

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable Roger L. Couch, Presiding Judge

Case No. 2007-GS-42-2111

State of South Carolina,

Respondent,

v.

Jeffrey Bernard Falls,

Appellant.

RECORD ON APPEAL
Volume I

RECEIVED

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 JEFFREY BERNARD FALLS,

8 DEFENDANT.

) TRANSCRIPT

) OF

) RECORD

) 2007-GS-42-2111

9
10 August 10th - 12th, 2011
11 Spartanburg, South Carolina

12
13 B E F O R E:

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

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

16 RYAN MCCARTY and TRAVIS MOORE
17 Assistant Solicitors
18 Attorneys for the State

19 CHRIS THOMPSON
20 ESQ.
21 Attorney for the Defendant

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

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<u>State's Exhibits</u>			
S-1	DVD		160, 229
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1 P R O C E E D I N G S

2
3 THE COURT: All right. Is the state ready for jury
4 selection?

5 State ready?

6 SOLICITOR MCCARTY: State's ready, Your Honor

7 THE COURT: Defense ready?

8 MR. THOMPSON: Yes, Your Honor.

9 THE COURT: All right. Let's bring the jury pool
10 around.

11 Mr. Thompson, while they're doing that, I note that
12 your client is before me on an indictment for trafficking in
13 cocaine. That's Case Number 2007-GS-42-2111.

14 Has he been arraigned on that charge?

15 MR. THOMPSON: As far as I know, Your Honor, he has.

16 THE COURT: And, so, he is still pleading not guilty?

17 MR. THOMPSON: As far as I know, yes, Your Honor.

18 THE COURT: And does he still demand trial by jury?

19 MR. THOMPSON: Yes, Your Honor.

20 THE COURT: Okay. Thank you very much. You can be
21 seated.

22 (WHEREUPON, the following takes place within the
23 presence of the entire jury panel.)

24 THE COURT: Good morning, ladies and gentlemen. It's
25 still barely morning.

1 We're about to begin the trial of another case. This
2 is the case of the State of South Carolina versus Jeffrey
3 Bernard Falls. The indictment in this case, and I will go
4 over it with you so that you can more fully answer the
5 questions that I'm about to ask, the indictment is in Case
6 Number 07-GS-42-2111. The indictment is for the offense of
7 trafficking in cocaine. I'm going to read the indictment to
8 you.

9 The body states that Jeffrey Bernard Falls did, in
10 Spartanburg County, on or about February 20th of 2007,
11 knowingly sell, manufacture, cultivate, deliver, purchase,
12 or bring into the state or did provide financial assistance
13 or did otherwise aid, abet, attempt, or conspire to sell,
14 manufacture, cultivate, deliver, purchase, or bring into the
15 state or did knowingly, actually or constructively, possess
16 or did knowingly attempt to become in actual or constructive
17 possession of more than 200 grams of cocaine, a Schedule II
18 controlled substance, in violation of Section 44-53-370 of
19 the Code of Laws of South Carolina, 1976 as amended, against
20 the peace and dignity of the State and contrary to the
21 statute in such case made and provided.

22 Now, ladies and gentlemen, that is the indictment in
23 the case, and as I've explained to you earlier, that is
24 simply the charge that brings the case before the Court.
25 That document can not be used by a jury in any fashion in

1 determining whether or not a person is guilty or not guilty
2 of the offense charged in the indictment. To the indictment
3 this defendant has pled not guilty. That places this case
4 before this Court for trial.

5 Now, before I begin my questioning, again, it is
6 necessary that you be sworn in each case to respond
7 truthfully to the questions that I'm about to ask.

8 Madam Clerk, please swear the jury panel for me.

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

11 THE COURT: Now, as I usually ask, if there was any
12 member of the jury panel who either failed or refused to
13 take the oath just administered by the clerk, please stand.

14 (No response.)

15 THE COURT: The record will reflect that all jurors
16 have now been sworn for purposes of my questioning.

17 Also, before I begin the questioning, I'm going to ask
18 that the attorneys who will be trying the case that they
19 introduce themselves to you, and in the case of the defense,
20 if you would introduce the defendant to the jury panel.

21 For the State.

22 SOLICITOR MCCARTY: Thank you.

23 May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 SOLICITOR MCCARTY: Good morning. As Your Honor said,

1 my name is Ryan McCarty. I'm an assistant solicitor. I'll
2 be prosecuting the case along with Travis Moore. He's also
3 an assistant solicitor here in the Solicitor's Office.
4 Thank you.

5 THE COURT: For the defense.

6 MR. THOMPSON: Please the Court.

7 THE COURT: Yes, sir.

8 MR. THOMPSON: Hello. My name is Chris Thompson, and
9 I'm an attorney here in Spartanburg, and I will be defending
10 Mr. Jeffrey Falls --

11 THE COURT: Mr. Falls, if you'll stand up please, face
12 the panel for me.

13 (Defendant complies.)

14 THE COURT: Thank you.

15 MR. THOMPSON: -- in this matter today for service---

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

17 (Defendant complies.)

18 THE COURT: Now, we'll follow the same procedure that
19 we have followed in the past. Ladies and gentlemen, if you
20 have a response to my questions, please stand. I will need
21 to place your name and juror number on the record before we
22 discuss your response.

23 Now, the first question that I have, is there any
24 member of the jury panel who is ever been related by
25 marriage or are you related by blood or have you had a close

1 personal or a social relationship with the defendant,
2 Jeffrey Bernard Falls, if that's true, please stand.

3 (No response.)

4 THE COURT: Now, has any member of the jury panel ever
5 been represented by either of the attorneys that are
6 involved in this case or have any of them ever appeared on
7 the other side of a legal matter from you, if that's true,
8 please stand.

9 (No response.)

10 THE COURT: Has any member of this, member of this jury
11 panel ever been related by marriage or are you related by
12 blood or have you had a close personal or social
13 relationship with any of the attorneys that might be
14 involved in the trial of this case, please stand.

15 (Juror responds.)

16 THE COURT: Ma'am, name and number?

17 JUROR: 58. I know Chris Thompson.

18 THE COURT: All right. And can you tell me in, in what
19 respect or---

20 JUROR: From the Spartanburg Athletic Club. I was
21 pretty -- I use to be pretty good friends with his wife
22 Jackie.

23 THE COURT: I see. Now, ma'am, the fact that you have
24 that, you know him in that fashion, would that affect your
25 ability to be fair and impartial in this trial?

1 JUROR: Don't think so.

2 THE COURT: Okay. Thank you, ma'am. You can be
3 seated.

4 Anyone else?

5 (No response.)

6 THE COURT: Now, I'm going to go over a list of
7 potential witnesses in the case. I don't know if any of
8 them are present. I don't think they are at this time, and
9 I'll, I'll have some questions concerning the list. It's
10 relatively short.

11 The potential witnesses are Trooper D.G. Wilson. He is
12 with the South Carolina Highway Patrol.

13 Trooper A. English. He is also with the South Carolina
14 Highway Patrol.

15 And Lieutenant Beth Stuart with the Spartanburg County
16 Sheriff's Office.

17 Now, as to those potential witnesses, has any member of
18 the jury panel ever been related by marriage or are you
19 related by blood or have you had a close personal or social
20 relationship with any of the individuals I identified as
21 potential witnesses, if that's true, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel or a
24 member of your immediate family or a close personal friend
25 of yours ever been prosecuted by the Seventh Circuit

1 Solicitor's office, if that's true, please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel, panel or
4 a member of your immediate family ever been arrested for,
5 charged with, or convicted of any crime involving or
6 relating to illegal drugs, if that's true, please stand.

7 (Jurors respond.)

8 THE COURT: Your name and number please, ma'am.

9 JUROR: Cheryl Dawson, 100.

10 THE COURT: Yes, ma'am.

11 JUROR: I have cousins, stepbrothers, various family
12 members, that have been, and I don't know what drugs or
13 anything, but I know that they have served some time.

14 THE COURT: All right. Would that, would that fact
15 affect your ability to be fair and impartial in the matters
16 involved in this trial?

17 JUROR: No, sir.

18 THE COURT: Thank you.

19 Name and number please, sir.

20 JUROR: Michael Weaver, 162.

21 THE COURT: Yes, sir.

22 JUROR: Stepson arrested for possession, 1980's.

23 THE COURT: All right. Would that affect your
24 impartiality in this trial?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir.

2 Name and number please.

3 JUROR: Dennis Thorstep, 152.

4 THE COURT: Yes, sir.

5 JUROR: I have a nephew currently serving time for
6 distribution of controlled substances.

7 THE COURT: All right. Would that affect your
8 impartiality in this trial?

9 JUROR: No.

10 THE COURT: Thank you.

11 Over here on my left, name please and number.

12 JUROR: Joan Durham, Juror 42. I have a son whose
13 served on drugs charges.

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

16 JUROR: No.

17 THE COURT: Thank you.

18 Name and number please, ma'am.

19 JUROR: Tanya Parks, 109.

20 THE COURT: Yes, ma'am.

21 JUROR: I have a nephew that's serving on drug charges.

22 THE COURT: Would that affect your impartiality?

23 JUROR: I don't think so.

24 THE COURT: Well, now you have to tell me whether
25 you -- if it, if it will affect it I need to know that.

1 JUROR: I think it would.

2 THE COURT: You think it would?

3 JUROR: Yes.

4 THE COURT: Then I'm gonna excuse you from the trial of
5 this case. But please be seated.

6 Name and number please, sir.

7 JUROR: Richard Doss, 57. I have two uncles that have
8 been arrested numerous times for drugs.

9 THE COURT: All right. Would that affect your
10 impartiality in this case?

11 JUROR: No, sir.

12 THE COURT: Thank you.

13 Ma'am, name and number.

14 JUROR: Angela Simmons, 137. I work as a pharmacy
15 technician and received a fraudulent, fraudulent
16 prescription from a customer of mine that I knew for various
17 number of years and they obtained narcotics.

18 THE COURT: Oh, I understand, ma'am. Would that affect
19 your impartiality in this trial?

20 JUROR: It would, yes, sir.

21 THE COURT: All right, ma'am. I'm going to ask, excuse
22 you and ask you to be seated.

23 Has any member of this jury panel ever had any kind of
24 experience with a police officer or state trooper, a federal
25 agent, a state or federal law enforcement agency that might

1 affect your ability to be fair and impartial in this case,
2 if that's true, please stand.

3 (No response.)

4 THE COURT: Does any member of the jury panel have any
5 opinions concerning the use of illegal drugs such as
6 marijuana, cocaine, methamphetamine, heroin, such that it
7 might affect your ability to be fair and impartial to both
8 the State and the defense in this case, if that's true,
9 please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel gathered
12 any information outside of this courtroom such that it may
13 have caused you to express or form an opinion concerning the
14 issues that might be involved in this case, if that's true,
15 please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 is aware of any bias or prejudice you might have either for
19 or against the State or the defense in this case, if that's
20 true, please stand.

21 (No response.)

22 THE COURT: Is there any member of this jury panel who
23 may have been a member of the Grand Jury that issued the
24 indictment in this case, it was indicted on May 17th of
25 2007, if that's true, please stand.

1 (No response.)

2 THE COURT: Is there any member of the jury panel who
3 was a member of or contributor to any group which has as its
4 primary concern the promotion of law enforcement or victims
5 rights?

6 These groups would include, but not be limited to such
7 groups as Mothers Against Drunk Driving, Students Against
8 Drunk Driving, Citizens Against Violent Crime, the South
9 Carolina Troopers Association, the South Carolina Sheriff's
10 Association, or other similarly oriented organizations.

11 If that's true, please stand.

12 (No response.)

13 THE COURT: Does any member of this jury panel know of
14 any reason whatsoever why he or she should not serve as a
15 juror in this case with particular emphasis being placed on
16 your ability to be both fair and impartial to the State and
17 the defense, if that's true, please stand.

18 (No response.)

19 THE COURT: Are there additional questions from the
20 State at this time?

21 SOLICITOR MCCARTY: None from the State, Your Honor.

22 THE COURT: Any additional questions from the defense?

23 MR. THOMPSON: Just ask if anyone is related to law
24 enforcement by blood or marriage.

25 THE COURT: All right. Is there any member of this

1 jury panel who is, who is, who has, member of the jury
2 panel, if you've served as a member of law enforcement or if
3 any member of your immediate family has served as a member
4 of law enforcement, if that's true, please stand.

5 (Jurors respond.)

6 THE COURT: Ma'am, I'll start with you, name and
7 number.

8 JUROR: Renee Huskey, 76. My son-in-law was worked as
9 a correctional officer for about twelve years and now he's a
10 state trooper in Camden County.

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

13 JUROR: No.

14 THE COURT: Thank you, ma'am.

15 Sir, name and number?

16 JUROR: Isaac Sims, 139. I have uncles and cousins who
17 have served with Spartanburg County Sheriff's Department.

18 THE COURT: Would that affect your impartiality, sir?

19 JUROR: No, sir.

20 THE COURT: You can seated. Thank you.

21 Ma'am, name and number.

22 JUROR: Juror Number 35, Julie Ray Creek. Married for
23 28 years to William Michael Creek, lieutenant at the
24 Spartanburg County Sheriff's Office.

25 THE COURT: Would that affect your impartiality, ma'am?

1 JUROR: No, sir.

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

3 Sir, name and number?

4 JUROR: William Young, Juror 173. I have a nephew that
5 works at the federal prison in Edgefield County.

6 THE COURT: Would that affect your impartiality in this
7 case?

8 JUROR: No, sir.

9 THE COURT: Thank you.

10 Name and number please, sir.

11 JUROR: Richard Doss, 52. I have -- my dad is a
12 retired game warden. Two brothers were highway patrolmen.

13 THE COURT: All right. Would that affect your
14 impartiality in the case, sir?

15 JUROR: No, sir.

16 THE COURT: Thank you.

17 Name and number please, sir.

18 JUROR: Kenneth Roam, 128. I have a cousin that's a
19 detective with the West Monroe Police Department in Monroe.

20 THE COURT: Would that affect your impartiality, sir?

21 JUROR: No, sir.

22 THE COURT: Thank you.

23 Ma'am, name and number.

24 JUROR: 100, Cheryl Dawson. I have a cousin that's a
25 police officer in Camden County.

1 THE COURT: Would that affect your impartiality?

2 JUROR: No, sir.

3 THE COURT: Thank you.

4 Sir, name and number.

5 JUROR: Number 16, Ray Bobo. My nephew served for a
6 number of years as a city police officer in New Mexico.

7 THE COURT: All right. Would that affect your
8 impartiality?

9 JUROR: No, sir.

10 THE COURT: Thank you, sir.

11 Any others?

12 (No response.)

13 THE COURT: Any other questions from the defense to
14 follow-up?

15 MR. THOMPSON: Can we approach?

16 THE COURT: You may.

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

19 THE COURT: All right. Other than the issue you raised
20 at the bench, are there any other questions from the
21 defense?

22 MR. THOMPSON: None, Your Honor.

23 THE COURT: Thank you.

24 All right. I'm gonna instruct then the clerk to
25 prepare a list of potential jurors in this case, and, as

1 usual, once that's completed, she'll begin to call the
2 names. Please bring your personal belongings with you if
3 you're selected. You'll be having a seat in the jury box to
4 my left.

5 (Pause.)

6 THE COURT: All right. Madam Clerk, you can begin the
7 jury selection process.

8 Strikes are five and five. We'll pick one alternate.

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

10 THE COURT: We are now selecting the alternate.

11 (WHEREUPON, an alternate juror was selected at this
12 time.)

13 THE COURT: I'll ask the attorneys to approach briefly.

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

16 THE COURT: All right. Any objection to the jury
17 selection process from the State?

18 SOLICITOR MCCARTY: None from the State, Your Honor.

19 THE COURT: Any from the defense?

20 MR. THOMPSON: None, Your Honor.

21 THE COURT: All right.

22 (Pause.)

23 THE COURT: All right. Ladies and gentlemen, you've
24 been selected to serve as the jury in this case. There are
25 some pretrial matters I'll be taking up with the attorneys

1 and also I'm aware of the fact that we're past noon. So,
2 you have a lunch that you probably would like to take, take
3 care of.

4 So, I'm going to excuse you. I'll ask you to be back
5 in the jury room that will be in use for this trial and I'll
6 ask you to be there by 2:30. So, that will give us time to
7 hopefully get the pretrial matters taken care of and be in a
8 position to begin the trial of the case.

9 When you return to the courthouse you'll be taking an
10 oath concerning your duties, and your oath will state that
11 you will decide the case solely based upon the law and the
12 evidence that will be presented during the trial. Now, the
13 only evidence that is presented during a case is witness'
14 testimony who are sworn to tell the truth who'll be
15 testifying from this witness stand and whatever documents or
16 other evidence comes into the record through that testimony.

17 For that reason it would be a violation of your oath to
18 try to gather any information concerning this case from any
19 other source. That includes such sources as news reports,
20 media records, Internet, or any other source that you might
21 seek to gather information. So, I'll caution you it would
22 be a violation of your oath to try to gather information
23 about this case on your own from any source other than the
24 information provided during the trial in this courtroom.

25 Also I will caution you not to begin to discuss the

1 case with anyone even among yourselves. You've been
2 selected as fair and impartial jurors. You have an open
3 mind concerning this case, and I want you to keep that open
4 mind even through the trial and all the way to the point
5 that I tell you to begin your deliberations, and only then
6 should you begin to try to make up your mind. I hope you
7 realize that even the most innocent conversation that you
8 might have, even among yourselves, in spite of the fact that
9 you know very little about this case, those discussions, if
10 it's about the nature of the charges or what's involved in
11 the case, it might begin to color your ultimate decision.
12 It might cause you to begin to make up your mind and at this
13 point in time you've heard none of the evidence and have
14 received none of the information that you need in order to
15 make a fair and an impartial decision in this case.

16 So, don't discuss this case with anyone. It's okay to
17 tell family or friends that you're serving on a jury and
18 that when it's over you'll decide if you want to talk about
19 it because you're under no obligation to talk about it with
20 anyone. But I will caution you don't discuss it with
21 anyone. Don't begin discussions about any matters involving
22 this case until I've asked you to do so.

23 I will caution you as well that jury tampering is a
24 crime. It's a felony in this state. And if anyone calls
25 you or contacts you about your service on this jury at

1 anytime during the trial, especially at this time, report
2 that to the Court. I can assure you I'll see that the
3 appropriate investigations are begun. I take jury tampering
4 very seriously. If it occurs, I'll see that we follow-up on
5 it in the appropriate fashion.

6 Again, I want you to be back in the jury room that will
7 be in use for this trial. We'll need to give them an
8 alternate room cause we have a jury out deliberating. The
9 bailiff will show you where to report back. Be there at
10 2:30 this afternoon.

11 Thank you very much. You're free to go at this time.

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

14 THE COURT: All right. In this case you indicated you
15 have a suppression hearing you'd like for me to consider.

16 MR. THOMPSON: I would, Your Honor.

17 THE COURT: I don't know if all your witnesses are here
18 yet.

19 Are they?

20 SOLICITOR MCCARTY: I believe Trooper Wilson is here,
21 and I think we went to see if Trooper English is here.
22 Trooper Wilson will be the crux of the matter. He's the
23 initial officer who makes the stop and conducts the course
24 of the roadside. Trooper English is involved in it. He's a
25 K-9 handler, and once the K-9 is involved in this, actually

1 does the hand search of the vehicle finding the powder
2 cocaine, Your Honor.

3 THE COURT: All right. Can, can we proceed with just
4 the one?

5 MR. THOMPSON: We should be able to, Your Honor. I
6 don't---

7 THE COURT: Okay. All right. Yes, sir.

8 SOLICITOR MCCARTY: Mr. Thompson filed this on our
9 office. We received it August the 4th. I'm assuming these
10 are the matters which he wishes to take up from the Court.
11 I'll hand a copy up.

12 THE COURT: Is that correct?

13 MR. THOMPSON: At this point, yes.

14 THE COURT: All right. Pass it up.

15 SOLICITOR MCCARTY: Your Honor, may we approach the
16 breach just briefly?

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

18 THE COURT: All right. Mr. Thompson, I have received,
19 in written form, a motion to suppress filed August 4th of
20 this year. I assume these are the grounds that you're
21 proceeding on, is that correct?

22 MR. THOMPSON: Your Honor, it is. I think I need to
23 make a phone call to Officer, Captain Hollifield at the
24 Sheriff's Office to get him here on the first matter as
25 concerning Subsection 23-1-210 and 215. I know there's a

1 statewide jurisdiction granted to the Highway Patrol --

2 THE COURT: Yes, sir.

3 MR. THOMPSON: -- and I, I would like to get some
4 clarification on exactly how those highway patrolmen wind up
5 here in Spartanburg County under any agreement that's out
6 here.

7 THE COURT: Well, now I've, I've reviewed those
8 agreements in the past. Now, my understanding of those
9 statutes have to do with the sharing of law enforcement
10 officers from other jurisdictions in this jurisdiction.

11 MR. THOMPSON: Right.

12 THE COURT: Now, state highway patrolmen I think have
13 stateside jurisdiction.

14 SOLICITOR MCCARTY: If I can, Your Honor, I know Mr.
15 Thompson referenced anything involving this is an operation
16 type, Rolling Thunder, multi-jurisdictional task force type
17 of thing.

18 THE COURT: Yes.

19 SOLICITOR MCCARTY: I'll hand up a copy of a previous
20 order you previously issued in the case, case of the State
21 of South Carolina versus Eldor Ramirez Gonzales. It's
22 Indictment Number 2009-GS-42-1020. This is an order that
23 came from your office dated January I believe it's 28th of
24 2010. I just ask you to take a look at that.

25 THE COURT: Yes, sir, that's what I was referring to.

1 SOLICITOR MCCARTY: Yes, sir.

2 THE COURT: That particular issue has been in front of
3 me before.

4 Now, there does have to be, my understanding, has to be
5 an agreement between agencies.

6 SOLICITOR MCCARTY: Well, this situation here, Your
7 Honor, I believe we're dealing with the Highway Patrol.
8 They have the jurisdiction to patrol wherever they can with
9 the county. I think there was an invitation to them, but
10 not necessarily an agreement because they don't come under
11 the payroll of the Spartanburg County Sheriff's Office.
12 They're still an independent agency. They're just invited
13 here to---

14 THE COURT: Participate.

15 SOLICITOR MCCARTY: ---participate or to at least
16 patrol.

17 THE COURT: That's what I was mentioning to Mr.
18 Thompson. I'm not sure their participation is governed by
19 those statutes because they are within their jurisdiction if
20 they're here.

21 MR. THOMPSON: I understand that, but at the same time
22 they're here based upon an agreement to be here with the
23 county.

24 THE COURT: I'm not sure they are. Let's find out.

25 SOLICITOR MCCARTY: Yes, sir.

1 THE COURT: I guess maybe that's the question.

2 MR. THOMPSON: And, like I say, that, that would be
3 my -- I subpoenaed the officer and I really can't say what
4 he told me over the phone. But it's my belief there's
5 nothing out there that, that warrants any type of an
6 agreement between, a written agreement between the county
7 sheriff and the Highway Patrol, and in this case---

8 THE COURT: well, I---

9 MR. THOMPSON: And I, and I need to get clarification
10 that this is, in fact, a Rolling Thunder seizure.

11 THE COURT: I understand what you're saying. I'm
12 just -- and I'll let you put up whatever you want to put up
13 on it.

14 MR. THOMPSON: And I just ask the Court to look at the
15 plain, plain language, plain meaning of the statute that---

16 THE COURT: well, I've looked at them before and my
17 understanding of those statutes are that it involves
18 situations where officers are taken from other
19 jurisdictions.

20 MR. THOMPSON: Right.

21 THE COURT: Other jurisdictional areas.

22 MR. THOMPSON: City, city/county or county/county.

23 THE COURT: It's sharing, it's sharing of resources.
24 There's one that has to do with specific investigations and
25 one that has to do with general investigations. And -- but

1 in this case, you've got officers who are within their
2 jurisdictional area.

3 MR. THOMPSON: Right.

4 THE COURT: So, I'm not sure that there has to be an
5 agreement for them. I mean if they -- they're here they're
6 here. If I see a highway patrolman rolling down the highway
7 and he pulls me over, he's within the State of South
8 Carolina, he's within his jurisdiction.

9 MR. THOMPSON: I understand that, Your Honor, but my
10 argument's gonna be that the whole Rolling Thunder task
11 force is organized in an effort to seize drugs and money. I
12 want to see if the, if the Highway Patrol shares in that
13 money, then my opinion that, that they would come under that
14 statute as an agency and there would need to be a written
15 agreement in place. For example, my client had over \$1,300
16 in his pocket. It was seized.

17 well, does the -- does the Highway Patrol get a portion
18 of these proceeds once this case is disposed of and if
19 there's a guilty verdict?

20 That, that would my question to the Highway Patrol.

21 SOLICITOR MCCARTY: I think they would, Your Honor. I
22 believe that they are entitled to -- any arresting agency,
23 and just regardless of being a part of this week of
24 Operation Rolling Thunder back in February of 2007, would
25 be, in effect, as if they had made the arrest in any other

1 county within the state. They're entitled to an amount of
2 the proceeds as set forth by statute or an amount of
3 forfeiture rather as set forth by statute just like any
4 other arresting agency would be.

5 I think what the concern here, with regard to these
6 multi-jurisdictional agreements is how they're paid for,
7 does it come under the county funds to pay for these types
8 of---

9 THE COURT: well, that was one of the issues that came
10 up before, and in that particular case I was informed that
11 there were no county funds expended in the case.

12 SOLICITOR MCCARTY: And there's not for that, Your
13 Honor, and I think it comes to the fact of do we have to go
14 to another authority, County Council, to authorize the
15 payment of these types of funds, and since we're not, we're
16 just allowing the sheriff to, as chief law enforcement
17 officer and Constitutional officer---

18 THE COURT: My understanding in that case is the money
19 was taken out of his general budget and he has the authority
20 to spend whatever they give him to spend.

21 SOLICITOR MCCARTY: Yes, sir.

22 THE COURT: Anyway.

23 MR. THOMPSON: Anyway, you know, I'm privy to some of
24 the correspondents between the jurisdictions, and that's
25 where the sharing of---

1 THE COURT: Oh, the jurisdictions involved in this
2 case?

3 MR. THOMPSON: No, Your Honor. Others. Like I said, I
4 subpoenaed from '07, what I have is from '08, and I wanted
5 to compare those two and see if anything existed between the
6 Highway Patrol from, from another jurisdiction and the
7 county sheriff.

8 THE COURT: Well, I'll let you inquire into it. I'm
9 not sure where we're going.

10 MR. THOMPSON: All right. But my argument is, like I
11 say, the plain meaning of the statute, if there's an
12 agreement to share those proceeds, like he said, the Highway
13 Patrol's paid from the state fund. So, it's not come -- the
14 county doesn't pay them to be here, but at the same time,
15 they do share in proceeds they, they pull off the street
16 here. They turned in everything to the Spartanburg County
17 Sheriff's Office. Not -- and didn't maintain it in a
18 Highway Patrol locker or anything like that.

19 THE COURT: I'm not sure I understand what the
20 importance---

21 MR. THOMPSON: And another, another concern---

22 THE COURT: I'm not sure I understand what the
23 importance of that is.

24 MR. THOMPSON: Well, I just think, in my opinion,
25 you've got a statute that plainly states there needs to be a

1 written agreement between these agencies, and these officers
2 will testify they're not, they're not here in Spartanburg
3 County. You look at the Spartanburg County---

4 THE COURT: well, you can go ahead and call your first
5 witness on this if you'd like.

6 MR. THOMPSON: Okay, Your Honor. I would call D.G.
7 Wilson.

8 THE COURT: All right. Come forward. Come on up and
9 be sworn.

10 D.G. WILSON, having been first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat please and state your name once
13 you're seated.

14 WITNESS: Darren G. Wilson.

15 THE COURT: Your witness, Mr. Thompson.

16 MR. THOMPSON: Please, please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. THOMPSON: And, also, if I could get an opportunity
19 to call Captain Hollifield at the county in, in the event
20 you -- this testimony may take us to where I want it to go.
21 If it doesn't, then I understand and it's my motion.

22 THE COURT: well, if you need to put Mr. Hollifield on
23 notice, could somebody call him and tell him to get on over
24 here?

25 We'll get one of these gentlemen to do that for you.

D.G. Wilson - Direct examination
by Mr. Thompson

1 MR. THOMPSON: Okay.

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. THOMPSON:

5 Q officer wilson, where, where do you -- what county do
6 you work out of?

7 A I have no specific county. I'm assigned to
8 headquarters in Blythewood.

9 Q Okay. what post is that?

10 A Headquarters.

11 Q Okay. Is it -- does it have a number?

12 A No, sir.

13 Q Okay. So, in Blythewood, where do you normally patrol?

14 A I'm assigned to work all over the state. I have three
15 teams spread throughout the state, upstate, mid-state, And
16 lower state.

17 Q what kind of teams are those?

18 A Aggressive Criminal Enforcement Teams.

19 Q Okay. what do those, what do those teams do?

20 A Our primary responsibility is to reduce fatalities on
21 the roadway through enforcement of traffic laws, and also to
22 curtail the flow of illegal drugs, contraband, weapons,
23 fugitives, terrorists, things of that nature, traveling in
24 our state.

25 Q Okay. And you had an opportunity to patrol in

D.G. Wilson - Direct examination
by Mr. Thompson

1 Spartanburg County in February of 2007, is that correct?

2 A Yes, sir.

3 Q And how did you come to be in Spartanburg?

4 A During Operation Rolling Thunder.

5 Q Okay. And does the Highway Patrol initiate that, that
6 multi-jurisdictional task force?

7 A We do not.

8 Q Who does?

9 A Spartanburg County Sheriff's Department.

10 Q Okay. And are you aware of any contact that you -- did
11 you personally have contact with Spartanburg County?

12 A No, sir.

13 Q Okay. Who, who would of been contacted by -- would
14 Spartanburg County have contacted your agency?

15 Do you know that?

16 A That's correct.

17 Q Okay. And do you -- are you privy to what would be
18 requested?

19 A No, sir, at that time I was not.

20 Q Okay. So, who, who would instruct you to be here in
21 Spartanburg on, in February of '07?

22 A That would be through our chain of command --

23 Q Okay.

24 A -- starting with the captain.

25 Q Okay. And how many times, prior to -- in, in 2007,

D.G. Wilson - Direct examination
by Mr. Thompson

1 prior to February, the week of February 19th, 20th, around
2 in there, when you pulled over Mr. Foster, how many times
3 had you been assigned to Spartanburg County in 2007?

4 A I wouldn't say I was assigned. I probably worked here
5 probably three or four times maybe. I hadn't been with the
6 A.C.E. Team that long at that point.

7 Q Okay. What's the A.C.E. Team, the team you mentioned?

8 A Aggressive Criminal Enforcement Team.

9 Q Okay. And the -- but you can't recall specifically the
10 dates you were here?

11 A No, sir.

12 Q Okay. Was that part of a task force?

13 A No, sir, like I said, we have teams that's assigned
14 this area or this region.

15 Q Okay. After February 20th, that week, the week of
16 the 20th in '07, did you have occasion to work in South
17 Carolina, in Spartanburg again?

18 A Immediately preceding the time did you say?

19 Q At anytime during 2007.

20 A I'm sure I've been back up a couple times since then.

21 Q Okay.

22 A Not---

23 Q What about during that year?

24 A During that year?

25 Q In '07?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A Yes, sir.

2 Q Okay. And was that part of the task force or just
3 routine patrol?

4 A Routine patrol.

5 Q Okay. So, when you come up here on routine patrol, do
6 you come up here and you stay overnight?

7 A Yes, sir, I have.

8 Q Okay. During your routine patrol?

9 A Yes, sir.

10 Q Okay. And then -- but -- so, can you explain to the
11 Court, is there any difference in you being in Spartanburg
12 on a routine patrol and your being in Spartanburg for a
13 Rolling Thunder task force?

14 A My enforcement is the same.

15 Q Okay. And is your assignment the same?

16 A Yes, sir.

17 Q It is.

18 Okay. So, your captain -- you basically tells you to
19 do the same thing on your standard patrol or it would be the
20 same as your Rolling Thunder experience, right?

21 A The mission is the same, yes, sir.

22 Q Okay. And what exactly is your mission, the same as
23 the -- you said you weren't a member of that team when
24 you're on routine patrol, right?

25 You weren't a member of the team in '07, February,

D.G. Wilson - Direct examination
by Mr. Thompson

1 correct?

