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**S.C. SUPREME COURT**

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

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**Appeal from Greenville County Court of Common Pleas  
The Honorable Perry Gravely, Circuit Court Judge**

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**Appellate Case No. 2017-0002411**

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**Daniel Lopez,.....Petitioner,**

**v.**

**State of South Carolina,.....Respondent.**

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**APPENDIX - VOLUME I**

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Daniel Lopez, # 355282,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-1299

ORDER

ENTERED COMPUTER

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CLERK OF COURT  
PAUL B. WIGGINS  
JAN 10 2018

This matter comes before the Court upon Applicant's Motion to Alter or Amend the Judgment or Order of Dismissal filed October 6, 2017, denying the Applicant's Petition for Post-Conviction Relief. The Court has determined that a hearing on this Motion would be necessary and addressed the issues as follows:

**1. Ineffective Assistance of Counsel-Trial in Absence**

The grounds of this claim relates to the trial attorney's failure to argue dismissal of the underlying charge on several grounds including the violation of the Applicant's 6<sup>th</sup> Amendment right to a speedy trial. First, the Court finds that this issue was adequately addressed in the Order dated October 6, 2017. As a further note, specifically regarding the speedy trial issue, the Court finds that the Applicant would not necessarily have been able to avail himself of the right to a speedy trial at that point in time. It is common practice for Defense counsel not to move for a speedy trial as a strategic matter. The South Carolina Supreme Court adopted four factors in analyzing the violation of a defendant's right to a speedy trial. Concerning the third factor, the South Carolina Supreme Court stated:

The third factor—assertion of the right—recognizes that while a criminal defendant has no responsibility to bring himself to trial, the extent to which he

exercises his right to a speedy trial is significant. Barker v. Wingo, 407 U.S. 514, 527-28, 92 S.Ct. 2182 (1972). This consideration prevents a criminal defendant from strategically acquiescing in a delay which works to his advantage, then asking the case be dismissed at the last moment once it is called for trial. Accordingly, "the defendant's failure to assert the right, although not conclusive, makes it more difficult to show that the right was violated." State v. Pittman, 373 S.C. 527, 550, 647 S.E.2d 144, 155 (2008).

State v. Reaves, 414 S.C. 118, 131, 777 S.E.2d 213, 219 (2015).

In State v. Lopez, Op. No. 2015-UP-216 (filed on April 15, 2015) the appeal by this applicant in the underlying matter, the Court of Appeals found that the Applicant's due process had not been violated in the matter proceeding to trial in his absence.

## **2. Ineffective Assistance of Counsel-Discovery Issues**

The Applicant argues in his Motion that trial counsel failed to move to compel production of the missing dash-cam video or assert a Brady or Rule 5 violation. The testimony at the PCR trial from the arresting officer indicated that the video was not produced because he had changed departments and his videos had been boxed up without his knowledge. For the failure to produce evidence in discovery to be a violation of a defendant's constitutional rights, there must be a showing of "bad faith" by the prosecution or law enforcement. See State v. Reaves, 777 S.E.2d 214 (2015). As addressed in the Order of October 6, 2017, the Court found that there was no prejudice of abuse in the failure to produce the video in question.

## **3. Ineffective Assistance of Counsel- Search and Seizure**

The Court finds that this was adequately addressed in the Order of October 6, 2017.



#### **4. Ineffective Assistance of Counsel-Failure to Preserve Record**

In reviewing the Applicant's file, it does not appear that this was specifically set out in the original Petition or subsequent amendments to the Petition for PCR and therefore, is not properly before this Court.

#### **5. Ineffective Assistance of Appellate Counsel**

As stated in the Order of October 6, 2017, the Court determined that no evidence or argument was presented on this matter at the evidentiary hearing on April 18, 2017 and therefore, appropriately addressed in the Order.

#### **Conclusion**

After careful consideration, the Court denies Applicant's Motion to Alter or Amend the Judgment and would affirm its previous Order with the clarifications or amendments as set forth herein.

It is so Ordered.



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THE HONORABLE PERRY W. GRAVELY  
Presiding Judge  
Thirteenth Judicial Circuit

November 3, 2017

Greenville, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2016CP2301299

Daniel Lopez vs. South Carolina State Of

FILED-CLERK OF COURT  
PAUL B. WICKENSIMER  
GREENVILLE

2017 NOV -8 PM 3:58

**CHECK ONE:**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

**NOTICE**

This is an Order in this case and has been filed in the Clerk of Court's Office.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

Susannah Conyers Ross 330 East Coffee St.  
Greenville, SC 29601

DeShawn Herman Mitchell PO Box 11549  
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Daniel Lopez, #355282,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
OF THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-01299

ORDER OF DISMISSAL

FILED-CLERK OF COURT  
PAUL B. WATSON  
GREENVILLE

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This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 29, 2016. Respondent made its Return on August 16, 2016. An evidentiary hearing into the matter was convened on April 18, 2017, at the Greenville County Courthouse before the Honorable Perry H. Gravely. Susannah H. Ross, Esquire, represented Applicant. Ruston Neely, Esquire of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. The following people also testified: Applicant's trial counsel, Christopher Scalzo, Esquire, Assistant Solicitor Joyce Monts, and Officer Chris Hines.

At the hearing, this Court had before it a copy of the records of the Greenville County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, appellate record and the trial transcript.

#### PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted by the March 2005 term of the Greenville County Grand Jury for one (1) count of Possession of a Firearm with an Obliterated Serial Number (2005-GS-23-

*PLW*

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01956) and one (1) count of Trafficking Cocaine (2005-GS-23-01957). Christopher Scalzo, Esquire, represented him. On October 12-13, 2009, Applicant's proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. Applicant's trial was held in his absence. The Honorable C. Victor Pyle, Jr. sentenced Applicant to confinement for five (5) years for the count of Possession of a Firearm with an Obliterated Serial Number and twenty-five (25) years for the count of Trafficking Cocaine. The sentences were set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Lopez, Op. No. 2015-UP-216 (filed on April 29, 2015). The Remittitur was issued on July 30, 2015.

#### **FACTUAL HISTORY**

In a pre-trial hearing on Applicant's motion to suppress, Deputy Hines testified regarding the facts leading up to Applicant's arrest. (See R. p. 14-42). Initially, Deputy Hines testified that he had been working for the Greenville County Sheriff's Department for twelve years; that he was assigned to the traffic division as a K-9 officer; and that he had received training on "highway drug investigation" in addition to other types of training. (R. p. 14). He further testified that he and his drug dog, Angie, had been properly certified at the time of Applicant's traffic stop. (R. p. 14-15). At approximately 2:30 pm on January 21, 2005, Deputy Hines was patrolling Interstate 85 in Greenville County. (R. p. 15). He noticed a man later identified as Applicant using a pay phone at the Breakers gas station. (R. p. 15). A white Dodge Intrepid was parked at the pay phone. (R. p. 15). A few minutes later, as Deputy Hines was sitting in his vehicle on the side of the road, the white Dodge Intrepid passed him going northbound on I-85 at a high rate of speed. (R. p. 15). Deputy Hines followed and attempted to overtake the vehicle, and at that point he was

able to measure Applicant's speed by radar and he determined that Applicant was going 72 miles per hour in a 60 mile-per-hour zone. (R. p. 15-16). As he approached Applicant's car, Applicant made an abrupt exit off the interstate onto White Horse Road. (R. p. 15-16). Deputy Hines pulled him over just after he had passed the exit which would have allowed him to turn around and proceed southbound on I-85. (R. p. 16-17; p. 26-27).

After informing Applicant that speeding was the reason for the traffic stop, Deputy Hines observed a cell phone sitting in the passenger seat. (R. p. 17). The cell phone appeared to be on. (R. p. 17). Deputy Hines then saw another cell phone sitting in the back of the car. (R. p. 17). Deputy Hines found it odd that Applicant had two cell phones in his vehicle, one of which was on, yet he chose to use a pay phone a few minutes before. (R. p. 17). While asking for and obtaining Applicant's license and other paperwork, Deputy Hines engaged in casual conversation with Applicant about where he was going and coming from. (R. p. 18). Applicant claimed to have been visiting his son in North Carolina and said he was heading home to Georgia. (R. p. 18). However, Deputy Hines observed that, before he was stopped, Applicant was actually traveling toward North Carolina rather than away from it. (R. p. 18). When Deputy Hines reviewed Applicant's license and paperwork, he noticed that Applicant provided a Louisiana driver's license listing a Kenner, Louisiana, address, a car registration listing a Gainesville, Georgia, address, and insurance paperwork listing a Tucker, Georgia, address. (R. p. 18-19). Applicant verbally provided a fourth address in Lawrenceville, Georgia and indicated that was where he was currently living. (R. p. 18-19). Deputy Hines testified that, based upon his training, the fact that Applicant provided four different addresses raised a "red flag." (R. p. 19, lines 8-11). He noted that three of Applicant's addresses were "in and around the Atlanta metro area" and that Atlanta is a known source for drugs used in drug trafficking. (R. p. 22, lines 14-19). Deputy Hines also

testified that the highway on which Applicant was traveling, I-85, is a "main pipeline for drug trafficking." (R. p. 22, lines 1-10).

After Deputy Hines informed Applicant he was only going to issue a warning citation for the speeding violation, Applicant maintained the same level of nervousness, which Deputy Hines found unusual. (R. p. 23, lines 3-11). He engaged in "nervous chatter" with Deputy Hines and tried to insinuate that he had an affiliation with law enforcement because he worked for Gwinnett County as a "bouncer" and "he told on people." (R. p. 19). Deputy Hines took this as Applicant trying to "befriend" him, and found it suspicious that Applicant was claiming to work for Gwinnett County as a "bouncer" since most law enforcement agencies do not employ persons as "bouncers." (R. p. 19, lines 17-25; p. 21, lines 6-9). Deputy Hines also noticed that Applicant had taped a Gwinnett County Police Department patch to his dashboard near the vehicle identification number. (R. p. 21, lines 4-6). Subsequently, Applicant reiterated his claim that he was going home to Georgia, but then asserted he was stopping to get something to eat first. (R. p. 20). Interestingly, when asked where he was going to get something to eat, he indicated he was heading to the McDonald's off of exit 44, which was odd because Applicant had just been using the pay phone at exit 40, and there was a McDonald's at that exit. (R. p. 21, lines 10-14; p. 25-26).

When Deputy Hines tried to confirm exactly where Applicant was coming from in North Carolina, Applicant began to stutter and was unable to provide the name of the army fort where his son was supposedly stationed. (R. p. 20). At that point Applicant began to "ad lib" a story and mentioned that his baby's mother lived in North Carolina and that the baby was sick. (R. p. 20). When Deputy Hines asked him how old his son was, Applicant changed his story and said the son was his friend's son. (R. p. 20). Then he changed again and stated his friend had a daughter. (R. p. 20). Deputy Hines was confused and tried to make sense of what Applicant was saying, but

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Applicant then said he had a daughter who was six who lived in California. (R. p. 20). Deputy Hines stated that Applicant's story was "kind of all over the place" and Applicant was "stumbling upon his words" and avoiding making eye contact with Deputy Hines. (R. p. 20-21). Deputy Hines also stated that Applicant appeared to be fabricating a story, "lie after lie after lie," and that most people he encountered in traffic stops did not fabricate stories. (R. p. 39-40). Hines indicated it would have been obvious to a reasonable person that Applicant was "making stuff up" because he didn't want the officer to know where he was going and coming from. (R. p. 99, lines 11-23).

Additionally, in Deputy Hines' experience, Applicant's level of nervousness was greater than that of most people, and he testified that Applicant, unlike most people, did not become less nervous after he was told he was only getting a warning. (R. p. 23; p. 39, lines 4-20). He stated that Applicant "kept on avoiding eye contact" with him. (R. p. 21, lines 2-3). He further testified that Applicant's conduct during the traffic stop was not consistent with "95 plus" percent of the hundreds of people that the police stop monthly in the vicinity. (R. p. 108, lines 8-21).

As Deputy Hines was finishing writing the warning ticket, he asked routine questions about whether there were any dangerous items in Applicant's vehicle. (R. p. 70, lines 12-20). When he asked Applicant if there were any guns in the car, Applicant looked down, broke eye contact, and said no. (R. p. 70, lines 12-14). When he asked if there was any marijuana or cocaine in the car, Applicant's "face kind of tensed up" but he said no. (R. p. 70, lines 14-16). When he asked Applicant about bomb or terrorist devices, Applicant "eased up," laughed, and said no. (R. p. 70, lines 17-20).

At that point in time, Deputy Hines, based upon his extensive experience and training, suspected drug activity and believed he had sufficient reasonable and articulable suspicion to

millimeter

detain Applicant and his vehicle long enough to allow his drug detection dog to perform a sniff around Applicant's vehicle. (R. p. 21, line 15 - p. 23, line 21; p. 37, lines 2-6; p. 42, lines 4-22; p. 108-109). After handing Applicant the warning ticket along with his other paperwork and confirming that Applicant had no questions regarding the warning ticket, Deputy Hines asked Applicant if he could search his vehicle. (R. p. 31-32). Applicant shrugged his shoulders and indicated he was ready to go ahead and leave. (R. p. 33). Deputy Hines told Applicant he was free to leave but that he was going to hold the car so that he could perform a drug sniff using his dog. (R. p. 33-34). At that point Applicant agreed that the dog could perform a sniff around the outside of his car. (R. p. 36, lines 38-39). Deputy Hines had already called for backup sometime during the midst of the traffic stop, and Deputy McBee arrived around the time Hines was requesting consent to search. (R. p. 32-36; p. 126-27). Only a few minutes had elapsed since Applicant was first stopped. (See R. p. 15, lines 5-17; p. 62, lines 7-22; see State's Exhibit # 7, DVD). Deputy McBee stood with Applicant in the concrete median while Deputy Hines and his dog performed the sniff. (R. p. 127-28).

While Deputy Hines walked the dog around Applicant's car, Applicant watched, "almost entranced" by what was going on with his vehicle to the point that he was almost oblivious to Deputy McBee's presence and the conversation they were having. (R. p. 127-29). The drug dog exhibited an "aggressive alert" to the left rear door seam and to the right rear tire well area. (R. p. 72-73). The alerts caused Deputy Hines to believe that drugs were contained somewhere in the rear part of Applicant's vehicle. (R. p. 73-74). His subsequent search of the car revealed a nine

<sup>1</sup> Although Deputy Hines' video of the traffic stop had been lost or misplaced after he transferred out of the traffic division (see R. p. 84-85), the video from the patrol car of Deputy McBee, the backup officer, was introduced at trial. (See R. p. 132-33; State's Exhibit # 7, DVD). Deputy McBee's video reflects that he pulled up to the traffic stop at 12:44 pm. (See State's Exhibit # 7, DVD).



millimeter handgun with an obliterated serial number in the center console and a cognac box filled with over 500 grams of cocaine in the trunk.<sup>2</sup> (R. p. 74-78).

### **ALLEGATIONS**

In his application, Applicant alleged that he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Ineffective assistance of appellate counsel;
3. Due Process violation.

On October 20, 2016 Applicant filed an "Amended Application" making the following allegations:

1. Ineffective assistance of trial counsel for the failure to communicate with client, advise of plea offer, investigate, effectively argue and preserve search and seizure issues as well as Applicant's right to be present at trial, confront his accusers, be fully informed of the nature of the charges against him, and representation by informed counsel; and
2. Due Process violations in that the Solicitor failed to produce Brady information and allowed destruction of evidence which amounted to an Unconstitutional breakdown in the adversarial process.

On December 2, 2016 Applicant filed an "Application Addendum" making the following allegations:

1. Ineffective assistance of trial counsel in the failure to investigate, keep Applicant informed of plea negotiations, failure to make adequate objections and arguments to preserve the record for direct appeal, and failure to inform the Applicant of the full nature of the allegation against him.
2. Due Process violations stemming from prosecutors failure to produce and/or possible destruction of in-car video of stop and initial call of the stop, Brady violations in failure to procure and produce exculpatory material, and trying Applicant in his absence years after a bench warrant was issued without actual notice or assuring a knowing and voluntary

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<sup>2</sup> Applicant was Mirandized and he indicated he wanted to cooperate and help the officers apprehend the person who was supposed to receive the drugs in Greenville County. (R. p. 78-84). Applicant's cooperation that afternoon led to the arrest of his co-defendant, Octavius Nelson. (R. p. 84). Afterwards, Applicant provided a voluntary statement at the police station wherein he admitted he was delivering drugs to Greenville for a dealer out of Dekalb County, Georgia, nicknamed "Candela." (R. p. 171-72). The statement indicated Applicant was supposed to hand the drugs over to a contact person, receive \$10,500 in exchange for the drugs, and return to Georgia and turn over the money to "Candela." (R. p. 172; p. 220, lines 14-20).

waiver.

## **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

### **Applicant's Testimony**

Applicant testified he was not at his trial and he was not notified of the term of court in which his trial was to take place. He testified he had appeared before but never received any bonds cards before. He testified he talked to trial counsel when he would appear for court dates. Applicant testified trial counsel gave him a plea offer and told him he was facing ten years. He testified trial counsel never mentioned the maximum for the charges he was facing and he was not aware he was facing twenty-five years. Applicant testified he was arrested in 2005. Applicant testified he never reviewed a video of the traffic stop leading to his arrest and he only learned of it after he was sentenced. He testified had he known of his court date he would have been there. Applicant testified he worked with law enforcement and they were going to help him out with his case. He testified when he did not hear anything about the case for a while, he thought his case was dismissed. Applicant testified he was not able to discuss trial strategy with trial counsel.

### **Counsel's Testimony**

Counsel testified he never got a chance to review the video of the traffic stop of Applicant prior to trial. He testified the trial was four years after the initial arrest of Applicant. Counsel testified he filed the standard discovery motions in this case. After having watched the video at the evidentiary hearing, Counsel testified having the video at trial would have been very beneficial to Applicant in that it gave an objective view of the Applicant and showed the drug dog's search of Applicant's vehicle during the stop. He testified he did not move for a speedy trial. Counsel testified had he received the video he would have shown it to Applicant prior to trial. Counsel also testified Applicant did not show up for trial and he tried to contact him by sending a letter to the

address he had for Applicant. Counsel testified he cross examined the officer who was featured in the video during the traffic stop of Applicant but the cross examination would have been more effective had he been in possession of the video. Counsel testified he remembered having a conversation with Applicant and the solicitor about Applicant pleading guilty to something less than trafficking, which carried mandatory minimum of twenty-five years. He testified he was in negotiation with the solicitor but there was no formalized written offer. Counsel testified Applicant would come from Georgia when he appeared for court dates and he had Applicant's Georgia addresses.

#### Assistant Solicitor's Testimony

Assistant Solicitor Monts testified she was the solicitor for Applicant's case. She testified she had discussions with Counsel about whether Applicant would cooperate and testify against his co-defendant. She testified she remembered discussing a plea offer of ten years. She testified she did not remember the exact time she discovered there was a missing video of the traffic stop. Solicitor Monts testified she did not have the video from Officer Hines and she talked to him about where it was because it was mentioned in his report. She testified Officer Hines told her he switched units and could not find the video after switching units. She testified she never saw the video prior to trial and she let Counsel know there was a missing video. She further testified had she been in possession of the video she would have turned it over to Counsel. Solicitor Monts testified her office sent Applicant bond cards to four addresses belonging to Applicant to let him know he had a trial coming up.

#### Officer's Testimony

Officer Hines testified he had been employed by the Greenville County Sheriff's Office for twenty years. Officer Hines testified he placed the video of the traffic stop in a locked storage cabinet at the center command office. He testified every officer had their own shelf and only the

supervisor had a key to those cabinets. He testified he was assigned to the traffic division during the time of arrest but left the division in 2006. He testified sometime in between the arrest and trial he was asked to look for the video and he did but was unable to locate it. He testified after he transferred out of the division, there was a supervisor change and stuff got moved around which included cabinets. He testified during the move someone boxed up his stuff.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel and due process violation:

First, after a review of the appellate record, this Court notes the Court of Appeals upheld the finding by the Trial Court that Applicant had been notified of and waived his right to be present at trial. No evidence presented at this hearing was sufficient to convince this Court that Applicant's trial counsel could have proceeded differently at trial, or that his performance was deficient. Applicant also failed to prove he was prejudiced by the alleged deficiency. Therefore, this Court denies this as a basis for granting the PCR.

Second, Applicant raised the issue of whether the officer who performed the stop exceeded the bounds of the law by extending the stop for use of drug dog on Applicant's vehicle. On Appeal, the Applicant raised the violation of his 4<sup>th</sup> Amendment rights and the Court of Appeals denied any violation. In reviewing this matter from the standard applicable to a PCR, this Court

pkw

finds that the Officer's actions did not violate the "reasonable extension" test that has been recognized by South Carolina courts or any other relevant federal case and that this issue does not support a basis for granting the Applicant's PCR.

Third, the Applicant asserts that the State abused discovery by failing to produce the dash-cam video during initial discovery or during the trial, and that the video was only disclosed when pursued more diligently by PCR counsel. Applicant asserts that video would have afforded the Applicant a better argument that the officer did not have articulable suspicion or extend the stop. In reviewing the video and comparing with the officer's testimony, there does not appear to be any material contradictions. Although the trial attorney may have had more information to cross-examine the arresting officer, the Applicant failed to show that he was prejudiced and that the outcome would have been different. The Applicant further asserts that the failure to produce the video before trial constitutes abuse of discovery. The Court finds that the explanation provided by the arresting officer appears valid. In the Court's view, the video neither provides any additional material information nor materially contradicts the officer's testimony. Therefore, the Court finds that there is neither prejudice to the Applicant nor was discovery abused.

Lastly, the Applicant raised the issue of ineffective assistance of appellate counsel. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove Appellate Counsel was deficient or that Applicant was prejudiced by Appellate Counsel's performance. Accordingly, this Court denies and dismisses this allegation.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or

omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

### CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 5<sup>th</sup> day of Oct, 2017.

  
THE HONORABLE PERRY W. GRAVELY  
Presiding Judge  
Thirteenth Judicial Circuit

Grenville, South Carolina.



FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

Daniel Lopez 355282  
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-23- 01299

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL J. HENDERSON  
2016 FEB 29 PM 1:19

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 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 McCormick Correctional Inst
2. Name and location of Court which imposed sentence Greenville General Court Session
3. Name(s) of co-defendant(s) (if any) Octavious Louis Nelson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2005 GS 23 01957
  - (b) 2005 GS 23 01956
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) October, 15, 2009 25 year For trafficking cocaine over 400 gram
  - (b) May 7 2013 Re-arrested Sentence

Revised 3/2003



Office of the Clerk of Court

Paul B. Wickensimer  
Clerk of Court for Greenville County  
Greenville, South Carolina

[www.greenvillecounty.org](http://www.greenvillecounty.org)

ENTERED COMPUTER

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2016 FEB 29 PM 1 59

FEBRUARY 29, 2016

DANIEL LOPEZ 355282  
MCCORMICK CORRECTIONAL INSTITUTE  
386 REDEMPTION WAY  
MCCORMICK SC 29899

MR. LOPEZ,

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION  
RELIEF APPLICATION. YOUR CIVIL CASE NUMBER IS  
2016CP2301299.

A COPY OF YOUR PCR HAS BEEN FORWARDED TO THE  
ATTORNEY GENERAL'S OFFICE.

ONCE IT IS DETERMINED THAT A HEARING SHALL BE  
SCHEDULED, YOUR PROCESS FOR ATTORNEY ASSIGNMENT WILL  
BEGIN. THIS MAY TAKE SEVERAL MONTHS.

WE ONLY FILE THE PCR APPLICATIONS. WE DO NOT SET COURT  
DATES NOR ARE WE ABLE TO ANSWER QUESTIONS CONCERNING  
YOUR CASE.

THANK YOU  
CLERK OF COURT'S OFFICE

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty tried in my absence / couldn't get my 10 year plea
- (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. April 29 2015
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2015-UP-216
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

see attachments

- (a) Ineffective of Counsel - Trial Counsel
- (b) Ineffective of Counsel - Appellate Counsel
- (c) Procedure of due process violation

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

- (a) Addendum A thru
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- no
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you: 29601
- i. christopher Scalzo 305 E. North Street, Suite 325 Greenville, SC.
- ii. Laura M Caudy 1330 lady street, Suite 401 Columbia, SC. 29201
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Scalzo was my arraignment, trial and sentencing lawyer
- ii. Laura M Caudy was my appeal lawyer
- iii. \_\_\_\_\_

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

Vacated or New trial

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

No

STATE OF SOUTH CAROLINA )

County of Greenville SC )

VERIFICATION

I, DL, 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.

Daniel Lopez

SWORN to and subscribed before me this 10  
day of February, 2016.

Jeff Franklin (L.S.)  
Notary Public

My Commission Expires: 12-16-2019

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

I, DL, 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.

Daniel Lopez  
Applicant

SWORN or affirmed to and subscribed before me this  
10 day of February, 2016.

[Signature]  
Notary Public

My Commission Expires: 12-16-2019



## Addendum A thru F

10. (D) Brady Violation

(E) Constitutional Violation 14 & 6  
Amendment.

(F) Prosecutor Miss Conduct.

11. (A) Fail to investigate, Failure to inform  
of plea.

(B) Fail to Properly argue & Preserve.  
Direct Appeal Issue.

(C) Bench Warrant and Notice to Appear

(D) 911 call

(E) Search/seizure and Sentence on constitutional

(F) Destroy Evidence.

Applicant does not have Post Conviction  
counsel at this time. Further more  
I do not yet have a full copy of  
Counsel's file, access to discovery, Access  
to funds for expert and investigative  
services, or any ability to conduct  
and investigation. Given this limitations,  
I cannot provide further information  
regarding additional claims available  
to me.

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Daniel Lopez, #355282,

2016-CP-23-01299

Applicant,

v.

**RETURN AND MOTION FOR A  
MORE DEFINITE STATEMENT<sup>1</sup>**

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on February 29, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the March 2005 term of the Greenville County Grand Jury for one (1) count of Possession of a Firearm with an Obliterated Serial Number (2005-GS-23-01956) and one (1) count of Trafficking Cocaine (2005-GS-23-01957). Christopher Scalzo, Esquire, represented him. On October 12-13, 2009, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. The Honorable C. Victor Pyle, Jr. sentenced Applicant to confinement for five (5) years for the count of Possession of a Firearm with an Obliterated Serial Number and twenty-five (25) years for the count of Trafficking Cocaine. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

<sup>1</sup> Respondent requests that Applicant be appointed counsel.

affirmed Applicant's conviction and sentence. State v. Lopez, Op. No. 2015-UP-216 (filed on April 29, 2015). The Remittitur was issued on July 30, 2015.

## II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Ineffective assistance of appellate counsel;
3. Due Process violation.

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, appellate record, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

## III.

Respondent first moves for a more definite statement. Rule 12(e) provides

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired.

The application in its current form is too vague to put Respondent on notice as to what Applicant is actually alleging. A PCR application must "specifically set forth the grounds upon which the application is based, and clearly state the relief desired." S.C. Code § 17-27-50 (2016). Applicant has merely made general claims of ineffective assistance, without reference to specific actions by counsel that constituted deficient performance. Applicant has also failed to raise any specific prejudice suffered as a result. Applicant's allegation that his Due Process was violated is similarly vague, to the point where Respondent is incapable of forming a meaningful response. Respondent therefore requests that Applicant be ordered to amend his application to bring it into compliance with the requirements of section 17-27-50.

#### IV.

Respondent further asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit, and that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a

C.A. No. 2016-CP-23-1299: Page 3 of 6

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

V.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, the issue is

whether 1) appellate counsel's performance was deficient, and 2) Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Respondent submits that 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### VII.

Applicant's third claim is that he was denied due process of law. As discussed more thoroughly above, Applicant has failed to set forth with specificity the grounds upon which these constitutional violations are based. This allegation in particular is so vague that it is impossible for the State to respond. The Uniform Post-Conviction Procedure Act requires that Applicant must "...specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In addition, in an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing that he is entitled to relief, this allegation should be summarily dismissed.

#### VII.

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

VIII.

WHEREFORE, Respondent requests that counsel be appointed and an evidentiary hearing solely for the purpose of determining whether Applicant's trial and appellate counsels were ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General

By: PLM  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

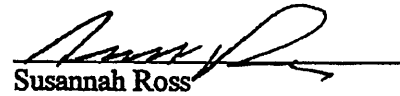
August 16, 2016





years after a bench warrant was issued without actual notice or assuring a knowing and voluntary waiver.

Respectfully submitted,



Susannah Ross  
Attorney for the Applicant  
330 E. Coffee St,  
Greenville, SC 29601  
(864) 242-0029

Greenville, South Carolina

This 2 day of December 2016

IN THE COURT OF COMMON PLEAS  
IN THE THIRTEENTH CIRCUIT

IN THE THIRTEENTH CIRCUIT

## APPLICATION ADDENDUM

## APPLICATION ADDENDUM

**CASE NO: 2016-CP-23-1299**

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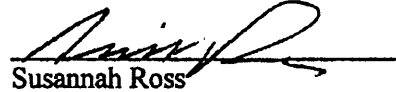
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FILED IN DISTRICT COURT  
GREAT FALLS CO. S.C.  
PAUL B. WICKENS IMERY  
2015 DEC 2 PM 3 13

- 2 ) Due Process violations stemming from prosecutors failure to produce and/or possible destruction of in-car video of stop and initial call of the stop, Brady violations in failure to procure and produce exculpatory material, and trying Applicant in his absence

years after a bench warrant was issued without actual notice or assuring a knowing and voluntary waiver.

Respectfully submitted,



Susannah Ross  
Attorney for the Applicant  
330 E. Coffee St,  
Greenville, SC 29601  
(864) 242-0029

Greenville, South Carolina

This 2 day of December 2016

VS.

STATE OF SOUTH CAROLINA, .

RESPONDENT.

**MOTION TO ALTER OR AMEND  
THE JUDGMENT**

ENTERED COMPUTER

FILED-CLERK OF COURT  
PAUL B. WILSON  
GREENSBORO, N.C.

2017 OCT 18 AM 10: 34

*JW*

his right to be present and no sufficient evidence was presented that trial counsel could have proceeded differently at trial. (Order p. 11). The Applicant's argument was that the trial attorney was ineffective for failing to argue against a trial in absence by moving to dismiss for lack of speedy trial pointing out that the arrest was January 25, 2005; the client's last court appearance was November 27, 2006; a bench warrant was issued June 6, 2008, and the case was first called to trial October 12, 2009 nearly five years after his arrest and the signing of his "notice document" at the time of his release on bond indicating that he must appear at the next term of court. Trial counsel then should have argued that after the nearly five year delay resulting in the loss of the video tape and three years delay from the last contact with his client amounted to a denial of due process.

Counsel should have argued against a trial in absence because that would be a violation of his clients 5th, 6th and 14th Amendment rights protected under the United States Constitution and Art. I § 3 and 14 of the South Carolina Constitution because his absence was not knowing and voluntary and would deny his client effective assistance of counsel because he could not communicate with counsel or assist with his defense . *See Brady v. U.S.*, 397 U.S. 742, 748 (1970) ("Waivers of Constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences" & SC Const Art. I, § 14 ("The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.")) & *See Ellis v. State*, 267S.C. 257, 261,

227 S.E.2d 304, 306 (1976) ("The deliberate absence of a defendant **who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time** indicates nothing less than an intention to obstruct the orderly process of justice.") & See also *State v. Wrapp* Appellate Case No. 2015-000909 (August 16, 2017). The Appellate Court addressed trial counsel's preserved argument that his client was not given proper notice because he was not issued a subpoena. (R. p.6-10)

### **Ineffective Assistance of Counsel- Discovery Issues**

Prior to Mr. Lopez's PCR hearing, Applicant's counsel subpoenaed the Assistant Solicitor, Joyce Monts, requesting Deputy Hines' dash-cam video. The video was missing at trial and testimony regarding the missing tape is throughout the trial record and Deputy Hines and Ms. Monts testified at the PCR hearing. (R. p. 42, l.6, pp.144-145). At the PCR hearing trial counsel stated that he filed discovery but did not move to compel the production of the missing dash-cam video or do a pre-trial motion asserting a Brady or Rule 5 violation. See *State v. Anderson*, 754 S.E.2d 905, 909 (Ct. App. 2014) ("[A]n individual asserting a Brady violation must demonstrate the evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or was impeaching." (citing *Kyles v. Whitley*, 514 U.S. 419, 419 (1995)). The transcript contained no argument by trial counsel that Mr. Lopez was denied due process by the loss of the video. See *State v. Cheeseboro*, 552 S.E.2d 300, 307 (2001). ("To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the

evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means." ). While the trial and PCR testimony did not support a finding that the State destroyed evidence in bad faith, the dash-cam evidence was exculpatory and impeaching. Its timely production would likely have changed the outcome of the trial.

### **Ineffective Assistance of Counsel- Search and Seizure**

The Order of Dismissal does not fairly address the Applicant's argument of ineffective assistance of trial counsel for failing to effectively argue the 4th Amendment issues at trial. Trial counsel viewed the dash-cam video at the PCR hearing and testified it would have greatly assisted him in his defense. In the video, Lopez does not appear to be "excessively nervous, with an inability to calm down, even after being told he was only receiving a warning." *St. v. Lopez*, Unpublished Op. No. 2015-UP-216. On the video, the stop begins at 14:22:56. Six minutes later Officer Hines had Mr. Lopez out on the street questioning him and tells Mr. Lopez he plans to issue a warning. Before doing so he checks the vin number opening the driver's door and looking in the car, he then asks about marijuana, cocaine, or guns in car as he's hands the warning to Mr. Lopez at 14:27:57. Lopez did not appear excessively nervous, unable to maintain eye contact, or stumbling over his words in the video during this period. (1/21/05 Hines video). At 14:30:00 after Officer Hines handed the warning to Mr. Lopez, he asks if he can search the car. The video shows Mr. Lopez, holding the completed warning ticket, saying that he wants to leave. Officer Hines then states at 14:30:40, "You can leave but I'm going to detain your car and let my dog run your car." The video does not show an "aggressive alert" by the drug dog. (R. p. 132-33, video 14:32:50) Most of the testimony Officer



Hines offered at trial as his basis for a reasonable and articulable suspicion of criminal activity is undermined by viewing the dash-cam video. The Court of Appeals' ruling relied only on the officer's testimony without the benefit of a full and fair cross examination, denied because as trial counsel testified, he did not have the dash-cam video or his client's assistance. The prejudice of this is that it denied due process resulting in an unfair trial. The drugs were not suppressed when they would likely have been had the judge and trial attorney had the benefit of the video. (R. p. 49-50) *See State v. Pichardo* 623 S.E. 2d 840, (2005). Furthermore, the case would likely have been reversed on appeal for a full and fair suppression hearing had the court of appeals had the benefit of the video. *See Rodriguez v. U.S.*, 135 S.Ct. 1609 (2015).

#### **Ineffective Assistance of Counsel- Failure to Preserve Record**

The Order of Dismissal fails to outline the Applicant's arguments of ineffective assistance of counsel for failure to preserve the record. Trial counsel admitted he did not request a jury charge that when evidence is destroyed or lost by a party the jury may infer that evidence which is destroyed or lost would have been adverse to that party. *See State v. Reeves*, 777 S.E.2d 213 (2015). Trial counsel failed to take exception to the jury instruction requesting a verdict that speaks the truth which misstates the burden in a criminal case. (R. p. 476 & 478). During trial deliberations, the jury asks why "Pled Guilty" is stamped on the co-defendant Nelson's trafficking indictment. (R. p. 487). At that point the judge declared a mistrial for that indictment and goes on to charge the jury to disregard any language on the indictment so as not to prejudice the defendant. (R. p. 489). That instruction was immediately followed by a hand-of one charge and a

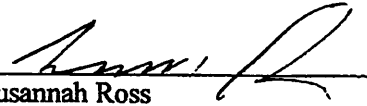
constructive possession charge stating that possession may be inferred by the circumstances. (R. p. 490). At this point trial counsel failed to take exception to the charges or request a mistrial on behalf of his client. Lopez's case was prejudiced by the co-defendant's indictment being stamped with "Pled Guilty". This prejudice was compounded by a hand-of-one and permissive inference possession charge. Mr. Lopez was prejudiced because his case was not declared a mistrial when the jury was exposed to highly prejudicial inadmissible evidence which denied him a fair trial.

#### **Ineffective Assistance of Appellate Counsel**

There is evidence in the PCR record that Trial counsel objected to the State's argument during closing that anyone in chain of drug production was guilty of trafficking and requested a clarifying charge that trafficking is a possession based offense and the State must prove the charged drug weight was knowingly possessed by the accused. (R. p. 465 & 478-479). The Applicant would allege that appellate failed to brief this winning issue.

For the foregoing reasons, the Applicant requests this Court to alter or amend its Order of Dismissal.

Respectfully submitted,

  
Susannah Ross  
Attorney for the Applicant  
333 E. Coffee Street,  
Greenville, SC 29601  
(864) 242-0029

Greenville, South Carolina  
This 18 day of October, 2017.

IN THE COURT OF COMMON PLEAS

RESPONDENT.

TRANSCRIPT OF RECORD

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1           **THE COURT:** This is the matter of Daniel Jesus Lopez  
2 versus the State of South Carolina, an application for PCR.  
3 It's an amended application filed by Ms. Ross, return filed  
4 by the State. I'll be glad to hear from you.

5           **MR. NEELY:** Thank you, Your Honor. As you stated, this  
6 is the case of Daniel Lopez versus the State of South  
7 Carolina, case number 2016-CP-23-1299.

8           Mr. Lopez is currently incarcerated in the South  
9 Carolina Department of Corrections pursuant to orders of  
10 commitment by the Greenville County Clerk of Court. He was  
11 indicted March 2005 term by the Greenville County Grand Jury  
12 for one count of possession of a firearm with an obliterated  
13 serial number and one count of trafficking cocaine.  
14 Christopher Scalzo represented him at trial.

15           The trial took place October 12th and 13th of 2009.  
16 Applicant was found guilty as indicted on all charges. The  
17 Honorable Judge Pyle sentenced Applicant to confinement for  
18 five years for the count of possession of a firearm with an  
19 obliterated serial number and twenty-five years for the  
20 count of trafficking cocaine. It was a TIA trial.  
21 Applicant was not present for the trial. Sentences were to  
22 be run concurrently.

23           A notice of appeal was filed on Applicant's behalf and  
24 perfected. The South Carolina Court of Appeals affirmed  
25 Applicant's conviction and sentence in State v. Lopez,

1 number 2015-UP-216. Remittitur was issued July 30th, 2015.

2 THE COURT: All right. Be glad to hear from you, Ms.

3 Ross.

4 MS. ROSS: Thank you, Your Honor. May it please the  
5 Court? I've got sort of an outline of the facts that I'd  
6 like to present.

7 THE COURT: Okay.

8 MS. ROSS: Just going back to the time-line here. This  
9 arrest was January 25th, 2005. Mr. Lopez's last appearance  
10 in court was 11/27/06. There was a failure to appear  
11 6/18/08. That was issued, a bench warrant. And then the  
12 trial was October 12th, '09.

13 A video of the pull was produced pursuant to my  
14 subpoena on this PCR action, I believe, in December of 2016.  
15 Though it might have been November.

16 We've alleged ineffective assistance of trial attorney.  
17 He failed to move for a dismissal for lack of a speedy  
18 trial, failed to effectively argue the trial in absence, and  
19 I'd refer you to page 6 and 9 of the transcript, pursuant to  
20 the Fifth, Sixth, 14th Amendments of the U.S. Constitution  
21 and Article 1, Section 3 and 14 of the South Carolina  
22 Constitution.

23 THE COURT: So was this a trial in absence?

24 MS. ROSS: It was a trial in absence.

25 THE COURT: Okay.

1           MS. ROSS: And the trial attorney didn't effectively  
2 articulate that this trial was nearly five years after the  
3 arrest, three years from last appearance and over a year  
4 after a bench warrant had been issued. There was a failure  
5 to prosecute that wasn't mentioned. And we'd argue that  
6 this stretches South Carolina Rule of Criminal Procedure  
7 number 16 beyond all reason and reality. The wrong  
8 addresses were on the bond card. Mr. Lopez had come to  
9 court and simply didn't get a card this time.

10           Also, pursuant -- well, State v. Brady states that the  
11 waivers of Constitutional rights not only must be voluntary,  
12 but must be knowing and intelligent acts done with  
13 sufficient awareness of the relevant circumstances and  
14 likely consequences.

15           And then, of course, we've got South Carolina Article 1  
16 and 14, right to effective assistance and being informed and  
17 aware of the charges against him. Here, this is even bigger  
18 because that video was never produced. And Mr. Lopez, the  
19 whole time, had been asking for the video.

20           Furthermore, with respect to the trial in *absentia*  
21 issue we've got Ellis v. State says that the right at issue  
22 is the right to be present. The question becomes whether  
23 that right was effectively waived by defendant's voluntary  
24 absence.

25           The deliberate absence of defendant who knows that he



1 stands accused in a criminal case and that his trial will  
2 begin during a specific period of time indicates nothing  
3 less than intention to obstruct the orderly process of  
4 justice. Here there was no term of court given. This was  
5 five years later after that arrest. So it's a bit  
6 different. And that was not fully argued by the trial  
7 attorney.

8 There was also failure to request a jury charge on the  
9 destruction of evidence, for a jury instruction on that that  
10 you can infer that that evidence would have been adverse to  
11 the State. Failure to communicate and assist Mr. Lopez in  
12 his defense. He was not allowed to view this video that he  
13 kept asking for. And while he was given a plea offer back  
14 in 2006 he was never allowed to consider that in light of  
15 the evidence which is this video. And that goes into failed  
16 to effectively argue the search and seizure issue.

17 And that switched from a trial -- trial counsel's  
18 ineffectiveness, but then it also goes into due process  
19 rights. Trial counsel was not allowed to cross examine  
20 Officer Hines who made the pull in light of this video that  
21 we'll soon see.

22 He also failed to object to or request a mistrial when  
23 the co-defendant's case was mistried because a stamp of pled  
24 guilty was put on the co-defendant's indictment. It was  
25 sent back to the jury room. When the jury brought that to

1 the trial judge's attention, he proceeded to dismiss the co-  
2 defendant's charges and then re-charged the jury at their  
3 request on a possession, constructive possession charge.

4 And in that he -- it's a burden-shifting charge because  
5 he doesn't mention that it's a permissive inference of  
6 possession of knowing, voluntary possession. And that's  
7 misstated by the judge. And that's on page 490. So there  
8 was no objection to that coming one and the other and then  
9 the jury went out after the co-defendant was mistried and  
10 comes back a few minutes later and finds the client guilty.  
11 This denied him a fair trial.

12 Appellate defense failed to brief some improper  
13 arguments on page 465 that the judge made and Mr. Scalzo  
14 objected to.

15 And then we'd also argue that there's a due process  
16 violation in Mr. Lopez's case. Both cases should have been  
17 mistried at the end. This is even more so with the trial in  
18 absence -- that the Brady violation, we'd argue, the failure  
19 to turn over the video. And I'll address that more later,  
20 but those are essentially the arguments in Mr. Lopez's case.

21 **THE COURT:** All right.

22 **MS. ROSS:** And at this point we'd call Daniel Lopez.

23 **THE COURT:** Mr. Lopez, if you'd come around.

24 **MADAME CLERK:** Mr. Lopez, please place your left hand  
25 on the Bible and raise your right hand.

1 Daniel Lopez, being duly  
2 sworn testified as follows;

3 MADAME CLERK: Thank you. You may be seated. Please  
4 state your full name for the record.

5 MR. LOPEZ: Daniel Jesus Lopez.

6 MADAME CLERK: Thank you.

7 **Direct Examination by Ms. Ross:**

8 Q. Okay. Mr. Lopez, you've filed a Post Conviction  
9 Relief. Can you state the basis for that filing?

10 A. Yeah. My lawyer failed to -- I filed for ineffective  
11 of counsel to protect my constitutional rights.

12 Q. Okay. How did he fail to protect your constitutional  
13 rights?

14 A. That I wasn't -- I'm nervous.

15 Q. And I know you're nervous. Were you there at your  
16 trial?

17 A. No, ma'am. I was not there at my trial, ma'am.

18 Q. Were you notified of the term of court of your trial  
19 date?

20 A. No, ma'am.

21 Q. Have you appeared before?

22 A. Yes. Yes, I have.

23 Q. Had you received bond cards before?

24 A. No, ma'am.

25 Q. How did you appear before when you came to court?

- 1 A. Me and him talked. He would tell me ---
- 2 Q. How did you know to come to court? Did you get a card
- 3 in the mail or how did you know?
- 4 A. I think he told me.
- 5 Q. Okay. And had you talked to him when you appeared
- 6 those times?
- 7 A. Yes.
- 8 Q. Now in talking to him did he ever give you a plea
- 9 offer?
- 10 A. Yeah. He had told me that I was facing ten years.
- 11 Q. Okay. And he told you that was the plea offer, for ten
- 12 years?
- 13 A. Yes, ma'am.
- 14 Q. Did he ever mention the maximum for this charge?
- 15 A. No, ma'am.
- 16 Q. And you didn't take the plea offer when he told you
- 17 about it. Why not?
- 18 A. Like I wasn't aware that I was facing twenty-five
- 19 years.
- 20 Q. Okay. And when you came in and talked to him -- well,
- 21 first, you were arrested in 2005, is that right?
- 22 A. Yes, ma'am.
- 23 Q. How long were you in jail?
- 24 A. A day.
- 25 Q. Okay. And then you were released. And when did you

- 1 first see Mr. Scalzo?
- 2 A. I don't have notes on that.
- 3 Q. Do you remember meeting him at all?
- 4 A. Yes. Yes.
- 5 Q. Okay.
- 6 A. I remember coming down to the courthouse.
- 7 Q. Did you ever review a video?
- 8 A. No, ma'am.
- 9 Q. Okay. Did you -- did you know of the video?
- 10 A. Well, I know of it after I got tried and I got
- 11 sentenced, and I've been in the department of corrections by
- 12 having the report from the transcript from the court and by
- 13 reading it it showed there that Officer Hines said that he
- 14 had the video at the suppression hearing.
- 15 Q. Okay. Did you ever ask to see the video?
- 16 A. Yes. I wrote a numerous amount of times to the
- 17 sheriff's department asking for it. And they kept telling
- 18 me that they didn't -- were not aware of it, that it was
- 19 never turned into property and that they never had it.
- 20 Q. Okay. Now what would have happened, do you believe, if
- 21 you had known of your court date?
- 22 A. I would have been there.
- 23 Q. And would the outcome have changed in any way? This
- 24 charge carries a mandatory twenty-five years.
- 25 A. Well, yes, because I cooperated with the police

1 officers to help them with the case when everything  
2 happened.

3 Q. Okay. Let's talk about some details of that. In the  
4 trial transcript right after your pull what happened? What  
5 did you do? Right after you were pulled over and they found  
6 drugs in the car.

7 A. I told them everything that was going on. I told them  
8 what was happening, where I was taking the drugs and where  
9 the drugs were going.

10 Everything happened because I work for Atlanta. I  
11 worked with Atlanta PD. I don't work for them. Like I'm,  
12 you know what I mean? Like they don't -- I don't work for  
13 them, but I help them with cases.

14 Q. Okay. And -- but after this arrest and charge another  
15 arrest was made of someone else ---

16 A. Yeah, the person ---

17 Q. --- involved in the case?

18 A. The person in Atlanta and the person here that it was  
19 coming to.

20 Q. Okay. So the transcript addresses the person here.

21 A. Yes.

22 Q. There was another person in Greenville who was tried  
23 with you.

24 A. Yes.

25 Q. And that was because you set him up ---

DANIEL LOPEZ - DIRECT EXAMINATION BY MS. ROSS

13

- 1 A. Yes.
- 2 Q. --- with law enforcement.
- 3 A. Yes.
- 4 Q. Did law enforcement talk to you before you set him up
- 5 and tell you that it would help you or not?
- 6 A. Yes. They said that they were going to talk on my
- 7 behalf and they were going to try to help me out with the
- 8 case.
- 9 Q. And then you say you went over and above that and then
- 10 went to help them out in Atlanta?
- 11 A. Yes, ma'am.
- 12 Q. With the same -- same kind of case?
- 13 A. Yes, ma'am.
- 14 Q. And was arrests made in Atlanta?
- 15 A. Yes, ma'am.
- 16 Q. Okay. As a result of that were you told that they
- 17 would help you out from the Atlanta as well?
- 18 A. Yes.
- 19 Q. And so when you didn't hear about the case what did you
- 20 think over time?
- 21 A. I thought that the case had gotten dismissed.
- 22 Q. Okay. And why did you think that?
- 23 A. Because I helped them with the case.
- 24 Q. Okay. And that's what they had told you that that
- 25 could happen?

1 A. Yes.

2 Q. Okay. Now just going down. If you had been there at  
3 trial what would -- what would you have testified to?

4 A. I would testify to what happened on the -- on the case.

5 Q. And what part of the trial would that have helped you  
6 out the most?

7 A. The -- well, I would have been able to testify against  
8 my co-defendant. And I probably would have been able to cut  
9 a deal with the prosecutors.

10 Q. All right. And so you think that you probably would  
11 have been offered a deal the same as or better than the ten  
12 years you had before?

13 A. Yes, that's right.

14 Q. Because you could have testified. And you'd already  
15 given a written statement against the co-defendant as well,  
16 correct?

17 A. Yes, ma'am.

18 Q. And also there was a suppression hearing, do you know  
19 what that is, before your trial?

20 A. Yes.

21 Q. Would you have testified at the suppression hearing?

22 A. Yes, ma'am.

23 Q. And what would you have said then?

24 A. Well, if I would have been able to see the video, it  
25 would have showed on the video that the officer really -- I



1     would have been able to testify to the truth, what happened,  
2     you know what I mean, that really he didn't have no probable  
3     cause to search the car.

4     Q.    Okay. Were you excessively nervous with an inability  
5     to calm down? You've seen the video. And at the time of  
6     this stop were you excessively nervous with an inability to  
7     ---

8     A.    No, ma'am.

9     Q.    And were you not maintaining eye contact?

10    A.    No, ma'am.

11    Q.    And were you engaged ---

12           **MR. NEELY:** Your Honor, at this time I'm going to  
13    object. She's leading the witness.

14           **THE COURT:** All right. Just rephrase your question  
15    then.

16           **MS. ROSS:** All right.

17    Q.    When you saw the video how would you characterize your  
18    demeanor?

19    A.    I was -- I wasn't nervous at all. I was talking to the  
20    officer and looking at him.

21    Q.    You said you was nervous at all?

22    A.    I wasn't nervous at all.

23    Q.    You were not nervous at all?

24    A.    No, I wasn't.

25    Q.    And at one point when you're talking to the officer

1     about some work you did in Atlanta, what were you trying to  
2     do there? What were you trying to do?

3     A.    I was just -- I was just letting him know that I know  
4     police officers and I've worked for them.

5     Q.    And what was the context of that? Was that the truth?

6     A.    Yes, ma'am.

7     Q.    And where were your eyes when you were talking to ---

8     A.    I was looking at him.

9     Q.    And have you seen the video? Is that consistent ---

10    A.    Yes, ma'am.

11    Q.    --- with that?

12    A.    Yes. Yes.

13    Q.    Now you said something about my boy, I was visiting my  
14    boy.

15    A.    Yes. In light of the video, if the video had been  
16    showed at the suppression, it would have showed that I  
17    explained to him what I meant when I said my boy because  
18    it's a term of slang meaning like your friend.

19    Q.    Okay.

20    A.    And that's what I meant. That's what I was telling  
21    him, that I went to go see my friend at -- at the Army base.

22    Q.    And the video would show that you weren't lying trying  
23    to say that you had a son?

24    A.    No.

25    Q.    And you never referred to a son? You just ---

1 A. No..

2 Q. --- said I went to see my boy?

3 A. Yes, ma'am.

4 Q. And then he later asked whether you had a son. And  
5 what did you say?

6 A. And I told him I had a daughter.

7 Q. Right. Anything else in the video that you could have  
8 clarified?

9 A. The video shows that -- like I said, it shows him --  
10 shows me telling him the truth about everything, that I  
11 wasn't nervous like he stated on his report. And it just  
12 would have showed the truth about everything that he said on  
13 his report for him having probable cause to search me or to  
14 run the dog around the car.

