooper Wilson or Trooper English did indicate
15 that nothing was found under the seat as he alleged.

16 Q Did you feel like you had a good opportunity to
17 cross-examine both of the troopers and present
18 questions as to maybe inconsistent statements or
19 reports?

20 A Sure. I mean, the suppression motion on the
21 transcript is 190 pages. And Officer Wilson's
22 cross-examination is a substantial amount of pages as
23 well.

24 Q You -- do you recall or have you had a chance to
25 see the appellate opinion in regards to Mr. Falls'

1 case?

2 A I have read it, just read over it one time.

3 Q So you would agree with me that the Court did find
4 that the objection was not renewed at the time the
5 drugs were entered?

6 A I do believe that -- I raised them all in the
7 suppression motion.

8 Q Right.

9 A And then -- but I don't know. I guess I didn't
10 renew them at the end, the conclusion of testimony.

11 Q Okay. And, just briefly, the testimony and,
12 obviously, as you said, you know, you thought it should
13 have been granted, but the officer testified that there
14 were multiple things that caused him to have, as he
15 said, reasonable suspicion. The story that Mr. Falls
16 gave about driving from Charlotte to Atlanta back in
17 one day pretty much, the issue of him meeting a cousin,
18 not knowing where he was meeting the cousin, not
19 knowing where the cousin lived and kind of giving a
20 sketchy name; is that right?

21 A I'm not sure I understand the question.

22 Q Okay. That's what the State was presenting; is
23 that right?

24 A Right. Right.

25 Q Not whether or not you believe or agree with that,

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1 but that's the evidence?

2 A Yes. Yes. Yes.

3 Q Okay. And this was a rental car; is that right?

4 A Yes.

5 Q And as indicated, there was no luggage or anything
6 in the vehicle?

7 A Right. Oddly, the officer testified it was
8 uncommonly clean.

9 Q In fact, there was testimony about whether or not
10 he had had it detailed and several things about the
11 cleanliness of the car; is that right?

12 A I believe so.

13 Q And the State also presented testimony from the
14 officer about his indication or his belief that
15 Mr. Falls was very nervous and shaking when he handed
16 him the rental agreement, dry mouth. In fact,
17 Mr. Falls asked for water from the trooper; is that
18 right?

19 A Yes.

20 Q So based on, I guess, the trooper's consideration
21 of this being an implausible story and these other
22 factors, that is what he based this reasonable
23 suspicion on for the stop?

24 A I believe he actually said totality of the
25 circumstances.

1 Q And, in fact, that's how the ruling was
2 essentially, is that based on the totality of the
3 circumstances, it was not a delay, delayed or prolonged
4 stop that was inappropriate?

5 A Right. And Judge Couch echoed the same ruling.

6 MS. WHITE: One moment, please, your Honor.

7 Q Was there an issue regarding having an independent
8 expert testify or test the drugs?

9 A That was never brought up to me.

10 Q Okay.

11 A That I recall.

12 Q And was there an issue about whether or not the
13 chain of custody was broken or whether or not that
14 could be proven; do you recall that?

15 A I was not privy. All I had was the -- I guess
16 it's a Rule 6 that indicated, I believe, the testimony
17 shows that Trooper English pulls it out of the car,
18 puts it on the hood, and I assume it went from there to
19 Mr. Wilson and he turned it over to SLED. But I don't
20 recall that being -- I think I questioned the chain of
21 custody maybe on the video at one point, and that
22 was -- I don't know if it was overruled or they brought
23 in another witness, I don't recall. But I don't recall
24 there being a problem with the -- I think it's Rule 6.

25 Q And the chemist did testify as to her taking

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1 control of the drugs and testing them. Was there an
2 issue in regards to the day that they had the banquet,
3 as Mr. Falls mentioned?

4 A I don't recall the -- I don't recall being privy
5 to the banquet information, and that could have been
6 brought up, but I believe -- let me make -- and I did
7 mention a banquet because the newspaper article always
8 does show the loot --

9 Q Right.

10 A -- that the Rolling Thunder produces, but I
11 don't -- I don't recall those specific drugs being at
12 issue of what was in there. I don't recall that.

13 Q Okay. And your argument about the banquet had to
14 do more with the jurisdiction and what they were
15 brought to the county for -- I mean -- excuse me --
16 strike that -- what the purpose was of the highway
17 patrolman being in town?