2 A Yes, I was.

3 Q You were a member of the A.C.E. Team?

4 A Yes.

5 Q I thought you just said you weren't in '07?

6 A I guess I misunderstood your question.

7 Q Okay. So, were you here on routine patrol as a member
8 of the A.C.E. Team?

9 A Yes, sir.

10 Q And then were you here as a member of Rolling Thunder
11 as a member of the A.C.E. Team?

12 A Yes.

13 Q Okay. And, so, you -- are you telling the Court, when
14 you came up here from Blythewood, you didn't know if you
15 were doing routine patrol or if you were doing Rolling
16 Thunder?

17 A Let me backtrack just a second just to make sure I
18 understand you. In 2007 I was assigned to the low state
19 A.C.E. Team.

20 Q Okay.

21 A I was a senior trooper at that time.

22 Q All right. And when the low -- can you explain to me
23 what the low state means?

24 A Just the low part of the state, the entire region from
25 95, from Dillon County to the North Carolina line, to the

D.G. Wilson - Direct examination
by Mr. Thompson

1 Georgia line, all the way to the coast.

2 Q Okay. So, the, the PeeDee region, beach area, that---

3 A Yes, sir.

4 Q ---down that way?

5 Okay. So, now, if you're assigned down there, then

6 it's probably more likely that you didn't patrol in

7 Spartanburg County in '07?

8 A All the teams will get together at sometimes and work

9 together. Like I said, three teams spread throughout the

10 state.

11 Q Okay. And, so, you're a hundred percent you been in

12 Spartanburg in '07 prior to the Rolling Thunder?

13 A To best of my recollection, yes, sir.

14 Q Okay. And you think you might of been up here after

15 that some too, right?

16 A Yes, sir.

17 Q Okay. Now, I'm gonna go back to that other question.

18 When you received your assignment to come here on let's

19 say routine patrol, would it be any different than the

20 assignment you received that you're coming up here for

21 Rolling Thunder?

22 A The mission is the same.

23 Q It's the same?

24 A Yes, sir.

25 Q And you don't know -- you really don't know if you're

D.G. Wilson - Direct examination
by Mr. Thompson

1 coming up here to be mixed in with other jurisdictions and,
2 and Spartanburg County and working on a multi-jurisdictional
3 task force?

4 A Oh, yes, sir, I know that.

5 Q You know that?

6 A Again, the mission is the same, yes, sir.

7 Q Okay. Are you saying there was more than one Rolling
8 Thunder in 2007?

9 A No, sir.

10 Q Okay. So, that's the only one you're aware of, right?

11 A Yes, sir.

12 Q Okay. And when you received your assignment, how do
13 you receive it, email, just from your captain?

14 A Through my supervisor at the time.

15 Q Okay.

16 A He would advise us.

17 Q And, and what manner would he, would he let you know
18 you're going to Spartanburg?

19 A Through email. We get an email from Spartanburg County
20 telling us the hotel location, meeting place, things of that
21 nature.

22 Q Okay. So, you got an email from Spartanburg County.
23 You didn't, but your captain did?

24 A My supervisor, yes, sir.

25 Q Okay. Your supervisor got an email and it said what?

1 Are you, are you -- were you privy to the email or you
2 just got word of mouth through your captain?

3 A I had a copy of the email. I don't have it now.

4 Q Okay. And what did it say about a motel room?

5 A I don't remember which one we stayed at in 2007.

6 Q Okay. But you didn't -- you're not -- you weren't
7 privy to a letter sent out by the county, right?

8 A What type?

9 I'm not sure.

10 Q A letter inviting multi-jurisdictions to come and join
11 them.

12 A I don't recall one, no, sir.

13 Q Okay. And you probably -- you're encouraged to room up
14 with somebody during Rolling Thunder?

15 A I think I did have a roommate at the, at the time.

16 Q Okay. And where would you of gotten that order from?

17 Just---

18 A Supervisor.

19 Q Okay.

20 A He would make the schedule.

21 Q Okay. So, when you received your orders, does he put
22 something in your hand or he just send you an email?

23 A Email, that's correct.

24 Q Okay. And you stated there was an email that came from
25 Spartanburg County, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A Yes, sir.

2 Q That was an invitation, is that what you said?

3 Maybe I said that.

4 A Yeah, maybe you said that.

5 Q Okay. All right. But you weren't privy to the email
6 from Spartanburg County?

7 A I guess it was a forwarded email. I'm -- I can't, I
8 can not recall.

9 Q Okay. And did that email reference Rolling Thunder?

10 A To the best of my recollection.

11 Q Okay. And when you went on normal patrol in
12 Spartanburg, you wouldn't of received an email referencing
13 Rolling Thunder, would you?

14 A I wouldn't have received two emails, no, sir.

15 Q Okay. And, so, basically you were in Spartanburg
16 County for Rolling Thunder on orders, correct?

17 A I was assigned, yes, sir.

18 Q And you were here -- you weren't here investigating a
19 string of crimes, were you?

20 A No, sir.

21 Q You were just on standard patrol, right?

22 A Yes, sir.

23 Q Okay. And then you would, you wouldn't argue with my
24 assessment that your usual patrolling area at that time was
25 the low state, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A That's normally where you would find me, yes, sir.

2 Q Okay. And then you wouldn't argue with me this, if I
3 said that you were up here in Spartanburg on a temporary
4 basis, would you?

5 A That would be a good assumption.

6 Q Okay. And then you wouldn't agree with me that, you
7 know, you're here for the mutual benefit of your agency and
8 the County Sheriff's Office, would you?

9 A I would say that I'm here to help reduce the fatalities
10 here in Spartanburg County.

11 Q Okay. And then you gained some benefit from that too,
12 right?

13 A I'm not sure exactly what you're saying.

14 Q Would you, would you be paid overtime?

15 A Oh, no, sir.

16 Q Okay. You did get out on the road though and gain
17 experience, right?

18 A Yes, sir.

19 Q Okay. And to your knowledge, there's no written
20 agreement between your agency and the county sheriff to
21 carry out Rolling Thunder, right?

22 A Not that I'm aware of.

23 MR. THOMPSON: Okay. Your Honor, Your Honor, I'm, I'm
24 gonna need Officer Wilson for the other motions. I don't
25 know that I need to go into those now because I guess you

D.G. Wilson - Direct examination
by Mr. Thompson

1 need to rule on these and then probably I'll need---

2 THE COURT: well, can you say the -- you say other
3 motion, what are you specifically talking about?

4 MR. THOMPSON: I want to challenge the validity of the
5 stop.

6 THE COURT: Oh, I understand that.

7 MR. THOMPSON: And the---

8 THE COURT: well, I'll ask him to stand down now.
9 we'll bring him back when we get to those issues.

10 You can step down.

11 WITNESS: Thank you, judge.

12 THE COURT: Do you wish to ask him any questions?

13 Just one second, officer.

14 SOLICITOR MCCARTY: I'm sorry. I'm gonna ask him just
15 a couple. I'm sorry.

16 THE COURT: I'm gonna let the State ask some questions
17 on this, this issue.

18 SOLICITOR MCCARTY: Just briefly, Your Honor.

19 THE COURT: Sure.

20 CROSS-EXAMINATION

21 BY SOLICITOR MCCARTY:

22 Q Sergeant Wilson, did you receive a pay check from the
23 Spartanburg County Sheriff's Office during the week of
24 February for your presence here in Spartanburg County?

25 A I did not.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q Okay. Were you paid at any other time by the
2 Spartanburg County Sheriff's Office for your presence here?

3 A I was not.

4 Q Paid by the Department of Public Safety I'm assuming?

5 A That's correct.

6 Q And you're part of the Aggressive Criminal Enforcement
7 or A.C.E. Team?

8 A Yes.

9 Q Is that a specific unit within the Highway Patrol?

10 A It is a specialized unit, yes, sir.

11 Q You described that there were kind of three zones.

12 You're just assigned to one of those zones, am I
13 correct?

14 A Yes, sir.

15 Q It is uncommon for you to patrol outside of your
16 regularly assigned zone?

17 A No, sir, we're the mostly flexible unit or one of the
18 most flexible units on the Highway Patrol. So, we get calls
19 from different zones.

20 Q Approximately, if you can, how many people are assigned
21 to each zone?

22 How many troopers are on the A.C.E. Team per zone?

23 A Per zone?

24 Q Or at the time that you were there in 2007 if you
25 recall even more.

D.G. Wilson - Cross-examination
by Solicitor McCarty

- 1 A Three to four.
- 2 Q Three to four members per zone?
- 3 A Yes, sir.
- 4 Q And they're all highway patrolmen, am I correct?
- 5 A Yes, sir.
- 6 Q So, we're probably talking somewhere between ten to
- 7 twenty officers max.
- 8 Am I assuming that correctly?
- 9 A More like ten to twelve.
- 10 Q Ten to twelve?
- 11 A Yes, sir.
- 12 Q Not a higher number?
- 13 A No, sir.
- 14 Q Okay. And these ten to twelve officers, they're all on
- 15 the A.C.E. Team, upper state, middle state, and lower state?
- 16 A Yes, sir.
- 17 Q Do you routinely patrol all three of those zones
- 18 together at one time?
- 19 A We do come together at times.
- 20 Q When you do come together, do you find yourselves often
- 21 times outside of your normal zone?
- 22 A Yes, sir.
- 23 Q Have you patrolled in other counties in the upper state
- 24 beyond just Spartanburg County?
- 25 A Yes, sir.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q When you are up here in either Spartanburg County or
2 those other counties, when it comes to lodging, do you find
3 yourself having to stay in hotels?

4 A Hotels or make other arrangements, yes, sir.

5 Q Now, in the situation here, do you recall, and you may
6 not, did you stay in a hotel during the week of
7 February 2007?

8 A Can not recall. I want to say that I possibly stayed
9 with another trooper.

10 Q Okay. A trooper here locally possibly at his house?

11 A Yes, sir.

12 Q Okay. If you had had to stay in a hotel or you stayed
13 in a hotel in the past, is that room and board covered by --
14 do you submit like a voucher back to your, through your
15 chain of command for reimbursements?

16 A Yes, sir.

17 Q Okay. So, it's not something that was immediately
18 provided by the Spartanburg County Sheriff's Office?

19 A Oh, no, sir.

20 Q You could have been here, am I correct in assuming, any
21 other week of the year in the same fashion or form for which
22 you were here during this week in particular in February of
23 2007?

24 A Yes, sir.

25 Q Do you come at the request of either local sheriffs or

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 highway patrol troops or at the request of county sheriffs
2 to help out in the enforcement of traffic in those counties
3 or in those jurisdictions?

4 A We do.

5 Q And let me ask you just this, being a member of an
6 A.C.E. Team like you were at that time or like you are now,
7 does that, in any way, change your jurisdictional mandate as
8 a highway patrolman?

9 A No, sir.

10 Q You just have the same statewide jurisdiction you have
11 being a regular highway patrolmen as you are being a member
12 of the A.C.E. Team?

13 A Absolutely.

14 Q Thank you.

15 Nothing further, Your Honor.

16 MR. THOMPSON: Briefly, Your Honor.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Mr. Wilson, can you -- you say that you turned in a
21 voucher for your motel room you paid for?

22 A We do a travel expense vouchers, yes, sir.

23 Q Who did you turn that into?

24 A It goes to the Department of Public Safety and through
25 admin system, administrative assistant.

1 Q And your testimony, is that what you did in February of
2 '07 for Rolling Thunder?

3 A Yes, sir.

4 Q Okay. What about a kick off dinner, did you attend
5 that?

6 SOLICITOR MCCARTY: Your Honor, I would just object to
7 the relevancy of whether or not there was any dinner pre or
8 post Rolling Thunder operation and what it has to do with---

9 THE COURT: I'll let him ask it. I'm not sure of the
10 importance of that.

11 But go ahead.

12 A In reference to the kick off, generally I think we call
13 it the safety briefing dinner.

14 Q Did you attend that?

15 A Yes, sir.

16 Q Okay. You normally attend a dinner and a briefing when
17 you're up here on routine patrol.

18 A Yes, sir, we always have a safety briefing.

19 Q All right. Who conducted that, that breakfast and
20 briefing?

21 A It was Spartanburg County.

22 Q Okay. And that's up here -- and when you're up here
23 under your usual jurisdiction, under your usual
24 jurisdiction, and you're up here on, on something other than
25 the multi-jurisdictional task force, does Spartanburg County

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Sheriff's office also give you a briefing?

2 A No, sir, that would be a supervisor.

3 Q Okay. And did you attend the final I guess -- well,
4 this one was a breakfast buffet and awards banquet?

5 A Yes, sir.

6 Q You did?

7 A Yes, sir.

8 Q Okay. And did you receive any awards?

9 A Don't recall one.

10 Q All right. So, you don't deny you're actively engaged
11 in Rolling Thunder while you were here in February of '07?

12 A Yes, we were on the roadways at the same time, yes,
13 sir.

14 MR. THOMPSON: Okay. Have no further questions, Your
15 Honor, for, on this issue.

16 THE COURT: Anything further?

17 SOLICITOR MCCARTY: No, Your Honor.

18 THE COURT: You may step down.

19 wish to call any other witnesses on this issue?

20 MR. THOMPSON: I don't know if Captain Hollifield's
21 here or not.

22 SOLICITOR HUNTER: I left a voice mail and I believe
23 another officer texted him while we were outside. I know
24 he's off duty today as the entire I.E.C. team is.

25 THE COURT: Okay. All right. We'll try to get him

1 here. We can move on to something else. I can figure all
2 that out.

3 MR. THOMPSON: All right.

4 SOLICITOR MCCARTY: We had an issue with that one. We
5 can hook up a separate DVD player. If you'll allow just a
6 moment, Your Honor.

7 THE COURT: Okay.

8 MR. THOMPSON: I'm on, I'm on my third, third tape.

9 THE COURT: Third what?

10 MR. THOMPSON: Third tape. These is---

11 THE COURT: Oh, they're having problems with their
12 tapes?

13 MR. THOMPSON: It's hard for me to get, hard for me to
14 get one that cooperates.

15 THE COURT: I understand.

16 (Pause.)

17 THE COURT: All right. Next motion.

18 MR. THOMPSON: Your Honor, we call Officer Wilson once
19 more.

20 THE COURT: And what is, is -- what motion are we on?

21 MR. THOMPSON: Your Honor, I'm gonna go with I think
22 number two, that it was an invalid stop of the defendant.

23 THE COURT: All right. You've been already sworn,
24 officer. Take the stand. Thank you, sir.

25 You may proceed.

D.G. Wilson - Direct examination
by Mr. Thompson

1 MR. THOMPSON: May it please the Court, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. THOMPSON:

4 Q officer Wilson, you have the detailed statement of
5 investigation that you presented?

6 Do you have a copy of that with you?

7 A Yes, sir.

8 Q Okay. You stated that on 2/20/07 around 21:07, is
9 that -- what is that?

10 Is that---

11 A That would be 9:00.

12 Q Nine o'clock?

13 A Yes, sir.

14 Q Okay. And then you were patrolling I-85 in Spartanburg
15 County traveling north on, at the 60-mile marker, is that
16 correct?

17 A Yes, sir.

18 Q You saw a light, a white Lincoln Town Car failing to
19 maintain its lane, is that correct?

20 A Yes, sir.

21 Q Okay. And if I get this to play.

22 Bear with me, Your Honor.

23 All right. This is, this is it right here, correct?

24 Is this---

25 A Yes, sir.

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by Mr. Thompson

1 Q Okay. Now, right here you're starting, you start the
2 stop, correct?

3 A Yes, sir.

4 Q Okay. So, you indicated -- you put in here that that's
5 at the 62-mile marker, correct?

6 A Thereabouts, yes, sir.

7 Q Okay. So, you have followed Mr. Falls in this white
8 Lincoln Town Car for two miles, right?

9 A I would say I followed him. We were traveling in the
10 same direction.

11 Q Okay. And as a matter of fact, you were beside him for
12 a good bit of that way, were you not?

13 A I was in a similar lane, yes, sir.

14 Q Okay. And you determined that he was -- had a, making
15 a fog line?

16 He was going over the fog line, right?

17 A That's correct.

18 Q Okay. And -- well, did you observe that while you were
19 beside him or behind him?

20 A He did it on several occasions. I seen it -- what drew
21 my attention to him was when I was in the center, center
22 lane, he crossed over -- pretty much just as he is right
23 there where you got it paused at.

24 Q Okay. And for that reason you pulled him over,
25 correct?

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by Mr. Thompson

1 A That's correct.

2 Q Okay. And, and these, these big trucks are on the road
3 quite often?

4 You're a highway patrolman. You see a lot those,
5 right?

6 A Yes, sir.

7 Q Okay. They're tough to drive around, right?

8 A I wouldn't say so.

9 Q Huh?

10 A If they were tough to drive around a lot of people
11 wouldn't have been on the road I guess.

12 Q Okay. Well, if you had your preference, would you
13 rather, rather drive beside one of those or a volkswagon?

14 A Volkswagon.

15 SOLICITOR MCCARTY: Your Honor, objection to the
16 relevance on that. It also draws an opinion on that matter.

17 THE COURT: Well, let's get, let's get to the point --

18 MR. THOMPSON: Okay.

19 THE COURT: -- Mr. Thompson.

20 Q You, you pulled him over for going over this fog line?

21 A That's correct.

22 Q What statute did he violate?

23 A The failure to maintain lane. I want to say that's
24 56-5-1900.

25 Q 1900, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A Yes.

2 Q That's right.

3 And how many fog line tickets do you write a month?

4 A I generally try to educate people, and, again, I
5 stopped Mr. Falls because he was driving over the fog line.
6 But that's indicative of somebody being fatigued, sleepy,
7 tired, having some type of medical issue.

8 Q Okay. Now, at the point you pulled him over, what do
9 you know about that car right there?

10 A Nothing. It's a Lincoln.

11 Q All right. It's a Lincoln, it's got a North Carolina
12 tag, right?

13 A That's correct.

14 Q Okay. And you probably know there's a black male
15 driver, right?

16 A I wouldn't say that. I didn't know who the driver was.

17 Q Okay. So, did you witness him impede any traffic
18 before you pulled him over?

19 A No, sir.

20 Q Okay. And you were right beside him for a long time,
21 right, or a couple miles almost, right?

22 A Presumably, yes, sir.

23 Q Okay. And you said his tires crossed over the fog
24 line.

25 So, that would mean if he was going off the road he was

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by Mr. Thompson

- 1 going away from any traffic, right?
- 2 A That's correct.
- 3 Q Okay. So, he didn't pose a safety risk to you beside
- 4 him, right?
- 5 A Well, coming in this morning I saw a number of disabled
- 6 motor vehicles on this roadway. So, that would be a
- 7 hazard---
- 8 Q Okay. Well---
- 9 A ---to himself.
- 10 Q ---how many, how many disabled vehicles did you see on
- 11 the road on this evening?
- 12 A I don't recall.
- 13 Q Okay. So, you would agree with my assessment that he
- 14 pulls over fairly smoothly here, right?
- 15 A We're in a bad location, but yes, sir.
- 16 Q And he, and he provided a turn signal before he came
- 17 off the road, right?
- 18 A Yes, sir.
- 19 Q And this is you here, right?
- 20 A Yes, sir.
- 21 Q Okay. So, again, is it your opinion that he violated
- 22 56-1-1900 or whatever the statute was?
- 23 A He was failing to maintain his lane, yes, sir.
- 24 Q Okay. But he didn't violate that statute, right?
- 25 A What, what are you asking me, counsel?

- 1 Q Did he -- he didn't violate that statute, did he?
- 2 A Yes, he did.
- 3 Q He did.
- 4 Are you familiar with the wording of that statute?
- 5 A Not verbatim.
- 6 Q Okay. I may have a copy of it somewhere.
- 7 would it be something along the lines that a vehicle
- 8 would be operated as nearly as practical entirely within a
- 9 single lane and may not be moved from one lane to another
- 10 until the operator determined the move can be made safely?
- 11 That sound fairly accurate?
- 12 A That sounds familiar.
- 13 Q Okay. So, he's maintained his lane as nearly as
- 14 practical as possible in that one lane, right?
- 15 Doesn't really state that he is violating a law if he
- 16 does sway out of that lane, does he?
- 17 A He could, you know, like I said, he could be ill,
- 18 fatigued, under the influence, a number of things.
- 19 Q So, you're really just pulling him over for what, check
- 20 on him or---
- 21 A For---
- 22 Q ---because he's violating---
- 23 A Check on him for his safety or other motorist on the
- 24 roadway.
- 25 Q Okay. And basically it's your testimony that he did

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by Mr. Thompson

1 violate the law or didn't?

2 A Yes, sir, he did.

3 Q He did.

4 Cause you -- so, his going over the fog line indicated
5 that he was not maintaining his lane---

6 A He was outside his lane of travel.

7 Q Per the statute?

8 A Yes, sir.

9 Q Okay. All right. So, you pulled him over and -- okay.
10 You indicate he's driving slow?

11 A Yes, sir.

12 Q All right. All right. Is there a minimum speed posted
13 on that road?

14 A The interstate's 45.

15 Q The interstate's 45. Is it posted I asked.

16 A Minimum -- I don't recall -- I don't remember seeing
17 it, but I'm sure it's posted somewhere.

18 Q Okay. But you remember seeing -- was he going less
19 than 45?

20 A No, sir.

21 Q Okay. So, why did you pull that car over he was
22 driving?

23 A Like I said, failing to maintain his lane.

24 Q Failing to maintain his lane. Not because he's going
25 too slow?

1 He was going over the minimum speed, right?

2 A I was concerned about him being either under the
3 influence, sleepy, fatigued, or having some type of medical
4 issue.

5 Q Okay. And that was your only concern, right?

6 A Public safety.

7 Q Okay. I want to show you -- I'll show you my favorite
8 part of this video, and you take, you take his driver's
9 license and that rental agreement right here, right?

10 A I don't recall.

11 Q Okay. You hear what you said there?

12 A I couldn't make it out.

13 Q All right. Let's try to go back. To you -- all right.
14 Told you he'd been to Atlanta. You asked for the license
15 and registrations.

16 All right. Right there you indicate he's driving slow,
17 right?

18 A That sounds like what I said. I couldn't make it out.

19 Q Okay. But it appeared you said you're driving slow.

20 All right. So, you got -- you have your hand -- you
21 have your license and registration in your hand there,
22 right?

23 A Yes, sir.

24 Q Okay. And you are gonna pull up behind him. Now, I'm
25 gonna run this back and we're gonna look at it, but,

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1 according to my count, you would be number one and there are
2 eight more sirens going on the side of this road within your
3 camera range.

4 would you agree or disagree with that?

5 A I don't recall.

6 Q Nine people pulled over in one camera shot. Let's look
7 at that.

8 All right. Here he goes. Here's flashing lights.

9 Here's flashing lights. Get around the curve, more come up.

10 Look right through here. Here, here, here, here.

11 A I don't believe all of those lights are from the
12 roadway, counselor. Look at all those, all those lights.

13 That's the 62-mile marker, right?

14 So, we're not in the City of Spartanburg. These
15 aren't, these aren't the city lights.

16 would -- I mean would that -- you've been out there on
17 Rolling Thunder. Would it be common to see five or six
18 other cars pulled over in your camera view?

19 A That would be similar with those other disabled
20 motorists also flashing hazard lights. I don't think those
21 are blue lights that you see.

22 Q Okay. Well, how many stops did, did you make during
23 Rolling Thunder?

24 A I don't recall.

25 Q Don't recall.

- 1 Okay. And you -- you're up here and what, what's your
2 captain tell you you're doing up here on Rolling Thunder?
3 A I'm sorry?
4 Q What's your captain tell you you're doing up here on
5 Rolling Thunder?
6 A What does my captain tell me I'm doing?
7 Q Yeah, why do you come up here?
8 A To reduce fatalities.
9 Q Okay. So, when you go to that kick off breakfast,
10 that's what they say?
11 A That's what they lead off with, yes, sir.
12 Q Okay. And then when you go to that dinner at the end
13 where they show off everything they got during the week, are
14 they putting up lives they saved?
15 A The sheriff comes in and tells us how happy the public
16 is that we came and made the roadways a much better place
17 for them to drive.
18 Q And what's he put on display?
19 A Everything that we seized for that week.
20 Q Okay. And that would be?
21 What are we seizing?
22 A Guns, drugs, contraband.
23 Q Cash?
24 A Everything. Cash.
25 Q Okay. And the truth of the matter is you have to have

D.G. Wilson - Direct examination
by Mr. Thompson

1 a reasonable articulable suspicion to pull these people over
2 for one, right?

3 A It's a legal traffic stop.

4 Q Okay. And really when you're involved in something
5 like this, you, you can't go at this with an objective point
6 of view. You've got a subjective point of view when you
7 pull these people over.

8 Isn't that the truth?

9 A Me?

10 Q Yes.

11 A No, sir.

12 Q Huh?

13 A No, sir.

14 Q So, all these cars pulled over, are you're saying could
15 be hazardous -- there has hazard lights flashing. I think
16 it clearly shows several, several cars pulled over and you'd
17 agree with me that, in Rolling Thunder, we're subject to
18 have several different jurisdictions. So, there may not be
19 the same consistent blue light or whatever light they pull
20 you over with, right?

21 You would, you would agree with me this is a Tuesday
22 night, right?

23 A Yes, sir.

24 Q Okay. What did you do right there, 3-6-0-7-1-9, when
25 you -- that was you on the radio?

- 1 A That's either his driver's license or his tag. I think
2 it was his D.L.
- 3 Q His tag number, right?
- 4 A I think it was his driver's license.
- 5 Q Okay. Driver's license number 360719.
6 So, you're running a license check on him right now,
7 right?
- 8 A Yes, sir.
- 9 Q You've got his license in your hand and car, car rental
10 agreement in your hand, right?
- 11 A Yes, sir.
- 12 Q Okay. Now, what's your concern here?
13 What, what -- you pulled him over.
14 What's your concern?
- 15 A I wanted to make sure he had a valid driver's license.
- 16 Q Okay. And did his driver's license check out okay?
- 17 A Yes, sir, I don't recall citing him for any driver's
18 license violation.
- 19 Q Okay. You agree with my assessment that, that 2100 --
20 actually it's like 2059:50 is when you initiated the blue
21 light.
- 22 Okay. Did that have anything to do with this stop?
- 23 A Was that me?
- 24 Q Yes, when that, when that came over your radio.
- 25 A I don't think that was me talking on the radio.

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by Mr. Thompson

- 1 Q I mean when that come over. Eventually you're gonna
2 find out his identity and everything, whether his license is
3 clear --
- 4 A Yes, sir.
- 5 Q -- right?
- 6 A Yes, sir.
- 7 Q Okay. Okay. At this, at this point, what had you
8 learned about the driver?
- 9 A I don't believe they'd given me any information about
10 that.
- 11 Q None?
- 12 A No, sir, not that I recall I don't think.
- 13 Q Okay. So, you don't know if his license was suspended
14 or anything like that, right?
- 15 A Not at this point, no.
- 16 Q Okay. And this is four minutes after 9:00, right?
- 17 All right. Now, you've got -- what do you have in your
18 hand right there?
- 19 A Probably got the rental agreement in my hand and
20 flashlight.
- 21 Q Okay. Now, is his inside light on?
- 22 A I don't recall.
- 23 Q All right. You're reaching in the car right there,
24 right?
- 25 Your head's almost in the car, correct?

- 1 All right. And you just tell him he hadn't done
2 anything, right?
- 3 A He said that he didn't do anything.
- 4 Q Did you affirm that?
- 5 Is that what you said?
- 6 A You didn't do anything. I'll talk with you. I think
7 that's what he said.
- 8 Q Okay. All right. Want to talk with you.
- 9 All right. At this point did you return his license to
10 him right there?
- 11 A No, sir.
- 12 Q Where's his driver's license at this point?
- 13 A Possibly in my hand with the rental agreement.
- 14 Q All right. Right there when you reached in, you sure
15 you didn't give his license back to him?
- 16 A I don't think, I don't think I reached in. I think my
17 hand was just at the window trying to hear what he was
18 saying.
- 19 Q Your hand's not in the car there?
- 20 A Don't think so. It's hard to see.
- 21 Q Okay. You couldn't -- may or may not of given his
22 license back, right?
- 23 A I'm sure that I did not.
- 24 Q Okay. All right. He's walking here.
25 what's he got in his hand?

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by Mr. Thompson

1 A I don't know. A piece of tissue.

2 Q All right. Now, you're a highway patrolman. When
3 somebody's got something in their hand I believe you're
4 gonna know it, right, what it is?

5 Is that not his wallet in his hand?

6 A Looks like it may be.

7 Q Okay. So, you pulled him over and you said you're
8 going too slow. Now you're telling him you're gonna write
9 him a warning, right, for improper lane usage?

10 All right. So, at 2104 and 37 seconds, you informed
11 him that he would receive a warning, correct?

12 A Yes, sir.

13 Q Okay. Now -- so, you wrote down at or round 2157 is
14 when you were patrolling. So, you're a little bit off of
15 your narrative here, right?

16 A At or around?

17 Q Yeah.

18 A Yes, sir.

19 Q Okay.

20 A That's close.

21 Q Probably 2107 probably come off of that ticket or that
22 warning you wrote, correct?

23 A My watch could of been off that night or something.

24 Q Okay. So, but at 2104, per this tape, you informed
25 Mr. Falls he would be receiving a warning, correct?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A According to the tape, yes, sir.

2 Q All right. And you don't dispute that's his wallet in
3 his hand?

4 A That looks like it's a wallet.

5 Q Okay. And he says okay. He tried to argue a little
6 bit, and it's common -- do you commonly get a little bit of
7 resistance when you try to give a citation?

8 A Sometimes.

9 Q Okay. It's not uncommon.

10 A (Witness nods negatively.)

11 Q All right. Okay. Now, he indicates the trucks are
12 bothering him, and earlier we saw a big truck go by and here
13 goes two more trucks go by, right?

14 A Yes, sir.

15 Q So, that statement's pretty accurate, wouldn't you
16 agree?

17 SOLICITOR McCARTY: I object, Your Honor. That calls
18 for speculation as to whether or not trucks were bothering
19 him. I mean I agree that's there's trucks on the
20 interstate.

21 MR. THOMPSON: No, I---

22 SOLICITOR McCARTY: It's Interstate 85. It's a heavily
23 traveled interstate. There's gonna be trucks.

24 THE COURT: I'm gonna sustain the objection. It calls
25 for speculation for him to be able to state what effected

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by Mr. Thompson

1 someone he wasn't in the car with and---

2 MR. THOMPSON: Oh, let me rephrase that.

3 You would agree with me that those, those trucks were
4 heading down the road?

5 There's a good bit of them, correct?

6 A They are.

7 Q Okay. Okay. All right. Did you work today.

8 What's that question got to do with writing a ticket
9 for improper lane, lane changing?

10 A At that point we were just having casual conversation.
11 He had a work uniform on.

12 Q Okay. How long does it usually take you to write a
13 warning?

14 A It all depends on how busy dispatch is sometimes.

15 Q Okay. But you evidently are writing a warning here,
16 right?

17 A That's correct.

18 Q Told him you're giving him one. Where then -- you --
19 then you said I thought you said you went to Atlanta, right?

20 You want me to rewind it?

21 A That sounds like what I said.

22 Q Okay. And then you basically -- you say I thought you
23 said you worked today or you -- I thought you went to
24 Atlanta. Let's see how it comes out here.

25 All right. All these questions, are these questions

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by Mr. Thompson

1 related to the improper lane usage citation or warning that
2 you wrote him?

3 A Just causal conversation.

4 Q Just casual conversation?

5 A Yes, sir.

6 Q And is that common that you do that when you pull
7 someone over?

8 A Again, like I stated in the beginning, he could of been
9 tired, just seeing how long he was on the road traveling
10 that day, how many hours he had been driving.

11 Q Okay. All right. Now, earlier in your narrative --
12 you, you had this, right?

13 A Yes, sir.

14 Q You stated that the driver had a nervous look on his
15 face and his hands were shaking rapidly as he handed Trooper
16 Wilson a North Carolina driver's license and Avis rental
17 agreement.