15 Q. What happened after he gave you the warning ticket?

16 A. He told me I was free to go, but he was going to hold  
17 my car so he could run the dog around it.

18 Q. All right. Now at this point were you free to get in  
19 your car and leave?

20 A. No, because he said he was going to hold the car so he  
21 could run the dog around it.

22 Q. Okay. And did you -- did you see the dog going around  
23 the car?

24 A. Yes, ma'am.

25 Q. Did you see the dog act in any specific way?

1 A. No, ma'am.

2 Q. Now drugs were found in the car, correct?

3 A. Yes, ma'am.

4 Q. Who packaged those drugs?

5 A. The people from Atlanta.

6 Q. Okay. So did you not personally package them?

7 A. No, ma'am.

8 Q. Do you know anything about how they were packaged?

9 A. No, ma'am.

10 Q. What do you think happened -- well, scratch that. Do  
11 you think -- were you able to discuss trial strategy with  
12 your lawyer?

13 A. No, ma'am.

14 Q. Were you able to present any of the evidence you had to  
15 your lawyer?

16 A. No, ma'am.

17 Q. Were you not showing up to court on purpose or running?

18 A. No. After -- after I went the last time on 2006 I  
19 asked my lawyer to postpone as long as he could so we could  
20 just wait it out.

21 Q. Was that so that you could run and ---

22 A. Oh, no. No. I was just trying to see if we could sort  
23 of work something out.

24 Q. Did you change your name or anything like that?

25 A. No, ma'am.

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1 Q. Is there anything else you'd like to tell the Judge  
2 about your PCR hearing?

3 A. Yeah, that I have been asking for this video from the  
4 very beginning, ever since I got incarcerated and I found I  
5 was aware of it. And I asked for it and been asking for it.  
6 And they kept telling me they never had it, but yet it had  
7 been brought up at the suppression hearing. And then at  
8 trial the officer had said that he had lost it, but now  
9 finally we are able to get it now.

10 Q. Okay. All right.

11 MS. ROSS: I've got no further questions.

12 THE COURT: All right. Cross examination.

13 MR. NEELY: Thank you, Your Honor.

14 **Cross Examination by Mr. Neely:**

15 Q. How you doing, Mr. Lopez?

16 A. All right. And you, sir?

17 Q. I just kind of want to go over some things you said in  
18 your testimony earlier. You mentioned -- you said where I  
19 was taking the drugs. Where were you taking the drugs?

20 A. To meet up with my co-defendant.

21 Q. And that was the man that was arrested as well?

22 A. Yes, sir.

23 Q. And were you bringing them from Atlanta?

24 A. Yes, sir.

25 Q. And you didn't package the drugs, is that correct?

1 A. No, sir.

2 Q. But you drove the vehicle?

3 A. Yes, sir.

4 Q. Okay. And you told the law enforcement officer that  
5 pulled you over that there was no drugs in the vehicle,  
6 correct?

7 A. Yes, sir.

8 Q. And you told him there was no gun in the vehicle,  
9 correct?

10 A. Yes, sir.

11 Q. And there was also a gun in the vehicle, wasn't there?

12 A. Yes, sir. But it wasn't where the officer said it was.

13 Q. Okay. You mentioned that in Atlanta you helped to set  
14 somebody up. Could you give us some more detail about that?

15 A. The person that gave me the drugs. And it was my fault  
16 that all this happened because I should have went to my  
17 friends that I work with in Atlanta and I should have told  
18 them what was -- what I was doing so we could have avoided  
19 all this.

20 Q. So what you mean by that is that you should have  
21 flipped on the person that gave you the drugs?

22 A. Well, see -- yeah.

23 Q. And if you had done that originally you would never  
24 have been arrested?

25 A. Yes, sir.

1 Q. Now when you say your demeanor wasn't nervous at all,  
2 that's -- that's your opinion after watching the video?

3 A. No. It was my opinion while I was pulled over.

4 Q. Okay. So you weren't nervous that you had half a kilo  
5 of cocaine in your car and got pulled over by an officer?

6 A. No, sir.

7 Q. Okay. Were you aware that there was a bench warrant  
8 out for your arrest?

9 A. No, sir.

10 Q. And where were you residing at the time in between  
11 releasing from bond and the trial?

12 A. I think I was still at the last address in  
13 Lawrenceville.

14 Q. Okay. So you were in Georgia?

15 A. Yes, sir.

16 Q. Okay. And when you say if I'd testified I could have  
17 received a deal, that's just -- that's what you were hoping?

18 A. That's what I was told. I was told I was facing ten  
19 years. And I'm pretty sure if -- I'm pretty sure if I would  
20 have been there and I would have helped them out, I'm pretty  
21 sure they would have ---

22 Q. Okay. So there was no deal in place, that's just ---

23 A. Not that I know of.

24 Q. --- makes sense to you?

25 A. Yeah. Not that I know of, no.

1 Q. Okay.

2 MR. NEELY: That's all the questions I have, Your

3 Honor.

4 THE COURT: All right. Any redirect?

5 MS. ROSS: Just one.

6 **Redirect Examination by Ms. Ross:**

7 Q. Have you seen -- so you've seen a copy now of the  
8 video?

9 A. Yes, ma'am.

10 Q. And how did you get that copy?

11 A. Because of you, ma'am.

12 Q. Okay. I provided it to you?

13 A. Yes, ma'am.

14 Q. Okay. And now were you ever shown that video prior to  
15 trial?

16 A. No, ma'am.

17 Q. All right.

18 MS. ROSS: Nothing further.

19 THE COURT: All right. Thank you.

20 A. Thank you, Your Honor.

21 THE COURT: All right. Any additional witnesses?

22 MS. ROSS: Judge, I'm trying to think about how to  
23 bring in the video. I guess I'll go ahead and call Chris  
24 Scalzo because he's seen a copy of the video.

25 THE COURT: All right. Y'all can -- seems like y'all



1 both want -- y'all can come up with a stipulation.

2 MS. ROSS: Yeah.

3 MR. NEELY: Your Honor, I'll stipulate to the video.

4 She can introduce it whenever she wants.

5 THE COURT: All right. So ...

6 MS. ROSS: Okay. Well, I'll just introduce the video  
7 at this time.

8 THE COURT: Okay. I think I have one up here.

9 MS. ROSS: You have one?

10 THE COURT: Here is a video. I assume it's the correct  
11 one.

12 MR. NEELY: It should be, Your Honor.

13 THE COURT: It doesn't have anything on it. It has  
14 Daniel Lopez as to Judge. So ...

15 MS. ROSS: Okay.

16 THE COURT: The parties have stipulated that this -- I  
17 guess we'll need to mark this as Plaintiff's exhibit 1.

18 (Whereupon Plaintiff's exhibit 1 was marked and  
19 admitted into evidence)

20 THE COURT: Are we going to watch it now or how ...

21 MS. ROSS: Yeah. And I'll go ahead and call Chris  
22 Scalzo ---

23 THE COURT: Okay.

24 MS. ROSS: --- to the stand and allow him to watch it  
25 as well.

1           **MADAME CLERK:** Please place your left hand on the Bible  
2           and raise your right hand.

3                                           **Christopher Scalzo**, being  
4           duly sworn testified as follows;

5           **MADAME CLERK:** Thank you. You may be seated. And  
6           please state your full name for the record.

7           **MR. SCALZO:** Christopher Scalzo.

8           **MS. ROSS:** I guess -- could we just start by watching  
9           the video?

10          **THE COURT:** Maybe.

11          **MS. ROSS:** Well, I can ask a few questions first.

12          **THE COURT:** No, I'm just saying maybe. I'm trying to  
13          get -- can I open ---

14          **MS. ROSS:** Oh, okay.

15          **THE COURT:** --- this file? That's all right.

16          (Pause)

17          **MS. ROSS:** Judge, you want to try my computer?

18          **THE COURT:** Yeah, that's fine. Everybody's in  
19          agreement that we can ...

20          (Pause)

21          **THE COURT:** All right. Just to make sure everybody's  
22          in agreement, we've marked as Plaintiff's exhibit 1, which  
23          is the DVD, which is presented to me. All parties agree  
24          that the video we're watching on Ms. Ross' computer is the  
25          video in question and y'all stipulate that that would be --

1     that's acceptable as far as reviewing?

2           **MR. NEELY:** Yes, sir, Your Honor.

3           **THE COURT:** All right.

4           **MS. ROSS:** How do I need to place it so you can see it

5     ---

6           **THE COURT:** Well, you place it right there. And then  
7     he can sit -- and I can move over here so I can see it as  
8     well.

9           **MS. ROSS:** Does that work?

10          **THE COURT:** I can see it pretty well right there.

11          **MR. SCALZO:** I can see it too.

12          **THE COURT:** And then y'all can stand here too so that  
13     y'all can see it. All right.

14           (DVD played)

15           (DVD stopped)

16          **THE COURT:** All right.

17          **MS. ROSS:** The State will stipulate to the rest of the  
18     search. I'd just ask that you view it later on ---

19          **THE COURT:** Okay.

20          **MS. ROSS:** --- your own time. But this is the main  
21     part for Mr. Scalzo's testimony.

22          **THE COURT:** All right. We've stopped it at 14 --  
23     thirty-five minutes and forty-four seconds.

24          **MS. ROSS:** All right. And I would just add that it  
25     goes on for another twenty minutes to 14:53:50 before he's

1     Mirandized and arrested and the drugs were found.

2           **THE COURT:**   Okay.

3           **MR. NEELY:**   And that's correct, Your Honor.   The State  
4     does stipulate.

5           **THE COURT:**   All right.   Okay.

6     **Direct Examination by Ms. Ross:**

7     Q.    Okay.   Mr. Scalzo, you've had an opportunity to review  
8     the video that's been played for you.   Did you ever get a  
9     chance to review that prior to the trial of Mr. Lopez?

10    A.   No, ma'am.

11    Q.   And, in fact, the trial was nearly five years after his  
12    arrest?

13    A.   It was in '09.   And I think he was arrested in '05.

14    Q.   Okay.   And had you ever -- did you file discovery?

15    A.   I filed the standard, general discovery motion I file  
16    in every case.

17    Q.   Is there a mention of the video in that discovery?

18    A.   No.   It's just a mention of Brady and Rule 5 and  
19    requests.

20    Q.   Okay.   But then when you received discovery is there  
21    reference to in-car video of Mr. -- of Officer Hines?

22    A.   In the report there's a reference by the report -- the  
23    discovery packet itself doesn't reference the video.   It  
24    references a video by, I think, Officer McAbee.

25    Q.   Okay.   Did you know -- did you ever specifically do a

1 further discovery motion for the video, ---

2 A. No, ma'am.

3 Q. --- this video? And did you know at some point that it  
4 existed?

5 A. Well, I knew clearly from the -- from the report. I  
6 don't ---

7 Q. The incident ---

8 A. --- know -- yes, the incident report. So I don't know  
9 when I would have found out or how I found out that the  
10 physical video was not available.

11 Q. All right.

12 A. I don't have a note, or a letter or record on it.

13 Q. Okay. In watching that video do you -- what do you  
14 feel that it would -- how would it affected your trial  
15 strategy having that video available to you?

16 A. I think it would have been very beneficial to have the  
17 video. A couple of things stand out in watching it.

18 One, you get an independent, more objective view of  
19 whether or not Mr. Lopez was nervous or not nervous. I  
20 mean, it would have given me the ability to argue that he  
21 was not nervous. I think there are a lot of minutes there  
22 where they're standing at the car that clearly shows he is  
23 not nervous and would not have had to rely solely on the  
24 subject of opinion of the officer, which is what happened in  
25 the trial.

1           The other thing would have been the dog alert. That  
2       was essentially a non-issue at the trial because there was  
3       no -- there was no evidence. There was no video, there was  
4       nothing that could have ever been pulled out with the --  
5       with the dog because nobody could ever see whether the dog  
6       alerted or didn't alert. I think it's very obvious in the  
7       video that there's a question about whether the dog alerted  
8       as well as no benefit for me to be able to get an expert to  
9       evaluate the search because I never saw -- the search would  
10      have had no evidence to give an expert to evaluate.

11          And the last thing on the search that jumps to my mind,  
12      which I had argued in a different case, which was his -- the  
13      officer is rewarding the dog as he leads the dog all the way  
14      around the car before the dog presumably alerts or does  
15      anything. I think that's problematic. I had no way of  
16      knowing he was doing that without the benefit of the video.  
17      And that's just the dog related search.

18          And then anything that the officer would have said with  
19      regard to characterizing Mr. Lopez's comments. Like, for  
20      instance, I didn't know until I watched the video -- I never  
21      understood the discrepancy between the boy -- my boy and the  
22      reference to the daughter. And I read the police officer's  
23      report where he says -- he characterized it as he was  
24      misrepresenting or lying, but until I watched the video I  
25      could never get the context of the conversation because I

1     didn't have the benefit of seeing what would have happened.

2             And you can tell I didn't argue that in the suppression  
3     hearing. I wasn't able to argue the more accurate  
4     explanation for why he was talking about boy versus having a  
5     child and not having a son, having a daughter. So I think  
6     -- and that's just in watching the video today. I haven't,  
7     obviously, spent time further evaluating the video beyond  
8     today.

9     Q.     So you haven't had a chance to piecemeal it, which you  
10    could have done ---

11   A.     Correct.

12   Q.     Now on the video it's clear that the warning is issued  
13   and put in Mr. Lopez's hand.

14   A.     Yes, ma'am.

15   Q.     And after that there is further questioning after that.

16   A.     Yes.

17   Q.     Now you argued that in your suppression motion just in  
18   a pathway what you said before, always that you could argue  
19   that there did not exist reasonable articulable suspicion to  
20   further the stop because -- I'm just trying to go -- because  
21   Officer Hines was giving you subjective reasons that you  
22   really couldn't argue too well against without seeing the  
23   video.

24   A.     I think that's right, yes.

25   Q.     Okay. Now have you seen any other videos before with

1 dogs running around cars?

2 A. Yes. I specifically am remembering a case -- it was a  
3 trial. I'm trying to remember whether it was prior to this  
4 case or after this case.

5 Q. Could this have been one of your first trials? I've  
6 heard somewhere ---

7 A. This would have been '09. I started in '02, '03. So  
8 it wouldn't have been my first trial. I've probably been --  
9 could be ten, fifteen trials at that point.

10 Q. Okay. Had you had ---

11 A. I don't think I -- I think this was the first dog case  
12 I had. The other trial that I'm thinking of, I think, was  
13 later, but I can't give a time, a date to it.

14 Q. Okay. Have you ever seen videos where there was a  
15 distinctive alert in a dog case?

16 A. Yes. The dog would lie down, scratch at a part of the  
17 car or whatever it's searching, maybe bark, but I think  
18 those are the only two I've seen in videos that I've  
19 handled.

20 Q. All right. And so it's not unheard of that a dog will  
21 actually alert when ---

22 A. Correct. I mean, the State tends to argue that that's  
23 a very specific thing.

24 Q. Right. And have you ever heard of a passive alert?

25 A. I think so. One of the things that I'm remembering --



1 and I don't think it was dealt with in this case, obviously,  
2 is the idea that you want to train the dog to do something  
3 that a dog wouldn't normally do, maybe scratch at a place or  
4 lay down so that there's not confusion about whether it's  
5 alerting versus just doing something a dog would normally  
6 do.

7 Q. Right. And what is the point of having videos of the  
8 dog running around the car anyway?

9 A. Well, to my mind it would be so we could evaluate  
10 whether or not it was properly done in terms of what the  
11 officer was doing and whether or not the dog itself properly  
12 alerted or didn't alert or alerted in the right place. I  
13 mean, if the dog is alerting in the front of the car and the  
14 drugs are found in the back of the car, that obviously would  
15 be an issue. I'm not saying that was what was going on in  
16 this case, it's just that's obviously something that needs  
17 to be evaluated.

18 Q. Now viewing this did you see any alert on the trunk of  
19 the vehicle?

20 A. I didn't. I didn't ---

21 MR. NEELY: Your Honor, I'm ---

22 A. --- see anything.

23 MR. NEELY: --- going to object at this point in time.

24 I don't think Mr. Scalzo's been qualified as an expert. I  
25 think she's asking for an expert opinion.

1           **THE COURT:** All right. I'm going to sustain.

2    Q.    If you had had that video and was arguing about the  
3    alert to the judge with that video, what would you have  
4    argued?

5    A.    If I was arguing to the judge I would have argued there  
6    was no alert because he moved the dog around to several  
7    parts of the car, he kept rewarding the dog saying good  
8    girl, good girl, and then I didn't see any change in the  
9    behavior of the dog. The dog never laid down. I didn't see  
10   in the video that the dog scratched at any part of the car.  
11   And he certainly didn't bark on the video. So maybe there  
12   was and maybe there would have been a further explanation by  
13   the officer, but that never was an issue because I never saw  
14   it.

15   Q.    All right. And what would you have argued about  
16   reasonable and articulable suspicion before the warning was  
17   given?

18   A.    You mean before the warning ticket?

19   Q.    The warning ticket was given, what would you have  
20   argued if you'd seen the video?

21   A.    In the video part of the basis -- and I think it's in  
22   my cross examination that the officer ultimately agrees with  
23   me that Mr. Lopez doesn't give him anything specific that he  
24   says because you said this, it is now reasonable suspicion.  
25   His argument to me and the court in cross examination is

1     that he was taking everything together.

2             And I think being able to point out that Mr. Lopez was  
3     not nervous, that his explanations about where he was going  
4     when you could see the interaction was much more normal and  
5     human than it sounded like from the stand when he read his  
6     report because he viewed it one way and a jury or judge  
7     could totally view it another way. So my argument would  
8     have been it was not reasonable suspicion because there was  
9     no fact that he could point to that would show a serious  
10    crime was afoot.

11    Q.    You think the video could have strengthened that  
12    argument?

13    A.    Absolutely.

14    Q.    And would it enabled you to cross examine more  
15    effectively Officer Hines?

16    A.    No doubt.

17    Q.    Now just moving on. Do you have any other comments  
18    regarding the video?

19    A.    I mean, the only thing -- it clearly would have been a  
20    useful tool that I could not replicate in any other way. It  
21    wasn't like a video of the statement by Mr. Lopez that he  
22    then wrote down that we could then just simply say the words  
23    are all there. It's a video of an event and had things in  
24    there that I would not have been able to -- and could not at  
25    the time know or replicate. So I guess that's the most

1 important thing about the video.

2 Q. Okay. And whose possession was it in?

3 A. It wasn't in mine. I don't really know whose  
4 possession it was in, but it was not in my possession.

5 Q. Okay. Now just moving back to the trial itself, did  
6 you ever move for a speedy trial?

7 A. I did not.

8 Q. Referring your attention to page 6 through 9 of the  
9 transcript, that addresses your argument on trial in  
10 absence.

11 A. Okay.

12 Q. Did you ever argue specifically it'd been five years  
13 since the arrest and a bench warrant had been issued in the  
14 interim?

15 A. No, ma'am.

16 MR. NEELY: I'm sorry. What was that page number?

17 MS. ROSS: 6 through 9.

18 Q. And you did argue that there was no subpoena of your  
19 client, but you never mentioned sending the bond card  
20 returned, received or anything of that matter?

21 A. No. It was clear -- and I looked through my file  
22 before I came up here and looked at the transcript. It  
23 looks like my main -- my only argument was that it was not a  
24 subpoena.

25 Q. All right.

1     A.     Because I don't have any research. And I don't have an  
2     outline of my argument that goes into any other law or  
3     detail about what you're referring to in terms of the time-  
4     frame or things like that. I really only argued that it was  
5     not a subpoena and therefore ---

6     Q.     Okay.

7     A.     --- the bond card shouldn't have been used that way.

8     Q.     And so you didn't get into that you couldn't  
9     effectively represent your client without him being present?

10    A.     I did not argue that. That's correct.

11    Q.     Or make a constitutional argument ---

12    A.     I did not.

13    Q.     Okay. Did you ever request a jury charge about the  
14    destruction of evidence because of the non-existence of the  
15    video?

16    A.     No, ma'am, I didn't.

17    Q.     And as far as -- I'd just refer you -- sorry, I'm going  
18    through some questions. We've gone through most the video  
19    questions, but I'd refer you to page 22 and 23 of the  
20    transcript.

21    A.     Okay.

22    Q.     And you testified before that you would have cross  
23    examined Mr. Hines differently with the video. Would the  
24    video help you cross examine him about the testimony that  
25    Mr. Lopez was nervous with his story, all over the place, no

1 eye contact and stuttering?

2 A. Yes. I think it would have allowed me not only in the  
3 cross examination to challenge the officer, but I think it  
4 would have allowed the judge to see the contrast.

5 Q. Okay. Between stuttering and what you see on the  
6 video?

7 A. Or between what the -- what the officer says he  
8 interpreted and what the video showed. I mean, it clearly  
9 was the officer's subjective interpretation of the encounter  
10 is what he testified to.

11 Q. Okay. Just going to the end of the trial.

12 A. Okay.

13 Q. There's some jury instructions that you didn't object  
14 to on page 476. The judge gave an instruction requesting a  
15 verdict that speaks the truth.

16 A. Yes. I recall that as a fairly specific Judge Pyle  
17 jury charge.

18 Q. And you didn't object there.

19 A. I did not.

20 Q. And is that the burden of proof that the jury has to  
21 find? Are they looking for a verdict that speaks the truth?

22 A. It doesn't, no.

23 Q. And on page 489 there was a mistrial of the co-  
24 defendant. Do you recall the basis of that?

25 A. Only because I'm looking back at the transcript there's

1 a discussion about it that the -- as you mentioned earlier,  
2 the pled guilty was stamped on the indictment of the co-  
3 defendant.

4 Q. And that was sent back to the jury?

5 A. Right.

6 Q. So he mistried the co-defendant's case because the jury  
7 saw that he probably attempted ---

8 A. Right.

9 Q. --- to plead guilty at one point?

10 A. Right.

11 Q. And now he then follows that on page 49 -- 490 with the  
12 second instruction of possession charge.

13 A. Okay.

14 Q. In that charge does he ever follow with anything about  
15 you're the trier of the facts and it's a permissive  
16 inference? I'll just ---

17 A. I'm skimming through it. I don't -- it doesn't look  
18 like he did. And it doesn't look like I asked him to.

19 Q. Okay. And this was after he just mistrialed --  
20 mistried the co-defendant's case.

21 **MR. NEELY:** Your Honor, I just want to -- I believe  
22 it's misstating the record. I don't believe the case was  
23 mistried. I believe Mr. Scalzo made a motion for a  
24 mistrial, which I believe that he was actually found not  
25 guilty.

1           **MS. ROSS:** Okay.

2     A.   Well, Mr. Mackenzie moved for a mistrial.

3     Q.   Yeah. Mr. Mackenzie moved ---

4     A.   Co-defendant's lawyer moved for a mistrial. I'm trying  
5   to see -- I don't -- I obviously don't have a memory of it.

6   I'm trying to look through my records to see whether I  
7   joined in his motion. I don't think I joined in his motion  
8   for a mistrial.

9     Q.   Okay.

10    A.   I don't see it in -- from 488 I think is where he makes  
11   the mistrial motion to the end. I don't see that I joined  
12   in that motion. I had joined in other motions during the  
13   trial.

14    Q.   Okay. And then further with the possession charge, he  
15   recharges possession and ---

16           **THE COURT:** All right. Just for the record here,  
17   looking on page 488 it says the court, solicitor, I think in  
18   all fairness to the defendant I've got to declare a  
19   mistrial.

20           **MS. ROSS:** I believe ---

21           **THE COURT:** Which, I think, this is actually the co-  
22   defendant. So the co-defendant was mistried.

23           **MS. ROSS:** I believe that's correct. Thank you, Judge.

24    Q.   So the co-defendant's case was mistried. And then ---

25           **THE COURT:** Hold on.



1           **MR. NEELY:** One second, Your Honor. I believe on page  
2   492, lines 13 through 15, the jury actually comes back with  
3   a verdict of not guilty. So while I believe the judge does  
4   say I think I need to declare a mistrial, I don't believe  
5   the judge ever actually declares a mistrial.

6           **THE COURT:** Oh, okay.

7           **MR. NEELY:** It really is kind of confusing, but I just  
8   wanted to clarify it for the record.

9           **THE COURT:** He says to the -- the defendant and the  
10   State have declared a mistrial with respect to that  
11   particular indictment. Okay. I'm thinking just one  
12   particular indictment elected to let it go to the trial --  
13   let it go to the jury on the remaining indictments as to  
14   that defendant. Okay.

15          **MS. ROSS:** Okay.

16   **Q.** And you never made an argument that that -- that's  
17   prejudicial to your client, the ---

18   **A.** Which one?

19   **Q.** The mistrial aspect ---

20   **A.** I did not. I didn't make any argument regarding  
21   mistrial of the co-defendant.

22   **Q.** All right. And then -- and then further, you didn't  
23   object to the constructive possession charge that followed  
24   it prior to the case going back to the jury?

25   **A.** That's right.

1 MS. ROSS: I beg the Court's indulgence.

2 (Pause)

3 Q. Now -- one more. Going back to the video, if you had  
4 received the video would you have shown it to your client  
5 prior to trial?

6 A. Absolutely, yes.

7 Q. And would you advise your client based on what you saw  
8 in that video?

9 A. Yes in terms of what it could do to help or hurt him.

10 Q. And when you -- you gave him his plea offer you didn't  
11 have the benefit of having that?

12 A. I did not have it then.

13 Q. All right.

14 MS. ROSS: I've got no further questions.

15 THE COURT: All right. Cross examination.

16 MR. NEELY: Thank you, Your Honor.

17 **Cross Examination by Mr. Neely:**

18 Q. I'm going to just start with that last question Ms.

19 Ross asked you. Can you advise your client if you're not in  
20 contact with him?

21 A. No, not at the time that I'm not in contact with him.

22 Q. And were you in contact with your client at the time of  
23 the trial?

24 A. Say again.

25 Q. Were you in contact with your client at the time of the

1 trial?

2 A. At the time of trial? No.

3 Q. And ---

4 A. Because he wasn't there.

5 Q. All right. And he'd been under a bench warrant for  
6 over a year before the trial?

7 A. I'll have to look, but I think that sounds correct.

8 Q. If the record reflects that ---

9 A. Yeah. Yeah. We had contact prior to that, but, yes,  
10 for that time period.

11 Q. And did you try to get in contact with him again  
12 whenever it was put up for trial?

13 A. Yeah. I'll look through the file. I think there may  
14 have been -- we usually will send a letter to the -- like  
15 the solicitor sends a bond card, we would send a letter to  
16 the addresses we had to try to contact as well as call.

17 Q. And two of the issues that the Court of Appeals  
18 actually addressed on appeal were the search on Fourth  
19 Amendment grounds and the Confrontation Clause and  
20 defendant's right to be at his trial, is that correct?

21 A. I think so. I don't have the opinion in front of me,  
22 but that sounds correct.

23 MR. NEELY: And the Court should have a copy of the  
24 appellate records ---

25 THE COURT: Right. We do.

1 Q. There was a lot of talk about the cross examination of  
2 Mr. Hines by yourself. Have you reviewed that -- the  
3 transcript in this case?

4 A. Yeah. I read through the cross earlier.

5 Q. And I believe that there were thirty pages of cross  
6 examination.

7 A. Might be. I don't disagree.

8 Q. And you went over with Mr. Hines fairly extensively the  
9 reward basis for a K-9 search and how that is perceived by  
10 Mr. Hines, is that correct?

11 A. I'll have to go through it. If you can point me to it,  
12 I'll double check it. You may be right. I'm not doubting  
13 you.

14 MR. NEELY: I beg the Court's indulgence.

15 (Pause)

16 Q. Page 174.

17 A. 174. I don't know that I read this far earlier.

18 Q. And starting at line 5, I believe, is the pertinent  
19 part.

20 A. Okay. Oh, this is during the trial?

21 Q. Yes.

22 A. Okay.

23 (Pause)

24 A. Okay. Yeah, we went over some of the alerting issues.

25 Q. And I believe that continues on. And, in fact, in page

1 177 it mentions one of the issues you spoke about earlier  
2 where he's rewarding the dog ---

3 A. Um-hum (affirmative).

4 Q. --- as she continues to search.

5 A. Um-hum (affirmative). But as you said, I'm not an  
6 expert. So ...

7 Q. Certainly.

8 A. I couldn't testify to that.

9 Q. But you did -- you did question Mr. Hines about how dog  
10 searches and certainly attempted to draw doubt on whether  
11 the dog is actually alerting to drugs or not?

12 A. You're right. That is what I was trying to do.

13 Q. And when the Court of Appeals ruled on the Fourth  
14 Amendment search, they obviously did not have the video at  
15 that time, is that correct?

16 A. Yeah.

17 Q. However, they had the testimony of Mr. Hines, and  
18 that's what they used to rule on the issue, correct?

19 A. Well, that's the only thing they had.

20 Q. And the video does not change -- I wanted to ask you a  
21 number of questions based on whether the video changes these  
22 factors.

23 A. Okay.

24 Q. Does the video change the fact that Mr. Hines had over  
25 a thousand hours of training in drug interdiction at the

1 time of the search?

2 A. No, it doesn't change that.

3 Q. Does the video change the fact that Mr. Lopez abruptly  
4 exited the highway at a high rate of speed and Hines  
5 approached him to stop?

6 A. I mean, I guess not. The video doesn't have -- doesn't  
7 even show that.

8 Q. Does the video change the fact that Lopez has four  
9 different addresses on different documents that he gave Mr.  
10 Hines?

11 A. It does actually because the video shows the exchange  
12 going on between the officer and Mr. Lopez in a completely  
13 different light than even what you just said, let alone the  
14 way Deputy Hines said it.

15 The way Deputy Hines testified to it or wrote in his  
16 report was in a much more -- I'm trying to think of the  
17 right word -- evasive. He characterizes it more evasively.  
18 When you watch the video and you can see what's going on  
19 between the officer and Mr. Lopez, it is a lot -- to my  
20 view, is a lot less evasive acting than in -- the way it was  
21 described. So to that question, yes, it does change it.

22 Q. But does it change the fact that he gave him four  
23 different addresses?

24 A. No, it doesn't change that fact.

25 Q. Okay. Does it change the fact that Lopez was traveling

1 on I-85, which is a known main pipeline for drug  
2 trafficking?

3 A. No.

4 Q. Or that three of his four addresses were -- surround  
5 Atlanta, a hub city for drugs?

6 A. No.

7 Q. And these are all factors that the Court of Appeals  
8 directly cited in deciding that Officer Hines had reasonable  
9 probability at the time of the -- he issued the warning to  
10 search the vehicle or run the dog around the vehicle.

11 A. Those were things they referenced. That's not the  
12 entirety of the basis for their opinion. I mean, they're  
13 doing the same thing that Deputy Hines was attempting to do  
14 in his testimony, which was say it was a broad look at all  
15 the factors. They weren't focusing on one, or two, or three  
16 factors. They were saying the totality of the circumstances  
17 did it, which is why we get back to the video being very  
18 relevant.

19 Q. Certainly. And the totality of circumstances the Court  
20 of Appeals also considered the fact that Mr. Lopez had two  
21 cell phones visible in his vehicle. And Mr. Hines has seen  
22 him making a phone call at a pay phone before he made that  
23 stop, is that correct?

24 A. That's -- are you asking me if that's what happened or  
25 if that's what the Court of Appeals asked? I'm confused by

1 the question.

2 Q. The Court of Appeals referenced as one of the factors  
3 that Mr. Lopez had two cell phones visible in his vehicle.

4 A. Right.

5 Q. And Mr. Hines had seen him earlier at a pay phone  
6 making a call, is that correct?

7 A. Right. It references that, yes.

8 Q. It references the fact that Mr. Lopez said he was going  
9 to eat at McDonalds and Mr. Hines had previously seen him on  
10 an exit with McDonalds before he got on the highway, isn't  
11 that correct?

12 A. You're asking me whether the opinion -- you're now  
13 talking about the opinion, not the video?

14 Q. Correct.

15 A. Okay. Yes. The opinion references that as one of the  
16 factors that it's using.

17 Q. And the Court of Appeals also referenced the fact that  
18 Mr. Lopez appeared to be heading the wrong way according to  
19 his travel plans that he gave to Mr. Hines as a factor in  
20 Mr. Hines' reasonable suspicion, isn't that correct?

21 A. That's what it references, but then the video shows the  
22 exchange. He says -- when he gets out of the car he says to  
23 the officer, I was just looking -- I'm looking, trying to  
24 decide about getting something to eat.

25 Q. Certainly.



1     A.    So he offers an explanation that doesn't exist in the  
2     opinion because it wasn't a fact in the -- in the trial.

3     Q.    But all the factors that the Court of Appeals cites are  
4     -- none of those factors are contradicted by the video?

5     A.    They are.

6     Q.    How are they contradicted by the video?

7     A.    The conclusion that Deputy Hines testified to, which  
8     essentially the Court of Appeals adopted that he was somehow  
9     misdirecting the officer because he was going in the  
10    opposite direction was much more obviously explained when  
11    you get to the video and you see him get out of the car in  
12    his casual conversation that he doesn't appear to be nervous  
13    about, he says, I'm looking for something -- to get  
14    something to eat.

15           The fact that he would have gotten off the highway is  
16    way less evasive. Maybe it is evasive at the end of the  
17    totality of the circumstances, but not having that video  
18    changes that. When you don't have the video, the only thing  
19    is the characterization of Deputy Hines.

20           When you have the video, you can see the demeanor of  
21    the discussion that takes place and make your own evaluation  
22    of it. That's why I think the video changes everything just  
23    about that the Court of Appeals is relying on.

24    Q.    So you're focusing on the demeanor and your  
25    interpretation of the defendant in the video?

1 A. I'm not focusing on my interpretation of the video, I'm  
2 focusing on an objective person watching the video making  
3 the relative determination of what it is as opposed to being  
4 only limited to what the officer would characterize it as.  
5 Right or wrong, at trial it was only the officer who could  
6 make a characterization of it.

7 Q. Well, you talked about the officer's subjective  
8 feelings.

9 A. Or his observation, yes.

10 Q. But all the factors that Mr. Hines outlined for the  
11 court at the trial and all the factors that the Court of  
12 Appeals used, all the facts that he gave are correct?

13 A. Well, some of them aren't facts. Some of them were  
14 just conclusions.

15 Q. I've stated a number of facts. All the questions I  
16 think I asked were based on the facts, is that correct?

17 A. Well, conclusions are based on facts. You'd have to go  
18 over all of them again to make sure they were all fact.

19 Yes, you are correct that in the record that's what Deputy  
20 Hines testified to, and that those are factors, not only  
21 fact, but factors that the Court of Appeals relied on in  
22 coming to its decision.

23 But the point, even what the Court of Appeals is saying  
24 and even what Deputy Hines was doing was taking facts and  
25 developing a conclusion based on those facts. And what I'm

1    saying is in watching the video I think you could look at  
2    the same set of facts and draw a different set of  
3    conclusions because the interpretation is now different.

4            If Deputy Hines thought him to be nervous, somebody  
5    else looking at the video could disagree. Without the video  
6    nobody can disagree with Deputy Hines because there's no  
7    other way to look at it.

8    Q.    And I'm not arguing that. I'm arguing just what the  
9    facts are. The fact that four addresses are all different,  
10    ---

11    A.    Um-hum (affirmative).

12    Q.    --- that's a fact. That's not a characterization,  
13    correct?

14    A.    That's true.

15    Q.    The fact that he was traveling north on I-85 is a fact,  
16    correct?

17    A.    That's a fact.

18    Q.    The fact that he said he was going home is a fact,  
19    correct?

20    A.    Yes.

21    Q.    The fact that his home is in Georgia is a fact,  
22    correct?

23    A.    That's right.

24    Q.    And the fact that he was not traveling in the direction  
25    of his home is a fact?

1 A. That's right.

2 Q. The fact -- it's a fact that he had two cell phones in  
3 his vehicle, correct?

4 A. That's right.

5 Q. And it's a fact that Mr. Hines saw him on a pay phone  
6 earlier?

7 A. Well, that's what he testified to, but, yeah.

8 Q. Certainly.

9 A. Right.

10 Q. That's not on the video and that ---

11 A. Yeah.

12 Q. --- would not have been on the video? The  
13 characterization of the totality of the circumstances,  
14 that's conclusion, ---

15 A. Um-hum (affirmative).

16 Q. --- as you said before, correct?

17 A. Um-hum (affirmative). Yes. Sorry.

18 Q. But the facts that the Court of Appeals used to make  
19 their conclusion were all correct, isn't that right?

20 A. I don't know. I mean, yeah, I agree with what you just  
21 said in terms of the facts that you listed out. I'll have  
22 to read the opinion to say that they relied on everything  
23 that was a fact.

24 But the clear conclusion that the Court of Appeals  
25 adopted as well as what Deputy Hines said was that it was

1 all interpreted to be evasive. It was all based on the  
2 conclusions about Mr. Lopez whether it was evasive, whether  
3 or not he really was going home, why was he going in the  
4 opposite direction.

5 And what wasn't coming through, because there was no  
6 video, was the whole interaction between Mr. Lopez and  
7 Deputy Hines, how it doesn't appear to be evasive in the  
8 video. That, I mean, yes, you want to say the facts are  
9 correct, but the implication that was testified to by Deputy  
10 Hines, he didn't just testify to facts, he offered a picture  
11 of how he saw it and to justify his reasonable suspicion.  
12 That is contradicted or at least contrary evidence based on  
13 the video. That's different.

14 **THE COURT:** All right. Let's -- whether he agrees with  
15 you or not is not going to make a determination on me. So,  
16 I mean, your issues have been pointed out. So let's move  
17 on.

18 Q. And the Court has the appellate record, but they did  
19 discuss and find that defendant had notice and -- sufficient  
20 notice was given and adequately -- solicitor's office  
21 adequately attempted to contact him, correct?

22 A. That's what the Court of Appeals determined, yes, sir.

23 Q. It was -- Ms. Ross asked you earlier if you moved for a  
24 speedy trial and you said that you didn't. Is it true that  
25 your client asked you to postpone the trial as long as

1 possible?

2 A. I heard him testify to it earlier. I don't have a  
3 specific recollection of him asking me to do that. I think  
4 that that's correct based on things I didn't do like file  
5 for a motion for a speedy trial and other things. And it  
6 wouldn't have been an uncommon thing to say, look, there's  
7 no reason to do a speedy trial here to speed things up.  
8 You're better off letting it go a little longer and see what  
9 develops.

10 Q. And if you'd lost contact with your client you would  
11 not move for a speedy trial, is that fair to say?

12 A. Yes. Certainly I wouldn't have moved on my own for  
13 one, that's correct.

14 Q. Mr. Lopez testified about working with the solicitor's  
15 office to obtain a deal. Do you recall that?

16 A. What I recall -- and I looked at my notes. I don't  
17 recall it independently of my notes, but I have a note that  
18 says November 27th, 2006, defendant appeared. So that meant  
19 he came to court.

20 I don't -- I'd have to look and see if that was an  
21 actual scheduled day. I have the cards, and I can do that  
22 if you want me to. The rest of my note says, Solicitor  
23 Monts did not know what co-defendant was doing and sent the  
24 defendant home.

25 There's another note, and I'm trying to find it as I'm

1 looking here, about Mr. Lopez potentially providing  
2 assistance to the solicitor's office. But I can't tell from  
3 that note whether that meant that the solicitor specifically  
4 asked me about that or whether she was contemplating that or  
5 whether we had approached her and were just kind of waiting  
6 for a response. I looked at the notes earlier and I don't  
7 have a way of knowing which end it came from, whether it was  
8 from us, from them, but it all looks to be just simply  
9 something that was out there and didn't get beyond the idea  
10 of doing it.

11 Q. Okay. Do you know if there was a plea deal of ten  
12 years in place?

13 A. That sounds correct. What I don't have in the file,  
14 and I looked again while I was sitting back before I came up  
15 to testify, there's no plea offer. So pretty common, but it  
16 does happen that you would get a letter from the solicitor  
17 and the solicitor would say here are the charges, here's  
18 what we propose to do with these charges. And that's  
19 generally talked about as a plea deal.

20 There is not one in this file, this case for that. But  
21 I clearly remember discussions with Ms. Monts as well as Mr.  
22 Lopez of pleading guilty to something less than the  
23 trafficking, which carried mandatory minimum of twenty-five.  
24 Ten sounds consistent and probably right. I don't have  
25 anything in here that would be able to tell me specifically

1 it was definitely ten, but I certainly know it was not  
2 trafficking at the level that he ended up trying -- getting  
3 convicted of. It was less.

4 Q. Is it fair to say that those would have been informal  
5 conversations?

6 A. What do you mean by informal?

7 Q. That it's not a letter that you have -- it's not a  
8 particular note that you can take like a firm offer to your  
9 client on? I don't know how your ---

10 A. Yeah ---

11 Q. --- interactions go.

12 A. I know what you mean. It certainly was not a contract  
13 type plea offer where we could have turned it around and  
14 said, hey, if you don't honor this, come to the court and  
15 say, court, make them honor it.

16 It was certainly discussions and negotiation moving --  
17 trying to move in a certain direction that never got  
18 formalized into an agreement that we would have come into  
19 court and do. Either because Mr. Lopez didn't agree to all  
20 of the terms or the solicitor wasn't ready to go where he  
21 wanted to go. We were in a negotiation. I don't know if  
22 that answers the question or not, but it was not formalized,  
23 like written down.

24 Q. Did your client inform you that he was going to go back  
25 to Georgia after making bond?



1     A.    I had always known -- when I got the case -- I believe  
2     he was already out on bond when I was appointed to the case.  
3     And I think my understanding was he had always come from  
4     Georgia the entire time.  So I knew that just from the get-  
5     go.  So whenever he came to court I knew he was coming from  
6     Georgia, and I knew he was going back to Georgia.

7     Q.    Were the addresses you had for him Georgia addresses?

8     A.    Yeah.  We have the appointment sheet, which I can find  
9     in here I'm pretty sure has his Georgia address.  And the --  
10    I believe some of the bond cards probably had it too when we  
11    would get copies of the bond cards from the solicitor's  
12    office.

13    Q.    Do you have a note or recall when you lost contact with  
14    your client?

15    A.    I don't recall.  I can try to look from the notes.

16           (Pause)

17    A.    Oh, okay.  4/17/07 that I spoke with Mr. Lopez on the  
18    phone and I advised solicitor wants to talk about the  
19    defendant testifying against co-defendant.  So I knew that  
20    note was in there.  It looks like that might be the last  
21    time.

22           The other notes in my file look to be written by my  
23    assistant, call defendant's cell or calls to the defendant  
24    attempting to get contact.  And then the next note that is  
25    of my handwriting is -- it looks like -- well, it's not

1 mine, but somebody looked up to see if the case was still  
2 active in '08. And it was active and the bench warrant was  
3 still out there. And then no notes until 2013 which is when  
4 Mr. Lopez was arrested after the conviction.

5 Q. And I think Ms. Ross already asked you this. So you  
6 don't have any notes about the video being missing?

7 A. Correct. I don't have a note. And I don't remember  
8 how I know the circumstances of the missing video.

9 Q. Okay. The missing video was testified to by Hines at  
10 trial, correct?

11 A. I think it was. I don't remember without looking  
12 through the transcript.

13 Q. And I'll just point the Court and Mr. Scalzo to page  
14 145, lines 10 through 14. Does that appear to be correct?

15 A. Yeah. I mean, that makes sense.

16 Q. And this was not the only video in this case, is that  
17 correct?

18 A. No. Deputy McAbee had a video.

19 Q. And what did Deputy McAbee's video show?

20 A. I'm trying to remember. I think -- and I didn't review  
21 that before I came up here. I think that's about when  
22 they're trying to set up to get -- so they pull Mr. Lopez  
23 over, they discover the drugs.

24 And so then he begins like he talked about, trying to  
25 assist them and, hey, I'm bringing this to this guy here in

1     Greenville. That's why he was there. So I think what they  
2     tried to do is set up essentially the buy.

3             And I don't remember if Deputy McAbee's video is before  
4     they go actually do the buy or the result of the attempt to  
5     get the co-defendant. But I think it mostly is revolving  
6     after the traffic stop ---

7     Q.     Okay.

8     A.     --- issues.

9             MR. NEELY: I beg the Court's indulgence.

10            (Pause)

11     Q.     And I guess suffice it to say your memory is a little  
12     bit foggy on that?

13     A.     On the video?

14     Q.     Yes.

15     A.     Yeah.

16     Q.     It's been a while since this case was ---

17     A.     Yeah. What, eight years or something like that?

18            MR. NEELY: That's all the questions I have, Your  
19     Honor.

20            THE COURT: Redirect?

21            MS. ROSS: Thank you, Your Honor. Just briefly.

22     Redirect Examination by Ms. Ross:

23     Q.     The trial in absence argument, the AG talked about the  
24     Court of Appeals had ruled on that issue.

25     A.     Okay.

1 Q. Were they given the benefit of you arguing the  
2 defendant's constitutional rights to engage and assist in  
3 his own defense?

4 A. No.

5 Q. To be present for each of the proceedings?

6 A. No.

7 Q. Did you ever again argue that you had difficulty  
8 effectively representing him without his presence?

9 A. No.

10 Q. And would you agree that the stop in this case after  
11 watching the video was extended for the dog to sniff?

12 A. Absolutely.

13 Q. All right. And are you familiar with Rodriguez v.  
14 U.S., a recent case specifically -- Supreme Court case  
15 specifically saying a stop can't be extended for a dog  
16 sniff?

17 A. Vaguely.

18 Q. It's ---

19 A. Because we had -- we had the Williams case, which is  
20 what I argued ---

21 Q. Correct.

22 A. --- going back all the way to that time. But, no, I'd  
23 have to have read -- I probably read it when it came out,  
24 but I don't recall it now.

25 Q. All right. And as far as we were going through a whole

1 lot with Officer Hines and what the Court of Appeals'  
2 opinion as far as the stop, really it comes down to  
3 reasonable and articulable suspicion, correct?

4 A. Yes, ma'am.

5 Q. And do you think that video affects the determination,  
6 the judge's determination whether there was reasonable  
7 articulable suspicion?

8 A. I think it could, yes.

9 Q. All right.

10 MS. ROSS: Nothing further.

11 THE COURT: All right. Thank you. Are you going to  
12 have more witnesses on your side?

13 MS. ROSS: May I recall my client?

14 THE COURT: No, let's take a quick break. We've been  
15 going for a while, an hour and forty-five minutes.

16 MS. ROSS: Okay. Thank you.

17 THE COURT: All right. We'll take a five minute break.

18 (Whereupon court was in recess at 11:47 am)

19 (Whereupon court reconvened at 11:58 am)

20 THE COURT: Ms. Ross, I believe you were ...

21 MS. ROSS: Thank you, Your Honor. I'd like to recall  
22 Mr. Lopez.

23 THE COURT: All right. I'll remind you you're still  
24 under oath, Mr. Lopez.

25 MR. LOPEZ: Yes, sir.

1 Daniel Lopez, having been  
2 previously sworn testified as follows;

3 **Direct Examination by Ms. Ross:**

4 Q. All right. Mr. Lopez, you wanted to testify about the  
5 testimony by Mr. Hines on page 42 of the transcript, is that  
6 correct?

7 A. Yes, ma'am.

8 Q. And what was that testimony?

9 A. It admits of him turning in the video.

10 Q. Okay. And what does he say there on page 42?

11 A. Page 42, line 4, it says -- Mr. Scalzo asked him, he  
12 says one question would be did you turn in -- on the  
13 recording device on your car? He says, yeah, I do have --  
14 yeah, I have the video. Was the recording -- was that  
15 recording while you were talking to him? I would assume so.

16 Q. Okay. And then it didn't turn up and it wasn't given  
17 over in discovery and he had a different testimony in trial  
18 ---

19 A. Yes, ma'am.

20 Q. --- about what happened. Okay. Now I also want to  
21 show you something. When did you bring this to my  
22 attention, these two pages?

23 A. I got them as -- as I came about the video and tried to  
24 find out about the video and I seen that the video was not  
25 showing up, I requested information on disciplinary actions

1 on the officer. And it shows in 2002 where he was found  
2 guilty for not turning in evidence.

3 Q. Okay. Well, first, do you recognize these?

4 A. Yes, ma'am. Yes, ma'am.

5 Q. And you gave them to me just during the hearing? You  
6 just ---

7 A. Yes.

8 Q. --- came and handed them to me, ---

9 A. Yes, ma'am.

10 Q. --- right?

11 (Pause)

12 MR. NEELY: Your Honor, I'll object to the fact that I  
13 haven't seen these before and I can't verify these documents  
14 are accurate.

15 THE COURT: All right. I'm going to allow them in. I  
16 think that I'm -- I'm going to let her lay a foundation  
17 appropriately.

18 MS. ROSS: Okay.

19 Q. Do you recognize these again?

20 A. Yes, ma'am.

21 Q. And how did they come into your possession?

22 A. I wrote the sheriff's department office and asked for  
23 his -- for his record.

24 Q. And what happened?

25 A. And they wrote me back and it shows -- they wrote me

1 back with everything that he's been written up for and his  
2 disciplinary actions. And ---

3 Q. Okay. And how did you choose these four pieces of  
4 paper?

5 A. Well, like I said, the one -- the disciplinary action  
6 where he got suspended for two days for not turning in  
7 evidence is because my evidence was missing, my video. And  
8 then I got the general orders where it states what they have  
9 to do when it comes to video -- video recordings.

10 Q. All right. And what does this general order  
11 specifically relate to?

12 A. To the video, to him turning in the video of the  
13 traffic stop.

14 Q. All right.

15 MS. ROSS: And I'd ask that these be marked as  
16 Applicant's exhibits 1, 2 and 3. If that's okay, we can  
17 staple these two ---

18 THE COURT: We've already got one.

19 MS. ROSS: 3, 4 and ---

20 MR. NEELY: Your Honor, I'm going to again object. I'm  
21 not sure when this policy was applicable. I don't know, I  
22 mean, obviously the inmate's testimony about where he gets  
23 the documents from, nothing to verify, there's no custodian  
24 of records from the sheriff's office. I would object to  
25 these ---



1           **THE COURT:** All right. And I've got your objection on  
2 the record. I'll consider them appropriately.

3           (Whereupon Plaintiff's exhibits 2, 3 and 4 were marked  
4 and admitted into evidence)

5       Q. And those are the three exhibits you want to put in for  
6 that?

7       A. Yes, ma'am.

8       Q. Do you have the cover letter with you?

9       A. From?

10      Q. From that?

11      A. Yes, I think I do. I have the whole envelope where  
12 they wrote me and sent it to me.

13      Q. Okay. Is this the envelope?

14      A. Yes, ma'am.

15      Q. And this was the envelope that these exhibits were  
16 mailed to you in?

17      A. Yes, ma'am.

18      Q. And what is the return address for this envelope?

19      A. The Greenville County Sheriff's Office.

20      Q. All right.

21           **MS. ROSS:** I'd offer this as Applicant's or Plaintiff's  
22 -- Applicant's exhibit 5.

23           **MR. NEELY:** Without objection.

24           (Whereupon Plaintiff's exhibit 5 was marked and  
25 admitted into evidence)

**JOYCE MONTS - DIRECT EXAMINATION BY MR. NEELY**

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1           **MS. ROSS:** All right. I have no questions at this  
2 time.

3           **THE COURT:** All right. Cross examination.

4           **MR. NEELY:** The State has no questions at this time.

5           **THE COURT:** All right. Thank you. You may step down.

6           **MS. ROSS:** And lastly, Judge, I understand that you  
7 have a copy of the DVD that's not playing for you. If you'd  
8 prefer, I can put in the copy that Ms. Monts provided to me.  
9 If you'd prefer ---

10          **THE COURT:** Yeah, I don't know if it's the actual DVD  
11 or it's my system or what.

12          **MS. ROSS:** Well, that's available if ---

13          **THE COURT:** All right. We'll just try it on another  
14 system. And if it doesn't work, then I will notify y'all.

15          **MS. ROSS:** Thank you, Your Honor. That's the  
16 Applicant's case.

17          **THE COURT:** All right. I'd be glad to hear from the  
18 State.

19          **MR. NEELY:** The State would call Joyce Monts to the  
20 stand.

21          **MADAME CLERK:** Ms. Monts, please place your left hand  
22 on the Bible and raise your right hand.

23                                   **Joyce Monts,** being duly  
24 sworn testified as follows;

25          **MADAME CLERK:** Thank you. You may be seated. And

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**JOYCE MONTS - DIRECT EXAMINATION BY MR. NEELY**

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1     please state your full name for the record.

2           **MS. MONTS:**   Joyce Monts.