18 A I think, from what I understand, it kind of went
19 into they have a breakfast the first day, and then at
20 the end of week they have a get-together and have
21 dinner or lunch or something and give an inventory of
22 all the drugs they seized, weapons, money, et cetera.

23 MS. WHITE: Thank you. Your Honor, that's all the
24 questions I have at this point.

25 MR. RUCKER: May it please the Court.

1 THE COURT: Rucker.

2 CROSS-EXAMINATION

3 BY MR. RUCKER:

4 Q Mr. Thompson, how much did you charge to represent
5 my client in this case?

6 A I believe Jeffrey paid \$3,500.

7 Q And I believe your testimony was the -- well, you
8 put a lot of time in into the motion to suppress; is
9 that fair to say?

10 A Yes.

11 Q Is it fair to say that was the whole case in a lot
12 of ways?

13 A I believe we had that conversation that if the
14 drugs come in, we got a bad scenario.

15 Q And you thought -- I mean, looking at *Illinois vs.*
16 *Cabellas*, and I believe you didn't cite *Provet, State*
17 *v. Provet*, but you didn't cite *State vs. Teinowitz*
18 (phonetic), which is a supreme court case. Based on
19 that, the drugs should not have been admitted?

20 A That's not my belief. And like I say, I believe
21 Judge Couch went with the totality of the
22 circumstances.

23 Q And he based it on his view that if you look at
24 the totality of the circumstances. After reviewing
25 those cases, that was his view of the way it was

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1 supposed to be analyzed?

2 A Yes, sir. Like I said, I tried to break it down.

3 And I think at some point I went in there being a

4 second detainment under one of those cases.

5 Q You had practiced seven years and doing a lot of

6 criminal law up until then?

7 A Yes.

8 Q You knew it was required that you move -- you

9 renew your motion during the trial, didn't you?

10 A Like I say, I probably overlooked that at the end.

11 There was one situation with a blue or red bag I felt

12 was important, and that came late in the trial. And I

13 could have.

14 Q Well, in fairness, it's a tense, stressful

15 situation?

16 A Right. And like I say, I could have neglected

17 to -- that could have been on my mind --

18 Q But --

19 A -- at the point where I didn't renew.

20 Q You simply didn't renew it for whatever reason --

21 stress of the trial, tension of the trial?

22 A I guess so. Like I say, it was two, three days, I

23 guess. And at the conclusion of the testimony,

24 anything from the State, anything from the defense.

25 Q Right.

1 A And I guess I neglected to do it right then.

2 Q You didn't do that for a strategic reason. You
3 just failed to do it and you should have done it?

4 A Right. I knew I preserved those issues on a
5 suppression motion. Well, I had certainly argued those
6 on a suppression motion, and I believe I renewed them
7 at the end of suppression motion, but I didn't at the
8 end of the trial, according to the transcript.

9 Q United States Supreme Court law and the South
10 Carolina State Court of Appeals and supreme court law
11 make it pretty clear that this 14-minute-long detention
12 was really not sustainable and those drugs should not
13 have been admitted into evidence?

14 A I would fully agree with that.

15 Q And one judge got it wrong in this case; is that
16 fair?

17 A I believe he did, and I believe I was right.

18 Q I understand you have to appear in front of him,
19 but in fairness, you argued a different view of the law
20 than he took?

21 A I did. And like I said, especially the break
22 where I would argue another detainment took place
23 because he was done with writing that ticket.

24 Q Right.

25 A And Jeffrey even asked him if, "I say you can't

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1 search, can I go?"

2 Q Right.

3 A And it was just an obvious delay, I felt like.

4 Q There were clear violations of at least *Tindall*,
5 probably *Provet*, and certainly *Caballes*?

6 A I would agree.

7 Q The court of appeals specifically said they
8 weren't getting to this because it wasn't preserved,
9 but based on your review of the law, if they would have
10 gotten to it, the law demands that the drugs be
11 suppressed in this case?

12 A I wouldn't say demanded it, but I would say he
13 would have a good argument that suppression was
14 warranted.

15 Q Is it just a good argument or is it fair to read
16 the law to say -- I mean *Tindall* is pretty close on
17 point.

18 A Right. That's what I felt like. And, you know,
19 you can read that case law and it goes round and round,
20 but, you know, the way I see it they should have been
21 suppressed at trial.