18 Do you recall that?

19 A Yes, sir.

20 Q Okay. Now, is that before he moved the car or after he
21 moved the car?

22 Before he moved the car, right?

23 A I think that was after he moved the car. Before.

24 Q Okay. So -- all right. So, does he look nervous
25 there?

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by Mr. Thompson

- 1 All right. His hands aren't shaking, are they?
- 2 A It's kind of, kind of hard to see here.
- 3 Q And he's relaxed sitting on your car, right?
- 4 A He's a little unsteady on his feet.
- 5 Q He's unsteady on his feet?
- 6 A He's got to lean, use my car to lean on.
- 7 Q Okay. Would that not -- is he not just relaxing on
- 8 your car?
- 9 A I guess he is tired.
- 10 Q Okay. So, when you went to his car, you didn't
- 11 indicate in here that you smelled alcohol, did you?
- 12 A No, sir.
- 13 Q You indicated you smelled marijuana?
- 14 A No, sir.
- 15 Q You didn't indicate you saw anything that would lead
- 16 you to believe he had illegal contraband in the car, did
- 17 you?
- 18 A There was at one point on here where I asked -- right
- 19 before I asked him to get out of the car he was reaching
- 20 underneath the seat. That drew my attention to him.
- 21 Q He was reaching underneath the seat to get something?
- 22 A Appeared to be putting something under the seat.
- 23 Q Okay. All right. Now, I'm gonna go back to right
- 24 here. I guess right here he appears to be putting something
- 25 in his wallet, does he not?

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by Mr. Thompson

1 04:37, writing him a warning. He basically apologized.

2 Didn't he say I'm sorry?

3 A The trucks.

4 Q watch his hands now and this portion I want you to see
5 what's going on with everybody's hands.

6 He opens his wallet there, right, and he puts something
7 in and closes it, right?

8 A He could be fidgeting for something. I didn't see him
9 put anything in it.

10 Q All right. well, you didn't really say in your
11 narrative one way or the other, right?

12 A Right.

13 Q Okay. Now, if he testifies that you gave him his
14 wallet, his license, and that's what he's doing, you
15 wouldn't have any way to rebut that, would you?

16 A well, that would be almost impossible because if I'm
17 still writing a warning I would need his license to complete
18 the warning.

19 Q well, let's talk about you writing this warning. Look,
20 your hands aren't touching the pad at all, right?

21 Aren't -- here you go.

22 All right. Your hand's not touching the pad.

23 All right. So at this point you have written down
24 improper lane usage?

25 A I want to make sure I understand what you're saying.

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 Q Okay. Still no pen, no pen or paper used, and a
2 minutes gone by since you said you're getting a warning.
3 Still no writing, right?
4 And now the pen's on the paper finally, right?
5 It's not writing, is it?
6 Still not writing, right?
7 Another minute goes by, still not writing, is that
8 correct?
9 Is that correct?
- 10 A Sir, I'm doing something there. I'm conducting
11 business.
- 12 Q I think you're fishing, aren't you?
- 13 A Not at all, sir.
- 14 Q All right. Now you're writing a little bit, right?
15 You're turning it over, what does, what does it mean?
16 You flip that page over.
- 17 A Maybe it's two sheets there. Maybe the wind blew one
18 up. I'm not sure.
- 19 Q All right. It looks like your hand turns it over to
20 me.
- 21 A I'm not sure.
- 22 Q See there.
23 You wouldn't argue your hand is flipping it up, right?
- 24 A I think that's the top page. It's blue. It's the
25 previous warning, yeah. That's what it looks like.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay.

2 A It's just flopping.

3 Q So, you're writing, writing on the previous warning or
4 are you writing Mr. Falls' name?

5 A I was moving out. So, I could see I believe.

6 Q All right. Officer Wilson---

7 A I, I see exactly what it is. On the back seat we have
8 to -- there's some boxes you got to check that you can not
9 check on the front which tells whether or not it's a moving
10 violation or some other type violation.

11 Q Okay. Now, the person's being pulled over privy to
12 that page?

13 A That's all on the same warning.

14 Q It's all on the same warning?

15 A Yes, it's just not on that first sheet.

16 Q So, you gave him two sheets?

17 A No, he gets one copy.

18 Q He gets one copy.

19 All right. So, this would be the sheet that you write
20 originally, right?

21 SOLICITOR MCCARTY: Is that gonna be marked for
22 anything, Your Honor?

23 THE COURT: I don't know what that is.

24 MR. THOMPSON: I'll let him identify it.

25 THE COURT: Okay. Let him identify it and we'll see

D.G. Wilson - Direct examination
by Mr. Thompson

1 where we are.

2 A The warning that I issued Mr. Falls.

3 Q Okay. And that is -- you're G. Wilson and your
4 signature, correct?

5 A Yes, sir, and then that's the proper date of -- well
6 now 2/20/07.

7 A Yes.

8 Q I-85.

9 Okay. Have that marked as Defendant's 1, Your Honor.

10 THE COURT: Any objection to it being entered,
11 introduced?

12 SOLICITOR MCCARTY: No, Your Honor.

13 THE COURT: All right. It will be marked and entered
14 into evidence.

15 (WHEREUPON, the ticket was marked as Defendant's
16 Exhibit No. 1 and received into evidence for purposes of
17 this hearing only at this time.)

18 Q Okay. So, you're writing this warning, and at 2104:37
19 or so you indicated to him he would be getting a warning,
20 right?

21 Is that around that time?

22 A Yes, sir.

23 Q And now you're explaining it to him, and you're telling
24 the Court that there's this page that he received, right,
25 and then there's another page on the back of it, correct?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A The copy that goes to the district office, yes, sir.

2 Q Okay. And is the solicitor's Office privy to that
3 copy?

4 A Yes, I'm sure it's filed away somewhere.

5 Q Okay. And, so, you're flipping that over, and you're
6 just having to check off it's a moving violation, correct?

7 A There's a number of other boxes on there, yes, sir.

8 Q There's the flipping.

9 So, the wind didn't blow it. It was just you flipped
10 it over, right?

11 A To check the appropriate boxes on the back, yes, sir.

12 Q Wasn't the old, the old ticket or the prior warning you
13 wrote, right?

14 A Right.

15 Q And do you have that back ticket with you today?

16 A No, sir.

17 Q That back piece, you don't have that?

18 A No, sir.

19 Q Okay. And you just turn that in?

20 You don't maintain a copy for yourself, right?

21 A No, sir.

22 Q All right. And your hands fall down again.

23 No writing, right, and you flip back over?

24 So, what, maybe ten seconds that took you to check off
25 the box on the back page?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A There's, there's more than one box back there.

2 Q Okay. Well, I mean but it didn't take you but about
3 ten seconds to do the back page, right?

4 A Yes.

5 Q All right. Now, you're asking him about renting a car,
6 right?

7 Correct?

8 A I didn't get to hear it, no.

9 Q I'm sorry.

10 when did you rent this car, right?

11 A Yes, sir.

12 Q And is that got anything to do with improper lane
13 change or usage or the safety of the road?

14 A Just want to make sure it's probably not an overdue
15 rental --

16 Q Okay.

17 A -- or that he is the person that rented the vehicle.

18 Q Okay. And then on that rental agreement, this -- and
19 if it were, if it were overdue, you could seize the car,
20 right?

21 A I could call the rental company and see what they would
22 like to have done.

23 Q Okay. And his wasn't overdue, right?

24 A Best of my recollection.

25 Q Okay. I think he informed you earlier, later that he

D.G. Wilson - Direct examination
by Mr. Thompson

1 had to turn it in the next day?

2 A The following day, yes, sir.

3 Q And you recall when he told you he got the rental car?

4 A Not exactly.

5 Q I think he says Valentine's Day. Right there.

6 Okay. So, he says picks it up on Valentine's and
7 returns it tomorrow.

8 That would be the 21st, right, and would you agree
9 that's him, Jeffrey Falls?

10 A Yes, sir.

11 Q Kendrick Avenue in Charlotte, right?

12 A Yes, sir.

13 Q And this basically says that he rented it the 14th of
14 February of '07, is that correct?

15 A Yes, sir.

16 Q And it was due the next day, right?

17 A Yes.

18 Q Okay. So, he was accurate on the, on when he rented it
19 and when it was suppose to be back, correct?

20 A Yes, sir.

21 MR. THOMPSON: Enter that as Defendant's 2.

22 SOLICITOR MCCARTY: I would object, Your Honor, because
23 we have filed previously reciprocal rule for discovery. I
24 don't have this. It wasn't in the State's evidence or
25 possession prior to today. In fact, I saw it for the first

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by Mr. Thompson

1 time just a moment ago. Your Honor, the State was served
2 with a reciprocal rule, rule of discovery on Mr. Thompson
3 back in 2007, April 18th, 2207, requesting that they
4 produce any evidence they claim to admit at trial. The
5 ticket I do have a copy of due to Trooper's Wilson file.
6 Prior rental agreement, I don't, I don't dispute that's what
7 it says, but I would disagree with that being admitted into
8 evidence.

9 MR. THOMPSON: And, Your Honor, I just move to enter it
10 basically to reinforce the trooper's testimony.

11 THE COURT: He's testified to it already. I'm gonna
12 leave it out.

13 MR. THOMPSON: Okay.

14 THE COURT: while we're in this break, I noticed
15 Officer Hollifield has arrived and I think I heard he might
16 be on his day off.

17 Do you want to go ahead and let's stop for a second and
18 let's take care of him?

19 MR. THOMPSON: I can do that, Your Honor.

20 THE COURT: All right. Step down briefly, officer.
21 Officer Hollifield, come on up and be sworn please.

22 WITNESS: Yes, sir, I apologize for my attire.

23 THE COURT: That's quite all right. I understand we
24 kind of inconvenienced you.

25 RANDY HOLLIFIELD, being first duly

Randy Hollifield - Direct examination
by Mr. Thompson

1 sworn, testified as follows:

2 THE COURT: State your name for the record.

3 WITNESS: Randy Hollifield.

4 THE COURT: Mr. Thompson.

5 DIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q Captain, you received a call from my office or a fax
8 earlier this week, correct?

9 A Yes, sir, I did.

10 Q And we were seeking out what?

11 A As far as the agreement between Trooper Wilson and the
12 Sheriff's Office as far as Rolling Thunder.

13 Q Okay. And to your knowledge, does any such agreement
14 exist?

15 A Not between the South Carolina Highway Patrol and the
16 Sheriff's Office itself, no, sir, it does not.

17 Q And you've indicated there was a jurisdictional
18 issue---

19 A Yes, sir, there is.

20 Q ---right---

21 A That's correct, sir.

22 Q ---that the county didn't enter into that agreement
23 because of the statewide jurisdiction---

24 A That is correct.

25 Q ---the Highway Patrol has, is that correct?

Randy Hollifield - Direct examination
by Mr. Thompson

1 A Yes, sir, that's correct.

2 Q But do your records indicate whether or not they were
3 involved with the Rolling Thunder?

4 A Yes, sir, they were.

5 Q Okay.

6 A Yes, sir.

7 Q Now, is that invitation sent out to all Highway Patrol
8 agencies or just a select few?

9 A That is sent out to a select few. That is sent out to
10 the South Carolina Highway Patrol A.C.E. Team.

11 Q Okay. And, and your -- it's your testimony there's no
12 written agreement between the office, county officer, County
13 Sheriff's Office---

14 A No, sir, there is not, no, sir.

15 Q ---and the Highway Patrol?

16 Okay. That's all I want, Your Honor.

17 THE COURT: All right. You wish to ask any questions?

18 SOLICITOR MCCARTY: No, Your Honor. We got Captain
19 Hollifield up. Thank you.

20 THE COURT: All right. Thank you.

21 You may step down.

22 WITNESS: Thank you, sir.

23 THE COURT: Any objection to his leaving at this time?

24 MR. THOMPSON: I need him to stay around all day. No,
25 I'm joking, Your Honor.

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by Mr. Thompson

1 THE COURT: You're free to go. Thank you for coming.

2 WITNESS: Thank you, sir. Yes, sir.

3 THE COURT: All right. I'm sorry I interrupted you.
4 Officer, resume the stand.

5 MR. THOMPSON: That's fine.

6 WITNESS: Yes, sir.

7 THE COURT: Okay. You may proceed, Mr. Thompson.

8 MR. THOMPSON: Thank you, Your Honor.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Okay. Officer, my, my notes indicate at 2105 you told
12 Mr. Falls he would be getting a warning. It's 2107 now,
13 correct, you're still writing on that warning, right?

14 A Yes, sir.

15 Q Okay. Now I'm looking at the ticket.

16 Now, would you agree with me that when you told him
17 that at 2105 you were over five minutes into the stop?

18 SOLICITOR MCCARTY: Your Honor, I see Mrs. Reeves
19 outside the door. I think she has something from the jury
20 on that other case.

21 THE COURT: All right. I don't know if they need me or
22 not.

23 Go ahead.

24 They'll come in if they need me. I think they're
25 getting lunch.

1 SOLICITOR MCCARTY: She had a piece of paper in her
2 hand. That was my only concern.

3 Q So, remember I said you pulled up at the -- the, the
4 traffic stop occurred about 2059:50?

5 A Uh-huh. (Affirmative).

6 Q So, we're seven minutes into the stop.

7 Okay. At 2105, five minutes into the stop you've said
8 we're gonna give you a warning, right?

9 Is that fairly closely there?

10 A Yes, sir.

11 Q Okay. And at this time, 2107, you are still holding
12 that warning in your hand writing it to him, right?

13 A Yes, sir.

14 Q Okay. All right. 2107:25. All right. Let's watch
15 the last few seconds here, and I'm not sure what you got to
16 say. I can't understand you. All right. You maybe can
17 help us out.

18 Okay. Now, the ticket, you have it before you, or that
19 warning, you've signed that -- you issued that at 2107, is
20 that correct?

21 A That's what I got on here, yes, sir.

22 Q Okay. And would that be pursuant to this or your time
23 you were keeping on your watch?

24 A Possibly be my watch time at the time if I got a watch
25 on. I'm not sure. watch or cell phone.

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by Mr. Thompson

1 Q Okay. So, I think we determined earlier that you said
2 it was around 2107 prior to pulling him over when actually
3 it was 2059. So, we're about eight minutes off.

4 Would that be accurate?

5 A At or around.

6 Q Okay. So, really you couldn't have had the ticket
7 written eight minutes earlier because you were in the, in
8 the very premature stages of the stop, right?

9 A Yes, sir.

10 Q Okay. But that ticket indicates he, that warning was
11 written at 2107 at sometime, right?

12 A Yes, sir.

13 Q Okay. Here -- okay. Still no writing.

14 All right. These last few seconds you didn't write
15 anything. So, evidently the, the citation's done.

16 All right. So, almost eight minutes into the stop, is
17 that right, about right?

18 A Yes, sir.

19 Q Okay. And would you agree with my assessment of that
20 citation that you're looking at, there is a total of nine
21 words on that citation, right?

22 A Actual words, yeah.

23 Q Okay. So, nine words and consisting of 58 letters, ten
24 numerals, consisting of 50 digits, five dashes, and one
25 check mark.

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by Mr. Thompson

1 A You want me to count them all?

2 Q Well, I mean does that sound fairly accurate just from
3 looking at the ticket. You can count if you'd like.

4 A Around about.

5 Q Okay. You didn't put a dot or a period after D.G. or
6 dot the I in Wilson.

7 All right. So---

8 SOLICITOR MCCARTY: Your Honor, I'm gonna object to
9 this line of questioning.

10 MR. THOMPSON: Here---

11 SOLICITOR MCCARTY: I don't know where we're going
12 exactly with whether or not he dotted the I in his last name
13 on the issuance of the citation.

14 THE COURT: I think Mr. Thompson is trying to
15 demonstrate that maybe the traffic stop took too long, but
16 this presentation is also taking too long. Let's get to the
17 point.

18 MR. THOMPSON: Okay.

19 Q Officer---

20 SOLICITOR MCCARTY: Thank you.

21 Q ---you are gonna try to tell this Court it takes you
22 over seven minutes to write this little bit of information
23 on that ticket?

24 A Yes, sir, and I still have not heard back from dispatch
25 yet.

1 Q Okay. Well, you've heard enough. You've got the
2 ticket written at 2107.

3 That's what you have on the ticket, right?

4 A That's what I put on it for the time, yes, sir.

5 Q All right. So, right now, at 2107:27, what do you --
6 what's in your mind right now?

7 Where are you going with this stop?

8 A I wouldn't say that the warning is complete at this
9 time. I think, at this point, I got to go back to my car to
10 look at my GPS unit to get the degree coordinates off of it.

11 Q Meaning what?

12 A Where you see the lat and long?

13 Q Longitude and latitude.

14 A I got to put lat and long on there.

15 Q Okay. But you don't dispute it's 2107 when it's
16 written, right?

17 A That's on the warning.

18 Q Okay. And the writing of a warning doesn't take near
19 as long as the ticket, right?

20 You would---

21 A All depends.

22 Q You wouldn't disagree with me if I've got case law that
23 says that, would you?

24 A Probably not. I don't know.

25 Q Okay. All right. Now, right here you're going to the

1 car for the latitude and longitude, right?

2 A I don't, I don't recall. I don't, I don't know. It's
3 possible.

4 Q All right. Hearing from dispatch yet?

5 A I don't recall hearing them over the radio.

6 Q Okay. Did you hear that?

7 A I said something.

8 Q Do you recall what you said?

9 A Can you play it back for me one more time?

10 Any unit near 62 north.

11 Q Okay. Any unit near 62 north means any unit near 62
12 mile marker north, right?

13 A Yes, sir.

14 Q Okay. You're calling another car in?

15 A I'm seeing who, who is close.

16 Q Okay.

17 A Closer.

18 Q Okay. And for what reason?

19 A As previously stated, I called another unit prior to
20 this after my second approach to the vehicle and no one is
21 still yet arrived.

22 Q Okay. So, you're -- when did -- you called it when?

23 A Right before he stepped out of the vehicle.

24 Q Did you put that in your narrative?

25 A Give me just a moment please.

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by Mr. Thompson

1 (Pause.)

2 A No, sir.

3 Q Okay. In fact, you, you put in here, in your, in your
4 narrative, Mr. Falls appeared to have placed an object under
5 the seat before getting out.

6 Now, is that when you're saying you called another
7 unit?

8 A Yes, sir.

9 Q Okay. And that was around the time right when you got
10 him out of the car, right?

11 A Yes, sir.

12 Q That was around 2104:37.

13 Okay. And right thereafter you informed him he'd be
14 getting a warning ticket, correct?

15 A Right.

16 Q So, really you didn't call another officer?

17 A I radioed for someone, yes, sir.

18 MR. THOMPSON: Your Honor, you mind if I run it back
19 and if we can clarify that?

20 THE COURT: You're -- you may -- let me ask you, how
21 much longer do we think we're gonna go?

22 I've got a question from the other jury I've got to
23 deal with.

24 MR. THOMPSON: Okay.

25 THE COURT: That's the reason I'm asking. I'm not

1 trying to shorten your presentation.

2 MR. THOMPSON: Maybe another---

3 THE COURT: What I'm trying to do is just manage the
4 courtroom.

5 MR. THOMPSON: Thirty minutes---

6 THE COURT: Okay.

7 MR. THOMPSON: ---to an hour maybe.

8 THE COURT: Okay. Well, what we're probably going to
9 end up doing at this point in time is I'm gonna probably
10 adjourn this. I don't know if you fellows have had lunch
11 yet.

12 Have you?

13 So, we're gonna let everybody go to lunch and then
14 we'll come back and start over on this.

15 MR. THOMPSON: Okay.

16 THE COURT: So, we're gonna call a recess. Be back in
17 about an hour. That will be about ten minutes till 3:00,
18 and we should be in a position then to resume at that point
19 in time.

20 Court's in recess in this case right now.

21 MR. THOMPSON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Officer, let me caution you that you're in the middle
24 of your testimony and you should not discuss your testimony
25 with anyone during the break.

1 Do you understand that?

2 WITNESS: Yes, sir.

3 SOLICITOR MCCARTY: I do need to speak with Trooper
4 Wilson regarding any possible accommodations they may need
5 tonight.

6 THE COURT: Oh, I understand that. I said not his
7 testimony. You can talk about his sleeping accommodations.
8 That's fine with me.

9 (WHEREUPON, Court was in recess for the lunch hour.)

10 THE COURT: While we're waiting on that, can I get the
11 attorneys in the next case to come up, Mr. McCarty, Mr.
12 Thompson?

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

15 THE COURT: All right. Mr. McCarty is in the
16 courtroom. If you gentlemen will step up to counsel table.
17 I'm gonna get that jury in and send them home for the
18 evening. We'll need to get the defendant in the courtroom.

19 (WHEREUPON, the defendant comes into the courtroom at
20 this time.)

21 THE COURT: Bring them in.

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

24 THE COURT: Ladies and gentlemen, as I indicated to you
25 earlier, we are, we are in the midst of pretrial matters

1 still in this case. Rather than make you stay any longer,
2 I'm just going to excuse you for the afternoon. I'll ask
3 that you be back in the jury room at nine o'clock in the
4 morning. We should of taken care of those matters by then,
5 and be in a position to start at that time. I apologize for
6 any inconvenience, but this is taking a little bit longer
7 than I thought it would, and rather than having you sit back
8 there this afternoon we'll release you at this time.

9 Now, the jury room you'll be reporting to is the one
10 right outside of the door. The bailiffs will show you where
11 to come to in the morning, nine o'clock. My instructions
12 concerning your activities outside of the courtroom
13 continue. You're free to go at this time. Thank you very
14 much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Trooper, if you'll resume the
18 stand. Let's get the TV up and rolling because I'm sure
19 we're still into that.

20 CONTINUED DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Trooper, I want to -- please the Court, are you ready?

23 THE COURT: Beg your pardon?

24 MR. THOMPSON: Are you ready?

25 THE COURT: Yes, sir, we're on the record anytime you

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by Mr. Thompson

1 want to start.

2 Q Trooper, when we left I think we were discussing the
3 fact that you, it was 2107, and you were returning to the
4 patrol car for the longitudes and latitudes for coordinates
5 for the event, is that correct?

6 Does that sound about right?

7 A Yes, sir.

8 Q Okay. And -- okay. At this point you said that you
9 went over the part that he had rented the vehicle and he
10 stated he rented it on Valentine's Day, that his car was in
11 the repair shop, is that correct?

12 A Yes, sir.

13 Q And then he was returning the rental the following day,
14 right?

15 A Yes, sir.

16 Q All right. You next stated that Mr. Falls began
17 nervously licking his lips as they began to turn white.

18 All right. Now, is this when you were in the car or
19 outside the car?

20 A While I was standing there having a conversation.

21 Q And this -- your testimony this gentleman's lips turned
22 white?

23 A Yes, sir, let me call it cotton mouth.

24 Q Okay. And his lips turned white.

25 Now, he starts hearing and the light's flashing on him

1 and everything.

2 Is then when you're talking about his lips---

3 A During that entire time that I was standing outside the
4 car talking to him.

5 Q The whole time. You returned to the car.

6 Now, right there you say you called any unit to that
7 mile marker, right?

8 A I was calling for the next closest unit. I had called
9 for a unit way prior to this.

10 Q Okay. And you said that was when you went back to the
11 car the first time?

12 A Right before he got out, yes, sir.

13 Q Okay. So, this is another call for another unit.

14 So, at the time you made that first call, why were you
15 calling that other car?

16 A Cause I, as I stated earlier, he -- it appeared that he
17 placed something under his seat.

18 Q So, at that time then you determined that his car was
19 gonna be searched?

20 A No, sir.

21 Q Okay. So, you just---

22 A It was at that time I was concerned he may have some
23 weapons or something in his vehicle.

24 Q Okay. And then you radioed back for, again, is what,
25 is your statement now.

1 In that for the same reason?

2 A Well, I guess I was calling to see where my backup unit
3 was.

4 Q Okay. All right. Putting his wallet back in his
5 pocket there, right?

6 A Yes, sir.

7 Q Okay. So, it was his wallet in his hand throughout.
8 Look up the road for your backup, right?

9 All right. What -- why is he not being given a ticket
10 at this time?

11 A If you recall, when I walked back up there, I told him
12 I needed to finish filling this out. It's not complete yet.

13 Q So, you still had not finished writing the ticket
14 after---

15 A No, sir.

16 Q ---almost ten minutes into the stop?

17 A Yes, sir.

18 Q Okay.

19 A If you'd like me to explain that I could.

20 Q Okay. Well, I'll let---

21 THE COURT: Wait a second. Wait a second. He has a
22 right to explain his answer.

23 Go ahead.

24 A As you see there, obviously your client's having some
25 trouble understanding me and I'm having some trouble

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by Mr. Thompson

1 understanding him cause I'm having to stop and pause and try
2 to listen to what he's saying and try to listen to the story
3 that he's telling me too. You know, wrap my head around
4 what he's telling me, and having a hard time hearing what
5 he's saying and understanding him.

6 Q Okay. And that's why you keep writing and not writing
7 and kind of going back and forth between writing the ticket
8 and not writing the ticket?

9 A Well, he's talking to me. I don't want to disrespect
10 him and not pay him any attention. I want to let him know
11 I'm hearing what he's saying.

12 Q Okay. Okay. Right here you indicated you wanted him
13 to drive careful, you wanted him to be safe out there,
14 right?

15 A Yes, sir.

16 Q And you put the warning in his hand, did you not?

17 A Yes, sir.

18 Q Okay. And at that time you asked him for permission to
19 search your car, right?

20 A Correct.

21 Q His car?

22 A Yes, sir.

23 Q Okay. And -- okay. Now, so, you are done.

24 As far as this improper lane usage goes, this stop is
25 over, is it not?

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by Mr. Thompson

- 1 A No, sir.
- 2 Q It's not. So, you're---
- 3 A No, sir.
- 4 Q ---still investigating the improper lane.
- 5 Is that what you're telling the Court?
- 6 A Oh, the improper lane usage?
- 7 Q Yes.
- 8 A I'm issuing him the warning.
- 9 Q Okay. So, at that point this -- at the point, this
- 10 point, is it -- the stop is over as far as that issue's
- 11 concerned, right?
- 12 A Once you receive the warning, yes, sir.
- 13 Q Okay. So, you put it in his hand and he, and he
- 14 doesn't want you to search the car. So, you pulled it back,
- 15 correct?
- 16 A He had one side of it and I had one side, yes, sir.
- 17 Q Okay. And you wound up with it, right?
- 18 A With it back I think so, yes, sir.
- 19 Q Okay. And his license aren't -- they aren't with this
- 20 ticket here, is it?
- 21 You already returned his license?
- 22 A I'm not sure.
- 23 Q Okay. And I want to go over those statements about
- 24 wanting him to be safe.
- 25 All right. Make sure you drive careful.

D.G. Wilson - Direct examination
by Mr. Thompson

1 so, he's good to go, right?

2 A Almost.

3 Q Almost.

4 okay. Okay. Then you want to search his car. He
5 doesn't let you search his car.

6 Are you telling the Court that his refusing to let you
7 search the car gives you reasonable suspicion to search the
8 car?

9 A He did not right, outright refuse to search it. If you
10 want me to go over what he said I'll---

11 Q well, here -- right here. Okay. Then we'll -- all
12 right. What did he say right there?

13 A He said if I said no then can I leave.

14 Q Right.

15 And, so, he wants -- and do you remember your response?

16 A Not exactly. Probably something---

17 Q What did you say right there?

18 A I have a K-9 officer coming.

19 Q Okay. Now, didn't you testify earlier that you called
20 any unit?

21 A I don't remember his call number at the time, but Lance
22 Corporal English was my partner that -- well, me and him was
23 working in the same area that night. He's the gentleman
24 that I called and I knew he was in route. That's why I said
25 I got, I had a K-9 coming.

1 Q Okay. You understand my problem with you saying that
2 you called any unit, and now you're telling the Court you
3 specifically called Mr. English with a dog?

4 A You understand what my problem is with that?

5 A There were some delay in him responding I guess and I
6 said I called to see if they had another unit closer.

7 Q I'm pretty sure you said I'm asking for any unit in the
8 area at 2107 when you returned to your car.

9 A I called for a K-9.

10 Q So, now you're, you're indicating it wasn't
11 specifically for a K-9?

12 A I called Lance Corporal English.

13 Q At 2107?

14 A Lance Corporal English.

15 Q Okay. And his leaving is contingent upon that K-9
16 searching, going around the car, correct?

17 A No, sir.

18 Q It's not?

19 A At that point I had no, no idea he was gonna refuse to
20 search or not consent to search.

21 Q Okay. well, you know it now when you're telling him
22 the car's on the way with a K-9, right?

23 A It should be momentarily.

24 Q Okay. And he's not allowed to leave until that dog
25 goes around the car, correct?

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1 A I'm, I'm not exactly sure what you're asking.

2 Q I'm asking you was he free to walk in there and get in
3 that car and take off and leave right now after he said if I
4 say no can I leave?

5 A No, sir. No, sir.

6 Q He was not?

7 A No, sir.

8 Q Okay. So, you admit -- now -- and here's where I need
9 to go with this.

10 Are you -- do you, do you consider this a second
11 separate detainment of Mr. Falls or is this one continuous?

12 SOLICITOR MCCARTY: Your Honor, I'm gonna object.
13 That's a -- detainment, that's a legal conclusion that the
14 judge, in this case being the fact finder in the suppression
15 hearing, would have to determine. He's asking the trooper
16 to make a determination whether he finds it was legally a
17 second detention at the time. The trooper's testifying this
18 is what happened during the course of the stop as he
19 participated in it and what he's testifying to. Mr.
20 Thompson's asking him to draw a legal conclusion as to
21 whether or not a second detainment---

22 THE COURT: Oh, I understand the objection.

23 Mr. Thompson.

24 MR. THOMPSON: My point is, Your Honor, he's
25 testified -- I said is the stop over. He said almost. So,

1 he can testify to whether he's detaining him anew based upon
2 his---

3 THE COURT: I'll allow the question. Go ahead.

4 Q Okay. would you consider this right here the end of
5 the first stop for the ticket and the initiation of the
6 second stop based upon his refusal to allow him to search?

7 A It was all one stop in my mind.

8 Q All one stop in your mind?

9 A Yes, sir.

10 Q Okay. And let's continue.

11 All right. what did you say there?

12 A I said I had a K-9 coming, I'm gonna run the dog around
13 the car, and if the dog alerts I won't need his permission I
14 think. I'm not sure, exactly sure if that's what I said
15 then.

16 Q Okay. All right. You told him that he's done nothing.
17 That means he's done nothing wrong, right?

18 A I told him -- he said he didn't do anything, and I told
19 him, I say, I didn't say you did anything.

20 Q Okay. So, you -- were you basically -- were you
21 agreeing with him or what's that statement mean?

22 A well, let's see where we're at. 2111. In the past 15
23 minutes that I spoke with your client I developed some
24 suspicions, you know, totality of what he was said, what
25 I've seen, what I heard, that led, led me to believe I was

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1 gonna search your client's vehicle.

2 Q Okay. But didn't you tell me earlier that you called
3 backup within the first three or four minutes of the stop?

4 A I thought that may be some type of weapon or something
5 in the vehicle.

6 Q Okay. And do you -- so, do you -- is it your -- do you
7 normally search a car when you see someone make a, a
8 movement in the seat?

9 A Yes, sir.

10 Q Always?

11 A I want to know what they're hiding, yes, sir.

12 Q Okay.

13 A It's not normal that I stop people and I see them
14 reaching under the seat.

15 Q Okay.

16 A That's not normal.

17 Q Well, how many times -- didn't he ask you several times
18 about a hat?

19 A He wanted to get his hat?

20 Q Right.

21 A Yes, sir.

22 Q All right.

23 A He asked me once.

24 Q And where did you find the hat?

25 A It may have been in the front seat. I'm not sure.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. Or maybe in the console, I mean in the
2 floorboard of the front seat.

3 A I don't recall.

4 Q Okay.

5 A I don't think so.

6 Q So, had you made your mind up that that car was being
7 searched within the first three or four minutes of this stop
8 based upon that movement where he looked or appeared to have
9 put something under the seat?

10 A In the first three or four minutes I knew that
11 something wasn't quite right with that vehicle, yes, sir.

12 Q Okay. Well then that really runs contrary to your
13 statement about totality of the circumstances then, doesn't
14 it, because---

15 A No, sir.

16 Q ---there was several minutes when---

17 A After seeing that and then hearing everything else that
18 he said, the story, that wasn't plausible. I mean---

19 Q Okay. Well, what---

20 A One and one wasn't equaling two.

21 Q Well, what wasn't plausible about his story?

22 A If you'll give me just a moment. First of all, the
23 fact that he's gonna get off work and drive to Atlanta just
24 to meet with his brother-in-law and talk about a
25 conversation he could of had over the phone.