3     **Direct Examination by Mr. Neely:**

4     Q.    Good morning, Ms. Monts.  Where do you currently work?

5     A.    The Thirteenth Circuit Solicitor's Office in the  
6    Greenville County office.

7     Q.    In what capacity?

8     A.    Assistant solicitor.

9     Q.    And how long have you worked there?

10    A.    Approximately twenty-two years.

11    Q.    And were you the solicitor in Mr. Lopez's case?

12    A.    Yes, I was.

13    Q.    Starting, I guess, at the beginning ---

14    A.    Actually, it might be -- it's around twenty years.

15    Q.    Do you recall making a plea offer or do you have any  
16    notes for the offer in Mr. Lopez's case?

17    A.    I don't have notes.  I remember discussing the case  
18    with Chris Scalzo.

19    Q.    And what were your discussions with Mr. Scalzo about?

20    A.    About the defendant, Mr. Lopez, whether or not he was  
21    going to cooperate against the co-defendant and testify or  
22    whether he was going to go to trial.

23    Q.    Do you remember a plea offer of ten years?

24    A.    I know we discussed that.  And that was in discussion.

25    Q.    Do you recall when you discovered that there was a

1 video missing?

2 A. I don't recall the exact time, but in the discovery  
3 process we would have turned over any video of the scene. I  
4 know we turned over the video of Officer -- Deputy Chris  
5 McBee [sic]. We did not have the officer from -- Officer  
6 Hines, who knew he had a video and it was in his report.

7 And then I talked to him about where it was. He had  
8 switched units. And his videos had been in a vault at one  
9 unit. And when he moved he didn't have it. So -- and he'll  
10 have to explain that, but I never saw a video at the time of  
11 trial.

12 Q. But your discussion with Mr. Hines about the missing  
13 video happened prior to trial?

14 A. Yes.

15 Q. And did you let Mr. Scalzo know there was a missing  
16 video?

17 A. Yes.

18 Q. If you'd had the video would you have turned it over to  
19 Scalzo?

20 A. Yes.

21 Q. And the video you did have, you did turn it over?

22 A. Yes.

23 Q. Do you know what measures the sheriff's office took to  
24 find the video?

25 A. I do not -- I do not know what measures they took, no.

1 Q. Okay. But you did ask them to try to find the video?

2 A. Yes. Yes.

3 Q. Do you recall what the video of McAbee showed at trial?

4 A. It -- he is the second officer. He comes in behind  
5 Officer Hines. And you see from McBee's -- looking forward  
6 from McBee's car you see Hines' car and what was going on in  
7 front of McBee's car, so Hines in or around his car.

8 Q. Okay. Mr. Lopez testified that he helped set somebody  
9 up in Atlanta. Did your office have any involvement in --  
10 with Atlanta law enforcement?

11 A. No.

12 Q. Did you -- have you heard about that before?

13 A. No.

14 Q. But there was discussions between you and Mr. Scalzo  
15 about a potential lesser sentence if he testified against  
16 his co-defendant?

17 A. Yes.

18 Q. Okay. Do you -- do you recall when those discussions  
19 stopped?

20 A. I believe when Mr. Scalzo no longer had contact with  
21 the defendant. I don't remember the exact time.

22 Q. And do you recall what your office did to try to  
23 contact the defendant to let him know that his trial was  
24 coming up?

25 A. We sent him cards as we do for any defendant for any

1 address that we've had including the bond address and any  
2 subsequent addresses that the defendant or the defense  
3 attorney has provided to us. I believe in this case we sent  
4 cards to four addresses.

5 Q. And on the bond paperwork for Greenville County, is it  
6 standard that ---

7 MS. ROSS: Judge, I'd just point out that this is all  
8 in the transcript, the issue with what lengths they went to  
9 and what's on the bond cards.

10 THE COURT: All right.

11 MS. ROSS: So I would object.

12 THE COURT: I'll let him go into it a little further.

13 Q. On the bond paperwork is it standard for Greenville  
14 County to have a must stay in this State qualification?

15 A. I believe that is standard -- I believe that is  
16 standard wording in there. It is common for the defendant  
17 if he lives out-of-State to go out-of-State, but that is the  
18 language that's in there. And regarding the bond card, we  
19 would have also notified the bondsman about making sure his  
20 person showed up for court.

21 Q. When was your office notified that the missing video  
22 had been found?

23 A. When -- I don't know the date, but when the first time  
24 that this PCR was going to be heard and I was contacted  
25 about the reasons for the PCR, I contacted Deputy Hines and

1 asked him -- told him that one of the issues was that this  
2 video had not been provided. And I -- and we talked about  
3 where it could be. I asked him to look again since time had  
4 gone on and look and see just per chance, due diligence,  
5 look some more to see if you could find it at this time.

6 Q. And it was that -- that second search upon your request  
7 the video was found?

8 A. Yes.

9 Q. And it was found by Mr. Hines? Is that your  
10 understanding?

11 A. Yes.

12 MR. NEELY: Those are all the questions I have, Your  
13 Honor.

14 THE COURT: Cross examination.

15 MS. ROSS: Okay.

16 **Cross Examination by Ms. Ross:**

17 Q. And -- and I had given you a subpoena for the video as  
18 well, hadn't I? Served ---

19 A. You ---

20 Q. --- on your office a subpoena for ---

21 A. You very -- I don't recall, but you very well may have.

22 Q. Okay. And I'm just looking at my notes on the McBee  
23 video. My notes show that he pulls up behind Officer Hines  
24 in an unmarked vehicle. So you see an unmarked vehicle and  
25 then the dog come out, but you can't see the actual dog

1 running or hear anything stated on Mr. McBee's video, does  
2 that -- does that sound correct?

3 A. Say that once more.

4 Q. Well, just on my notes about the video say that --  
5 pulls up on another officer, unmarked, getting dog out, less  
6 than a minute. And then -- and then you can't see what's  
7 happening in front of the car because McBee's pulled up  
8 behind Officer Hines.

9 A. Lopez's car is in front of Hines' car.

10 Q. Right.

11 A. And McBee is behind Hines' car. So you see the dog  
12 getting out ---

13 Q. Of Hines' ---

14 A. --- of Hines' car.

15 Q. Right. But you can't see the detail going around Mr.  
16 Lopez's car?

17 A. Probably not.

18 Q. Okay.

19 MS. ROSS: I've got nothing further.

20 THE COURT: All right. Any redirect?

21 MS. ROSS: Sorry.

22 **Cross Examination by Ms. Ross Continued:**

23 Q. You provided me with a DVD and provided that to my  
24 office and have provided it to ---

25 A. Yes.



1 Q. Thank you.

2 MR. NEELY: No further questions.

3 THE COURT: All right. Thank you. You may step down.

4 All right. Call your next witness.

5 MR. NEELY: The State would call Chris Hines.

6 MADAME CLERK: Mr. Hines, please place your left hand  
7 on the Bible and raise your right hand.

8 Chris Hines, being duly  
9 sworn testified as follows;

10 MADAME CLERK: Thank you. You may be seated. And  
11 please state your full name for the record.

12 MR. HINES: Chris Hines, H-i-n-e-s.

13 **Direct Examination by Mr. Neely:**

14 Q. Officer Hines, where are you currently employed?

15 A. The Greenville County Sheriff's Office.

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

17 A. Approximately twenty years.

18 Q. What department are you currently in?

19 A. Currently I am -- as of January 3rd been reassigned and  
20 over our traffic unit and our air support unit.

21 Q. And what divisions have you been in over the course of  
22 your twenty years?

23 A. Started out on the uniform patrol division and then  
24 went over to what was our selective enforcement division,  
25 consisted of our neighborhood enforcement team and then

1 transferred to our traffic division where I was for a number  
2 of years. In '06 I transferred to our air support unit.

3 And I remained there up until the beginning of the year.

4 Q. So at the time of this incident what division were you  
5 in?

6 A. I was assigned to our traffic unit in the selective  
7 enforcement division.

8 Q. That was 2005?

9 A. That's correct.

10 Q. And in 2006 you left the traffic division?

11 A. That's correct.

12 Q. And were in air support?

13 A. Air support, correct.

14 Q. For how long?

15 A. I remained there until January 3rd when actually took  
16 over as the supervisor of that unit as well.

17 Q. This year?

18 A. Correct.

19 Q. So eleven years in air support?

20 A. Right.

21 Q. Do you recall after the incident where you stored the  
22 video?

23 A. Back in early 2000 and during 2005 this time, the only  
24 real units in the sheriff's office had in-car videos was our  
25 traffic division. It was not common practice for most of

1     our patrol cars as they do now and after the last probably  
2     six or seven years implemented that through our patrol  
3     division.

4             So for years we were the only unit that had air and car  
5     videos. And we had a locked storage cabinet at our center  
6     command office where all our traffic videos were kept. And  
7     every officer had their own shelf. And the supervisor had a  
8     key to that.

9             And any time a video was needed, it was -- the key was  
10    got from the supervisor and would go and retrieve that video  
11    and replace it back after the -- until time for destruction,  
12    which at the time we would keep them ninety days after a  
13    non-criminal trial or case on the video. And then keep them  
14    up until the trial or it was okay to get rid of at the time  
15    through the solicitor's office.

16    Q.    So before you destroyed a video you okayed it through  
17    the solicitor's office?

18    A.    That's correct. Normally in the past, yes.

19    Q.    And these videos were VHS tapes?

20    A.    Correct.

21    Q.    And is that where you placed this video?

22    A.    Correct.

23    Q.    Or that's where you remember ---

24    A.    Well, all my videos were in the same spot, correct.

25    Q.    And that was in 2005?

1 A. Correct.

2 Q. And when were you asked to look again for this video?

3 A. I don't remember exact date. I'm sure sometime prior  
4 to the trial in 2009. I don't really have any dates leading  
5 up to when -- any interaction regarding this trial prior to  
6 2009 took place. But sometime -- like I said, shortly after  
7 -- in 2006 I transferred out.

8 And it would have been sometime post -- typically at  
9 least about a year before we usually hear anything at all in  
10 some of these cases with the court system. So sometime  
11 between probably 2006 and 2009, but I don't have the exact  
12 date or time-frame.

13 Q. Okay. But sometime during the -- during the arrest and  
14 at trial you were asked to look for the video ---

15 A. Correct.

16 Q. --- of the traffic stop? And you were unable to find  
17 it?

18 A. That's correct.

19 Q. Do you -- was it you that looked or did you hand the  
20 responsibility to somebody else?

21 A. I actually looked through my stuff. What -- after in  
22 -- after I transferred out of the unit, of our traffic unit,  
23 a short time later, and I don't remember exact, I think in  
24 the actual testimony it said about a year later, we had a  
25 supervisor change in the traffic division. And between the

1 lieutenant and the sergeants down there, offices were moved  
2 around.

3 I was asked to come and get -- pick my videos up, the  
4 one I shared down at the site, they had my stuff in a box.  
5 All -- it didn't appear that that was all my stuff, but I  
6 didn't have -- I didn't -- I just took it because -- and  
7 took it back to my office at the airport and locked it up.

8 It wasn't until they moved from Southern Command --  
9 they moved from 666 Perimeter Road to 5 Chapel Road sometime  
10 after -- I think it was after 2010, maybe 2011 time-frame.  
11 And I -- one of the gentlemen -- or I had a deputy from the  
12 -- that was based out of office bring a box to my office and  
13 it had certain videos in it that was found in one of the  
14 storage rooms down there. So, obviously, it appeared to me  
15 that sometime in the move of packing stuff up, some of my  
16 stuff got moved into a storage area down in the -- in the  
17 old building of Southern Command.

18 Q. And do you know how you identified those materials as  
19 yours?

20 A. Well, I mean, it has -- it had case numbers. All my  
21 videos -- and I wrote -- would have the date. And if it was  
22 saved, we'd have the case number on there. And they pulled  
23 the case numbers on that and it had -- it came back to my  
24 cases. So that's how they identified it from there.

25 MR. NEELY: May I approach the witness?

1           **THE COURT:** Yes.

2       Q.   And what you just held up for the record was a VHS  
3       tape. What is that VHS tape?

4       A.   This VHS tape -- VHS tape, which was -- I have  
5       documented here from January 14th, '05 at 11:30 when that  
6       went into -- I installed this tape or started using this  
7       tape through January 21st, 2005 at approximately -- when I  
8       took it out of the vault was -- or when -- it was 2:50 on  
9       the 21st. And it's got a case number on here, which was the  
10      same case number, which was referencing this case here.

11      Q.   And is that your handwriting on that tape?

12      A.   That is.

13           **MR. NEELY:** Your Honor, at this time I would introduce  
14      the original video tape into evidence.

15           **THE COURT:** Any objection?

16           **MS. ROSS:** No objection. Can I look at the dates on  
17      there real quick?

18           **THE COURT:** I'm sure somebody has a VHS player around.

19           (Whereupon Defendant's exhibit 1 was marked and  
20      admitted into evidence)

21      Q.   And you say you see that second box of files in 2011,  
22      you said?

23      A.   It was sometime after the -- after the move or in the  
24      process of them moving the offices. And I'm not exactly  
25      sure of the exact year when that -- they moved into the new

1 facility, but it was sometime about that time-frame. And it  
2 could have been 2012 time-frame. I would have to go back  
3 and look at the dates of when that move actually took place.

4 Q. But it was during that move that ---

5 A. It was subsequent to that that the box was found when  
6 they were cleaning out the old building.

7 Q. When Ms. Monts asked you to go look for the video  
8 again, is it that second box where you found the video?

9 A. Actually those videos and some paperwork I put in my --  
10 a locked filing cabinet I keep in my office that I only have  
11 access to. And when she asked, I just went back and looked  
12 back through my -- the videos -- all the videos in there  
13 looking for the case number.

14 And I found a few notes on that video. I always put  
15 the case number on the outside of the -- on the end cap and  
16 also on the top and ended up locating that actual case  
17 number and told her, hey, I've got -- and let her know I had  
18 a copy of the video and went and had our guys who do have  
19 the VHS player and capability of writing to a DVD to make a  
20 copy of the -- of the actual stop.

21 Q. And when was that?

22 A. Probably sometime at the end of fall 2016. I'm going  
23 to say -- I don't -- maybe October, September time-frame.  
24 I'm not a hundred percent sure. It -- there was a sheet --  
25 a copy was placed in our property and evidence that would

1 have the specific date when it was actually -- the video was  
2 made and placed into evidence. Or a copy, I'm sorry.

3 Q. But as soon as it came to your attention that you had  
4 this video you notified the solicitor's office?

5 A. Yes. I called Ms. Monts and let her know that I had a  
6 copy of it and I'd go and have a copy made of the video and  
7 have it placed in our evidence.

8 Q. And have you had time to look at the video?

9 A. I have reviewed.

10 Q. Does it change your opinion of what happened that day?

11 A. No, sir.

12 MR. NEELY: Your Honor, beg the Court's indulgence. I  
13 would like to have Mr. Hines look at the video to give -- so  
14 that he can point out what he thinks happened to Your Honor  
15 with the dog search. So I don't know if we can pull that up  
16 again and play that.

17 MS. ROSS: And I'd just object. Again, this is going  
18 to the subjective -- I think it's too late to have the  
19 active memories of what's happening. And I would argue that  
20 the Judge can judge ---

21 THE COURT: Yeah, I think that's probably up for me to  
22 decide based on -- I mean, I've got to review the transcript  
23 and the video. I'm not sure him explaining that is going to  
24 -- is appropriate at this point. So ...

25 Q. Officer Hines, how much experience do you have with K-



1 9s?

2 A. We actually went -- prior to certification we had -- we  
3 go through a handler's course, which was -- let me try to  
4 give the exact hours on that. Initially four hundred hour  
5 course for initial training with the dog. And then from  
6 then on we certified at least annually. And we did weekly  
7 training with our -- with the trainer. So to go back for  
8 the total time with the actual dog experience, I would say  
9 just based off the top of my head, the dog, probably over a  
10 thousand hours give or take of dog training.

11 Q. Have you ever been qualified as an expert at trial?

12 A. Not in K-9, no.

13 MR. NEELY: I believe that's all the questions I have,  
14 Your Honor.

15 THE COURT: Cross examination.

16 **Cross Examination by Ms. Ross:**

17 Q. I just need to look at the tape again. Did it say  
18 January 21st on it?

19 A. That would be ---

20 Q. Because the arrest looks like it was the 25th.

21 A. That wasn't -- actually the arrest report has 21.

22 Q. I got you. Okay. Sorry. And so that's when the video  
23 was made. Is there a procedure for putting stuff into P&E?

24 A. There -- yes.

25 Q. And I'd just refer you to G0223. Do you recognize

1     that?

2             (Pause)

3     Q.    Or does that look like the procedure or the rule about  
4     that?

5     A.    Yeah, that's a -- a copy of the -- that was not in  
6     place.  Actually, this says community services tape storage.  
7     That division is what traffic was under at the time this was  
8     -- policy was made.  That community -- that division didn't  
9     even exist when ---

10    Q.    Okay.

11    A.    --- at 2000 -- I was selective enforcement division on  
12    that.  So that is a current policy that was not in place at  
13    the time..

14    Q.    All right.  So you didn't follow that ---

15    A.    That policy was not even in existence at this ---

16    Q.    Okay.  So you did follow the later policy ---

17    A.    Correct.

18    Q.    And what you did again at the time was just to put it  
19    in -- did you put it in P&E storage?

20    A.    The video?

21    Q.    Yes.

22    A.    No.  As I said, we have a locked filing cabinet/vault  
23    type structure that we kept all of our -- all the traffic  
24    kept their videos in there.

25    Q.    Just sort of internally within your office ---

1 A. Right. And the supervisor had the key to that.

2 Q. Supervisor or everybody?

3 A. No. The supervisor had the key to it. And if you  
4 needed a copy -- if you needed your video, you would go and  
5 get the key from him or he would open it up for you and sit  
6 there and go through your shelf and get your stuff.  
7 Everybody had their own shelf in there to -- with their name  
8 on it. So I'd have a shelf with all my videos laid out.  
9 And all the traffic guys had their specific videos on the  
10 shelves.

11 Q. Okay. And then how -- with that, with only the  
12 supervisor accessing it, I guess you can't say how it  
13 somehow was misplaced and not kept with the rest of -- if  
14 all your stuff was kept on one shelf ---

15 A. Well, like I said, they allowed me to keep my videos  
16 locked up there at the -- after I transferred out for a  
17 short time, after a supervision change as they were moving  
18 stuff around, they were moving cabinets around, they --  
19 actually the office that they were kept in, that office --  
20 that office, actually the supervisors, traffic moved to  
21 another office in the same building, desks, filing cabinets,  
22 that all moved around.

23 And I don't know who put -- boxed my stuff up, but my  
24 stuff was sitting in a box when I -- they called and said,  
25 hey, you need to come and get your videos and your stuff

1 down here that you left down here. And that's what -- I  
2 picked up what they had boxed up.

3 Q. All right. And so I guess this procedure didn't work  
4 well in the case of this particular tape because it got lost  
5 for trial?

6 A. Right. And like I said, I was not even assigned ---

7 Q. Okay.

8 A. They let me keep my videos locked up down there because  
9 at the time when we moved offices I didn't have a -- we  
10 didn't have a office at the airport that was a secure  
11 location at the time I transferred.

12 After that, about a year after I was over there we got  
13 a new office facility which we could lock up. But the  
14 supervisor that was there at the time let me keep my videos  
15 there. The new supervisor that came in said you basically -  
16 - you need to come and get your stuff.

17 Q. Okay.

18 A. So ...

19 Q. But at all times it was basically in the control of law  
20 enforcement ---

21 A. Correct.

22 Q. --- supervisor? Okay. Now, Mr. Lopez, earlier you  
23 were here, put in some exhibits. And they said that you had  
24 a two day disciplinary suspension for mishandling evidence.

25 MS. ROSS: May I look at that, Judge?

1 Q. And That's not this, but it's -- it's this and that.

2 Is that -- did that happen?

3 A. Yes.

4 Q. Okay.

5 MS. ROSS: I've got no further questions.

6 MR. NEELY: No redirect from the State.

7 THE COURT: All right. You can step down.

8 MR. NEELY: At this time the State would rest.

9 THE COURT: All right. Any reply from the Applicant?

10 MS. ROSS: No -- no, Your Honor.

11 THE COURT: All right. Anything else then from -- I'd  
12 be glad to hear brief closing remarks if y'all would like to  
13 make them.

14 MS. ROSS: Well, I did a lot going to the ineffective  
15 assistance of counsel. I believe Your Honor was taking  
16 notes. And that was my allegations there.

17 We also have ineffective assistance of appellate  
18 counsel for failing to brief on page 465 or any other  
19 arguments that Mr. Scalzo did effectively object to. But  
20 our issue was he didn't lay a record strong enough to  
21 support the Court of Appeals coming to a fair opinion on the  
22 trial in absence or the search and seizure.

23 And a lot of that was not Mr. Scalzo's fault. A lot of  
24 it had to do with the non-existence of this tape. I will  
25 allow the tape to stand on its own for Your Honor, but I

1 would argue that it did amount to a due process violation.

2 To get to that level there has to be evidence of bad  
3 faith by the State. I don't know if it raises to that. I  
4 would let Your Honor make that determination, but also that  
5 the evidence -- or that the evidence possessed exculpatory  
6 value apparent and the defendant had no ability to obtain  
7 that by other means. That's what happened here. It was, we  
8 would argue, exculpatory.

9 Viewing the tape we would argue goes to much of the  
10 case law that Mr. Scalzo argued and has happened since as  
11 far as search and seizure is objecting to the very type of  
12 search that this was one where a warning is given and then  
13 the search is extended beyond that. We have U.S. --  
14 Rodriguez v. United States, which is 135 S.Ct. 1609, 2015  
15 opinion, but it is an opinion that came out the same year as  
16 the Court of Appeals opinion.

17 There's also since then U.S. v. White, which is a  
18 Fourth Circuit opinion saying burnt marijuana doesn't amount  
19 to reasonable and articulable suspicion.

20 U.S. v. Williams, Fourth Circuit case, reasonable  
21 articulable suspicion has to connect to a criminal act.  
22 Here, driving on 85, not a criminal act. Going in a  
23 different direction from your home, not a criminal act.  
24 Again, this is the type of search and seizure, and it's  
25 apparent from the video, that the courts are trying to

1 prevent.

2 Also we have U.S. v. Richardson, which is 385 F.3d 625,  
3 which is saying that nervousness is not enough. And we  
4 would argue that the video shows that the subjective  
5 opinions given by the officer as to his basis for a  
6 reasonable articulable suspicion did not amount to that.  
7 Also shows that the dog did not alert.

8 There's certainly -- in federal cases judges are  
9 beginning to regard the video and look for whether there is  
10 an alert and find that there must be some indication of the  
11 dog alerting in order to justify a search. That didn't  
12 exist here.

13 And the drugs that were found were in the trunk. And  
14 you can see there is no alert whatsoever to the trunk. And  
15 the packaging of the drugs indicate that there'd be  
16 difficulty to smell.

17 So for those reasons we'd argue that this amounts to a  
18 due process violation and ask that Mr. Lopez be granted Post  
19 Conviction Relief.

20 **THE COURT:** All right.

21 **MR. NEELY:** Thank you, Your Honor. I think that the  
22 most important factor here is the Court of Appeals opinion.  
23 The only -- the only two things that the Court of Appeals  
24 opinion cites that are challengeable as subjective are  
25 Lopez's nervousness and his nervous chatter.

1           And I know Mr. Hines has seen the video. He still  
2           thinks that Lopez was acting in a nervous manner. He cites  
3           a number of things that he thought led up to that including  
4           when Lopez was very, very serious whenever he asked him if  
5           there was marijuana or cocaine in the trunk or in the car.  
6           And then whenever he asked him if he had a bomb in the car  
7           he started laughing.

8           Again, Mr. Hines believes that -- he has over a  
9           thousand hours of training with K-9s to back it up including  
10          national certification. All of it -- all of that is in the  
11          record and the transcript and that the dog alerted on the  
12          rear tire well, which is right around where they found the  
13          drugs.

14          Obviously at the time of this case, 2009 case, a lot of  
15          our jurisprudence on car searches hadn't come out yet, but  
16          counsel isn't required to be clairvoyant in his arguing of  
17          the search. And the Court of Appeals opinion came out in  
18          2015.

19          And the Court of Appeals opinion even addresses the  
20          fact that at the time he gave the ticket based on the  
21          articulable facts that the officer gave, he had reasonable  
22          suspicions to search the vehicle. Officer gave a reason as  
23          to why he said he can go. And that's in the transcript as  
24          well.

25          He said I want to keep it amenable. I didn't have



1 backup at that time. I can't -- I can't search the vehicle  
2 -- do a K-9 search of the vehicle and keep an eye on the  
3 defendant. I don't know what he's going to do. I want to  
4 keep it amenable and keep it a, you know, pleasant  
5 transaction until I have backup that can secure the scene  
6 and help me in that regard.

7 And then with the confrontation clause argument, the  
8 Court of Appeals found pretty clearly that it's the  
9 defendant's duty to keep his attorney and the solicitor's  
10 office apprized of his whereabouts. And the duty is not on  
11 the solicitor's office or the defense attorney to try to  
12 find the defendant.

13 On the bond paperwork it said he has to stay within the  
14 State of South Carolina. It's one of the reasons that you  
15 stay within the State of South Carolina is because once the  
16 defendant leaves the State, they're harder to find, harder  
17 to get back.

18 And Mr. Scalzo noted that his last contact with Mr.  
19 Lopez was in 2007. The trial was in 2009. So that's a two  
20 year period of contact [sic] Mr. Scalzo was unable to get in  
21 contact with his client. That's an unreasonable amount of  
22 time.

23 And again, they -- they made the allegation that Mr.  
24 Scalzo failed to ask for a speedy trial. His client on the  
25 stand said that I asked him to postpone the trial as long as

1 possible. And that's what Mr. Scalzo was doing presumably,  
2 what his client wished.

3 It seems to me that the Court of Appeals was able to  
4 accurately rule on the Fourth Amendment allegation based on  
5 the facts that they submit and that the only thing that the  
6 video shows is an argument against the subjective opinion of  
7 Mr. Hines that he was -- that Mr. Lopez was nervous during  
8 the stop. That is a subjective opinion.

9 And I do not doubt for one second that Mr. Scalzo would  
10 have loved to have the video to cross examine Mr. Hines  
11 with, the same as any defense attorney would prefer a video  
12 of any circumstance. But mistakes happen.

13 In this case I think it's pretty obvious that this is  
14 not a case of bad faith. I mean, if this was a bad faith  
15 argument, the video would not have -- never have showed up.  
16 When Ms. Monts asked him to find the video again, and he had  
17 found the video, it would just disappeared again.

18 That's not what happened here. As soon as he found the  
19 video he let Ms. Monts know, made watchable copies on DVD  
20 and gave them over to the solicitor's office so that they  
21 could give them over to the AG's Office and we could in turn  
22 provide them on to Ms. Ross.

23 I don't think it's bad faith. I think that the Court  
24 of Appeals accurately ruled based on the facts in the  
25 transcript. And the same facts are backed up by the DVD. I

1 think if this was a case where we had Mr. Hines saying he  
2 said something he didn't say and then on video it's not  
3 reflected, it's a whole different case. But in this case we  
4 had -- what Mr. Hines said is exactly what happened.

5 And Mr. Scalzo was very insistent that his  
6 interpretation of the facts could change and the argument  
7 about what the facts mean could change, but the facts were  
8 laid out by Mr. Hines accurately. And his opinion of what  
9 the facts meant were laid out accurately. And watching the  
10 video didn't change that.

11 The video accurately displays the facts and the basis  
12 for Mr. Hines' opinion. Obviously opinions may differ. And  
13 Mr. Scalzo's opinions would have differed from Mr. Hines.  
14 And he could argue it, which he wished he could have done.  
15 But the facts didn't change, and the facts were what the  
16 Court of Appeals used to make their opinion.

17 **THE COURT:** All right. Thank you. I think in light of  
18 the issues that were presented I definitely need to review  
19 portions of the transcript, the matters presented and some  
20 of the case law that y'all have cited. I want to carefully  
21 look through that before I make a decision. So I'll review  
22 that and let y'all know something hopefully in the next day  
23 or so.

24 **MR. NEELY:** Thank you, Your Honor.

25 **MS. ROSS:** Thank you, Your Honor.

1

(Hearing Ended at 12:41 pm)

2

(End of Requested Transcript of Record)

## Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 18th day of April 2017.

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

September 8, 2017

*Susan W. Hudgins*

---

Circuit Court Reporter



GO - 235

## GENERAL ORDERS

## BIAS BASED PROFILING

### PURPOSE:

**Racial, ethnic and bias based profiling in law enforcement are totally unacceptable.** This policy provides guidelines for deputies to prevent such occurrences, and to protect deputies from unwarranted accusations when they act within the dictates of law and policy.

### DEFINITIONS:

**Bias Based Profiling** – The selection of an individual(s) based solely on a trait common to a group for enforcement action. This includes, but is not limited to: race, ethnic, background, gender, sexual orientation, religion, economic status, age, cultural group or any other identifiable group.

**Reasonable Suspicion** – Also known as articulable suspicion. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would cause a reasonable person to believe that a crime has been committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a deputy combined with his or her training and experience, and/or reliable information received from credible outside sources.

### LEGAL DISCUSSION:

A fundamental right guaranteed by the Constitution of the United States to all who live in this nation is equal protection under the law. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents. Citizens are free to walk and drive our streets, highways, and other public places without police interference so long as they obey the law. They are also entitled to be free from crime, and from the depredations of criminals, and to drive and walk public ways safe from the actions of reckless and careless drivers. The Sheriff's Office is charged with protecting these rights regardless of race, color, ethnicity, gender, sexual orientation, physical handicap, religion, economic status, age, cultural group, or any other belief system or identifiable group.

**The Sheriff's Office prohibits bias based profiling in traffic stops, field contacts, and in asset seizures and forfeiture efforts.**

Deputies are required to be observant, to identify unusual occurrences and law violations, and to act upon them. It is this proactive enforcement that:

- Keeps citizens free from crime.

**COURT OF COMMON PLEAS AND GENERAL SESSIONS  
EXHIBIT RECORD AND RECEIPT FORM**

PLAINTIFF Daniel Lopez  
 DEFENDANT State  
 CASE NO. 2016-CP-23-1299  
 DATE 4/18/17  
 DATE ENDED 4/18/17

ATTORNEY S. Ross  
 ATTORNEY Ruston Heely  
 JUDGE Dravely  
 COURT REPORTER Susan Hudgins

| PLAINTIFF'S/STATE'S EXHIBITS |                                   | ID | EV |
|------------------------------|-----------------------------------|----|----|
| 1                            | DVD                               | ✓  | ✓  |
| 2                            | General orders                    | ✓  | ✓  |
| 3                            | Disciplinary Action               | ✓  | ✓  |
| 4                            | Failure to Preserve Evidence Form | ✓  | ✓  |
| 5                            | Envelope                          | ✓  | ✓  |
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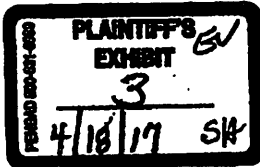
| DEFENDANT'S EXHIBITS |           | ID | EV |
|----------------------|-----------|----|----|
| 1                    | VHS video | ✓  | ✓  |
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Susan W. Hudgins  
 COURT REPORTER

Jan White  
 CLERK OF COURT

PAGE 1 OF 1

DATE 4-18-17



## DISCIPLINARY ACTION

DEPUTY CHRIS HINES  
Name

JUNE 12, 2000  
Date

DEPUTY 11  
Position Title

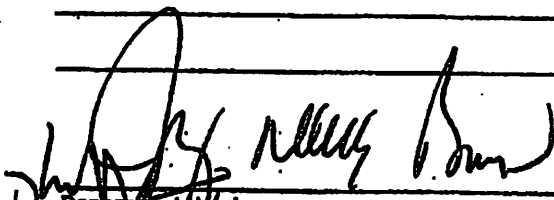
SHERIFFS OFFICE  
Department

### SUSPENSION

DEPUTY CHRIS HINES is suspended from his ~~job~~ job for  
TWO DAYS, JUNE 30th AND JULY 1, 2000 for the following reasons:  
FAILURE TO THOROUGHLY PRESERVE EVIDENCE (RULES AND REGULATIONS 60.01)

### DISMISSAL

\_\_\_\_\_ is discharged from county  
employment for the following reasons: \_\_\_\_\_

  
\_\_\_\_\_  
Department Head  
  
\_\_\_\_\_  
Employee

6/23/00  
Date  
6/13/00  
Date

\_\_\_\_\_  
Personnel Director

\_\_\_\_\_  
Date



No motorist, once cited or warned, is to be detained beyond the point where there exists no reasonable suspicion of further criminal activity, and no person or vehicle is to be searched in absence of a warrant, a legally recognized exception to the warrant requirement, or the person's voluntary consent. In each case where a search is conducted, this information is to be recorded, including the legal basis for the search, and the results thereof. It is strongly recommended consent searches only be conducted with written consent. If the individual indicates they will consent to search but are refusing to sign a **Consent to Search Form**, fill out the form anyway and insert "*consented to search but refused to sign*," and the signature of a witness in the signature block.

If a patrol vehicle is equipped with a video camera, video and sound are to be activated prior to a traffic or pedestrian stop to record the behavior of the vehicle or person. The camera is to remain activated until the person is released and resumes his/her journey.

A person's race, ethnicity, gender or sexual orientation or any combination of these is not to be the sole factor in determining probable cause for an arrest or reasonable suspicion for a stop.

#### BIAS BASED PROFILING COMPLAINTS:

Any person may file a complaint with Professional Standards if they feel they have been stopped or searched for racial, ethnic, or other bias based profiling reasons. No person is to be discouraged, intimidated, or coerced from filing a complaint. No person is to be discriminated against because they have filed a complaint.

On a day-to-day basis, Lieutenants and Sergeants are to randomly back-up deputies on vehicle and pedestrian stops to ensure compliance with this policy. Supervisors are to remain particularly alert to any pattern or practice of possible discriminatory treatment by individual deputies or units, and are to take appropriate corrective action whenever it appears this policy is being violated.

Annually, Professional Standards will conduct a documented administrative review of agency practices and citizens' concerns. Additionally, Professional Standards will make public a statistical summary of all profiling complaints for the year, including the findings as to whether they were sustained, not sustained, unfounded, or exonerated.

  
Steve Loftis, Sheriff



# Greenville County Sheriff's Office

JOHNNY MACK BROWN, SHERIFF

AN ACCREDITED LAW ENFORCEMENT AGENCY



To: Capt. Loftis  
From: Lt. Saltmarsh  
Subject: IA-00-07 Failure to Preserve Evidence/Deputy Chris Hines  
Date: June 6, 2000

I have reviewed the investigation conducted by the Office of Professional Standards ( IA-00-07 ) regarding Deputy Chris Hines.

I feel that since Deputy Hines issued the Courtesy Summons, set the trial date and requested a case number from Dispatch, he alone acted as the case agent and should have been custodian for the marijuana until it was properly placed into property and evidence.

On June 2, 2000, I talked with Deputy Hines regarding the investigation. He told me the incident occurred during Operation Clean Sweep and he did not remember the incident. He said it was possible he only wrote the ticket for another officer, which occurred frequently during this time period. He agreed his involvement in the case ( writing the ticket, court date, case number ) would qualify him as the initiating officer for the case, but could recall no pertinent information regarding the suspect or the marijuana.

I explained policies and procedures to Deputy Hines regarding evidence. He was fully aware of our policy and has assured me he has taken proper measures to prevent incidents like this from happening again. I explained case management and case files to him and suggested he maintain copies of all paperwork and cases for future reference. I feel Deputy Hines fully understands the significance of maintaining proper control of evidence.

Deputy Hines failed to properly follow procedures regarding evidence in this case, resulting in the dismissal of the charge. I am recommending Chris be suspended for a period of (2) two days.

AES:mre

A TRADITION OF SERVICE SINCE 1786

4 McGEE STREET / GREENVILLE, SOUTH CAROLINA 29601

EXHIBIT

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4/18/17 SK



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29899

FIRST-CLASS MAIL

U.S. POSTAGE  
PAID  
GASTONIA, NC  
28054  
OCT 31 18  
AMOUNT

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R2304M113030-07



**Greenville County Sheriff's Office**  
4 MCGEE STREET • GREENVILLE, SOUTH CAROLINA 29601



10. Daniel Lopez 355282  
-3A 236  
386 Redemption Way  
McCormick, S.C. 29899

CKING NUMBER



9500 1156 0497 6305 0263 68

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS  
2005-GS-23-01956  
2005-GS-23-01957

**ORIGINAL**

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

DANIEL JESUS LOPEZ,  
DEFENDANT.

VOLUME I

October 12 and 13, 2009  
Greenville, South Carolina

**B E F O R E:**

THE HONORABLE C. VICTOR PYLE, JR., JUDGE; and a jury.

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

JOYCE K. MONTS, ESQ.  
Assistant Solicitor

CHRISTOPHER D. SCALZO, ESQ.  
Attorney for Defendant Daniel Jesus Lopez  
ANDREW R. MACKENZIE, ESQ.  
Attorney for Octavius Louis Nelson

HOLLIE M. JENKINS  
Circuit Court Reporter

# I N D E X

(SW) - Denotes State's Witness  
 (DW) - Denotes Defense Witness  
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for  
Greenville County.



P R O C E E D I N G S

1 THE COURT: Good morning.

2 I understand that we have some pre-trial motions.

3 How do y'all want to proceed with the motions.

4 MR. MACKENZIE: I would say that it might be best to  
5 address the motion for severance and the suppression of  
6 the search. Because that -- depending on how that goes,  
7 we might not need --

8 THE COURT: Okay. Solicitor, let's do the severance  
9 motion first.

10 And who's the moving party on it?

11 MR. MACKENZIE: It's really Mr. Scalzo, but I would,  
12 also, join in that motion.

13 THE COURT: All right.

14 MR. SCALZO: So I would officially move to sever,  
15 Judge. Primarily, my client is not present. There is a  
16 bench warrant. It's been an active bench warrant.  
17 It's -- 2008, I believe, is when the bench warrant may  
18 have been issued.

19 So, I mean, my first motion would be that you wait  
20 until he's found to try him so that he, obviously, could  
21 be present.

22 THE COURT: Well, I guess then what we need to do is  
23 do the hearing on the notice.

24 MS. MONTS: Yes, Your Honor.  
25

1 THE COURT: All right. Let's do that first.

2 MS. MONT'S: Your Honor, the State would call my  
3 investigator, Ms. Sonia Bass.

4 THE CLERK: Please place your left hand on the Bible  
5 and raise your right hand.

6 WHEREUPON,

7 SONIA RENEE BASS,  
8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please be seated.

11 Please state your full name for the record.

12 THE WITNESS: Sonia Renee Bass.

13 DIRECT EXAMINATION

14 BY MS. MONT'S:

15 Q Ms. Bass, did you send out bond cards to Mr. Daniel  
16 Jesus Lopez in regards to the trial that is on today's  
17 trial docket?

18 A Yes.

19 Q Can you, please, tell the Court what addresses you  
20 sent those to?

21 A Yes. All right. The first address was 4059 Burnside  
22 Lane in Lilburn, Georgia, 30043. The second address,  
23 which is the same address reflected on his bond sheet that  
24 he gave the Court, was 1202 Summer Ridge Lane,  
25 Lawrenceville, Georgia, 30044. An additional address was

1 provided: 1644 Cannon Ball Court in Lawrenceville,  
2 Georgia, 30044.

3 Q And do you have a copy of the bond sheet?

4 A I do.

5 Q And what is the address on that bond sheet?

6 A That was the 1202 Summer Ridge Lane.

7 MS. MONTS: Your Honor, we'd move that these  
8 documents be Court's exhibits.

9 THE COURT: All right. Put them in as Court's  
10 Exhibits.

11 (WHEREUPON, Court's Exhibit No. 1 was marked for  
12 identification and admitted into evidence.)

13 MS. MONTS: And, Your Honor, I would point out that  
14 the bond sheet does have a sentence in there stating that  
15 if -- that the trial may continue in the Defendant's  
16 absence.

17 THE COURT: All right.

18 MS. MONTS: That would be the State's --

19 THE COURT: Mr. Scalzo.

20 CROSS-EXAMINATION

21 BY MR. SCALZO:

22 Q Ms. Bass, you said "bond cards"?

23 A Yes.

24 Q And you used U.S. postal?

25 A I believe that's what they stamp it with, yes.

1 Q And you never sent the subpoena?

2 A No. We use bond cards.

3 Q And you did not contact Georgia or the Sheriff's  
4 Department in any of the counties in Georgia to have a  
5 subpoena sent to him?

6 A No.

7 MR. SCALZO: That's all I have.

8 THE COURT: Let me see the exhibit, please.

9 (Pause.)

10 THE COURT: All right. Anything else, Mr. Scalzo?

11 MR. SCALZO: Just that it was not a subpoena.

12 There's no proof that he received it from any of those  
13 addresses. That bond card is not a subpoena. It's not an  
14 official court document. It's a convenience that the  
15 Solicitor's Office uses.

16 So, on that basis, I would move that there be a  
17 continuance until he's contacted.

18 THE COURT: Thank you.

19 You can step down.

20 MR. MACKENZIE: And, Your Honor, if I may. The  
21 reason that we're joining in the motion to sever is that  
22 the co-defendant gave a statement against my client that  
23 tends to incriminate Mr. Nelson. And we believe that the  
24 statement is inaccurate and not truthful.

25 So we would like to move -- join in the motion to

1 sever. And if that cannot be done, we would ask that  
2 the --

3 THE COURT: All right. Let me rule first on the --

4 MR. MACKENZIE: Okay.

5 THE COURT: All right. I'm looking at Court's  
6 Exhibit No. 1.

7 Solicitor, the -- on the acknowledgement by the  
8 Defendant, it shows an address of 1202 Summer Ridge Lane  
9 in Lawrenceville, Georgia. The notices that were sent out  
10 were to him at 4059 Burnside Lane, Lilburn Georgia.

11 MS. MONTS: Your Honor, I believe it was sent to  
12 several addresses, including the Summer Ridge Lane.

13 THE COURT: All right. I see that. And it does  
14 contain the language that he would be tried in his absence  
15 if he failed to appear.

16 Mr. Scalzo, your motion is denied.

17 So let's move on to the motion to sever.

18 What's the basis for --

19 MR. MACKENZIE: Thank you, Your Honor.

20 Mr. Lopez gave a statement against my client that  
21 incriminates him. And my client denies what is alleged in  
22 that statement. I have a copy of it. So we move to sever  
23 based on that ground.

24 And we would, also, just add that if it cannot be  
25 severed that we would like to have the statement redacted.

1 All right. What else do we have now?

2 MR. SCALZO: We would have Mr. Lopez's motion to  
3 suppress the drug evidence. And there's a weapon as well.

4 MR. MACKENZIE: And we would like to join in that,  
5 too.

6 THE COURT: Okay.

7 MR. SCALZO: And I would include that there's a  
8 statement, obviously, that's been the subject of what's  
9 been discussed and is connected to this motion to  
10 suppress.

11 THE COURT: Okay.

12 MS. MONTES: Your Honor, I apologize. Did -- what  
13 motion did Mr. Scalzo --

14 THE COURT: Motion to suppress.

15 MS. MONTES: Of the car stop?

16 MR. SCALZO: Yes.

17 MS. MONTES: And, Your Honor, the State's position  
18 would be that the Defense has to state with specificity  
19 what his objection is to --

20 THE COURT: All right. Mr. Scalzo.

21 MR. SCALZO: The car stop was a violation of the  
22 Fourth Amendment. There's no warrant. It was a traffic  
23 stop without a warrant.

24 MS. MONTES: Your Honor, I believe that the Defense  
25 has to be more specific than that.

1 THE COURT: I agree with that.

2 Be more specific.

3 MR. SCALZO: Well, Judge, I'll be specific. He was  
4 driving on the highway. The police pulled him over for  
5 speeding. That was the only thing they pulled him over  
6 for. There was a warning ticket issued. And the police  
7 detained his car and tried to get consent out of him. At  
8 first, he said, no. They detained his car. And then he  
9 said, yes. And I think that's a violation of --

10 THE COURT: What's wrong with that?

11 MR. SCALZO: Well, the -- he only had -- the police  
12 officer only had the authority to pull him over and detain  
13 him for the ticket -- the traffic ticket, which was  
14 speeding. That -- once that was completed, the U.S.  
15 Supreme Court and the state court has said that you can't  
16 hold him any longer.

17 Once he tried to gain consent and my client said, no,  
18 I'm not going to give consent, the police officer then  
19 tried to seize him by detaining his car. The man is from  
20 out of state. And they, basically, pulled him over. And  
21 in seizing the car -- and he's seizing the person. That  
22 taints any consent that he gave. And that's the only  
23 basis for them to ever search the car.

24 THE COURT: Solicitor.

25 MS. MONTS: Your Honor, the officer developed

1 articulable suspicion of a crime in progress during the  
2 stop. And that's what led to him asking for consent and  
3 not getting it, and then running the drug dog, Your Honor.

4 THE COURT: All right. So you're going on consent?

5 MS. MONTS: No, Your Honor. I'm sorry. That  
6 articulable suspicion --

7 THE COURT: Right.

8 All right. Do you have something, Mr. Mackenzie?

9 MR. MACKENZIE: I mean, I was just going to add this  
10 is a warrantless search situation. Of course, there are  
11 exceptions to the warrantless search -- warrant  
12 requirement. But I would take the position that the State  
13 has the burden of going forward on that to prove that  
14 there is an exception, or some kind of exigent circumstance.

15 THE COURT: All right. Do you need any testimony?

16 MR. SCALZO: Yes, sir. I believe testimony --

17 MR. MACKENZIE: Yes --

18 THE COURT: All right. Solicitor, you may proceed.

19 MS. MONTS: Your Honor, the State would call Chris  
20 Hines.

21 THE CLERK: Mr. Hines, if you can put your things  
22 down. And I'll put you under oath.

23 WHEREUPON,

24 CHRIS HINES,

25 after first having been duly sworn, testified as follows:



1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your full name for the record.

4 THE WITNESS: Chris Hines, H-I-N-E-S.

5 DIRECT EXAMINATION

6 BY MS. MONTS:

7 Q Officer, please, state for the Court where you're  
8 employed, and how long you've worked there?

9 A Greenville County Sheriff's Office, 12 years.

10 Q And what were your duties on January 21st, 2005?

11 A I was assigned to the traffic division, also, as a  
12 K-9 officer to do traffic reports on Interstate 85 in  
13 Greenville County.

14 Q And can you describe some of your training and  
15 experience in this field?

16 A Through the course of my duties at the Sheriff's  
17 Office, I've received over 1,400 hours of actual criminal  
18 patrol, drug and -- highway drug investigation classes,  
19 interdiction/highway terrorism training, hands-on and  
20 actual classroom training. And, at the time,  
21 approximately 600 hours of actual K-9 handler training,  
22 including a 400-hour handler certification course with  
23 myself and the K-9, Angie, who was my partner at the time.

24 Q And are you and your dog -- were you certified  
25 together in January of '05?

1 A That's correct.

2 Q And, please, describe what happened late in the  
3 afternoon on January 21st, '05. Where were you working?

4 A I was assigned Interstate 85 in Greenville County.  
5 At approximately 2:30 on January 21st, I was turning  
6 around at the county line on Interstate 85 and Highway  
7 153, Exit 40.

8 As I'm turning around, there's a gas station on the  
9 northbound side of the interstate, which is a Breakers gas  
10 station. As I pulled through the parking lot there, I  
11 observed a gentleman on the phone -- on a pay phone and a  
12 white Dodge Intrepid parked at the pay phone at the corner  
13 of the parking lot. At the time, I didn't think much  
14 about it. I pulled back on the interstate and was sitting  
15 on the side of the road looking over some stuff in my  
16 vehicle when I saw the same Dodge Intrepid pass by at a  
17 high rate of speed.

18 From that point, I tried to measure his speed with  
19 radar. As he came by so fast, I didn't have the  
20 opportunity to do that at the time. I attempted to  
21 overtake the vehicle. And as I was approaching him coming  
22 up on Exit 44, which is in Greenville County, the White  
23 Horse exit on I-85 northbound, he made a lane change and  
24 exited off on to White Horse Road, Exit 44 --

25 Q Explain that lane change. What brought your

1 attention to it?

2 A It was -- he was, actually, in the number one lane  
3 and, actually, came across -- I'm sorry. He was,  
4 actually, in the number three lane. And as he was coming  
5 up on the exit, there was an abrupt change like he was  
6 about to miss his exit is kind of what I took. But he was  
7 still traveling. At that point, he exited --

8 Q How many lanes did he cross?

9 A At that point, he was in number three lane. So he,  
10 actually, just jerked it over on to the shoulder there --  
11 or, actually, on to the exit ramp. And I measured his  
12 speed at 72 miles an hour with the police radar. It was a  
13 60 miles an hour zone on the interstate. I am a certified  
14 radar operator of the South Carolina Criminal Justice  
15 Academy.

16 Q And what is the speed on the off ramp?

17 A It's a suggested 45 is what I believe DOT suggests  
18 the off-ramp speed once they exit off. But the actual  
19 interstate speed is 60 miles an hour.

20 Q Please continue. What happened? What did you do?

21 A As he exited off, he got on to White Horse Road. I  
22 turned my blue lights on and siren to engage in a traffic  
23 stop. We went, actually, up to the red light at 85 and  
24 White Horse. And he made a left hand turn. And we,  
25 actually, went north on Highway 25, which is the White

1 Horse Road area.

2 And he stopped on the bridge. I walked up to him on  
3 the passenger side and introduced myself, and gave him the  
4 reason for the traffic violation, which was speeding.

5 Q What tag, if you recall, was the car --

6 A It was registered out of Georgia. The Georgia  
7 registration, I believe, was displayed. It was Georgia  
8 AFD 8621, which was what was displayed on the car at the  
9 time.

10 As I'm -- as soon as I, you know, explained why I  
11 stopped him, he apologized for that. And I immediately  
12 looked down and I saw a cell phone sitting on the  
13 passenger seat, which appeared to be on.

14 And then I, also, observed --

15 Q Well, why did that alert your attention?

16 A Well, this gentleman was just on the pay phone at the  
17 exit -- at Exit 40 standing on the pay phone. And then I  
18 observed another cell phone in the back, which was --  
19 struck me as odd. He's got two cell phones. One of them  
20 is, actually, in the -- appeared to be in the on position.  
21 And he is talking on a pay phone -- standing on the side  
22 of the road, basically, talking on a pay phone when you've  
23 got two phones in your possession already.

24 Q And, please, continue. What did you say?

25 A I asked for his license and his paperwork. And while

1 he retrieved that information, I asked where he was going,  
2 just making conversation while I was getting his  
3 paperwork. At which point, he told me he was going home  
4 to Georgia. However, he's, actually, traveling the  
5 opposite way going northbound toward North Carolina,  
6 instead of, actually, going toward Georgia.

7 I asked him where he was coming from. And he replied  
8 he was visiting his boy in North Carolina, who was in the  
9 Army -- or, actually, coming -- had been in North Carolina  
10 visiting his boy. So he's, actually, going toward North  
11 Carolina, instead of coming from North Carolina.

12 At this point, I turned to check his driver's  
13 license. He provided me a Louisiana driver's license. He  
14 gave me a registration with an address of Gainesville,  
15 Georgia, and he had an insurance -- the vehicle was in his  
16 name. The insurance was in his name. And he had another  
17 address of, I believe, Lawrenceville, Georgia.

18 Q So were the addresses on his driver's license, the  
19 car registration, and the insurance all different?

20 A Two different states and three different addresses at  
21 this point. And through the course, he, actually,  
22 provided, I believe, a fourth address to me as well.

23 Q Was that separate than the other three?

24 A That's correct. I'm trying to get that exact --  
25 yeah, when I asked him to verify his address, he provided

1 a Lawrenceville, Georgia address. So he's got Tucker,  
2 Georgia on the insurance; Lawrenceville, Georgia is what  
3 he, actually, provided that he was living there;  
4 Gainesville, Georgia was on the registration; and Kenner,  
5 Louisiana is on the driver's license, which immediately --  
6 and the registration and the insurance paperwork normally  
7 are issued, at least, yearly.

8 So if you've got several addresses within the year,  
9 which I -- it kind of raised a red flag. In my training,  
10 this guy doesn't have a steady place where he's laying his  
11 head at night.