22 Q And it's your belief that if, based on your review
23 of the law, if the appeals court could have properly
24 reviewed it, they then would have remanded it because
25 they believe it should have been suppressed?

1 A Like I sai, I don't know that they would remand
2 it, but it would be a good argument, a valid argument.

3 Q We're going to move on. I'm not asking you to
4 think what the judges would do. The law, though,
5 reviewing the law, means if they did their job
6 properly, they should have remanded it because it
7 should have been suppressed if they would have been
8 able to get to that issue?

9 A If I applied the law. I don't know about them,
10 but I think there's applicable law to remand it.

11 Q But the court of appeals itself in a very similar
12 case says this should have been suppressed. And the
13 United States Supreme Court --

14 A And I believe *Tindall* was the one strikingly
15 close. I think it was *Tindall*.

16 Q But at least one of the cases you cited within
17 your motion to suppress?

18 A Yes.

19 Q I think that covers the stop and detention. The
20 Rolling Thunder issue, would the previous order in a
21 case called *State vs. Gonzales* that Mr. Kelly, now
22 Judge Kelly argued --

23 A If you let me look, I believe Judge Couch goes
24 into it.

25 MR. RUCKER: Your Honor, if I may approach the

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1 witness.

2 THE COURT: Yes, sir.

3 THE WITNESS: Is this the one that Judge Kelly
4 argued?

5 BY MR. RUCKER:

6 Q I'm asking you if that's the one that y'all went
7 over.

8 A I believe it is.

9 Q Okay. Does that refresh your memory as to the
10 order?

11 A It does.

12 Q Okay. Now, if you need it back, certainly ask for
13 it, obviously. But the issue actually in Gonzales was
14 that the contract was produced in that case, wasn't it?

15 A I believe it was.

16 Q All right. And the judge denied the suppression
17 motion because the contract was produced, and he
18 reviewed South Carolina Code of Laws 23-1-210 (b). He
19 went to the actual statute that allowed this, correct?

20 A I'm sure he did. I believe it was Judge Couch
21 that did the ruling on that.

22 Q Right. But the difference in this case is they
23 did not produce a contract or did not produce the
24 agreement as part of the trial, correct?

25 A Right. And I believe I tried to hammer on that a

1 little bit in the suppression motion. I believe that
2 might have been my first motion I raised was the
3 jurisdictional authority of the officer.

4 Q Sure. Did Judge Couch say he was taking judicial
5 notice that he already reviewed this material before
6 and he knew out there there was an agreement?

7 A That I don't recall.

8 Q In fairness, what was his basis for saying that
9 the agreement was not necessary to be produced?

10 A I guess kind of what Jeffrey went into, I ruled on
11 it before, and I know it's good, it's a legitimate
12 practice.

13 Q And you objected to that based on the agreement
14 not being there, right?

15 A I believe I did.

16 Q And because that wasn't preserved, that was
17 abandoned also on appeal, correct?

18 A Yes. I may have even had a subpoena sent to an
19 officer who supposedly had the contract.

20 Q What happened with that subpoena?

21 A He never showed, and I believe Judge Couch
22 basically said, well, it's not necessary anyway.

23 Q Was that on the record? Was that part of his
24 ruling or was that a sidebar?

25 A That -- I believe it's here in the motion.

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1 Q But it was not renewed at trial?

2 A No. I didn't go back into that.

3 Q As far as the plea offer, my client testified that
4 the case was out there for four and a half years; is
5 that right?

6 A Yes.

7 Q The best plea he could get was 18 years; isn't
8 that right?

9 A As far as I know. Now, he may have said he can
10 plead to 28 to 100, but I don't recall him -- it seems
11 like that was the plea offer, to reduce it to that and
12 he would -- I think there would be a recommendation of
13 18.

14 Q Did you have an actual sit-down or a meeting with
15 Mr. McCarty from the solicitor's office talking about
16 the bad stop?

17 A Probably three or four times. And even today, you
18 feel like somebody, something is going to come along
19 and undo some of these Rolling Thunder cases, in my
20 opinion. And the thing we would talk about was the
21 stop. And, of course, he was there to prosecute the
22 case, so he didn't agree with my interpretation of the
23 case law. I believe we may have -- I don't know.
24 Maybe somewhere in the negotiations I believe the
25 *Illinois* case came up, and he still. . .