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by Mr. Thompson

- 1 Q Okay. That was his cousin, wasn't it?
- 2 A Let's see who he was. Yes, cousin.
- 3 Q Okay. Did you ask him if he worked that day?
- 4 A Yes.
- 5 Q Did he have on a work uniform?
- 6 A He did.
- 7 Q Does he have on a work uniform today apparently?
- 8 A I don't know what kind of shirt that is. I think
- 9 that's a work shirt. I don't know.
- 10 Q Okay. Did he tell you that he left from Charlotte?
- 11 THE COURT: Sir, you can be seated.
- 12 Go ahead.
- 13 A Did he tell me he left from Charlotte?
- 14 Q Yes, he's from Charlotte and said he worked that day,
- 15 right?
- 16 A I'm not exactly sure where he said he was coming from.
- 17 Q Okay. About midway through my page here.
- 18 A Page 1 or 2?
- 19 Q Yes, sir, Page 1. Mr. Falls stated yes when you asked
- 20 him if he worked.
- 21 A Okay.
- 22 Q Okay. And then you advised him you thought he was
- 23 coming from his house in Atlanta and he said he did. Okay.
- 24 A Coming from his cousin's house in Atlanta.
- 25 Q In Atlanta.

1 Okay. So, you're a highway patrolman, correct?

2 A Yes, sir.

3 Q How many years you been on the force?

4 A Patrol nine years.

5 Q Okay. So, if I leave from Charlotte to Atlanta, if he
6 leaves at 12:00, he'll likely be there by 4:00, 4:30, if the
7 traffic, normal traffic, is that about right?

8 A I guess.

9 Q Maybe even sooner.

10 Okay. Then did he tell you that he hung out with his
11 cousin for a few hours?

12 About halfway down Page 2. Trooper Wilson asked
13 Mr. Falls what he and his cousin did while in Atlanta.
14 Mr. Falls stated that they hung out with some girls and
15 stuff like that. He asked if they went anywhere and they
16 just shot the breeze and then he came back because he had
17 something to do and even -- is that right?

18 A Give me just a second to catch up with you here.

19 Is that the same report I got here?

20 Q I'm not sure.

21 A I don't think so.

22 Q You're on Page 1. I'm on Page 2. I'm sorry. I think
23 you're on Page 1.

24 A Oh, just hung out, just hung out with some girls and
25 stuff like that.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. So, he, he even indicated that he, the exit was
2 240 in Atlanta, right?

3 A He believes.

4 Q Okay. And, so, it's not -- I mean it's very possible
5 to leave Charlotte at 12:00, go to Atlanta, hang out a few
6 hours, and then be right back in Spartanburg at nine o'clock
7 at night, isn't it?

8 I mean that timeline's up fairly well, doesn't it?

9 A My question at that time was why.

10 Q Was why?

11 A Yeah.

12 Q Why?

13 A Why.

14 Q He went to---

15 A Yes, sir.

16 Q ---to go hang out with his cousin.

17 A I mean it wasn't so much what he said, how he said it,
18 hesitating as if he was fabricating or trying to create a
19 story.

20 Q Okay. And didn't you testify earlier that you were
21 having trouble hearing, he was having trouble hearing you,
22 there was a communication barrier due to the traffic and the
23 noise?

24 A Yes, sir.

25 Q Okay. And, in fact, that hindered your ability to

D.G. Wilson - Direct examination
by Mr. Thompson

1 write that warning according to your testimony, right?

2 A It delayed it, yes, sir.

3 Q Okay. So, you would, you would agree with me that his
4 timeline leaving Charlotte at 12:00, which is an hour from
5 Spartanburg, Atlanta is about three hours, he could be there
6 between three and four hours in Atlanta, hang out a few
7 hours, leave and come back through Spartanburg, and that
8 timeline would be fairly accurate, would it not?

9 A Well, he would of went there, turned around, came right
10 back to be back at 9:00, yes, sir. He wouldn't have hung
11 out that long.

12 Q It's Spartanburg now. He's not back in Charlotte.
13 He's in Spartanburg. So, be three hours away.

14 So, he could hang out till 6:00, right?

15 A I guess.

16 Q Okay. So, that story lined up and the story, the Avis
17 Car Rental, those documents proved that he was right on the
18 money with that. He rented it on the 14th. It was to be
19 back on the 21st, correct?

20 A Yes, sir.

21 Q Okay. And what other things, as far as the totality of
22 the circumstances, led you to believe something was amiss
23 here?

24 A His nervousness. Like I said, getting cotton, cotton
25 mouth. I've never had anybody ask me for some water or not

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by Mr. Thompson

1 being able to talk, his mouth constantly sticking together,
2 and trembling, having a nervous look.

3 Q Okay. And you -- so, you and I would disagree. I
4 don't think he looks nervous on the tape.

5 A We would disagree.

6 Q But you say he does?

7 A I've stopped thousands of cars and he don't fit with
8 the normal motoring public.

9 Q Okay. And I think you testified earlier that it's
10 quite natural for someone to be nervous when they get pulled
11 over?

12 A Initially.

13 Q Initially?

14 A Yes, sir.

15 Q Okay. And then you, you indicated he was shaking when
16 he handed you his license, correct?

17 A Yes, sir.

18 Q There's no shaking in this video that I can see.

19 Did you detect any?

20 A Well, we all, we all saw where he was unsteady on his
21 feet, where he had to lean on my vehicle.

22 Q Okay. Well, didn't you give him permission to lean on
23 the vehicle?

24 A I don't recall if I did or not.

25 Q Okay. Would you not consider -- but you didn't

D.G. Wilson - Direct examination
by Mr. Thompson

1 consider any field sobriety tests or anything like that?

2 I mean he wasn't unsteady on his feet, was he?

3 A After speaking with him initially it wasn't my concern
4 that he was under the influence. Most likely fatigued.

5 Q Okay. So, he's tired, coming down the road, and you
6 don't -- it's not necessarily what he told you, but how he
7 told you is what you got a problem with, correct?

8 A Like I said, his nervous behavior, his story. It just
9 didn't make sense.

10 Q Okay. Now, you would admit that Atlanta's got a lot of
11 places to go visit, right?

12 A Yes, in Atlanta. It's also a source, source city for
13 drugs.

14 Q Well, I mean so it's every road up and down 85 and 95,
15 isn't it?

16 But, but you would agree with my assessment that, that
17 you know there's places to hang out there, right?

18 A I'm sorry?

19 Q You, you'd agree with my, my opinion that there's
20 several places to hang out, as he put it, in Atlanta?

21 A Yes, especially if you want to purchase drugs.

22 Q Okay. I don't.

23 But now, as we go through here, explain to me once
24 more, you -- did you call Officer English the first time you
25 summons the police officer, a backup?

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1 A We changed call numbers several times, but I want to
2 think that that was his call number that I was calling.

3 Q So, you can -- so, you can, you can specify who you
4 call, but did the tape not say any unit?

5 Didn't you say it said any unit, but now you're saying
6 you specifically called him?

7 A You talking about the second time?

8 Q Yes.

9 A I don't remember.

10 Q The first time, do you know if you called him or not?

11 A That was his call number that I called---

12 Q Okay.

13 A ---that I recall.

14 Q And then the second time you specifically asked for a
15 dog again, right?

16 A No, sir.

17 Q All right. Now, at the point when the, the refusal
18 comes in, when he says you can't search his car, I'm trying
19 to understand what you're saying here to him.

20 Okay. Did you actually say if the dog doesn't hit I
21 won't need to search?

22 A I think what I'm saying if the dog refused, he don't
23 consent to my search, I can't search the car.

24 Q So -- right.

25 But you conditioned his leaving on the dog, right?

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1 I thought you maybe stated it in the negative. Let me
2 hear it one more time.

3 Could you understand that?

4 A I said if the dog does not alert I won't need a search.

5 Q Okay. All right. I'm just trying to clarify that.

6 All right. Your Honor, the remainder of it is the
7 search, and you may want to view it. I don't know. We can
8 watch the whole thing.

9 THE COURT: Only if you think that's important to the
10 motions that you've made.

11 MR. THOMPSON: I think as far as these two that I'm
12 working, but on the stop being improper and the detention
13 being prolonged and the scope of the stop---

14 THE COURT: Well, I'm looking at the five grounds in
15 your motion. One was that -- first was that he was not
16 authorized to act in Spartanburg County, and we've already
17 dealt with that.

18 Second was the traffic stop employed by the officer was
19 improper. We've talked about the purpose for the stop.

20 Third is the defendant was unlawfully detained, and I
21 assume you're talking about detained longer than was
22 necessary for the traffic stop.

23 MR. THOMPSON: And that's where I was. Kind of both of
24 those motions tread on whether the Court determines it's one
25 detention or two.

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1 THE COURT: And the defendant's automobile was
2 illegally searched. That may have to do with the search.
3 I'm not sure exactly what grounds you're saying that was
4 done on, and then, finally, subsequent seizure of the
5 defendant, of the defendant lacked reasonable suspicion.

6 MR. THOMPSON: That would be where we see the buy is.

7 THE COURT: Beg your pardon?

8 MR. THOMPSON: That would be where, in the event we
9 consider one stop over, and then there's -- I mean one
10 detainment has ended and a new detainment---

11 THE COURT: Okay. I don't know that I need to watch
12 the search for any of those motions.

13 MR. THOMPSON: Okay.

14 THE COURT: If you think I do -- I don't know what --
15 you've seen this tape. I haven't. So, I don't know what's
16 down the road. So, you tell me if you think I do.

17 SOLICITOR MCCARTY: I can inform the Court just
18 timeline wise. If you, if you're looking at the time stamp
19 there on the right-hand side, 2113:42.

20 THE COURT: 2113:42.

21 SOLICITOR MCCARTY: Trooper English actually comes into
22 scene on, if I back up one page, 2113:28. So, about forty
23 or fifty seconds from now Trooper English actually arrives
24 on scene you see. He may of arrived a few seconds earlier,
25 but he actually gets into the camera angle where you can see

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1 him. K-9 sniff actually begins at 2114:18. The search of
2 the vehicle, the hand search, once the K-9 alerts, lasts
3 approximately four more minutes and 12 seconds before the
4 cocaine's discovered.

5 THE COURT: Okay.

6 MR. THOMPSON: I mean I -- I'd rather watch it just to,
7 but and---

8 THE COURT: Well, I'd like to get all these motions
9 heard today. We're about an hour from five o'clock.

10 SOLICITOR MCCARTY: Unless he's contesting the dog, I
11 don't think there's anything further.

12 THE COURT: And I'm sure the State's gonna want to ask
13 some questions.

14 MR. THOMPSON: Okay. Well, as far as my motions go I
15 think we've covered it.

16 THE COURT: Okay.

17 MR. THOMPSON: Thank you.

18 THE COURT: All right. Mr. McCarty, your witness then.

19 SOLICITOR MCCARTY: May it please the Court?

20 THE COURT: Yes, sir.

21 SOLICITOR MCCARTY: I'll try and watch what we can real
22 quick. I'm sorry I'm gonna have to go back over the tape,
23 Your Honor.

24 THE COURT: It's okay.

25 CROSS-EXAMINATION

1 BY SOLICITOR MCCARTY:

2 Q Trooper Wilson, I'm looking at the date on this,
3 February 20th, 2007, am I right?

4 A Yes, sir.

5 Q So, at this point we're more than four years old?

6 A Yes, sir.

7 Q Okay. You're trying to remember the best you can off
8 your incident report as well as having this video to use to
9 refresh your recollection, am I correct?

10 A Yes.

11 Q Okay. Do you recall verbatim what was said on here?

12 A Not word-for-word, no, sir.

13 Q All right. And there are times when there's other
14 traffic on the roadway, the microphone itself is muffled.

15 You're having to take your best guess sometimes as to
16 what was said, am I correct?

17 A Yes, sir.

18 Q I want to talk about one Mr. Thompson talked about. I
19 think I can agree with him and maybe you'll agree with me
20 too.

21 The defendant informed you he left Charlotte around
22 noon that day, the day you stopped him, on the 20th of
23 September or 20th of February 2007 to head to Atlanta?

24 A (Witness nods affirmatively.)

25 Q Approximately four hours down there. He said he stayed

1 a couple hours. He's on his way back. That's probably
2 about nine hours. If he stays two hours -- four hours down.
3 If he stays two, that's six o'clock, makes his way back,
4 he's in Spartanburg by about nine o'clock is about where
5 we're at. I think we're okay in saying that.

6 Is it necessarily the fact that you can make that trip
7 in nine hours that caused you any moment of pause or concern
8 when you talked with this defendant or was there something
9 else about that response or that storyline that caused you
10 to pay more attention or requesting what was being said?

11 A Yes, it was more the response than the story.

12 Q And why, why -- what about a short travel time or a
13 time with a short turnaround time would cause suspicion in
14 your mind?

15 A Again, first of all, with the normal motoring public
16 doesn't just make a turnaround trip, and the fact he was
17 going to visit his cousin, had to call him to meet him,
18 didn't know exactly where he lived. Once he got to Atlanta
19 he had called and find someone to meet. Through my training
20 and experience, we see that commonly with drug, drug
21 transactions.

22 Q And your training and experience, if you'll just touch
23 on that briefly, you said you are a member of the Aggressive
24 Criminal Enforcement Team, the A.C.E. Team with the Highway
25 Patrol.

1 Does that receive any type of other specialized traffic
2 interdiction training, drug source training beyond what you
3 might receive at the police academy?

4 A Yes, sir.

5 Q What, what all would it entail please?

6 A Desert Snow, which is a national school that I attended
7 in I think it was Las Vegas. We also have an A.C.E. school
8 that we teach through the academy, Criminal Justice Academy
9 here in South Carolina. Plus National Crime Enforcement
10 Association, N.C.E.A.

11 Q In fact, N.C.E.A had its U.S. conference for the winter
12 conference in Spartanburg this past year, am I right?

13 A Yes.

14 Q Did you attend that?

15 A Yes, sir, and several other different drug seminars and
16 conferences.

17 Q All right, sir. And in those seminars and conferences
18 and further trainings, you're taught about things like drug
19 source cities, am I correct?

20 A Yes, sir.

21 Q You're taught about certain indicators, both verbal and
22 physical, that a motorist or someone you encounter might
23 exhibit, am I correct?

24 A Yes.

25 Q So, you do have a basis of knowledge for that type of,

1 of what you're looking for, am I correct?

2 A Yes, sir.

3 Q So, what may be innocuous to me, with no formal
4 training, might be, because of your training and experience,
5 something you key off on, am I correct?

6 A That's correct.

7 Q I'm gonna have to do -- we're gonna -- I just want to
8 start back at the beginning because I want to, based on
9 those types of things you've learned, I want to go through a
10 few points on this with you and go through and ask what you
11 may have seen at a specific moment. Go all the way back
12 here.

13 All right. I want to stop right there. We're
14 approximately -- we're not even a full minute into the stop
15 yet at this point.

16 Tell me what you knew about this car as you approached
17 it.

18 It was a North Carolina tag, am I correct?

19 A Yes, sir.

20 Q When you approached the vehicle you learned it was
21 occupied one time with one motorist, am I correct?

22 A Yes, sir.

23 Q Mr. Falls, when he pulled over, he maintained his
24 vehicle position pretty close to that white fog line nearest
25 the interstate, am I correct?

1 A That's correct.

2 Q Caused you to have to do a passenger side approach to
3 the vehicle?

4 A That's correct.

5 Q Was there anything suspicious or out of the norm about
6 that?

7 A In our training, we're taught that the vehicles will
8 sometimes call, what we call white line meaning they pull to
9 the white line just so they keep us away from that side of
10 the vehicle.

11 Q Okay. Just so they put some distance between
12 themselves and you?

13 A Yes, sir.

14 Q Now, when you walk up and you talk to him and you say
15 how are you doing, sir, is there anything you noticed about
16 the defendant or about the vehicle or the interior of the
17 vehicle itself that, because of your training and
18 experience, maybe caught your eye whereas maybe if I had
19 approached him it may not have caught my eye?

20 A Well, first of all, for that to be a rental and for
21 someone traveling, the vehicle was unusually clean meaning
22 the exterior and the interior was clean. Immaculate.

23 Q So -- but in and of itself, somebody could keep a very
24 clean vehicle?

25 A Yes, sir.

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by Solicitor McCarty

- 1 Q But did it look lived in or driven in?
- 2 A No, sir.
- 3 Q So, pretty spotless?
- 4 A Yes, sir.
- 5 Q And you later learned he said he had the car at that
- 6 point for almost seven days?
- 7 A Yes.
- 8 Q Six to seven days?
- 9 A Yes, sir.
- 10 Q Okay. Did you notice any items in the vehicle like
- 11 luggage or bags, anything like that, in the back seat or in
- 12 the passenger's seat?
- 13 A There was nothing inside the vehicle.
- 14 Q And the defendant's dress, you stated you thought he
- 15 was wearing what appeared to be a work uniform, am I
- 16 correct?
- 17 A Yes, sir.
- 18 Q Okay. When you talked to him you said, I believe you
- 19 said I'm just checking in on you. You're driving a little
- 20 slow. I believe that's what Mr. Thompson said. I believe
- 21 that's what you may of said there. The defendant replied he
- 22 had some type of sinus problem, am I correct?
- 23 A That's correct.
- 24 Q Possibly, possibly looking for an exit to pull over at?
- 25 A That's correct.

1 Q Did he advise you whether or not, where he was coming
2 from, what he was doing at that point?

3 A He stated he was just getting off work, stated that he
4 was coming from Atlanta.

5 Q Okay. So, you got a North Carolina car, pretty clean
6 on the interior, and now he tells you he's coming from what
7 you know from your training and experience to be a source
8 city. Again, nothing particularly unusual. I mean my
9 brother-in-law and sister-in-law live in Atlanta. I come
10 back from their house quite often.

11 But to you, based on your training and experience,
12 these were things that you began to look at to add together
13 for the whole pieces of the puzzle, am I correct?

14 A Yes, sir.

15 Q All right.

16 MR. THOMPSON: Your Honor, I know it's cross, but the
17 questions are almost like the solicitor's testifying here.
18 If you could---

19 THE COURT: Well, it is cross.

20 MR. THOMPSON: I understand that, but pretty lengthy
21 and---

22 SOLICITOR MCCARTY: He has the chance to deny it or, or
23 disagree with me.

24 THE COURT: Well, let's try, let's try not to testify
25 for him. But you're on cross-examination, and people are

1 allowed to lead on cross-examination.

2 SOLICITOR MCCARTY: Thank you, Your Honor.

3 Q Did you indicate -- you indicated with Mr. Thompson
4 about the defendant's nervousness, am I correct?

5 A Yes, sir.

6 Q What about his nervousness caused you any concern or
7 suspicion?

8 A Well, when he passed me his driver's license and the
9 rental agreement his hands were shaking uncontrollably.

10 Q Was it more so than what you encountered with the
11 average motorist?

12 A Yes, sir, I could visually see the papers shaking in
13 his hand.

14 Q And he had papers cause he had a rental agreement, am I
15 right?

16 A Yes, sir.

17 Q This is just real quick. I'll fast-forward a little
18 bit here, and you tell him to pull up a little bit to get
19 out of that guardrail situation, is that right?

20 A Yes, sir, for safety reasons, of course.

21 Q Now, right there you're on your mic on your shoulder.
22 Can you see that on the video?

23 A Yes, sir.

24 Q You seem to be saying something. It sound or may -- do
25 you recall approximately what you said?

1 A Radioing Lance Corporal English.

2 Q This is the point at which we're talking about the
3 initial contact with Trooper English?

4 A Yes, sir.

5 Q And that occurs at 2104:10 on the video, am I correct?

6 A Yes, sir.

7 Q Right here at 2104:29 in the video you've asked the
8 defendant to step back with you, step out of the vehicle so
9 you can talk to him. I see you step back. It appears that
10 he places your flashlight up under you arm.

11 Am I correct?

12 A Yes, sir.

13 Q What's going on here?

14 What's going on at that moment in the video here?

15 A Well, at this point, like I said, I seen him make a
16 movement under the seat. I don't know what he got in the
17 vehicle at this point, and I want to separate him from the
18 vehicle and whatever it is that's---

19 Q Are you getting on your mic as he's getting out?

20 A Yes, sir.

21 Q For---

22 A And calling, calling out and trying to get in touch
23 with Lance Corporal English, English.

24 Q Okay. Right there at that part of the video you, you
25 initially tell the defendant you're just gonna write him a

1 warning ticket. He then responds with something.

2 Did you ask him a question?

3 A Well, initially when, when he got back there I told him
4 I was gonna write him a warning seeing he was already
5 nervous. Generally people are nervous when you pull them
6 over. But after finding out why they're being stopped and
7 is gonna receive a warning, the nervousness just started to
8 come down, and, again, at this point I don't know if he's
9 carrying any weapons. I just want to make him feel at ease
10 until my backup gets there.

11 Q You saw him reach under the car prior, reaching up
12 under around the seat area---

13 A Yes, sir.

14 Q ---before getting out.

15 This kind of chatter with you, is that indicative of
16 anything based on your training and experience?

17 A For people to just come out and just start, you know,
18 telling their life story so to speak or just start talking
19 without being asked a question, being overly friendly, trying
20 to take control of the traffic stop.

21 Q As you've been trained and taught, that's an indicator
22 of nervousness, am I correct?

23 A Yes, sir.

24 Q Trooper Wilson, you go on through the course of the
25 next little bit in the video and I believe you met the

1 defendant about working that day and whether or not he
2 worked, am I correct?

3 A Yes, sir.

4 Q Do you recall what type of responses he gave to any of
5 those in response to did you work today?

6 A He told me that he did work, and that he owned some
7 type of wrecker service or something like that.

8 Q Okay. Did you confront him about what appeared to be a
9 discrepancy in his story about coming from a house in
10 Atlanta or coming from Atlanta?

11 A Yes, sir.

12 Q At this point were you concerned that there may be an
13 inconsistency in his story?

14 A Yes, again, it appeared that he was trying to put, put
15 a story together as we were talking.

16 Q which a normal motorist would know exactly what they've
17 been doing?

18 A Especially within that short period of time.

19 Q I want to go forward about 15 seconds in this video and
20 pause it again. Right there. You asked him how long he was
21 in Atlanta.

22 what type of response did that elicit from the
23 defendant when you asked him that question?

24 A He had to pause for a second to think about it, and---

25 MR. THOMPSON: Your Honor, I'm gonna -- he can't

1 testify what my client was thinking.

2 SOLICITOR MCCARTY: Oh, it's absolutely on the video,
3 Your Honor. There's two seconds where his client just would
4 not at all---

5 MR. THOMPSON: He can testify to what---

6 THE COURT: Don't both talk at the same time.

7 MR. THOMPSON: All right.

8 THE COURT: Go ahead, Mr. Thompson.

9 MR. THOMPSON: I'm just saying he can't testify to
10 what's in my client's mind. He can testify that he paused.
11 But he can't testify to what he was, what his mind, what was
12 on his mind.

13 Q Trooper Wilson, did the defendant pause before he gave
14 a response to that answer?

15 A There was hesitation in his response.

16 Q Did he -- so, he didn't immediately -- I'm sorry, Mrs.
17 Reeves.

18 He didn't immediately respond to that answer, did he?

19 A No, sir.

20 Q He had to think about it possibly, am I correct?

21 A Yes, sir.

22 Q Okay. You had learned previously that he had been at
23 what he described as his cousin's house, am I correct?

24 A That's correct.

25 Q Do you recall asking what his cousin's name was?

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by Solicitor McCarty

1 A I do.

2 Q And do you recall, when you asked him initially what
3 his cousin's name was, what type of response was elicited
4 from the defendant?

5 A Again, it was a hesitation with a huh, his name is
6 Black, last name Black.

7 Q Did he ever mention in here -- and I think -- let's
8 watch for a second.

9 He talks about something about a birthday party, am I
10 correct?

11 A Yes, when I was asking him about his cousin's name,
12 that's when he ignored that question and said well, his
13 cousin was really gonna have a birthday party. I'm sorry.

14 Q Is ignoring a direct question by an officer, again, one
15 of those indicator type things that you been taught or
16 trained on as a cue to look for in somebody's developing a
17 pattern in a story?

18 A Yes, sir.

19 Q So, would you say this is a non-responsive answer to
20 your question?

21 A Yes, sir.

22 Q Did you ask him at all about the birthday party or a
23 party that may of been planned?

24 A I did not.

25 Q But he ended up telling you that the party was the

1 following week, am I correct?

2 A That's correct.

3 Q Did you ask him why he went so early?

4 A Yes, sir, I asked him why he went to Atlanta so early
5 and he stated that his cousin just told him to come, come
6 and check him out.

7 Q At this point, based on the story that the defendant
8 has given you, does it seem like a common sense style travel
9 plan to you?

10 A No, sir, not to work all day and then just go check my
11 cousin out for a couple hours.

12 Q And just to talk about a birthday party?

13 A Correct.

14 Q A birthday party is something we can usually conduct
15 business over the phone about, am I correct?

16 A Yes, sir.

17 Q Did the defendant indicate to you that he had gone down
18 there to sign any contracts for a rental hall or a bounce
19 house for whatever for a party?

20 A No, sir.

21 Q Sign any contracts with a DJ or somebody, a caterer,
22 anything like that?

23 A No, sir.

24 Q He only indicated to you it was just to talk about it,
25 am I correct?

1 A That's correct.

2 Q So, nothing to you that indicated that he would require
3 his physical presence in Atlanta for that conversation?

4 A No, sir.

5 Q Play it forward a few seconds more.

6 Right there approximately 2106:10 or 2109:09, if I
7 recall the video correct, you asked the defendant where's
8 this Antwan or Antwan Black live at in Atlanta.

9 Do you recall asking that question?

10 A Yes, sir, and, again, there was a long hesitation.

11 Q I'm sorry?

12 A He hesitated again before responding.

13 Q Hesitated again before responding.

14 When you were speaking with the defendant, did you
15 notice anything or did he maintain eye contact with you or
16 did he look away before he responded to these questions?

17 You may not recall. I'm just asking if you recalled.

18 A No, sir.

19 Q Okay. Fair enough. It was a little more than four
20 years ago.

21 Did you inquire as to whether or not Mr. Falls, the
22 defendant, had been to Atlanta before?

23 A Yes, I asked him how many trips he had made down
24 previously.

25 Q And what do you recall his response to be?

1 A I think he said he'd been down there three times prior.

2 Q Did he indicate with anymore specificity, in those
3 three trips, where his cousin lived at in Atlanta?

4 A He did not.

5 Q Again, is this something that's triggering in your head
6 as to a story that's not adding up?

7 A Yes, sir.

8 Q Are you, at this point, do you believe the defendant is
9 possibly being deceptive with you with regard to his travel
10 plans and itinerary?

11 A Very much so.

12 Q If we fast forward a little bit in through here just to
13 speed it up.

14 You did ask him about having a rental car, am I
15 correct?

16 A Yes, sir.

17 Q And as we've learned with Mr. Thompson he had that
18 rental car, like I said, for approximately six or seven days
19 prior to this stop?

20 A Yes, sir, Mr. Falls, yes, sir.

21 Q Oh, I'm sorry. Mr. Falls had this.

22 The defendant had a pretty clean rental car for six
23 days prior to you making a stop on him that night. Here in
24 just a moment you return back to your cruiser. Right here
25 you return back to your cruiser.

1 Now, you stated, once you'd returned back there, that
2 the defendant asked you a question, am I correct?

3 Let me back it up. Maybe you've not heard it.

4 A Yes.

5 Q The defendant asked you for a water?

6 A Yes, sir.

7 Q Nine o'clock at night, am I right?

8 A Yes, sir.

9 Q You've been a trooper for nine years?

10 A Yes, sir.

11 Q How long with the A.C.E. Team?

12 A At least six, five, six.

13 Q You estimated you've done over a thousand traffic stops
14 in that period of time?

15 A Easily.

16 Q In a thousand traffic stops, how many times has someone
17 ever asked you for water?

18 A That was a first.

19 Q You indicated to Mr. Thompson, when he asked the
20 question that the defendant appeared to be licking his lips,
21 is that correct?

22 A Yes, sir, cotton mouth.

23 Q Had what you thought to be cotton mouth?

24 A Yes, sir.

25 Q Cotton mouth is just dry mouth, am I correct?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A Yes, sir.

2 Q What about cotton mouth or having a dry mouth will
3 cause anybody to be suspicious?

4 A Through my training and experience and doing public
5 speaking, you're nervous and your mouth get dry.

6 Q Okay. So, right here this is an indication of
7 nervousness to you?

8 A Yes, sir.

9 Q And we're approximately seven and a half to eight
10 minutes into this traffic stop?

11 A Yes, sir.

12 Q Okay. While you were inside of your cruiser -- this is
13 the point where Mr. Thompson is asking you, at that point,
14 probably -- at some point in here you called for any
15 additional unit in the area of Mile Marker 62 northbound, am
16 I correct?

17 A Yes, sir.

18 Q Having previously radioed for your other A.C.E. Team
19 member, Steven English, am I correct?

20 A Yes, sir.

21 Q All right. Let me ask you real quick too about Mile
22 Marker 62. You've been in Spartanburg a few times.

23 Mile Marker 62 northbound, at Mile Marker 63, that's
24 the exit for Duncan, am I correct, the Duncan exit off of
25 I-85?

- 1 A I believe it is, yes, sir.
- 2 Q Highway 290?
- 3 A Yes, sir.
- 4 Q Okay. Are you familiar with that exit?
- 5 Have you ever stopped at it before?
- 6 A I may of been there for some gas or something.
- 7 Q Okay. So, there's gas stations there, am I correct?
- 8 A Yes, sir.
- 9 Q Other businesses probably at that exit?
- 10 A I think a couple restaurants maybe.
- 11 Q Okay. So, right adjacent to the interstate, do you
- 12 recall?
- 13 A Very close.
- 14 Q Okay. So, when Mr. Thompson asked you earlier about
- 15 these nine lights, you're driving up the interstate, the
- 16 interstate on 85 is a part of the corridor of 85, are there
- 17 woods on each side of the interstate?
- 18 A Yes, sir.
- 19 Q Okay. So, it's not open pasture land and field land
- 20 through there, am I correct?
- 21 A Correct.
- 22 Q It's at nine o'clock at night. You had your lights on
- 23 obviously. It appears that most of the other motorists on
- 24 the interstate had their lights on.
- 25 A Yes, sir.

1 Q would it probably be safe in assuming that a business
2 like a gas station might have its lights on?

3 A Yes, sir.

4 Q We're in February of 2007 at nine o'clock at night?

5 A Yes, sir.

6 Q Is it possible that those nine other motorists that
7 were possibly stopped out there could of been off in the
8 distance as we saw, is it possible, the lights from those
9 businesses at Exit 63 Highway 290 in Duncan, South Carolina?

10 A I'm sorry. Say that --

11 Q well, when he talks about following the defendant up
12 the road, are you following the defendant up the road to the
13 point of the second stop, he pointed to all those lights off
14 in distance and said to you that those were other law
15 enforcement officers or highway patrolmen that were pulling
16 another motorist over.

17 I'm asking you, those lights off in the distance, was
18 it also possible that those could have been gas station
19 lights, restaurant lights, something like that, at the next
20 exit up?

21 A Yes, sir, that could of been passing vehicles passing
22 by other vehicles making the lights flicker.

23 Q And even if it was nine separate traffic stops out
24 there on Interstate 85 and what appears to be the southbound
25 lane, do you have any control over how other motorists drive

1 and what traffic infractions that may occur, do you?

2 A No, sir.

3 Q Okay. Trooper, when you get back in the car here, and
4 I'm to go back that far, but when you get back in the car
5 here and you radioed for another unit to come and assist you
6 at this point, you've seen the defendant reach under the
7 seat. We don't know what he's got. He may have a weapon or
8 hidden a weapon in the car or even on his person.

9 Did you observe the defendant's behavior while you were
10 in your cruiser and he was out in front of you?

11 A Yes, sir. While I was sitting in my car I was watching
12 him also. I seen he was still licking his lips and
13 constantly kept looking back towards his vehicle.

14 Q Looking back at his vehicle?

15 A Yes, sir.

16 Q And throughout all this, even to the point where we
17 informed him that a K-9 is coming, he keeps asking to go
18 back and get a hat out of his vehicle, am I correct?

19 A Yes, sir.

20 Q Are you gonna allow him to walk up to that vehicle and
21 retrieve a hat by himself?

22 A No, sir.

23 Q Why not?

24 A That's officer's safety.

25 Q Exactly.

1 You don't know what he put under the seat, do you?

2 A I do not.

3 Q Could of been a gun, am I right?

4 A Absolutely.

5 Q And you don't know where that hat was located?

6 A No, sir.

7 Q Did he tell you the hat was in the back seat?

8 A No, sir.

9 Q Did he tell you the hat was under the front driver's
10 seat?

11 A No, sir.

12 Q Okay. After you get back out with the defendant here,
13 and I'll fast forward again just a little bit to speed it
14 up, looking back, looking back, looking back, you're back
15 out here talking with him again about this citation
16 possibly. I believe at that point, at 2109:52, if I am
17 correct, you stated to the defendant where did you meet him
18 at, and I think you're referencing his cousin, am I correct?