12 Anyway, I told him I was going to write him a warning  
13 for the speeding. And, at that point, he began to engage  
14 in casual conversation. He asked if we had been busy.  
15 And then he told me he worked for Gwinnett County. I  
16 asked him what he did for the county. He told me he was a  
17 bouncer and that he told on people. He was kind of trying  
18 to befriend me is what I took this as.

19 Q When you told him that you were only going to write  
20 him a warning, what did you notice about his behavior?

21 A That's -- at that point, it's still nervous chatter.  
22 Like I say, he started trying to befriend me. He  
23 mentioned that he worked for Gwinnett County, trying to  
24 insinuate, in my mind, that he was a law enforcement  
25 officer or had affiliation with law enforcement.

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1           As I began writing -- he kept -- I mean, he kept his  
2 hands in his pocket still, you know, with nervous chatter.  
3 I, again, asked him where he was going. He said he was  
4 going home to Georgia. But he said he was stopping to get  
5 something to eat. I confirmed again what part of North  
6 Carolina -- or where he was coming from in North Carolina.  
7 And he began to stutter.

8           And I have in my report that he said, Fort, Fort --  
9 he's in the Army. He, basically, couldn't provide where  
10 he was coming from in North Carolina. He then stated his  
11 baby's mother was in North Carolina, and the baby was  
12 sick.

13 Q       Was that in response to any of your questions?

14 A       No. At this point, he starts, basically, trying to  
15 kind of ad lib a story is kind of the way it appeared to  
16 me. So I asked him how old his son was. And then he said  
17 it was his friend's son. Then he changed and stated that  
18 his friend had a daughter.

19           So, at this point, I was confused. And I asked him  
20 if the daughter was his. And he said he had a daughter  
21 that was six that lived in California. So his story is  
22 just -- it was kind of all over the place about where he  
23 was going and where he was coming from.

24 Q       What was his demeanor?

25 A       Nervous, you know, kind of stumbling upon his words.

1 Q Would he make eye contact with you?

2 A Not directly. He kept on -- 'I mean, he kept on  
3 avoiding eye contact with me. I went back to check the  
4 male in the car, and that's when I observed a Gwinnett  
5 County police department patch taped to the dash by the  
6 VIN, which, once again, I thought was kind of odd  
7 considering most law enforcement agencies don't employ  
8 bouncers per se as a job title, which is what he was  
9 claiming to be for the county.

10 And then I asked him about where he was going to eat.  
11 And then that's when he looked up and he said, McDonald's,  
12 which I found was kind of odd since there was a McDonald's  
13 at Exit 40 where he had just come from. There's one at  
14 that exit as well.

15 So, at this point, he's all over the place.  
16 Obviously, I feel, based on my training, that this guy  
17 is -- I'm not exactly sure where the gentleman lives.  
18 He's got his story where he's going, where he's coming  
19 from is not adding up. The direction of travel to -- of  
20 his story as -- he says he's going to Georgia, coming from  
21 North Carolina. He's going totally the wrong way as far  
22 as interstate travel. He's on a cell phone -- I mean,  
23 he's got two cell phones. He was stopped talking on a pay  
24 phone. In my mind, I felt that there was some type of  
25 criminal activity afoot here.



1 Q And was there any significance to the fact that this  
2 occurred on I-85?

3 A I-85 is a pipeline between the Atlanta, Georgia area  
4 up to Charlotte, North Carolina, and the Raleigh-Durham  
5 area. Based on statistics provided by the DEA, it is a  
6 trans-shipment point for illegal narcotics up the east  
7 coast up into Charlotte, Greensboro, Raleigh-Durham, and  
8 on up into the -- up north into the New York area. So,  
9 yeah, I-85 is a -- based on statistics and my experience,  
10 it is a main pipeline for drug trafficking.

11 Q And is there any significance to the fact that  
12 several of his addresses were from Lawrenceville and  
13 ..Tucker?

14 A Yeah. All these are -- every address, minus his  
15 driver's license, are all, basically, in and around the  
16 Atlanta metro area, which is -- like I say, once again,  
17 Atlanta is a known city for drug trafficking, or  
18 origins of drug trafficking and -- are coming from that  
19 area.

20 Q And, based on all your hours of training and your  
21 experience in this field, what did these items lead you to  
22 believe?

23 A Based on his demeanor -- like I said, when you put  
24 all this together, I felt for sure there was some type of  
25 criminal activity afoot. In my mind, based on my

1 training, specifically, some type of drug trafficking  
2 activity.

3 He was very nervous. Even after I told him I was  
4 going to write him a warning, he was still -- his nervous  
5 level still remained constant, more so than the public  
6 that we deal with every day. After they, you know,  
7 realize they're going to get a warning -- if you tell them  
8 they're going to get a ticket -- you know, after they  
9 realize what's coming, they -- you know, their sense of  
10 nervousness drops. His remained the same throughout the  
11 whole traffic stop.

12 So, I mean, at that point, you know, I made up my  
13 mind I was going to, at least -- I was going to ask him  
14 for consent to search the vehicle, and try to do it the  
15 least intrusive way from that point, and then see what his  
16 response was to those -- to that -- or to those questions  
17 concerning the consent.

18 Q Okay. And did you believe you had enough  
19 information, at this point, to articulable suspicion to  
20 run the drug dog?

21 A Yes, I did.

22 MS. MONTS: Thank you.

23 I have no further questions.

24 THE COURT: Mr. Scalzo.

25 MR. SCALZO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCALZO:

Q So you pulled him over for a speeding ticket;  
correct?

A A speeding violation, yes, sir.

Q A speeding violation. And you said that you were on  
I-85. And when you were tracking him to figure out how  
fast he was going, you were trying to catch up with him.  
So you were some distance from him?

A Yeah. He, originally, passed -- I was sitting on the  
side of the road after I had saw him at the pay phone  
before. And he passed me traveling at a high rate of  
speed. At which point, I tried to -- the vehicle, yes.

Q Okay. And then you describe that you had not turned  
on your lights at this point, and he's still on the  
highway; correct?

A That's correct.

Q That he jerked the wheel to get off the exit. And  
you described it as it looked like he thought he was going  
to miss his exit?

A That's correct.

Q And if he had gotten off at that exit, gone up the  
ramp, gone over and around, he could have gotten back on  
I-85 north; correct -- I mean south; is that right?

A That's a possibility, yes, sir.

1 Q And, now, he would have been going in the correct  
2 direction to go back to Georgia; is that right?

3 A But the exit he was at prior, he could have made that  
4 a lot easier.

5 Q But that wasn't my question. My question was, if he  
6 jerked the wheel, got off, and went all the way around,  
7 he'd be going back to Georgia?

8 A Yes, sir.

9 Q In the direction of Georgia, I should say.

10 A Right.

11 Q And he'd, also, be going back in the direction of  
12 McDonalds as well; isn't that right?

13 A Toward which -- the one at Exit 40? Is that the one  
14 you're referring to?

15 Q Right. You had said that he was at Exit 40, and  
16 there was a McDonald's there; correct?

17 A That's correct.

18 Q And, now, when he gets back on the highway --

19 A Right.

20 Q -- and he's driving, and then he jerked the wheel to  
21 get off. If he had turned around and gotten on the other  
22 side of the highway, he would be going back to Atlanta in  
23 the direction of Atlanta and back in the direction of  
24 McDonalds; isn't that correct?

25 A Well, there's, also, a McDonalds at Exit 44, which he

1 had -- which, at that point, he said that's where he was  
2 going. He was going to eat at McDonalds. There's a  
3 McDonalds on about every exit on 85. So that's -- why  
4 he's going to that one McDonalds...

5 Q You're saying he says, I'm going to that McDonalds?

6 A Yes. He, actually, pointed, I mean.

7 Q You didn't say that earlier. You just said he said  
8 he was going to McDonalds.

9 A He looked -- insinuated he was going to that  
10 McDonalds.

11 Q All right. So, now, you pulled him over. And I  
12 think you described that he stopped -- is it on the actual  
13 bridge, the overpass?

14 A It's, actually, right past -- he, actually, stopped  
15 right past the exit to get on 85 southbound --

16 Q Okay.

17 A -- to go back toward Georgia. So, actually, the  
18 direction -- if he had kept going, he would have been --  
19 he did not try to get back on Interstate 85 southbound.  
20 He stopped right past that pull off there kind of on the  
21 shoulder.

22 Q But you had turned your lights off; right?

23 A That's correct.

24 Q So he exits. You exit. You turn your lights on, and  
25 so he pulls over?

1       A     Yeah. The lights were, actually, turned on on the  
2     exit ramp getting on at White Horse Road from 85 north.  
3       So he, actually, got to the right light, made a left,  
4     proceeded past the exit ramp back to southbound, and  
5     stopped right there.

6       Q     Okay. And so, now, essentially, he's stopped at an  
7     exit off the side of the road?

8       A     He's on the shoulder of the side of the road, yes,  
9     sir.

10      Q     Okay. Then you come up to him. And like a regular  
11     traffic stop, you're getting his license, registration,  
12     that kind of information?

13      A     That's correct.

14      Q     Which he provided you the documents?

15      A     Yes.

16      Q     And you, ultimately, gave him a warning ticket --

17      A     That's correct.

18      Q     -- isn't that right?

19      A     That's correct.

20      Q     And he had -- you took the VIN number. You,  
21     actually, were able to look at the car and you saw the VIN  
22     number on the car; is that right?

23      A     To make sure it matched up to the insurance and the  
24     registration.

25      Q     Which it did?

- 1 A That's correct.
- 2 Q And the car was registered to him in his name?
- 3 A Yes.
- 4 Q Insured under his name?
- 5 A That's correct, all different addresses.
- 6 Q Different addresses, but still in his name?
- 7 A That's correct.
- 8 Q And the car was not -- did not come up in your  
9 computer as being stolen?
- 10 A Not to my knowledge.
- 11 Q No warrants or anything came up showing for him that  
12 were outstanding?
- 13 A Nothing local, no, sir.
- 14 Q Nobody was looking for him that you're aware of at  
15 that point on the side of the road?
- 16 A At that point, no, nothing.
- 17 Q And I'm assuming -- you didn't testify to this. But  
18 I'm assuming what you did is you went back to your car to  
19 run all that information, and then came back with a  
20 warning ticket to give to him?
- 21 A I went back and got my warning book out of the car,  
22 yes.
- 23 Q Okay. But you -- what I'm saying is you got his  
24 information, did what you needed to do, wrote the warning  
25 ticket, and then brought the warning ticket back to him?

1 A No, sir.

2 Q Okay. What did you do?

3 A My standard policy or procedure is to get the  
4 information. We have a mobile data terminal in the car.

5 Q Right.

6 A I return to my vehicle, make sure the license is  
7 valid, and make sure the registration is valid. At which  
8 point, I return and have the driver -- either prior to  
9 doing that, I'll have them come back and exit out of the  
10 vehicle where I can keep an eye on them. Or once I've  
11 completed that, if they're not already out of the vehicle,  
12 I'll walk back up and have the driver exit out of the  
13 vehicle and, actually, stand to the front right of my car  
14 while I'm writing the warning.

15 Q All right. And that's, in fact, what you did in this  
16 case?

17 A Yes.

18 Q He wasn't out when you were in your car running your  
19 checks; correct?

20 A One moment, please.

21 Q Sure.

22 A That's correct.

23 Q And so when you decided that you now were going to  
24 give him a warning ticket, I assume, you went to the car  
25 and got him out to bring him to the back of his car and



1 the front of your car?

2 A Right. Normally, I just motion for them to step  
3 back.

4 Q Okay. Is that what you did here?

5 A That's correct.

6 Q But you got him out of the car?

7 A That's correct.

8 Q And do you have your actual book as you're writing  
9 standing there in front of him, or do you go back to your  
10 car and write it in the car?

11 A No. We stand right there and I write it as we talk.

12 Q And you're telling him what you're doing as you're  
13 writing it, essentially?

14 A Normally, like I said, we'll just either --  
15 basically, make small talk while I'm writing it, or, you  
16 know, tell him I'm writing him a warning, which, in this  
17 case, he knew I was writing a warning.

18 Q Right. So you indicated to him, I'm writing you a  
19 warning ticket. You were finishing up; is that fair?

20 A Well, once I completed the actual warning, from that  
21 point, yes, sir.

22 Q All right. And then you finished the actual writing  
23 the warning and you give him the warning, you give him the  
24 paper, don't you?

25 A Eventually, yes.

1 Q Well, at what point do you give him the warning, the  
2 piece of paper?

3 A I mean, after I asked -- you know, asked several --  
4 you know, trying to confirm the story during this whole  
5 time asking several questions concerning the story and  
6 then about where he was going to eat. I mean, while I'm  
7 writing that -- as I was completing it, you know, I asked  
8 him, specifically, if he had any drugs in the car.

9 Q Right. So you're talking to him while you're  
10 preparing the warning?

11 A That's correct.

12 Q After you finish talking with him about some of  
13 these -- where he's going, what was he doing questions,  
14 then you, actually, give him the warning; correct?

15 A Once I finish writing it, that's correct.

16 Q And I believe what you have in your report is, I  
17 issued him the warning, and returned all of his paperwork,  
18 and asked if he understood the warning, and if he had any  
19 questions?

20 A That's correct.

21 Q And that's what you did?

22 A About the questions about the warning, that's  
23 correct.

24 Q And when you -- what you would have told him about  
25 the warning was, hey, this is just a warning. It's not an

1 actual ticket. You're not going to have to come to court,  
2 essentially, is what you're trying to get him to  
3 understand, you're not going to have to pay a fine or  
4 anything like that; right?

5 A Right, for this violation.

6 Q For this violation?

7 A That's correct.

8 Q All right. And he did not have any questions for  
9 you, he said he understood the warning?

10 A Yes. That's correct.

11 Q Did you have any other tickets for him at that point?

12 A No. At that point, I didn't. At that point, I went  
13 and asked if I could search his vehicle.

14 Q Okay. We're going to talk about that in one second.

15 Did you have a K-9 in your car?

16 A Yes.

17 Q All right. You had not gotten your K-9 out at this  
18 point?

19 A That's correct.

20 Q And did you call for backup when you originally  
21 pulled him over?

22 A No. I believe it was, actually, a little later in  
23 the stop.

24 Q Okay. And let's talk about the consent issue.

25 You've given him the warning ticket, you're on the side of

1 the highway -- the side of the road. And we've already  
2 established he is not from South Carolina; correct?

3 A That's my knowledge, yes.

4 Q All right. And you asked him if you could search his  
5 car?

6 A That's correct.

7 Q And he, basically, says he doesn't want -- he shrugs  
8 his shoulders, I don't really want to do that. He wants  
9 to leave; isn't that right?

10 A He doesn't really answer either, "yes" or "no." He  
11 doesn't give an answer either way.

12 Q Well, then you asked him -- he shrugged. He didn't  
13 answer. And you said, is that a "yes" or a "no." And he  
14 said he just wanted to leave; isn't that right?

15 A That's correct.

16 Q Okay. And what you told him was, hey, you're free to  
17 go, but I'm going to hold your car?

18 A That's correct.

19 Q And, at this point, he's on the side of the road?

20 A At this point, yeah. That's the statement I made to  
21 him. And the reasoning behind that --

22 Q Well, hold on. We'll talk about it in a second.

23 A Okay.

24 Q But you're detaining -- you just, basically, said,  
25 I'm going to keep your car here. Because you want to run

1 your dog around his car?

2 A That's correct. Yeah, based on what the -- what's  
3 been observed thus far in the traffic stop.

4 Q All right. Did you ask him about the use of the pay  
5 phone versus the fact that he had a cell phone, at this  
6 point I'm talking about?

7 A I don't recall.

8 Q All right. So you did not have an explanation that  
9 you requested from him to explain why he might have used a  
10 pay phone, instead of one of the cell phones he had; is  
11 that correct?

12 A That's correct.

13 Q And when you were standing at the car when you first  
14 pulled him over, I'm assuming you were able to see inside  
15 the car?

16 A Yes.

17 Q And you didn't see any contraband, you didn't see any  
18 drugs, guns, anything like that?

19 A Just several cell phones, which -- I mean, which I  
20 found was kind of odd, especially when he's, actually --  
'21 one of them was on. And he's already stopped and paid  
22 somewhere to, actually, use the phone.

23 Q Right. You said that. And you didn't ask him about  
24 the other cell phone that was in the car, whether or not  
25 it even worked at that point?

1 A No.

2 Q And, in fact, the phone that you said was on, you  
3 didn't ask him whether or not that was, actually, working  
4 or in service. It was on, but you don't know if it,  
5 actually, had service connected to it, did you?

6 A I did not reach in there and check the phone, no,  
7 sir.

8 Q Now, at the point at which you say to him, You're  
9 free to leave, but I'm going to keep your car, do you go  
10 to get your dog at that point? What do you do?

11 A At that point, I believe I've already called for  
12 Deputy McBee to -- as a backup officer. His behavior --  
13 he's nervous. He -- I don't know -- this guy is,  
14 obviously, not telling the truth about something. I don't  
15 know what his -- what's going on in his mind.

16 So I'm trying to put him at ease letting him know,  
17 hey, he may be free to go. So he thinks in his mind, hey,  
18 you know, I'm not going to cause any trouble.

19 So, at that point --

20 Q Now, when you say you called for backup, do you call  
21 right there standing there? Do you take your radio and  
22 call for backup?

23 A Yes.

24 Q So he could hear you calling for backup?

25 A Well, we have codes. I mean, he don't -- he's not

1 going to know what codes.

2 Q But he can hear you get on your radio?

3 A Which I've probably done several times during the  
4 traffic stop, yes.

5 Q And then before you start with your dog, another  
6 deputy shows up?

7 A Yeah. Prior to running the dog, Deputy McBee shows  
8 up.

9 Q Okay. And he gets out?

10 A That's correct.

11 Q And he's standing with the Defendant while you're  
12 searching the car with your dog?

13 A That's correct. I believe he, actually, at that  
14 point -- when I told him that, he said -- he told me he  
15 could -- I told him I was going to run the vehicle [sic]  
16 around the dog [sic]. He said that, at that point, I  
17 could run my K9 around his car.

18 Q Right.

19 A He was still hanging around.

20 Q And, at that point, when he says, yeah, you can do  
21 it, this is after you've indicated to him that you're  
22 going to keep his car, so you can do it; right?

23 A I'm sorry.

24 Q When he says, sure, you can run the dog, that's only  
25 after you had said to him, I'm going to keep your car here

1 so I can run my dog around it?

2 A Right. At that point, I felt I had reasonable  
3 suspicion that some type of criminal activity -- based on  
4 my training and experience, from what I've seen, what --  
5 his demeanor, questions, responses that I was going to  
6 detain him and his car.

7 Q All right. So but really you had decided that long  
8 before that had come up. When you asked for consent, what  
9 you're saying is you weren't really asking for his  
10 consent, you were just trying to make him feel good about  
11 the fact that you were going to search his car; isn't that  
12 right?

13 A No. We were doing it in the least intrusive manner  
14 asking for consent. If not, then we'll run the dog. If  
15 the dog doesn't run [phonetic] the car, then he'd be on  
16 his way.

17 Q I think you've got to figure out which position  
18 you're going to take. Either --

19 MS. MONTES: Objection, Your Honor --

20 BY MR. SCALZO:

21 Q You were --

22 THE COURT: Hold on.

23 MS. MONTES: I don't think this is proper questioning  
24 for the officer.

25 THE COURT: Just ask him questions.



1 MR. SCALZO: Okay.

2 BY MR. SCALZO:

3 Q You were either trying to obtain consent because you  
4 thought you needed consent to search the car, or you were  
5 trying to make him feel better about it or in a least  
6 intrusive way. You weren't trying to do both; correct?

7 A We always -- if situations like that -- arise like  
8 this, we always ask for -- try to ask for consent and --  
9 A, to see what their response is, and makes them try to  
10 feel at ease, give them like -- you know, like he has a  
11 say so in it.

12 Q All right. But what you're telling us is he didn't  
13 have a say so at that point?

14 A At this point, yeah, I was going to run the dog  
15 around the car. That's correct.

16 Q Which is why you told him you were going to hold the  
17 car so you could do that; correct?

18 A That's correct.

19 Q Now, as far as -- you talked about I-85 being a  
20 pipeline for drug activity, and that was factoring into  
21 your suspicion, and why you wanted to hold him and search  
22 the car; is that right?

23 A No. I mean, 85 is a known drug corridor.

24 Q All right. Well, what I'm asking you is that --  
25 you're saying that that was part of what you were

1 factoring in as to why you were detaining the car?

2 A Not that one specific thing, no.

3 Q But it was part of it --

4 A We stop dozens of people daily. And it doesn't --  
5 and the innocent motoring public doesn't act like this. I  
6 mean, that's -- you know, they're pretty consistent with  
7 their behavior. And, at this point, based on what we've  
8 seen -- or my experience that -- but based on this and  
9 that 85 is a drug corridor, yeah, that played a part into  
10 it.

11 Q Well, I'll just ask two questions. One, had you ever  
12 met him before?

13 A No.

14 Q So his demeanor was not something you'd ever  
15 encountered before as far as him personally?

16 A And we deal with nervous people every day out there.

17 Q Okay.

18 A I mean, if somebody gets stopped by the police,  
19 obviously, you know, most people is [sic] going to be  
20 nervous. This continued. Most people don't have to  
21 fabricate stuff as it appeared he was doing in this --

22 Q Well, it appeared he had been fabricating. But that  
23 was your opinion about whether he was fabricating. At  
24 that point, you had no proof that he, actually, fabricated  
25 anything?

1 A Well, when he -- he goes from having a son to not  
2 having a son, to having a daughter. I mean, you know,  
3 ages change. I think that speaks for itself.

4 Q One question would be, did you turn on your recording  
5 device in your car?

6 A Yeah. I do have the -- yeah, I have a videotape of  
7 it.

8 Q Was that recording while you were talking to him?

9 A I would assume so.

10 Q All right. And does anything about whether he had a  
11 son, or didn't have a son, or whether the son -- whether  
12 he was lying about the age of the son, what does that have  
13 anything to do with drugs?

14 A Well, this whole thing is a matter of more or less  
15 being deceiving, not forthcoming, trying to distance  
16 himself, what he's, actually, doing. Because his whole  
17 premise really was he's coming from North Carolina. I was  
18 just trying to ask where he was coming from. At that  
19 point, he's having to make up another story. It's lie  
20 after lie after lie, basically.

21 Q Well, you say lie after lie after lie. But, in fact,  
22 he said fort something, something. He couldn't remember  
23 the name of the fort that he had gone to is what you knew.  
24 You were assuming that he was lying.

25 A It -- well, most people, if their son is in the

1 military, are going to know where they're stationed is the  
2 way I look at it.

3 Q Perhaps, perhaps. But he might have just gone there  
4 and didn't remember the name of the fort as well.

5 A I find that hard to believe.

6 THE COURT: Just ask him questions. Don't testify  
7 yourself.

8 MR. SCALZO: Okay.

9 BY MR. SCALZO:

10 Q Now, in order for somebody to get from Atlanta to  
11 North Carolina, essentially, they've got to drive on I-85?

12 A No, sir.

13 Q If he's going to North Carolina, he can take another  
14 highway to North Carolina; correct?

15 A That's correct.

16 Q 90 percent of the people that are going from Atlanta  
17 to North Carolina are not going to take the other highway.  
18 They're most likely going to drive I-85. It's one of the  
19 busiest highways in the country --

20 A Not necessarily. I-20 has as much traffic coming out  
21 of Atlanta going to North Carolina as I-85 does.

22 Q Right. It just depends on where he's going in North  
23 Carolina?

24 A That's correct.

25 Q Okay. So the fact that he was on I-85 and it is this

1 drug corridor, you had no indication that he was driving  
2 it because it was a drug corridor?

3 A No.

4 Q You were just -- in your mind, you're saying you were  
5 suspicious about what he had said. But you didn't have  
6 anything that you could say, okay, this specific thing  
7 means he's probably carrying drugs?

8 A That's right. You put them altogether and it paints  
9 the big picture.

10 Q It paints the big picture that you were suspicious of  
11 him.

12 A It raises reasonable suspicion. I didn't say I had  
13 probable cause that he had -- at that time had drugs in  
14 the car.

15 Q But you're saying you were suspicious of drug  
16 activity, or you were just suspicious. Because you  
17 said --

18 A Of criminal activity from -- and from based on my  
19 experience, yeah.

20 Q Okay.

21 A There's a high probability it's going to be drug  
22 related.

23 Q But it was a high probability based on other things.  
24 It wasn't a high probability based on things you had  
25 learned from him; correct?

1 A That's correct.

2 Q Okay. Now, just to be clear. Once you've searched  
3 the car and you end up finding --

4 MS. MONTES: Objection, Your Honor, --

5 BY MR. SCALZO:

6 Q -- some drugs --

7 THE COURT: Hold on. Hold on.

8 What's your objection?

9 MS. MONTES: We're just here to decide whether or not  
10 the search was valid --

11 THE COURT: Right.

12 MR. SCALZO: And, Judge, where I'm going is I think I  
13 just need to connect that, ultimately, the -- to talk to  
14 him was part of the suppression and would be any  
15 statements that come out of this.

16 THE COURT: No. I disagree.

17 MR. SCALZO: All right. Then I don't have any  
18 further questions of him.

19 MR. MACKENZIE: Can I just briefly?

20 MS. MONTES: Your Honor, we would say that Mr. Nelson  
21 does not --

22 THE COURT: What basis do you have?

23 All right. Anything else, Solicitor?

24 MS. MONTES: No, Your Honor.

25 THE COURT: Thank you.

1 Step down.

2 All right. Anything else?

3 MS. MONTIS: That would be the only witness, Your  
4 Honor.

5 THE COURT: Do you have anything to present,  
6 Mr. Scalzo?

7 MR. SCALZO: I don't have any evidence to present,  
8 but I would like to make an argument, Judge.

9 THE COURT: Well, you've already made your argument.

10 MR. SCALZO: Well, I do want to point out some case  
11 law that supports the argument.

12 THE COURT: All right.

13 MR. SCALZO: Your Honor, there's several different  
14 cases. But, primarily, I want to point out State v.  
15 Williams, which is an appellate court case from 2002.  
16 It's 351 S.C. 591. In that case, it was a car stop. The  
17 police officer -- I believe it was in Spartanburg --  
18 pulled the person over. And, eventually -- again, it was  
19 a kind of simple traffic stop that the police officer then  
20 sort of extended the stop.

21 And the appellate court -- the Court of Appeals  
22 decided that that was not a reasonable stop. And one of  
23 the important things that they point out is, it says,  
24 Before you leave, let me ask you a few questions. That  
25 was what the police officer said to the driver.

1           And what the Court of Appeals said is, look, in our  
2 review, this statement indicated that the driver wasn't --  
3 he wasn't free to leave based on the -- what the police  
4 officer was telling him and the other circumstances of the  
5 case, which were that there were other officers present.  
6 We have a very similar circumstance here.

7           Another case I'll point out would be State v.  
8 Pichardo, 367 S.C. 84. In that case, the Court of  
9 Appeals, again, they hold that this being nervous does not  
10 equal reasonable suspicion. Because the person is nervous  
11 does not rise to the level of meeting a reasonable  
12 suspicion that he might be committing a serious offense.  
13 And I think that's the distinction. There have got to be  
14 articulable facts that the officer can point out to you  
15 that would raise the issue to be a serious offense, not  
16 just an everyday offense.

17          Another case I would point to is the State v. Jones,  
18 Court of Appeals. It's 364 S.C. 51. That is a reference  
19 to the Williams case I cited, as well as Caballes, which  
20 is Illinois v. Caballes. It is the U.S. Supreme Court  
21 case which talked about detaining somebody so that you  
22 can use a K9 to search the car, do an air sniff of the  
23 car.

24          And, basically, what Jones does is it recognizes  
25 Caballes in South Carolina. And what you have is the U.S.



1 Supreme Court saying you cannot -- an officer cannot  
2 detain somebody for a regular traffic stop longer than is  
3 necessary for the traffic stop in order to search the car  
4 using the K9. You can do it if -- while you're doing the  
5 speeding ticket or the warning ticket. If you run the dog  
6 around and the dog alerts, that's fine. But you can't  
7 detain them longer than it takes to do the stop.

8 Well, that's what you have going on here. He pulled  
9 him over for speeding. He's writing him the warning  
10 ticket. He gets him out of the car. He doesn't even  
11 leave him inside the car. He finishes up and says, hey,  
12 you're ready to go, then asks for consent. He doesn't  
13 give consent.

14 The only point at which he gives consent is when the  
15 officer says, I'm not going to let you go because I'm  
16 going to keep your car, which I think is the same as  
17 saying, before you leave, let me ask you a few questions.  
18 It's, actually, even more serious, I think. The man is  
19 from another state. He can't get back. He can't leave  
20 the side of the road. At that point, I think that's an  
21 illegal detention to continue to hold him. He's finished  
22 his --

23 THE COURT: Well, how about State v. Rogers, which is  
24 a Court of Appeals '05 case?

25 MR. SCALZO: Let me see if I have that case.

1 THE COURT: I said -- it's, actually, Reyes,  
2 R-E-Y-E-S.

3 MR. SCALZO: Reyes, I don't have that.

4 What is the Court concerned --

5 THE COURT: Well, I think that's -- I'm going to deny  
6 your motion to suppress. And I'm basing it on State v.  
7 Reyes, which is -- I don't have the citation. It's case  
8 decision number 4036 by the Court of Appeals on October  
9 31st, '05.

10 MR. SCALZO: And could I ask the Court what the  
11 ruling was?

12 THE COURT: And I'm reading from that case. It says,  
13 Once the underlying basis for the initial traffic stop has  
14 concluded, it does not automatically fall that any further  
15 detention or questioning is Unconstitutional. Lengthening  
16 the detention for further questioning beyond that related  
17 to the initial stop is permissible in two circumstances.  
18 First, the officer may detain the driver for questioning  
19 unrelated to the initial stop if he has an objectively  
20 reasonable and articulable suspicion that illegal activity  
21 has occurred, or is occurring.

22 And I find from this officer's testimony that that is  
23 the case. He had objectively, reasonable, and articulable  
24 suspicion of illegal activity.

25 Second, Further questioning unrelated to the initial

1 stop is permissible if the initial detention has become a  
2 consensual encounter. And, in this case, I find that your  
3 client consented.

4 So your motion to suppress is denied.

5 MR. SCALZO: And I just want to make my argument  
6 clear for the record. One, I don't think he articulated  
7 anything that raises that. And, two, any consent he gives  
8 if he illegally detains him is then, obviously, tainted.

9 THE COURT: All right. You're protected.

10 What else do we have?

11 MR. MACKENZIE: Your Honor, I guess the next motion  
12 would be regarding the lost evidence. This is one --

13 THE COURT: Hold on just one minute.

14 MR. MACKENZIE: Oh, yes, sir.

15 THE COURT: We've got a jury panel.

16 What else do we have besides that?

17 MR. MACKENZIE: There's this one motion. There was  
18 the motion regarding the confidential informant's file.  
19 And I -- just a brief little motion about some mention of  
20 some other drugs that were found that were not charged.

21 THE COURT: Okay. Well, I think I'm going to excuse  
22 the panel until 2:30.

23 MR. MACKENZIE: Yes, sir.

24 THE COURT: Just tell them to be back at 2:30, and  
25 we'll select a jury then.

1 unusual to most people. So we just go over it and make  
2 sure they understand.

3 Q Okay. When was he, actually, booked and put into the  
4 jail?

5 A That, I don't know. Because --

6 Q Would it have been before this? After this?

7 A Oh, it would have been after this.

8 MR. SCALZO: That's all I have.

9 THE COURT: Thank you.

10 Step down.

11 THE WITNESS: Thank you, sir.

12 MS. MONTS: Nothing further, Your Honor.

13 THE COURT: I understand your client is not here.

14 Do you have anything else to present?

15 MR. SCALZO: No. I don't have any evidence to  
16 present, Judge, because he's not here. So I would renew  
17 my prior motions.

18 THE COURT: All right. With respect to the written  
19 statement, I find that he was properly advised of his  
20 Constitutional rights under Miranda, that thereafter he  
21 freely and voluntarily gave a statement to the law  
22 enforcement officers. And that under the totality of the  
23 circumstances, it was voluntarily made, not the result of  
24 any coercive police tactics. And, therefore, it will be  
25 admitted.

1 MR. SCALZO: Your Honor, can I just -- for the  
2 record, my objection -- or my motion to suppress, that  
3 would be based on the fact that my original motion, which  
4 is once it's an illegal stop, any consent they would have  
5 gotten after that, everything is tainted from that point  
6 forward. And that's -- I want to make that clear for the  
7 record.

8 THE COURT: Okay. That's fine.

9 Now, you said you had an oral statement.

10 MS. MONTES: Your Honor, just anything that Mr. Lopez  
11 said after he was Mirandized at the scene and that was not  
12 in response to a question of the officer, we would say it  
13 was not in violation of Miranda.

14 THE COURT: Is that on the basis of anything he said  
15 after that was a voluntary statement by him?

16 MS. MONTES: Yes, Your Honor.

17 And then after Miranda -- yes, he was -- had been  
18 advised of his rights.

19 THE COURT: Okay. Mr. Scalzo, any problem with that?

20 MR. SCALZO: Well, I -- not necessarily. But I would  
21 like to be clear about what statements we're talking about  
22 because it's a -- you know, it's a flowing...

23 THE COURT: All right. Can you tell Mr. Scalzo what  
24 that is?

25 MS. MONTES: Your Honor, I would -- if this is the

1 THE COURT: Mr. Mackenzie, I, certainly, understand  
2 the situation you're in now. But these cases allegedly  
3 occurred back in January of '05.

4 MS. MONTES: Yes, Your Honor.

5 THE COURT: I'm sorry, sir. But I've got to deny  
6 your motion.

7 All right. Are you ready to make your opening  
8 statements to the jury?

9 MS. MONTES: Yes, Your Honor.

10 THE COURT: Bring the jury in, please.

11 (WHEREUPON, the jury came into open court at  
12 approximately 9:35 a.m.)

13 THE COURT: Good morning.

14 All right. Solicitor, brief opening statement.

15 OPENING STATEMENTS

16 MS. MONTES: Ladies and gentlemen, again, my name is  
17 Joyce Montes. I work with the Thirteenth Circuit  
18 Solicitor's Office.

19 It's my job here to prove to you beyond a reasonable  
20 doubt that the Defendants -- there's two Defendants in  
21 this case, Mr. Daniel Lopez and Mr. Octavius Nelson, that  
22 they are each guilty of the crimes that they are charged  
23 with. And they are independently charged.

24 The two charges that Mr. Nelson has are trafficking  
25 in crack cocaine and trafficking in cocaine. What

1 Mr. Lopez has is trafficking cocaine and possession of a  
2 weapon with an obliterated or filed-off serial number.

3 Now, you're going to hear a case. And you're going  
4 to hear witnesses from the witness stand. You're going to  
5 have physical evidence, items to take back in the jury  
6 room with you when you're deliberating and look at. So  
7 you're going to have two different kinds of evidence, the  
8 verbal, and physical that you can look at.

9 You're going to hear a story of what happened. On  
10 January 21st of 2005, Mr. Lopez was coming from Atlanta.  
11 He was stopped on I-85 --.or just pulling off I-85 in  
12 Greenville County. Officers will tell you what happened  
13 at that stop. In that vehicle was found a gun with an  
14 obliterated serial number and over 400 grams of cocaine --  
15 actually, over 500. But the statute -- the highest  
16 statute is over 400. That person, Mr. Lopez, then agreed  
17 to assist the police and continue with the delivery here  
18 in Greenville to who he was supposed to deliver those  
19 drugs to.

20 So the second spot after the highway is the Waffle  
21 House on I-85 and Augusta Road. At that location, the  
22 vice unit arrives. They're waiting for the person and go  
23 to find the person who the delivery is supposed to be to.  
24 And that person that the State has charged is Octavius  
25 Nelson.

1           Now, the trafficking cocaine that Mr. Nelson is  
2 charged with is for his conspiracy in picking up the 400  
3 grams that was in Mr. Lopez's car.

4           The third scene is that after the Waffle House,  
5 officers go to [REDACTED] here in Greenville  
6 County, the address where his parents live and  
7 Mr. Nelson -- excuse me, where Mr. Nelson's parents live.  
8 And Mr. Nelson resides there from time to time. They get  
9 consent to search. They find crack cocaine and other  
10 items that you'll hear about, trafficking weight crack  
11 cocaine. It was over 28 grams.

12           So you're going to have -- it's kind of a long story.  
13 And in this case, it's kind of different because we have  
14 three separate locations, but it all pieces together from  
15 the delivery to the reception to the processing.

16           And, ladies and gentlemen, the State appreciates your  
17 time, appreciates the attention you're going to pay,  
18 appreciates the attention that you're going to pay to the  
19 witnesses. And, at the end of the trial, we believe that  
20 the verdict that you should come up with on these four  
21 charges on these two Defendants is guilty.

22           Thank you.

23           THE COURT: Mr. Mackenzie.

24           MR. MACKENZIE: Thank you, Your Honor.

25           May it please the Court.



1           Good morning everybody. I'm Andrew Mackenzie. I  
2 represent Octavius Nelson, who's seated right here at  
3 counsel table. I practice law here in South Carolina.

4           Octavius is 29 years old. He's a Greenville native.  
5 He works at a place called the List Company and, also,  
6 Frito Lay.

7           He pleads not guilty to these charges. Octavius did  
8 not aid, or conspire, or possess any-drugs in this case.  
9 And he did not aid or conspire with anybody to do so. He,  
10 certainly, did not do so knowingly. If his actions can  
11 somehow be construed as conspiring or aiding in a drug  
12 transaction, he did not do so knowingly.

13          Now, I'm here to remind you that sometimes people in  
14 criminal cases who are innocent are charged with crimes.  
15 That happens from time to time. Sometimes, innocent  
16 people are charged. And we see that from time to time in  
17 the media about people who were charged with crimes,  
18 originally suspected to be guilty, and later are  
19 exonerated, such as Richard Jewel, the Olympic bomber, or  
20 the Duke lacrosse players, or Hurricane Carter, and people  
21 like that. It does happen. I suggest to you that this is  
22 one of those cases.

23          We believe the evidence will show that he's not  
24 guilty of any of these charges. I believe the evidence  
25 will show that, at best, he was a unwitting dupe, or a

1 patsy, or an unwitting pawn in an illegal drug  
2 transaction.

3 Now, I believe you're going to hear some evidence of  
4 a plan, or an attempted drug transaction. And you're  
5 going to hear some evidence that Octavius was present.  
6 But I don't believe you're going to hear any evidence that  
7 he knew or realized what he had gotten himself into, or  
8 knew what was going on. And I think that's going to be  
9 one of the key issues in this case.

10 Octavius pleads not guilty. That means the burden is  
11 on the State to prove him guilty beyond a reasonable  
12 doubt. That means they have to -- it's not just a matter  
13 of whether there might be some evidence, or maybe he's  
14 guilty under certain circumstances. The evidence must be  
15 that you're firmly convinced of his guilt before you can  
16 convict him.

17 Now, I want to ask you to try to keep an open mind in  
18 this case. The State gets to go first. They get to  
19 present all their witnesses and evidence before we have a  
20 chance to do so. So, please, try to keep an open mind  
21 until you've heard from everybody. And then once you've  
22 heard all the evidence in the case, you'll then return to  
23 the jury room to deliberate and return a verdict that  
24 speaks the truth in this case.

25 Thank you.

1 THE COURT: Mr. Scalzo.

2 MR. SCALZO: Thank you, Your Honor..

3 Good morning. My name is Chris Scalzo.. I'm an  
4 assistant public defender here in Greenville. And I  
5 represent Daniel Lopez.

6 And I'm going to state the obvious, that there isn't  
7 anybody sitting next to me. That's an unusual -- this is  
8 an unusual case. One, because there isn't a defendant  
9 sitting next to his attorney; two, there's a co-defendant,  
10 who, actually, is present with his attorney. And that's  
11 going to be a naturally unusual thing in this case that,  
12 obviously, is going to come to the forefront of your mind.  
13 The Judge is going to instruct you on some of the law that  
14 pertains to that throughout the trial and, particularly,  
15 at the end of the trial.

16 It is an important thing to recognize that you're  
17 going to hear the State's version. It's going to be their  
18 version. There isn't going to be any other version.  
19 There aren't any other witnesses that the Defense is going  
20 to present. Certainly, Mr. Lopez is not going to testify  
21 in this case. And your challenge, to the best of your  
22 ability, is going to be to try to figure out what happened  
23 with only one side.

24 Now, I recognize that that's technically okay. In  
25 other words, there's no rule that says that that can't

1     happen, that you could not convict simply because only one  
2     side presented. In fact, the law that the Judge is going  
3     to tell you is that the Defense is not required to put  
4     anything in. But your duty is to try to figure out what  
5     happened, and try to figure out whether or not the State  
6     has proven its case beyond a reasonable doubt.

7             Now, whether or not you feel that more evidence needs  
8     to come in, whether or not from the State's side, whether  
9     or not the State, actually, told you or you feel that the  
10    State gave you all the information it could have or should  
11    have, that all still exists. That's all part of your duty  
12    as far as jurors in this case.

13            And I just want to lay it out there upfront that it  
14    is an unusual thing for there not to be somebody else  
15    sitting at the table. And I want you to understand that  
16    going forward, you will only hear State witnesses from  
17    Mr. Lopez's side, obviously. I don't know what Mr. Nelson  
18    is going to do. I can't speak on his behalf.

19            So, to the best of your ability, keep in mind that  
20    you're evaluating the State's evidence. And, at the end  
21    of the trial, we'll talk about whether or not the State's  
22    evidence really helps you resolve the issue that you have  
23    to resolve. Does it leave open questions or things that  
24    you want to know or need to know? I just ask you to keep  
25    that in mind as the trial progresses.

1 THE COURT: All right. Solicitor.

2 MS. MONT'S: Your Honor, the State calls Deputy Chris  
3 Hines.

4 THE CLERK: Place your left hand on the Bible and  
5 raise your right hand.

6 WHEREUPON,

7 CHRIS HINES,  
8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please be seated.

11 Please state your full name for the record.

12 THE WITNESS: Chris Hines, H-I-N-E-S.

13 DIRECT EXAMINATION

14 BY MS. MONT'S:

15 Q Deputy, please, tell the jury where you're employed,  
16 and how long you've worked there.

17 A The Greenville County Sheriff's Office for 12 years.

18 Q Can you explain some of your training in working at  
19 the Sheriff's Office?

20 A I've had -- upon starting my career, the basic  
21 Criminal Justice Academy. I graduated as a distinguished  
22 honor grad. From then on, I've been assigned to the  
23 traffic division and assigned to Interstate 85. During  
24 that course of time, I've received approximately 1,400  
25 hours of traffic-related courses, specifically, dealing

1 with criminal patrol on the roadways to include terrorist  
2 interdiction, drug interdiction, and other criminal  
3 interdiction along the roadways.

4 I, also, was, at the time, a K9 handler and received  
5 400 hours initial handler course training for the K9, and  
6 then several hundred hours of actual hands-on training,  
7 and other certification classes with the K9 program.

8 Q Okay. Regarding the K9, can you describe what  
9 education and training you've received weekly, monthly,  
10 yearly?

11 A Prior to starting with the K9, we go through a  
12 400-hour handler course with a handler like myself and my  
13 K9 partner at the time, which was a female German Shepherd  
14 named Angie, which during the course, basically, training  
15 the handler and the dog to become a police K9 unit to work  
16 together.

17 Upon the completion of that training, we go through,  
18 at least, weekly training and reiterating what we have  
19 learned previously to include training and detection of  
20 illegal drugs. She was trained in marijuana, cocaine, the  
21 detection of crack cocaine, methamphetamine, Ecstasy, and  
22 heroin. And we conducted that training weekly while we  
23 were paired together, in addition to receiving national  
24 certifications for narcotics detection.

25 Q And can you describe the national certification

1 process?

2 A Yeah. There's a -- at this -- the North American  
3 Police Dog Work Association has a national program, which,  
4 basically, is a standard set for certifying a dog in  
5 narcotics detection throughout the country. And we would  
6 go usually once a year to a national certification with  
7 handlers from all over the country, and test on these  
8 certain standards to make sure that our K9s met the  
9 national certification level.

10 Q And did Angie and you get certified?

11 A Yes.

12 Q And did you continue to get certified?

13 A Yes. At least, yearly we went through, at least, one  
14 certification with a national agency.

15 Q And was this prior to January 21 of 2005?

16 A That's correct.

17 Q And describe how you keep up-to-date, or if you keep  
18 up-to-date with the training.

19 A We, also, have in-house training, which I mentioned,  
20 which we go through and run different scenarios with  
21 placing an illegal substances that the K9 is trained on.  
22 And during our training, we run them on vehicles, houses,  
23 open areas, and through different types of training  
24 scenarios for the dogs weekly. And we keep a training log  
25 of the training that we perform with the K9.

1 Q Okay. Is there a certain percentage that they  
2 have -- that Angie and you have to pass in order to be  
3 certified?

4 A Yes. Through the North American Police Work Dog  
5 Association, at the time, I believe -- I'd have to go back  
6 and look at the exact records. I think there was 30 hides  
7 of illegal narcotics of the one -- of the trained sources.  
8 And you would have to find, I believe, 28 of the 30 to  
9 make the national certification.

10 Q And did you and Angie pass that?

11 A That's correct. We did.

12 Q And, at the time of this case, how long had you and  
13 Angie worked together?

14 A We started in October of 2003. So we'd been together  
15 a little over two years.

16 Q And how often would you work with Angie?

17 A Weekly -- at least, weekly in a training scenario.  
18 Like I said, we were together every day. So  
19 occasionally -- we'd do some sort of training activity  
20 pretty much on a daily basis.

21 Q And did she live with you?

22 A Yes.

23 Q And going to the incident date, January 21, 2005. At  
24 that time, what were your duties with the Sheriff's  
25 Office?



1 A At that time, I was assigned to the traffic division  
2 and, also, as a K9 handler assigned to Interstate 85 to  
3 conduct traffic enforcement along 85.

4 Q And late that afternoon, do you know where on I-85  
5 you were working?

6 A We were, generally, assigned to the whole Interstate  
7 85 area of Greenville County. At approximately 2:30, on  
8 the 21st, I was turning around at the county line, which  
9 is Highway 153, which was common practice. That's the  
10 last -- that's the -- it's right there at the county line.  
11 So it's normal that we would turn around.

12 I was turning around to go back -- come back into  
13 Greenville County. There was a gentleman at a pay phone  
14 at the Breakers gas station, which is located on the  
15 northbound side of 153. It was a white Dodge Intrepid  
16 sitting in the corner of the -- at the pay phone. A  
17 gentleman was talking on the pay phone. And I didn't  
18 think much about it. I proceeded back on to 85 and pulled  
19 over on the side of the interstate and was reviewing some  
20 stuff in my car.

21 A short time later, I saw this white Dodge Intrepid  
22 pass by at a high rate of speed. At that point, it was  
23 obvious that he was exceeding the posted speed limit. I  
24 didn't have my radar currently set up to measure his speed  
25 from what I was doing. So I attempted to overtake his --

1 the vehicle and to catch up to him.

2 As I was approaching him, I began to approach him on  
3 White Horse Road. He was in the number three lane, which  
4 is the slow lane. He was still running at a high rate of  
5 speed. As he came up to the White Horse Road exit, he  
6 abruptly exited off on the exit ramp. It appeared to me  
7 maybe he had missed his exit. At which point, I measured  
8 his speed at 72 miles an hour. It's a 60-mile hour zone  
9 on the interstate. The suggested ramp speed is 45 miles  
10 an hour.

11 At that point, I engaged my blue lights and siren to  
12 initiate a traffic stop on him. He exited off on to White  
13 Horse Road and made a left on White Horse Road going  
14 northbound and, finally, stopped right past the exit ramp  
15 to get on to southbound Interstate 85.

16 Q Is that location in Greenville County?

17 A Yes. That is in Greenville County.

18 Q What did you do once his vehicle stopped?

19 A At that point, I approached the vehicle on the  
20 passenger side, which is standard for my procedure of how  
21 I approach vehicles. I explained the reason for the stop.  
22 I immediately noticed a cell phone was in the on position  
23 sitting on the passenger seat. I, also, noticed another  
24 cell phone sitting in the -- on the rear seat of the  
25 vehicle.

1           The plate -- the car was out of Georgia. It had  
2 Georgia -- it was a white Dodge Intrepid with a Georgia  
3 tag of AFD 8621, which was the same car I had seen before  
4 with the gentleman standing talking on the pay phone at  
5 Exit 40.

6           He was the only person in the car. I explained to  
7 him why I had stopped him. He immediately apologized for  
8 the speeding. And I went and asked for his paperwork,  
9 license, registration, insurance information. And I asked  
10 him where he was going.

11          At that point, he told me he was going to Georgia,  
12 which I found kind of odd since he was going northbound on  
13 85. If he was going to Georgia, he should have been going  
14 southbound.

15          During the course of the -- of getting his paperwork,  
16 I asked him where he was coming from, which he replied he  
17 was coming from North Carolina from visiting his boy in  
18 the Army. Once again, his direction of travel in relation  
19 to his story is not matching up. He's, actually -- if he  
20 was coming from North Carolina, he should have been in the  
21 southbound lane of 85, instead of the northbound lane.

22          He, actually -- from where he stopped, he could  
23 have -- he was past the actual southbound entrance ramp  
24 for White Horse Road. So although I was behind him with  
25 my blue lights on, it wasn't indicative that he was going

1 to get back on to go southbound.

2 Q Did you have an opportunity to check his driver's  
3 license and paperwork?

4 A I did. It was -- when I ID'd the gentleman  
5 identified as Daniel Lopez, he had a Louisiana driver's  
6 license. The car was registered to him out of Georgia.  
7 It was registered to a Gainesville, Georgia address. The  
8 insurance, which was in his name, had a Tucker, Georgia  
9 address.

10 Q Was this unusual?

11 A In my mind, yes. Based on my training, he's got  
12 three different locations -- three different addresses,  
13 the Georgia -- two Georgia addresses. The Lawrenceville  
14 and Tucker, Georgia address are both close to the Atlanta  
15 area. The car registration and the insurance are issued  
16 yearly. So that told me right there, in addition to his  
17 out of state driver's license from another state outside  
18 of Georgia, that the vehicle is registered to -- he was  
19 provided three different addresses in the matter of a  
20 year, which I found kind of odd.

21 I went back to check his driver's license and the  
22 registration. I went back to him to confirm what address  
23 he had -- where he, actually, was living. And he,  
24 actually, provided a fourth address, which was a  
25 Lawrenceville, Georgia address, which, again, is a suburb

1 of the Atlanta metropolitan area.

2 Q Did you tell him how you were going to proceed with  
3 the car stop?

4 A Yeah. At that point, like I said, he had apologized.  
5 He was apologetic. I had asked him -- I had explained to  
6 him I was going to write him a warning for the speeding.  
7 And at which point after I checked his driver's license --  
8 I had him exit the vehicle. So he was, actually, standing  
9 at the rear of his vehicle and the front right corner of  
10 my vehicle. And he kind of -- he had a nervous demeanor  
11 as I -- after I told him I was going to write him a  
12 warning for the speeding, he kind of made some nervous  
13 chatter.

14 He stated that -- he asked me, he said -- if we had  
15 been busy. And he told me that he worked for Gwinnett  
16 County, which I kind of indicated that he was trying to  
17 pass himself as a law enforcement officer in Georgia.

18 So I asked what he did for them. And he told me he  
19 was a bouncer, that he told on people, which I kind of  
20 thought as odd, because not too many police officers --  
21 agencies have actual bouncer as a job description. It  
22 sounded more like maybe he was -- basically, he was  
23 insinuating that he was giving information to the police,  
24 but didn't, actually, work for them.

25 He still had a nervous demeanor. He kept his hands

1 in his pockets just kind of chattering nervously, you  
2 know, about the -- where -- about being the bouncer. I  
3 confirmed again that he was going home to Georgia. And he  
4 told me that, yeah, that he had stopped to get something  
5 to eat.

6 So I'm still trying to figure out exactly what --  
7 where he's coming from, what's going on with this guy. I  
8 mean, obviously, he's being deceptive about where he's  
9 going, what he's doing.