1 Q He wouldn't back down?

2 A Still felt like that was a decent offer. Like I
3 say, I think he was hung up on the second offense.

4 Q Now, the plea offer -- I mean, I'm sorry, the
5 video issue, did you bring a copy of that video today?
6 The judge will have it from the clerk's office.

7 A I did not.

8 Q You were under subpoena to bring your entire file.
9 But, again, it's in the clerk's office. When you
10 reviewed it with Mr. Falls, your testimony is he never
11 said it was darker than it actually looked when it was
12 happening?

13 A I don't recall him saying that. Now, Jeffrey
14 would remember more smaller details than me, but I
15 agree with Jeffrey I never saw Jeffrey bent down or do
16 anything under the seat or consistent with the
17 allegations that the trooper made.

18 Q Do you know what the problem with the video was?
19 Was it your machine that was trying to view it because
20 I believe there was also a problem at trial.

21 A I believe initially the program necessary to play
22 it, the DVD, was not available on my computer. And I
23 could be wrong, but I believe the State at some point
24 provided me with a disk to load that player.

25 Q Do you think there was an issue with the disk

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Christopher Thompson - Cross

1 itself, that it could have been altered?

2 A No.

3 Q Why do you believe that?

4 A It's not a bad video realistically as far as
5 roadside tapes go. It's -- it's pretty good video. I
6 mean, it's not -- you know, you're not going to have
7 high quality with those, but I can -- he -- you can see
8 Jeffrey lick his lips and things like that, but -- so
9 it's not like it was blurry or anything like that. And
10 I didn't notice -- and one reason I believe it's
11 legitimate is the way we're able to calculate the
12 length of the detainment is the running clock and the
13 numerical system on the tape remains consistent.

14 Q All right. As far as the -- how many times did
15 you review the video yourself?

16 A Probably ten or more.

17 Q So how many hours roughly or minutes did it take
18 you to go through all that ten times?

19 A Easily 20, 25 hours.

20 Q Did you miss that the driver's license number was
21 being called in wrong?

22 A I never had his driver's license number, and I
23 didn't pick up on that. And I believe Jeffrey -- maybe
24 he picked up on it during the suppression or -- but I
25 didn't pick up on that.

1 Q And, specifically, what I'm getting at is did you
2 hear on the video that the officer said he was calling
3 in the wrong -- he had called in the wrong number or at
4 some point on, later after call-in, did he admit that?

5 A I don't believe he admitted that until trial.

6 Q So it's your testimony if you would have reviewed
7 the driver's license with him beforehand, you would
8 have known that was an issue and that could have helped
9 your notion to suppress, but you didn't bring that up
10 during your motion to suppress?

11 A I think I didn't bring it up during the motion to
12 suppress as relevant to the *Illinois* case, that that,
13 his calling in the wrong number, I felt was intentional
14 to create a delay, to further delay the matter until
15 the drug dog could get there. If you watch the tape, I
16 mean, there's five or six cars up the interstate pulled
17 over, so that was kind of my reasoning, he called in
18 the wrong number so the dog could get there. I think,
19 you know, the *Illinois* case says once the dog is there,
20 you're in a valid stop. He's fair game.

21 Q All right. What I'm getting at is I believe your
22 testimony was you didn't have a copy of my client's,
23 your former client's, driver's license?

24 A Did not, no.

25 Q So how would you know whether it was wrong or

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Christopher Thompson - Cross

1 right, simply what the officer said?

2 A No. Jeffrey brought it to my attention after he
3 had viewed the tape and maybe looked at his driver's
4 license. He brought it to my attention. So it was
5 something we knew about coming in.

6 Q That was within the suppression motion hearing?

7 A It was either during the suppression or the day
8 before because I believe Jeffrey had come up. Like I
9 say, I don't think I gave him a tape. I think we
10 watched it together. And he either picked up on it
11 then or during the suppression hearing.

12 Q If y'all would have gone over this case more
13 thoroughly in this four and a half years, would you
14 have discovered that driver's license issue earlier?

15 A Possibly. I mean, I don't know.

16 Q Could that have affected your ability to more
17 persuasively argue the suppression hearing, if you
18 would have had more time to research it and argue it?

19 A Well, I mean, the officer admitted on the record
20 that it did -- it did create a delay because he never
21 heard back that this person has a clean driving record,
22 there's no warrants. So I believe it was -- I don't
23 know that we could have done any more than that.