19 A Yes, sir.

20 Q Was the defendant's response to that question
21 immediate?

22 A No, sir, he again pondered for an answer for a few
23 seconds.

24 Q And did he -- once he committed to an answer to you,
25 was it affirmative or did he even have like he was searching

1 for that once he responded to you?

2 A He was searching for it and he stated Exit 240 he
3 believe.

4 Q So, he wasn't even sure which exit it was?

5 A Correct.

6 Q Been to Atlanta three times, his cousin lived down
7 there, had just been there a couple hours earlier.

8 You asked him did you go to his house.

9 what was his response, the defendant's response?

10 A I couldn't -- he stated no.

11 Q And we're talking approximately 2110 in the video.

12 Did you ask him then where did they go once he met his
13 cousin?

14 A Yes, I asked him did they just stay beside the highway
15 and talk and he stated yes.

16 Q Did that make sense to you that someone would drive to
17 Atlanta from Charlotte, spend a couple hours on the side of
18 the road at possibly Exit 240, speak with a relative, and
19 then drive all the way back to Charlotte that evening?

20 A If they were gonna meet, the cousin could of drove just
21 halfway and just meet him to cut his travel time in half.

22 Q So---

23 A Didn't make sense.

24 Q Didn't add up to you?

25 A No, sir.

1 Q Okay. And, again, even at this point here did you feel
2 like the defendant was being dishonest with you?

3 A Absolutely.

4 Q And here in about five seconds we get to you tell him
5 that he's fatigued and he might want to pull over.

6 Did you hear that?

7 A Yes, sir.

8 Q And then it looks like Mr. Falls right here is
9 continuing on with the conversation with you, am I correct?

10 A Yes, sir.

11 Q Explaining to you about the trucks and the problem he
12 had with his vision, am I right?

13 A Yes.

14 Q And that was at 2110:49 on the tape?

15 A (Witness nods affirmatively.)

16 Q From the moment of the stop -- and it seems like with
17 this traffic stop, as we been talking about the video and
18 going through, it lasted two and a half hours. Let me do my
19 calculation and see if I'm right.

20 But from the initial stop to the point where this
21 warning ticket was explained, ten minutes 53 seconds, am I
22 correct, or thereabouts?

23 A Yes, sir.

24 Q Ten minutes and 53 seconds from the time you get him
25 actually stopped on the roadside, comes to a complete stop

1 next to that guardrail to here, is ten minutes an average or
2 within your average amount of time for your normal traffic
3 stop given the situation which you have here?

4 A Yes, I would say that's about average.

5 Q How would you -- an average traffic stop, with nothing
6 else going on with it, you pull somebody over, you say hey,
7 just be careful as you're driving, be on your way, how long
8 would you estimate that traffic stop to take?

9 A Guesstimating about, depends on the speed of dispatch,
10 five to seven minutes.

11 Q So, we're not even that far outside of that normal
12 routine for you and we've got all this other stuff going on
13 with the defendant, you walk up to him, North Carolina tag,
14 am I correct?

15 A Yes, sir.

16 Q Tells you he's coming from Atlanta. You learn that he
17 made a down and back trip in one day.

18 Am I right?

19 A Yes, sir.

20 Q You also learn from him that he's visited his cousin,
21 am I correct?

22 A Yes, sir.

23 Q And was he able to immediately tell you what his
24 cousin's full name was?

25 A Was not.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q He told you his last name first, am I correct?

2 A Correct.

3 Q Told you his last name was Black?

4 A Black.

5 Q You had to ask what his name was, right?

6 A That's correct.

7 Q You then learn, as you speak with him during this ten
8 minute 53 second stop with, as I may recall, as I may state,
9 there's a point there which when you have initially pulled
10 him over you ask him to move beyond the guardrail for your
11 safety and his safety for this traffic stop. So, we still
12 have to go beyond that to do that, am I correct?

13 A Yes, sir.

14 Q But upon your initial approach to that vehicle,
15 initially when you get up on, on that guardrail, clean
16 looking car, unusually clean given that it's a rental, and
17 as we know, he's had it for six days, rental car -- is there
18 anything about rental cars that in and of themselves would,
19 based on your training and experience, cause some suspicion
20 in your mind?

21 A Yes, sir, people involved in criminal activity won't
22 use their own vehicle for fear of it being seized. They
23 normally rent cars.

24 Q So, that -- let's just fast forward a good bit here.

25 This car was actually seized that night, am I correct,

1 and turned back over to Avis?

2 A Yes, it was towed.

3 Q But had been, this been Mr. Falls or let's say this was
4 me in this situation, my personal vehicle, it would of been
5 towed, put in impound that night, am I correct?

6 A Very well possible, yes, sir.

7 Q Very well possible.

8 And that's a normal part of procedure for forfeiture of
9 assets when you're running drugs on the interstate or
10 anywhere, am I correct?

11 A Yes, sir.

12 Q All right. He tells you he's coming from a source
13 city.

14 when you walk up on a car, you call for that additional
15 unit because you have seen what?

16 A An unusual, an unusual action in the vehicle by him.

17 Q And what is that unusual action?

18 A Reaching under the seat.

19 Q Okay. You ask him to get out of the seat, out of the
20 car and talk to you.

21 In the course of that conversation as you're writing
22 the ticket to him, citation to him, as he's talking to you,
23 you pause to look and respond to him, am I correct?

24 A Yes, sir.

25 Q And you stated to Mr. Thompson that's just because you

1 didn't want to be disrespectful, is that correct?

2 A Wanted to make sure I was understanding and hearing
3 what he was saying.

4 Q And, in fact, as we watch this whole video, this ten
5 minutes and 55 seconds, there's times here where you have to
6 ask him to repeat himself because a truck goes by or
7 Interstate 85 is just loud, am I correct?

8 A Yes, sir, and lean into him to hear him.

9 Q Let me ask you about the driver's license check. You
10 first called it in when you came in, and I think you called
11 it in about 2101:33 into the video. I mean you called North
12 Carolina 3-6-0-7-1-9.

13 During the whole course of this, did the license ever
14 come back to you, any confirmation to you as to whether or
15 not it was under suspension, it was clear, anything like
16 that while you're speaking with him outside of the vehicle?

17 A I don't recall.

18 Q Okay. So, you're still waiting for that action to
19 occur during all of this?

20 A Yes.

21 Q Okay. Called a K-9 unit because you yourself had
22 suspicions about something possibly criminal afoot here in
23 this vehicle, am I correct?

24 A Yes, sir.

25 SOLICITOR MCCARTY: All right. May I have just one

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 moment, Your Honor?

2 THE COURT: Yes, sir.

3 (Pause.)

4 SOLICITOR McCARTY: Your Honor, I think that's all the
5 further questions I have for Trooper Wilson. Thank you.

6 THE COURT: Redirect?

7 MR. THOMPSON: Please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Trooper Wilson, with all of these suspicions you got,
12 you just gonna give the guy a warning and let him go?

13 A At least for the purposes of why we're here today to
14 make sure I had a strong case, sir.

15 Q well, what was, what was to make sure you had a strong
16 case?

17 A Listening to his story.

18 Q Going fishing for evidence?

19 A I wouldn't call it fishing, sir.

20 Q Huh?

21 A No, sir.

22 Q Okay. well, you called -- you say you called for that
23 backup immediately, 2109, 2104 or so, right?

24 A Yes, sir.

25 Q At that point it was determined he would be searched.

1 So, really your totality of the circumstances argument
2 goes out the window right there, doesn't it?

3 A No, sir, and if you care for me to explain I will.

4 Q Love to.

5 A Okay. December the 12th -- 27th of 2003 I was
6 involved in a shooting. When he went to reach under the
7 seat I was in fear of my safety.

8 Q Okay. This guy didn't shoot you, did he?

9 A No, sir.

10 Q Okay. And---

11 A I wasn't gonna give him the opportunity.

12 Q Okay. And you're -- Officer English, he searched that
13 car thoroughly, didn't he?

14 Tore out the back seat, ripped open a door, didn't he?

15 A I think that's a question you need to ask Lance
16 Corporal English on that.

17 Q Well, you sat there and watched him, didn't you?

18 A I watched Mr. Falls. That's my job as backup.

19 Q Okay. And what did, what did Officer English bring you
20 out of that car?

21 A I want to say he brought the plastic bag with the
22 9-ounces of cocaine in it.

23 Q Okay. And where did he say he found that?

24 A Driver's side door panel.

25 Q Okay. What did he tell you he found under the seat?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A I don't recall.

2 Q Didn't find anything under the seat, did he?

3 A Don't recall.

4 Q Huh?

5 A Don't recall.

6 Q Okay. All this I don't recall, I don't remember, I
7 can't, you can't understand what Mr. Falls is telling you,
8 he tells you it's a wrecker, you think he's talking about a
9 wrecker, another kind of wrecker, wouldn't that be
10 indicators that somebody's nervous and on drugs from your
11 training?

12 A No, sir, that's just an indication that was four years
13 ago.

14 Q Okay. So, he -- so, it's okay for you to hesitate and
15 stumble through your conversation, but if he does it it
16 means he's guilty of trafficking in drugs and needed to be
17 searched?

18 Is that what you're telling the Court?

19 A No, if it happened nine hours ago I'd have a better
20 memory of it.

21 Q Okay. Now, you go back and call for another backup,
22 right?

23 A I call for a unit on the radio.

24 Q Okay. And that being done, you, you call for that
25 backup.

1 Now, you've already, you've already determined that,
2 that car was gonna be searched when you made that first
3 call, right?

4 A I was gonna find out what he was placing under his
5 seat, yes, sir.

6 Q Okay. And, so, at that point, when you determined that
7 that search was gonna happen, you knew you had a black male
8 driver, you had a North Carolina license plate, a rental car
9 coming from Atlanta?

10 That's all you knew, is that right?

11 A I knew that his story didn't make a lick of sense.

12 Q He's not started in on his story at the point you
13 called that first time, had he not?

14 All, all you had asked him was a couple of questions,
15 did you work today, where were you coming from?

16 I think that's all.

17 A Okay. At that point I knew he was extremely nervous.

18 Q Okay. And nervousness?

19 A Yes, sir.

20 Q Okay. And your indication that we are shaking
21 profusely, that's not backed up by what we see on the tape,
22 is it?

23 A I don't know if you see it. I saw it.

24 Q Okay. Can you -- if I -- I hate to turn that tape on
25 again, but can you tell -- does it show up on the tape where

- 1 he's supposedly went under the seat?
- 2 A I don't, I don't guess you can see it.
- 3 Q You -- so, you could see it, but the camera couldn't
- 4 see it?
- 5 Is that your testimony?
- 6 A I was standing right there at the passenger window.
- 7 Q And that's when you saw him go?
- 8 A Yes, sir.
- 9 Q So he just, right in front of you, just went under his
- 10 seat?
- 11 A As I was approaching the passenger side, yes, sir.
- 12 Q Okay. And with that going on, at various points, you
- 13 know, you turn your back to him, do you not?
- 14 A I think I kept a pretty good eye on him.
- 15 Q well, I mean there's times in that tape when your back
- 16 was to him and you're getting in the car or that type of
- 17 thing.
- 18 A And, again, at that point he was removed from the
- 19 vehicle, from whatever he was placing under that seat---
- 20 Q okay.
- 21 A ---or in that area.
- 22 Q You didn't suspect a gun on his person then?
- 23 A I suspected whatever he had pushed under the seat.
- 24 Q Okay. Now, you answered a lot of questions that
- 25 Mr. McCarty asked you, and I'm gonna go over some of these,

1 those things.

2 You, you testified you told Ryan McCarty that you
3 didn't, his story wasn't adding up, right?

4 A No, sir.

5 Q Did you testify to me earlier that it wasn't what he
6 was saying but how he was saying it?

7 A I think I said that it wasn't so much in what he was
8 saying but how he was saying it.

9 Q You did say that, but now you're saying it was what he
10 was saying.

11 Is that what you're telling the Court?

12 A It's a combination of all things.

13 Q The truth is you're on Rolling Thunder, and you pull
14 somebody over, that truck, that car's getting searched if
15 it's a black person's, especially in a rental car, isn't
16 that correct?

17 A Absolutely not.

18 Q And he -- Mr. McCarty harps on that clean car,
19 unusually clean car.

20 All right. It's February 20th at nine o'clock,
21 right?

22 Right?

23 A Yes, sir.

24 Q Do you recall when that that Avis rental agreement said
25 that car had to be back?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A When it had to be back?

2 Q Yes.

3 A The 21st.

4 Q Okay. So, would it make sense that he's gonna take it
5 back nasty and dirty or would he take it back clean?

6 SOLICITOR MCCARTY: Objection, Your Honor. That's
7 gonna call for speculation.

8 THE COURT: Sustained.

9 Q If you're taking a car back to somebody, are you gonna
10 take it back nasty or clean?

11 SOLICITOR MCCARTY: Objection, Your Honor. That calls
12 for opinion. On that point it's not material.

13 THE COURT: He's asking what he would do. I'll allow
14 it.

15 A I wouldn't clean it 24 hours to return it. I'd
16 probably clean it on my way to taking it back and fuel it up
17 and all that stuff. That's what I normally do.

18 Q Okay.

19 A If I had to clean it out.

20 Q Do you rent cars?

21 A Sometimes.

22 Q Okay. So, stands to reason people rent cars, right?

23 A Yes, sir.

24 Q So -- let's say -- I drive an old pickup. Let's say I
25 want to go to Atlanta and watch the Braves play. I rent a

1 car and I go watch the Braves play, and then I'm gonna shoot
2 up here to Charlotte to watch a race.

3 Okay. Your, by your analysis, if you pull me over,
4 you're gonna suspect I'm carrying drugs, right?

5 A No, sir, cause you probably gonna have some Braves
6 stuff in there, paraphernalia, some drinks, some fast food
7 wrappers, or whatnot in there.

8 Q All right. I'm pretty cheap. So, I might not.

9 But, but that's, that's the way your analysis, your
10 analysis goes in this case, right?

11 A Totality of the circumstances.

12 Q So, that's that you're basing your argument on is
13 totality of the circumstances?

14 A Yes, sir.

15 Q But you've already, you're already -- so, really, the
16 only -- those circumstances are limited to the fact that you
17 got a rental car, from North Carolina, and he's coming from
18 Atlanta, right, because then -- cause you, you called for
19 the guy that searched the car right then?

20 That's all you knew about this situation, right?

21 A No, sir.

22 Q What else did you know at that time?

23 A I did call for a search of the car at that time. I
24 called for an officer because Mr. Falls was reaching under
25 his seat.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Q Did you not tell me earlier that you, that it was to
2 search that car for that purpose?

3 A If I did, that wasn't my intent that you took it that
4 way.

5 Q Did you not testify that once you called on that
6 shoulder speaker, whatever it is, okay, you called that
7 backup and you told this Court that it was your intention to
8 search that car?

9 A I think I said I wanted to find out what he placed
10 under the seat.

11 Q Okay. Well, that would be to search the car then,
12 wouldn't it?

13 Now, in your training and your experience, is a K-9
14 gonna find a gun or a knife in a car?

15 Is he gonna alert to that?

16 A If they're trained on it.

17 Q If they're trained on it.

18 A Yes, sir.

19 Q All right. So, you sent out a call to Officer
20 English's dog because, cause he's trained for that or do you
21 remember?

22 A I'm sorry. Say that again.

23 Q You, you called Officer English's dog.

24 Is he trained to, to find guns and knives or do you
25 know?

1 A I'd have to speculate, but I don't think he is.

2 Q Okay. Now, I'm not gonna turn that tape back on, but
3 are you alleging, or I know he alluded to it, that he pulled
4 up close to the white line to keep you from coming to the
5 driver's side door.

6 A That's a tactic that's used.

7 Q But you're not saying my client did that?

8 A I can't think for your client.

9 Q Okay. But you can think for -- you can look at the
10 tape and say it, and see that he's -- now right there he
11 couldn't of got much closer to that guardrail, could he?

12 A I could of got a little bit closer.

13 Q He could of got a little bit closer.

14 Okay. So, that's one of those tactics you're trained
15 to see that -- over here you went -- you approached the, the
16 passenger side again. In fact, he gets off the pavement
17 when he pulls over the next time, doesn't he?

18 A Well, you'll see me pull over farther and then he pulls
19 over a little bit more. If you want me to assume I guess
20 cause I pulled over farther. I don't know.

21 Q Okay. So, your, your testimony is he could of gotten a
22 little closer to that guardrail I guess, right?

23 A (No response.)

24 Q All right. Now, you called that officer right here at
25 2104. You called him, specifically call him, Officer

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by Mr. Thompson

1 English, right here, is that correct?

2 Right here in just a second.

3 A It's part of the -- you want me to explain it?

4 I'm sorry.

5 Q well -- all right. At that point had you, had you seen
6 him hide the or go under the seat allegedly?

7 A As I was approaching, yes, sir. As soon as I got right
8 to the back passenger glass.

9 Q Now, right there you're summonings Officer English,
10 right?

11 A I was calling him just prior to that. I don't know if
12 he was responding to what.

13 Q Then you tell my client at 2104 he's gonna be getting a
14 warning, right?

15 A Yes, sir.

16 Q And all this training and these classes and things you
17 go to, have they had an occasion to tell you anything about
18 the dog arriving while you write a ticket?

19 A Yes, sir.

20 Q Okay. what have they told you?

21 A well, I tell you what I know. It's if a dog arrives, a
22 dog -- if one is on the scene and unavailable, they can do a
23 free air sniff.

24 Is that what you're alluding to?

25 Q Okay. while you're writing the ticket, right?

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1 A They can, while I'm conducting business.

2 Q Okay. You know that. You knew that before on, right
3 here at this stop, didn't you?

4 A If it's in my mind I guess I had knowledge of it.

5 Q Okay. So -- and that's why your pen's dancing around
6 with that warning, and those nine words that you wrote took
7 11 minutes, isn't it?

8 A No, sir, I was listening to your client.

9 Q I, I -- you're waiting on that dog to get there so you
10 can have that free air sniff to give you probable cause to
11 search the car, are you not?

12 A Not at all. If I was waiting on that I would of never
13 asked him to search the car.

14 Q Well---

15 A I would of just went straight---

16 THE COURT: Now, Mr. Thompson---

17 MR. THOMPSON: I'm sorry.

18 THE COURT: ---I've given you a lot of latitude.

19 You're on direct. You've been asking a lot of argumentative
20 questions. I've let it go on and on and on.

21 MR. THOMPSON: All right.

22 THE COURT: I know what the argument's gonna be I
23 think. Now, if there's something new I would be more than
24 happy to hear it.

25 MR. THOMPSON: Well---

1 THE COURT: I think we've covered a lot of this already
2 on direct. If it's something new that came out on, on the
3 cross by Mr. McCarty, you certainly have the right to do
4 that on redirect. But now we're getting into simply
5 argumentative question after argumentative question, and I'm
6 gonna have to call time on that.

7 MR. THOMPSON: Yes, sir, Your Honor.

8 THE COURT: Thank you.

9 Q All right. You went into the, the -- you said he told
10 your, his life story to you and he was overly friendly or
11 you agreed with that.

12 A That's, that's not exactly how I said that.

13 Q Okay. How did you say that?

14 A I believe I said that when they're trying to take over
15 the conversation, they tell you their life story, start
16 rambling on about something you didn't ask them about,
17 something to that effect.

18 Q All right. So, did he tell you stuff you didn't ask
19 about or did he not answer your questions or did you ask
20 him---

21 A He ignored---

22 Q ---or did you testify to that too?

23 A well, I know on one specific example he ignored the
24 question and started talking about something I didn't even
25 ask him.

1 Q And you went into and -- Mr. McCarty hit on this. He
2 asked you about riding up there to talk about a birthday
3 party, and that could of been done on the phone, right?

4 A Sure.

5 Q You said well, they could of met half way, right?

6 A Sure.

7 Q Okay. Mr. McCarty didn't allude to the fact that they
8 met and hung out with girls, did he?

9 A No, he didn't, but if you want me to get exactly to
10 what he said there I'll try to find that in my notes here.

11 SOLICITOR MCCARTY: Well, Your Honor, I would just
12 object to this point. I believe that this was asked
13 originally on the direct. I believe Trooper Wilson did
14 testify that the defendant had indicated that they hung out
15 and talked with girls and stuff like that I believe is one
16 of the quotes he said if I may be phrasing incorrectly, but
17 I believe that's what he said previously. I would agree
18 that he did testify to that earlier.

19 THE COURT: Okay, sir.

20 MR. THOMPSON: And my, my next question would go into
21 that.

22 THE COURT: Sure.

23 MR. THOMPSON: Okay.

24 Q And, trooper, it's about half way down, but he's, he's
25 clarified that. Okay. And through your experience you

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1 can't, you can't hang out -- it's not suppose, much fun to
2 hang out with girls on the phone as it is in person, is it?

3 SOLICITOR MCCARTY: Your Honor, I object. That calls
4 for speculation there too.

5 MR. THOMPSON: Withdrawn, Your Honor.

6 THE COURT: Thank you.

7 Q Okay. But you would agree that the cousin wasn't the
8 only person he met with in Atlanta, correct, according to
9 his statement?

10 A I'm not even sure he met with the cousin.

11 Q According to what he told you, correct?

12 A Yes, sir.

13 Q Okay. And you stated that the water was a big deal,
14 asking for the water, right, and I think you described it as
15 cotton mouth, is that right?

16 A Cotton mouth, yes, sir.

17 Q what is cotton mouth?

18 A Dry mouth.

19 Q Dry mouth.

20 A Mouth becomes clammy.

21 Q when I was in college we got cotton mouth because we
22 got, drank too much beer the night before.

23 You ever heard of cotton mouth?

24 SOLICITOR MCCARTY: Your Honor, I'm gonna object to
25 this. This is just not even covering any new ground here.

1 MR. THOMPSON: well, Your Honor, he's trying to show
2 cotton mouth is a specific cause, nervousness. I'm trying
3 to show---

4 THE COURT: well, the Court will take judicial notice
5 of the fact that cotton mouth can have several causes. You
6 certainly have the right to argue that when we do our
7 argument.

8 MR. THOMPSON: Right.

9 THE COURT: I don't know that, again, this is an
10 argumentative, argumentative question that you're asking.
11 The time for argument's coming I hope.

12 Q Okay. And then you basically said that he put
13 something, you saw him go under the seat, and it could of
14 been a weapon, right?

15 A I don't know what it was. It could of been anything.

16 Q All right. And then, and then -- you, to your
17 knowledge, nothing was recovered under the seat, right?

18 A No, sir.

19 Q Okay. And you testified your normal stop time is ten
20 to eleven minutes, correct?

21 A Five to seven.

22 Q Five to seven minutes.

23 Okay. And this one went on for maybe 12 minutes, close
24 to 12 minutes, right?

25 A Ten, twelve..

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1 Q Okay. And you said that because of all the other stuff
2 going on.

3 What other stuff are you talking about?

4 A Like we had to reposition our vehicles. Mr. Falls
5 talking, not being able to understand what he was saying,
6 you know, just the conversations that we were having.

7 Q All right. And those conversations were initiated by
8 the 16 questions you asked him, right?

9 A Not all of them.

10 Q Huh?

11 A Not all of them.

12 Q Well, but I would be accurate that you did fire about
13 16 questions at him?

14 A I didn't count them. I'm not, I'm not sure, no.

15 Q Okay. And then I think you told him on the -- when Mr.
16 McCarty played the tape again, you said let me explain this
17 warning, no points, no fine, correct?

18 A I believe that's what I said.

19 Q Okay. And then you don't deny that you withheld that
20 ticket because you were waiting on that dog, right?

21 A I was waiting on his response.

22 Q Whose response?

23 A Mr. Falls.

24 Q So, if he had said well -- but he said no.

25 Then what, then what would, were you thinking?

1 A I'm sorry?

2 Q What was your -- what's your response?

3 If he says no, then what are you thinking?

4 A Then I just reach -- he had it like this and I just
5 pulled it back.

6 Q You pulled it back?

7 A Yes, sir.

8 Q Okay. So, his receiving permission to leave was
9 contingent upon that dog going, going around the car,
10 correct?

11 A When I told him good to go, he was good to go, I'm sure
12 he had in his mind that he was free to go.

13 Q Okay. And you, you told him he was good to go, right?

14 A Right.

15 Q And the only---

16 A He asked if he was good to go.

17 Q Okay. And you admit he was good to go until he told
18 you no, right?

19 A I'm not sure where you're going with that.

20 Q Well, you said -- you told him he was good to go and
21 you're sure that's what he's thinking, right?

22 You didn't just say that?

23 A Yes.

24 Q Okay. And he said no, and, therefore, you pulled back
25 the ticket and he was not allowed to leave, right?

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1 A Right.

2 Q Okay. So, did his, his saying no, did that create more
3 reasonable suspicion for you to hold him?

4 A He was gonna stay anyway.

5 Q He was gonna stay anyway?

6 A Yes, sir.

7 Q Okay. So, you were gonna pat him on the back, say have
8 a nice day, but not let him leave?

9 A I was gonna search his car. He could of left.

10 Q Okay. So, the purpose for your original stop had, is
11 ended a long time ago then, right?

12 A No, sir.

13 Q The fog line violation?

14 A What you call a long time ago?

15 Q Well, about 11 -- I mean 2104 when you called your
16 backup.

17 A No, sir.

18 Q Okay. What about 2107 when you called for backup
19 again?

20 A No, sir.

21 Q Okay. So, you are basically saying this was one
22 continuous stop.

23 Is that what you said earlier?

24 A Yes, sir, in my mind.

25 Q Okay. And you testified that you don't remember if his

1 driver's license information came back?

2 A And after listening to the video again, I never heard
3 it come across the radio. I don't recall.

4 Q All right. So, you were -- but you could of heard that
5 it was okay, right?

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

7 Q You did say in your statement that his driver's license
8 came back as being Jeffery Falls, right?

9 Page 1 of your statement.

10 A Said -- I think I said he was identified by his license
11 as Jeffery Falls. Yes, he was identified by his license.

12 Q Okay. So, he's -- so, you never heard back about his
13 license?

14 A No, sir.

15 Q You didn't know?

16 A To the best of recollection.

17 Q You had no indication whether he had a suspended
18 license or anything like that?

19 A No, sir.

20 Q And yet you were just gonna write a warning, right, and
21 let him go?

22 A Write a warning for failing to maintain a lane, yes,
23 sir.

24 MR. THOMPSON: Okay. No further questions, Your Honor.

25 SOLICITOR McCARTY: I'm not gonna ask anything

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1 substantial, Your Honor, but I do have---

2 THE COURT: That's okay. I'll let you clear up some
3 matters if you need to.

4 SOLICITOR McCARTY: There's not matters to clear up
5 except one, two really. We been watching the video. I was
6 gonna have marked as State's Exhibit No. 1. I would ask at
7 this time---

8 THE COURT: Any objection to that.

9 MR. THOMPSON: None, Your Honor.

10 THE COURT: All right. It will be marked as---

11 SOLICITOR McCARTY: Thank you, Your Honor.

12 THE COURT: ---State's Exhibit No. 1.

13 (WHEREUPON, the videotape was marked as State's Exhibit
14 No. 1 and received into evidence for purposes of this
15 hearing only at this time.)

16 RECROSS EXAMINATION

17 BY SOLICITOR McCARTY:

18 Q My only other question, Trooper Wilson, is just this
19 and this is because Mr. Thompson raised this issue three
20 separate times. He's identified the defendant as a black
21 male somehow insinuating that because he was a black male
22 that was some cause for the initiation of this traffic stop
23 or he being detained in the course of this traffic stop.

24 Did the defendant's race in any way, shape, or form
25 play into any part of your investigation of this matter?

1 A No, sir, it did not.

2 Q And, Trooper Wilson, I'm gonna ask this because if
3 somebody down the road should have to read this transcript,
4 again, you're a South Carolina Highway Patrolman, am I
5 correct?

6 A Yes, sir.

7 Q You're an adult male.

8 Do you identify yourself as an adult male, an adult
9 black male, an adult Latino male?

10 A Black male.

11 Q Thank you.

12 Nothing further, Your Honor.

13 THE COURT: Anything further based on those questions?

14 MR. THOMPSON: None, Your Honor.

15 THE COURT: All right. You wish to argue the point or
16 is there other evidence, other testimony?

17 Sir, you can step down.

18 MR. THOMPSON: No other testimony.

19 Please the Court, Your Honor. My argument, one, was
20 that the stop was not a valid stop. The officer testified
21 he pulled Mr. Falls over for coming over the fog line, and,
22 as we read subsection 56-5-1900 says a vehicle shall be
23 driven as nearly as practical entirely within a single lane.
24 Shall not be moved from the lane until the driver's first
25 ascertained such movement can be made safely. There's no

1 testimony provided by the officer that, that that's been
2 violated.

3 I think the, the language is clear as nearly as
4 practical within a single lane. I couldn't find a South
5 Carolina case on point. There's several from out of the
6 jurisdiction. U.S. versus Gregory, 79 F3rd 973. Basically
7 the Utah State Code, 41-6-61, is not an exact mirrative
8 (phonetic) of the South Carolina Code, but it is a great
9 deal like it.

10 The officer pulled over a U-Haul that had crossed over
11 into the right shoulder emergency lane. The officer stopped
12 the driver. During the search they found drugs. There was
13 a suppression motion made, and the Court looked at the Iowa
14 law, like I say, the Ohio law that states the same, a
15 vehicle shall be operated as nearly as practicable entirely
16 with in a single lane, shall not be moved from that lane
17 until an operator has determined it can be done so safely.

18 Relying on that law, the Tenth, the Tenth Circuit
19 states if we found -- we do not find that an isolated
20 incident of a vehicle crossing into an emergency lane on a
21 roadway is a violation of the law. In arriving at a
22 conclusion, the Court noted that the truck could of crossed
23 into the emergency lane for any number of reasons. Also
24 noted there's no evidence that the action created a danger
25 to any other traffic or there was any threat of collision.

1 Now, here we've got Mr. Falls being tailed or the
2 officer's beside him for two miles, and the complaint is
3 he's driving too slow originally, and then it evolves into a
4 lane violation or a fog line violation. And that, like I
5 say, it's not written out on the ticket. I'm not sure -- I
6 assume that that's where he's going with it. It's 56-5-1900
7 I believe it was and he testified that as to that being the,
8 the statute in which he felt like was violated.

9 Here, Your Honor, he didn't impede any other traffic.
10 There's no indication that he's a drunk drive. He doesn't
11 indicate he smells anything on him. He didn't smell
12 marijuana---

13 THE COURT: How would you know that until you stopped
14 him?

15 MR. THOMPSON: I'm sorry?

16 THE COURT: How would you know those facts until after
17 you stopped him?

18 MR. THOMPSON: He never goes into that is what I'm
19 saying. He never---

20 THE COURT: No, no, no. But the point I'm getting to
21 is the question's whether or not the stop was valid. That's
22 what we're talking about right now.

23 MR. THOMPSON: Right.

24 THE COURT: The initial stop. And if an officer
25 observes someone driving in such a, a fashion that raises

1 suspicion about several things, alcohol intoxication,
2 fatigue, things of that nature, how does an officer know
3 which of those issues might be involved until after he's
4 stopped the vehicle to check on the driver?

5 MR. THOMPSON: well, he doesn't know, Your Honor.

6 THE COURT: Okay.

7 MR. THOMPSON: And -- but he's, he's just an
8 investigator, investigatory stop based on Rolling Thunder,
9 in my opinion, Your Honor, he's gonna pull him over for any
10 little violation. And if that's the case, then we'll pull
11 over everybody that rides up and down the road because
12 everybody's gonna swerve in their lane some.

13 THE COURT: well, now, his testimony wasn't he didn't
14 swerve inside his lane. I think his testimony was that he
15 saw him on a couple of occasions cross the fog line.

16 MR. THOMPSON: Right.

17 THE COURT: And the case you're just reading from talks
18 about an isolated incident. I think that's probably once.
19 I think the testimony here was that it occurred, at least on
20 a couple of occasions, as he observed him driving up the
21 highway.

22 MR. THOMPSON: well, no other, other cases go into it
23 where they go over the line more than once, Your Honor, and
24 it's not -- they're not impeding traffic, and they're not
25 creating a hazard. He didn't, he didn't say there was any

1 hazard. In fact, he said he drove beside him for a good
2 while.