10 So I asked him what part of North Carolina he was in  
11 and -- or his boy was in. He hesitated. And he said,  
12 Fort, fort -- then he said he was in the Army, which I  
13 immediately thought, you know, somebody's son is in the  
14 military -- if my son is in the military, I'm going to  
15 know exactly what base he's at. I found that as being  
16 deceptive, or odd, to say the least.

17 Then he changed his story and said his baby's mother  
18 was in North Carolina, and the baby was sick. I asked him  
19 how old the -- his son was. And then he said that it was  
20 his friend's son. And then he changed his story again and  
21 said, no, his friend had a daughter.

22 I'm still trying -- now, I'm confused. I don't  
23 know -- I mean, he's changing his story minute by minute,  
24 I mean, as every sentence comes out of his mouth. So I  
25 asked him if it's his daughter. And he says, no, that he

1 has a daughter that was six that lived in California.

2 I'm not sure -- obviously, in my mind, based on what  
3 I've seen before, this guy is not consistent with the  
4 normal innocent motoring public that we deal with daily.  
5 I mean, he's, obviously -- in my mind, there's something  
6 going on here.

7 Q At this point, have you checked his vehicle  
8 identification number?

9 A No. At that point, I kind of let him sit for a  
10 minute. I walked up to check the VIN on the car to make  
11 sure it does match the registration and insurance.

12 Q Describe what the VIN is.

13 A The VIN is, basically, the serial number for the car  
14 located at -- the most clearly visible place for it is the  
15 left front dash area of the vehicle. You can see it most  
16 of the time visible from looking over the driver's side on  
17 the -- through the windshield on the driver's side right  
18 in front of the steering wheel. There's several other  
19 locations, but that's normally the easiest place to check  
20 the VIN.

21 A lot of times -- we always check the VIN just to  
22 make sure it matches up to the paperwork. People can get  
23 a car or a tag -- can steal a tag off a car that may not  
24 have been reported stolen. It could be off a similar type  
25 car. So we try to make sure that the paperwork -- the

1 vehicle registration matches the actual VIN that's on the  
2 vehicle to make sure that that car is not stolen and that  
3 it's, actually -- everything matches up.

4 When I walked to look at the VIN, there's a Gwinnett  
5 County Police Department patch that's, actually, taped  
6 right in front of the VIN, which, once again, I thought  
7 was odd that he's got a police department patch taped  
8 there, which, in my mind, was like he's trying to befriend  
9 law enforcement to make a -- I guess to kind of get off  
10 easier, or get on his way a little bit quicker.

11 But, you know, based on his story so far, I mean,  
12 obviously -- and, now, he's got this police patch up  
13 there. I'm not -- there's something going on that, in my  
14 mind, is not -- some type of criminal activity is taking  
15 place that he's involved with.

16 After checking that, I asked where he was going to  
17 eat. And he looked up and said, McDonalds. Well, yeah,  
18 there's a McDonalds at the White Horse Road, Exit 44.  
19 There's, also, a McDonalds located off the exit that he  
20 just came from. As with, you know, the majority of the  
21 exits along 85, there's McDonalds, which, you know, I  
22 found that as kind of odd. Why not if you're already  
23 stopped at an exit where there's a -- using a pay phone,  
24 why not drive on that exit and go to a McDonalds?

25 Q Could you see the -- a McDonalds from where you had



1 stopped him?

2 A There's a -- when you get off the exit ramp, there's,  
3 actually, the little signs on the side that show the  
4 restaurants. So I know it's listed on there. I'm not a  
5 hundred percent sure if you can, actually, see the actual  
6 McDonalds. In fact, they do have the golden arches that  
7 sticks up above that's kind of -- it's a little bit of a  
8 curve off of 153. There's signs that say there's a  
9 McDonalds on that exit. It's pretty obvious signs that  
10 when you exit that you know there's a McDonalds located  
11 there.

12 At that point, as I was finishing writing the warning  
13 ticket, I asked if there were any guns in the car. And he  
14 looked down and broke eye contact and said, No. I asked  
15 him about any marijuana or cocaine. And he had a  
16 serious -- his face kind of tensed up. And he said, No.  
17 I asked him if there were any bomb or terrorist devices.  
18 At that point, he eased up and kind of laughed and said,  
19 No. His demeanor changed when I asked, you know, about  
20 the bombs or terrorist devices. I went ahead and issued  
21 him a warning and asked him if he had any questions, which  
22 he said he didn't.

23 At that point, I went and asked for consent to search  
24 his vehicle. Even though I have a K9 in the car, this  
25 guy's behavior was abnormal, in my opinion. I didn't know

1     what -- at this point, I was still on the roadside and  
2     didn't have a backup officer there at that point. So I  
3     was trying to do the least intrusive method with him, and  
4     kind of keep him at ease a little bit. He wouldn't --  
5     when I first asked him, he didn't give me a -- he just  
6     kind of shrugged his shoulders and didn't say yes, didn't  
7     say no. I had Deputy McBee on the way as a backup  
8     officer.

9             Then he told me he just wanted -- he needed -- he was  
10    ready to go. When I tried to ask him, you know, give me  
11    a -- you know, ask for a yes or no answer, he really  
12    wouldn't answer. Finally, he just asked if he could go.

13            At that point, you know, trying to make -- waiting on  
14    Deputy McBee to arrive, I told him, I said, well, I was  
15    going to detain his car. I was going to run my K9 around  
16    the vehicle. If the K9 alerted, then we would, obviously,  
17    search the vehicle. That would give us the probable cause  
18    we needed to search the vehicle.

19            At that point, I told him that he was free to leave,  
20    trying to keep him at ease. Because, at this point, like  
21    I said, I don't know what he's up to. Obviously, there's  
22    something going on.

23            Shortly thereafter, Deputy McBee pulls up. And I  
24    begin to get K9 -- Angie, who's my K9, out of the vehicle  
25    and run her around the vehicle. As I stated earlier,

1 Angie was certified through the national -- North American  
2 Police Work Dog Association weekly training. She was  
3 certified in the odors of marijuana, cocaine, crack  
4 cocaine, methamphetamine, heroin, and Ecstasy.

5 Q Where did Mr. Lopez go while you --

6 A At this point, he's standing on the side of the road.  
7 He, actually, told us -- told me I could run the dog on  
8 the car. He's, actually, standing probably about 30 feet  
9 away from the car on the side of the road, away from the  
10 roadway, away from the flow of traffic. Deputy McBee goes  
11 and stands with him as I run Angie down the car.

12 As a standard practice, I run -- I always start on  
13 the driver's side front of the vehicle and work down the  
14 driver's side to the rear, around the back, and then back  
15 around the front of the vehicle. As we came down the  
16 driver's side, she was doing her free air sniff. We got  
17 to the left rear door seam area of the vehicle, a,  
18 four-door -- a Dodge Intrepid, a four-door vehicle.

19 At that point, she stopped and went back, started  
20 breathing heavily and started scratching. Based on our  
21 training, I -- that was a -- my -- she was telling me that  
22 she's smelling one of the odors that she's trained in.

23 Q Do all drug dogs scratch when they alert?

24 A It's different. It's usually -- that's called an  
25 aggressive alert. There's usually an aggressive alert,

1 which is a scratch. Some of them, actually, sit down. It  
2 really depends on the way they were trained. She was  
3 trained to scratch. But some of them will, actually, sit  
4 down at the -- where they smell the odor that they're  
5 trained in.

6 I continued to work her around the backside of the  
7 vehicle. When we got around to the back to the rear tire  
8 well -- the right rear tire well, the breathing changed.  
9 She began sniffing intently, and then started scratching  
10 kind of up in the tire well. So, at that point, she's  
11 indicating to me, once again, that she was smelling the --  
12 one of the trained odors that she was trained in.

13 Q Does her action of scratching tell you where she is  
14 smelling this item?

15 A Based on the wind patterns of the car -- I mean,  
16 you've got car -- you've got -- the car is on the side of  
17 the road. Normally, it will give you a general area. You  
18 know, in a sterile environment, the dogs can pretty  
19 much -- can pinpoint a lot of times the odor -- the actual  
20 source of where the odor is coming from.

21 In this type of environment, you've got cars going  
22 by. You're out there, actually, kind of on a -- right off  
23 an overpass. The wind is blowing. So you can, actually,  
24 take the odor and swirl it around, or push it from one  
25 direction of the car to the other.

1           At this point, I was pretty certain, based on what  
2 she's told me, that the odor is coming from somewhere in  
3 the rear of the vehicle. At that point, I placed her in  
4 the car and began searching the vehicle.

5           When I opened the trunk, there was several different  
6 items. There was a bag of tools, an old printer, computer  
7 parts, a grocery bag of clothes that had a gold -- a  
8 cognac bottle box in there. I kind of briefly just  
9 searched it and then went back to the front of the car.

10           And, at that point, I -- when I went to the front, in  
11 the center console, I located a loaded H&K USP 9mm  
12 handgun. When I began to look at it, I immediately  
13 noticed the serial numbers had been scratched off the  
14 weapon.

15           The serial number -- every firearm has a serial  
16 number. They're required by law to have a serial number  
17 when they're manufactured. Normally, if somebody -- in my  
18 experience, if a firearm serial number is missing or  
19 scratched off, as it appeared in this case, there's a good  
20 possibility it could have been used in a crime, and/or a  
21 stolen firearm, or they didn't want the registered owner  
22 traced back to that firearm.

23       Q     And, Deputy Hines, I'm going to hand you an item. If  
24 you'll wait just a second.

25       A     Okay.

1 (WHEREUPON, State's Exhibit No. 3 was marked for  
2 identification only.)

3 BY MS. MONTS:

4 Q I'm going to hand you what's been marked for  
5 identification as State's Exhibit No. 3. Can you, please,  
6 identify this, and any components there?

7 A Yes. That's, actually, the firearm that was in the  
8 glove compartment. At the time, it was, actually -- it  
9 has the actual magazine in the handle here, which contains  
10 the bullets. The bullets in this case -- for evidence  
11 purposes, we -- it was packaged separately. So we're not  
12 allowed to store or put into evidence a loaded firearm.

13 But, at the actual time that it was located, there  
14 was ammunition. It was a loaded firearm in the glove  
15 compartment of the car with the serial number area -- on  
16 this model, it's on the bottom, which was -- had been  
17 obliterated, scratched off. I was unable to make out any  
18 serial number of the weapon.

19 Q And did you ask for testing to be done on that gun?

20 A That's correct. We put -- standard practice, when we  
21 put in a firearm into our evidence, we -- they check --  
22 normally, check the ballistics. There's a series of  
23 tests. They normally check. We have technicians that do  
24 that in our forensics division. And it was submitted for  
25 testing.

1 Q And I'll continue with your chain on that. But,  
2 please, continue with what -- your search of the car.

3 A At that point, I went back to my vehicle for about a  
4 moment. I even ran a criminal history on Mr. Lopez, in  
5 addition to the firearm being altered, or in this case  
6 totally scratched off, to see if he could even legally be  
7 in possession of a firearm, even though this one was there  
8 and had a scratched off serial number. . .

9 I was in the vehicle a short time and then went back  
10 out. I began searching the car again for additional  
11 contraband. I went back to the trunk area and started  
12 detailing. I went -- kind of just briefly went through  
13 everything in the trunk. I didn't open anything up. I  
14 just kind of moved some things around to see if  
15 anything -- if I saw anything obvious. I went back and  
16 did a detailed search of the trunk. I looked at the  
17 printer, the monitor they had in there, and went through  
18 the bag of tools.

19 There was a blue grocery bag of clothes and the  
20 cognac bottle. I pulled that out. And when I opened --  
21 actually, the cognac bottle was, actually, closed up on  
22 top of it. I opened it up and --

23 Q If you can wait just a second.

24 A Okay.

25 Q -- I will show you an item.

1 (WHEREUPON, State's Exhibit No. 4 was marked for  
2 identification only.)

3 BY MS. MONTES:

4 Q Deputy, I'm going to hand you what's been marked for  
5 identification as State's Exhibit No. 4. Can you, please,  
6 identify this?

7 A Yeah. That's the actual -- the cognac bottle I was  
8 referring to that was located in the trunk of the vehicle.  
9 This is, actually, the one -- it still has my initials on  
10 it and the case number from when I, actually, placed that  
11 into evidence. But it has a -- still has the lid and at  
12 the bottom -- at that time, it was, actually, closed up  
13 like it was -- come off the shelf.

14 So, at that point, I opened up the bottle -- or  
15 opened up the box and saw some plastic in there, which, at  
16 that point, I really -- I immediately recognized it wasn't  
17 a bottle of cognac. I pulled it out. And there was  
18 several -- plastic wrap, but covered in what appeared to  
19 be -- have some kind of a dish detergent smell, which is a  
20 common masking agent for -- it's a common thing they'll do  
21 to try to mask the odor of illegal drugs.

22 Q Would you go ahead with the scissors and just -- and  
23 maybe half cut the top and show us the open box, please?

24 A Okay. Do you want me to pull the stuff --

25 Q Yes.



1 MR. SCALZO: Judge, I want to make an objection.  
2 It's not been moved into evidence yet.

3 THE COURT: That's right. Don't show it until it's  
4 in evidence.

5 THE WITNESS: Okay. Yes, sir.

6 BY MS. MONT'S:

7 Q Please continue. What did you do at the scene with  
8 this box?

9 A I pulled this plastic out. And I unwrapped it. And  
10 then I saw a block of a white powder substance, which was  
11 field-tested. It field tested positive for cocaine with a  
12 field weight of 518.5 grams.

13 At that point, Mr. Lopez was secured in handcuffs. I  
14 advised him of his Miranda warnings -- of his Miranda  
15 rights. And we, actually, called Deputy Ruddy, who had  
16 the transport vehicle, to come and place Mr. Lopez in the  
17 vehicle for transport.

18 MS. MONT'S: I'd like to have this marked.

19 (WHEREUPON, State's Exhibit No. 5 was marked for  
20 identification only.)

21 BY MS. MONT'S:

22 Q Deputy Hines, I'm going to hand you what's been  
23 marked for identification as State's Exhibit No. 5. Can  
24 you, please, identify any marks or writing on this?

25 A Yeah. The original bag of the white powder substance

1 from when I placed it in P&E is in there with the case  
2 number, my initials. When this was submitted to our  
3 property and evidence, it was submitted for testing as  
4 well to confirm that it was -- actually, just to confirm  
5 that it was cocaine and the actual amount.

6 Q And can you, please, identify the other item with  
7 it --

8 MS. MONT'S: I'd like to have this marked.

9 (WHEREUPON, State's Exhibit No. 6 was marked for  
10 identification only.)

11 BY MS. MONT'S:

12 Q Deputy, this is State's Exhibit No. 6 for  
13 identification. Can you, please, identify that?

14 A This is the actual final packaging that the -- the  
15 white powder substance, the cocaine -- which we  
16 field-tested for cocaine was placed in. This, actually,  
17 had the other plastic wrap wrapped on top of it. But this  
18 was, actually, separated when it went to the lab by the  
19 lab tech, and was placed in that. And it was sealed up.  
20 And that's the actual plastic -- final plastic bag that it  
21 was in as we found it on the roadside in that box.

22 Q And, please, describe with these items the -- State's  
23 Exhibit Nos. 3, 4, 5, and 6, where did you put those  
24 items?

25 A At that point, I secured all the items in my vehicle.

1 And they remained in my possession until I placed them  
2 into our property and evidence drop box at the conclusion  
3 of this -- our investigation with this case.

4 Q And describe the drop box at the property and  
5 evidence room.

6 A After hours, the -- or during normal business hours,  
7 we have a -- property and evidence technicians that are  
8 there to receive evidence we drop in, or turn in from a  
9 case. After hours, we have a secured lock box that you,  
10 actually, fill the paperwork out, and label it on there as  
11 you put it in the drop box.

12 And then you -- it's, basically, a one-way drop. You  
13 can drop it in, but you're not able to retrieve anything  
14 out of it. Only the lab -- or the evidence technicians  
15 have access to come retrieve the stuff out and,  
16 actually, enter it into the lockers down in property and  
17 evidence.

18 Q Did you ever go back and retrieve these items for any  
19 reason?

20 A These -- no. These were -- once I turned these into  
21 evidence, no.

22 Q And going back to the crime scene, what did you do  
23 after you found the white powder substance?

24 A Like I said, at that point, Mr. Lopez was handcuffed.  
25 I advised him of his Miranda warning -- or rights. Deputy

1 Ruddy arrived on the scene. He's got a -- my car was a K9  
2 vehicle. So the backseat of my car is, actually, a K9  
3 kennel. So I can't transport any person that I place  
4 under arrest. Deputy McBee's car, at the time, was, also,  
5 a K9 vehicle, so he couldn't transport anyone.

6 Deputy Ruddy arrived. And Mr. Lopez was placed in  
7 his car. We called for a wrecker for the -- for  
8 Mr. Lopez's car. And Deputy McBee came to me and said  
9 that Mr. Lopez was wanting to cooperate, and indicated  
10 that the actual drugs were coming to Greenville.

11 So, at that point, I called my supervisor, who, in  
12 turn, called our vice and narcotics unit. We moved just  
13 across off the roadway to a car wash off of White Horse  
14 Road near Interstate 85. At that -- and, at that point,  
15 some of our vice and narcotics deputies came and spoke  
16 with Mr. Lopez.

17 Shortly thereafter, we took him down to southern area  
18 command. And they conducted an investigation as to where  
19 this -- where these drugs were coming to Greenville.

20 Q Did you do a field-test on the white powder?

21 A I did, yes.

22 Q What was the result?

23 A It field-tested positive for cocaine.

24 Q Where did you and Officer McBee go after you left the  
25 car stop?

1 A We went all -- we all went down to southern command.  
2 And Mr. Lopez -- at that -- we, basically -- -- he was  
3 turned over to the vice and narcotics unit. Because he  
4 was wanting to cooperate with the investigation as to the  
5 delivery of these drugs.

6 Q Did you talk to Mr. Lopez anymore after you left that  
7 scene?

8 A No. Once they -- we moved over to the car wash, I  
9 don't recall having hardly any other interaction with  
10 Mr. Lopez. Our vice and narcotics unit pretty much took  
11 it over from there.

12 The only other action I had in this case was after he  
13 wanted to make a delivery to whoever -- the person that  
14 was getting these drugs, I assisted with the takedown of  
15 that once that delivery was arranged.

16 Q Did you sign any warrants on Mr. Lopez?

17 A I did. I went -- during the second part of the  
18 investigation while -- after the -- a controlled delivery  
19 type case was made, I then went and signed warrants on  
20 Mr. Lopez for the cocaine and for the firearm.

21 Q And was Mr. Lopez subsequently arrested on those  
22 charges?

23 A He was. And he was placed in -- -- he was taken to  
24 the detention center by the officers of our vice and  
25 narcotics unit.

1 Q And the -- where was the location that you went to to  
2 continue the delivery of this?

3 A After southern command, I know a phone call was made  
4 by Mr. Lopez. I wasn't -- I don't know the nature of that  
5 phone call. All I was told is that we were going to the  
6 Waffle House at Augusta Road and 85, and that they were  
7 going to meet a guy in a dark-colored truck.

8 Mr. Lopez was not, actually, involved. We, actually,  
9 had one of our vice and narcotics units take Mr. Lopez's  
10 car. And he acted as the undercover during this.

11 Q And was this cocaine that you just described that was  
12 found in Mr. Lopez's car taken to that scene?

13 A It was in my -- it remained in my possession at all  
14 times.

15 Q Was it in a locked compartment?

16 A It was -- yes, secured in my trunk.

17 Q And where -- describe where you parked at the Waffle  
18 House.

19 A We were -- there were several units in the area. We  
20 were being advised via radio by -- of kind of what was  
21 going on, and when to come in. We were, actually, a  
22 street behind the Waffle House when we got the signal that  
23 they were trying -- that our officer had made contact with  
24 a gentleman in the truck, and had motioned for him to  
25 follow him is what the -- we went in to takedown the

1 vehicle.

2 I pulled up on the driver's door area of a  
3 dark-colored Ford Ranger pickup. I believe it had -- with  
4 the tag 822 RRB. I got out of the vehicle, pointed my  
5 service weapon at him. I didn't know if he was armed  
6 based on what we had just -- gotten a gun off of  
7 Mr. Lopez. There was a high probability this gentleman  
8 may be armed.

9 One of the vice and narcotics officers and some other  
10 deputies went in and, actually, arrested the driver, who  
11 was later identified as Octavius Nelson. Once he was  
12 secured in a vehicle, that's when I went back and did my  
13 paperwork on Mr. Lopez.

14 Q And, at the original scene, was your car equipped  
15 with a video recorder?

16 A Originally, it was. That's correct.

17 Q And do you have a video from that scene?

18 A There is -- there was a video. Since this time,  
19 our -- I transferred in '06 out of the traffic unit into  
20 our aviation unit. Our policy in the traffic division  
21 then -- because cameras were just limited pretty much to  
22 our traffic division and a few other cars. The  
23 supervisors kept a locked video vault in their office,  
24 which we kept all of our videos from our traffic stops.  
25 Upon me transferring out, my videos remained in that vault

1 under the traffic supervisor's -- he was the one that had  
2 access to it.

3 Approximately a year after being out of the unit,  
4 they had a supervisor change down there. And I was  
5 directed -- was told to come get -- pick my videos up from  
6 southern command out of the vault. When I got down there,  
7 there was a box of videos that had my name on them. And I  
8 was told that's what -- as I took them -- and I've noticed  
9 since this time that that was, actually -- turned out to  
10 be about half of the videos I had in there. The other  
11 half I don't know as to what happened, if they were  
12 disposed of, thrown away, or what. But not all of the  
13 videos that I had in that vault were turned back over to  
14 me where I keep secure now at my office.

15 Q And who was your backup officer on that day?

16 A Deputy McBee was my first backup officer.

17 MS. MONT'S: Your Honor, I'd move State's Exhibit  
18 No. 4 into evidence at this time.

19 THE COURT: Any objection, Mr. Mackenzie, or,  
20 Mr. Scalzo?

21 MR. MACKENZIE: No, sir, Your Honor.

22 MR. SCALZO: My objection is based on my prior  
23 pre-trial motion.

24 THE COURT: All right. Subject to your former  
25 motion, put it in.



1 ( WHEREUPON, State's Exhibit No. 4 was admitted into  
2 evidence.)

3 MS. MONTS: Thank you.

4 I have no further questions.

5 THE COURT: All right. Mr. Scalzo.

6 Mr. Mackenzie, are you going first?

7 MR. MACKENZIE: I'll go first.

8 CROSS-EXAMINATION --

9 BY MR. MACKENZIE:

10 Q Deputy Hines, were you tipped off in any way to be on  
11 the lookout for this particular car?

12 A No, sir.

13 Q And, now, all this that took place on the highway, of  
14 course, Mr. Nelson wasn't present for any of that; is that  
15 correct?

16 A That's correct.

17 Q And Mr. Lopez had a loaded gun in his glove  
18 compartment?

19 A In the center console, yes, sir.

20 Q Center console?

21 A Yes, sir.

22 Q And, in your experience as a police officer, is that  
23 unusual in this type of case?

24 A To find guns and drugs, no. That's a -- a lot of  
25 times that's a common element.

1 Q And you stated that Mr. Lopez was very nervous, you  
2 felt like, when you were talking to him?

3 A Yes, sir, when I was talking with him.

4 Q And Mr. Lopez had -- was in possession of two mobile  
5 phones; is that right?

6 A That's correct.

7 Q And one -- the number for one of those phones -- do  
8 you know the number for it?

9 A No, sir, I do not.

10 Q You mentioned that he -- Mr. Lopez was on the phone  
11 at the Breakers gas station?

12 A That's correct.

13 Q Do you know the number for that phone?

14 A No, sir.

15 Q Lopez was from Georgia?

16 A He's got Georgia addresses, Louisiana addresses.  
17 Where he's, actually, from I do not know.

18 Q The driver's license was from Louisiana?

19 A That's correct.

20 Q Everything else was from Georgia?

21 A That's correct.

22 Q At the Waffle House, Mr. Nelson, you said he -- when  
23 he got there, he went inside and got some food; is that  
24 correct?

25 A That, I do not know. I wasn't -- what was, actually,

1 going on -- we were kind of being advised via the radio.  
2 We were not -- I was not, actually, in the parking lot. I  
3 didn't arrive in the parking lot until they said that they  
4 were -- gave us the sign to take him down, that they were  
5 leaving the parking lot.

6 Q Okay. And Deputy Grounsell was acting as a -- in an  
7 undercover capacity, he was driving the white car to the  
8 Waffle House?

9 A That's correct.

10 Q It is clear that Mr. Nelson did not know the person  
11 in the white car, did he?

12 A That, I do not know.

13 Q Well, the person in the white car was an undercover  
14 police officer. So isn't it fair to assume that  
15 Mr. Nelson, obviously, did not know the person who drove  
16 up in the white car?

17 A I can't answer that.

18 Q There's no evidence that he -- that Mr. --

19 THE COURT: Now, he said he couldn't answer it,

20 Mr. Mackenzie.

21 BY MR. MACKENZIE:

22 Q Mr. Nelson did not speak to the other person in the  
23 white car?

24 A Like I said, I wasn't there when their interaction  
25 took place. Because we were a street behind there. Until

1       they got in their vehicles to leave the parking lot -- the  
2       only information I was told prior to going there was --

3       Q     Well, I'm not asking you to repeat what anybody said.

4       A     Right.

5       Q     You're saying you didn't even see Mr. Nelson. Did  
6       you see him go into the Waffle House?

7       A     No.

8       Q     Did you see him come out of the Waffle House?

9       A     The only interaction I had with Mr. Nelson was -- he  
10      was in the vehicle when they were leaving. And we got the  
11      sign -- or the go ahead to go in and make the arrest.

12           And I pulled up to the dark-colored Ford Ranger  
13      pickup that was identified that they had told us -- one of  
14      our -- I believe one of our other vice and narcotics  
15      vehicles blocked him in the front. Another one -- we had  
16      several vehicles that was all around. I was one of many.  
17      And they got him out and handcuffed him. And that was my  
18      involvement. Outside of what happened, actually, at the  
19      Waffle House, I was not -- I was a block away from the  
20      Waffle House.

21      Q     Okay. And Mr. Nelson was not in possession of a gun  
22      in that truck, was he?

23      A     That, I do not know.

24      Q     He had no money on him, did he?

25      A     That, I do not know.

1 Q But he did have a cell phone; is that correct?

2 A I do not know that either.

3 MR. MACKENZIE: Thank you.

4 THE COURT: All right. Mr. Scalzo.

5 MR. SCALZO: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. SCALZO:

8 Q Deputy Hines, I guess let's talk about your stop of  
9 Mr. Lopez. You said you were -- you first encountered him  
10 at the Pumpers?

11 A At the Breaker gas station.

12 Q Breakers. I'm sorry.

13 A I didn't encounter him. I just observed him standing  
14 there on the pay phone, which is kind of away from the  
15 parking lot in the corner. And I just happened -- where I  
16 turned around, actually, coming out of the exit, he was  
17 right there as I was pulling out.

18 Q All right. Now, I'm assuming that that's something  
19 you remember later on when you write the report. It's not  
20 something that -- you didn't know to pay attention to him  
21 when he was at the Breakers?

22 A Well, I saw him standing there. And I observed the  
23 tag out of Georgia, a Georgia-plated vehicle. He was  
24 standing there at that time, you know. You don't see a  
25 whole lot of people using a pay phone these days. But, I

1 mean, he was in a position that was away from the  
2 building. So when I'm checking for traffic, I see the  
3 vehicle. At that particular moment, it didn't really --  
4 you know, it was just an observation.

5 Q All right. Well, you said you noticed the tag, that  
6 it was from Georgia --

7 A Yes. But, at the time, I couldn't tell you exactly  
8 what the tag was. I just remembered --

9 Q Okay. At that point, you notice it was a Georgia  
10 tag, but you didn't write down the tag number, or anything  
11 like that?

12 A That's correct.

13 Q All right. Then you get on the highway?

14 A That's correct.

15 Q And you said you pulled over for a stationary --

16 A That's correct.

17 Q And so what you're doing is you're observing traffic?

18 A At that point, I was, actually, finishing up some  
19 paperwork -- or looking over some paperwork in my car. So  
20 I didn't have the radar. I wasn't going into it -- at  
21 that point, I wasn't running radar. That's correct.

22 Q Okay. And you -- as you testified, you've got Angie,  
23 the K9, in your car with you?

24 A That's correct.

25 Q And from that, I gather that, essentially, what your

1 role was was drug interdiction?

2 A We do -- in addition to traffic enforcement, we do  
3 criminal patrol. We detect various crimes, whether it be  
4 drug interdiction, terrorist interdiction, you know,  
5 looking for stolen property. 'I mean, we do a role of  
6 various...

7 Q Right. And I understand you're talking about your  
8 unit; is that right, that your unit's role is to do those  
9 various thing?

10 A Well, that's what -- I mean, I -- yeah. I personally  
11 would look -- you know, would do stuff, yes.

12 Q But, obviously, primarily, you were concerned with  
13 drugs. Because your dog is trained only to the scent of  
14 drugs, narcotics; isn't that right?

15 A At this point, we don't -- to my knowledge, there's  
16 not a -- the other crimes I mentioned, there's not a  
17 drug -- a dog that would be available to sniff out a  
18 terrorist at this time. So, yeah, I mean, really...

19 Q We know that. But you have dogs that are trained to  
20 smell guns; right?

21 A Well, carrying a gun in and of itself is not illegal.  
22 So outside of the schools, the Sheriff's Office doesn't  
23 have any dogs that do actual gun -- sniffs for guns.

24 Q Yes or no, there are dogs trained that Greenville  
25 County uses to smell for guns, weapons?

1 A We have a -- the only thing -- we have one bomb  
2 detecting dog. And I don't believe he, actually, sniffs  
3 for crime.

4 Q I'm not sure if you answered my question or not, so  
5 I'm going to ask it again.

6 If you're trying to find a weapon and you're using a  
7 dog, there are dogs that are trained to smell for weapons;  
8 is that correct?

9 A Yes.

10 Q And there are dogs who are trained to smell for bomb  
11 material?

12 A That's correct.

13 Q Okay. Your dog was not trained for that, for those  
14 smells?

15 A That's correct. Because, like I said, carrying a  
16 weapon in and of itself in a vehicle is not -- there's  
17 legal ways to carry a firearm, so.

18 Q Well, I understand that. That's not what I was  
19 asking. And the reason is they don't -- you don't like to  
20 cross train the dog; correct? You want him to look for  
21 drugs only, or you only want him to look for weapons, or  
22 bomb-making materials. You don't want to have a dog that  
23 does both; isn't that correct?

24 A That's correct.

25 Q Okay. And, in this case, you had a dog that was,



1 specifically, trained for drugs?

2 A That's correct.

3 Q Okay. And so when you're saying what you're looking  
4 for is a lot of these various crimes, maybe your unit is,  
5 but particularly you -- specifically, you, you're looking  
6 for drug interdiction because you have a dog that's  
7 trained for drugs; isn't that right?

8 A Well, the dog is a tool. I mean, it's -- you know, I  
9 carry mace on my belt. I don't walk around spraying  
10 everybody with mace. I mean, it's just -- it's a tool I  
11 have to use when it's needed. It's not something that's  
12 used all the time.

13 Q And my point is that your focus is on -- your primary  
14 focus on that day was drugs?

15 A With this car stop, yes.

16 Q Correct.

17 A After the -- after talking with Mr. Lopez, it turned  
18 into that focus, yes.

19 Q Well, you say after, but really you were interested  
20 in that from the point probably when you saw him speeding  
21 and he had a Georgia license; isn't that right?

22 A No, sir. There's hundreds of cars on 85 with Georgia  
23 license you see everyday. I mean, that's not the case.

24 Q Well, and you pulled him over?

25 A That's correct.

1 Q And at the point in which you said you were going to  
2 pull him over, you -- it looked like he had missed -- you  
3 said it looked like he had missed his exit; isn't that  
4 correct?

5 A That's correct.

6 Q Because you don't turn your lights on until you,  
7 actually, get on to the exit ramp?

8 A Yeah. I'm still trying to catch up to the vehicle at  
9 this point.

10 Q Because you're stationary and he had driven by?

11 A That's correct.

12 Q And, at this point, you talked about him being in the  
13 northbound lane of I-85?

14 A That's correct.

15 Q And he gets off, goes up. Is it a light at the exit?

16 A Yeah. You, actually, get off, and there's, actually,  
17 a light at the end of the ramp.

18 Q And he makes a left-hand turn?

19 A That's correct.

20 Q And that's on to White Horse Road?

21 A That's correct.

22 Q And, essentially --

23 A It's going north on White Horse. That's correct.

24 Q And, essentially, he's going across to the other side  
25 of the highway.

1 A That's correct.

2 Q And if he had gotten on the highway, he would have  
3 been getting on the highway for southbound I-85?

4 A Actually, when he stopped, actually, he went right  
5 past the exit to get on to southbound 85.

6 Q Well, that's because you were pulling him over. What  
7 I'm asking you is, if he had gone all the way around, he  
8 would have gotten on to southbound? --

9 A There's a possibility.

10 Q Okay. Because you testified that some of -- you kept  
11 saying, obviously, he was lying to you, and things like  
12 that. And one of the reasons you said you were relying --  
13 you were making that judgment was that he said he was  
14 going to Georgia, but was going in -- you said the wrong  
15 direction. Isn't that what you testified to?

16 A That's correct, yeah. He, basically, had gone almost  
17 five miles in the wrong direction when he was at Exit 40,  
18 which he could have easily gotten on and gone southbound  
19 then. I mean, it's -- if he was going south on 85 to  
20 begin with, he would know, okay, I need to get back on  
21 south 85.

22 Q He might -- you said he was from Georgia. You first  
23 saw him from -- at Exit 40; is that correct?

24 A That's correct.

25 Q You didn't see what side of the highway he was on,

1 because he was already at the Breakers?

2 A Well, the Breakers is, actually, on the northbound  
3 side. There's two gas stations that would have been much  
4 easier to get to if he had got off on the southbound side.

5 Q Okay. If he was -- if he had inadvertently got on  
6 the northbound side, or he got on the northbound side  
7 because he wanted to go to a specific place, and then go  
8 to Atlanta, it wouldn't have changed the fact that he  
9 wanted to go to Atlanta; isn't that correct?

10 A Ultimately, if he was wanting to go to Atlanta, I  
11 mean, how -- I'm not quite following your train of thought  
12 there. That's kind of -- in my opinion, that's not  
13 logical.

14 Q Let's break it down. Let's say you intended by the  
15 end of today to go back to your house --

16 MS. MONTES: Objection, Your Honor. I believe we're  
17 off track with this questioning.

18 THE COURT: Let's move on.

19 MR. SCALZO: All right.

20 BY MR. SCALZO:

21 Q Isn't it possible that when you asked him where he  
22 was going, he was telling you his end destination,  
23 Atlanta?

24 A It's possible.

25 Q All right. Now, whether he might have gotten off on

1 northbound, or went to make a phone call, when he says I'm  
2 going to Atlanta, that's, ultimately, where I'm going.  
3 That doesn't mean he's lying to you. That just means he's  
4 telling you where he's going to end up; isn't that  
5 correct?

6 A If I say I'm going on vacation, that doesn't -- and I  
7 go six months from now, it's kind of the same thing. I'm  
8 not -- there's a lot of gray area in between that needs to  
9 be kind of clarified.

10 Q And what I'm pointing out is that you said several  
11 times in your testimony earlier that, obviously, in other  
12 words, you had drawn the conclusion that because he was in  
13 the northbound and you asked him where he was going, and  
14 he said Atlanta, ultimately, you didn't clarify whether or  
15 not he was going to Atlanta later on today, he was trying  
16 to get to Atlanta right at that moment. You immediately  
17 said in your mind, obviously, he's lying to me?

18 A I tried to figure out where he was going and where  
19 he -- you know, at this point, where he was coming from.  
20 And, you know, he wouldn't give me a -- his story,  
21 obviously, was -- it appeared to me -- like I said, it was  
22 all over the place.

23 If you're coming from business somewhere in North  
24 Carolina, if you come down 85, you go to Exit 40. It  
25 makes no sense to turn around and go almost five miles

1 back up the interstate to go to a McDonalds.

2 Q And you didn't ask him that question, though, did  
3 you? You didn't say, when he said, I'm going to Atlanta,  
4 hey, sir, it doesn't make any sense that you're going to  
5 Atlanta, but you stopped here, or you didn't stop at  
6 that -- you didn't ask him that question, did you?

7 A No.

8 Q Okay. And one of the things that is in your mind --  
9 you've got a hunch is really what you've got, don't you?  
10 That's what you're working off of?

11 A Well, I mean, like I say, he's already provided four  
12 different addresses, which from my experience is a -- is  
13 common for somebody that doesn't want anyone to know where  
14 to be tracked down. He, obviously, hasn't -- doesn't know  
15 where -- want me to know exactly where he's going and  
16 where he's coming from. He makes up a story about his  
17 son, a daughter, whatnot. I mean, he's making stuff up as  
18 he goes. I mean, that was pretty obvious. I mean,  
19 there's...

20 Q It was obvious to you, at least, that's what you're  
21 saying. But that wasn't my question --

22 A I think to a reasonable person that it would be  
23 obvious.

24 Q My question was, you were really operating off a  
25 hunch. You have a hunch of what you thought was going on?

1 A I think this is clear signs of deceptive behavior,  
2 you know, based on my training that there's some type of  
3 criminal activity that he's involved with.

4 Q Okay. And you testified to that earlier. Let's talk  
5 about the criminal activity. First of all, you talked  
6 about the different addresses. Now, you ran a criminal  
7 history on him; correct?

8 A Later, yes.

9 Q You ran the VIN number off of the car, didn't you, to  
10 try to see if it was stolen?

11 A Well, I ran the actual registration.

12 Q The registration.

13 A It matched up. That's correct.

14 Q You had insurance information?

15 A Uh-huh.

16 Q The insurance information was valid?

17 A That's correct.

18 Q The driver's license was valid. In other words, it  
19 didn't come back, this guy has a suspended license, this  
20 guy -- this person doesn't even exist. It was a valid  
21 driver's license?

22 A That's correct.

23 Q The registration was valid?

24 A Correct.

25 Q It matched the car?

1 A Correct.

2 Q So let's talk -- put the drug issues all of that  
3 aside for a second. Aside from the warning ticket or the  
4 speeding ticket you might have given him, there wasn't  
5 anything else that you could have charged him with with  
6 regard to the car. You couldn't have charged him -- he  
7 wasn't driving a stolen car; right?

8 A No. The car was not stolen.

9 Q He wasn't driving without a valid license?

10 A Well, yeah. It was valid in the state, but, you  
11 know, he hasn't registered, obviously, in Georgia to have  
12 a valid Georgia driver's license.

13 Q Okay. But he was driving with a valid license is the  
14 answer; isn't that right?

15 A Yes.

16 Q Okay. And he had insurance on the car?

17 A Correct.

18 Q And it was the proper insurance for that car?

19 A To my knowledge, yes.

20 Q Then you talked about the address of -- two of the  
21 addresses were in the Atlanta suburban area?

22 A Actually, three of them.

23 Q Three of them. I'm sorry.

24 A That's correct.

25 Q All right. So this wasn't -- aside from the



1 Louisiana address, basically, everything was in Georgia?

2 A Yeah. At various locations in Georgia -- in and  
3 around the Atlanta area.

4 Q All right. What you did not have was any evidence  
5 that he had stolen the car; correct?

6 A Like I said, the car was registered to him.

7 Q You had no evidence -- you didn't smell any marijuana  
8 in the car. He hadn't just been using any drugs in the  
9 car that you could smell?

10 A That's correct.

11 Q You didn't see any drugs in the car?

12 A Like I said, the only thing I observed in the car was  
13 the two cell phones.

14 Q All right. And we'll talk about the two cell phones  
15 in just a second. And you, also, didn't see like a pipe  
16 or anything like that in the car?

17 A I never indicated that.

18 Q But that's something, in your experience, you've seen  
19 before. You've seen that with people having a pipe  
20 driving -- or smelling of marijuana in the car?

21 A Most people that smoke marijuana -- or have a pipe,  
22 you're probably referring to a methamphetamine or a crack  
23 pipe, most of those aren't your ones that's trafficking  
24 large amounts of drugs.

25 Q But we're not talking about -- again, we haven't

1       gotten to the point where you found the drugs yet. This  
2       is all the point before. You don't know anything, other  
3       than this information. You haven't found any drugs yet.  
4       You haven't even run your dog yet; isn't that correct?

5       A     That's correct.

6       Q     And so you kept saying, obviously. And I asked you  
7       whether or not you, basically, had a hunch. And you say  
8       you're pointing to this very specific things. So I'm  
9       trying to understand the specific things and what they're  
10      telling you.

11       And, at this point, the things that you've got that  
12      you're, specifically, pointing to are really telling you  
13      I'm a little suspicious, but you don't have anything  
14      that's telling you he's driving -- trafficking cocaine  
15      yet, because you haven't found any cocaine yet; isn't that  
16      right?

17      A     At that point, no, the cocaine had not been found.

18      Q     All right. And he's in his car at first?

19      A     That's correct.

20      Q     And then you decide to get him out of his car?

21      A     Which we do -- I do with all the traffic stops. I  
22      get them out because it's easier, especially on the  
23      interstate and that environment, it's so hard to hear with  
24      cars going by. So we'll get out and have them stand,  
25      actually, away from traffic at a safer location than,

1 actually, me leaning up in the car trying to talk to  
2 someone. So, yeah, for communication and it's a safety  
3 factor for both myself and the person that's stopped.

4 Q Okay. And in getting him out of the car, you didn't  
5 get the sense that -- from the sort or physical standpoint  
6 that he was somehow going to be difficult to contain. He  
7 was cooperative with you?

8 A Outside of his, you know, nervous behavior -- I mean,  
9 just -- I know what this guy was going to do.

10 Q But you, obviously, felt secure enough that he wasn't  
11 going to just run and charge at you, or you didn't feel  
12 that he was going to run away by getting him out of the  
13 car and put -- change the dynamics of having him outside  
14 the car versus inside the car?

15 A Well, I mean, when I asked him out, like I said, this  
16 was pretty early on in the traffic stop. And it was  
17 really before we got into a lot of this other questioning.  
18 But, I mean, it's when his nervousness really starts to  
19 show.

20 Q All right. And you had decided -- I'm not sure at  
21 what point, and maybe you can tell us. But you had  
22 decided you were going to give him a warning ticket for  
23 the speeding?

24 A That's correct.

25 Q And when you get him out and you bring him to the

1 back of his car and you're kind of in front of your car,  
2 is that location wise where you're at?

3 A We're, actually, kind of off to the right, the right  
4 of the car.

5 Q And you're -- you've got your ticket book out, your  
6 warning ticket book out. And you're writing the warning  
7 ticket as you're talking to him?

8 A That's correct.

9 Q And explaining -- I'm assuming you're explaining what  
10 the warning is?

11 A Well, I'll explain the whole warning -- what the  
12 warning is at -- once I'm finished with it.

13 Q And what the warning, essentially, is is I'm not,  
14 actually, giving you a ticket where you'll have to pay a  
15 fine; correct?

16 A That's correct.

17 Q And I'm just literally warning you for the next time  
18 that you shouldn't be speeding?

19 A Correct.

20 Q And you're going to be free to go?

21 A Well, yeah, at -- when the actual warning is issued,  
22 yeah, there's no further -- that violation has been  
23 explained. And he's given a warning. And, at that point,  
24 that warning is complete.

25 Q And then you asked him if he understood that?

1       A     Right.

2       Q     He said he did understand that. And before he

3       leaves, you ask him if you could search his car?

4       A     That's correct.

5       Q     And you said he didn't really say yes or no?

6       A     That's correct.

7       Q     But, eventually -- and you wanted him to say yes or

8       no. You wanted him to give you a specific answer?

9       A     Well, I mean, yeah. I like to have a specific

10      answer.

11      Q     Okay. Me and you both. You then say to him, give me

12      a specific answer. And he says, well, I really would like

13      to just leave?

14      A     That's correct.

15      Q     And you took that as a no. He didn't say no, but you

16      took it to mean that he didn't want you to search the car?

17      A     That's correct.

18      Q     And what you told him was that -- you're on the side

19      of the highway, he could go, but his car was going to

20      stay?

21      A     Right. I had a backup unit coming. He is -- his

22      behavior -- I don't know if he's going to try to fight,

23      what his intentions are. So I want him to feel that I'm

24      as least a threat to him at this -- right now until I get

25      somebody else there to help keep an eye on this guy, and

1 make sure we control the situation.

2 Q So you're telling us that the tactic you were using  
3 was you wanted to search the car, but you wanted to put  
4 him at enough ease that you wouldn't have to rely -- you  
5 wouldn't need to handle him while you're, also, trying to  
6 search the car?

7 A Well, we're not going to search a car without a  
8 backup officer there. But, you know, in that process,  
9 Deputy McBee was on the way, you know. I wanted him to be  
10 at as much ease as -- you know, to take his mind off of  
11 any type of maybe violent thoughts, I mean, that -- or  
12 anything that would put me in jeopardy.

13 Q But you had him outside of the car. You didn't take  
14 him and put him in your car at that point; right?

15 A At that point, I didn't place him in my car. That's  
16 correct. And I could sit there at -- I mean, at a safe  
17 distance, you know, and watch this -- watch somebody --  
18 you know, you try to keep them at ease. You try to -- you  
19 know, you try to comfort them. That way, they're emotion  
20 level is not as -- he doesn't get too excited, you know,  
21 and do something that could hurt himself or me.

22 Q What you wanted to do was search the car and you  
23 wanted his consent. And you figured the easiest way to do  
24 it, you know, honey instead of vinegar gets you more  
25 flies.

1           So you said, I'll try to make him feel better about  
2     it. I'll give him a warning ticket for the speeding.  
3     I'll then ask him politely can I search the car. When he  
4     said no, you were then faced with trying to figure out,  
5     well, he's now not going to give me consent, now, how do I  
6     get into the car? That's another way to look at it, isn't  
7     it?

8     A     Well, the warning ticket and the whole car search  
9     issue doesn't come up just because I stopped the guy for  
10    speeding. We stop hundreds of people monthly out there.  
11    And a small percentage of those that show -- that have  
12    behavior like this, yeah, we may ask for a consent to  
13    search. There may be other indicators of some type of  
14    activity going on. We're not stopping everybody for  
15    speeding and searching everybody. A very small  
16    percentage, actually, get searched out there.

17           This gentleman was not consistent with 95 plus  
18    percent of the people that we stop daily, which, yeah, led  
19    me to believe that during the course of the traffic stop  
20    the more this went on, yeah, he's up to some type of  
21    criminal activity.

22    Q     Some type of criminal activity --

23    A     More specifically --

24    Q     -- but you couldn't put your finger on what it was?

25    A     Yeah, based on this through the training and

1 experience out there, I mean, this type of behavior  
2 probably was going to be some type of drug violation in my  
3 mind --

4 Q Okay.

5 A -- at this point when we come to ask to search the  
6 vehicle.

7 Q All right. So, again, that brings us back to what's  
8 going on there. You -- are you saying that you got a  
9 hunch that this is drug activity at the point at which  
10 you're asking him to search the car?

11 A I think I have reasonable suspicion that there's some  
12 type of criminal activity. The probability is pretty high  
13 that it's going to be some type of illegal drug activity.

14 Q So you're saying that you have that in your mind at  
15 the point at which you ask for consent?

16 A That's correct.

17 Q So what you didn't do is say, if I've got this  
18 reasonable suspicion, which means I believe I can just  
19 detain him and his car so I can search it. Instead, you  
20 just said, can I search it?

21 A No. At that point -- like I said, prior to running  
22 the dog, you know, I didn't see anything in plain view  
23 that would give me the probable cause to go out there and  
24 just straight into a search, you know, though he's --  
25 what's going on, you know. I've got the reasonable



1 suspicion that something is going on.

2 At this point, I'm trying to make it in the least  
3 intrusive manner, hey, I'll ask him if I can search his  
4 car, you know. If he says no, then, obviously, I'm going  
5 to run the police dog.

6 Q Right. Because you had decided that you believed  
7 what was going on was drugs; correct?

8 A At this point, yes.

9 Q All right. And you know that in order -- you've  
10 completed the warning ticket and you've given it back to  
11 him; right? Are you on the same page with me?

12 A Right.

13 Q You would know that you would need what you could  
14 call reasonable suspicion to further detain him and search  
15 his car if you didn't have consent; isn't that true?

16 A As far as -- rephrase that for me.

17 Q I may have asked too many questions at once.

18 If you've got consent to search somebody's car, you  
19 don't need any other legal authority if they gave you  
20 authority to search their car; correct?

21 A Yeah. But we don't just ask --

22 Q Well, that's not what I asked you --

23 A -- everybody we stop.

24 Q That's not what I asked you. I asked you if you  
25 walked up to me and said, can I search your car? And I

1       said, yes, you wouldn't have any -- I gave you consent,  
2       and you can search; isn't that correct?

3       A     We don't -- that's not how we operate.

4       Q     I know you're not going to do that. But I'm saying  
5       in that situation, you could do that.

6       A     There's got to be some basis to ask for consent to  
7       search.

8       Q     By your policy. But, legally, you can just ask  
9       somebody if you can search. And if they say yes, you can  
10      search, can't you?

11      A     To some degree, yes.

12      Q     All right. Now, in this situation, if he had said  
13      yes, you can search my car when you asked him that first  
14      time, you could have just searched the car. You wouldn't  
15      have needed any other reasonable suspicion or probable  
16      cause; isn't that right?

17      A     If he gives us consent at that point, yes, we can  
18      search his car.

19      Q     All right. But if he does not give you consent to  
20      search, you now have to have some other justification, at  
21      least, reasonable suspicion or probable cause; isn't that  
22      right?

23      A     Probable cause.

24      Q     In order for you to take your dog out to run him  
25      around the car, you need something more than --

1 A Yeah. To run the dog, yes, I need some type of  
2 reasonable suspicion at that point.

3 Q All right. But you're saying you had reasonable  
4 suspicion when you asked him for consent to search the  
5 car?

6 A That's correct.

7 Q I think that's what you said; right?

8 A Yeah, correct.

9 Q You then get Angie out of the car to run her around  
10 the Intrepid?

11 A That's correct.

12 Q And you said that there's training and so forth that  
13 you and Angie had gone through together; is that right?

14 A Correct.

15 Q You said that in order for her to be certified -- I  
16 guess it was a national certification, you said something  
17 about there were 30 attempts, and she had to have 28; is  
18 that correct?

19 A Yeah. I believe -- I'd have to refer to the exact --  
20 and that was off of memory. I would have to refer to the  
21 actual certification rule. Let me see if I have that with  
22 me.

23 Q All right. And what I'm curious about that you  
24 didn't testify to was false positives, the issue being  
25 when the dog -- you're trying to search an area, does the

1 dog indicate that something is there, but it turns out  
2 there really isn't something there? And, in training, I'm  
3 assuming you might find -- you try to find those  
4 situations out and, perhaps, correct the behavior; isn't  
5 that right?

6 A That's correct. There have been instances where a  
7 dog will alert that there, actually, may not be physical  
8 drugs there at that time, but the odor from where they  
9 were there still remains in that area.

10 Q That's your belief, but you don't have any really way  
11 of knowing whether or not the dog is smelling the odor, or  
12 just scratching, or doing whatever they do to alert?

13 A We do it off of what we've trained with them based on  
14 the behavior. It's not -- the dog doesn't just randomly  
15 walk down and scratch just a scratch because there's --  
16 obviously, there's -- you know, you watch the dog's  
17 behavior.

18 And it's almost like, you know, smelling popcorn. If  
19 you see -- smell popcorn coming through the door, you  
20 start sniffing, sniffing more intently. If you want to  
21 try to track it down, you start kind of sniffing with your  
22 nose and work toward it. It's kind of the same thing with  
23 a dog. A dog comes in. There's some behavioral change  
24 and breathing change with the sniffing. And then when the  
25 dog, actually, kind of gets in the -- based on the

1 training is when we normally -- the dog will begin to  
2 scratch.

3 Q Except that the difference between us as humans'  
4 smelling that popcorn and the dog is we know what we want  
5 to do. We want to find that popcorn. The dog doesn't  
6 want to find the drugs just to find the drugs. The dog  
7 wants to find the drugs because you're going to give the  
8 dog a reward. That's how you train him.

9 A We have the little rubber hose, I believe, as -- or a  
10 burlap little sack as a reward, yes. It's all a game to  
11 the dog.