24 Q But the delay under the law has to be reasonable,
25 correct?

1 A Yes.

2 Q I mean, you can't just delay it with a bunch of
3 lies or misleading, officers can't do that?

4 A Not supposed to.

5 Q It has to be legitimate -- I mean, if the truth
6 comes out, it has to be legitimate that the delay took
7 that long based on something the officer had no control
8 over?

9 A I believe I understand you to be saying that it
10 has to be unintentional or, yeah, just basically a
11 process of the system.

12 Q And that trooper is up there specifically under
13 Rolling Thunder to stop people, find drugs, find guns.
14 How experienced was that trooper at the time he made
15 this arrest, do you know?

16 A I believe Mr. McCarty went through all that on
17 direct examination. Maybe, I don't know, 11 -- for
18 some reason 11 years sticks my mind, but I'm not sure.

19 Q This is a very experienced trooper, but he's
20 missing a basic driver's license number from North
21 Carolina?

22 A Again, I'm not bad about the guy, but I believe it
23 was just an intentional tactic.

24 Q Could you have helped your cross-examination by
25 knowing that earlier than you did?

Jeffrey B. Falls v. State of South Carolina 2014-CP-42-00129
Christopher Thompson - Cross

1 A Not necessarily. I mean it was --

2 Q Did you produce a copy of the driver's license to
3 cross-examine him?

4 A I did.

5 Q But that was -- that's not something you were
6 prepared to do, you just found out about it the day
7 before?

8 A Well, if I'm not mistaken, maybe we had the actual
9 license and entered it as an exhibit.

10 Q And then as far as the chain of custody, when did
11 you find out that the drugs could have been used at
12 that banquet -- would have been produced at the banquet
13 for the pictures?

14 A When I was sitting over there. I didn't
15 realize -- I wasn't privy to the banquet dinner. I
16 don't know if they put the actual drugs up there or
17 not.

18 Q Did you ever talk to the SLED chemist yourself
19 after reading the Rule 6?

20 A No.

21 Q Did you not check with any of the people in the
22 chain of custody to make sure it was legitimate?

23 A Not really. I mean, they, you know, other than
24 cross-examination when they take the stand.

25 Q Do you believe you could have covered through that

1 chemist that those drugs would have been taken over to
2 that hotel and had pictures taken of them with the
3 other stuff?

4 A Well, I mean, again, assuming it's true testimony.
5 Everybody did testify. I believe English and Wilson
6 and the chemist.

7 Q Well, I'm asking -- I'm sorry.

8 A Yeah. I mean, I could have questioned her as to
9 if she were privy to any banquet and the drugs being
10 maybe taken out of his custody; put on a table and
11 returned to him or something. I could have.

12 Q Earlier you said -- I mean, the drugs are the
13 case. Why wouldn't you simply make a phone call to the
14 chemist, find out if she's cooperative, find out what
15 happened with the chain of custody issue?

16 A I didn't have any reason to believe anything had
17 happened to the chain.

18 Q So is it fair to say that you assumed that
19 everybody that signed the chain of custody would be
20 honorable and do what they were supposed to do?

21 A Yes. And it's been my experience that -- I've
22 been overruled on objection when everybody is not
23 present to testify that they handled the drugs.

24 Q So it's your view in a criminal case, if everybody
25 is not present, that that evidence would still come in?

1 A My argument would be you need everybody here. I
2 didn't have any information to believe that it was
3 taken by anybody to the banquet.

4 MR. RUCKER: Just a few more questions, your
5 Honor.

6 BY MR. RUCKER:

7 Q Mr. Thompson, do you recall reviewing the Form B,
8 Rule 6 where D.G. Wilson says he was the person who
9 seized the drugs and the money from Jeffrey Falls?

10 A I believe I did. And then -- actually, I guess
11 English would have been the one to discover the drugs.
12 And the -- well, I guess it's really not relevant. You
13 know, Jeffrey and I discussed the fact that he tore the
14 car apart and found them right there in the door, but I
15 do recall Wilson being the seizer and then -- but the
16 tape shows English retrieved the drugs. And I kind of
17 went -- I went into that on the bag issue because they
18 never produced the red bag or whatever color it was at
19 trial.

20 Q Specifically my question is: Did Officer Wilson
21 testify he was the one that seized the drugs and the
22 money off of my client, Jeffrey Falls?