3 THE COURT: well, again, to be a violation of that
4 statute I will tend to agree with you, Mr. Thompson, that
5 there would have to be some danger to other cars on the road
6 or something of that nature. But if the issue or the
7 question is driver fatigue -- in other words, I read about
8 it every weekend. Somebody goes to sleep on an interstate
9 and hits a bridge abutment or something, killed, other
10 drivers are killed, cross the center median.

11 If the issue is whether or not a driver is fatigued or
12 under the influence, how in the world will a police officer
13 ever know what, what's going on without stopping the car and
14 checking the driver?

15 I'm not sure how I understand how that's gonna be
16 accomplished assuming you think an officer has the right to
17 do that. Maybe you think an officer doesn't have the right
18 to do that.

19 MR. THOMPSON: well, an officer has the right to pull
20 him over and, and investigate the reason why he's doing
21 that.

22 THE COURT: Yes, sir, that, that would be my
23 conclusion, but---

24 MR. THOMPSON: I would go back to my original argument
25 that the officers, he's lacks, being objectivity here

1 because we're in a Rolling Thunder situation where we're
2 looking for any little thing to pull people over, and I'm
3 saying he was -- it was his subjective belief that this
4 person -- he's got nothing to lose. This is all a fishing
5 expedition, and that's what -- the first thing he does when
6 he sees it cross over that fog line, Your Honor, then he's
7 not -- he's, he's pulling him over when I don't believe it's
8 reasonable that he did. That would be my argument there.

9 THE COURT: Oh, I understand your argument.

10 Go ahead.

11 MR. THOMPSON: Your Honor, that would be -- then I
12 would just say that, you know, because he didn't break the
13 law, he was not, he was not, he was not warranted in pulling
14 my client over. That would be the end of that argument
15 there.

16 THE COURT: Yes, sir.

17 MR. THOMPSON: The other argument will be the prolonged
18 detention.

19 You ready for that?

20 THE COURT: Yes, sir.

21 MR. THOMPSON: Okay. Your Honor?

22 THE COURT: Do you want to address the stop first?

23 SOLICITOR MCCARTY: I couldn't tell, Your Honor, when
24 you said yes, sir, I pointed at myself if you were pointing
25 at me.

1 THE COURT: No, no, he said -- he asked me if I wanted
2 him to go forward with his argument concerning the prolonged
3 detention, and I told him he could go ahead. We'll take it
4 all at one time and I'll let you respond.

5 Yes, Mr. Thompson, I'll hear from you concerning the
6 prolonged detention.

7 MR. THOMPSON: All right, Your Honor. Your Honor, I'll
8 go into some Fourth Amendment analysis. I mean I don't
9 think I need---

10 THE COURT: Well, I've, I've been up here listening and
11 I've read Tindall. I've read State versus Provet, I guess
12 how you, how you pronounce that.

13 It's Provet right or Provet?

14 SOLICITOR MCCARTY: Provet I believe, Your Honor.

15 THE COURT: Provet. Okay. And I don't know whether
16 it's a Chevrolet or Chevrolet. I'm not sure which one.

17 All right.

18 MR. THOMPSON: All right, Your Honor.

19 SOLICITOR MCCARTY: I have a copy.

20 Do you have a copy?

21 THE COURT: I've got them up on my computer. I'm
22 looking at them. But I'm familiar with that analysis. I
23 don't know that you need to repeat it to me. I've, I've
24 read both of those cases while we've been doing this this
25 afternoon.

1 MR. THOMPSON: Okay. All right, Your Honor. Well, you
2 know---

3 THE COURT: And I've, I've read them for some other
4 cases I had earlier. I mean I'm familiar with the argument.
5 It might of been one you were involved in, is that right?

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

7 THE COURT: Okay. All right. I'm somewhat familiar
8 with that.

9 MR. THOMPSON: Okay. well, I would argue under
10 Tindall, Your Honor, if you notice, and I don't have my
11 notes on it right there, but I'll jump to it, in Tindall the
12 Court basically says at the time that the officer informs
13 the driver that he's gonna be receiving a ticket or a
14 warning I think it was in the Tindall, and let me get that.
15 I want to make sure I'm not misspeaking.

16 THE COURT: They took the position that the purpose of
17 the stop was over as soon as the ticket would be or the
18 warning was completed.

19 MR. THOMPSON: well, I think Tindall says, goes a
20 little bit further and says that once the, the dispatcher---

21 THE COURT: Now, in Tindall I think questioning
22 continued after that point in time. I think the issue is
23 whether the questioning that raised the reasonable suspicion
24 --

25 MR. THOMPSON: Right.

1 THE COURT: -- occurred -- let me finish. Before --
2 occurred before or after the reason the stop had been
3 completed, and in Tindall the Court said that once the
4 reason for the stop had been completed, the questioning
5 continued for several minutes thereafter during which time
6 the officer developed his reasonable suspicion and in
7 Provet---

8 SOLICITOR MCCARTY: Provet I believe is the way you say
9 it.

10 THE COURT: In Provet, they said that the reasonable
11 suspicion had been developed prior to that time. In fact,
12 in Provet he was still waiting on a call back from the, the
13 dispatch as to registration and license information when he
14 then launched into the request for search. I think there's
15 a difference in the facts in Tindall and Provet.

16 MR. THOMPSON: Right. I was, I was, I was speaking
17 toward Tindall.

18 THE COURT: Yes, sir, Tindall, again, I read it and
19 maybe I'm wrong, you can tell me, that the suspicion was
20 developed by questioning that occurred after the purpose for
21 the stop had been completed.

22 MR. THOMPSON: Right, and the Court made it clear that
23 once the officer informed Tindall he would write him a
24 ticket, at this point the purpose of the stop was
25 accomplished except for issuing the warning ticket, and

1 then, however, rather than issue the ticket, the officer
2 continued to question Tindall for an additional six or seven
3 minutes.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: In our case here, he tells him, at two
6 different points, one point, I'm gonna write you a warning.

7 THE COURT: He did.

8 MR. THOMPSON: And then the officer goes through a
9 series of questions. And, in my opinion, fiddles around
10 with the, with the, the warning, not writing it, because
11 he's waiting on the drug dog to get there. So, he's
12 covering---

13 THE COURT: Well, the motivation could of been several
14 things, and it is true this officer testified your client
15 continued to engage him in conversation during that period
16 of time. Of course, your client doesn't have to say a word
17 to him. He's got a right to stand there and be silent.

18 MR. THOMPSON: I understand that, but, but I---

19 THE COURT: From what I viewed on the, on the video, it
20 was a mutual conversation that continued after that point in
21 time. It wasn't simply an officer asking questions and
22 getting answers. There seemed to be some information
23 volunteered by your client and that without questioning.

24 MR. THOMPSON: All right. Well -- and I think Tindall
25 says once that's established it goes into another analysis

1 on---

2 THE COURT: Well, now, but in Tindall, don't you agree
3 that they pretty much say though the reasonable suspicion
4 for continuing the stop after the purpose of the stop had
5 been completed was developed after the purpose for the stop
6 had been ended. And, in this case, the officer states, and,
7 of course, I'm sure you're gonna dispute it, you have a
8 right to dispute it, the, that his suspicion began when he
9 approached the car at the back window and it appeared
10 somebody -- that your client put something on the seat, and,
11 he, in fact, called for backup at that time, which would
12 tend, lead me to believe that he developed some suspicion at
13 that point in time.

14 MR. THOMPSON: Right.

15 THE COURT: Now, the question is whether it's
16 reasonable or not, and the question then becomes whether or
17 not it's sufficient to justify continued detention after the
18 purpose of the stop had been ended. That's where we are I
19 think.

20 MR. THOMPSON: Right, and that's where I'm saying that
21 Tindall says it goes from there, and the question then
22 becomes does he reasonably suspect that there's a serious
23 crime in effect, and then Tindall---

24 THE COURT: Possibility, possibility. In fact, they
25 don't even require probable cause. They call reasonable

1 suspicion---

2 MR. THOMPSON: Reasonable suspicion.

3 THE COURT: ---instead of probable cause.

4 MR. THOMPSON: And the Court goes into the analysis
5 that, at the point where the officer suspects, chose to
6 conclude the traffic stop despite the State -- chose not to
7 conclude the traffic stop, despite stated intention to issue
8 a ticket, instead to go into the questions, it looks at what
9 he had and knew.

10 Okay. It says at that point the officer ascertained
11 the following: Tindall was driving from Durham. Okay.
12 Durham is, is a drug source or a drug city for drugs much
13 like Atlanta here that Mr. McCarty was questioning the
14 officer on.

15 Secondly, to meet his brother. Okay. My client's
16 meeting a cousin. Then in Tindall did a felony stretch or
17 some type of thing where he raised his arm when he got out,
18 and then that he seemed nervous. And the Court found that
19 those facts did not provide the officer with reasonable
20 suspicion that a serious crime was afoot. Consequently
21 continued detention was illegal and the drugs discovered
22 were, should be suppressed, and that's the argument here.

23 At the time he calls in Officer English, he knows
24 just -- he knows he's got a North Carolina car or a tag. He
25 has a rental car and he's coming from Atlanta, and under,

1 and under Tindall---

2 THE COURT: And he has, and he has seen him possibly
3 place something under the front probably seat as he
4 approached the car.

5 MR. THOMPSON: And, and---

6 THE COURT: Now, let's don't leave anything out, Mr.
7 Thompson.

8 MR. THOMPSON: And in, in that respect, Your Honor, I
9 would go to a Wisconsin case. It's State v. Johnston, 2007.
10 W.E. 32.

11 Okay. In that case the officers testified that when
12 they, when he pulls up he sees the, the shoulders disappear,
13 their head goes almost under the seat as if they're putting
14 something under the seat. The Court looked at it and said
15 basically that when an officer's positioned behind the
16 vehicle, he might see the driver's head or shoulder move or
17 even momentarily disappear from view. Without more to
18 demonstrate that, under the totality of the circumstances,
19 an officer possesses specific or articulable facts
20 supporting reasonable suspicion that a person's dangerous
21 and may have immediate access to a weapon. Such an
22 observation does not justify significant intrusion upon a
23 person's liberty.

24 Were we to conclude that the behavior observed by the
25 officer here were sufficient to justify a protective search

1 of Johnston's person and his car, law enforcement would be
2 authorized to frisk any driver and search his car upon a
3 valid traffic stop whenever the driver reaches to get his
4 registration out of the, the glove compartment, a glass of
5 water---

6 THE COURT: Let me, let me ask you something. Don't
7 read the case to me. Answer, answer my question.

8 Did that case have any other factors of suspicion in it
9 other than what you just told me?

10 MR. THOMPSON: The others was when he got out of the
11 car he was, told him he had a bad leg and he, he resisted a
12 search of his person. He was pulled over earlier in the day
13 for an emissions violation. Later on the same police
14 officer sees him, assumes he is not remedied the violation,
15 pulls him over again because he fails to give a turn signal,
16 and then basically he finds out that the emissions issue
17 was, was cleared up, and then he, and then the part where he
18 goes in and looks or apparently goes down like he's putting
19 something under the seat, and I think it was a high crime
20 neighborhood too.

21 THE COURT: All right.

22 MR. THOMPSON: So, so, those -- the Court looked at
23 that and basically---

24 THE COURT: You know, the problem with all these cases,
25 Mr. Thompson, is that it depends on how a Court, at any

1 given time, and which Court, and which lawyers and judges
2 are looking at it, what constitutes a reasonable suspicion.

3 MR. THOMPSON: I agree.

4 THE COURT: And I'm not sure that Tindall case and
5 Provet case have really answered that question for us at
6 this point in time.

7 MR. THOMPSON: I agree, Your Honor, and I would go---

8 THE COURT: I don't know. There's no bright line test.

9 MR. THOMPSON: I understand that, and I'm asking the
10 Court to consider the tape, the officer's actions, I, what I
11 believe is obviously stalling, the fact that he is already
12 called for that dog. He testified he knows if that dog
13 shows up while he's writing that ticket he's got free reign
14 over that car, and he keeps, and he keeps stalling. He
15 doesn't write the ticket out. As I stated---

16 SOLICITOR MCCARTY: I don't think he's---

17 MR. THOMPSON: ---there's nine words---

18 SOLICITOR MCCARTY: If I can object briefly there, Your
19 Honor. I don't think Sergeant Wilson testified that he knew
20 that, once that dog showed up, that he would have free reign
21 over that car. I think Trooper Wilson testified that he
22 called Trooper English, who is his partner with the A.C.E.
23 Team, that they were up here for that purpose, that was the
24 initial radio call out.

25 THE COURT: And I think he also testified, and to be

1 fair, I think he testified that if the dog did nothing he
2 could do nothing --

3 SOLICITOR MCCARTY: Thank you.

4 THE COURT: -- on a free air sniff.

5 MR. THOMPSON: Right. But he did testify that the dog
6 would get a free air sniff if he was continuously writing,
7 if he was still writing that warning---

8 THE COURT: well, I don't know if he knows that or not.
9 Now, that's---

10 MR. THOMPSON: I think he testified that he, he was
11 aware that if he's writing that ticket and the dog show up,
12 that dog can -- the dog will be given access to the car.

13 THE COURT: For a free air sniff. Walk around it
14 without getting in the car.

15 MR. THOMPSON: Right, for a free air sniff.

16 THE COURT: Okay. And he indicated -- I think his
17 testimony was, just to be fair, that if the dog didn't make
18 any hit on the free air sniff, he's done.

19 MR. THOMPSON: well, right. But he didn't -- the dog
20 didn't show while he's writing that ticket.

21 THE COURT: I understand. I understand. I've heard
22 the facts. I understand all that.

23 MR. THOMPSON: Okay. Also---

24 THE COURT: I'm just trying to be fair to him. I think
25 you -- your statement was, Mr. Thompson, that if the dog

1 showed up he'd have free reign over the car and that's not
2 what he said.

3 MR. THOMPSON: Right. Well, a free air sniff is what I
4 should of -- okay.

5 THE COURT: Excuse me. Go ahead.

6 MR. THOMPSON: And then the officer also testified that
7 the dog was not trained to detect weapons. So that was
8 contrary---

9 THE COURT: I think he said he couldn't speculate on
10 that. He didn't know whether or not the dog had been
11 trained for that purpose. That was the testimony that I
12 heard.

13 MR. THOMPSON: Okay. So, he's, he's calling the dog
14 for what reason, to look for drugs, and if -- but he's
15 saying, he's saying this fear and his worry is that it's a
16 weapon.

17 THE COURT: All right. Mr. Thompson, you got five more
18 minutes.

19 MR. THOMPSON: All right, Your Honor. I'd go to that,
20 that case involving the, going down where the shoulders
21 disappeared, and then there's another case that basically
22 says that -- and in all -- continuing with the totality of
23 the circumstances, a surreptitious movement by a suspect in
24 a vehicle immediately after a traffic stop could be a
25 substantial factor. But it, but it does not necessarily

1 indicate that they are hiding a dangerous weapon, and then
2 it goes into the fact that a person could be putting
3 anything out there, getting a fast food wrapper up, getting
4 his registration out, putting his wallet---

5 THE COURT: I understand that that is one of the
6 factors to be considered and I'm looking at the totality of
7 the factors.

8 MR. THOMPSON: Right. And then I'll go---

9 THE COURT: I understand that.

10 MR. THOMPSON: I would go into the fact that my client
11 had his license returned to him. That is evidence on the
12 wallet, that he has, has his wallet there. He is putting
13 that back in there. The officer's returned his, his
14 license. He's told him that he'll be getting a warning, and
15 eventually does give him a warning, puts it in his hand, but
16 pulls it back, and he refuses to allow the search. My
17 argument would be that when he returns that license and told
18 him he was getting a warning, well, that ended that search
19 and that he had to have renewed reasonable suspicion --

20 THE COURT: I agree.

21 MR. THOMPSON: -- to, to detain him anew.

22 THE COURT: I agree.

23 MR. THOMPSON: Okay. And he's testified one time that
24 I think we weren't doing a totality of the evidence,
25 circumstances, that it turned into that when he was

1 cross-examined by Officer McCarty, I mean Solicitor McCarty.
2 Here, his reasonable suspicion on the first time when he
3 called somebody was basically that he had the car from
4 Atlanta, a rental, and that the, the reaching under the
5 seat, I'd argue that doesn't rise up to a level, under the
6 totality of the circumstances, to provide reasonable
7 suspicion to bring in a dog and search the car.

8 That being the case, him ending the search by telling
9 my client, his wording, want you to be safe out here, okay,
10 he says he could of walked away, he was gonna let him walk.
11 I don't think he meant to be safe walking up the road. He
12 meant safe driving. He had ended and concluded that stop,
13 and I would argue that his refusing to allow the car to be
14 searched is not reasonable suspicion that allows him to
15 search the car, and then he pulls that back, they sit on the
16 side of the road, and he's waiting for that dog.

17 THE COURT: I would agree that that would not, in and
18 of itself, constitute reasonable suspicion. The fact that
19 someone refuses to a consensual search.

20 MR. THOMPSON: Right. And I would -- that's my
21 argument on that, Your Honor.

22 So, you can look at it. He says it's one continuous
23 stop. I argue it's two. It's one stop, two detainments.
24 He returns those, that license and he's putting that warning
25 in his hand, putting that Avis rental agreement back in his

1 hand. In fact, that concludes it. Then he's got to have
2 something renewed, some renewed reasonable suspicion in
3 order to hold my client and he doesn't have it that, because
4 the refusal does not rise to that level, and I believe it's
5 the State's---

6 THE COURT: well, that's what we're here to talk about
7 is whether or not there was a reasonable suspicion at that
8 time---

9 MR. THOMPSON: Okay.

10 THE COURT: ---to continue the detainment.

11 MR. THOMPSON: In the State cases -- sorry for talking
12 over you. You gave me five minutes. I'm trying to hurry.

13 THE COURT: I'm trying to bring this to a close. We
14 been going all afternoon.

15 MR. THOMPSON: The State cases would be Williams, Your
16 Honor, I believe and Pichardo and Riveria maybe, and I can
17 provide the cites for those. But there's several case law,
18 Your Honor, where nervousness -- everybody's nervous. I
19 don't think that should have a bearing on---

20 THE COURT: He -- Mr. Thompson, let me explain to you.
21 If you take any of these factors, and isolate them in and of
22 themselves, both, both Tindall and Provet say the same
23 thing. Any one of those factors may not be enough.

24 MR. THOMPSON: Right.

25 THE COURT: That's the reason you look at them put

1 together, the totality of them. That's the way I'm suppose
2 to view it.

3 MR. THOMPSON: Okay.

4 THE COURT: I'm sure there may be a case and you've
5 quoted me one and I'm sure you've quoted it right that says
6 that reaching under your seat, in and of itself, is not
7 sufficient, and I understand there may be a case that says
8 nervousness in and of itself is not sufficient. I'm sure
9 those cases exist.

10 MR. THOMPSON: Right.

11 THE COURT: The question becomes, and I know what the
12 question is, looking at all the circumstances that existed
13 at that time, was there sufficient suspicion to warrant the
14 continued detention once the purpose for the stop had been
15 completed, and I know you take the position in this case it
16 wasn't. You certainly have every right to take that
17 position.

18 MR. THOMPSON: And in closing, Your Honor, I would say
19 that if you look at Tindall and I think it's People v. Cox
20 out of Illinois, they do list the four elements that the
21 officer provided, that he claimed gave him reasonable
22 suspicion, and couldn't---

23 THE COURT: Gave him what?

24 MR. THOMPSON: He -- the officer -- basically what the
25 officer knew and the Court's determined that it did not rise

1 to the level of reasonable suspicion and that was in Tindall
2 where the officer knew Tindall was driving to Durham, he was
3 going to see his brother, he was in a rental car, and he, he
4 seemed nervous, and he did the felony stretch.

5 THE COURT: All right. Thank you, sir.

6 MR. THOMPSON: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 SOLICITOR MCCARTY: I believe Mr. Moore's gonna handle
9 the first part.

10 THE COURT: All right. Mr. Moore, I'll hear from you
11 please, sir.

12 SOLICITOR MOORE: Yes. Yes, sir, briefly, I don't
13 think you issued a ruling on the first position, but it's
14 the State's position that the Department of Public Safety,
15 under the direction of the Highway Patrol, has statewide
16 jurisdiction. I mean there's no necessary agreement---

17 THE COURT: Well, let me ask you.

18 Are you still arguing the point about jurisdiction?

19 MR. THOMPSON: I am, Your Honor, but I thought you were
20 gonna rule on that.

21 THE COURT: Well, I can rule on it right now. I'm
22 gonna rule that he had the authority to be here.

23 MR. THOMPSON: Okay.

24 THE COURT: So, we don't need to have any argument
25 further. I kind, I kind of come to a conclusion on that

1 one.

2 MR. THOMPSON: Okay. Thank you.

3 THE COURT: All right. Go ahead.

4 SOLICITOR MOORE: Very briefly on the second one, Your
5 Honor, it's the State's position that an officer has the
6 right, if he believes any of the multitude of traffic
7 violations that occurred on the interstate were in his
8 jurisdiction, he has reasonable suspicion to believe that
9 traffic violation has happened in his presence, he can
10 initiate a traffic stop to further that investigation to
11 determine whether or not the actual traffic infraction
12 happened. If so, he can issue a warning ticket or even
13 issue a citation or a fine based off that.

14 The only testimony we have on the record is Trooper or
15 Sergeant Wilson's testimony that he saw at least two,
16 possibly three times, the defendant's vehicle cross the fog
17 line. Based off that, it's the State's position he had the
18 right and within his jurisdiction to make a stop on the
19 roadside, and based off his observation, we believe we've
20 met the preponderance of the evidence standard in a
21 suppression hearing to show that the stop was completely
22 lawful, and Mr. McCarty's gonna address the further
23 detention on the roadside.

24 THE COURT: Thank you.

25 SOLICITOR MCCARTY: If I may, Your Honor, I appreciate

1 the fact that you've already looked up the Provet case.

2 Your Honor, I believe that there's a couple points---

3 THE COURT: And Tindall. Tindall doesn't help you as
4 much as the other one does.

5 SOLICITOR MCCARTY: No, but I believe this case is
6 closed and more analogous to the issues that have occurred
7 in Provet as they appeared and are played out, but much
8 like---

9 THE COURT: well, do you agree with my analysis that
10 Tindall appears to be more of a questioning and development
11 of the suspicion after the purpose for the stop had been
12 ended?

13 SOLICITOR MCCARTY: It was, Your Honor, and, in fact, I
14 believe Tindall was one of the sticking points here was the
15 driver's license information had been returned to the
16 trooper in the situation in Tindall.

17 THE COURT: I think that's correct.

18 SOLICITOR MCCARTY: Whereas in here we do not have that
19 information as well as in Provet. It had not yet been done.
20 Your Honor, here we never had the driver's license come
21 back. Trooper Wilson testified that, during the course of
22 when he listened to the audio of this tape, he never heard
23 it come back over the radio, and, of course, he's somewhat
24 familiar with radio traffic and dispatch traffic. He would
25 probably recognize that. He said he didn't.

1 Your Honor, the questioning at times throughout the
2 whole event was deminimus. I know it took us three hours to
3 get through it. It's really only about ten, eleven minutes
4 start to finish. The whole thing, start to finish, even
5 from the point of the search, the initial stop to the
6 cocaine discovery, is 19 minutes and 17 seconds.

7 Your Honor, the last part, we're dealing with
8 reasonable suspicion. I appreciate the fact that you were
9 aware of Tindall and Provet. That saves me a substantial
10 amount of argument regarding those points, and I'll just ask
11 that the Court treat the situation and the factual situation
12 here sort of analogous to the facts that we had in Provet.

13 We had a situation here where Sergeant Wilson stopped
14 the car. Upon approach, it's a North Carolina car. It's a
15 rental vehicle. It's occupied one time. It's unusually
16 clean, based on his experience, with other motorists as
17 described. He finds out that the guy is coming from a
18 source city. In speaking with him further, we have travel
19 plans that are short. We have a story that doesn't seem to
20 be adding up. We have several points during conversing with
21 the defendant where his responses to the trooper's questions
22 cause him some moment of pause as if he has to think, as
23 Trooper Wilson described, for an answer. Not having it
24 readily available as if somebody who knew the story would be
25 able to tell it to you.

1 Your Honor, he describes a couple different physical
2 attributes the defendant has, the nervousness. I agree
3 whole heartedly with you that, in a vacuum, by themselves,
4 those things are quite innoxious. They don't necessarily
5 lend towards any type of reasonable suspicion, but under a
6 totality of the circumstances type situation it would.
7 Sergeant Wilson testified that the nervousness that he saw
8 exhibited by the defendant was above and beyond what he
9 normally encounters with motorist he's had in over a
10 thousand traffic stops in his career.

11 Your Honor, another physical indicator he saw with the,
12 the defendant was the presence of cotton mouth, and cotton
13 mouth, according to Trooper Wilson through his training and
14 experience, is an indicator of nervousness. Again, also the
15 physical attributes of the shaking of the hands,
16 nervousness, but also the physical mouth drying, asking the
17 trooper for water. Again, something uncommon to Trooper
18 Wilson's experience patrolling the roadways for the past
19 nine years.

20 You have -- give me one moment, Your Honor. I just
21 want to go over my list just one more time.

22 (Pause.)

23 SOLICITOR MCCARTY: Your Honor, finally, when we have
24 the initial part of this traffic stop going on, he had
25 testified he does see the defendant reach up under the seat

1 or in the front seat carrier. Ultimately we watched the
2 video further and that is where the cocaine is discovered in
3 the driver's side front door area, and that part of the
4 vehicle, and that's where it's ultimately concerned.

5 Trooper Wilson had previously been involved in the
6 officer involved shooting type situation concerned for his
7 safety primarily. Can't fault him for that. He has to be
8 worried about what the officer, what he just put there or
9 what he just removed from there.

10 Thank you, Your Honor.

11 THE COURT: Anything further?

12 MR. THOMPSON: Just mention to the Court, to the Court
13 that the State does not go into the renewed detention of, of
14 my client after the warning ticket is issued or that the
15 fact he's told -- like I said, under Tindall, when he's told
16 he's gonna be issued one, that's when the Court says he
17 needs to stop and does. And, like I said, you're right.
18 Tindall does go back and throw into another element, and
19 I'll wrap this up, the, the things he knew at the time he
20 contacted that backup officer were not sufficient to be
21 reasonable suspicion to search the car.

22 And then, like I say, my client's detained on the side
23 of the road while we wait for the dog basically because he
24 refused to allow the search, and that's the only thing he
25 could come up with after the fact that he withdrew that. I

1 mean he had put it, the warning in my client's hand, the
2 trooper did, Your Honor.

3 THE COURT: All right. Anything further?

4 SOLICITOR MCCARTY: Your Honor, I would only just argue
5 that all the reasonable suspicions involved here in the
6 original lawful stop. I was remiss in handing this case up.
7 It's a Fourth Circuit case. It just talked about the Court
8 should be able to give credit on, and I'll hand this to Mr.
9 Thompson, a Court should be able to give credit to an
10 officer's practical experience based on his daily
11 observations.

12 I think, based upon his involvement in the A.C.E. Team,
13 his nine years patrolling---

14 THE COURT: well, one of these cases even talks about
15 this tactical group that he's involved in and the special
16 training that they have.

17 SOLICITOR MCCARTY: Yes, sir.

18 THE COURT: One of the cases I read.

19 SOLICITOR MCCARTY: I believe Trooper Owens, as with
20 Provet, was also a member of the A.C.E. Team as well at one
21 time.

22 THE COURT: Yes, sir.

23 All right. well, I find that the facts in this case
24 are more akin to the case in Provet, in Provet. I find that
25 the reasonable suspicion was developed prior to the time of

1 the renewed or continued detention. I guess you can put it
2 either way. Therefore, I find that the officer had a
3 reasonable suspicion to continue the detention after the
4 traffic stop, and that the, therefore, the search, the free
5 air sniff would have been proper.

6 Now, any other matters we need to decide, Mr. Thompson?

7 MR. THOMPSON: Not at this time, Your Honor, and I
8 would -- can you clarify your ruling that it was developed
9 prior to the renewed detention, and, therefore, the---

10 THE COURT: I think there was a reasonable suspicion
11 that had been developed prior to the time that the warning
12 was handed and pulled back.

13 MR. THOMPSON: Right. Okay.

14 THE COURT: That had already developed at that point in
15 time, and I think it was a reasonable suspicion at that
16 point in time. Therefore, the continued detention under
17 Provet would of been warranted.

18 MR. THOMPSON: Right, but I just wanted clarification
19 on that, Your Honor.

20 THE COURT: That would be my finding in this case.

21 All right. Nine o'clock in the morning.

22 Let's see. Mr. Falls?

23 DEFENDANT: Yes, sir.

24 THE COURT: You're out on bond, is that right?

25 DEFENDANT: Yes, sir.

1 THE COURT: Your bond will continue until in the
2 morning. I will caution you that at nine o'clock in the
3 morning we'll resume the trial of your case. Should you
4 fail to appear at that time, you will be tried in your
5 absence and a bench warrant will be issued for your arrest.

6 Do you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right. Anything further before we
9 break for the evening, the State?

10 SOLICITOR MCCARTY: No, Your Honor. I was gonna ask
11 about the bond issue, but you addressed that.

12 THE COURT: Okay. Anything further, Mr. Thompson?

13 MR. THOMPSON: No, Your Honor.

14 THE COURT: All right. Nine o'clock in the morning.
15 Thank you, gentlemen.

16 SOLICITOR MCCARTY: Thank you, Your Honor.

17
18 (WHEREUPON, Court was in recess for the evening.)
19
20
21
22
23
24
25

1 Thursday, August 11th, 2011

2
3 THE COURT: All right. We're back on the record in the
4 case of The State of South Carolina versus Jeffrey Falls.

5 Is the State ready to proceed?

6 SOLICITOR MCCARTY: State is ready, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. THOMPSON: Yes, Your Honor.

9 THE COURT: Bring the jury in.

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

12 THE COURT: Good morning, ladies and gentlemen. I hope
13 everyone had a good evening, and if anyone had any problems
14 or difficulty in following my instructions concerning your
15 behavior in the overnight, please stand.

16 (No response.)

17 THE COURT: It appears that all jurors were able to
18 follow my directions.

19 I told you that when you returned to the courtroom you
20 would be taking an oath concerning your duties and
21 responsibilities as jurors in this case, and at this time,
22 Madam Clerk, I'd ask that you please swear the jury panel.

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

25 THE COURT: If there was any juror that failed or

1 refused to take the oath just administered by the clerk,
2 please stand.

3 (No response.)

4 THE COURT: It appears that all jurors have been sworn
5 concerning your responsibilities in this case.

6 Now, before we begin this trial, there's some matters
7 that I want to discuss with you so that perhaps we can
8 better understand the roles and responsibilities that each
9 of us has in the conducting of a trial.

10 Perhaps, for some of you, I think there's always
11 somebody on the jury who has never been in this position
12 before, whose never set on a jury where you were deciding a
13 question concerning the guilt or the innocence of someone
14 who's charged with a crime, and for those of you for whom
15 this is your first experience, probably most of what you
16 know about what goes on in courtrooms and how trials are
17 conducted and the responsibilities of jurors you might of
18 learned from television shows that you've watched or movies
19 that you've seen or books that you've read or that --
20 perhaps some from your school.

21 And while those are interesting forms of information, I
22 hope you realize that the people who write the scripts and
23 the story lines for those particular forms of information
24 take what they call literary license with what goes on in
25 the courtroom. In other words, for example, it never ceases

1 to amaze me that on television that you can have an event
2 occur, and the person arrested perhaps, and a trial occur,
3 and a verdict reached in the space of an hour and you still
4 have time for commercials. So, obviously they, they take
5 some license with what goes on in the courtrooms, and by
6 that I mean it's not really what happens in courtrooms, and
7 the reason for that is that those forms of information are
8 intended for your entertainment. I can assure you that the
9 trial that you're involved in today is intended for anything
10 but your entertainment.

11 What you're engaged in is what I believe to be a
12 fundamental part of our democracy where citizens are brought
13 before the court and placed in positions of authority as
14 jurors to make important decisions in the matters that go on
15 in our courtrooms and Court systems. You're engaged in a
16 search for the truth. We're engaged in an effort to see
17 that justice is done between the parties that are before
18 this Court, and you would perhaps, if I asked you, if I
19 asked you how, what would you expect a search for the truth
20 to be, you would expect it to be slow, you'd expect it to be
21 deliberate, and you'd expect it perhaps to be even
22 repetitive, and that's exactly what you're going to be
23 involved in, a slow, deliberate, and repetitive process
24 trying to see that justice is done between the parties that
25 are before the Court.