12 Q Exactly. It's a game to the dog. And what's going  
13 on is when -- it's a she I'm assuming, Angie is a female?

14 A That's correct.

15 Q That when she alerted, you're going to -- at some  
16 point, you're going to reward her for alerting, for doing  
17 a successful job?

18 A That's correct.

19 Q And what I'm getting at is when you're training when  
20 there are false positives, if the dog alerts but there  
21 really isn't something there, walk me through the steps  
22 you go through and at a what point you, actually, reward  
23 the dog.

24 A As far as -- I'm kind of confused exactly what steps  
25 you're referring to.

1 Q Okay. What you didn't describe when the Solicitor  
2 was questioning you was when the -- you walked the dog  
3 around in this case?

4 A That's correct.

5 Q Angie around the car?

6 A That's correct.

7 Q She alerted, you said, in two places, one on the left  
8 side and one on the right side?

9 A Correct.

10 Q You didn't describe rewarding her, but I'm assuming  
11 you did reward her.

12 A That's correct.

13 Q At what point did you reward her?

14 A Well, the first -- normally, in a situation like  
15 that, she doesn't get rewarded until the very end. She'll  
16 get praised. She doesn't get her toy usually until  
17 what -- you know, until I'm done working the car. That's  
18 my -- the way I do.

19 Q Okay. And when you say "working the car," what does  
20 that mean? What's entailed in working the car?

21 A Well, until I'm done, you know, walking around the  
22 car or feel that, you know, I'm done with the search of  
23 the vehicle, the free air sniff.

24 Q The free air sniff search; right? That doesn't  
25 include you opening the car and looking through the car?

1 A That's correct.

2 Q So what happens is you walk her around. When you  
3 feel that you've finished your sniff, or the dog has  
4 finished her sniff, you then take her -- do you bring her  
5 to your car?

6 A That's correct.

7 Q You're going to reward her at the car or before you  
8 put her back in the car for doing the sniff?

9 A No, no. You walk her around -- when she alerts --  
10 she alerted to the left side.

11 Q Right.

12 A Instead of giving her her toy right then, I give her  
13 a praise -- a praise reward for the dog.

14 Then we continue working around. When she gets to  
15 the second side -- to the right side and alerts, at that  
16 point, I didn't get any behavior change at the front of  
17 the vehicle coming down. I've already got an alert on the  
18 left side. She alerts on the right rear.

19 At that point, you know, she would get her toy.  
20 Because I feel, you know, based on what she's said there  
21 that, hey, she's getting an odor from the rear of this  
22 vehicle.

23 Q Okay. But you reward her before you search the car?

24 A That's correct, before --

25 Q Before you physically search the car?

1 A That's correct.

2 Q And that's what you -- and that's the method you  
3 would always use, even in training. Because, obviously,  
4 you're going to train her for that method?

5 A Well, yeah. But in training, we do cars that may  
6 have one or two hides. They may run five cars that have  
7 zero hides. So it's, you know, based on the actual dog  
8 doing the right thing.

9 Q Maybe. Let's ask a couple more questions and let the  
10 jury figure that part out, whether it's the right thing.

11 But my question is, after you have searched the car  
12 and you found what you believed to be drugs; right?

13 A Right.

14 Q You've already rewarded the dog?

15 A That's correct.

16 Q All right. And, in fact, if you had done one of  
17 those situations where there was no -- there weren't any  
18 drugs in the car, you would have rewarded the dog before  
19 you searched the car to find it?

20 A I'm sorry.

21 Q If you would have -- in a situation -- you described  
22 a situation where the dog would run through and they would  
23 find drugs in some cars, because there were drugs in some  
24 cars, or in some areas. There's another area where there  
25 wouldn't be any drugs. Because that's part of training --



1 or testing of the dog?

2 A That's correct.

3 Q What you're describing is when the dog does that free  
4 air sniff, in those instances where there were no drugs in  
5 the area that the dog was searching, the dog still would  
6 have been rewarded prior to you going and finding whether  
7 or not there were drugs in that area because of your  
8 method?

9 A She gets praised. She doesn't get her toy at that  
10 point, no.

11 Q She doesn't get her toy at what point?

12 A You know, if -- in training, if we run a car and  
13 there's -- you know, that's what we consider a blank car  
14 where there's nothing in it, you know. If you run around  
15 and, you know, she does alert, she gets praised because  
16 she did a good job. But she doesn't get her toy unless  
17 there's an actual, you know, alert on the vehicle, or  
18 location.

19 Q Unless she alerts?

20 A Right.

21 Q Right. So it's the alerting that you're rewarding;  
22 correct?

23 A Correct.

24 Q You opened the trunk of the car and you -- after you  
25 put Angie back. And you searched -- you're now searching

1 the contents of the trunk?

2 A I did a brief check of the trunk, yes.

3 Q And, at first, you didn't open anything up. You  
4 didn't see anything that stood out to you?

5 A It was just a bunch -- it looked like there was a  
6 bunch of junk back there, an old computer monitor,  
7 printer, some clothes, a bag of tools.

8 Q Okay. And then you decided you were going to search  
9 the interior of the car?

10 A Yeah. Normally, when I search a car, we usually do  
11 what we call just a quick search where I make sure that  
12 there's nothing obvious before we do a detailed search. I  
13 didn't see anything in the trunk. I go check the glove  
14 box, the center console, under the seats, you know, areas  
15 that are known for -- are common areas for easy  
16 concealment of contraband, or weapons and make sure -- and  
17 then once we've done that, we'll go back and do a detailed  
18 search of the actual -- the whole vehicle.

19 Q All right. You find the gun within the center  
20 console. And, now, you're going back to the trunk after  
21 you do that; right?

22 A Yeah, a short time later, yes.

23 Q Okay. So, now, you're looking -- you're determining  
24 to look more in detail into the trunk?

25 A Right. And I, actually, go through the items that

1 are in the trunk.

2 Q Now, when you have the cognac bottle, you didn't get  
3 Angie to sniff the cognac bottle?

4 A No.

5 Q Or the box, I should say.

6 A That's correct.

7 Q Okay. And the cognac bottle is in the trunk. Are  
8 the boxes in the trunk?

9 A Yes. Actually -- yeah. It was kind of up towards  
10 the backseat, but it's, actually, in the trunk  
11 compartment, yes.

12 Q So if you're facing the trunk and you open the trunk,  
13 where is the cognac box?

14 A It's, actually -- it was in a plastic bag with some  
15 clothes, kind of almost in the center more or less of the  
16 trunk up against the back. I believe it was, actually,  
17 behind the printer or the monitor in a bag of clothes, the  
18 actual bag it was in. It wasn't sitting loose as you see  
19 it there. It was, actually, in another bag.

20 Q All right. And you said Angie alerted. But she  
21 scratched on the right side, or the left side of car?

22 A Yeah. The actual left -- I believe the door -- rear  
23 door seal, and then the right tire well -- rear tire well.

24 Q And she did not alert to the back of the trunk, or  
25 any other location of the vehicle?

1 A That's correct.

2 Q Bear with me one moment.

3 When Mr. Lopez provides you -- or provides the police  
4 with a phone number to contact some other person who he  
5 was supposed to bring this cognac box to -- right? You're  
6 aware that that took place?

7 A That's correct.

8 Q You described what develops through the team that's  
9 now going to finish delivering the cognac box.

10 A I had a limited part in that.

11 Q Right. You had a limited role in that. But you're  
12 aware of kind of what -- some of the things that had been  
13 going on?

14 A That's correct.

15 Q And you testified that, I guess, Investigator  
16 Grounsell was the undercover person that was going to  
17 drive the car?

18 A That's correct.

19 Q And Mr. Mackenzie asked you if the co-defendant,  
20 Nelson, knew the driver, and you said you didn't know?

21 A I don't know if he knew -- if they had ever seen each  
22 other face-to-face or not. I can't testify to that.

23 Q Okay. I understand that. Now, what you're talking  
24 about is you didn't know if Mr. Nelson had seen Mr. Lopez?

25 A That's correct.

1 Q But you know that he never saw Investigator  
2 Grounsell?

3 A I'm assuming so.

4 MR. SCALZO: No further questions, Your Honor.

5 THE COURT: All right. Mr. Mackenzie, do you have  
6 any recross now?

7 MR. MACKENZIE: No, sir, Your Honor.

8 THE COURT: All right. Any redirect?

9 MS. MONTS: No, Your Honor.

10 THE COURT: Thank you.

11 You can step down.

12 All right. Take the jury out for a short recess.

13 (WHEREUPON, the jury was excused from open court at  
14 approximately 11:05 a.m.)

15 THE COURT: All right. We'll take a short recess.

16 MR. MACKENZIE: Your Honor, can I -- Mr. Nelson needs  
17 his blood pressure medicine.

18 Is that okay if --

19 THE COURT: Sure.

20 MR. MACKENZIE: -- he can get it?

21 THE COURT: Where is it?

22 DEFENDANT NELSON: My mother has it.

23 THE COURT: Sure.

24 MR. SCALZO: Judge, how long is the recess?

25 THE COURT: About 10 minutes.

1 MS. MONTIS: Your Honor, may Officer Hines be excused?

2 THE COURT: Any objection to excusing this officer?

3 MR. SCALZO: I don't --

4 MR. MACKENZIE: No, sir, Your Honor.

5 THE COURT: Thank you.

6 You're excused.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Bring the jury in.

9 MR. SCALZO: Judge, before the jury comes in --

10 THE COURT: Hold on.

11 MR. SCALZO: I just want to remake my motion to  
12 suppress because that particular officer testified again.  
13 And to preserve the record, I want to remake my objection.

14 THE COURT: All right. Subject to your objection.

15 MR. MACKENZIE: Can I raise one issue?

16 THE COURT: Sure.

17 MR. MACKENZIE: I think this is already covered. And  
18 I think this is already understood. But I just want to  
19 make it clear that I'm objecting to any testimony from --  
20 or statements from Mr. Lopez that would identify  
21 Mr. Nelson, based on my previous -- I think that's  
22 understood.

23 MS. MONTIS: It was -- and --

24 MR. MACKENZIE: Based on the Bruton issue.

25 MS. MONTIS: There was something said yesterday I

1 noticed you were surprised about. Do you recall what that  
2 was?

3 MR. MACKENZIE: We've got the statement covered. But  
4 I'm talking about any oral statements from Mr. Lopez that  
5 I may not be aware of.

6 THE COURT: Well, if there are none --  
7 Do you know of any statements by Lopez?

8 MS. MONTS: Your Honor, basically, the information  
9 that was in the statement was told by the officer and is  
10 in his report. But that's the only --

11 THE COURT: Okay.

12 MS. MONTS: And we've redacted that to not use the  
13 name Tay.

14 THE COURT: All right.

15 MS. MONTS: But the rest of the information in the  
16 statement will be mentioned.

17 THE COURT: Yes, it will.

18 All right. Bring the jury in.

19 (WHEREUPON, the jury came into open court at  
20 approximately 11:31 a.m.)

21 THE COURT: All right.

22 MS. MONTS: Your Honor, may we approach?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: You may proceed.

1 MS. MONTIS: Your Honor, the State calls Officer Chris  
2 McBee.

3 THE CLERK: Well, the Bible is rather covered, but if  
4 you could move the things over.

5 Place your left hand on the Bible and raise your  
6 right hand.

7 WHEREUPON,

8 CHRISTOPHER THOMAS MCBEE,  
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 Please be seated.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION

14 BY MS. MONTIS:

15 Q Officer, please, tell the jury where you're employed,  
16 and how long you've worked there.

17 A My name is Christopher Thomas McBee. And I work for  
18 the Greenville County Sheriff's Office. This year will be  
19 15 years.

20 Q Can you explain some of your experience and training  
21 with the Sheriff's Office and in law enforcement?

22 A Sure. I, of course, received the basic training that  
23 all officers receive. As a result of my tenure at the  
24 Sheriff's Office, I've been fortunate to receive  
25 approximately 1,000 hours of additional training to

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1 include specific training in traffic enforcement, and  
2 criminal drug investigations, and so on.

3 I, now, am assigned to the K9 services unit. And, in  
4 that unit, I've handled two dogs. I have personally about  
5 2,500 hours of training between the two dogs. And I  
6 currently handle a Belgian Malinois named Barry.

7 Q And back on January 21 of 2005, what unit were you  
8 assigned to, and what were your duties?

9 A I was assigned to the traffic enforcement unit. I  
10 was one of Chris Hines partners working the interstate,  
11 I-85. And I was partners with a black female German  
12 Shepherd name Cipher [phonetic].

13 Q And, specifically, on January 21st, what area would  
14 you have worked, and what were you working?

15 A My main area of responsibility was criminal patrol on  
16 I-85 within Greenville County.

17 Q And at approximately 2:30 that afternoon, do you  
18 recall receiving a call to go anywhere -- or where did you  
19 go?

20 A At about 2:30, I received a call from Deputy Hines  
21 requesting backup on a traffic stop, which is fairly  
22 common. I responded to the area of White Horse Road on  
23 the overpass off the northbound side.

24 Q What did you observe when you got to that location?

25 A When I got to that location, I noticed that Deputy

1 Hines had a Dodge Intrepid stopped. There was an  
2 individual, who was later identified as Daniel Lopez,  
3 standing on a concrete median that was sort of shaped like  
4 a triangle. It was at one of the exit points. He was  
5 standing there. I pulled up behind Deputy Hines' vehicle.  
6 And he asked me to stand by with the individual who was on  
7 the side of the road.

8 Q Is this location in Greenville County?

9 A It is.

10 Q What did you observe Officer Hines do?

11 A Almost immediately, as I pulled up and was with  
12 Mr. Lopez, Deputy Hines then got his K9, Angie, and began  
13 to work the vehicle that he had pulled over.

14 Q Did you and Officer Hines receive your training  
15 regarding K9's from the same company?

16 A All our training is done in-house. All our dogs come  
17 in green. We're responsible for all the training.  
18 Yearly, they're certified through the North American  
19 Police Work Dog Association, if that's what you're  
20 referring to, yes, the same certification.

21 Q And what did you observe? How long did this  
22 situation take with the K9?

23 A It was fairly quick. I couldn't tell you the  
24 exact -- I noticed he worked the exterior of the car. I  
25 noticed he was fairly quick.

1 Q And did you talk to Mr. Lopez while this was going  
2 on, or afterward?

3 A I did.

4 Q What -- please, describe that location.

5 MR. SCALZO: And, Judge, I'm going to renew my prior  
6 objection.

7 THE COURT: All right. Subject to your objection.

8 THE WITNESS: And I'll explain to you why I was  
9 speaking to him. In that capacity as a backup, I'm  
10 responsible for a couple of things. One is the safety of  
11 my partner and, also, my safety, but, also, the safety of  
12 the people we have pulled over, because of traffic and  
13 anything else that may occur at that point.

14 Obviously, at that point, Deputy Hines was using his  
15 drug detector dog. I wasn't exactly sure of the  
16 circumstances. But it was, also, part of my job, at that  
17 point, to sort of ease any tension that may have been  
18 coming from Mr. Lopez at that time.

19 So, basically, at the very onset of what was  
20 happening, I was having general conversation with him  
21 about the weather, where he was coming, and so forth.

22 BY MS. MONTS:

23 Q And, please, describe -- did you notice anything  
24 about Mr. Lopez's demeanor?

25 A What was unusual to me is as Deputy Hines worked the

1 exterior of the car with the K9, Angie, and then later  
2 went in to a search of the vehicle, I continued to have  
3 this conversation with Mr. Lopez. It was very generalized  
4 stuff, nothing major.

5 And what I found completely unusual is that as we  
6 spoke, he was almost entranced at watching his vehicle and  
7 watching what Deputy Hines was doing to the point that I  
8 was having problems maintaining eye contact. He was  
9 almost oblivious to my presence there, if that helps  
10 you -- helps me describe what I was seeing. I'd have to  
11 try to redirect his attention to me just to be able to  
12 talk to him. But he was almost -- it was like I wasn't  
13 even there as Deputy Hines was doing what he was doing  
14 with the K9, Angie.

15 Q Did you find out from your conversation where  
16 Mr. Lopez was from, or where he had been?

17 A He told me that he was coming from Fort Bragg.

18 Q And did you observe Officer Hines search the vehicle?

19 A I did.

20 Q What did you observe?

21 A I observed him search the trunk of the vehicle very  
22 quickly. Then he did an interior search of the vehicle.  
23 And he -- at one point, he advised me that he had found a  
24 firearm inside the vehicle. I then, also, witnessed him  
25 work -- search the trunk of the vehicle. And, again,

1 after he searched the interior, he advised me that he had  
2 found an amount of cocaine inside the vehicle.

3 Q And regarding the gun, did you see this?

4 A Yes.

5 Q What did you observe about it?

6 A He -- I can't tell you exactly when he showed it to  
7 me, but I did observe the gun to see that the serial  
8 number on the gun was obliterated. Because, obviously --  
9 that's what he told me. Otherwise, it would have been  
10 legally possessed in the car where it was. And he  
11 showed me that the serial number was obliterated at that  
12 point.

13 Q And describe what you saw regarding the trunk.

14 A The trunk was, as he said -- I can't tell you exactly  
15 what was in there. I do remember a computer monitor, sort  
16 of disheveled clothing, and tools, and so forth. It  
17 wasn't very neat.

18 Q Did Officer Hines, subsequently, show you what he  
19 found in the trunk?

20 A He did.

21 Q What did you observe?

22 A He showed me a gold-colored box that would contain a  
23 cognac bottle. Inside the box was a substance wrapped in  
24 plastic that he told me field tested positive for cocaine.

25 Q And did you see the substance?

1 A Yes.

2 Q What did it look like?

3 A It's a whitish powder. Some of it was still part  
4 packed, not like crack cocaine, but as if something had  
5 caused the cocaine to be under pressure. But most of it  
6 was in a packed form.

7 Q And was Mr. Lopez handcuffed?

8 A He was.

9 Q Was he placed under arrest?

10 A He was.

11 Q Was he read his Miranda rights?

12 A Deputy Hines read him his Miranda warnings.

13 Q Did you or somebody else take the -- Mr. Lopez  
14 somewhere from that scene?

15 A Yes. Deputy Ruddy was called to transport Mr. Lopez.  
16 Deputy Hines and I, as he told you earlier, we both have  
17 dogs. We're not allowed to transport with the dogs,  
18 obviously, for obvious reasons. Also, we're not allowed  
19 by policy to transport prisoners in the front seat of our  
20 vehicle.

21 So, at that time, we called for Deputy Ruddy. He  
22 responded. And he was placed in the cage portion of his  
23 car.

24 Q Was your car equipped with a video recording device?

25 A It is. It is now, and it was then, yes.

1 Q And did you have a recorder going on from when you  
2 pulled up at the scene?

3 A I did.

4 MS. MONTIS: I'd like to have this marked.

5 (WHEREUPON, State's Exhibit No. 7 was marked for  
6 identification only.)

7 BY MS. MONTIS:

8 Q Deputy, I'm going to hand you what's been marked  
9 as State's Exhibit No. 7. Would you, please, identify  
10 this?

11 A It's a DVD of the original recording that was taken  
12 on the scene from that date.

13 Q Was that provided by you?

14 A Yes, it was.

15 MS. MONTIS: Your Honor, we'd move this into evidence  
16 at this time.

17 THE COURT: Any objection?

18 MR. MACKENZIE: No, sir, Your Honor.

19 MR. SCALZO: Nothing, other than the basic running  
20 objection.

21 THE COURT: All right. Put it in.

22 (WHEREUPON, State's Exhibit No. 7 was admitted into  
23 evidence.)

24 MS. MONTIS: Your Honor, we would ask to be able to  
25 publish the video.

1 THE COURT: Yes.

2 (WHEREUPON, a portion of State's Exhibit No. 7 was  
3 played in open court.)

4 MS. MONTIS: Your Honor, the sound is not working.  
5 We're trying to get somebody over here to get the sound to  
6 work on this.

7 THE COURT: Are you going to have to play it over?

8 MS. MONTIS: Yes, Your Honor.

9 THE COURT: Well, why don't you stop it until you get  
10 somebody up here and get it fixed.

11 MS. MONTIS: It's fixed, Your Honor.

12 THE COURT: It's fixed?

13 MS. MONTIS: Yes.

14 (WHEREUPON, a portion of State's Exhibit No. 7 was  
15 played in open court.)

16 MS. MONTIS: Your Honor, may we approach?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: Take the jury out for a minute, please.

20 (WHEREUPON, the jury was excused from open court at  
21 approximately 11:50 a.m.)

22 THE COURT: All right. Get it fixed.

23 (WHEREUPON, a break was taken.)

24 MS. MONTIS: Your Honor, I believe we're ready.

25 THE COURT: Bring the jury in, please.



1 ( (WHEREUPON, the jury came into open court at  
2 approximately 12:20 p.m.)

3 THE COURT: All right. Solicitor, you may proceed.

4 MS. MONTS: I'll continue with the video.

5 (WHEREUPON, State's Exhibit No. 7 was played in open  
6 court.)

7 MS. MONTS: Your Honor, there's about four minutes  
8 left. We can -- the sound is going to be out now, so we  
9 can just fast forward for the last four minutes.

10 THE COURT: All right. That's fine.

11 (WHEREUPON, State's Exhibit No. 7 continued to be  
12 played in open court.)

13 BY MS. MONTS:

14 Q Deputy McBee, on the -- at the end of the stop with  
15 Mr. Lopez, where did you go?

16 A After we cleared the traffic stop location, we went  
17 to the car wash, as you saw in the video, which is just up  
18 the road on White Horse Road on the left side.

19 Q And who, if you recall, met you there?

20 A Myself and Deputy Hines went there. Our supervisor  
21 was there and, also, units from the vice and narcotics  
22 unit were there.

23 Q How long did you stay there before you went to  
24 another scene?

25 A I couldn't give you the exact time. It wasn't very

1 long. It was a few minutes.

2 Q And can you explain where the microphones are on you  
3 and in the car when you're recording?

4 A Sure. There's one that's, typically, in the back to  
5 record the sound from the interior of the vehicle. And  
6 then the other is, actually, on the -- on our belt that we  
7 carry on a daily basis, just like that.

8 Q And what would possibly cause the sound to go in and  
9 out on that?

10 A Wind blowing causes a lot of that interference. If  
11 it's close up to something else, it gets a lot of reverb  
12 into the microphone.

13 Q And does the radio transmission inside the car affect  
14 the other microphone at all?

15 A Sometimes, it can.

16 Q And was Mr. Lopez arrested at that time?

17 A He was.

18 Q And where did you go when you left that scene?

19 A I went to southern area command, which is one of our  
20 offices off of -- down in the Donaldson industrial park.

21 Q And I may need you to speak into the microphone a  
22 little bit.

23 A I'm sorry.

24 Q Who all met you there, if you recall -- or just name  
25 some of the people.

1 A I couldn't give you everybody that was there.  
2 Obviously, the folks that were on the scene originally and  
3 then other units and investigators within the vice and  
4 narcotics unit.

5 Q And what were your duties now?

6 A Basically, it was logistical support. I wasn't privy  
7 to any of the interview of Mr. Lopez. But I was given a  
8 support role in what was to come very shortly.

9 Q And where did you go in that support role?

10 A I was given the information that there's possibly  
11 going to be an exchange occur in an attempt to find out  
12 who this cocaine was going to at a Waffle House that is no  
13 longer there. At the time, it was still in operation on  
14 Augusta Street near I-85.

15 I was placed very near where Deputy Hines was, about  
16 a block away from the actual location. I didn't,  
17 actually -- I was not, actually, able to see anything that  
18 was going on at the Waffle House. My function was there  
19 for support. I had radio communication with other units  
20 to include investigators with the vice and narcotics unit.  
21 And they were going to tell me when I needed to come in  
22 and to attempt to takedown this other party involved in  
23 this operation.

24 Q And were you given a signal to come into the scene?

25 A I was.

1 Q And what did you do, and what did you see?

2 A Beforehand, I was told that a blue Ford Ranger was  
3 possibly going to be involved, and the individual inside  
4 was who we were looking for. Once I was told to come in  
5 to help with the takedown, as I pulled into the back  
6 portion of the parking lot of the Waffle House, I did  
7 witness this blue Ford Ranger with a black male occupant  
8 in the driver's seat.

9 Q Were there other sheriff's deputies vehicles there?

10 A Yeah. There was quite a few.

11 Q Were any of them marked or with lights?

12 A Yes. We did have -- mine was unmarked, but I had  
13 lights. There was a K9 unit there that was fully marked  
14 with lights, and numerous other vehicles.

15 Q And where did your vehicle go, and where did the blue  
16 truck go -- or the dark truck go?

17 A The dark truck was attempting to leave. And that's  
18 why we were called in. It was stopped. I pulled into the  
19 parking lot, exited my vehicle, and approached the Ford  
20 Ranger.

21 Q And what did you observe when you approached?

22 A I -- as I approached, I observed the driver and the  
23 sole occupant of the vehicle to be a black male, who was  
24 later identified as Mr. Nelson. I assisted in taking --  
25 getting him out of the vehicle, taking him to the ground,

1 handcuffing him, and securing him.

2 Q Was Deputy Wannemacher there?

3 A He was.

4 Q Describe what he did -- or what you observed.

5 A Deputy Wannemacher, one of our other K9 units, was  
6 there, with his patrol dog, Roscoe. He assisted just in  
7 logistics as well with the dog. He brought the dog onto  
8 the scene. He called out to the individual in the car to  
9 comply. Because, oftentimes, with the dog there, that's  
10 an extra bit of assurance that the folks we're dealing  
11 with aren't compliant.

12 He moved towards the car, called out to him as we  
13 were approaching as well. He told him if he did not  
14 comply with the arrest that he'd be bitten by the dog.  
15 The occupant complied fully and was taken out, and  
16 handcuffed, and identified as Mr. Nelson.

17 Q Was there any vehicles behind the pickup truck as it  
18 was trying to exit?

19 A There was. I couldn't tell you exactly which one it  
20 was. If I'm not mistaken, it was an unmarked vehicle at  
21 that time.

22 Q What did you do once Mr. Nelson was arrested?

23 A Once Mr. Nelson was arrested, I was advised that this  
24 ongoing operation and investigation was going to continue  
25 to another residence in Greenville County.

1 Q Do you know what that residence was?

2 A Yeah. I'll check the address. I believe it was [REDACTED]  
3 [REDACTED]. Let me make sure the numbers are right.

4 Yeah, [REDACTED]

5 Q Is that location in Greenville County?

6 A It is.

7 Q And is that Waffle House at I-85 and Augusta Road in  
8 Greenville County?

9 A It is.

10 Q And what did you observe at [REDACTED]  
11 Were there any other officers there when you arrived?

12 A Yes, there were. Myself -- let me read them out to  
13 you. Myself and Investigator Tony Rogers with the vice  
14 and narcotics unit were some of the first officers there.  
15 Also, Investigator Craig Moore and Investigator  
16 Kerian [phonetic] were there at the onset.

17 Q And what did you do when you arrived?

18 A I assisted Deputy Rogers -- Investigator Rogers with  
19 anything that he needed. At that time, he spoke to the --  
20 he and I spoke to the occupants of the home, who  
21 identified themselves as the occupants and owners of the  
22 home, who, also, identified themselves as the mother and  
23 stepfather of Mr. Nelson.

24 Q Besides those two, was there anyone else in the home?

25 A There was. There was, also, an individual identified

1 as his brother, who they described as invalid and was  
2 bedridden at the time in a bedroom that was attached to  
3 the kitchen.

4 Q And was there anybody else that you recall?

5 A Not that I recall.

6 Q And did you observe a consent to search?

7 A I did. Investigator Rogers requested a written  
8 consent to search at the time that we contacted the  
9 residents of the home, and at which time he did acquire  
10 that from the residents.

11 Q And were you a witness on that document?

12 A I couldn't tell you. I feel like I am. I'd have to  
13 look at the document to be able to tell you. But I  
14 believe I was -- I, actually, did sign and witness the  
15 document.

16 Q And can you describe the house?

17 A I can describe the area that I was responsible for  
18 searching.

19 Q Okay.

20 A The house was kind of laid out in an odd fashion. My  
21 area of responsibility for search was the kitchen area,  
22 which was directly off of a larger living room area, and  
23 the bedroom that was connected to the kitchen.

24 Q How large of a house was this? Was it one story?  
25 Two story?

1 A It was a ranch-style house probably 1,500, 1,600  
2 square feet. That's not exact, but it kind of gives you  
3 an idea.

4 Q And describe what you observed when you went in these  
5 rooms that you went in?

6 A First of all, my goal was to systematically search  
7 those two areas. Obviously, other folks were there  
8 searching as well, the Sheriff's Office with the vice and  
9 narcotics unit.

10 I began with the kitchen area and began a systematic  
11 search of the cabinets, and refrigerator, and everything  
12 that was inside the kitchen space.

13 Q What did you observe in the bedroom off of the  
14 kitchen?

15 A In the bedroom off the kitchen was a bed. And there  
16 were, also -- it was the brother of Mr. Nelson in the bed. .  
17 At which time, we had to help him from the bed into a  
18 wheelchair that moved from his bedroom into the common  
19 area of the living area.

20 Q What approximate age was this person?

21 A I couldn't tell you. I couldn't tell you.

22 Q Was he a child, or --

23 A No. He was an adult male. To -- it would be a  
24 complete guess as to what his exact age was at the time.

25 Q And could he move himself into the wheelchair, or how



1 did that --

2 A The term that the family used was invalid. And he  
3 was non-ambulatory in my summation. We, actually, had to  
4 help him into the wheelchair to get him into the other  
5 room.

6 Q Was the doorway big enough for a wheelchair to get  
7 through?

8 A I believe it was. I don't remember if we, actually,  
9 had the wheelchair in his room, or if it was in the  
10 kitchen. But it was in that small area is where we,  
11 actually, helped him into the wheelchair.

12 Q And describe the rooms that you searched. What was  
13 in either of these rooms, what furniture?

14 A I believe there was a -- I can't recall if there was  
15 a table or not in the kitchen. The kitchen was just  
16 typical stuff on the counter as far as appliances that had  
17 food [sic], and so forth. There may have been a table,  
18 but I can't say for sure.

19 In the bedroom, there was a single-size bed on the --  
20 that -- whose back went to the far wall. It was kind of  
21 partially to the right of the bedroom. It was more  
22 centered than not, a chest of drawers, a small table with  
23 a stereo, stereo speakers, miscellaneous clothing, and  
24 boxes, and, also, a closet to the left when you walked  
25 into the bedroom.

1 Q And did you -- describe the process. What were you  
2 supposed to do if you found an item?

3 A As I searched, if I found anything that was of  
4 evidentiary value as far as illegal items or items as far  
5 as paperwork or miscellaneous effects, I was to take them  
6 directly from me to Investigator Rogers, who was filling  
7 out what's called a return on the consent to search. The  
8 return is nothing more than the documentation of what was  
9 searched, and what was seized by the Sheriff's Office.

10 Q And did you find items in these rooms?

11 A I did.

12 Would you like me to tell you what I found?

13 Q Yes, please.

14 A Okay. I'm going to refer to my report so I can tell  
15 you exactly what was found.

16 As I began my search in the kitchen, I moved to a  
17 cabinet that was about chest high to me, maybe chest or  
18 neck high. It was your typical kitchen cabinet that was  
19 just to the left of the refrigerator. So if you can  
20 imagine the refrigerator here, and then I opened the  
21 kitchen cabinet here as I faced it.

22 I opened that kitchen cabinet and inside is what I  
23 found, the following items: A large amount of an  
24 off-white rock-like substance in baggies that appeared to  
25 be crack cocaine, a Pyrex measuring cup containing an

1 off-white rock substance, two spoons covered in white  
2 powder that appeared to be cocaine, a large digital scale  
3 covered in white powder, brown packing tape, and plastic  
4 wrapping coated in white powder, and numerous baggies in  
5 that same cabinet area.

6 Q Describe again how -- the height of that cabinet.

7 A As I was standing -- as I face you, you would,  
8 actually, be behind the cabinet or refrigerator. The  
9 refrigerator was to my right. To my head, the  
10 refrigerator was approximately this high. Just to the  
11 left of that was the cabinet. The bottom edge of the  
12 cabinet was probably around my chest to my upper neck  
13 area, typical height of a cabinet in a kitchen. I  
14 would have to -- you'd have to stand up to reach to get  
15 it.

16 Q And how tall are you?

17 A I'm 6'5".

18 MS. MONTS: I'd like to have these marked.

19 (WHEREUPON, State's Exhibit Nos. 8 and 9 were marked  
20 for identification only.)

21 BY MS. MONTS:

22 Q Deputy, I'm going to hand you what's been marked for  
23 identification as State's Exhibit Nos. 8 and 9. Can you,  
24 please, identify these?

25 A These are items that were seized from the cabinet, a

1 cookie form of what -- what's called a cookie form of  
2 crack cocaine, and a baggie with -- or baggies with white  
3 residue on them.

4 Q And describe State's Exhibit No. 9, and what form  
5 that was in when you found it.

6 A Can you clarify that for me, so I answer correctly,  
7 please?

8 Q If it would refresh your memory to review your report  
9 for that item that you seized --

10 A All right. The plastic was what was seized from the  
11 brown packing tape. And plastic that is coated with the  
12 white powder is what, based on my experience and training,  
13 is, typically, known as a kilo wrapper. Kilo being a  
14 street term for a kilogram of cocaine. In the compressed  
15 form, they are shipped, wrapped tightly to maintain the  
16 compressed form until -- for distribution.

17 The -- in the form that I found it, the packing tape  
18 was, actually, helping hold the form of the plastic. So  
19 you could visualize the void that was there and almost see  
20 the -- where the compressed powder cocaine would have  
21 gone. And, in my training and experience, it was really  
22 obvious to me that that's what that had contained.

23 MS. MONT'S: I'd like to have this marked.

24 (WHEREUPON, State's Exhibit Nos. 10 and 11 were marked  
25 for identification only.)

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1 BY MS. MONTS:

2 Q Deputy, I'm going to hand you what's been marked for  
3 identification as State's Exhibit Nos. 10 and 11. Can  
4 you, please, identify these items?

5 A State's Exhibit No. 10 is the Pyrex dish that I found  
6 in the cabinet with the residue and, also, the two spoons  
7 bearing the same residue as it was seized that day.

8 Let me look at State's Exhibit No. 11.

9 State's Exhibit No. 11 contains the digital scales  
10 that were seized bearing the white residue, and, also, a  
11 grinder.

12 Q And describe their location to each other, please.

13 A All in the same area. They were on the middle shelf,  
14 I guess, of that cabinet, not the bottom, but the middle  
15 in very close proximity to one another all in the same  
16 general area.

17 MS. MONTS: I'd like to have this marked.

18 (WHEREUPON, State's Exhibit No. 12 was marked for  
19 identification only.)

20 BY MS. MONTS:

21 Q Deputy, I'm showing you State's Exhibit No. 12. Can  
22 you, please, identify this?

23 A Sure. This was the packing tape and saran wrap  
24 plastic that was around the other plastic with the white  
25 powder residue that I identified that -- that I believed

1 to be the kilo wrapper.

2 Q And where did you continue to search?

3 A After that, I did not find any other contraband in  
4 that area. At that time, I moved to the bedroom that was  
5 attached to the kitchen.

6 Q Were there any other officers assigned to those rooms  
7 that you were searching?

8 A I don't think so. I can't say for sure, but I was  
9 the main one searching those areas. There may have been  
10 somebody assisting me, but I don't have it documented.

11 Q What room did you go to next?

12 A The bedroom belonging to the Defendants's brother  
13 that was attached directly to the kitchen. The only way  
14 in and out of it was, actually, from the kitchen.

15 MS. MONTIS: I'd like to have these marked.

16 (WHEREUPON, State's Exhibit Nos. 13 and 14 were marked  
17 for identification only.)

18 BY MS. MONTIS:

19 Q I'm handing you what's been marked as State's Exhibit  
20 Nos. 13 and 14. Can you, please, identify these?

21 MR. MACKENZIE: And, Your Honor, I object to this  
22 one. And it's for reasons previously stated. And I don't  
23 have anything to add.

24 THE COURT: All right. Subject to your objection.

25 THE WITNESS: These are both items that were found in

1 the bedroom. I'll refer to my report to give you exact  
2 locations. These were in a cigar box marked "Phillies  
3 Blunt" on the outside in the top portion of the closet  
4 that I described to you that's on the left in the bedroom.  
5 This is a bag of round-scored pills with a smiley face on  
6 one side that I identified visually as Ecstasy -- or what  
7 was commonly described as Ecstasy. A small round ball, or  
8 round-shaped object that was believed to be hashish at  
9 that time was, also, taken out of that box.

10 BY MS. MONT'S:

11 Q And describe the relationship to each of these items  
12 that you found in that bedroom off the kitchen.

13 A These were, actually, in the same Phillies Blunt box  
14 right beside each other in the top portion of the closet,  
15 the upper portion of the closet there in that bedroom.

16 Q And who did you take these items to?

17 A All the items that were seized by me during the  
18 search were taken to Investigator Rogers for  
19 documentation.

20 Q And what did he do with those items -- or what did  
21 you see him do with those items?

22 A I saw him on the return portion of the written  
23 consent documenting them by writing them down as where  
24 they were taken from. And, also, at that point, he was  
25 organizing them for transport and eventual placement into

1       our property and evidence.

2       Q     And how high up in that bedroom closet were these  
3       items?

4       A     Again, it was just above my head, maybe head level or  
5       higher where I don't have to reach up and into the closet  
6       to get them.

7       Q     And where was the man that had been in the bed prior  
8       to you entering? Was he watching while you searched?

9       A     No. When we first came in the house, he was,  
10      actually, in the bed lying down. And, later on, he was  
11      helped to the wheelchair and taken to the living room  
12      area.

13      Q     Regarding State's Exhibit No. 11, can you describe  
14      what this is, and what it's used for?

15      A     Sure. State's Exhibit No. 11 contains two digital  
16      scales bearing white powder residue on them. Based on my  
17      training and experience, the digital scales bearing the  
18      white powder are what are often used to measure amounts of  
19      illegal drugs, specifically, in this case, cocaine for  
20      sales or packaging.

21      Q     What did you see elsewhere [sic] -- elsewhere in the  
22      house? Did you see other officers?

23      A     Yes. There were other officers that -- some were  
24      with the family standing by with them. Obviously,  
25      Investigator Rogers was preparing the paperwork and



1 evidence that was obtained. And other officers were  
2 searching the rest of the residence.

3 Q What did you do once you finished searching these two  
4 rooms?

5 A Once I finished searching the two rooms that I was  
6 in, obviously, I took all the evidence that I found and  
7 gave them to Investigator Rogers. And then I was there  
8 logistically for security of the area, and to help with  
9 anything else that may have arisen as far as paperwork, or  
10 anything -- it was an ongoing investigation.

11 Q Do you have an approximation of how long you were at  
12 the house?

13 A I couldn't tell you. I couldn't tell you, unless I  
14 saw it on a watch.

15 Q And when you left the scene, where did you go?

16 A As I left the scene, I think I went back to southern  
17 area command to finish up any paperwork that I may have  
18 had.

19 MS. MONTIS: No further questions.

20 THE COURT: Mr. Mackenzie.

21 MR. MACKENZIE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MACKENZIE:

24 Q Deputy McBee, when you were out on the roadway with  
25 Mr. Lopez, he was -- you said he was very much focused on

1 the car and the search of the car; is that correct?

2 A At the onset, yes, sir. The dog and then the search,  
3 yes, sir.

4 Q And did he appear to be pretty nervous to you at that  
5 point?

6 A The word is -- I think I used was oblivious, just  
7 absolutely not even aware I was there, yes, sir.

8 Q And there were two cell phones found in his car; is  
9 that correct?

10 A I did not find them.

11 Q Okay. Did you -- I don't guess you participated  
12 really in the search of his car at all, did you?

13 A No, sir.

14 Q Okay. When you -- there was a certain time when you  
15 were standing out on the roadway with Mr. Lopez, y'all  
16 were having a conversation; is that correct?

17 A Yes, sir.

18 Q Isn't it true that he made statements to you to the  
19 effect of, I work for --

20 MR. SCALZO: Your Honor --

21 BY MR. MACKENZIE:

22 Q -- the police --

23 THE COURT: Hold on --

24 MR. SCALZO: -- I'm going to object with my  
25 continuing objection.

- 1 THE COURT: All right.
- 2 BY MR. MACKENZIE:
- 3 Q Did he make a statement to you to the effect of, I
- 4 work for the police?
- 5 A Do you want me to publish exactly what was said?
- 6 Q If you can.
- 7 A He said, I work for you guys.
- 8 Q What does "you guys" mean?
- 9 A I assumed that meant the police.
- 10 Q Isn't it true he made a statement to you to the
- 11 effect of, I know people who move dope?
- 12 A Yes, he did.
- 13 Q Didn't he say at one point, I smoke weed?
- 14 A He did.
- 15 Q When y'all were at southern area command for the
- 16 first time before the search of the house, did you hear
- 17 any verbal statements that Mr. Lopez made at that point?
- 18 A No, sir. I wasn't privy to any of those.
- 19 Q Okay. When you were at the Waffle House, did I hear
- 20 you say you did not, actually, see anybody -- the person
- 21 arrive? Mr. Nelson, did you see him arrive at the Waffle
- 22 House?
- 23 A No, sir, I did not.
- 24 Q Okay. You did participate in the arrest?
- 25 A Yes.

1 Q Okay. And all of the police cars that were there for  
2 the arrest were unmarked cars; is that correct?

3 A No. There was some marked. There was, at least, one  
4 marked.

5 Q Where was the marked car?

6 A It was, also, in the parking lot. It was the K9  
7 unit.

8 Q The K9 unit we saw on the video?

9 A No. There was another K9 unit on duty in a marked  
10 vehicle. Deputy Wannemacher and his dog, Roscoe, also,  
11 responded in the same capacity as I did at that moment.

12 Q Was that car involved in the arrest, or the takedown?

13 A In as far as he brought his dog out as support to  
14 challenge the suspect as we all moved in and supported  
15 with his K9, yes.

16 Q Some of the cars, actually, drove in behind and in  
17 front of the truck; is that correct?

18 A Yes. I remember -- I can't give you the exact  
19 placement. But, as far as I can remember, there,  
20 actually, was a vehicle behind Mr. Nelson.

21 Q All right. Those were unmarked cars; right?

22 A Yes, I believe so.

23 Q When Mr. Nelson was arrested, he was searched,  
24 obviously?

25 A I did not search him. I didn't see him be searched.

1 Q You did not see the search?

2 A No.

3 Q Were you involved in the search of the truck?

4 A No.

5 Q Now, when Mr. Nelson was arrested at the Waffle  
6 House, no money was found on him, was there?

7 A I don't know if there was or not, sir.

8 Q When the -- when you and the other deputies were-  
9 searching the house, you were looking, at least, in part,  
10 for money, weren't you?

11 A Anything contraband, yes, sir.

12 Q I mean, anything having to do with contraband?

13 A Sure, absolutely.

14 Q All right. The owners of the house were Kathleen  
15 Nelson and Charles Burns; is that correct?

16 A I don't have that information. I couldn't tell you.

17 Q I mean, didn't you testify earlier that you spoke  
18 with the owners?

19 A I spoke with the owners, who identified themselves as  
20 the mother and stepfather.

21 Q Okay.

22 A And that's what I have indicated in my report. I did  
23 not indicate their names.

24 Q The mother and the stepfather were the owners of the  
25 house?

1 A That's -- they indicated that, yes, sir.

2 Q Octavius Nelson was not the owner of that house, was  
3 he?

4 A I don't know.

5 Q There were -- the persons present were the mother,  
6 the stepfather, and the brother?

7 A Yes, sir.

8 Q The brother was in one of the bedrooms?

9 A He was.

10 Q In the bed?

11 A Yes, sir.

12 Q It appeared to you that that was his bedroom; isn't  
13 that correct?

14 A They identified it as his bedroom, yes.

15 Q Octavius Nelson was not present at this time; is that  
16 correct?

17 A No. He was in custody.

18 Q No money was found in that house?

19 A I don't know. I did not find any money.

20 Q Are you aware of any money being found in that house?

21 A No.

22 Q No mobile phones were seized from the house, were  
23 they?

24 A I couldn't tell you. I did not find any mobile  
25 phones.

1 Q All right. And you're saying the crack was found in  
2 the kitchen?

3 A That's correct.

4 Q Not in the bedroom?

5 A No, sir, the crack cocaine was not.

6 Q Items were seized from all throughout the house,  
7 though, weren't they?

8 A There were other items that were taken into evidence.  
9 I couldn't tell you where or what, other than what I was  
10 involved in personally.

11 Q The tablets and the suspected hashish were found in  
12 the brother's bedroom?

13 A That's correct.

14 Q The cookies and the paraphernalia -- all of the  
15 paraphernalia related to the cookies were found in the  
16 kitchen cabinet; is that correct?

17 A Yes, sir.

18 Q They were all together in one place?

19 A Yes, generally, in the cabinet, yes, sir.

20 Q And the cabinet was closed?

21 A That's correct.

22 Q They were not in plain view?

23 A No, sir.

24 MR. MACKENZIE: Thank you.

25 That's all I have.

1 THE COURT: Do you know if the lunch is here?

2 THE BAILIFF: It's here. They just brought it.

3 THE COURT: All right. We'll take a recess at this  
4 time for lunch.

5 And then you can cross after lunch, Mr. Scalzo.

6 Take the jury out.

7 (WHEREUPON, the jury was excused from open court at  
8 approximately 1:21 p.m.)

9 THE COURT: You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: We'll recess at this time.

12 Now, please, be ready to start back at -- let's say  
13 at 2:00.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Come back around. You're still under  
16 oath, Mr. McBee.

17 Bring the jury in.

18 (WHEREUPON, the jury came into open court at  
19 approximately 2:16 p.m.)

20 THE COURT: Mr. Scalzo.

21 MR. SCALZO: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SCALZO:

24 Q Deputy McBee, I will try to be brief and to the  
25 point.



1 A All right.

2 Q Basically, just two topics I want to talk to you  
3 about. First, when we were looking at the video, it set  
4 some of the scene. And I'm going to ask you to help us  
5 maybe get a little more detail about it.

6 In the video, it's your car facing Deputy Hines' car,  
7 that's the perspective we have; right?

8 A Yes.

9 Q And to the far right of that screen, there's a little  
10 green sign that has "ATL," the letters on it. Is that a  
11 sign for Atlanta?

12 A Yes.

13 Q And the -- it looked like a little triangle --  
14 concrete triangle area where that sign was?

15 A Yes.

16 Q It looks like when you exit your car, you walk over  
17 to that area?

18 A That's correct.

19 Q And it appears that's where Mr. Lopez is standing?

20 A Yes.

21 Q And it's off screen.

22 A Uh-huh.

23 Q That triangle area, you've got the entrance way to  
24 get on to I-85 south?

25 A If I'm not mistaken, that is coming from southbound

1 on to White Horse Road.

2 Q Right. So if you have the -- if you're looking at  
3 the triangle over here, you see a car sitting at the  
4 light. That's what you're talking about; right?

5 A That's correct.

6 Q Then you have White Horse Road --

7 A That's correct.

8 Q -- which is, obviously, the traffic going by on the  
9 left side of the cars?

10 A Right.

11 Q And then what you can't see out of the camera is that  
12 that's the entrance way to I-85 south?

13 A That's correct.

14 Q Okay. And where Mr. Lopez, obviously, pulled over  
15 was just past where that entrance way would have been?

16 A That's correct.

17 Q Okay. And the White Horse Road portion that we see  
18 there, is it four lanes on each side in each direction?

19 A I believe it's six there if I'm not -- may two and a  
20 turning lane. So probably six there, including the  
21 turning lane.

22 Q It's a very big road?

23 A Yeah.

24 Q A dangerous road --

25 A Sure.

1 Q -- to be standing in the roadway; right?

2 A I'd agree.

3 Q You talked about and you said it a couple of times  
4 that when you were speaking with Mr. Lopez, he was  
5 watching Deputy Hines search the car?

6 A That's correct.

7 Q And you used the word he was -- seemingly, he was  
8 oblivious to you talking to him, because he was watching  
9 what Deputy Hines was doing?

10 A Right.

11 Q And -- but he did say, because you were engaging him  
12 in a conversation -- I'm not sure if we could hear what  
13 you asked him. But you did say that he told you he was  
14 coming from Fort Bragg?

15 A That's correct.

16 Q And this would have been during the time in which  
17 he's -- Deputy Hines is searching the car, and he's  
18 watching the car, but you're kind of talking to him?

19 A Uh-huh.

20 Q Okay. And he was advising you he was coming from  
21 North Carolina and saying Fort Bragg; is that fair?

22 A Yes.

23 Q Okay. And you did not ask him to explain the  
24 confusion about where he said he was coming from, and the  
25 direction that he was found traveling on the highway?

1 A Yeah. I wasn't aware of any of the conversation that  
2 he and Deputy Hines had had prior to that.

3 Q All right. And then you did not observe when you  
4 were present Deputy Hines do the same, try to clarify any  
5 discrepancy?

6 A Right, I didn't.

7 MR. SCALZO: That's all I have, Judge.

8 THE COURT: All right. Any redirect, Solicitor?

9 MS. MONTS: No, Your Honor.

10 THE COURT: Any recross?

11 MR. MACKENZIE: No, sir, Your Honor.

12 THE COURT: Thank you, sir.

13 You can step down.

14 Now, do you need to excuse Mr. McBee?

15 MS. MONTS: Yes, Your Honor.

16 THE COURT: Any objection to excusing him?

17 MR. MACKENZIE: No objection.

18 MR. SCALZO: No, sir.

19 THE COURT: Thank you.

20 MS. MONTS: The State calls Officer Maxwell.

21 THE CLERK: Sir, please, place your left hand on the  
22 Bible and raise your right hand.

23 WHEREUPON,

24 JEFF MAXWELL,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 THE WITNESS: Thank you.

4 THE CLERK: Please state your full name for the  
5 record.

6 THE WITNESS: Jeff Maxwell.

7 DIRECT EXAMINATION

8 BY MS. MONT'S:

9 Q Officer, please, tell the jury where you're employed,  
10 and how long you've worked there?

11 A I'm employed with the Greenville County Sheriff's  
12 Office. And I've been there since May of 1997.

13 Q And what is your experience and training in law  
14 enforcement?

15 A I just -- I graduated from the basic Criminal Justice  
16 Academy. I went on to receive detective certifications,  
17 also, drug investigations, criminal patrol, various  
18 narcotic classes after that.

19 Q And what unit have you been assigned -- units have  
20 you been assigned to at the Sheriff's Office?

21 A Since I've been at the Sheriff's Office, I worked in  
22 uniform patrol for about seven years. I worked in vice  
23 and narcotics for two years. I then moved to the violent  
24 crimes unit. I worked there about a year and a half. And  
25 I'm currently assigned to financial crimes where I've been

1       there about two years.

2       Q     And on January 21st of 2005, what unit were you  
3       assigned?

4       A     Vice and narcotics.

5       Q     And on January 21st of 2005, what was your  
6       assignment or duties for that day?

7       A     Actually, I don't really remember what I was doing,  
8       specifically, that day. I do remember we were pretty  
9       busy. This, actually, came up, as you saw, from the car  
10      stop sort of unexpectedly. And I was called in to assist  
11      with this investigation.

12      Q     Where is the first place you went to regarding this  
13      investigation?

14      A     I went to our office, which is based in -- we call it  
15      southern area command. It's our office at Donaldson  
16      Center.

17      Q     And when you got there, what was your assignment?

18      A     I was asked to assist with the interview of  
19      Mr. Lopez. He was already there with two of our other  
20      investigators.

21      Q     And who were those other investigators?

22      A     One was Investigator Charlie Blackburn, and the other  
23      was Investigator Keith Grounsell.

24      Q     And is Officer Blackburn still employed with the  
25      Sheriff's Office?

1 A No, he's not.

2 Q Where is he now?

3 A He is employed with the FBI, the Federal Bureau of  
4 Investigations. And he's stationed, last I heard, in  
5 South Dakota.

6 Q And where did you, and these other officers, and  
7 Mr. Lopez meet up?

8 A We have an interview room at our office. It's,  
9 basically, just a standard interview room you might see on  
10 television. It's just a bare room with a desk and three  
11 or four chairs, which we can speak with people in a kind  
12 of controlled environment.