23 A I don't believe he did. I believe English
24 testified, "Yeah, that's me on the tape," and he
25 gets -- seems like he comes back, has Trooper Wilson

1 cuff Jeffrey and he goes back to the car, finds them
2 and brings them up. And then like Jeffrey says, he
3 puts them on the hood of the car and takes a lot of
4 pictures, but I don't recall Wilson testifying he
5 seized them.

6 Q But you reviewed the discovery, including the Rule
7 6, you testified earlier.

8 A Yes.

9 Q And Form B, do you remember that it indicates that
10 Trooper Wilson is the one who indicates he's the one
11 who seized the material off Jeffrey Falls including a
12 signed statement?

13 A I don't recall that, but I believe it does leave
14 English out of that for whatever reason.

15 MR. RUCKER: May I approach the witness, your
16 Honor?

17 (WHEREUPON, Defendant's Exhibit Number 1
18 was marked for identification.)

19 BY MR. RUCKER:

20 Q I'm going to show you what's been marked for
21 identification purposes Applicant's Exhibit 1. Do you
22 recognize that document?

23 A Yes, sir.

24 Q Is that the Form B Rule 6 that you reviewed in
25 preparation for trial?

1 A Yes, sir.

2 Q All right. Do you remember getting that from the
3 solicitor's office?

4 A Yes.

5 Q All right. Who signed it saying they seized the
6 material, the drugs and the money, from Jeffrey Falls?

7 A D.G. Wilson says he seized from Mr. Falls pursuant
8 to a search the contraband.

9 Q All right. But that was --

10 A And he does sign it.

11 Q Did he actually have that notarized?

12 A No.

13 Q All right. Do you recall questioning him on that
14 issue at all?

15 A No.

16 Q That's a pretty big deal when you have one officer
17 establishing a chain on a form but it's actually
18 another officer who did it; is that right?

19 A That's a big deal, but at the same time the tape
20 shows, you know, everything that transpired.

21 Q Right. But the tape shows that that form is
22 incorrect; is that right?

23 To put it in a more clear way, if the tape shows
24 that the other trooper actually collected the material
25 but Trooper Wilson signed the form saying he did it,

1 then that's an impeachable issue with that trooper,
2 isn't it?

3 A Sure.

4 Q I mean, they're going through the motions at this
5 point, if that form is to be believed, because it's not
6 true based on what you reviewed?

7 A Right.

8 MR. RUCKER: No further questions.

9 MS. WHITE: Just briefly, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. WHITE:

12 Q As to the point that you were just discussing with
13 Mr. Rucker, is it your understanding that if a trooper,
14 if Trooper English had taken the drugs and then given
15 it to Wilson to transport to the chemist that day in
16 the video, that he would have had to have filled in a
17 separate form for chain of custody?

18 A Honestly, I see that as a clerical issue where
19 probably English moves on in a separate automobile, and
20 that's just what he turned in on a report.

21 Q Does the law not require as far as practicable for
22 the chain to be established?

23 A Yes.

24 Q Okay. And, in fact, on page 261, you ask Officer
25 Wilson -- or, excuse me, on direct they asked him if he

1 did not participate in the search, and is that the
2 point that Trooper English found the cocaine, and again
3 you didn't participate in the search. So it was clear
4 that Trooper English found the cocaine, but it was
5 Officer Wilson who took the drugs to the evidence --
6 took them into evidence; is that right?

7 A Yes. And that's the form he used to -- I would
8 call it a drop box, I guess.

9 Q Okay. And had there been any issues with the
10 video of concern, whether it had been tampered with or
11 other issues having to do with chain, would that have
12 been something you would have brought up?

13 A Sure. I mean -- well, yeah. I mean, I would have
14 because I want to do whatever the client wants to do,
15 but it's not uncommon for a criminal defendant to say
16 the video evidence has been tampered with or something.
17 But I don't recall that being even brought up.

18 Q Okay. All right. Thank you.

19 MS. WHITE: That's all I have, your Honor.

20 MR. RUCKER: Nothing further, your Honor.

21 THE COURT: Thank you, Mr. Thompson. You can step
22 down.

23 Anything further?

24 MS. WHITE: Nothing further from the state.

25 MR. RUCKER: Nothing further, your Honor.

1 THE COURT: All right. If there's nothing
2 further, I'm going to take this under advisement.
3 There is a lot of material for the Court to read. Is
4 the 14-minute tape that y'all have continuously
5 referred to, is that in evidence here?