1 Again, I thanked you previously, I'll thank you again
2 for your willingness to come forward and accept the
3 responsibility that you've accepted in this case as jurors
4 in this case.

5 Now, this courtroom is also a place of honor and it's
6 dedicated to the preservation of citizens rights under the
7 Constitution of this state and the Constitution of the
8 United States. And I, as I've told you, we are operating
9 under a system of justice where you are important decision
10 makers in this, this courtroom and I'll go over your
11 responsibilities and the decisions that will be placed
12 before you during this trial.

13 Now, the attorneys that are involved in this case are
14 here to represent their client's interest. They're here to
15 present their cases before you in this matter. At -- but
16 first and foremost, those lawyers are also officers of this
17 Court. At some point in time they've appeared before some
18 tribunal in this state and they've taken an oath and part of
19 that oath includes an oath to assist you in your search for
20 the truth.

21 You can expect for, from them that they'll act in an
22 ethical profession, and a professional manner in the
23 presentation of their client's cases before you during this
24 trial. I'm going to remind each of you too that you've now
25 come before this Court and you've taken an oath to decide

1 this case based upon the law and the evidence, and, as such,
2 you're expected to act in a reasonable and a professional
3 and an ethical manner in the discharge of your duties as
4 jurors in this case.

5 Now, what I'm telling you now is not intended to serve
6 as a charge on the law later on once all the arguments have
7 been made and the evidence has been presented, and then I
8 will charge you concerning the law in this matter. What I
9 am trying to explain to you is the procedure that we'll
10 follow and also the responsibilities that we have in this
11 case. I've already gone over with you the indictment when
12 we went through jury selection. I won't read it to you
13 again now. I'll do that when I charge you concerning the
14 law.

15 But, as you're aware, the charge is trafficking in
16 cocaine in this case, and that indictment again is simply
17 the charge that brings the case before this Court and it
18 contains the allegations that the State has made against the
19 defendant in this case. It informs us, you and I, of the
20 charge to be tried. It informs the defendant of the charge
21 that's been lodged against him.

22 And the defendant has pled not guilty to that
23 indictment. That plea, under the law and the Constitution
24 of this state, places the burden of proof solely upon the
25 state in this case, and it's the State's duty to prove the

1 defendant's guilt by proof beyond a reasonable doubt.

2 It's your job, as jurors, at the close of this trial,
3 to determine whether or not the State has met that burden of
4 proof in this case. So, therefore, your purpose in this
5 case is to find and determine the facts in this case. Now,
6 the law and the Constitution of this state make the jury the
7 sole judges of the facts in this case.

8 Now, as the sole judges of the facts in this case, you
9 will be responsible to determine the truth of the evidence
10 that you've heard and the weight and the effect of the
11 evidence that you will hear during this trial. Now, the
12 same law that makes you the sole judges of the facts makes
13 me the sole judge of the law in this case.

14 Now, I will tell you that, as the presiding officer in
15 this trial, it will be my responsibility to perhaps rule on
16 questions of evidence or the appropriateness of questions
17 that might be asked during the trial, and I may have to
18 discuss some matters with the attorneys during that process.
19 I'm going to tell you now, and I'll tell you at the close of
20 the trial, please don't take from anything that I do as the
21 presiding officer in the discharge of my duties to indicate
22 to you in any manner or fashion whatsoever that I have an
23 opinion as to how you ought to determine the facts in this
24 case. You see, the law doesn't allow me an opinion on the
25 facts. You're the sole judges of the facts. So, I do not

1 have an opinion as to how you determine the facts in this
2 case.

3 But now the same law that makes you the sole judges of
4 the facts makes me, again, the sole judge of the law. The
5 law doesn't allow you to disagree with me concerning the law
6 just as I can't disagree with you concerning your
7 determination of the facts. Therefore, I will tell you that
8 if you came into this courtroom with any notion whatsoever
9 as to what the law is or if you have a belief as to what
10 the, the law ought to be, you should leave those notions
11 outside of the jury room. Because, under the oath that
12 you've taken, it's your responsibility to take the law
13 exactly as I give it to you at the close of the trial.
14 Then, then you would apply it to facts as you've determined
15 them to be, and, therefore, you should be in a position to
16 reach a just and a fair verdict in this case.

17 It's especially important that you, as jurors, perform
18 your duty as determiners of the facts conscientiously and
19 diligently because, under our law, ordinarily there's no
20 means by which an erroneous determination of facts that's
21 been made by a jury can ever be corrected.

22 Now, I've already told you and explained to you the
23 importance of you not -- keeping an open mind throughout the
24 trial, and I will emphasize that one more time. You've been
25 selected as jurors with fair and open minds on this case.

1 I'm gonna ask you not to begin any discussions about any
2 portions of this case now or at any break we have during
3 this trial because, again, I want you to keep an open mind.
4 I don't want you to begin to decide any issue because you're
5 going to hear arguments from counsel. You're going to hear
6 evidence during the trial, and then you'll hear more
7 arguments from counsel, and then you'll hear my charge on
8 the law. Until you have all of that information you don't
9 have all of the information in your possession with which to
10 begin to form decisions.

11 So, again, through the trial, accept the information
12 that you hear, listen to the testimony carefully, pay
13 attention to what goes on in the courtroom, don't begin
14 discussions until you are armed with all of the evidence and
15 all of the information that you'll need and then when I tell
16 you to begin your deliberations you should be in possession
17 of what you need to have in order to intelligently discuss
18 the issues that are involved in this case. So, again, don't
19 attempt to begin any discussions before that time, and,
20 again, under your oath, you have, you have taken an oath to
21 decide the case based on the evidence in this trial.

22 Now, let me explain to you what evidence is. Evidence
23 is testimony from witnesses that are sworn to tell the truth
24 that will, that will testify from this witness stand.
25 Evidence includes documents and other pieces of property

1 that come into the record of the case through that
2 testimony. So, I will tell you now that I'm going to allow
3 the attorneys to make arguments. I've told -- I've already
4 explained that to you. But the statements made by lawyers
5 at the beginning of the trial and the close of the trial,
6 they do not constitute evidence. At the beginning of the,
7 the trial, that's -- they'll explain to you perhaps what
8 they intend to prove, and at the close of trial they'll go
9 over the evidence that you've heard from their client's
10 perspective.

11 But, again, statements made by lawyers during the trial
12 do not constitute evidence, and, therefore, shouldn't be
13 considered by, by you in directly deciding guilt or
14 innocence. The evidence, again, will be the testimony that
15 you hear in the courtroom, and whatever comes into the
16 record through that testimony during the trial of the case.

17 For that reason, again, it would be -- it's important
18 that you not try to gather any information during any of our
19 breaks from any other source because there is no evidence in
20 this case outside of this courtroom. So, you should not try
21 to gather information from the Internet or any other source
22 if we have a break in this trial. That would be highly
23 improper. And I can assure you those sources of information
24 quite often contain information that is not, that, that is
25 not admissible under the rules of evidence that govern our

1 courts, and shouldn't, and shouldn't be considered by you in
2 reaching a verdict in your case.

3 Now, at the close of trial, I've already told you, it
4 will be your solemn responsibility to determine the guilt or
5 the innocence of the defendant in this case, and your
6 verdict must be based solely upon the record of this trial
7 and the evidence that is in that record.

8 Now, I've already told you that you are the sole judges
9 of the facts, and what that means also is that you will be
10 the sole judges of the credibility and believability of
11 witnesses who will testify during the trial, and that's what
12 credibility means. It means believability. And I'm going
13 to tell you to use your own good common sense in making that
14 determining. Each of you, everyday, make common sensical
15 decisions as to what you choose to believe and what you
16 choose not to believe. We do it everyday about the things
17 we hear, we see, or we read. And today's no different.
18 You'll be making that decision here in the courtroom about
19 the evidence that you'll hear.

20 Now, as the sole judges of the facts, you have the
21 right to believe all of what some witness may testify to,
22 part of what a witness testifies to. You also have the
23 right to believe none of what a witness has told you. You
24 have the right to believe one witness against the, all the
25 other or all the others against one because, again, you are

1 the sole judges of the facts. Therefore, you're the sole
2 judges of the credibility or believability of witnesses who
3 will testify during the trial.

4 Now, you have the right, using your common sense, to
5 use such factors in making that determination as to whether
6 or not a witness has a stake in the outcome of the case,
7 whether or not a witness has a bias or prejudice one way or
8 the other. You also can decide whether or not the witness
9 had the ability to know the facts about which the witness
10 testified, and perhaps, most importantly, observe the
11 witnesses as they testify, the way they speak, how they
12 deliver their testimony. Again, use your common sense and
13 make a decision as to the credibility and the believability
14 of the witnesses who testify, and then you should assign
15 whatever weight you think that testimony deserves in making
16 the decision in this case.

17 Now, I do not appoint a foreperson in this case until
18 the close of the case and I am charging you concerning the
19 law. And one reason I do that is because I want to
20 emphasize to a jury that no juror hearing this case has any
21 greater say than the others in making a decision because, in
22 the end, before a verdict is reached by a jury, it must be
23 unanimous. Each and every one of the 12 jurors who are
24 deliberating must agree upon the verdict before it becomes
25 the verdict of the jury. So, there's no great -- no, no

1 more important juror than any other juror. You all have an
2 equal say in the outcome of the case.

3 Now, when I appoint a foreperson, that person's job
4 will be to preside over the deliberations and send messages
5 to the Court if that's necessary during your deliberations,
6 ask questions, things of that nature. But that person has
7 no greater voice or say in the outcome of the case than any
8 other juror on the jury. So, I'll make that appointment at
9 the close of the trial.

10 Now, I want to be sure that I haven't violated anyone's
11 rights in my opening comments, does the State have any
12 objection to any of the opening comments?

13 SOLICITOR MCCARTY: None, Your Honor. Thank you.

14 THE COURT: Defense have any objections?

15 MR. THOMPSON: None, Your Honor.

16 THE COURT: All right. Now, ladies and gentlemen, I
17 have explained to you that the State has the only burden of
18 proof in this case because the defense, defendant, at this,
19 is presumed to be innocent. So, the State, since they have
20 the burden of proof, they're allowed to go first with their
21 opening statement, followed by the defense. Then, in the
22 presentation of evidence, the State will also go first in
23 presenting its evidence and then the defense has the right
24 to present any evidence they choose to present.

25 Once the evidence is all in, then the parties or the,

1 the attorneys will be allowed to sum up that evidence with a
2 closing argument. Thereafter I will charge you concerning
3 the law, and then I'll turn the case over to you for your
4 deliberations. So, that's the process that we'll go
5 through.

6 So, the State may begin with its opening statement.

7 Mr. McCarty.

8 SOLICITOR MCCARTY: May it please the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 SOLICITOR MCCARTY: Good morning.

12 I appreciate your patience so far. I know we started
13 this yesterday. You guys were brought in, we selected you
14 as a jury. We selected you based upon your ability to be
15 fair and impartial to both sides, the State and to Mr.
16 Thompson and his client, the defendant in this case, Jeffery
17 Bernard Falls.

18 I'll tell you from the outset, the testimony you'll
19 hear involves state troopers and it involves a traffic stop.
20 If you're like me, you've probably been involved in a
21 traffic stop. Maybe it's for speeding, maybe something
22 else. But I ask you to, as the judge said, as the judge
23 told you in his opening remarks, you're not to base in on
24 what you believe the law is, but what the law ought to be.
25 You're to follow the law as he will give it to you.

1 You're to listen to the testimony with a clear and open
2 mind. Don't have a previous bias or opinion based upon the
3 traffic stop you may of been involved, hopefully nobody was
4 involved in, but listen to what the troopers have to say
5 because I tell you they're professionals.

6 Mr. Thompson, I'm sure will attempt to tell you,
7 through the course of his cross-examinations of my witnesses
8 as well as even possibly in his closing argument, that this
9 was a fishing expedition by these troopers. They're out
10 just looking for anything. But I promise you, when you hear
11 their testimony, you'll find that it's different.

12 Trooper Wilson, who you'll hear from momentarily,
13 initiated this traffic stop against the defendant on
14 February 20th back in 2007. So, we're dealing with a case
15 that's a little bit old. Sometimes memories are a little
16 bit faded, but I think you'll find that he's very clear on
17 what happened there.

18 And I when said troopers are professionals, they are.
19 They're a professional just like a professional could be any
20 person, a doctor, a lawyer, any occupation, an accountant, a
21 teacher, whatever it may be. And within each one of those
22 professions, even in your own experience and your own work
23 lives, if you learn certain things that are unique to your
24 situation, that are unique to your occupation, and that's
25 what these troopers have, this experience, this training and

1 education that you'll hear about. Things that you and I
2 might think are a little innocuous. Don't mean anything.

3 To these troopers, they're signs. They're cues.
4 They're indicators. They're things to start to think about.

5 They're out on the roadside everyday. That pull people
6 over. They don't know who they are. They don't know where
7 they're coming from, what their temperament is, what their
8 histories are. They got to be aware. They got to be
9 thinking on their feet. They've got to be paying attention.
10 And in this case here, that's what you'll find Trooper
11 Wilson did during this entire course of this traffic stop
12 with the defendant.

13 Ultimately, because of Trooper Wilson's listening,
14 paying attention, responding to what the defendant told him,
15 Trooper Wilson was able to form a belief that something
16 other than just a traffic stop for which the defendant was
17 stopped for was going on with this. Ultimately you'll hear
18 from other trooper, Steven English who runs a K-9 dog, we
19 all have seen those maybe on TV or in the movie, he brings
20 the dog out. The dog alerted on the vehicle, and there was
21 a search of the vehicle.

22 When they did a search, a more thorough search of that
23 vehicle, they found, as you'll hear, .250 grams of powder
24 cocaine. That's a quarter of a kilo. We'll put it in those
25 kind of terms.

1 Ladies and gentlemen, this case will be short in terms
2 of number of witnesses that the States puts before you. I
3 anticipate only having to call three witnesses, but I don't
4 want you to misconstrue the brevity of my witnesses or the
5 number of them for the importance of this case.

6 The defendant is charged with trafficking in cocaine in
7 excess of 200 grams. Trafficking in this state can be based
8 on multi or trafficking in this state alone is based on
9 weight. It doesn't require that it necessarily be in a
10 vehicle traveling up and down the road. Trafficking can and
11 it doesn't apply in this situation, but trafficking can
12 apply to somebody sells something, brings it to somebody
13 else, makes something. It's all based upon the weight.
14 And, so, the defendant stands before you, and as the State
15 will argue, was in possession of more than 200 grams of
16 powder cocaine.

17 Ladies and gentlemen, I think you'll find that after
18 the conclusion of the State's presentation, with all its
19 witnesses, the testimony, the evidence that puts forward,
20 that at the end of this trial you'll be able to find proof
21 beyond a reasonable doubt that the defendant is guilty of
22 the crime of trafficking in powder cocaine more than 200
23 grams.

24 Thank you.

25 THE COURT: Mr. Thompson for the defense.

1 MR. THOMPSON: Please the Court, Your Honor?

2 May we approach briefly?

3 THE COURT: Yes, you may.

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

6 THE COURT: Mr. Thompson, you may proceed.

7 MR. THOMPSON: Please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. THOMPSON: Ladies and gentlemen, my name is Chris
10 Thompson, and I'm an attorney here in Spartanburg, South
11 Carolina. I'm representing Mr. Jeffrey Falls in this trial
12 here today.

13 I, like Mr. McCarty said, I appreciate your service.
14 You're gonna watch a videotape of a stop. The stop is part
15 of a multi-jurisdictional task force that we have here in
16 Spartanburg called Rolling Thunder, and Rolling Thunder is a
17 situation where police officers from various jurisdictions
18 come into Spartanburg County to enforce the law, and
19 basically there's -- they saturate I-26 and I-85, and at the
20 end of it, you got your paper Saturday, you saw the front
21 page. It said Thunder's Haul.

22 SOLICITOR MCCARTY: Your Honor, I'm gonna object. This
23 is a -- I think the offense in this case occurred back in
24 2006. We're talking about something that occurred in 2011
25 here with the newspaper.

1 THE COURT: Mr. Thompson, I don't know if that's
2 relevant in this particular case. I don't know if that
3 relates to what went on in '07 or not. I don't know the
4 scope of this particular, this particular reported incident
5 or that one. I'm gonna sustain the objection.

6 SOLICITOR MCCARTY: Thank you, Your Honor.

7 MR. THOMPSON: Your Honor, I would argue that it's a
8 continued yearly task force or sting.

9 THE COURT: Oh, I understand that. But each one stands
10 on its own, and I, again, do not know the scope of that
11 operation and it compares to the one that we're talking
12 about in this case, and it happened after this particular
13 incident. I've made my ruling. I'll sustain the objection.

14 MR. THOMPSON: Thank you, Your Honor.

15 THE COURT: You can talk about this, this particular
16 operation all you'd like.

17 MR. THOMPSON: Thank you, Your Honor.

18 Ladies and gentlemen, Rolling Thunder is a sting where
19 we saturate these highways and more people are pulled over
20 than normal, and my belief and I hope I can show you today
21 that it's a contest.

22 People do stuff that's wrong. You're gonna look at
23 this tape and you got to decide who did something wrong, my
24 client, somebody that rented a car before him, or this
25 gentleman over here. We been through all the legal

1 arguments yesterday. They will go through those again. But
2 it's gonna put it before you today.

3 I want you to take this evidence and do what the judge
4 said, use your common sense, and arrive at a decision, and
5 make that decision and make it be based on the evidence.
6 Make it be your decision.

7 Okay. Don't -- you know, don't be swayed by me, by
8 him, by anybody. Make your decision. When you do, I think
9 you're gonna find out that my client's not guilty of this
10 crime. You'll come back with a not guilty verdict. I
11 appreciate your service.

12 THE COURT: All right. At this time the State may call
13 its first witness.

14 SOLICITOR MCCARTY: Your Honor, if I can, I'm gonna --
15 I'd like to call Lieutenant Beth Stuart a little out of
16 order. She's got an appointment she's got to get to.

17 THE COURT: Certainly.

18 Come forward please, ma'am. Come to my left and be
19 sworn please. Right over here.

20 BETH STUART, having been first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please, ma'am, and once you're
23 seated I'd ask that you state your name.

24 WITNESS: Sure. Mary Elizabeth Stuart.

25 THE COURT: And, Mr. McCarty, it's your witness.

Beth Stuart - Direct examination
by Solicitor McCarty

1 SOLICITOR MCCARTY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR MCCARTY:

4 Q Lieutenant Stuart, if you will, tell the jury who you,
5 where you work, what you do please.

6 A Yes, I'm a forensic chemist with the Spartanburg County
7 Sheriff's Office, and I have been there about eight and a
8 half years now.

9 Q As a forensic chemist, what do you do with the
10 Spartanburg County Sheriff's Office?

11 A Sure. My main duties are drug analysis, fire debris
12 analysis, poison analysis, and meth labs.

13 Q In order to do those types of analysis, I'm sure you
14 have some type of educational training and background.

15 would you tell the jury what that consists of?

16 A Sure. I have a Bachelor's Degree of Science Degree in
17 Chemistry and a Bachelor's of Science in Biochemistry both
18 from the College of Charleston and I have a Master's Degree
19 in Chemistry from the University of South Carolina. I have
20 been to the law enforcement school down in Columbia. I've
21 also been to the DEA forensic chemist school, and I've been
22 to the DEA clandestine lab, essentially meth lab school.

23 I've also been to our instrumentation company, a
24 company that makes it, called Agilent. I've also been to
25 numerous classes with them as well as I am nationally

Beth Stuart - Direct examination
by Solicitor McCarty

1 certified by the paid American Board of Criminalist in all
2 areas of forensic science. Every year we're required to
3 have 40 hours of continuing training in our areas. And, so, I
4 have that.

5 Q Assuming, based on all that, you've had a chance to
6 analyze something that's considered a narcotic or narcotic
7 type substance in your time at the Sheriff's Office, is that
8 correct?

9 A I think I'm up to about 3,000 items now.

10 Q And those 3,000 items have included various drugs like
11 marijuana, cocaine, heroine, methamphetamine, pills?

12 A Yes.

13 SOLICITOR MCCARTY: Okay. Bear with me for just one
14 moment if you will please. I'm sorry.

15 THE COURT: Yes, sir.

16 (Pause.)

17 SOLICITOR MCCARTY: I thought I missed a question
18 there.

19 Lieutenant Stuart, have you ever been qualified as an
20 expert in State or Federal Courts?

21 A I have both, 28 times total.

22 SOLICITOR MCCARTY: All right. Your Honor, at this
23 time I would offer Lieutenant Stuart as an expert in the
24 field of chemistry and narcotics analysis.

25 THE COURT: Any objection?

1 MR. THOMPSON: No objection.

2 SOLICITOR McCARTY: Thank you.

3 THE COURT: Ladies and gentlemen, let me explain to you
4 what we're doing right now so that you maybe will understand
5 this process. Generally, under the rules of evidence,
6 witnesses who testify in Court are not allowed to state
7 opinions. They're allowed to testify concerning facts
8 within their knowledge, but not state opinions based on
9 those facts.

10 Now, that's the general rule. There's an exception
11 made for witnesses who are qualified as expert witnesses in
12 some field, science, calling, or profession, something of
13 that nature. And once a witness is designated, designated
14 as an expert witness, that witness has the right then to
15 state opinions within that field of expertise and also
16 allowed to state the basis or the reasons that, that they
17 have those opinions.

18 In that case this witness is being offered as an expert
19 in the forensic analysis of, of drugs and chemicals, and,
20 without objection, I'm going to qualify her as an expert
21 within that field. That means she'll be allowed to state
22 her opinions concerning matters within that field and the
23 reasons for those.

24 Now, at the close of the trial, and during my charge,
25 I'll discuss, in a, in a little more detail, how you, the

Beth Stuart - Direct examination
by Solicitor McCarty

1 jury, have the right to consider the testimony of experts
2 along with other witnesses. So, we'll talk about that again
3 at the close of the trial. But at this time I have
4 qualified the witness as an expert.

5 Mr. McCarty, you may proceed.

6 SOLICITOR MCCARTY: Thank you, Your Honor.

7 Q Lieutenant Stuart, you work in a lab type situation or
8 setting at the Sheriff's Office, am I correct?

9 A Yes, sir.

10 Q And that lab has certain controls and safeguards within
11 it for maybe processing of evidence or narcotics?

12 A Yes, sir.

13 SOLICITOR MCCARTY: If I can, if I have just one thing
14 we need to mark, Your Honor.

15 THE COURT: Yes, sir.

16 (WHEREUPON, a report was marked as State's Exhibit No.
17 3 for identification purposes only at this time.)

18 Q Lieutenant Stuart, when you or your laboratory receives
19 an item that's a, potentially a narcotic substance, what do
20 you do to insure that it hasn't been tampered with or messed
21 with or anything like that?

22 A Make sure it's sealed.

23 Q And it's sealed in what?

24 A Typically it's a B.E.S.T. Bag.

25 Q Okay. I want to show you, if I can -- if I may

Beth Stuart - Direct examination
by Solicitor McCarty

1 approach, approach the witness, Your Honor?

2 THE COURT: You may approach the witness.

3 Q Those are both State's 2 and No. 3, and ask you if
4 you'll look at those real quick.

5 Do you recognize the item in State's No. 2?

6 A I do. It's a B.E.S.T. Bag containing the items that
7 we're here today for. It has my initials all over it.

8 Q Okay. And actually we kind of got two bags there, am I
9 correct?

10 We got a B.E.S.T. Bag that's kind of a blue lined
11 baggy---

12 A Yes.

13 Q ---inside it?

14 A Yes.

15 Q And then you have a separate bag containing that, am I
16 correct?

17 A Yes.

18 Q Now, what about the B.E.S.T. Bag is it that you look
19 for to see if there's been anything happening to the bag,
20 altered or tampered, or anything like that?

21 A Sure. In our lab we have agencies from all over
22 Spartanburg County bring us drugs. So, we needed a uniform
23 way for everyone to submit the drugs to us so everybody
24 would do it the same, and that's why we use the B.E.S.T.
25 Bag, and B.E.S.T. is just an acronym for Best Evidence

1 Sample Testing. So, it's just a way for everybody to submit
2 it the same way.

3 Basically this bag you see in here with the blue lines,
4 you drop the evidence inside and then it has a seal across
5 the top. It's not tamper proof. If you want to get in it
6 you can. You just cut it, whatever. But you're gonna be
7 able to tell. If you try to rip the sides, the lines are
8 gonna distort. Obviously if you cut it you will be able to
9 tell. So, it's the way that we ensure that when the sample
10 comes to us that they are sealed properly.

11 When I go to pick something up I do an initial check to
12 make sure it's sealed, and then I take it back to the lab
13 with me, and then when I go to work the case, I actually
14 double-check to make sure it's sealed, check behind myself
15 again, and then I'll put my initials on the bag with the
16 date I cut it open and the letters okay so I know it was
17 sealed properly and there was no tampering before I ever
18 opened the bag.

19 Q And if it wasn't properly or if it wasn't squared away
20 like you anticipated, would you test that substance---

21 A I would not.

22 Q ---or analyze it?

23 A It would not be tested. The officer would be
24 contacted.

25 Q So, in the case here of the State of South Carolina

1 versus Jeffrey Bernard Falls in State's Exhibit No. 2,
2 that's the item you tested, am I correct?

3 A Yes, it is.

4 Q Were you able to -- how did you test the item?
5 what steps did you do to test that item?

6 A Sure. It's a two part test. The first part is what we
7 call a presumptive test, and it's basically a chemical color
8 change. If I drop chemicals on it, it will change colors
9 for me.

10 The second part of the test is an instrumental test and
11 it's what's called a confirmatory test. We use an
12 instrument called a GCMS. Basically it prints me out a
13 report that we call "a fingerprint" of that item. So, I did
14 both those tests on the item.

15 Q And are you able to, based upon those tests, form an
16 expert opinion as to what the substance is that you tested?

17 A Yes, it was cocaine.

18 Q Were you able to weigh the cocaine or weigh the amount
19 of cocaine and determine how many grams it was?

20 A Yes, it 254.12 grams.

21 Q 254.12.

22 And I'll make sure my math is correct, a kilo gram is a
23 thousand grams, am I correct?

24 A Yes.

25 Q So, this is a quarter of a kilo?

Beth Stuart - Direct examination
by Solicitor McCarty

- 1 A A little over, yes.
- 2 Q A little bit over.
- 3 Lieutenant Stuart, the papers there before you I have
- 4 marked as State's Exhibit No. 3.
- 5 will you look at that please?
- 6 Do you recognize that?
- 7 A Yes, sir.
- 8 Q What is that please?
- 9 A This is the lab report, copy of the lab report.
- 10 Q And that is a fair and accurate copy of it?
- 11 A Yes.
- 12 Q On the second page of the lab report, is that a copy of
- 13 just the qualifications here?
- 14 A Yes, my form with my qualifications and my signature
- 15 for the report.
- 16 Q And if I can ask you to look kind of down towards the
- 17 bottom of the page.
- 18 From whom or from where did you receive this evidence
- 19 that you tested?
- 20 A In this case I actually received the evidence directly
- 21 from Trooper Wilson.
- 22 Q Thank you.
- 23 And on what date was that received?
- 24 Do you recall?
- 25 A On February the 20th.

Beth Stuart - Direct examination
by Solicitor McCarty

1 Q Thank you.

2 Your Honor, at this time I'm not gonna offer State's
3 No. 1 or No. 2 at this point, but I would offer State's No.
4 3, the report from her analysis for admission into evidence.

5 THE COURT: Is there an objection?

6 MR. THOMPSON: That's the report, right?

7 THE COURT: That's what he indicated, yes.

8 MR. THOMPSON: Yes. No objection to that report.

9 THE COURT: All right. Without objection, that will
10 be -- is it already marked?

11 SOLICITOR MCCARTY: It is already marked, Your Honor.

12 THE COURT: All right. It will be admitted as marked
13 into the record.

14 (WHEREUPON, State's Exhibit No. 3 was received into
15 evidence at this time.)

16 THE COURT: You may proceed.

17 SOLICITOR MCCARTY: Your Honor, I believe that will be
18 all the questions I have for Lieutenant Stuart at this time.

19 THE COURT: Your witness, Mr. Thompson.

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q Ma'am, you said you received that directly from Officer
23 Wilson on the 20th of February?

24 A Yes, sir.

25 Q Okay. And what time of day was that?

Beth Stuart - Cross-examination
by Mr. Thompson

1 A I don't mark the time. Just the date.

2 Q But that would of been during the day?

3 You worked the day shift back or night shift?

4 A With it being actually during Rolling Thunder, I would
5 of been working all hours whenever they needed me.

6 Q Okay. And I have no further questions.

7 THE COURT: Anything further?

8 SOLICITOR MCCARTY: No, Your Honor. I'd ask that
9 Lieutenant Stuart be excused please.

10 MR. THOMPSON: No objection.

11 THE COURT: Any objection?

12 MR. THOMPSON: None.

13 THE COURT: Ma'am, you may step down. You're free to
14 go if you'd like. I'm sure you have other things to do.

15 WITNESS: Yes, sir.

16 SOLICITOR MCCARTY: Thank you, Your Honor.

17 Your Honor, the State---

18 THE COURT: You may call your next witness.

19 SOLICITOR MCCARTY: Thank you. I'm sorry.

20 The State would call Trooper Darren Wilson to the
21 stand.

22 THE COURT: Sir, if you'll come forward to my left and
23 be sworn.

24 D.G. WILSON, having been first duly
25 sworn, testified as follows:

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1 THE COURT: Have a seat, and once you're seated, state
2 your name for the record.

3 WITNESS: Darren Wilson.

4 THE COURT: Mr. McCarty, your witness.

5 SOLICITOR MCCARTY: Thank you, Your Honor. If I may
6 just have a moment here to remove these and put them back.

7 THE COURT: I understand.

8 DIRECT EXAMINATION

9 BY SOLICITOR MCCARTY:

10 Q Sergeant Wilson, just by way of introduction, if you
11 will tell the jury who you are and where do you work and
12 what you do.

13 A My name is Darren Wilson. I work for the South
14 Carolina Highway Patrol. I've been with them for nine
15 years, and I am a supervisor with the Aggressive Criminal
16 Enforcement Team.

17 Q And the acronym for the Aggressive Criminal Enforcement
18 is the A.C.E. Team, is that correct?

19 A Stands for A.C.E.

20 Q What exactly does the A.C.E. Team do?

21 A We patrol the highways enforcing traffic laws, trying
22 to reduce fatalities throughout the state. Also controlling
23 the flow of illegal drugs, illegal contraband, fugitives,
24 terrorists, things of that nature coming and throughout our
25 state.

1 Q Trooper Wilson or Sergeant Wilson, during the course of
2 your nine years with the Highway Patrol, have you received
3 any type of training or education in traffic interdiction or
4 drug enforcement interdiction, those types of issues?

5 A Yes, sir, I've been to numerous classes. Desert Snow,
6 which is the national class. I attended that in Las Vegas.
7 NCEA, National Criminal Enforcement Association, attended
8 several different seminars and trainings with them and
9 numerous other trainings in Georgia, North Carolina, you
10 know, just throughout the United States.

11 Q In these trainings, what, what types of issues do you
12 focus on?

13 Can you explain to the jury a little bit more so
14 they'll understand where you're coming from, your
15 background, your ability to reason things out during traffic
16 stops please?

17 A In the field of interdiction, we learn the trends, what
18 is, what is normally seen when someone is trafficking or
19 carrying illegal drugs, contraband. Those things that I
20 spoke of earlier. We learned indicators or items of
21 interest like how they're concealed, numerous, numerous
22 things.

23 Q You're taught about or are you taught rather about the
24 physical characteristics of suspects in roadways on the
25 roadside stop?

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by Solicitor McCarty

1 A Yes, we also taught interview techniques, how to listen
2 to what's being said, how it's being said, what we see,
3 hear -- we use our five senses. What he see, hear, and
4 smell.

5 Q Trooper Wilson, how many times would you estimate
6 you've conducted a traffic stop with your times in the
7 Highway Patrol?

8 A Thousands.

9 Q Over the course of nine years?

10 A Yes, sir.

11 Q And have all of those stops resulted in a search of a
12 vehicle or a traffic stop or a traffic ticket being issued?

13 A They have not.

14 Q So, you've issued some folks just a warning or just a
15 courtesy reminder?

16 A Yes, sir.

17 Q All right. Trooper Wilson, let me ask you about -- do
18 you have any other law enforcement experience other than
19 with the trooper, about being a trooper?

20 Do you have any prior military experience?

21 A Yes, sir, I worked five years with Clarendon County
22 Sheriff's Department. Also served 20 years in the military,
23 and I am retired at this point from the Army.

24 Q Sergeant Wilson, do you have -- have you ever been
25 recognized by either the Troopers Association or anyone else

1 for any type of award for your service or your duty as a
2 trooper?

3 A Yes, sir, in 2003 I was Trooper of the Year for the
4 State of South Carolina. In 2004 I was National Trooper of
5 the Year for the entire nation to include Canada. At that
6 point I was the first and only trooper and still is the only
7 trooper ever in South Carolina to be given that honor.

8 Q Trooper Wilson, I want to take you back to
9 February 20th, 2007.

10 On that date you were involved with a traffic stop
11 involving the defendant, Jeffrey Bernard Falls, am I
12 correct?

13 THE COURT: Yes, sir.

14 Q And Mr. Falls who we're speaking of, he's the gentleman
15 sitting next to Mr. Thompson in the courtroom?

16 A Yes, sir.

17 Q Trooper, were you on patrol in Spartanburg County on
18 that day?

19 A I was.

20 Q Now, is Spartanburg County your normal area of patrol?
21 Is it some place you find yourself day in and day out?

22 A No, sir.

23 Q Why were in, you here in Spartanburg County?

24 A Operation Rolling Thunder.

25 Q Okay. Now, as a trooper, maybe some folks on the jury

1 know this or not, but do you have statewide jurisdiction to
2 enforce traffic offenses and criminal offenses across the
3 State?

4 A I do. I can enforce any laws anywhere in the State of
5 South Carolina.

6 Q And were you invited up here, as a member of the A.C.E.
7 Team, for traffic interdiction and traffic safety for that
8 purpose?

9 A I was.

10 Q What were the primary goals during the Rolling Thunder
11 as you understood it?

12 A The primary goal is to reduce fatalities here in
13 Spartanburg County and to reduce the number of DUI's.

14 Q And that's done through a heavy enforcement, heavy
15 saturation, as Mr. Thompson said, of law enforcement on the
16 roadways, am I correct?

17 A Yes, sir.

18 Q Has it been your experience, when people are traveling
19 up and down the roadway, they see a police officer or a
20 cruiser and they tend to slow down, pay a little bit more
21 attention about what they're doing?

22 A Absolutely. Officer presence is a deterrence.

23 Q Now, on the night of February 20th, 2007, when you
24 were patrolling in Spartanburg County, where did you come
25 into contact with Mr. Falls?

1 A On Interstate 20 -- excuse me. Interstate 85 around
2 the 62-mile marker north.

3 Q The 62-mile marker going north, that's approaching the
4 City of Duncan, Highway 290 area, am I correct?

5 A Yes, sir, Exit 63.

6 Q What about Mr. Falls drew your attention or caused you
7 to be involved in this incident with him?

8 A In that portion, I believe it's a three -- that portion
9 of the interstate is three lanes. I was in the center lane,
10 and he was in the far right lane. As we were traveling down
11 the interstate, I observed the vehicle go across the white
12 fog line, the solid white line to right of the interstate.
13 I observed the vehicle go across that line on several
14 occasions meaning the right side of his vehicle went
15 completely off the roadway.

16 Q What about traveling off the side of the roadway or
17 exiting your lane of travel like that causes you or what
18 about that would cause you to be concerned or suspicious?

19 A It could be an indication of someone driving under the
20 influence, someone driving fatigued, sleepy, or somebody
21 having some type of medical condition.

22 Q Now, when you talk about fatigued, when you witnessed
23 this, when you witnessed the defendant driving in that
24 manner, approximately what time of the day was it?

25 A This was 9:07 at night.

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by Solicitor McCarty

1 Q So, you---

2 A Around about.

3 Q Approximately nine o'clock at night?

4 A Yes, sir.

5 Q February 20th?

6 A Yes, sir.

7 Q Dark outside?

8 A Yes, sir.

9 Q Everybody have their headlights on?

10 A Yes, sir.

11 Q All right. Did you initiate a traffic stop on the
12 defendant?

13 A I did.

14 Q And what do we mean by initiating a traffic stop?

15 A Meaning that I activated my emergency equipment at the
16 point with my blue lights without the siren.

17 Q Did the defendant pull over pretty much immediately
18 thereafter?

19 A He did.

20 Q Trooper Wilson, let me ask you about this incident.

21 Did your car have a -- was it equipped with a video
22 recording device?

23 A Yes, it was.

24 Q Now, is that device activated -- can you activate it
25 manually or does it come on when you turn your blue lights

1 on?

2 A I can activate it manually by mashing a record button,
3 but once you turn your blue lights on it automatically comes
4 on.

5 Q Now, do you have any control over that camera as to how
6 it's operated once the blue lights are on as to can you cut
7 it off, pause it, or do things with it?

8 A I can not pause it, but I can stop recording.

9 Q During the course of this traffic stop with Mr. Falls,
10 from the point where you initiated the traffic stop till the
11 end, did you turn off the video or turn it, cut it off at
12 any point?

13 A I did not.

14 Q Have you seen the videotape prior to your testimony
15 today in trial?

16 A From what I seen yesterday.

17 Q All right. Trooper Wilson, does that video or that DVD
18 that I'm asking you about, does that fairly and accurately
19 represent the event that occurred on February 20th, 2007?

20 A Yes, sir.

21 Q Your Honor -- if I may show you what's marked as
22 State's Exhibit No. 1.

23 Trooper, is that the video equipment that we're talking
24 about?

25 A Yes, sir.

1 SOLICITOR MCCARTY: Your Honor, at this time I ask that
2 State's No. 1 be admitted for purposes of evidence.

3 THE COURT: Any objection?

4 MR. THOMPSON: I'd like to hear a little bit about the
5 chain of custody on it, on the video.

6 THE COURT: You can ask about that. I'm not sure that
7 that's required, but I'll---

8 Q Well, I'll ask you this. Trooper, is the video -- how
9 is it maintained in your vehicle?

10 How is it recorded?

11 Did you have---

12 A It's recorded on VHS, which is in a locked box stored
13 in the trunk.

14 Q Who has access to that lock box?

15 A I do.

16 Q Are you the only person who has that access?

17 A Yes, sir.

18 Q When you have an incident like this where something has
19 been recorded, what do you do with that videotape?

20 A I keep the original for evidence and make a working
21 copy of the tape.

22 Q So, the original has been placed into evidence and this
23 is a copy of that original tape?

24 A Yes, it is stored and put in the district.

25 Q Okay. And, so, this copy that, that we're looking at,

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1 talking about today marked as State's Exhibit No. 1, that's
2 a fair and accurate copy of what you have recorded on VHS
3 cassette?

4 A Yes, sir.

5 Q It hasn't been altered or amended in anyway?

6 A No, sir.

7 Q Has it been edited for time or shortened or lengthened?

8 A No, sir.

9 SOLICITOR MCCARTY: All right. Your Honor, that would
10 be, as far as my offer on the tape.

11 THE COURT: Any objection, Mr. Thompson?

12 MR. THOMPSON: None.

13 THE COURT: All right. It will be admitted as marked
14 as State's No. 1.

15 (WHEREUPON, State's Exhibit No. 1 was received into
16 evidence at this time.)

17 SOLICITOR MCCARTY: Thank you.

18 Your Honor, may I publish to the jury at this time?

19 THE COURT: You may.

20 SOLICITOR MCCARTY: Thank you.

21 THE COURT: Now, ladies and gentlemen, what we mean by
22 publish, that's a long legal phrase for we're gonna show it
23 to you. That's what that means.

24 Mr. McCarty, can you bring it out just a little
25 further?

1 I think they're having a hard time getting where they
2 can see it. I notice some people kind of straining around a
3 little bit.

4 All right. If anybody has any difficulty I want you to
5 let me know. I want you to be able to see.

6 Q Trooper, can you also see the video?

7 A Yes, sir.

8 SOLICITOR MCCARTY: Your Honor, may I be permitted to
9 stand up by the trooper while we're doing this?

10 THE COURT: Oh, yes, sir.

11 SOLICITOR MCCARTY: Thank you.

12 THE COURT: Is it okay if we lower the lights a little?

13 (WHEREUPON, a portion of the videotape was played for
14 the jury at this time.)

15 Q Trooper, I'm gonna pause it right there. I want to ask
16 some questions as we go through this video about some, about
17 the course of this traffic stop you have.

18 Right here we see that you stopped the defendant, am I
19 correct?

20 A Yes, sir.

21 Q And this is his vehicle.

22 would you describe to the jury what that vehicle is?

23 A It's a -- excuse me just a second. It's a Lincoln.

24 Q Lincoln.

25 what type of tag does that have on it?

1 A North---

2 Q Is it South Carolina?

3 A North Carolina.

4 Q North Carolina registered vehicle.

5 Now, is there anything, when you make this traffic
6 stop, about where the defendant stopped on the roadway that
7 you're looking for as a state trooper based on your training
8 and experience?

9 MR. THOMPSON: Your Honor, I'm gonna object to the
10 leading nature of this. A lot of it is immaterial, but
11 we're getting to the point where---

12 THE COURT: Well, now, that question was is there
13 anything -- I don't find that last question to suggest an
14 answer. So, I'll allow the question.

15 SOLICITOR MCCARTY: Thank you.

16 Trooper, would you like for me to ask it again?

17 A Yes, sir.

18 Q Is there anything, based on your training and
19 experience, about the way or the nature in which the
20 defendant stopped his vehicle or positioned his vehicle that
21 became suspicious or, or alerted to you anything?

22 A Well, he stopped right on the white fog line that I was
23 speaking about earlier.

24 Q Position, position -- when you say stop on the white
25 fog line, do you mean positioned the driver's side of the,

1 the vehicle on the white, on the white fog line?

2 A Yes, sir, making it pretty much impossible for me to
3 walk up to the driver's side, not unless I was to step out
4 into traffic.

5 Q And why is that important in your training, experience,
6 and education on this?

7 A Through my training and experience we're taught that if
8 a person pulls up to the white line, that's what we call
9 white lining, they're trying to keep you from that side of
10 the vehicle. There's some reason they don't want you on
11 that side of the vehicle. They're trying to create distance
12 between myself and that side of the vehicle.

13 Q Now, trooper, we can see you kind of leaned into the
14 window of the passenger side talking.

15 At this point of the stop, what information have you
16 gathered from the defendant or from his vehicle?

17 A Well, upon my getting out of my car and my initial
18 approach, I was looking at the vehicle. I was noticing that
19 it was unusually clean. As I got up to the back window
20 there, viewing inside of the vehicle, I could see no items
21 in the vehicle. It was unusually clean. There was nothing
22 inside the vehicle that could be seen.

23 Q And when you say unusually clean, does that mean that
24 the vehicle didn't look like it was lived in so to speak?

25 A Correct.

1 Q And based on your experience with thousands of traffic
2 stops, do -- was this vehicle different from those other
3 vehicles you've stopped in the past?

4 A Yes, it did not match what I normally see from the
5 normal motoring public.

6 Q What about the defendant, at this point, were you able
7 to notice?

8 A His attire, what he was wearing.

9 Q What was he wearing, do you recall?

10 A A work uniform meaning a pair of blue pants, work
11 shirt, and a work jacket. I believe it had a name tag on
12 it.

13 Q And we're talking about approximately nine o'clock at
14 night?

15 A Yes, sir.

16 Q We heard you say something to the effect of you're just
17 driving a little slow, just checking on you.

18 Did the defendant respond to that statement to you?

19 A I believe he said he was just, just getting off work.

20 Q Just getting off of work?

21 A Yes, sir.

22 Q Now, did he tell you maybe where he had been from or
23 where he was going?

24 A Said he was coming from Atlanta.

25 Q So, at this point you have the defendant telling you

1 that he just got of work, he's coming from Atlanta?

2 A Yes, sir.

3 Q And the tag on the car is from North Carolina, am I
4 correct?

5 A Yes, sir.

6 Q Add we're dealing with at nine o'clock at night.

7 Now, has the defendant, at this point, handed you his
8 driver's license and registration or do we need to watch
9 just a few seconds more?

10 A I think this is at the point that he's getting ready to
11 pass me his license.

12 (WHEREUPON, another portion of the video was played for
13 the jury at this time.)

14 Q And, Trooper Wilson, now we just heard North Carolina
15 3-6-0-7-1-9 and you've repeated that number. That appears
16 on the tape in State's Exhibit No. 1 at 2101:37, 9:01 and 37
17 seconds according to the way your camera records the time,
18 am I correct?

19 A Yes, sir.

20 Q What was that you had just said to -- and I'm assuming
21 you just called dispatch, is that correct?

22 A Yes, I was talking with the radio dispatcher and I was
23 checking his driver's license. That was his driver's
24 license number that was being said over the radio.

25 Q So, he had previously given you his driver's license

1 and you asked him to pull on up?

2 A Yes, sir.

3 Q And why did you ask him to pull on up?

4 A For safety reasons. You saw me take a look back. I'm
5 not sure what happened back there. But that was a bad
6 location to be in up next to that guardrail. I just wanted
7 to get him in a little bit more open space.

8 Q Pinning yourself between the guardrail and his vehicle?

9 A Yes, sir.

10 Q At -- when the defendant handed you his license and
11 registration on the vehicle, was there anything you noticed
12 about the defendant?

13 A Yes.

14 MR. THOMPSON: Your Honor, I object to leading, Your
15 Honor.

16 THE COURT: He asked if there was anything he noticed.
17 I don't find that to suggest an answer. Overruled.

18 Q Was there anything about the defendant that you noticed
19 as he handed you his license and registration?

20 A Through my training and also we're taught don't
21 immediately reach in and take the license. Let them reach
22 out to you just so they hand it to you and stare at them for
23 a while, and as he done that, as he handed me his license, I
24 could see that his hand was shaking uncontrollably. Just
25 visually shaking.

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1 Q Is it normal for a motorist to be nervous during the
2 course of a traffic stop?

3 A Initially, yes.

4 Q And you've encountered that nervousness in other
5 traffic stops?

6 A Numerous times.

7 Q Would you, comparing the defendant's nervousness as you
8 saw it on February 20th, 2207, was it more or less
9 compared to other motorist you've encountered?

10 A He was more nervous than any normal traffic stop.

11 Q Was there anything about the registration of this
12 vehicle that also caught your eye?

13 A He did not actually have the registration. It was a
14 rental agreement that was due back the following day.

15 Q So, at this point you've learned now that the car is
16 also a rental car?

17 A Yes, sir.

18 Q Trooper Wilson, based on your training and experience,
19 is there anything odd about a rental car from what you have
20 learned in your training and experience that would cause you
21 to begin to think about that scenario or that situation?

22 A Yes, sir, we're also taught that people involved in
23 criminal activity will also rent a vehicle because, in fear
24 of having their vehicle seized if they're caught with large
25 amounts, large amounts of contraband.

1 Q All right. I'm gonna continue to play the video on a
2 little bit further.

3 (WHEREUPON, another portion of the video was played for
4 the jury at this time.)

5 Q Trooper, from right there it sounded like you said
6 something as you approached the vehicle, did you?

7 A Yes, sir, I was calling for my partner, Lance Corporal
8 English.

9 Q Why were you calling for your partner at this point?

10 A As I was reapproaching the vehicle, I noticed that
11 Mr. Falls was leaning forward appearing to be placing
12 something under the front seat driver's side.

13 Q Why would that be concerning to you?

14 A I did not know if he had any weapons, whether or not
15 he's trying to hide a weapon, or what he was trying to do.

16 Q Trooper, do you have any personal experience involving
17 motorist who have been involved with weapons?

18 A Yes, sir, December the 27th of 2003 I had a fellow
19 trooper and friend who stopped a vehicle for the very same
20 reason, failing to maintain lane, walked up to the vehicle
21 and was immediately shot for no apparent reason. I, in
22 turn, responded to the scene and was confronted by the guy
23 who shot him and I ended up shooting that guy five times.
24 Turns out he had just recently stabbed his wife several
25 times, stolen the car, and stolen the handgun.

1 Q So, for you it's primarily officer safety?

2 A Yes, sir, absolutely.

3 Q All right. Trooper, I want to continue to play on just
4 a little bit more.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q Also there you explained to the defendant at that point
8 that you were gonna write him a warning, am I correct?

9 A Yes, sir.

10 Q And then it seemed the defendant responded to you.
11 What, what did -- as you recall, what did he say to
12 you?

13 A He was saying that the trucks were bothering him.

14 Q Did you ask him about, about that question?

15 A Don't -- no, sir.

16 Q Is that type of response or, or chatter, is that, in
17 your training and experience, taught you anything or is
18 there anything about that type of situation that is a pure
19 indicator for you?

20 A Yes, sir, we're also taught that when people just start
21 rambling on about, for no apparent reason or answering
22 questions that are not asked, they're trying to distract you
23 or to, I guess, get your mind off what you're focused on.

24 Q Continue to play on.

25 (WHEREUPON, another portion of the video was played for

1 the jury at this time.)

2 I think we heard you ask him about whether or not he
3 had worked that day, am I correct?

4 A Yes, sir.

5 Q Do you recall how he responded?

6 A He began saying something about he owned a wrecker
7 service of some type of towing service.

8 Q Was that the question you had asked him?

9 A No, sir.

10 Q Did you reask him again if he had worked?

11 A I did.

12 Q And---

13 A I asked him again if he worked and he stated that he
14 was coming from his cousin's house in Atlanta.

15 Q You asked him about coming from his cousin's house in
16 Atlanta.

17 Did you ask him how long been, he had been at his
18 cousin's house in Atlanta?

19 A Yes, sir.

20 Q How did Mr. Falls respond to that question?

21 A When, when I asked him how long he stayed at Atlanta,
22 he looked away from me for a brief moment and paused and
23 then he looked back and then he stated, stated for a few
24 hours.

25 Q Now, what about that is, in your experience and your

1 training, something to be looking for or a cue?

2 A It's, it's not normal to find someone traveling a long
3 distance just to go stay for a few hours anywhere a long
4 distance.

5 Q Is there anything about coming from Atlanta being a,
6 being, again, on, based on your training and experience as
7 you've learned about the City of Atlanta, is that something
8 you're looking for or listening for?

9 A Yes, sir, I'm taught, through DEA and other law
10 enforcement entities, that Atlanta is a source city for
11 narcotics.

12 Q Source city being?

13 A Being a major hub. They're large amounts of drugs
14 coming in and out of Atlanta.

15 Q So, at this point in the traffic stop we're about five
16 approximately minutes into it. You've learned that the
17 defendant has a North Carolina driver's license. Said he
18 had worked.

19 Am I correct?

20 A Yes, sir.

21 Q That he'd been to his cousin's house in Atlanta and is
22 on his way back, am I correct?

23 A Yes, sir.

24 Q Through the information that you've gathered at this
25 point, and not to mention too when you approached the

1 vehicle you saw him reaching up under the seat apparently,
2 am I correct?

3 A Yes, sir.

4 Q So, at this point are you beginning to listen more
5 attentively to what he's trying to tell you about things or,
6 or we just going on business as usual?

7 A I'm listening to what's being said and my suspicions
8 are rising even more that something's just not right about
9 this stop. It's more than just my normal traffic stop.

10 Q Play it a little bit more please.

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

13 Q It's a little bit hard to hear I know. We can tell
14 Interstate 85's rather busy, am I right?

15 A Yes, sir.

16 Q And, and those trucks we hear distorting the sound on
17 this video, are they distorting how you're hearing things on
18 the interstate as well?

19 A Yes, I'm having some trouble hearing what I'm saying,
20 what he's saying.

21 Q Are you sometimes having to ask him to repeat what he
22 just said?

23 A Yes, sir.

24 Q Trooper Wilson, at this point I think we've asked him
25 about or you've asked him about being in Atlanta.

1 Did the defendant state for what purpose he'd been in
2 Atlanta?

3 A Said his cousin called him and wanted him to come to
4 check him out.

5 Q Was there any reason why he was down there that he
6 stated he was going to check out his cousin?

7 A To plan a birthday party.

8 Q Was the party that day?

9 A It was the next week, the following week.

10 Q And that's according to what Mr. Falls told you?

11 A Yes, sir, according to him.

12 Q So, according to what Mr. Falls told you at this point
13 he went to meet his cousin to plan a birthday party that was
14 the following week?

15 A Yes, sir.

16 Q Did Mr. Falls indicate to you, at that time, that he
17 had gone down there because he met, they met with a caterer
18 or met with a DJ or met with anybody like that?

19 A No, sir.

20 Q Just stated he'd gone to plan a party with his cousin?

21 A Yes, sir.

22 Q You asked him his cousin's name, am I correct?

23 A I did.

24 Q How did the defendant respond to that question?

25 A He paused as if he was searching for a name and said

1 uh, Black.

2 Q Just provided the name Black?

3 A Yes.

4 Q Did you ask him to expand on that?

5 A I did. I asked him is his name Black or was that the
6 last name.

7 Q And how did Mr. Falls respond?

8 A He said last name Black.

9 Q Did he provide a first name?

10 A Once I asked him what was his cousin's first name he
11 did state Antwan Black.

12 Q So, first -- so, when asking about his cousin's name,
13 he paused, gave you the name Black, and then when you asked
14 him was that his last name he said yes, am I correct?

15 A Yes.

16 Q And then after that you had to ask him for a first
17 name, am I correct?

18 A I did.

19 Q That -- now, what about that is suspicious, that
20 somebody doesn't provide you with a first name or a full
21 name upon being asked that kind of a question?

22 A well, being that he was searching for a name or had to
23 think of the name that long for his cousin, I felt that he
24 was trying to give me a fictitious name or try to just
25 create a name to give me to throw out.

1 Q Trooper, I'm gonna play a little bit further.

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

4 Q I'm gonna stop right there and I heard you say when did
5 you rent this car, but I want to ask you about conversations
6 that precede that.

7 what were you inquiring with the defendant about in
8 this conversation?

9 I know it's a little hard for us to hear, but what were
10 you asking him?

11 A I asked him where his cousin live, and he stared at me
12 with a, with a blank look on his face and then he paused for
13 a few seconds and was shaking his head and indicated that he
14 did not know where he lived.

15 Q Did you ask him if he'd ever been to Atlanta before
16 today?

17 A I did.

18 Q All right. How did Mr. Falls respond to that?

19 A He, he said he had.

20 Q Did he indicate a number of times he had been there
21 before?

22 A He said he'd been there a few times before.

23 Q A few times before.

24 Did he indicate how long his cousin may have lived in
25 Atlanta or had his cousin recently moved to Atlanta?

1 A Approximately one year.

2 Q So, according to Mr. Falls, his cousin had lived there
3 a year, been there a few times, but he didn't know where he
4 lived?

5 A Correct.

6 (WHEREUPON, another portion of the video was played for
7 the jury at this time.)

8 Q I heard the defendant ask you for water, am I correct?

9 A Yes, sir, he did.

10 Q Did you have any water for him?

11 A I did not.

12 Q And what about the defendant's physical presence, as
13 you were out on the roadside, did you observe prior to him
14 asking that question?

15 A As you can see right before I walked off from the
16 screen, he was nervously licking his lips. He was
17 developing cotton mouth, and I'm taught, through my training
18 and experience, that whenever you get dry mouth or cotton
19 mouth that could be a sign of nervousness also.

20 Q Now, trooper, you've been on the road for nine years,
21 a member of the A.C.E. Team for several more than that, done
22 over a thousand traffic stops, you ever had a, someone ask
23 you on the roadside for a glass of water?

24 A This is the first time anybody ever asked me for water.

25 Q Is that suspicious to you?

1 A Yes, sir.

2 Q Now, trooper, you're back in your cruiser at this
3 point, am I correct?

4 A Yes.

5 Q What are you doing at this time?

6 A On the warning citation that I issued Mr. Falls, I have
7 to -- well, at that time I had to put a grid coordinates, a
8 latitude and longitude. I'm retrieving that from my GPS
9 that's mounted inside my vehicle.

10 Q During the course of that time, are you able to observe
11 the defendant and his actions?

12 A Yes, I was making sure that I kept an eye on him and
13 I'm observing him from my vehicle, and just as his head is
14 turned here, I can notice that he's continuously licking his
15 lips and looking back towards his vehicle.

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

18 Q We just heard a little bit, something sound like it
19 went over the radio, am I correct?

20 A Yes, sir.

21 Q What are you doing at this point in the video at 2108,
22 approximately 19 or 20 seconds?

23 A Calling again for another unit to respond to my
24 location.

25 Q So, at this point, Trooper English had not yet made it

1 out to your location, am I correct?

2 A Yes, sir.

3 Q And you called him at 2104:10.

4 So, approximately four minutes earlier?

5 A Yes, sir.

6 (WHEREUPON, another portion of the video was played for
7 the jury at this time.)

8 Q Okay. The defendant asked to get his hat, am I
9 correct?

10 A Yes, sir.

11 Q Did he indicate, I guess, I'm assuming his hat was in
12 the vehicle?

13 A I'm assuming so, yes, sir.

14 Q Were you gonna allow the defendant to go back up to the
15 vehicle at this point and get his hat?

16 A I was not.

17 Q And why would that be?

18 A Office safety issues. Again, I've already seen him
19 make a movement under the seat and I was not gonna allow him
20 to return to the vehicle without me clearing the vehicle
21 before he reentered.

22 Q So, you didn't know really what he made that movement
23 for, if it had been a weapon or putting something away or
24 putting his hat there at that point, you don't know?

25 A I do not.

1 Q Okay. Trooper, let me ask you one quick question about
2 your partner, Trooper English.

3 Trooper English is a K-9 handler, am I correct?

4 A He is.

5 Q But he's also your partner on the A.C.E. Team, am I
6 correct?

7 A He is.

8 Q So, he assists you in these calls and you assist him in
9 these types of calls, is that correct?

10 A Yes, and just to elaborate on that just a little bit,
11 ever since 1992 when Trooper Mark Coates got killed in
12 Jasper County down on Interstate 95, on the A.C.E. Team, we
13 try to stay close to one another, within a few miles, so if
14 we need assistance we can respond as quick as possible.

15 Q So---

16 MR. THOMPSON: Your Honor, may we approach?

17 THE COURT: Yes, you may.

18 MR. THOMPSON: I'm sorry.

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

21 THE COURT: Ladies and gentlemen, this is an occasion
22 where I need to discuss some matters with the attorneys, and
23 any time it may involve something that I believe might be
24 something that should not be considered by you, in other
25 words, evidence that may not be admissible, I'm gonna ask

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1 you to step out of the courtroom while I have that
2 discussion, and then once I've made a ruling we'll bring you
3 back in and I'll discuss the rulings with you.

4 As always, when you leave the courtroom, I'll instruct
5 you not to begin any discussions concerning the case until
6 such time as I've advised you to do so.

7 You may retire to the jury room at this time.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. You want to state your concern
11 on the record please.

12 MR. THOMPSON: Please the Court, Your Honor.

13 Yesterday I think Trooper Wilson testified they were
14 team members, he and Trooper English. Today he's saying
15 their partners, and I was just requesting a sequester of
16 Trooper Wilson for the remainder of the testimony that
17 Trooper Wilson provides.

18 SOLICITOR MCCARTY: I have, I have no problem asking
19 Trooper English to step outside. I used the term partner.
20 That wasn't provided to me. That's just meaning they were
21 members of the same A.C.E. Team unit that were up here and
22 that's a choice of word on my part. But if it causes any
23 concern to the defendant---

24 THE COURT: Okay. I'm gonna ask Trooper English to
25 step outside the courtroom and not to discuss his testimony

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1 with anyone that he might have or discuss with anyone else
2 their testimony in the case.

3 Thank you, sir.

4 MR. THOMPSON: Thank you, Your Honor.

5 THE COURT: And while you're, we got the jury out,
6 we're gonna take a short break. We been going for about an
7 hour and a half, which is when we normally take a break.

8 I'll instruct the witness also not to discuss
9 testimony, your testimony with anyone at this time during
10 your break.

11 You can move about.

12 WITNESS: Yes, sir.

13 SOLICITOR MCCARTY: Thank you, Your Honor.

14 THE COURT: Court's briefly in recess. Thank you.

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

16 THE COURT: Okay. Officer, you can resume the stand
17 please, sir.

18 (Witness returns to the stand.)

19 THE COURT: State ready to proceed?

20 SOLICITOR MCCARTY: Yes, sir, we are.

21 THE COURT: Defense ready to proceed?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: All right. Let's bring the jury in.

24 MR. THOMPSON: Your Honor, I'm okay, aren't I?

25 THE COURT: Yeah, that's fine. No problem.

1 MR. THOMPSON: I'm asking for forgiveness instead of
2 permission.

3 MR. THOMPSON: No problem.

4 THE COURT: We're ready for them. Come on in.

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

7 THE COURT: All right. The record will reflect the
8 jury has returned to the courtroom, and as you come and go,
9 there aren't any assigned seats except for you, ma'am.
10 You're the alternate and you're always seated there.

11 All right. When we broke earlier you were in the
12 process of examining the witness, Mr. McCarty, and you may
13 proceed.

14 SOLICITOR McCARTY: Thank you, Your Honor.

15 Mrs. Reeves, cut the lights down for me please.

16 CONTINUED DIRECT EXAMINATION

17 BY SOLICITOR McCARTY:

18 Q Trooper, I'm just gonna pick back up with the video and
19 continue to play on.

20 (WHEREUPON, another portion of the video was played for
21 the jury at this time.)

22 Q Right there I heard you ask the defendant when did you
23 leave to go to Atlanta, am I correct?

24 A Yes, sir.

25 Q what did he reply?

1 A He paused again for a few moments and stated about
2 12:00.

3 Q Again, what about that pause that's suspicious that may
4 be a person like myself wouldn't recognize without your type
5 of training or experience?

6 A Again, that's a hesitation and could be someone trying
7 to develop a story or create an answer.

8 Q Did you have any feelings about the defendant's story
9 as he's telling it to you at this point, his travel
10 patterns, and who he met and where he went?

11 A Yes, sir, 2007, this was the year that the economy
12 began to go bad, gas prices are high. It's supposedly had
13 been working that day and then just leave work to go to
14 Atlanta, the price of fuel being high, renting a vehicle,
15 driving to Atlanta for a turnaround trip, it just wasn't
16 plausible to me.

17 Q Wasn't adding up for you based on your experiences, am
18 I correct?

19 A Yes, sir.

20 Q And also, based on your experiences, this was adding up
21 towards something else, am I correct?

22 A Yes, sir, again, this was more than just a normal
23 traffic stop.

24 Q All right. Trooper, I'm gonna continue to play on.

25 (WHEREUPON, another portion of the video was played for

1 the jury at this time.)

2 Q During that exchange with the defendant, you were
3 asking him about what he did in Atlanta, am I correct?

4 A Yes, sir.

5 Q What were you specifically asking him about?

6 A Asking him what did he and his cousin do while they
7 were in Atlanta.

8 Q What did he reply?

9 What did the defendant reply?

10 A He stated that they just hung out with some girls and
11 stuff like that.

12 Q Did he -- did the defendant indicate how long he stayed
13 in Atlanta?

14 A I asked him if they went anywhere. He stated, he
15 stated that they just shot the breeze and he came back
16 because he had something to do.

17 Q Did you ask him where he went at when he got to
18 Atlanta?

19 A Yes, I asked him where he met his cousin at.

20 Q And how did he respond to that question?

21 A And, again, he paused and, and pondered a few seconds
22 for an answer and then stated that they met at Exit 240 he
23 believes.

24 Q So, he even conditioned his own statement with he
25 believes?

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1 A Yes.

2 Q Did that seem like he was searching for an answer in
3 your opinion?

4 A Yes, sir.

5 Q Trooper, so, at this point you've learned that he's now
6 left for Atlanta at noon, stayed there for a couple of hours
7 on the roadside at Exit 240 he believes, and talked about
8 girls and stuff like that with his cousin, am I correct?

9 A Yes.

10 Q Did the defendant -- did you have -- did you feel the
11 defendant was being honest with you about what was going on
12 at this point?

13 A No, sir, again I believe that he was creating a story.
14 As we went along, he just trying to give me an answer that
15 would fit the question that I was asking him and I could see
16 his nervousness continue to grow.

17 Q Was there anything about his body language or how he
18 was, how he maintained himself in speaking with you that
19 through, again, through your training and experience, you
20 were able to look at him and gather any information about?

21 A Again, having the look of nervousness in his face. I
22 could visibly see that he was nervous and at one point here
23 he became unsteady on his feet and had to lean on my
24 vehicle.

25 Q Do you ever have people just prop themselves up against