13 Q And do you recall if Mr. Lopez was handcuffed at this  
14 time?

15 A I don't recall. But if we had him in our interview  
16 room, it's typical that we'll -- he's already been  
17 searched, made sure there's no weapons, or any kind of  
18 contraband on him at that time. So it would be normal for  
19 us to unsecure him and take the handcuffs off. But I  
20 don't remember, specifically, if when I got there if he  
21 was unsecured or not.

22 Q And describe the furniture in the room, please.

23 A It's just a standard desk, three or four chairs,  
24 depending on how many people are in there.

25 Q And do you have any forms that you go over with

1 somebody that you're about to speak with?

2 A Yes. We have a Miranda form, which contains,  
3 basically, your Miranda rights when you're in custody and  
4 we're questioning you.

5 Q I'm going to hand you what's been marked for  
6 identification as State's Exhibit No. 1. Can you, please,  
7 identify this document?

8 A Yes, ma'am. This is the waiver of rights signed by  
9 Mr. Lopez, Investigator Blackburn, and myself.

10 Q And can you describe any handwriting on that  
11 document, and who wrote on there?

12 A Sure. At the very top is the case number, which is  
13 assigned to this investigation. That's what all your  
14 property and evidence and other forms would have on it to  
15 identify it belongs to this case. It's entitled "Your  
16 Rights," Sheriff's Office, Greenville, South Carolina.  
17 The date is handwritten, 1/21/05. The time is 1738, which  
18 is 5:38 p.m.

19 The next section here is the paragraph, Before we ask  
20 you any questions, you must understand your rights. There  
21 is an initial, "DL," which would have been made 'by  
22 Mr. Daniel Lopez. And it's signed at the bottom 'there.  
23 You have a little "X." And the writing here, the little X  
24 is Investigator Blackburn's handwriting. So he would  
25 have, basically, indicated these little X's for after we



1 went over the form for Mr. Lopez to sign if he understood  
2 it, and that sort of thing.

3 But the first line, Before we ask you any questions,  
4 you must understand your rights, initial "DL." You have  
5 the right to remain silent. The second line, Anything you  
6 say can and will be used against you in court -- excuse  
7 me, Anything you say can be used against you in court.  
8 It's, also, initialed "DL." You have the right to talk to  
9 a lawyer for advice before we ask you any questions, and  
10 to have him with you during questioning. That's  
11 initialled "DL." If you have no money to pay a lawyer's  
12 fee, the Court will appoint one to represent you without  
13 cost, if you wish. That's initialed "DL." If you decide  
14 to answer questions now without a lawyer present, you will  
15 still have the right to stop answering at any time. You,  
16 also, have the right to stop answering at any time until  
17 you talk to a lawyer. That's, also, initialed "DL."

18 Down here, it says "Waiver of Rights." This is,  
19 basically, indicating that he has -- we have read this.  
20 He has read it. He's had a chance to ask us any  
21 questions,  
22 or clarify anything. And this would be a waiver of these  
23 rights that we just went over.

24 It says, I have read the statement of my own rights.  
25 And I understand what my rights are. I am willing to make

1 a statement and answer questions. I do not want a lawyer  
2 at this time. I understand and know what I'm doing. No  
3 promises or threats have been made to me, and no pressure  
4 or coercion of any kind has been used against me. And  
5 that's initialled right here "DL."

6 Also, the word -- I don't know if you can see it from  
7 there, but it -- "coercion" is circled. We do that to go  
8 over that word with the person. Coercion, you know, means  
9 force, that we're not forcing the person to talk to us, or  
10 we're not twisting their arm, or something like that.  
11 That's, also, initialled "DL" beneath it.

12 And then the last line, you have the signature line.  
13 And it's signed by Daniel Lopez. Over here, you have a  
14 witness line that's signed by Investigator Blackburn, his  
15 unit number. The second witness line is my signature, my  
16 unit number at the time. And then the time is 1604, which  
17 would be 6:04 p.m.

18 Q Are you sure about that time?

19 A Oh, excuse me, 4:04 p.m.

20 Q And did you observe Mr. Lopez sign this document?

21 A Yes.

22 MS. MONTS: Your Honor, we'd move this exhibit,  
23 State's Exhibit No. 1, into evidence.

24 THE COURT: All right. Any objection?

25 MR. MACKENZIE: No objection.

1 MR. SCALZO: Subject to my pre-trial motions.

2 THE COURT: Subject to your objection, it's in.

3 (WHEREUPON, State's Exhibit No. 1 was admitted into  
4 evidence.)

5 BY MS. MONT'S:

6 Q Officer Maxwell, did Mr. Lopez acknowledge in any  
7 manner that he understood his rights?

8 A He did.

9 Q How did he do that?

10 A Well, he told us he understood. He didn't have any  
11 questions, or anything like that.

12 Q Did you ask him if he had any questions?

13 A Yes. That's a standard procedure.

14 Q And, please, continue. What did you do after you  
15 went over this form with him?

16 A After that, we took a typed statement from Mr. Lopez.  
17 That's a -- a statement form that we use. And we, also,  
18 went over that with him.

19 MS. MONT'S: I'd like to have this marked.

20 (WHEREUPON, State's Exhibit No. 2 was marked for  
21 identification only.)

22 BY MS. MONT'S:

23 Q Officer, I'm going to hand you what's been marked for  
24 identification as State's Exhibit No. 2. Can you, please,  
25 identify this form?

1       A     This is a statement -- this is a copy of the  
2       statement that he provided myself and Investigator  
3       Blackburn.

4       Q     And who typed this form?

5       A     Investigator Blackburn would have typed this.

6       Q     And where did the information on the form come from?

7       A     Mr. Lopez.

8       Q     And were you present when that information was given?

9       A     That's correct, I was.

10      Q     And are there signatures on this form?

11      A     Yes, there are.

12      Q     Whose signatures?

13      A     Again, same format as the waiver of rights. You  
14      would have Mr. Lopez's signature here. Also, beneath it,  
15      it states, I have received a copy of this statement. His  
16      name is there, also. Again, witness block, Investigator  
17      Blackburn's signature. And then my signature beneath it.

18            MS. MONTES: Your Honor, we'd move State's Exhibit  
19      No. 2 into evidence.

20            MR. MACKENZIE: And I object, Your Honor, based on  
21      the reasons stated previously.

22            THE COURT: I understand. Subject to your objection,  
23      it's in evidence --

24            MR. SCALZO: And I renew my objection.

25            THE COURT: Put it in.

1 (WHEREUPON, State's Exhibit No. 2 was admitted into  
2 evidence.)

3 BY MS. MONTES:

4 Q Officer, can you, please, explain the rights that are  
5 at the top of this form?

6 A Yes, ma'am. At the top, you have, State of South  
7 Carolina, County of Greenville. Again, the case number.  
8 The rights are, basically, what I just read to you and  
9 are, also, at the top of this.

10 It states, I, Daniel Jesus Lopez, do hereby give  
11 freely and voluntarily this statement to Investigator C.P.  
12 Blackburn --

13 THE COURT: You can turn around and read it. You  
14 don't have to hold it up.

15 THE WITNESS: Okay. And Investigator J. Maxwell, who  
16 have identified themselves to me to be deputies of the  
17 Greenville County Sheriff's Office, Greenville, South  
18 Carolina. I have, also, been advised that I do not have  
19 to make this or any other statement. And that what I say  
20 can be used against me in a court of law. I have been  
21 advised that I have the right to counsel with an attorney  
22 of my choice. If I am financially unable to obtain an  
23 attorney, the Court will appoint an attorney to represent  
24 me. I have not been threatened or promised any reward to  
25 make this statement.

1 BY MS. MONTES:

2 Q And what personal information is there about  
3 Mr. Lopez?

4 A Okay. It says, I am 34 years old. And I reside at  
5 1202 Summer Ridge Lane, Lawrenceville, Georgia, 30044. I  
6 have a 13-grade education. And I can read and write.

7 Q Is the -- are the next three paragraphs information  
8 that was given to you and to Investigator Blackburn?

9 A Yes, by Mr. Lopez. That's correct.

10 Q Was -- once this document was typed up and signed --  
11 or prior to him signing it, was he given an opportunity to  
12 make any changes?

13 A That's correct. We ask them do you want to read over  
14 it, make sure that it's true and correct in your words.  
15 If you want to make any additions, changes, deletions, let  
16 us know at this time and we'll do that.

17 Q And did Mr. Lopez want to make any changes or  
18 corrections prior to him signing this document?

19 A No, he did not.

20 Q Please read what the information is in the document.

21 A Okay. It states, I have been living in Atlanta for  
22 about four or five years. I met a guy who I'll call  
23 Candela about six months ago. Candela is Spanish for  
24 flame. Candela is a Dominican, who is about 30 years old.  
25 He lives in some apartments in DeKalb County, Georgia, on

1 Chamblee Tucker Road. His apartment is on the third  
2 floor.

3 While I was giving this statement, I used a phone and  
4 got the following information about where he lives.  
5 Candela lives in Apartment ■ in Building ■. I have his  
6 cell numbers stored in my cell phone. They are 44 --  
7 excuse me, ■ and ■1.

8 Today, Candela called me and told me to come over to  
9 his house for a favor. I told him, okay, because I owe  
10 him \$300. When I got there, we started talking. And  
11 Candela told me that he had three kilos in the apartment.  
12 I saw a gallon-size Ziploc bag that was about three  
13 quarters full of crack.

14 Candela told me that he wanted me to go to Greenville  
15 to deliver something. He handed me a box and a piece of  
16 paper with some numbers on the paper. Candela told me to  
17 get off at Exit 42-B, to go to the Waffle House, call the  
18 numbers, and give the box to the guys I was supposed to  
19 meet. Candela told me I was going to follow whoever I was  
20 supposed to met and collect the money. Candela told me to  
21 come back to his house with the money.

22 When I got into Greenville, the police pulled me over  
23 and found the cocaine. I showed them the piece of paper  
24 with the names of the people I was supposed to give the  
25 box of cocaine to. I told the police that I would call

1 the number and tell him that I was in town and ready to  
2 meet. I called and told him that I missed the exit, but  
3 would turn around and come back. He told me that he was  
4 in a blue truck. And I told him that I was in a white  
5 Intrepid. He told me to meet at the Waffle House, and the  
6 exit number is 46. So I guess Candela had the wrong exit  
7 number.

8 And then beneath that, it says, I have read the above  
9 statement of one page and it is true and correct, as best  
10 I recall.

11 Q And what took place once you finished this statement  
12 and Mr. Lopez signed it?

13 A At that point, we would have turned him over to other  
14 deputies to be transported to detention. And I went to  
15 assist with the search warrant.

16 Q And where did you go to assist with the search?

17 A I believe it's [REDACTED]

18 Q And who was present when you arrived?

19 A There was already other investigators on the scene,  
20 Investigator Rogers, Investigator Moore, Deputy McBee, and  
21 Mr. Nelson's stepfather, mother, and invalid brother.

22 Q And did you see this brother in the house? Where was  
23 he when you saw him?

24 A I believe he was already in the kitchen area in the  
25 wheelchair.



1 Q Can you describe the house?

2 A It's a single-level ranch style house. It's about  
3 1,500 square feet. It has a carport off to the side,  
4 which is where I entered through. And you went  
5 immediately into the kitchen area. There's a bedroom off  
6 the kitchen. And then it wraps -- through the kitchen, it  
7 wraps around to the living room. If you continue through  
8 the living room, there's like a little foyer for the front  
9 door. And then there's a hallway that led back into the  
10 back part of the house where the bedrooms, and the  
11 bathrooms, and that sort of thing would be.

12 Q Do you know if -- was there any rooms right off of  
13 the kitchen?

14 A Well, there was the back bedroom where the disabled  
15 brother was staying.

16 Q And did you search anywhere in the house?

17 A Yes. I searched the living room, which, basically,  
18 was converted into a -- more less a bedroom. There was a  
19 bed, basically, in the middle of the living room, clothes,  
20 and magazines, and that sort of thing just sort of laying  
21 about in the living room like someone had been living  
22 there.

23 Q And describe where you searched.

24 A I searched the entire living room. That was the  
25 section that had not been covered by the other officers on

1 the scene. And I worked my way -- I started almost like  
2 in a clock fashion. I started on one side and worked my  
3 way around, and then I sort of went to the middle of the  
4 room, which the bed was, basically, in the middle of the  
5 room. So that was one of the last things I searched.

6 I looked -- first looking at the bed, I -- there  
7 really wasn't anything unusual. Then I think it had  
8 some -- a sheet, or a bed spread, or something like  
9 someone  
10 had been sleeping there. And I moved it and there was a  
11 handgun laying on top of the bed.

12 Q Describe how you came across it, please.

13 A Basically, just moving the covers. And that's how I  
14 found it. It wasn't readily visible. I mean, you had to  
15 remove whatever bedding was on the bed to find it.

16 Q What did you do with it. And what were you supposed  
17 to do with anything once you found something?

18 A At that point, I told our -- what we call "scribe."  
19 That is the person that, actually, fills out the return  
20 section of the search warrant. And, basically, he  
21 documents what is found and later a copy of what is found  
22 is delivered to the occupants of the house.

23 But I told him I had found a handgun. I took it to  
24 him. And he recorded it on the return section of the  
25 search warrant.

1 MS. MONTES: I'd like to have these marked.

2 (WHEREUPON, State's Exhibit Nos. 15, 16, and 17 were  
3 marked for identification only.)

4 BY MS. MONTES:

5 Q Officer, I'm going to hand to you what's been marked  
6 for identification as State's Exhibit Nos. 15, 16, and 17.  
7 Can you, please, identify these?

8 A This would be the handgun that I found underneath the  
9 bed covers in the living room on the bed.

10 MR. SCALZO: Judge, can I get him to tell us what  
11 items they're talking about?

12 THE COURT: Sure.

13 Tell him what you're --

14 THE WITNESS: Okay. This is State's Exhibit No. 16,  
15 a Taurus pistol. It has a holster, State's Exhibit  
16 No. 15. And then when I found the pistol, I checked to  
17 see if it was loaded. And it was. And it had five  
18 bullets, which are marked State's Exhibit No. 17. It  
19 contained five bullets.

20 BY MS. MONTES:

21 Q Officer, was the gun loaded when you found it?

22 A That's correct. It was.

23 Q And how many bullets does that gun hold?

24 A I believe it holds five. Let me check.

25 It does. It holds five.

1 Q And have you seen this gun since you turned it over  
2 to Investigator Rogers?

3 A No, ma'am.

4 Q In the living room, was there any other furniture  
5 that you recall?

6 A The living room was cluttered. I'm sure there was  
7 furniture. I can't tell you, specifically, what was  
8 there. I just remembered it was pretty disorganized,  
9 pretty disheveled. Like I said, it looked as if someone  
10 was staying in the living room. There was a bed, and  
11 clothes, and that sort of thing just laying 'around like a  
12 typical bedroom would be.

13 Q Did you happen to look in any other -- in any of the  
14 other bedrooms in the house?

15 A I walked back in the hallway. But, like I said,  
16 there were other officers that were already working that  
17 area of the house. So I didn't go into those rooms. I  
18 just remember the whole back of the house scene was just  
19 covered in mold from -- the roof had caved in from an  
20 apparent fire in one of the rooms in the back of the  
21 house. So the whole back of the house was sort of covered  
22 in like a mold.

23 Q Do you know if the room that you saw that in had any  
24 furniture?

25 A I don't recall.

1 MS. MONTS: Thank you.

2 I have no further questions.

3 THE COURT: All right. Mr. Mackenzie.

4 MR. MACKENZIE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MACKENZIE:

7 Q Deputy Maxwell, when y'all were at the southern area  
8 command, Mr. Lopez, also, gave some verbal -- or oral  
9 statements to y'all in addition to his written statement;  
10 is that correct?

11 A I don't recall if he did.

12 Q You were not involved in that?

13 A No.

14 Q He had two phones with him; is that correct -- or do  
15 you know whether or not he had two telephones?

16 A I don't know. Basically, when I got to him, he'd  
17 already been secured. And all his property would have  
18 been outside of the room that I was in.

19 Q And in his statement, he says that he is from  
20 Georgia; is that correct?

21 A He gave his address at that time as being  
22 Lawrenceville, Georgia, yes, sir. That's correct.

23 Q And that he says that Mr. Candela is, also, from  
24 Atlanta, Georgia?

25 A Well, he stated that Candela lives in an apartment.

1 Q Okay. He lives in DeKalb County, Georgia, on  
2 Chamblee Tucker Road. That's what he said; right?

3 A Yes, sir. That's correct.

4 Q Now, you were not involved with what took place at  
5 the Waffle House?

6 A No, sir.

7 Q At the house on Dorchester Boulevard, one of the  
8 things y'all were looking for was money; is that correct?

9 A Yes, sir. That would have been typical for a drug  
10 investigation.

11 Q But no money was found?

12 A I didn't recover any money.

13 Q Are you aware of any money being found?

14 A There's a lot of things -- there was other  
15 investigators there. I can't tell you if there was money  
16 that was found or not.

17 Q Okay. The persons present were Mr. Nelson's mother,  
18 his stepfather, and his brother; is that correct?

19 A Yes, sir.

20 Q You didn't find any mobile phones in the house, did  
21 you?

22 A No, sir.

23 Q You -- the crack was found in the kitchen; is that  
24 correct?

25 A Based on prior testimony, I would have to say yes.

1 Although I -- like I said, I didn't -- my area was the  
2 living room. So I can't really say what happened in the  
3 other parts of the house.

4 Q I believe you stated that you -- when you were in the  
5 kitchen, you observed the -- Mr. Nelson's brother in the  
6 kitchen; is that right?

7 A I believe he was somewhere, yes, in that area.

8 Q There were items seized by the Sheriff's Office from  
9 all throughout the house; is that correct?

10 A That's my understanding, yes.

11 Q That gun, the Taurus revolver, was not submitted for  
12 any kind of fingerprint analysis, was it?

13 A Not by me. I don't know from --

14 Q Are you aware of it being subjected to any sort of  
15 fingerprint analysis?

16 A No. I'm not aware, no.

17 Q There's nothing illegal about that gun in and of  
18 itself, is there? For example, there's no -- the serial  
19 number isn't rubbed off or anything like that; is that  
20 correct?

21 A That's correct. It's -- nothing as it sits is  
22 illegal about it.

23 MR. MACKENZIE: Thank you.

24 That's all I have.

25 THE COURT: Mr. Scalzo.

1 MR. SCALZO: Thank you, Your Honor.

2 Before I start questioning, one thing I'd like to  
3 clarify, Judge, State's Exhibit No. 15 was the  
4 Defendant -- Mr. Lopez's statement. And I think State's  
5 Exhibit No. 15 was marked, also, as the holster. I don't  
6 know if I'm confused about that, but that's how I have it  
7 in my notes. So I just wanted to point that out for the  
8 Court.

9 THE COURT: Well, let's clarify it.

10 MS. MONTIS: Your Honor, the holster is States's  
11 Exhibit No. 15. The gun is State's Exhibit No. 16. And  
12 the bullets are State's Exhibit No. 17.

13 THE COURT: All right.

14 MR. SCALZO: I just heard them say that the statement  
15 was State's Exhibit No. 15. That was right before we did  
16 the gun and the holster, Your Honor.

17 THE COURT: What is the statement?

18 MS. MONTIS: State's Exhibit No. 2 is the statement.

19 MR. SCALZO: All right. I'm sorry.

20 THE COURT: Okay. Does that clarify it, Mr. Scalzo?

21 MR. SCALZO: Yes. I'm sorry.

22 CROSS-EXAMINATION

23 BY MR. SCALZO:

24 Q Investigator Blackburn, the first thing I want to ask  
25 you --



1 A Maxwell.

2 Q Maxwell, I'm sorry.

3 A Yes, sir.

4 Q Is State's Exhibit No. 1, which you have up there --

5 A Yes, sir.

6 Q -- that's the waiver form --

7 A Yes, sir.

8 Q -- that was talked about?

9 Help me to understand. There's two different times  
10 on there. The top right-hand corner, it says, Time 1738,  
11 which would be 5:38; right --

12 A That's correct.

13 Q -- in the evening?

14 And then at the bottom left-hand corner is 1604,  
15 which you talked about earlier was before. Can you  
16 explain what do those two times mean, and what's the  
17 discrepancy?

18 A Okay. Basically, the time -- that would be the time  
19 that the interview began with the suspect.

20 Q Which one?

21 A At the top.

22 Q At the top right?

23 A Right.

24 Q Okay.

25 A The 1738, down at the bottom would be the time it

1 concluded.

2 Now, as far as -- it's in military time. 1738 would  
3 be 5:38 p.m. This down here, actually, should be 1804.  
4 Because 1604 would be 4:04 p.m., which, obviously, you saw  
5 on the traffic stop this, I think, occurred around 4:00,  
6 or 5:00, something like that. So that's a mistake there,  
7 basically, a typographical-type error. It should be 1804.

8 Q Okay. Thank you for helping me understand that  
9 discrepancy.

10 A Yes, sir.

11 Q Let's talk about the statement and what you were --  
12 well, let me back up a little it.

13 Mr. Candela -- and I think that's the only portion  
14 where he's named that you have; correct?

15 A Correct.

16 Q He is not here?

17 A Correct.

18 Q You did not investigate a person named Candela, or  
19 connect that name with anybody else, did you?

20 A I did not.

21 Q Okay. And I'm not aware of any reports. Are you  
22 aware of any reports regarding Mr. Candela in this case,  
23 besides this information you've already testified to?

24 A I'm not aware of any, no, sir.

25 Q Okay. And the obvious thing is that Mr. Candela is

1 not going to -- you don't anticipate him coming in to  
2 testify what he told Mr. Lopez when they met with each  
3 other; right?

4 A As far as my --

5 Q As far as your knowledge.

6 A Well, I have a limited role in this case. So I'm not  
7 the case agent. So, you know, I can't really explain, you  
8 know, all the in's and out's of the investigation.

9 Q Right. Well, I'm not asking you to explain. I'm  
10 just saying, to your knowledge, you don't have any  
11 information that anybody has developed information about  
12 what Mr. Candela told Mr. Lopez?

13 A No, sir.

14 Q Okay. And that brings me to the statement, which is  
15 State's Exhibit No. 2, not State's Exhibit No. 15, but  
16 State's Exhibit No. 2. You testified that what  
17 Mr. Blackburn typed out, because that's what this is, this  
18 is typed out by Deputy Blackburn?

19 A That's correct.

20 Q And this is the only recording of it; correct?

21 A Correct.

22 Q There isn't an audio or a video recording of the  
23 conversation between you, Mr. Blackburn, and Mr. Lopez?

24 A That's correct.

25 Q All right. And what is typed by Deputy Blackburn in

1       that second paragraph is that he -- referring to this  
2       Candela guy -- handed me -- referring to Mr. Lopez -- a  
3       box and a piece of paper; correct?

4       A     Correct.

5       Q     And the piece of paper had some numbers on it?

6       A     Correct.

7       Q     And he, basically, tells you that his instruction was  
8       to take the box -- and, presumed, the box we're talking  
9       about here is this cognac box that's been referred to?

10      A     I would have to say yes, that --

11      Q     That was your understanding of what the conversation  
12      was?

13      A     Correct.

14      Q     Okay. The box -- the cognac box, are you aware of  
15      any fingerprint analysis, any forensic analysis done to  
16      that cognac box?

17      A     Again, it's getting a little bit out of the scope of  
18      my involvement --

19      Q     Well, I'm just asking you what you're aware of. You  
20      don't have to tell me what other people know, just what  
21      you know.

22      A     No, not that I'm aware of.

23      Q     Okay. And, based on what you told Mr. Mackenzie,  
24      what is typed out here are the words that Mr. Lopez gave  
25      to you and Deputy Blackburn, there isn't any supplemental

1 extra words that he verbally gave to you that didn't end  
2 up on here --

3 A No, sir.

4 Q -- on this statement; is that correct?

5 A Yes, sir.

6 MR. SCALZO: That's all I have, Judge.

7 THE COURT: Any redirect, Solicitor?

8 MS. MONTS: No, Your Honor.

9 THE COURT: Thank you.

10 You can step down.

11 MS. MONTS: Your Honor, we ask that this witness be  
12 excused.

13 THE COURT: Any objection to excusing Mr. Maxwell?

14 MR. MACKENZIE: No, objection.

15 MR. SCALZO: No, sir.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Thank you.

18 MS. MONTS: Your Honor, the State calls Officer  
19 Marchi.

20 THE CLERK: Sir, please, place your left hand on the  
21 Bible and raise your right hand.

22 WHEREUPON,

23 CHRISTOPHER DOUGLAS MARCHI,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 Please be seated.

2 Please state your full name for the record.

3 THE WITNESS: Investigator Christopher Douglas  
4 Marchi.

5 DIRECT EXAMINATION

6 BY MS. MONTS:

7 Q Investigator, please, tell the jury where you're  
8 employed, and how long you've worked there.

9 A Currently, I'm an investigator with the Greenville  
10 County Sheriff's Office. I was first hired in 1989. And  
11 I have worked continuously with two exceptions of overseas  
12 service.

13 Q And, please, explain some of your training and  
14 experience in law enforcement.

15 A I've taken numerous classes throughout the years,  
16 both in narcotics, patrol, warrant service, technical  
17 surveillance, for example, basic and advanced narcotics  
18 investigations, various classes over the years.

19 And as far as case wise, I've probably been involved  
20 in several hundred drug investigations that would be  
21 anywhere between search warrants, surveillance, drug  
22 arrests, other types of investigations.

23 Q And were you on duty on January 21st, 2005?

24 A Yes, I was.

25 Q What was your assignment on that afternoon?

1 A I was asked by the supervisor to initiate a follow-up  
2 investigation on a drug interdiction stop that occurred on  
3 the interstate.

4 Q And what was your first -- where did you first meet  
5 and learn about what your assignment was?

6 A I was quickly briefed by the deputies involved in the  
7 car stop, Deputy Hines primarily, and McBee. I was  
8 introduced to Daniel Lopez.

9 Q Do you recall where that took place?

10 A Down at southern area command.

11 Mr. Lopez -- I was advised that Mr. Lopez was  
12 interested in talking to us, assisting us, and, perhaps,  
13 continuing the investigation as far as the local drug  
14 connection where these drugs that was obtained from the  
15 stop were going to.

16 Q And were there any other officers working with you at  
17 that time?

18 A The majority of the vice and narcotics investigators,  
19 I think, were on duty at that time.

20 Q And did you receive information from Mr. Lopez?

21 A Yes. I did a very brief -- I would say maybe a  
22 10-minute verbal interview with Mr. Lopez, basically,  
23 getting some quick facts as to who he was, where he was  
24 from, where he was going to in Greenville, and primarily  
25 where these drugs were supposed to go to.

1 Q And what plan did you make, and what transpired in  
2 order to pursue this?

3 A Well, after briefly talking to the officers that were  
4 down at southern command, we decided that we would attempt  
5 to make a phone call. Mr. Lopez had described to us that  
6 he had a telephone number in which he was supposed to call  
7 when he got into Greenville County. Once he made that  
8 call, he was to meet with an individual who he would turn  
9 the drugs over to. And then he would receive a sum of  
10 money for that.

11 Q And was all that supposed to take place at one  
12 location, or do you know?

13 A He gave me the impression that it would be at one  
14 location.

15 Q And, at this point, had you spoken with Investigator  
16 Maxwell to find out what information he had received?

17 A Off and on. We were very crunched for time.  
18 Mr. Lopez advised us that he was already -- had already --  
19 was several minutes late. And he was concerned that if we  
20 didn't move quickly or expediently that we possibly could  
21 not try to deliver these drugs.

22 So the time was really of the essence. So I was  
23 taking most of my information really from him in the  
24 verbal interview, and trying to organize the different  
25 elements of our unit to try to arrange this meeting.



1 Q And what about the statement in Mr. Lopez's statement  
2 that he was supposed to follow whoever he was supposed to  
3 meet and go collect the money?

4 A I don't think I learned about that until, perhaps,  
5 afterward. A lot of that formal debrief was kind of going  
6 on after I had left from southern command.

7 Q Did you pursue having the phone call made?

8 A Yes. We did make the phone call from Mr. Lopez's  
9 cell phone.

10 Q And what was Mr. Lopez's cell phone?

11 A His number was a 404 area code number, 513-1345, an  
12 Atlanta area code.

13 Q Could that be 2345?

14 A I'm sorry, 2345.

15 Q And what number was he to call?

16 A He gave me a number that -- which was a local  
17 Greenville number. And that was area code 864, 303-8568.

18 Q Were you present when this phone call was made?

19 A Yes, I was.

20 Q Please describe what -- was there any other officers  
21 present, if you recall?

22 A I know there were some other officers there. I  
23 can't, specifically, say who was with me at the time.  
24 There was a lot of interaction going on. We were trying  
25 to get units out to the area where we hoped that this

1 meeting would take place. So I know there was, at least,  
2 one or two, but I can't say who was exactly...

3 Q Was this call recorded?

4 A Yes, it was.

5 Q Did you listen to the call?

6 A I did.

7 Q And where, pursuant to this call, were you supposed  
8 to --

9 MR. MACKENZIE: Your Honor, I object to that based on  
10 reasons previously stated, Your Honor.

11 THE COURT: On what, sir?

12 MR. MACKENZIE: The recording.

13 THE COURT: I'm not sure I understand your objection.

14 MR. MACKENZIE: It's based on the objection I had  
15 made yesterday. I'll be glad to approach.

16 THE COURT: Yes, approach.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: Subject to your objection.

19 MR. MACKENZIE: Thank you, Your Honor.

20 BY MS. MONTS:

21 Q Investigator Marchi, please, continue. What  
22 information did you learn, and what did you do to pursue  
23 the information you received from the phone call?

24 A We made the phone call. And Mr. Lopez was talking to  
25 an individual trying to explain that -- trying to justify

1 the delay. And he was saying how he had gotten lost on  
2 the interstate and missed his exit. And he was trying to  
3 come back around.

4 We were trying to arrange a particular spot where we  
5 could get both surveillance units and enough units that  
6 could do a takedown in the safest possible manner.  
7 Eventually, after a little bit of back and forth  
8 conversation, from what I recall, it was agreed upon the  
9 Waffle House at Augusta Road and I-85 would be the meeting  
10 location.

11 Q Do you recall the approximate time of that phone  
12 call?

13 A I believe the approximate time was 3:52.

14 Q And what did you do to get his help to do this  
15 takedown?

16 A Well, after we made the phone call, I turned  
17 Mr. Lopez back over to Investigator Blackburn and Maxwell.  
18 I then proceeded to make contact with several other  
19 officers to try to get what we call a perimeter team,  
20 which would be a team that could both get visual  
21 surveillance on a particular location, and be available  
22 for the actual arrest.

23 We had multiple units out there. And, also, I had to  
24 arrange the marked units. Typically, when you're doing a  
25 situation like that, you want to have a marked unit

1 available. So I had coordinated with two of the deputies  
2 to arrange that.

3 I, also, had to coordinate with an undercover officer  
4 that worked in the unit at the time, Investigator  
5 Grounsell, who would, in essence, play the role of  
6 Mr. Lopez in this situation. And the reason for that  
7 primarily is Mr. Lopez had just been taken into custody.  
8 For safety reasons, for fear of possible escape, and that  
9 sort of situation, it wasn't the sort of thing I could put  
10 him in a car and send him by himself to this meeting  
11 location.

12 So we decided that we would ask Investigator  
13 Grounsell to pose as Mr. Lopez. And that primarily worked  
14 out because Mr. Lopez had stated that these people,  
15 supposedly, had never seen him before. So we arranged to  
16 have Investigator Grounsell take Mr. Lopez's car and drive  
17 to the meeting location.

18 Q Did the person you were going to -- or Mr. Grounsell  
19 was going to meet know what vehicle he would be in?

20 A Yes. We did discuss vehicles -- or Mr. Lopez  
21 discussed vehicles on the phone and told him what he was  
22 driving, the white Intrepid. And he was told that -- by  
23 the person on the other end that they would be coming in a  
24 dark pickup truck.

25 Q And did you go to the location at the Waffle House?

1 A I did. We arranged several different -- two to three  
2 man teams in different vehicles. And we got in areas that  
3 we could keep both visual surveillance on the parking lot,  
4 but, also, north and south of the location just in case  
5 something kind of went mobile and got out of the parking  
6 lot. But the plan was to try to keep it contained to the  
7 parking lot.

8 Q And is that -- where's the -- what's the address of  
9 that Waffle House?

10 A (There was no response.)

11 Q Or what street is it on?

12 A It's on Augusta and 85. I'd have to look to see what  
13 the exact number -- it's not in business anymore, though.

14 Q And is that -- I'm sorry. It's not in business  
15 anymore?

16 A No, no. The building is still there, but it's not in  
17 business.

18 Q And is that in Greenville County?

19 A Yes, it is.

20 Q And what did you observe when you got there, and did  
21 you arrive prior or after Investigator Grounsell?

22 A I believe I arrived either at the same time or maybe  
23 a few minutes before. My duties, at that time, would be  
24 to control the communication amongst the officers to make  
25 sure that everyone would be in place, and to call out

1       their positions to make sure that our undercover officer,  
2       when he gets in there, is covered properly in case  
3       something -- an emergency-type situation were to happen,  
4       we could get units to assist him.

5       Q     Did you observe any vehicles in the parking lot?

6       A     After Investigator Grounsell arrived -- I can't tell  
7       you exactly how many minutes it could have been. It  
8       seemed like a while. But I'm sure it was probably between  
9       five to 10 minutes. There was a dark-colored pickup truck  
10      that did pull into the parking lot.

11      Of course, there are a lot of dark-colored pickup  
12      trucks. So just because one pulls in, that does not  
13      necessarily mean that that's the one we're looking for.  
14      But I did try to take note of that pickup truck, because  
15      that's the only one that had come in similar to the one we  
16      were looking for.

17      Q     What did you need besides the description of the  
18      vehicle in order to know who you were looking for?

19      A     Well, that would have been the tough part. Because  
20      we didn't really have a description of the person who  
21      would arrive, other than in all probability a male  
22      subject. All we knew for sure was that it was probably a  
23      male subject, and it was probably going to be a  
24      dark-colored pickup truck.

25      Q     So what would you need in order to further your

1 investigation?

2 A Well, we were hoping that when the vehicle they were  
3 looking for came in that there would be some sort of  
4 contact initiated between the individual in the vehicle --  
5 or individuals and our undercover officer, who was, again,  
6 posing as Mr. Lopez. And we were hoping that because we  
7 gave the vehicle description of Mr. Lopez's car -- or he  
8 did to the individual.

9 So they should be looking for our guy, just like we  
10 would be looking for them. And we were hoping that there  
11 would be some sort of interaction to indicate this was the  
12 person.

13 Q Did you observe how many people were in that vehicle?

14 A That particular vehicle, there was one person.

15 Q What did you observe them do?

16 A That individual parked the vehicle -- if you're  
17 facing the Waffle House, my recollection was he parked on  
18 the left-hand side of the parking area. He then went  
19 inside, stayed maybe a minute or two. He came back out.  
20 He had a -- like a Waffle House plastic bag in his hand.  
21 Apparently, he picked something up from there. He came  
22 out the front door.

23 And, at that point in time, he just stopped. And I  
24 would say it was maybe 10 feet or so in the front door,  
25 kind of in the parking area, but going to his vehicle.

1 Once he stopped, he just began looking around, which was  
2 somewhat unusual. And I think, at that point in time, is  
3 when he saw the white Intrepid.

4 Q And how many surveillance officers were there at this  
5 time, if you recall?

6 A I think we had, at least, four mobile units. Those  
7 mobile units are individual cars. But they may have  
8 contained one to two officers apiece. I know I was with  
9 then-Sergeant Burris. And I pretty much had a visual on  
10 the parking lot from my position. But there were other  
11 units scattered about, two-man teams primarily, plus the  
12 marked units that were kind of hidden off.

13 Q And describe what you observed after this person  
14 stopped and looked around.

15 A Once he stopped -- and Investigator Grounsell had  
16 parked the vehicle he was in more towards the back part of  
17 the parking lot. If the building is here, the truck is  
18 here, Investigator Grounsell's vehicle is like about here.  
19 And, of course, I'm about here. He made some motion with  
20 his arm in the direction of Investigator Grounsell.

21 Now, there was some vehicles kind of obstructing my  
22 view somewhat. But I could see some sort of arm movement  
23 from him towards Investigator Grounsell's direction.

24 Q Did Investigator Grounsell do anything at that time?

25 A He was communicating with us at that time as well.



1 So we had communication between both the mobile units and  
2 Investigator Grounsell.

3 Q What is that communication through?

4 A Radio.

5 It was never our intention to let Investigator  
6 Grounsell really get one-on-one interaction between the  
7 person and him. Investigator Grounsell is not a  
8 Hispanic -- of ethnicity. So if he saw Investigator  
9 Grounsell, he would know within a few seconds, hey, this  
10 is not a guy named Lopez. So we had to make sure that  
11 there was not actual close visual contact.

12 So what Investigator Grounsell did, at that time, was  
13 to start to back his vehicle up or, at least, have the  
14 backing lights on so he would kind of maneuver out in the  
15 parking lot giving an indication that he was going to come  
16 to him.

17 Q Did you observe the person who got out of the pickup  
18 truck get back in the pickup truck?

19 A Once Investigator Grounsell started moving, he went  
20 back to the truck, got in the truck. And within probably  
21 seconds, he was backing his truck into the parking lot.

22 Q What did he -- what did you and Officer Burris do  
23 once you saw this person get back into his pickup truck?

24 A Well, our situation was a little dicey at that point.  
25 Because we weren't set up and didn't have the manpower to

1 do a mobile type of surveillance. Mobile surveillance is  
2 going to be following the person from point A to point B.  
3 There were not enough units really for that. So we knew  
4 from the start it'd have to be, basically, an arrest in  
5 the parking lot.

6 So, basically, at that point in time, when I was  
7 comfortable that this was the individual that was going to  
8 meet Investigator Grounsell, posing as Mr. Lopez, that we  
9 were going to do the takedown in the parking lot of the  
10 Waffle House.

11 Q Was the motioning vivid enough for you to see to  
12 determine that this was the correct person?

13 A In my mind, yes. But, also, remember, I was, also,  
14 in communication with Investigator Grounsell, who had kind  
15 of a better view than I did. He could see straight  
16 through the parking area from his vehicle to the truck.  
17 So he knew, yes, this man is motioning to me. This man is  
18 wanting me to follow him. And he indicated that to me on  
19 the radio, which confirmed, basically, what I saw.

20 Q And, please, describe what signal you gave, and what  
21 the officers did.

22 A Well, we give a typical takedown signal, which is  
23 just verbally on the radio telling units to move in. The  
24 key to it is get in there promptly, but get in there  
25 safely. Primarily, you need to block the vehicle, which

1 Sergeant Burris and myself had that primary  
2 responsibility. Because we were in our -- the biggest  
3 vehicle we have, which was a Dodge Ram pickup truck.

4 Q I'm sorry. What?

5 A A Dodge Ram pickup truck is what we were in.

6 And we maneuvered around to the front of the entrance  
7 to block that dark pickup truck from, actually, leaving.  
8 So we were probably the first unit to maneuver around to  
9 that front parking lot.

10 I believe, also, while we were doing that,  
11 Investigator Grounsell maneuvered his car towards the back  
12 bumper end -- or close to the bumper end of the truck to  
13 keep it from backing up. So, in essence, what you have  
14 are two blocking vehicles. And then you have the other  
15 vehicles coming in to -- as best they can to support the  
16 arrest team, which ended up being primarily, I believe,  
17 myself, and Deputy McBee, and probably Sergeant Burris.

18 Q Describe what you did, and when you exited your  
19 vehicle.

20 A As soon as we maneuvered around and got to the front  
21 of the dark pickup truck, I was on the passenger side. So  
22 I got out and went to the driver's side, as I recall, of  
23 the dark vehicle. I had my service weapon out pointed in  
24 the direction of the vehicle. And I ordered the male  
25 subject to show his hands, first off.

1 Q Was Investigator -- or excuse me, Officer Wannemacher  
2 there as well?

3 A I believe he came in about that same time.

4 Q Okay. Please continue.

5 A And there were other supporting elements, too, at  
6 that time. But as soon as I got to the driver's side and  
7 opened the door covering the driver, verbally, I ordered  
8 him out several times. And it took a few seconds, but he,  
9 eventually, did come out of the vehicle.

10 Q Why did you order him several times?

11 A It just seemed to take one or two chops to get the  
12 point across to exit the vehicle.

13 Q So, please, continue. After you ordered him out  
14 several times, what took place?

15 A We handcuffed the driver. We did a quick pat down  
16 for weapons, and then secured him away from the vehicle  
17 and more or less got all the cars -- our vehicles off the  
18 street and kind of out of the way, so there were no  
19 traffic hazards at that point.

20 Q Was there any contact with Investigator Grounsell's  
21 vehicle?

22 A I didn't know this until later, but, apparently, when  
23 Sargent Burris and I maneuvered to the front, the truck --  
24 the driver of the truck put it in reverse, whether that  
25 was a -- what his frame of mind was, at that point, I

1 can't say. But he did put it in reverse and ended up  
2 ramming into the front of the Dodge Intrepid.

3 Q Do you know where Investigator Grounsell was when you  
4 got the driver out of the pickup?

5 A No. I really can't say. There was quite a few  
6 people around. And I'm sure he was probably more out of  
7 the way. That would be the standard way that an  
8 undercover officer would react would be to -- more to exit  
9 the scene. He's not marked. There's no Sheriff's Office  
10 clothing on the undercover officer, whereas all the other  
11 officers are either going to be uniform officers, or are  
12 going to have some marking on us.

13 So to avoid the possibility of friendly on friendly,  
14 you get the UC officer out --

15 Q What do you mean "friendly on friendly"?

16 A Well, mistaking someone who's not marked as a  
17 Sheriff's Office deputy as some sort of aggressor. In the  
18 confusion of an arrest like that, that could happen. So  
19 the undercover officer is naturally going to try to exit  
20 out of the scene so he doesn't get wrapped up in that.

21 Q And are you talking about gun fire?

22 A Well, it could be all sorts of situations. It --  
23 there have been cases of gunfire in those sort of  
24 situations. There have been cases of uses of force, be it  
25 handcuffing, throwing down on the ground, just different

1 things. You just try to avoid it.

2 Q And, please, describe, were there any blue lights?

3 A Yes. We had two vehicles with blue lights, to the  
4 best of my recollection. One was a marked vehicle. And I  
5 believe that was Deputy Wannemacher's vehicle. And the  
6 other vehicle was, I believe, Deputy McBee's, which was an  
7 unmarked patrol vehicle. But it did have blue lights and  
8 siren.

9 Q Please continue. Where did you go once you had the  
10 person exit the vehicle?

11 A I then took the driver kind of off to the side just  
12 away from his vehicle. I gave a quick verbal Miranda.  
13 And, at that point, I asked him if he wanted to speak to  
14 us about the situation that we were in with him. He  
15 immediately said, no, he didn't want to talk to us. So  
16 that more or less ended the interaction I had with him as  
17 far as speaking to him.

18 Q What steps did you take to identify who this person  
19 was?

20 A I was able to find a wallet that the driver had on  
21 his person. He had a driver's license with a name and an  
22 address on it, as well as some other -- I'm sure other  
23 forms of identification. But the driver's license was the  
24 primarily thing I was, initially, looking for.

25 Q You said his driver's license and there were other

1 forms of --

2 A I think he had like bank cards, and things like that.

3 Q Was there a picture on the driver's license?

4 A Yes, there was.

5 Q Did you compare it to the person?

6 A Yes, I did.

7 Q Was it the same individual?

8 A It was.

9 Q And what was the name and the address on the driver's  
10 license?

11 A The name was Octavius Nelson, and an address of 226  
12 West Dorchester, which is in Greenville.

13 Q Was a tag -- was the tag on the pickup truck run?

14 A Yes. I'll have to refer to my notes on the tag. But  
15 it was checked. And it did come back to the same address  
16 on the license. I believe the tag was -- it was a Ford  
17 Ranger pickup truck with a tag of 822 RRB.

18 Q Was Octavius Nelson arrested at that time?

19 A, Yes, he was.

20 Q And is the person that was in that pickup truck that  
21 was arrested at that time in the courtroom today?

22 A Yes, he is.

23 Q Where is he seated?

24 A The Defendant.

25 Q Did he have a cell phone on his person?

1 A Yes.

2 Q Did you take possession of that?

3 A I did take possession of it.

4 Q What was the number on that phone?

5 A The number was a local number with an 864 area code.

6 And it was 303-8566.

7 Q What did you do with that phone once you took  
8 possession of it?

9 A It remained in custody with us.

10 Q And did you look in that phone?

11 A Yes. On scene of the arrest, I did look in the  
12 phone.

13 Q And did you get some information off the phone?

14 A Yes. Typically, most mobile phones are going to have  
15 an address book, recent calls. Some phones will have sort  
16 of direct-connect communication, depending on what kind of  
17 phone it is. And it's sort of like -- the phone is like a  
18 walkie talkie of sorts, text messages, different things  
19 like that is what I would, typically, look for.

20 Q And during this -- during the arrest of Mr. Nelson,  
21 was there a direct-connect attempt made?

22 MR. MACKENZIE: Your Honor, I'm going to object. I  
23 don't know that this witness is qualified to answer these  
24 types of questions.

25 THE COURT: What's your question?



1 MS. MONTIS: Your Honor, whether there was --  
2 whether -- when the officer was looking in the phone after  
3 the Defendant's arrest, whether there was a direct-connect  
4 attempt made to the cell phone while the Defendant was  
5 being arrested.

6 THE COURT: I'll allow that.

7 Go ahead.

8 THE WITNESS: Yes, there was.

9 BY MS. MONTIS:

10 Q And what was the number from that direct-connect  
11 attempt?

12 MR. SCALZO: I'm going to object, Your Honor. It  
13 sounds like hearsay to me. He's reading off of something  
14 that's not in evidence. He's trying to give testimony  
15 about what it is.

16 THE COURT: No. I'll allow that.

17 Go ahead.

18 THE WITNESS: The direct connect was made at 4:56.  
19 And it was to the phone that we, actually, called prior to  
20 the operation.

21 BY MS. MONTIS:

22 Q And what was that number?

23 A The area code was 864, 303-8568.

24 Q And the call -- the direct-connect attempt was from  
25 that phone to the phone in Mr. Nelson's possession; is

1       that correct?

2       A     That's correct.

3           MS. MONTIS: I'd like to have this marked.

4           (WHEREUPON, State's Exhibit No. 18 was marked for  
5           identification only.)

6       BY MS. MONTIS:

7       Q     Officer, I'm going to hand you what's been marked for  
8           identification as State's Exhibit No. 18. Can you  
9           identify this?

10      A     Yes. It's the phone I took off of the Defendant  
11           after his arrest.

12      Q     Did you have it in your custody for sometime?

13      A     I did.

14      Q     Did you, subsequently, turn it into the property and  
15           evidence room?

16      A     Yes, ma'am.

17      Q     And did you pick it up and bring it to court today?

18      A     I did.

19           MS. MONTIS: Your Honor, we'd move the telephone into  
20           evidence at this time.

21           THE COURT: Any objection?

22           MR. MACKENZIE: No objection.

23           THE COURT: Put it in.

24           (WHEREUPON, State's Exhibit No. 18 was admitted into  
25           evidence.)

1 BY MS. MONT'S:

2 Q Officer, once you had the phone in your custody, did  
3 you, subsequently, get subscriber information for the  
4 phone?

5 A I did.

6 MS. MONT'S: Your Honor, Mr. Mackenzie and I have a  
7 stipulation that we'd like to enter.

8 THE COURT: All right. Are you going to read it?

9 MS. MONT'S: Yes, Your Honor.

10 Your Honor, regarding cell phone numbers 864-303-8566  
11 and 864-303-8568, it is stipulated by Defense Counsel Drew  
12 Mackenzie and Assistant Solicitor Joyce Monts that the  
13 authenticity of the cell phone records, and the owner of  
14 the accounts being Octavius Louis Nelson is established.  
15 The testimony of the custodian of records from the cell  
16 phone company will not be required.

17 And we'd move this into evidence.

18 THE COURT: Yes.

19 (WHEREUPON, State's Exhibit No. 19 was marked for  
20 identification and admitted into evidence.)

21 (WHEREUPON, State's Exhibit No. 20 was marked for  
22 identification only.)

23 BY MS. MONT'S:

24 Q Officer, I'm handing you State's Exhibit No. 20. Can  
25 you, please, identify this?

1 A Yes, ma'am. This is Sprint subscriber information.

2 Q Did you obtain this?

3 A Yes, ma'am.

4 MS. MONT'S: Your Honor, we'd move this into evidence  
5 at this time.

6 THE COURT: All right. It's in evidence.

7 (WHEREUPON, State's Exhibit No. 20 was admitted into  
8 evidence.)

9 BY MS. MONT'S:

10 Q Can you, please, identify the owner of the phone  
11 numbers, and the addresses?

12 A Both numbers, the numbers that we read out earlier  
13 came back to Octavius Nelson, [REDACTED]  
14 Boulevard in Greenville. And the account establish date  
15 was 12/17/2004.

16 Q Officer, what did you do after Mr. Nelson was  
17 arrested at the Waffle House?

18 A As to my recollection, I believe I had one or two  
19 officers secure Mr. Nelson. And then I went over to the  
20 home address. Prior to that, I asked a couple other  
21 officers to go ahead and go to the Dorchester Boulevard  
22 address and try to make contact with somebody there.

23 Q Is the Waffle House and the Dorchester address, [REDACTED]  
24 [REDACTED] in Greenville County?

25 A Yes, ma'am, it is.

1 Q What did you observe when you got to the residence?

2 A Two or three of our officers had already made contact  
3 with some -- what we later found out to be family members  
4 of Mr. Nelson, and had obtained a consent to search of the  
5 residence. And we were in the process of trying to  
6 organize a search team to make a search of the house.

7 Q And once you got there, what was your role?

8 A Primarily, at that point, I just assisted in the  
9 search of the residence.

10 Q Please describe the house.

11 A Ranch style, probably mid-size, 1,300 to 1,500 square  
12 feet. Typical layout of a ranch style house. It had an  
13 open garage, kitchen, living room, and some bedrooms.

14 Q What did you observe about the rooms in the house?

15 A When I went into the kitchen, I noticed there was a  
16 room off to the side of the kitchen. It may have been a  
17 converted room into a bedroom. There was, also, a living  
18 room that appeared to be -- someone was, actually,  
19 sleeping in there like a bed made up in the living room.

20 There was, also, two other bedrooms to the far part  
21 of the house. One, apparently, had been occupied, but it  
22 was quite obvious no one was living in there at that point  
23 in time, because of some -- apparently, there had been a  
24 fire at some point. And you could, actually, see a fairly  
25 large hole in the roof. So it was quite clear it was not

1 really habitable, that room.

2 Q Was there any furniture in that room?

3 A Yes. Chest of drawers, the typical type of things  
4 that a bedroom would have if you live in it, but, of  
5 course, no one did.

6 Q Can you describe the living room area?

7 A It was a small living room, kind of a bed-couch type  
8 combination, clothing, magazines kind of all spread out.  
9 I want to say there was a -- some end tables and a TV in  
10 the living room.

11 Q Did you notice anything on the TV?

12 A Yes. There was a note on the TV about this wide, and  
13 yeah tall taped to the television with some handwriting on  
14 it.

15 MS. MONTES: I'd like to have this marked.

16 (WHEREUPON, State's Exhibit No. 21 was marked for  
17 identification only.)

18 BY MS. MONTES:

19 Q Investigator, I'm going to hand you what's been  
20 marked as State's Exhibit No. 21 for identification. Can  
21 you, please, tell the jury what this is?

22 A This was the handwritten note that I just described  
23 to you that was on the TV.

24 Q And did you take custody of this form?

25 A I did.

1 Q And, at some point, did you turn it into property and  
2 evidence?

3 A I did.

4 Q And did you bring it to court today?

5 A Yes.

6 MS. MONT'S: Your Honor, we'd move State's Exhibit  
7 No. 21 into evidence.

8 THE COURT: Any objection?

9 MR. MACKENZIE: No objection.

10 (WHEREUPON, State's Exhibit No. 21 was admitted into  
11 evidence.)

12 BY MS. MONT'S:

13 Q Officer, please, publish the note.

14 A It says, Mom and Charles, I'm taping the fight on  
15 HBO, love Tay, spelled T-A-Y. I'm going to check on  
16 junior and senior. And it is handwritten on the paper.