6 MR. RUCKER: It should be at the clerk's office.

7 MS. WHITE: It was put into evidence, your Honor,
8 during the trial, so the clerk's office here, we may
9 have to -- we can get it, I'm sure, at some point this
10 week. They might, because this was -- well, this was
11 2011 so it might not be already in storage, but we can
12 see if we can get them to get that.

13 THE COURT: I'd like to -- since that seems to be
14 the focus of the case, I'd like to review that.

15 Mr. Rucker, you just had him identify an exhibit
16 here. Are you putting that in?

17 MR. RUCKER: No, sir. That was just used to
18 refresh your memory.

19 THE COURT: All right. If there's nothing
20 further, we'll take this under advisement. We're going
21 to take a few-minute break.

22 (WHEREUPON, the hearing ended at 12:14 p.m.)

23 ***END OF REQUESTED TRANSCRIPT OF RECORD***

24

25

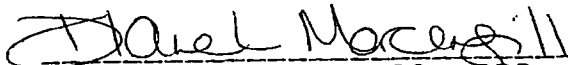
1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Spartanburg County, South
10 Carolina, on the 8th day of June 2015.

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, counsel,
14 nor interest to any party hereto.

15 December 11, 2015

16
17 

18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
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STATE OF SOUTH CAROLINA)
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 COUNTY OF SPARTANBURG)
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)
 Jeffrey B. Falls, #347321,)
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 Applicant,)
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 v.)
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 State of South Carolina,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2014-CP-42-0129

ORDER OF DISMISSAL

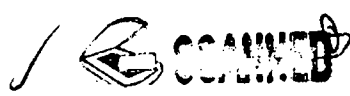
This matter comes before the Court by way of an application for post-conviction relief filed January 9, 2014, and an amendment filed April 8, 2014. Respondent made its Return on or about October 9, 2014. The Court convened an evidentiary hearing into the matter on June 8, 2015, at the Spartanburg County Courthouse. Applicant was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Chris Thompson, Esquire, also testified. This Court had before it the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the May 2007 term of the Spartanburg County Grand Jury for trafficking in cocaine (2007-GS-42-211). Applicant was represented by Christopher P. Thompson, Esquire ("Counsel"). On August 12, 2011, Applicant proceeded to trial where he was found guilty of the charge by a jury. The

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 CLERK OF COURT
 SPARTANBURG COUNTY

RCS



Honorable Roger L. Couch sentenced Applicant to imprisonment for twenty-five years and a fine of \$100,000.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Falls, Op. No. 2013-UP-420 (filed November 20, 2013). The Remittitur was returned on December 6, 2013.

II. ALLEGATIONS

In his current application and amendment, Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to function as the State's adversary in any sense of the word,
 - b. Counsel failed to properly consult with or communicate with Applicant as to the status of the case,
 - c. Counsel never ascertained whether or not Applicant fully understood all of the issues involved with the case,
 - d. Counsel failed to do the necessary factual investigations and preparation for trial on Applicant's behalf,
 - e. Counsel failed to function as the counsel that the Constitution Sixth Amendment guarantees,
 - f. Counsel failed to provide Applicant with his complete loyalty.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

banquet. He testified that Counsel should have tested the drugs separately. Applicant also testified that the money found on his person at the traffic stop was not from a drug deal but from his towing business. Applicant testified that he believes the officers prolonged the stop by purposefully calling in the wrong driver's license number. Applicant further testified that Counsel should have objected to the arresting officer's testimony because Applicant believed he committed perjury.

Counsel testified that he had been practicing law for seven years in 2011 and had handled many similar cases before. He testified that he discussed the possibility of a plea offer involving an eighteen year sentence. He testified that he performed extensive investigation and research in this case and believes the Operation Rolling Thunder is unconstitutional. Counsel testified that he raised the issue of the stop being improper and unconstitutional. Counsel testified that he believed the motion to suppress the evidence from the traffic stop should have been granted and admitted that he did not renew his objection to the evidence when it came in during the trial.

Counsel further testified that he and Applicant tried to watch the traffic stop video five to six times. Counsel testified that he saw the video at least ten times himself and believed the video to be a decent quality. He testified that he does not recall Applicant saying that the video had been altered. He testified that the video's running clock remains consistent throughout and he did not believe it to be altered. He further testified that any initial issues he had with the video involved the program required to play it.