17 Q What else did you observe about the room, or what  
18 else did you, perhaps, find?

19 A I believe I found some Pyrex mixing cups, a box of  
20 baking soda, kind of a fork -- like a typical fork that  
21 you would use to eat with, and two scales. I mean, that  
22 was from the -- what I call the bedroom, the burnt out  
23 looking bedroom.

24 MS. MONT'S: I'd like to have this marked.

25

1 (WHEREUPON, State's Exhibit No. 22 was marked for  
2 identification only.)

3 BY MS. MONTIS:

4 Q Officer, I'm going to hand you what's been marked as  
5 State's Exhibit No. 22. Can you identify these?

6 A Yes, ma'am. These are the two scales, the Pyrex cup,  
7 the baking soda, and the fork.

8 Q And describe where you found these.

9 A I believe they were in the closet that was in the  
10 bedroom. To the best of my recollection, the closet was  
11 pretty full. So it was, I think, on top of a -- the top  
12 portion of the closet on a shelf.

13 Q I'm sorry. I can't hear you.

14 A To the best of my recollection, it was like on a top  
15 portion of the closet on a -- like a closet shelf.

16 Q And which bedroom is this?

17 A That would be the burnt out looking bedroom.

18 Q Was there any possibility someone was living in that  
19 room?

20 A Could someone be living in it? Of course,  
21 physically, yes. But I very much doubt it. It didn't  
22 look to have been lived in for quite sometime.

23 Q And what about the hole in the roof?

24 A My recollection was it was pretty large. If it was  
25 raining, you wouldn't want to be in there for too long.



1 Q Did you find anything else around the house?

2 A Various paperwork, different things that I kind of  
3 took note of, primarily paperwork that would be connected  
4 to Mr. Nelson.

5 MS. MONTES: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 23 was marked for  
7 identification only.)

8 THE COURT: Take the jury out for a recess.

9 (WHEREUPON, the jury was excused from open court at  
10 approximately 3:34 p.m.)

11 THE COURT: All right. We'll take a short recess.

12 (WHEREUPON, a break was taken.)

13 THE COURT: I've got a note here from Teresa Sanders,  
14 who's one of our jurors. And she says, I'm a close friend  
15 with Charlie Blackburn's mother.

16 He's not listed as a witness. I think his name was  
17 mentioned.

18 MS. MONTES: That's right, Your Honor. He was an  
19 officer who used to work at the Sheriff's Office, who  
20 was -- who helped get the statement, Lopez's statement.

21 THE COURT: I understand. I'm going to bring her out  
22 and see if that presents any problem.

23 Bring Ms. Sanders out for me.

24 (WHEREUPON, Juror #231, Teresa Sanders, entered the  
25 courtroom.)

1 (WHEREUPON, the jury came into open court at  
2 approximately 3:50 p.m.)

3 THE COURT: Solicitor, you may proceed.

4 BY MS. MONTIS:

5 Q We were talking about what was in the -- what you  
6 found in the house. I'm going to hand you State's Exhibit  
7 No. 23. Can you tell me what this is?

8 A Yes, ma'am. This was the paperwork that I referenced  
9 to that was throughout the house in different locations.

10 Q Can you, please, describe what the item is?

11 A The first piece of paperwork is an envelope with a  
12 letter. It's addressed to a Tay Nelson, [REDACTED]  
13 [REDACTED], Greenville, South Carolina, from a  
14 Cory Shell with a Spartanburg address.

15 The second item is a BB&T bank balance sheet with the  
16 name Octavius Nelson with a P.O. Box 6935 in Greenville.  
17 The statement date is 12/26/01.

18 Q And, if you could, speak up just a little bit,  
19 please.

20 A I'm sorry. The statement date was 12/26/01.

21 The next is a balance sheet from Wachovia Securities  
22 in the name of Octavius Nelson with a P.O. box of 6935 in  
23 Greenville. No date from what I can tell on this one.

24 Next piece of paper is a State of South Carolina  
25 Employment Security Commission questionnaire, I believe,

1 with the name of Octavius L. Nelson, [REDACTED]  
2 [REDACTED] in Greenville.

3 The next piece of paper is handwritten. And it  
4 states, Your P.O. box rent is past due. Mail will be  
5 returned on 6/10/96. And there's some handwritten notes,  
6 phone numbers, first names on the back of this piece of  
7 paper.

8 The last thing is an envelope from State Farm  
9 Insurance. And it is addressed to Octavius L. Nelson, [REDACTED]  
10 [REDACTED] in Greenville. In it, it has  
11 State Farm Mutual automobile insurance company paperwork  
12 with the name Octavius L. Nelson and an account number,  
13 and, I believe, \$54.90 due.

14 Q Did you take custody of these items?

15 A Yes, ma'am.

16 Q And did you, subsequently, turn them into the  
17 property and evidence room at the law enforcement  
18 center?

19 A I did.

20 Q And did you bring them to court today?

21 A I did.

22 MS. MONTIS: Your Honor, we'd move State's Exhibit  
23 No. 23 into evidence at this time.

24 THE COURT: Any objection?

25 MR. MACKENZIE: There's no objection.

1 (WHEREUPON, State's Exhibit No. 23 was admitted into  
2 evidence.)

3 BY MS. MONTIS:

4 Q Investigator, did you take custody -- excuse me, did  
5 you bring items to court with you today?

6 A I did.

7 Q Can you, please, describe where you went to get the  
8 items to bring to court today?

9 A This morning, I went to the law enforcement center  
10 off of 4 McGee Street, and went to the property and  
11 evidence room, which is in the downstairs part of the LEC,  
12 and met with the property and evidence clerks.

13 Q And describe the procedure for checking items in and  
14 out there, please.

15 A Every item that goes in has a -- what they call a P&E  
16 sheet where the chain of custody is and a description of  
17 the item. And it's identified by case number and other  
18 such things. But on the bottom of that sheet is a  
19 sign-off portion where if I were to put something in or  
20 pick up something for court or for examination, different  
21 things, then I would, actually, print my name, and sign  
22 it, put why I'm taking it and the date and time.

23 Q And who has access to this property and evidence  
24 room?

25 A Certified law enforcement officers will meet with the

1 property and evidence technicians, three or four, on any  
2 given first or second shift that, actually, work down  
3 there. To go in there, since it's a secured facility,  
4 you, actually, have to get with whatever evidence clerk is  
5 on duty and sign a sign-in sheet.

6 But, normally, you don't even go in. You just go to  
7 the window and tell them what you're there for. And for  
8 court, for example, they will review all the evidence  
9 that's under my case number -- under the case number of  
10 this case. And they'll pull all the evidence associated  
11 with that case number and bring it to me. I'll then  
12 review the P&E sheets item by item. I sign for it. I  
13 take the P&E sheets and the evidence, take it to court  
14 and, of course, I will bring it back and sign it back in.

15 Q And did you, in fact, bring every item regarding this  
16 case to court today?

17 A Yes, ma'am. Every item in P&E associated with this  
18 case is here.

19 MS. MONTS: Thank you.

20 No further questions.

21 THE COURT: Mr. Mackenzie.

22 MR. MACKENZIE: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MACKENZIE:

25 Q Deputy Marchi, there's a stipulation regarding the

1 phone records, and you've already testified to -- can you  
2 identify these two documents?

3 MR. MACKENZIE: I'm sorry. Let me have them marked  
4 for identification.

5 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were  
6 marked for identification only.)

7 BY MR. MACKENZIE:

8 Q These are Defendant's Exhibit Nos. 1 and 2. Could  
9 you identify those for us?

10 A Yes, sir. These are phone totals to two separate  
11 numbers, I believe.

12 Q Are they telephone records?

13 A Yes, sir, they are.

14 Q From phone numbers 864-303-8566 and 8568?

15 A That would be correct.

16 MR. MACKENZIE: I'd like to move those into evidence  
17 at this time.

18 THE COURT: Any objection?

19 MS. MONTS: No, Your Honor.

20 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were  
21 admitted into evidence.)

22 BY MR. MACKENZIE:

23 Q I want to take you back, first of all, to the -- what  
24 was going on at this southern area command. You talked  
25 about Mr. Lopez and his cooperation. He made some verbal

1 statements to you before or approximately at the same time  
2 that he gave his written statement; is that correct?

3 A That would be correct.

4 Q And isn't it true that he told you that he was going  
5 to purchase the drugs for \$10,500?

6 A Well, I wouldn't say -- quite put it that way. From  
7 my recollection, it was --

8 THE COURT: Can you pull a little closer to the  
9 microphone, please?

10 THE WITNESS: My recollection was that he was to  
11 deliver a half kilo, and then pick up money and take it  
12 back to someone in Atlanta.

13 BY MR. MACKENZIE:

14 Q I'm not asking you who he was buying it from -- or,  
15 excuse me, who he was selling it to. But what I'm asking  
16 you is, he gave you a figure on the purchase price for the  
17 powder cocaine, didn't he?

18 A Yes, sir, he did.

19 Q And what was that figure?

20 A \$10,500.

21 Q Thank you.

22 Now, Mr. Lopez had two telephones; is that correct --  
23 I mean, excuse me -- yes. Mr. Lopez had two telephones;  
24 is that correct?

25 A I only recall one, but he could very well have two.

1 Q Okay. At the Waffle House, are you saying that  
2 Mr. Nelson arrived at about 4:45 p.m.? Is that correct?

3 A Mr. Nelson didn't go to -- I'm sorry. I believe we  
4 had Mr. Nelson in custody at 4:45. So I would guess that  
5 he probably arrived at about 4:39, 4:40, somewhere like  
6 that.

7 Q And he went -- when he got there, he went inside and  
8 got some to go -- a to-go box and a cup; is that right?

9 A I just remember something in a Waffle House bag. I'm  
10 assuming it was food.

11 Q Now, he never came over and, actually, spoke to  
12 Investigator Grounsell in any way?

13 A No. He did not speak to him.

14 Q He did not come over and shake his hand and say, how  
15 are you doing, I haven't seen you in a long time?

16 A No. He did not do that.

17 Q The cars that moved in to intercept Mr. Nelson, those  
18 were unmarked cars, weren't they?

19 A Well, it was really a mix of unmarked, and one marked  
20 car, and one car that had blue lights, but was not marked.

21 Q Where was the marked car?

22 A To the best of my recollection, I believe the marked  
23 car, perhaps, was somewhere near the Holiday Inn. I'm  
24 working off of memory. But if you can think where the  
25 Waffle House is right on Augusta Road, the interstate



1 being north, the Holiday Inn is a fairly large portion of  
2 that intersection.

3 So I could be mistaken. But, for some reason, I'm  
4 thinking they were kind of back in there kind of out of  
5 sight..

6 Q Okay. I mean, normally, you wouldn't use a marked  
7 car in an undercover operation?

8 A In a takedown, yes, you would. In a physical arrest,  
9 you would -- if you could have a marked car.

10 Q But this car wasn't, actually, involved with the  
11 takedown itself. It was over in another location nearby.  
12 Is that what you're saying?

13 A I'm not quite sure I understand what the question is.

14 Q How far away was the marked car?

15 A Maybe 500 yards, give or take. It was within  
16 response-time distance.

17 Q Okay. And then you said that Mr. Nelson was arrested  
18 promptly; is that correct?

19 A He was promptly taken into custody, yes, sir.

20 Q Now, there was something about the car had backed up,  
21 but there was no damage done to any of the cars; is that  
22 correct?

23 A I don't recall any significant damage to the cars,  
24 no.

25 Q When Mr. Nelson was arrested, he was searched; is

1       that correct?

2       A     A search incident to arrest, yes, sir.

3       Q     He did not have a gun, did he?

4       A     I don't recall him having a gun on his person, no.

5       Q     He did not have any drugs on his person either, did  
6       he?

7       A     Not on his person.

8       Q     He didn't have any money on him either?

9       A     No, not on his person.

10      Q     His truck was searched; is that correct?

11      A     Yes.

12      Q     There was no gun in the truck?

13      A     Not to my recollection.

14      Q     There were no drugs in the truck?

15      A     There may have been some prescription medications.

16      Q     All right. Well, you did not testify to that  
17      earlier, did you?

18      A     I haven't testified at all as far as the car stop.  
19      What was found in the car, I haven't testified to at all.

20      Q     Up to this point, we have not heard anything about  
21      any drugs in the truck, have we?

22      A     No. I have not testified previous to that.

23      Q     There was no \$10,000 in the truck either, was there?

24      A     No, there was not.

25      Q     Okay. The one phone that's in evidence, that's the

- 1 one that ends 8566; is that correct?
- 2 A Yes.
- 3 Q The one ending 8568 was never recovered, was it?
- 4 A No. It was not recovered.
- 5 Q You went to [REDACTED] based on
- 6 the address on the license?
- 7 A Correct.
- 8 Q That was the only basis for going to that address; is
- 9 that correct?
- 10 A Correct.
- 11 Q One of the things you were looking for on Dorchester
- 12 Boulevard was the money; isn't that correct?
- 13 A That would be correct.
- 14 Q The money was never found?
- 15 A Correct.
- 16 Q The owners of that house, [REDACTED]
- 17 Boulevard, were Kathleen and Charles Burns -- Kathleen
- 18 Nelson and Charles Burns; is that correct?
- 19 A I believe so, yes.
- 20 Q That is Mr. Nelson's mother and stepfather; correct?
- 21 A I believe so, yes.
- 22 Q Mr. Nelson was not the legal owner of that house, was
- 23 he?
- 24 A When you say "legal owner," the one paying the
- 25 mortgage?

1 Q Yes.

2 A I've never seen anything indicating that he paid any  
3 mortgage or owned the house, no.

4 Q Kathleen, his mother, was, also, the owner of that  
5 blue truck, wasn't she?

6 A My recollection is that the vehicle was registered to  
7 a Charles Burns, I believe.

8 Q It was not registered to Octavius Nelson, was it?

9 A No, it was not.

10 Q The persons present at the house were the mother, the  
11 stepfather, and the brother; is that correct?

12 A I believe so, yes.

13 Q And you testified that there was only one real  
14 bedroom -- working bedroom, actual bedroom. And then  
15 there was another bed it looked like set up in the living  
16 room; is that correct?

17 A Well, there were -- you'd probably say two working  
18 bedrooms. Because one room, I think, off the kitchen was  
19 kind of converted into some sort of bedroom of sorts, I  
20 think. And then, you had another bedroom on the other side  
21 of the house. And then you had the burned out room, to  
22 the best of my recollection, and, of course, the living  
23 room that was converted.

24 Q So how many bedrooms did you have that, actually,  
25 looked like they were being used?

1 A Probably two.

2 Q Two, but maybe one is what you're saying?

3 A Well, I would say probably two.

4 Q Okay. It appeared when y'all got there that the  
5 brother lived in that house?

6 A Yes. It appeared to me that he did.

7 Q Now, when y'all obtained search to consent -- consent  
8 to search the house, you did not ask Octavius Nelson for  
9 his consent to search the house, did you?

10 A No, I did not.

11 Q The hard rock-like substance was found in the  
12 kitchen; is that correct?

13 A I believe it was. I'll refer to the supplemental.

14 Yes, sir.

15 Q But there were -- the items that were seized from the  
16 house were found all throughout the house; is that  
17 correct?

18 A That would be reasonable to say.

19 MR. MACKENZIE: Thank you.

20 That's all I have.

21 THE COURT: All right. Mr. Scalzo.

22 MR. SCALZO: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SCALZO:

25 Q Investigator Marchi, I've got to get you all the way

1 back to -- it's been a while since you got on the stand --

2 A That's all right.

3 Q -- the first -- when you first got up on the stand,  
4 you were describing your role. Do you remember that?

5 A Yes.

6 Q And I think you described that you were assigned to  
7 do some follow-up investigation to Deputy Hines' original  
8 stop?

9 A That would be correct.

10 Q Okay. And what it sounded like from your  
11 description -- and tell me if I'm wrong -- but it sounded  
12 like from your description was you became sort of the lead  
13 investigator kind of putting all these pieces together  
14 for, at least, this set up for the exchange of the  
15 cocaine, and the money, and, ultimately, the takedown, and  
16 the search. It sounds like you were kind of coordinating  
17 a lot of what was going on. Is that fair to say?

18 A That would be fair to say.

19 Q Okay. And let's get a little bit back to kind of the  
20 time line about what things -- when things were happening.  
21 You were describing, when Ms. Monts was questioning you,  
22 that you were trying to put together the contact with the  
23 buyer, and you were trying to put together a team that  
24 could pose as Mr. Lopez to complete the transaction?

25 A Yes, sir.

1 Q Okay. And that develops right on the heels of Deputy  
2 Hines and Deputy McBee taking Mr. Lopez into custody?

3 A That would be correct.

4 Q All right. And I think you had said that you were  
5 working under a time crunch. That was the term that you  
6 used.

7 A That would be correct.

8 Q And that was because Mr. Lopez was indicating that,  
9 hey, the person is waiting on me and it's been a while  
10 since he's been waiting?

11 A Yes. And there was, also, the other person in  
12 Atlanta that was, we thought, possibly being in contact  
13 with the person in Greenville. And if -- that person in  
14 Atlanta, obviously, could estimate the time of travel.  
15 And if there was a significant delay, there could be some  
16 phone calls made.

17 Q And so, at that stage, you were very concerned about  
18 timing and making sure the timing didn't get away from you  
19 and kind of blow what was about to happen?

20 A That would be correct.

21 Q All right. And when you were having your  
22 conversation with Mr. Lopez, this is during that kind of  
23 time crunch; right?

24 A Yes, sir, down at southern command.

25 Q And so this isn't really like a debriefing of him.

1 This is, look, give me the quick skinny. Who am I  
2 supposed to meet with? Where am I supposed to go? Give  
3 me the kind of quick background about what's going on  
4 here; isn't that right?

5 A That would be fair to say. But, at the same time, we  
6 did have other officers assigned to a more formal  
7 debriefing to give us a little more detail, historically  
8 speaking --

9 Q Right. But I'm talking about your conversation with  
10 Mr. Lopez --

11 A Yes.

12 Q -- specifically, at that time crunch period that  
13 we're talking about?

14 A That would be correct.

15 Q Okay. And it would be fair to say, because of that  
16 time crunch; you weren't really trying to figure out all  
17 the details about how it developed between this Candela  
18 guy and Mr. Lopez. All the details of what happened, at  
19 that point, weren't as important as finding out, where am  
20 I supposed to go to meet this person, who am I supposed to  
21 meet. The real important thing was that at that point?

22 A The local connection was our immediate concern at  
23 that time.

24 Q At that particular point?

25 A Correct.



1 Q And this takes place -- this quick conversation  
2 between you and Mr. Lopez takes place before he meets with  
3 Investigator Maxwell for his formal statement? Let me --

4 A My recollection was that, yes, I did my quick debrief  
5 before. And then as -- and it may have been kind of  
6 intermixed possibly, but I think it was more before.

7 Q Well, I think you were just testifying when  
8 Mr. Mackenzie was questioning you about the timing of when  
9 you, actually, arrested Mr. Nelson and you did that  
10 takedown. And, one, you testified on direct with the  
11 State that the phone call that you got Mr. Lopez to make  
12 was about 3:52 p.m., I think was the time that you gave  
13 us?

14 A About that, yes.

15 Q And I'm looking in my notes to see when -- if you  
16 gave a time for when you, actually, did the arrest -- or  
17 conducted the arrest of Mr. Nelson. Do you know what time  
18 that was?

19 A I think we physically took him into custody at about  
20 4:45.

21 Q Okay. And I don't know if State's Exhibit No. 1 is  
22 up here. It looks like every other piece of evidence is  
23 up here. Yes, here it is.

24 If you look at State's Exhibit No. 1, again,  
25 Investigator Maxwell talked about the times on that form?

1 A Yes, sir.

2 Q And you're familiar with this kind of form, you've  
3 used it before?

4 A I am familiar.

5 Q And 1738 at the top-right corner, he indicated that  
6 would have been when they started their interview?

7 A Well, it could be -- I didn't write it, so I can't  
8 say for certain.

9 Q Right. I understand.

10 A But it could either be, actually, flip flopping the  
11 start and end times. 1604 could have been the start time,  
12 and 1738 could have been the end time. But I'm  
13 speculating on that.

14 Q Okay. But if you take what Deputy Maxwell said,  
15 which was he had said he believed it started at 1738, and  
16 he thought that 1604 really should have been 1804 -- that  
17 was what he testified to.

18 A It's altogether possible.

19 Q Okay. My point being is that the more detailed  
20 "debriefing" of Mr. Lopez really takes place after you get  
21 the real skinny from him about who you're supposed to meet  
22 and what you're supposed to do?

23 A It's very possible.

24 Q Okay. And in your follow-up investigation either  
25 that day or even since, you have not had contact with a

1 person that you believe to be Candela, or the person that  
2 is Candela -- or Candela?

3 A No, I have not.

4 MR. SCALZO: That's all I have, Judge.

5 THE COURT: Any redirect?

6 MS. MONTES: No, Your Honor.

7 THE COURT: Thank you.

8 Step down.

9 MS. MONTES: The State calls Keith Grounsell.

10 May we approach?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held.)

13 THE CLERK: Sir, if you'll, please, place your left  
14 hand on the Bible and raise your right hand.

15 WHEREUPON,

16 KEITH PHILLIPS GROUNSELL,  
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 Please state your full name for the record.

21 THE WITNESS: Keith Phillips Grounsell.

22 DIRECT EXAMINATION

23 BY MS. MONTES:

24 Q Mr. Grounsell, please, tell the jury your background  
25 in law enforcement.

1       A     My name is Keith Phillips Grounsell. I've been in  
2     law enforcement since 1998. Prior to law enforcement, I  
3     received my bachelor of science degree from Lander  
4     University, sociology with an emphasis in criminal justice  
5     was the degree name.

6           From there, I went to the South Carolina Criminal  
7     Justice Academy in 1998. I graduated from the nine-week  
8     academy and received 394 hours of general training at the  
9     police academy there in Columbia, South Carolina.

10          From there, I was a police officer at Mauldin City  
11     Police Department. I spent three years with the Mauldin  
12     City Police Department.

13          And from there, I left the Mauldin City Police  
14     Department in 2001, and was employed with the Greenville  
15     City Police Department. From day one with the Greenville  
16     City Police Department, my primary responsibility was to  
17     work undercover. I started working undercover narcotics.  
18     And I spent approximately one year with the Greenville  
19     City Police Department before I went to the Sheriff's  
20     Office.

21          Once I was at the Sheriff's Office, within six  
22     months, I was promoted into the position of narcotics  
23     investigator. I spent approximately three years working  
24     narcotics investigations. The primary emphasis was  
25     undercover narcotics.

1           In 2005, I left the Sheriff's Office and was employed  
2 with the Drug Enforcement Administration as a special  
3 agent with the DEA. And I was stationed in Garden City,  
4 Kansas. I spent a couple years there working cases --  
5 undercover cases, again, Title 3 investigations, which are  
6 federal wire taps and other conspiracy cases with the Drug  
7 Enforcement Administration.

8           And then I resigned my position there and have been  
9 currently in Afghanistan for the last two years. I'm,  
10 currently, back home on workman's comp from an injury I  
11 received over in Afghanistan.

12       Q     And what are your duties over in Afghanistan?

13       A     I was a supervisor. Initially, I was a supervisor  
14 over two national programs, one was ANCOP. It stands for  
15 the Afghan National Civil Order Police, which is,  
16 basically, a 5,000-man special forces unit. We train them  
17 in close quarters battles, SWAT tactics, different things  
18 like that. We -- the general who was over the 5,000-man  
19 unit, I was one of his personal mentors. In addition to  
20 that, I was a personal mentor to the personnel chief of  
21 staff of that unit.

22           The last four months I was there before I was  
23 injured, I had -- I commanded my own camp, which is on the  
24 Pakistan border in Jalalabad, Afghanistan, and had  
25 approximately 80 guys at the camp with me. We went out to

1 multiple locations throughout the region and covered, I  
2 think, three provinces, several districts. And we,  
3 basically, built police departments from scratch from the  
4 ground up and mentored the generals, and the commanders,  
5 and the low-level soldiers on how to do their jobs.

6 Q And going back to your training and experience with  
7 narcotics in the United States, can you describe the types  
8 of cases you made, and the number of cases you made?

9 A Yes. I've personally been involved in over 500 drug  
10 investigations myself. That's at the state and the  
11 federal levels. Personally, I have done undercover  
12 deals -- successful undercover deals in over 160 cases.

13 I've, also, been involved in the execution of over  
14 300 search warrants. As a result of this throughout my  
15 tenure of working narcotics, specifically, in the field of  
16 undercover tactics, I received over 1,320 hours of  
17 training. That's at the federal and the state levels.

18 I've received an 80-hour course in basic narcotics  
19 investigation, interim to investigations; also, a 92-hour  
20 course in undercover investigations, a 40-hour course in  
21 meth and other clandestine lab investigations; RAVE and  
22 club drug investigations; air smuggling techniques; drug  
23 stash house narcotics building entry; narcotics officer  
24 safety training; drug interdiction investigative  
25 techniques; risk management in violence and undercover;

1 drugs in America; and drug identification; explosive booby  
2 traps and bomb threats on drug cases.

3 I'm certified in the field-testing of illegal drugs  
4 and narcotics through the federal school, the Regional  
5 Counter Drug Task Force Association. I've, also, been  
6 asked and paid as a guest instructor to teach at a federal  
7 undercover school in Mississippi where it's a 92-hour school.

8 I've, also, received training in; analytical  
9 investigations; intro to advanced criminal enforcement,  
10 basic asset forfeiture, which is a 40-hour school put on  
11 by the Drug Enforcement Administration; gangs and  
12 narcotics training; basic telecommunications exploitations  
13 program training; intro to controlled drug investigation  
14 courses; intro to clandestine lab investigations; drug  
15 identification, an additional 16-hour course; intro to  
16 high world drug investigations; surveillance operations;  
17 ethical issues and decision making in law enforcement,  
18 specifically, in the field of narcotics; intro to  
19 conspiracy investigation cases --

20 THE COURT: Solicitor, let's move on, please, if you  
21 don't mind.

22 MS. MONTIS: Okay.

23 BY MS. MONTIS:

24 Q Mr. Grounsell, have you ever been qualified in either  
25 state or federal courts as an expert in drugs?

1 A Yes, I have.

2 Q How many times?

3 A Seven times in state court, and one time in federal  
4 court.

5 Q And, specifically, what areas do these include?

6 A Street-level narcotics, identifying components of  
7 methamphetamine labs, drug prices, wholesale prices versus  
8 retail prices, exploiting how -- potential profits made  
9 from drug sales.

10 MS. MONTS: Your Honor, we would move  
11 Mr. Grounsell -- move that he be qualified as an expert in  
12 the financial value of street-level drugs, as well as the  
13 manufacture of street-level drugs.

14 THE COURT: Any voir, Mr. Mackenzie, or, Mr. Scalzo?

15 VOIR DIRE EXAMINATION

16 BY MR. MACKENZIE:

17 Q Do you hold any special licenses?

18 A All those courses that I was reciting, which is 1,320  
19 hours, were specialized training courses. I've, also,  
20 graduated from a 640-hour course the Drug Enforcement  
21 Administration put on, which was a four-month live-in  
22 course in order to become a special agent with the Drug  
23 Enforcement Administration. So I'm a certified special  
24 agent with the DEA.

25 Q Have you ever taught?



1 A Basic undercover school, yes, sir. I've taught that.  
2 It's a 92-hour course in Meridian, Mississippi. In  
3 addition to that, while I've been in Afghanistan, I've,  
4 also, been a personal mentor to the drug section of the  
5 provincial headquarters located across the street in  
6 Jalalabad, Afghanistan, where I've commanded the general  
7 on how to run his narcotics unit.

8 Q Have you ever published anything?

9 A Published anything? Currently, I'm in the process.  
10 I've got 380 pages completed in a book that I'm fixing to  
11 publish.

12 Q That you're working on?

13 A Yes, sir, an undercover narcotics book.

14 Q Are you going to be testifying as to any sort of  
15 scientific theory or principle that you used in this case?

16 A No, sir, basic street narcotics.

17 Q Well, have your opinions about street narcotics ever  
18 been subject to any sort of peer review, or anything like  
19 that?

20 A Can you rephrase that? I don't quite understand.

21 Q Have your opinions about street narcotics ever been  
22 experimentally verified as being true?

23 A Yes, sir. I've been investigating narcotics for  
24 multiple years. I've personally been involved in over 500  
25 narcotics investigations.

1 MR. MACKENZIE: All right. Thank you.

2 THE COURT: Mr. Scalzo.

3 VOIR DIRE EXAMINATION

4 BY MR. SCALZO:

5 Q The Solicitor said that you -- or requested that you  
6 be acknowledged as an expert in the financial value of  
7 street-level drugs --

8 A Yes, sir.

9 Q -- and what I'd like to know is where do you acquire  
10 the expertise on the financial value? How are you going  
11 to determine the value?

12 A Good question. Based upon my experience of working  
13 undercover and purchasing drugs over 160 times and working  
14 on 500 investigations, in addition to that, I'm certified  
15 through the Drug Enforcement Administration as a special  
16 agent.

17 So I'm very familiar with drug prices. I've worked  
18 drug cases not only in South Carolina, but in Kansas,  
19 which, also, went into Mexico. I've worked in different  
20 countries, and, also, in California. So I've worked drugs  
21 east coast to west coast. I can tell you the different  
22 prices.

23 Q Now, the way you're describing acquiring the  
24 information that you're going to rely upon to make your  
25 opinion --

1 A Yeah.

2 Q -- is that -- you're strictly coming from the law  
3 enforcement side, obviously; right? You're a law  
4 enforcement officer getting involved --

5 A I understand what you're saying. But a lot of my  
6 information comes from the street.

7 Q Right. But you're doing undercover buys and things  
8 of that nature is what you're -- where you're getting --

9 A As an operative for the government, yes, sir.

10 Q Okay. And in a law enforcement undercover buy, you  
11 do have a certain level of control over the price?

12 A I can negotiate with them --

13 Q Right.

14 A -- which I tend to do. And I can give a ballpark  
15 figure. I can't give an exact figure of what a drug will  
16 be worth, except for in a small amount. When it gets to a  
17 larger amount, obviously, that price varies.

18 Q Okay. And your testimony with regard to anything  
19 related to the financing of drugs is going to come from  
20 your personal experience with making drug sales?

21 A My personal experience in addition to the training  
22 that I've received.

23 Q Now, the training that you've been referring to, is  
24 that training, like Mr. Mackenzie asked you about, peer  
25 review? And, for instance, if you were an economist, you

1 might do a study into a certain item that is sold across  
2 the United States, let's say. And you might do an  
3 analysis of that and that may not include things that you,  
4 actually, have sold, but you would analyze it?

5 A I understand.

6 Q And you'd do a study that you might have a peer and  
7 another economist evaluate your study to see if you do a  
8 good job, were you accurate, those kind of things?

9 A We discuss drug prices prior to doing most buys when  
10 we have the time to discuss them amongst the guys within  
11 the unit. There's guys in the unit that have 20-plus  
12 years experience.

13 In addition, I've been able to compare drug prices  
14 and learn that the prices on the east coast aren't  
15 necessarily reflective of what's in the mid-west or on the  
16 west coast. So I've been able to see that throughout my  
17 career and to determine what the exact prices are of drugs  
18 in this region of the United States.

19 Q And that is not an analysis that you've done. That's  
20 something you're acquiring as you're kind of going along?

21 A It's that in addition to what I've been supplied with  
22 by the Drug Enforcement Administration, the prices that  
23 they, generally -- you can get them off their website, the  
24 basic drug prices.

25 MR. SCALZO: That's all I have, Judge.

1 THE COURT: All right. He's qualified.

2 Proceed.

3 MR. SCALZO: I would note my objection that if you  
4 can qualify him as an expert, I think he should be allowed  
5 to talk about his personal experience --

6 THE COURT: I'm qualifying him as an expert to  
7 testify as to the value of street -- street value of  
8 narcotics.

9 MR. MACKENZIE: Can I be heard on that real quick?

10 I mean, I would object to any testimony about the  
11 street value of drugs in this case when we've already had  
12 testimony from the State's witness establishing --

13 THE COURT: Your objection goes to weight, not to  
14 admissibility.

15 MR. MACKENZIE: Yes, sir.

16 THE COURT: Proceed, Solicitor.

17 CONTINUED DIRECT EXAMINATION

18 BY MS. MONT'S:

19 Q Mr. Grounsell, in January of '05, where were you  
20 employed?

21 A With the Greenville County Sheriff's Office as a  
22 narcotics investigator.

23 Q And on January 21st, 2005, what was your assignment?

24 A I was assigned to the narcotics unit as a narcotics  
25 investigator. My primary function was to work in an

1 undercover capacity.

2 Q Did you receive direction from a supervisor that  
3 afternoon to act in that capacity?

4 A I had received information that there was a suspect  
5 who was pulled over, and who would potentially cooperate  
6 and give us some information. And it was received to me,  
7 basically, that I could potentially work in an undercover  
8 capacity on this case. I didn't know the facts at the  
9 time.

10 Q Where did you go to meet with anyone to learn about  
11 the case?

12 A The suspect, who was later identified as Lopez, came  
13 down to the southern area command, which is our office at  
14 the Donaldson Center.

15 Q When you arrived there, who was present?

16 A There were several investigators going in and out.  
17 It was a rather busy day. We were working, I think, three  
18 different investigations. We were working on three  
19 different things. And we were getting pulled in all  
20 different directions. We were working several cases. And  
21 we had previous cases we had been working.

22 So I would say -- I couldn't say exactly who was  
23 there. I know Hines and McBee were both there, the  
24 deputies who did the traffic stop, and subject Lopez was  
25 there, and, also, Investigator Marchi.

1 Q And what instruction did you receive? Did you have  
2 to change your clothing?

3 A When I found out that I could potentially do an  
4 undercover transaction, be involved in one, I wanted to  
5 get further details on it. I personally spoke to Lopez  
6 and determined that I needed to change my clothing. The  
7 attire that I was wearing wasn't appropriate for the  
8 situation I was about to encounter.

9 Q What did you wear to proceed?

10 A I, basically, just went in and tried to look as much  
11 as I could like the suspect -- or the individual who was  
12 supposed to deliver the drugs. Baggy clothing. At the  
13 time, I had long hair, which was long and in a ponytail..  
14 So I, actually, put it up in a beanie cap and pulled it  
15 down low over my eyes. I just, basically, tried to -- I  
16 want to say dress down somewhat from what I was dressed  
17 like that day.

18 Q And did you know where you were to go?

19 A Initially, you know, I was gathering information and  
20 the facts of what I knew. I found out later that I was  
21 supposed to go to the Waffle House located off Augusta  
22 Road near Interstate 85, which is now closed, actually.

23 Q And what were you supposed to drive there?

24 A I was going to drive suspect Lopez's vehicle, which  
25 was a white in color Dodge Intrepid.

1 Q Why would you drive that vehicle?

2 A Because that was the vehicle that the person that we  
3 were supposed to be delivering the drugs to was looking  
4 for. We didn't want to do anything out of the ordinary to  
5 spook them any further since we were already late to do  
6 the transaction.

7 Q Explain that. Why would being late spook --

8 A When you're doing a deal such as this, we're  
9 delivering a large quantity of drugs, a half kilo of  
10 cocaine, it's got a high street value. When there's a set  
11 time when you're supposed to meet somebody, if that time  
12 is off, sometimes, a dealer won't even show up. Because  
13 they're in fear that something happened that could  
14 potentially lead to them being arrested, such as what  
15 occurred in this situation, the police pulled him over,  
16 the subject cooperated, and we did a controlled  
17 delivery -- attempted --

18 Q And did you have any other information about what you  
19 were supposed to do when you arrived at that location?

20 A I was told to look for a --

21 MR. MACKENZIE: I object, Your Honor, based on  
22 hearsay and my client's right to confront the witnesses  
23 against him.

24 THE COURT: I'm going to allow the basic information  
25 he was furnished.



1           Go ahead.

2           THE WITNESS: I was told to look for a black male in  
3 a dark in color pickup truck.

4           BY MS. MONTS:

5           Q     When you arrived at the scene, did you notice if  
6 there were any other officers present?

7           A     Just prior to arriving, I was notified via my Nextel  
8 cell phone that there was a dark in color pickup truck  
9 that was parked in the rear of the Waffle House parking  
10 lot, which was indicated to me through the surveillance  
11 team through Investigator Marchi, who was the lead on the  
12 case.

13          Q     And where did you park?

14          A     I parked directly across from that truck, but I did  
15 not back into the parking space. This pickup truck was,  
16 actually, backed into the parking space. I pulled  
17 directly across from it, so I could see the pickup truck  
18 out of my left side mirror and my rearview mirror, the  
19 main rearview mirror. But I adjusted all my mirrors so I  
20 could see all around me. And I did that as to not give  
21 myself away.

22                A lot of police officers tend to want to back into a  
23 parking space. Working undercover, any little thing you  
24 can do that's not an indicator of a possible police  
25 officer, I tried to do that. So that's what I did. I put

1 myself at a tactical disadvantage. I put my back to the  
2 suspect -- potential suspect's vehicle. Nobody was  
3 located in the vehicle at the time.

4 Q What were you supposed to do when you did contact  
5 whoever this person was?

6 A Initially, what I was supposed to do was go to the  
7 location and meet with this unknown subject. And we were  
8 going to drive to another unknown location and do the  
9 transaction. That was all I knew at the time.

10 But our plans were not to go that far with it due to  
11 officer safety issues. We did not have a lot of planning  
12 time. I was not wearing a body wire. We had surveillance  
13 that just got out there on the scene. They hadn't been  
14 set up too long. And, normally, we like to control the  
15 whole entire environment.

16 So when I got out there, our plan was once it was  
17 identified 100 percent that that's our guy and he gives me  
18 the indicators to go with him to whatever location we're  
19 going to go to, I was to notify our team and they were  
20 going to come in and effect an arrest.

21 Q What did you observe while you were sitting there  
22 parked in the parking lot?

23 A Well, I was parked in the parking lot. Like I said,  
24 I had my back to the vehicle, the dark in color -- which  
25 was later identified as a dark blue Ford Ranger pickup

1 truck. I had my back to that. I saw a black male subject  
2 later identified as Mr. Nelson in the courtroom today walk  
3 out of the Waffle House. I assume he came out of the  
4 Waffle House, because he had a Waffle House cup and a  
5 to-go box.

6 And when he first came in my visual out of that --  
7 one of my side mirrors, my right side mirror, I observed  
8 him come. And I'm looking up in my mirror adjusting my  
9 mirror to see if this is possibly him. There were no  
10 other cars parked in that rear section of the parking lot.

11 So I was watching him as he was giving me head nods.  
12 But I wanted to make sure a hundred percent that that was  
13 him. He gave me two head nods. And then he went over to  
14 his vehicle. And I was assuming he was giving me head  
15 nods at the time because he had his hands full. He had a  
16 cup and a to-go box in his hands. He couldn't motion with  
17 his hands properly.

18 He went over to the driver's side of the vehicle that  
19 was backed in. All this time, I'm observing him between  
20 my rearview mirror, and my left side mirror, and my  
21 driver's side mirror. He opens -- puts the stuff on top  
22 of the vehicle, the to-go box and the cup, unlocks the  
23 car, opens the car, sits down in the car with those two  
24 items and places them in the car. He has one foot still  
25 sticking out of -- which we call the apex, which is where

1 the door frame -- the door opens. He has one foot  
2 sticking out. So he's not a hundred percent seated in the  
3 vehicle.

4 And, at that time, he points over at me with his left  
5 hand, points and motions like this. Well, I was a little  
6 bit confused at first. I knew he was pointing at me, but  
7 I wasn't sure, does he want me to come over to him, or is  
8 he telling me to follow him. Because that's where the  
9 exit was, actually, also.

10 So I, actually, at that time, I turned around in my  
11 seat completely all the way around just so I could see him  
12 not through the mirrors anymore. I wanted to make sure.  
13 At that point, he stood up outside in the apex of the door  
14 and the frame of the car. He stood up and pointed at me  
15 and motioned to follow him.

16 At that time, I knew what he was talking about. So I  
17 touched my parking brake as to indicate, okay, I got you,  
18 I understand what you're saying. So he sat down in his  
19 vehicle. I put my car into reverse as he started to pull  
20 out. I backed up as slow as I could. Because I wanted to  
21 give time for our takedown team to let them know, hey -- I  
22 had to talk on my Nextel radio under my breath -- or not  
23 under my breath, but out loud holding my radio down so he  
24 couldn't see me while I'm trying to back up at the same  
25 time and let my team know what's going on.

1           So as he -- as I'm backing up and he's pulling out,  
2           he stops at the entrance where it's -- he's free to go.  
3           He could take a left and go outside. He stops, turns  
4           around in the pickup truck, and looks back to make sure  
5           that I'm coming.

6           At that time, I'm backing up. And I stop and put it  
7           in drive. When I do that, one of our takedown vehicles  
8           was a silver in color Dodge Ram pickup truck. I believe  
9           Sergeant Burris was driving it with Investigator Marchi in  
10          the seat with him. He pulls up on the front nose of the  
11          suspect, Mr. Nelson's pickup truck.

12          At that point, a marked patrol car comes up and pulls  
13          on the opposite side. It's a pretty wide entrance-exit  
14          area. So the patrol car squeezed in. I remember seeing  
15          the lights on the patrol car at the time. And I was  
16          looking. There's two exits to get out of the Waffle  
17          House. And I noticed that the other exit, nobody was  
18          coming up there to block in case to prevent a potential  
19          chase.

20          So I decided at that time to pull my vehicle up  
21          directly behind the suspect's vehicle. Normally, as an  
22          undercover, you do not get involved in any kind of  
23          takedown or anything like that due to the fact that they  
24          believe you're a suspect -- they believe you're a bad guy,  
25          you're one of them. They don't think you're a police

1 officer. And I didn't want to get involved in the  
2 takedown and they believe that I'm, actually, somebody  
3 trying to rob them.

4 So what I did is I parked my vehicle approximately  
5 three feet behind the rear bumper of his car. He was at a  
6 dead stop. When I parked it there, I see that he's  
7 looking -- he's kind of looking forward now. He had  
8 turned back around in the seat. So he, obviously, saw  
9 what was in front of him. And that's when the vehicle  
10 reverse lights came on. And his vehicle backed up and  
11 struck the front of my vehicle. Well, I had already had  
12 my brake applied. I was still in drive at the time.

13 So what I did is when he struck it, he did not  
14 continue to press the gas, or anything like that. He  
15 struck my vehicle and stopped from there. The police  
16 officers are yelling commands.

17 So I threw my vehicle immediately into park, jumped  
18 out of the vehicle and took off running around the  
19 backside of the Waffle House. And I did that as to  
20 prevent getting myself out of a potential line of fire if  
21 there was any gun fire, or anything like that. I was not  
22 marked as a police officer. And I wanted to get out of  
23 the way as fast as I could.

24 Q Can you describe how many officers were there, and  
25 what they were wearing?

1 A All the -- what we call plain clothes police  
2 officers --

3 THE COURT: Solicitor, what's the relevance of this?

4 MS. MONTIS: To -- Your Honor, to show what the  
5 Defendant would have seen as far as that these are marked  
6 officers.

7 THE COURT: Go ahead.

8 THE WITNESS: All the narcotics investigators who  
9 were involved in this case were, generally, plain clothes  
10 officers. But we have raid vests that are just,  
11 basically, tactical nylon vests that you throw over. They  
12 have big Sheriff's Office markings on the front. They're  
13 properly marked. A lot of the guys wear a badge around  
14 their necks in addition to the big Sheriff's Office logo  
15 on the front and on the rear.

16 In addition to that, the blue lights were going from  
17 the marked patrol car there. And there were patrol  
18 officers coming out in uniform. It --

19 MR. MACKENZIE: I'll object, Your Honor. I mean,  
20 he's not alleged to have fled the scene or anything.

21 THE COURT: Move on, please, Solicitor.

22 BY MS. MONTIS:

23 Q When did you get back in your vehicle?

24 A After -- I waited, I'd say, approximately 15, 20  
25 seconds behind the corner of the building. I kind of

1       peeped around to make sure everything was secure.

2               When I saw that the scene was secure, I immediately  
3       walked up, looked at the vehicles to make sure there was  
4       no damage, first off. Because it wasn't my vehicle that I  
5       was driving. I didn't notice any damage on the vehicles.  
6       The vehicles were approximately three inches apart at that  
7       time. I jumped back in my vehicle at that time and drove  
8       it back to the southern area command, which is our office.

9       Q       Did you see where Mr. Nelson was taken?

10      A       No.

11      Q       Did you have any more personal dealings with either  
12      Mr. Lopez or Mr. Nelson?

13      A       With Mr. Nelson, no.

14               Mr. Lopez, I was, initially, in on the interview with  
15      Investigator Blackburn. I was called off to do something  
16      else. And I wasn't in there but a couple of minutes. And  
17      then Investigator Maxwell came in and took my place and  
18      conducted the interview.

19      Q       And going back to the amount of drugs that you were  
20      supposedly delivering to the person at the Waffle House,  
21      describe the dollar value of the cocaine.

22               MR. SCALZO: And I'll renew my objection, Judge.

23               MR. MACKENZIE: As will I.

24               THE WITNESS: Okay. I was supposed to be delivering  
25      a half a kilo of cocaine. A half a kilo -- a kilo is 2.2



1 pounds. A half a kilo, if you want to get into gram  
2 quantities, is 500 grams.

3 Now, the way it appeared was that, based upon the  
4 information I received of the potential price of these  
5 drugs, this was going to -- from a wholesale purchase,  
6 basically, which means it wasn't a street-level purchase.  
7 They were buying it from a wholesaler. And whatever  
8 happened after that was going to bring it down to the  
9 street level.

10 So, in my opinion, you know, if you're purchasing  
11 500 -- which I believe it equvalted out to 504.48 grams  
12 total, it's valued approximately wholesale between 9,000  
13 and 12,500, in that general area on the east coast here.

14 BY MS. MONTS:

15 Q And what would be the retail of that?

16 A Now, this is where it gets somewhat confusing. Now,  
17 if that quantity of drugs were taken and they were broken  
18 down into street-level sales quantities, which is normally  
19 like a user purchasing one gram -- they might even  
20 purchase less than a gram. And, sometimes, they might  
21 purchase what they refer to as an eight ball, which is 3.5  
22 grams, or upwards of an ounce. It just depends who this  
23 person is selling to.

24 If they were selling all street level, this quantity  
25 of drugs without it being diluted or cut up to bulk up the

1 quantity of the drugs, just in its -- 504 grams, it would  
2 be valued at \$50,448.

3 Q Do drug dealers bulk up the cocaine?

4 A It's very common for drug dealers, especially when  
5 you're buying kilo quantities that are pressed amounts of  
6 cocaine -- not in every case, but, generally speaking, a  
7 lot of times pressed cocaine means that it's in a little  
8 more pure form. I'm not saying that's a definite  
9 indicator of that. Because there's other people who can  
10 cut up cocaine and recompress it.

11 But if you're buying it in the kilo form, it,  
12 generally, has not hit the -- hit down on the street  
13 levels where it's been cut up by multiple levels of  
14 dealers in order for them to disperse it and make more and  
15 more profit off of it. So even --

16 Q What is added to it to make it --

17 A It can be many different substances, anything from  
18 some sort of powdered vitamins that you might buy at  
19 GNC or a health store --

20 THE COURT: All right. Now, Solicitor, he's  
21 testified to the value of it. Let's move on to something  
22 else, please.

23 BY MS. MONT'S:

24 Q Let's move on to the crack cocaine. What would be  
25 the value of the crack cocaine?

1 A The value of the crack cocaine is a little bit  
2 different. When you're dealing with cocaine and crack  
3 cocaine, they're both based upon cocaine. But what it  
4 is --

5 MR. MACKENZIE: Could I just note my objection for  
6 the record? I still don't understand the relevance of  
7 this.

8 THE COURT: Well, it's relevant.

9 What's the value of the crack? Just give us a --

10 THE WITNESS: The value of 39.18 grams of crack  
11 cocaine wholesale is, generally, about 1,500 to 1,800, if  
12 you're purchasing it wholesale. Now, if it was resold and  
13 in small quantities, which crack cocaine is, generally,  
14 sold in what they call \$20 rocks, which is one-tenth of a  
15 gram.

16 So a gram of crack is valued at \$200 per gram versus  
17 cocaine is \$100 per gram on the street. Okay. Because  
18 it's sold in much smaller quantities. It's sold valued at  
19 \$7,836. So there's a potential profit of anywhere from  
20 \$6,000 to \$6,300 something.

21 Now, getting back with the cocaine. There's a  
22 potential profit margin of --

23 THE COURT: Move on, please, Solicitor.

24 MS. MONT'S: Thank you.

25 I have no further questions.

1 THE COURT: All right. Mr. Mackenzie.

2 CROSS-EXAMINATION

3 BY MR. MACKENZIE:

4 Q Before this day, January 21st, '05, you had never  
5 seen Octavius Nelson before in your life, had you?

6 A I don't believe so.

7 MR. MACKENZIE: Thank you.

8 That's all I have.

9 THE COURT: All right. Mr. Scalzo.

10 MR. SCALZO: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SCALZO:

13 Q You just talked about after you did your undercover  
14 work, you went back to southern command.

15 A Yes, sir.

16 Q And, initially, you were going back to participate in  
17 the interview debriefing -- or the further interview of  
18 Mr. Lopez?

19 A That was not my initial intent. My initial intent  
20 was to not really be involved too much further in that, to  
21 go ahead and write down the facts of what happened out  
22 there with me.

23 Q Right. But, initially, you kind of got called into  
24 that interview?

25 A Yes. We were pretty busy.

1 Q And, during that interview, you did not have any  
2 conversations or ask questions of Mr. Lopez about the  
3 value of the cocaine?

4 A I knew what the value of the cocaine -- what he was  
5 supposed to be selling it for.

6 Q But what I'm saying is, you didn't have a  
7 conversation with him to figure out did he even know what  
8 that was, did he know what you just testified to, the --  
9 that it went from 9,000 to 12,500. In other words, you  
10 had no conversation with him to evaluate what he,  
11 actually, knew?

12 A I knew that he knew he was supposed to deliver a half  
13 a kilo of cocaine.

14 Q But whether or not he understood what that really  
15 translated into as far as what you've testified to, you  
16 have no knowledge. He didn't give you any information  
17 about that?

18 A I overheard that he quoted a price -- a wholesale  
19 price. That's all I heard was the 10,500 wholesale price.

20 Q Now, he didn't use wholesale. That was your --

21 A That's my analogy of exactly what it is. It is a  
22 wholesale price.

23 Q So when -- his words would have been, I was  
24 instructed to go pick up -- give this box, get \$10,500?

25 A He was --

1 Q That's the information you got --

2 A The way I understood it was, he was instructed to  
3 meet with somebody. They were going to go to another  
4 location. And that's an unknown location. And that's  
5 where the money was going to be, which we don't know where  
6 that location is.

7 Q Okay. And the wholesale and all the finances of it,  
8 that's something that you apply your knowledge to come up  
9 with what you just testified to?

10 A Based upon my training, experience, and knowledge,  
11 yes.

12 Q It was not from a conversation you had with Mr. Lopez  
13 is my point.

14 A Oh; no. No, sir.

15 Q And when you were in the interview before you get  
16 called out for something else, how long were you in there  
17 for?

18 A I would say -- and this is -- I don't know exactly.

19 Q Sure.

20 A I would say approximately less than five minutes.

21 Q Okay. And how far into the interview --

22 A It really wasn't into the interview at all.

23 Q Okay.

24 A It was more along the lines of -- what we, generally,  
25 do when we bring somebody in is -- especially if we're

1 working undercover, I try and get down to their level,  
2 just small talk with them about unrelated things --

3 Q Okay.

4 A -- where are you from, you know.

5 Q You were trying to build a rapport?

6 A Build a rapport is all I was trying to do, get him a  
7 drink, make sure he wasn't handcuffed, all those things.

8 Q Okay. And so as far as the contents of that written  
9 statement that was moved in, you weren't present for  
10 any --

11 A I was not present.

12 MR. SCALZO: That's all I have.

13 Thank you, Judge.

14 THE COURT: Any redirect?

15 MS. MONTS: No, Your Honor.

16 THE COURT: Thank you.

17 Step down.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Ladies and gentlemen, we'll  
20 suspend at this time. We'll pick back up tomorrow morning  
21 at 9:00.

22 Now, please, remember the admonition that I read to  
23 you yesterday, the order from the Chief Justice. When you  
24 leave and when you come back in the morning, please, have  
25 your badges on. I ask that you do that so that everyone