Counsel testified that he did not recall Applicant's concerns regarding the possibility of the evidence being on display at a police ceremony and that all people in the chain of custody testified at trial. He testified that he had no reason to believe that there were any issues with the chain.

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B. Ineffective Assistance of Trial Counsel

Because the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures an trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The trial court conducted a lengthy suppression hearing prior to the trial starting, and this Court finds that Counsel made the appropriate arguments in challenging the admission of the video and the drugs. The trial court ultimately ruled against Applicant at the suppression

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J. HOPE BUCKLEY

hearing. Counsel failed to preserve his objection once the evidence was admitted later in the trial – a fact that led the Court of Appeals to reject Applicant's appeal.

South Carolina Courts have held specifically that failure to preserve a motion to suppress in a drug case is deficient performance by trial counsel. McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013). In our present case, Counsel admits that he did not preserve the issue for appeal. This Court finds that Counsel's failure to preserve his objection constituted deficient performance measured by the standard of reasonableness under prevailing professional norms, meeting the first prong of the Strickland test.

The question now turns to the issue of prejudice. The applicant must prove that the errors of trial counsel prejudiced the applicant; to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

This Court has no jurisdiction to review this case from an appellate perspective. It is well established law in South Carolina that one Circuit Court Judge does not have the authority to overturn the rulings of another Circuit Court Judge. A very competent and capable trial judge ruled that the challenged evidence was admissible. It is clear that the admission of the challenged evidence came only after a very substantial evidentiary hearing and that the issue is a close question. Counsel testified that he still believes that the evidence should have been suppressed. This Court's review of the transcript and video raises factual questions as to whether detaining Applicant until the officer with the drug dog arrived was reasonable in light of the circumstances. This issue is magnified by the nature of the case itself. In a drug case, the issue of the search usually is the central issue to the case. In this particular case, had the Court suppressed the challenged evidence, or the ^{appellate} ~~applicant~~ courts held that the evidence should have been suppressed and remanded the case, the State would have had no case against Applicant. The reverse is also

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true. The fact that the evidence was admitted placed Applicant in a very unfavorable position during the trial. However, this Court cannot conduct its own merits analysis because the trial judge ruled on that particular issue. This PCR analysis would be different if this were an issue that trial counsel failed to raise altogether. This issue was raised and the trial judge ruled.

The Court must look at the error in light of all the facts and circumstances of the case. To show prejudice, the applicant must prove that his whole case was prejudiced – that confidence in the eventual outcome is eroded. The lower courts cannot predict with absolute certainty how an appellate court will rule, especially in a factual situation such as this one. There are numerous cases in which delayed searches have been upheld. On the other hand, there are other cases where the searches have been deemed unreasonable. There is no way that this Court can conclude that there is a reasonable probability of a different outcome had trial counsel preserved his objection on the challenged evidence. Based on the facts, the Court finds that Applicant would have been able to make a good faith argument to the appellate courts, but nothing further. Merely being able to make a good faith argument does not arise to the standard of proving a reasonable probability of a different outcome. Accordingly, this Court finds that Applicant has failed to prove that he was prejudiced by trial counsel's deficient performance. Accordingly, the PCR application is denied.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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 T. HOPE BLACKLEY

IV. CONCLUSION

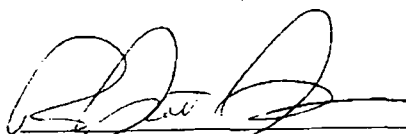
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21 day of July, 2015.



R. SCOTT SPROUSE
Presiding Judge
Seventh Judicial Circuit

M. HOPE BLACKLEY

2015 JUL 24 AM 9:16

SPROUSE

DOCK NO. **07-GS-42-2111**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 28 2011

TERM

THE STATE

vs.

JEFFREY BERNARD FALLS

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

WITNESSES

SCHP

Sgt. J. J. Ke...

SENTENCED MADE

2. REPORTED **Computer**

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

ARREST NUMBER

7. ASSESSMENT AND FINE CARD MADE **Computer**

K222670 TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

True Bill

Stephanie...

Foreperson of Grand Jury

Date: *5/17/07*

VERDICT

Guilty

Francis...

Foreperson of Petit Jury

Date: *8/12/11*

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY 22 AM 11:53
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 17 2007 , the
 Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Jeffrey Bernard Falls did in Spartanburg County on or about February 20, 2007, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than 200 (two hundred) grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370 , *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR