

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G. Edward Welmaker, Trial Judge
The Honorable Daniel D. Hall, Post-Conviction Relief Judge

S.C. Supreme Court

Appellate Case No. 2015-001459

Travell Levone Hill, ... Respondent/Petitioner,

v.

State of South Carolina, ... Petitioner/Respondent.

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT.....	1
FINAL BRIEF OF APPELLANT	183
FINAL BRIEF OF RESPONDENT	198
COURT OF APPEALS OPINION	235
APPLICATION FOR POST-CONVICTION RELIEF	237
RETURN.....	244
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	249
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING	257
ORDER GRANTING POST-CONVICTION RELIEF	288
STATE’S RULE 59E MOTION	299
HILL’S RULE 59E MOTION	302
STATE’S RETURN TO HILL’S 59E MOTION	306
SUPPLEMENTAL ORDER	309
CLERK OF COURT RECORDS	315
S.C.D.C. RECORDS.....	319

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON

THE STATE OF SOUTH
CAROLINA,

2008-GS-23-6996

March 30-31, 2010

PLAINTIFF,

TRANSCRIPT OF RECORD

-VS-

TRAVELL HILL,

Defendant.

BEFORE:

The Honorable, Judge G. Edward Welmaker

APPEARANCES:

Joyce Monts, Esquire
Assistant Solicitor for 13th Judicial Circuit
Attorney for the State

Chris Posey, Esquire
Attorney for the Defendant

Danette P. Hanks
Circuit Court Reporter

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Shannon Chasteen				
Direct	56			
Cross		84		
Brad Dowis				
Monts	89			
Posey		98		
Tyra Rodgers				
Monts	100			
Posey		117		
James Armstrong				
Monts	127			
Posey				
				PAGE
Suppression Hearing				
Shannon Chasteen				
Direct - Monts				33
Cross - Posey				45
Opening Statements				
Monts				53
Posey				54
Closing Statements				
Monts				142
Chris				152
Charge				158
Certificate of Reporter				180

STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
S-1	Rental Agreement	5	64
S-2	Cocaine	5	134
S-3	Packaging	5	134
S-4	Recording from car	5	78
S-5	Report of Armstrong	5	132

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

C-1	Note from jury	174	
C-2	Note from jury	174	
C-3	Note from jury	175	
C-4	Note from jury	175	
C-5	Note from jury	177	

JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
190	March, Carolyn T	W	F				x
110	Manley, Lisa R	W	F			x	
71	Fulmer, Duward T	W	M			x	
83	Harkins, Angela D	W	F				x
88	Holtzman, Morgan R	W	M				x
155	Robinson, Antwan L	B	M		x		
77	Graffia, Michael N	W	M				x
138	Owens, John S	W	M				x
28	Brantner, Daryl T	W	M				x
151	Richardson, Brian A	W	M			x	
5	Aguilar, Elizabeth M	W	F				x
84	Hawthorne, Bevelyn A	B	F				x
166	Smith, Terry W	W	F			x	
181	Wardlaw, Pamela K	B	F		x		
191	Merali, Shamim S	I	F				x
115	Medlin, James R	W	M				x
22	Bibb, Barbara J	W	F				x
160	Schultz, John D	W	M				x
62	Downs, Julie H	W	F			x	
174	Tallon, Deborah T	W	F				x

1 (WHEREUPON, Court convened with all parties
2 present and the following proceedings were had.)

3 (WHEREUPON, State Exhibit Numbers 1 through 5
4 were marked for identification.)

5 THE COURT: Please be seated, ladies and
6 gentlemen. Are there any matters we need to take
7 care of before the jury is called up? I understand
8 the strikes will be five and five; is that correct?

9 MR. POSEY: Yes, sir. Judge, as far as the
10 one pretrial issue, I would just make a motion, and I
11 will grant -- the State, based on the facts the State
12 will present, I will present -- or what the Court
13 should hear, but that the search should be ruled
14 unconstitutional due to a Williams violation, The
15 State vs. Williams violation. And if I state any of
16 this incorrectly I'm sure Ms. Monts will correct me,
17 but I believe I'm right. This is a traffic stop on
18 I-85. Mr. Hill was the driver -- my client was
19 driving the car. There was a passenger in the car.
20 Mr. Hill was pulled from the car and taken back to
21 the trooper's patrol car, was told he would be issued
22 a warning ticket. The other person remained in the
23 vehicle for a period of time. I believe at some
24 point in time even that person was removed from the
25 vehicle. I'm not sure based on the tape and the

1 dialogue if it occurred before or after, but in a
2 sense, in short, the trooper did issue a warning
3 ticket to Mr. Hill for following too closely. He
4 then asked for consent to search the car.

5 Judge, from everything I have I think that was
6 based solely on the nervousness of the Defendant,
7 some statements made by the Defendant. There was no
8 articulable evidence in the car of any illegal
9 activity that could be seen by the officer. There
10 was no packaging, no air fresheners, nothing in the
11 car based on the discovery I've seen that would lead
12 anybody to say it was articulable to the senses that
13 there was illegal activity going on in the car.
14 Based on that, Your Honor, my position would be, one
15 -- it would be twofold. The warning ticket that was
16 given to Mr. Hill, that ended the basis for the stop,
17 therefore anything afterwards should not be allowed
18 in. Two, that Mr. Hill was not even the proper
19 person to ask for consent to search the car. The
20 rental agreement was not in his name. I believe it
21 was a friend or a relative of the passenger in the
22 car who rented the vehicle for the passenger and I
23 believe that information was given to the officer.
24 That's who should have been asked for consent to
25 search the car anyway.

1 Based on those factors I would ask that the
2 Court suppress the search and subsequent finding of
3 narcotics in the car based on State vs. Williams,
4 Your Honor.

5 THE COURT: Ms. Monts?

6 MS. MONTS: Your Honor, it's the State's
7 position, first of all, that the Defendant was not a
8 valid driver on the rental agreement and we do have
9 the officer here and the original rental -- or a copy
10 that was in the vehicle of the rental agreement. And
11 based on the Wellons case from 1994, Fourth Circuit,
12 if the person is not a valid driver on the rental
13 agreement they do not have standing to argue a
14 violation of their Fourth Amendment rights. And
15 there have been two unpublished opinions in 2008 and
16 2009, since that date that again quote Wellons so
17 that it's still good law.

18 And secondly, besides the fact that the
19 Defendant does not have standing to argue it based on
20 the fact of the rental agreement, we do believe that
21 based on the Williams case that the officer did
22 develop articulable suspicion and he would have to
23 testify to those observations and indicators that he
24 observed which subsequently lead to the drug dog from

1 another officer coming to the scene and alerting on
2 the car which then gave them probable cause for the
3 search. The Defendant and the passenger were not
4 arrested until after a search of the vehicle and over
5 a kilo of cocaine was found in the vehicle. Either
6 one of -- if you know whether you're going to make a
7 ruling based on the Wellons case or otherwise I can
8 put the officer up to testify to ---

9 THE COURT: Well, we probably need to hear
10 some testimony also. But let's go on and select our
11 jury first. They've been waiting awhile this
12 morning. We'll get them selected. Would it be one
13 witness to testify on the suppression hearing, Ms.
14 Monts?

15 MS. MONTTS: Yes, Your Honor.

16 THE COURT: We can let them go back and
17 select a foreperson. We'll select one alternate and
18 strikes will be five and five. And any voir dire
19 other than what I normally ask?

20 MS. MONTTS: Not from the State.

21 MR. POSEY: Nothing from the defense, Your
22 Honor.

23 THE COURT: All right. I've got a witness
24 list here. Any of these for sure not going to
25 testify? All of them possibly would testify?

1 MS. MONTS: Your Honor, as I mentioned to
2 Mr. Posey and to yourself, and I was referring to
3 Lance Corporal, excuse me, Officer Donkle from the
4 Highway Patrol, she is the -- she works at the
5 Central Evidence Facility in Columbia, and she did
6 bring the drugs to Court today. We would ask that
7 she be excused and just did want to put that on the
8 record. The drugs are here. She did bring them.
9 She does have a funeral to attend so we were going to
10 -- I did speak to Mr. Posey about this and wanted to
11 put that on the record.

12 THE COURT: Her only involvement is
13 bringing them here today?

14 MS. MONTS: Yes, Your Honor.

15 MR. POSEY: Judge, being that that is her
16 only involvement I see no reason not to excuse her.
17 And that part of the chain I would not contest
18 anyway, Your Honor. I don't have any problem with
19 it.

20 THE COURT: I'll not sound her name. All
21 right. Let's have the jury come up.

22 (WHEREUPON, the jury entered the open Court at
23 approximately 10:30 a.m.)

24 THE COURT: Good morning, ladies and
25 gentlemen. I'm Eddie Welmaker. I'm from Pickens

1 County. I'm grateful to be over here working this
2 week in Greenville County. We need your assistance
3 today serving as a juror in a case that we're about
4 to start. You've been qualified already yesterday to
5 be a juror this week, but I need to ask you some
6 additional questions to determine your eligibility to
7 serve on this particular case that we're about to
8 begin.

9 I have before me an indictment and that
10 indictment states that Travell Levone Hill did here
11 in Greenville County on or about February the 19th,
12 2008, knowingly delivered or brought into the State
13 of South Carolina or provided assistance to someone
14 doing that or conspired to sell or manufacture or
15 deliver a quantity of cocaine being more than four
16 hundred grams. He's been charged with trafficking in
17 cocaine. He's entered a plea of not guilty for that
18 charge.

19 By pleading not guilty to that charge the State
20 of South Carolina has the burden of proving his guilt
21 beyond a reasonable doubt. Everyone is presumed
22 innocent of a crime that they're charged with until
23 the State meets that burden of proof beyond a
24 reasonable doubt. That's why we need to have jurors.
25 We need to find twelve impartial and fair jurors to

1 listen to the evidence to determine what the facts
2 are and to be a judge of the facts.

3 First of all, is there any member of the jury
4 panel who has any prior knowledge about this
5 particular incident, either that you read about it in
6 the newspaper or heard about it on TV or heard about
7 it from some other source. If you have -- or came
8 upon the scene. If you have any independent
9 knowledge first or second hand about this particular
10 accusation against Mr. Hill would you please stand.

11 (No response.)

12 THE COURT: Thank you. There is no
13 response.

14 Is there any member of the jury panel related by
15 blood or marriage or has a close business, a social
16 or a personal relationship with Mr. Travell Levone
17 Hill? If so, would you please stand.

18 (No response.)

19 THE COURT: Thank you. There is no
20 response.

21 Several witnesses may be called upon to
22 testify in this case, ladies and gentlemen. I'll
23 read those names out for you and then I'll need to
24 ask some follow-up questions. Among the witnesses
25 that may be testifying would be Shannon Chasteen.

1 These individuals are from the South Carolina Highway
2 Patrol. Trooper Dowis, D.M. Howard, Mendell Rivers.
3 Also, from the Department of Public Safety is Israel
4 Flounders, Captain Fricks. From the Department of
5 Public Safety, James Armstrong, Kara Bennett. And
6 also a potential witness, Tyra Deniese Rodgers.

7 Is any member of the jury panel related by blood
8 or marriage to any of these potential witnesses? If
9 so, would you please stand?

10 (No response.)

11 THE COURT: Does any member of the panel
12 have a close business, a social or personal
13 relationship with any of these potential witnesses?
14 If so, would you please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury
17 panel who has expressed or formed an opinion in
18 anyway about the facts in this case? If so, would
19 you please stand.

20 (No response.)

21 THE COURT: Is there any member of the
22 panel aware of any bias or prejudice that would
23 interfere with your ability to be a fair juror in
24 this case? If so, would you please stand.

25 (No response.)

1 THE COURT: Thank you. There is no
2 response.

3 Is there any member of the jury panel or a
4 member of your immediate family who is a law
5 enforcement officer? If you or a member of your
6 immediate family is in law enforcement, would you
7 please stand?

8 (No response.)

9 THE COURT: Thank you. There is no
10 response.

11 Is there any member of the jury panel who
12 is a member, a contributing member of any group that
13 has its primary concern the promotion of law
14 enforcement or victims rights such as the Sheriff's
15 Association, MADD, SADD, PAR, CAVE, any of those
16 organizations. If you're a contributing member would
17 you please stand?

18 (No response.)

19 THE COURT: Thank you. There is no
20 response.

21 At this time I'll ask the attorneys if you
22 would please stand and introduce yourselves to the
23 jury. Ms. Monts?

24 MS. MONTS: Ladies and gentlemen, I'm Joyce
25 Monts. I work with the Thirteenth Circuit

1 Solicitor's Office.

2 THE COURT: Mr. Posey?

3 MR. POSEY: Good morning, ladies and
4 gentlemen. My name is Chris Posey and I'm a private
5 defense attorney.

6 THE COURT: Thank you. Is there any member
7 of the jury panel related by blood or marriage to
8 either of these attorneys? If so, would you please
9 stand.

10 (No response.)

11 THE COURT: Does any member of the panel
12 have a close business, a social, or a personal
13 relationship with either of these attorneys? If so,
14 would you please stand.

15 Yes, ma'am, your name, please?

16 JUROR: In the past I worked for Mr. Chris
17 Posey's brother and mother.

18 THE COURT: In the past you worked for his
19 brother?

20 JUROR: Yes.

21 THE COURT: And how long ago was that, Ms.
22 Jones?

23 JUROR: About a year ago.

24 THE COURT: Okay. Would the fact that you
25 worked with a relative of his in the past affect your

1 ability to be a fair juror? If you were selected
2 could you be fair to the State, could you be fair to
3 the defense, and make a decision not on prior
4 relationships but on what takes place in this
5 Courtroom?

6 JUROR: I don't think so because their
7 family has been real good to me.

8 THE COURT: And you believe that you would
9 not be able to be a fair juror?

10 JUROR: No, I wouldn't trust myself.

11 THE COURT: All right. Well, I'll excuse
12 you from the trial of this case. If you'll be
13 seated, please. Thank you, Ms. Jones, for sharing
14 that with us.

15 Ladies and gentlemen, the State of South
16 Carolina, the Defendant in this case, Mr. Hill, they
17 deserve to have fair jurors to hear this case. They
18 desire to have the same. Is there any member of the
19 panel aware of any reason whatsoever that you believe
20 you could not be fair to both the State of South
21 Carolina, to the Defendant in this case and render a
22 verdict that would speak the truth based solely on
23 the evidence, the testimony that you hear in this
24 Courtroom, the law that I give you and that alone.
25 If for any reason you believe you could not be a fair

1 juror in this case, would you please stand?

2 (No response.)

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

5 Any other questions from the State?

6 MS. MONTES: No, Your Honor.

7 THE COURT: From the defense?

8 MR. POSEY: No, sir, Your Honor.

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

11 MADAM CLERK: When I call your name if
12 would come up and stand in front of the podium.
13 Bring your items with you.

14 Juror number 190, Carolyn March.

15 MS. MONTES: Madam Clerk, can you repeat the
16 name, please?

17 MADAM CLERK: Carolyn March, juror number
18 190. What says the State?

19 MS. MONTES: Please present the juror.

20 MADAM CLERK: What says the Defendant?

21 MR. POSEY: Please seat the juror.

22 MADAM CLERK: Thank you. You may be seated
23 in the jury box. Ma'am, Carolyn, you may be seated
24 in the jury box.

25 Juror number 110, Lisa Manley. What says the

1 State?

2 MS. MONTS: Please present the juror.

3 MADAM CLERK: Thank you.

4 MR. POSEY: Please excuse the juror in this
5 case.

6 MADAM CLERK: You may be seated. You are
7 excused from this case.

8 Juror number 71, Duward Fulmer. What says the
9 State?

10 MS. MONTS: Please present the juror.

11 MR. POSEY: Please excuse the juror from
12 this case.

13 MADAM CLERK: Mr. Fulmer, you may be
14 seated. You are excused from service in this case.

15 Juror number 83, Angela Harkins. What says the
16 State?

17 MS. MONTS: Please present the juror.

18 MR. POSEY: Please seat the juror.

19 MADAM CLERK: Thank you. You may be seated
20 in the jury box.

21 Juror number 88, Morgan Holzman. What says the
22 State?

23 MS. MONTS: Please present the juror.

24 MR. POSEY: Please seat the juror.

25 MADAM CLERK: Thank you. You may be seated

1 in the jury box.

2 Juror number 155, Antwan Robinson. What says
3 the State?

4 MS. MONTES: Please excuse the juror from
5 this case.

6 MADAM CLERK: Thank you. You may be
7 seated. You are excused from service in this trial.

8 Juror number 77, Michael Graffia or Graffia.
9 What says the State?

10 MS. MONTES: Please present the juror.

11 MR. POSEY: Please seat the juror.

12 MADAM CLERK: Thank you. You may be
13 seated.

14 Juror number 138, John Owens. What says the
15 State?

16 MS. MONTES: Please present the juror.

17 MADAM CLERK: What says the Defendant?

18 MR. POSEY: Please seat the juror.

19 MADAM CLERK: Thank you. You may be seated
20 in the jury box.

21 Juror number 28, Daryl Brantner. What says the
22 State?

23 MS. MONTES: Please present the juror.

24 MADAM CLERK: What says the Defendant?

25 MR. POSEY: Please seat the juror.

1 MADAM CLERK: Thank you. You may be seated
2 in the jury box.

3 Juror number 151, Brian Richardson. What says
4 the State?

5 MS. MONTES: Please present the juror.

6 MR. POSEY: Please excuse the juror in this
7 case.

8 MADAM CLERK: Thank you. You may be
9 seated. You are excused from service in this case.

10 Juror number 5, Elizabeth Aguilar. What says
11 the State?

12 MS. MONTES: Please present the juror.

13 MR. POSEY: Please seat the juror.

14 MADAM CLERK: Thank you. You may be seated
15 in the jury box.

16 Juror number 84, Beverlyn Hawthorne. What says
17 the State?

18 MS. MONTES: Please present the juror.

19 MADAM CLERK: And the Defendant?

20 MR. POSEY: Please seat the juror.

21 MADAM CLERK: Thank you. You may be seated
22 in the jury box.

23 Juror number 166, Terry Smith. What says the
24 State?

25 MS. MONTES: Please present the juror.

1 MADAM CLERK: The Defendant?

2 MR. POSEY: Please excuse the juror.

3 MADAM CLERK: You may be seated. You are
4 excused from service in this trial.

5 Juror number 181, Pamela Wardlaw. What says the
6 State?

7 MS. MONTS: Please excuse the juror from
8 this case.

9 MADAM CLERK: Thank you. You may be
10 seated. You are excused from service in this trial.

11 Juror number 191, Shamim Merali. What says the
12 State?

13 MS. MONTS: Please present the juror.

14 MADAM CLERK: The Defendant?

15 MR. POSEY: Please seat the juror.

16 MADAM CLERK: Thank you. You may be seated
17 in the jury box.

18 Juror number 115, James Medlin. What says the
19 State?

20 MS. MONTS: Please present the juror.

21 MR. POSEY: Please seat the juror.

22 MADAM CLERK: Thank you. You may be seated
23 in the jury box.

24 Juror number 22, Barbara Bibb. What says the
25 State?

1 MS. MONTS: Please present the juror.

2 MR. POSEY: Please seat the juror.

3 MADAM CLERK: Thank you. You may be seated
4 in the jury box.

5 Juror number 160, John Schulz. What says the
6 State?

7 MS. MONTS: Please present the juror.

8 MR. POSEY: Please seat the juror.

9 MADAM CLERK: Thank you. You may be seated
10 in the jury box.

11 Juror number 62, Julie Downs. What says the
12 State?

13 MS. MONTS: Please present the juror.

14 MR. POSEY: Please excuse the juror in this
15 case.

16 MADAM CLERK: Thank you. You may be
17 seated. You are excused from service in this case.

18 Juror number 174, Deborah Tallon. What says the
19 State?

20 MS. MONTS: Please present the juror.

21 MR. POSEY: Please seat the juror.

22 MADAM CLERK: Thank you. You may be seated
23 in the jury box.

24 THE COURT: Any matters we need to take
25 care of as far as selection of a jury in this case?

1 Anything from the State?

2 MS. MONTS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. POSEY: No, sir.

5 THE COURT: Ladies and gentlemen who were
6 not selected for the trial of this case, I can
7 dismiss you from the Courtroom now. If you would, go
8 back down to the assembly room. There will be
9 further instructions for you there as to when you
10 need to call back or check back. You are excused at
11 this time.

12 (WHEREUPON, the jury panel was dismissed.)

13 THE COURT: Ladies and gentlemen, I thank
14 you very much for your participation. You've seen
15 the process by which you were selected. You have
16 committed to these parties and you've been selected
17 especially to hear this case knowing that you will be
18 fair and impartial jurors.

19 Let me give you a few preliminary instructions.
20 This is in no way to be considered an instruction on
21 the law, but to give you a little bit of an idea of
22 how we'll be progressing during the trial of the
23 case. I'm honored to be working with you. We're
24 going to be judges in this case. I'm going to judge
25 the law. I'm referred to as the judge. But you're

1 every bit as much a judge as I am because you're
2 going to be judging the facts in this case. You may
3 have some nervousness about being in this Courtroom,
4 might never have been in a Courthouse even, much less
5 in the Courtroom. Now you find yourself sitting in a
6 jury box and you're thinking to yourself, Well, I
7 can't be a judge. I've never had any legal training.
8 I haven't ever had any lawsuits. Nobody's ever sued
9 me. I've never been a part of the judicial process.
10 I can't be a judge in this case.

11 But let me assure you, ladies and gentlemen, you
12 bring into this Courtroom every skill you're going to
13 need to be a judge because you bring into this
14 Courtroom the every day experiences that you enjoy in
15 your home and work force and social activities. You
16 bring into this Courtroom the good common sense with
17 which you've been blessed. That will serve you well
18 as you listen to evidence, listen to testimony and
19 decide what the facts are in this case.

20 You've committed through the selection process.
21 Soon you'll be committing under an oath to be fair to
22 both sides, to be impartial to both the State and to
23 Mr. Hill in this case. As the judge of the law I
24 will explain what the law is to you when the case is
25 concluded. You must accept that law and apply the

1 law as I state it to you. You're going to be the
2 judge of the facts. I'm going to be the judge of the
3 law. And while we each are judges we each have
4 separate duties to perform. I don't rule upon the
5 facts. That's your prerogative and yours alone. I
6 do rule upon the law.

7 The trial takes place in stages. Your
8 experience in a trial might be your favorite
9 television program or a novel that you've recently
10 read or a movie that you've enjoyed. Normally in a
11 trial there's not moments of high drama where events
12 happen. It's a deliberative process by which a
13 lawyer will ask a question of a witness, the witness
14 will give an answer. The other lawyer gets to ask
15 questions. The witness can answer those questions
16 and we move along that way.

17 After the attorneys have a chance to make an
18 opening statement to you then witnesses will be sworn
19 to tell the truth and they'll take an oath on the
20 Bible there and they'll sit in this witness box and
21 they'll testify.

22 In the course of testimony sometimes objections
23 are made. Lawyers are trained to, under the rules of
24 procedure, under the rules of evidence, sometimes
25 they'll determine in their own mind that an objection

1 is warranted, that I need to rule upon a matter of
2 law. Frequently that can be done summarily from the
3 bench here. I can say overruled or I can say
4 sustained and we can move to the next question.
5 Sometimes the lawyers may come up here and we'll have
6 a little conference here at the bench. We can
7 whisper and get a matter resolved and sometimes that
8 would be on the scheduling of when we're going to
9 break for lunch or how much longer is a witness going
10 to be. Sometimes it might necessitate -- one of the
11 lawyers may say I have a matter of law or I need an
12 objection and it might necessitate me having you go
13 back to the jury room.

14 As a judge of the law I want to make the very
15 best decisions I can under the law to make sure my
16 rulings are accurate, as I'm sure you want to make
17 the very best decision you can as the judge of the
18 facts. Sometimes in ruling upon legal matters it
19 might necessitate me hearing some testimony that
20 wouldn't normally be proper in a trial. It might
21 have me reviewing some legal cases or some statutory
22 law or hearing some arguments from the attorneys that
23 would have nothing to do with your fact finding
24 requirement. So, if that happens -- and there are
25 stages in the trial where there are legal matters

1 that have to be brought up, it might necessitate and
2 it will necessitate you going back to your jury room.
3 I hope you understand that while I'm ruling on those
4 legal matters that have no concern to you, then
5 ultimately we'll have the case presented to you in an
6 orderly manner by the attorneys.

7 After all the evidence is presented then the
8 attorneys will again have an opportunity to address
9 you in a closing statement and then the case will be
10 yours to deliberate to determine what the facts are.

11 Until all the evidence is in and especially
12 until I instruct you on the law, it would be improper
13 for you to be talking about the case. I've read you
14 excerpts from an indictment. I've told you before
15 and I'll tell you again that's not evidence. The
16 fact that Mr. Hill has been arrested and charged and
17 indicted is not evidence. The evidence is going to
18 come in this Courtroom from any documents or tangible
19 evidence that's presented, from testimony that a
20 witness will give you and that's what you'll need to
21 base your decision on.

22 Normally we'll take breaks every hour, hour and
23 a half, as we progress. You'll have an opportunity
24 to let me know if you need a break when I haven't
25 called for one. You've had a chance already I'm sure

1 to meet the bailiffs. We have folks here that will
2 assist you. If you can't get my attention and I
3 haven't called for a break and you need a break,
4 please let us know because it's vitally important for
5 you to be comfortable so that you can be a good
6 listener. That's what your duty is, to be a good
7 listener and to watch what's happening during the
8 course of the trial and listen to the testimony
9 that's given.

10 If you don't get my attention and you need to
11 take a break, please let one of the bailiffs know.
12 You've had a chance I'm sure already to meet them.
13 Mr. Lynch on the back door, Mr. Frazier over to your
14 right. They'll certainly help you. The young lady
15 from the Clerk's office who called your name earlier
16 will administer an oath to you later. Ms. Lanfear,
17 she'll certainly be available to you if you get her
18 attention. This young lady sitting directly in front
19 of me, Ms. Danette Hanks, she's the Court reporter.
20 She's taking down everything that is said during the
21 course of these proceedings to make sure we have a
22 valid record. She may be marking exhibits if there
23 are any exhibits, documents or whatever, to give the
24 exhibit numbers to those. She will certainly be of
25 assistance to you. The young lady seated beside me,

1 Ms. Anna Lakes, she's a recent law school graduate.
2 You may see her and you probably have already coming
3 and going and taking care of things back in the
4 office and assisting me here on the bench as well.
5 Get some of their attention, any one of those, and
6 we'll certainly give you a break when you need it.
7 Normally we'll go an hour, hour and a half at a time.
8 We'll normally break for lunch at one o'clock or as
9 close thereto as we can. Normally in the evening
10 we'll try to be finished by five, five thirty,
11 sometimes six, depending on a witness testifying and
12 trying to finish up as best we can. I'll do my very
13 best to not keep you too long and keep the case
14 moving because I know you're here at a sacrifice.
15 You didn't volunteer to be here by any means. We're
16 going to do everything within our power to make your
17 time valuable while here.
18 As you come and go at lunch and in the mornings and
19 in the evenings, you may see the lawyers in the hallway
20 or on the elevator with you. If those lawyers seem a
21 little distant to you and not very friendly, please
22 don't hold that against these attorneys. They are
23 friendly folk. But their training is that they don't
24 want to give any appearance of any impropriety and be
25 talking to a juror. If they see you in passing and they

1 nod or don't carry on some conversation with you about
2 the -- even though it may be innocent conversation about
3 ball games or weather or anything else, just because it
4 might look bad they might seem a little distant and
5 unfriendly. But I'm sure you will understand that.
6 That's their training to make sure that not even any
7 appearance could be alleged that they're doing anything
8 improper with a member of the jury.

9 The same would apply to, and I'll explain that in
10 more detail to you, as you're out and about during
11 breaks, you shouldn't be talking about the case with
12 each other. Only when all the evidence is in and the
13 instruction on the law has been given to you should you
14 start that discussion about the facts in the case or any
15 elements of the case.

16 Likewise, with your family and friends. You may
17 have some curious family members at lunch as we take
18 lunch and even later in the day that want to know all
19 about your experience as a juror and what the case is
20 about. You can certainly tell them that you're on a
21 case, but you shouldn't be talking about the evidence
22 that you hear with anyone. You'll have a chance to do
23 that at the end of the case. But while it's going on
24 remember the commitment you've made through the
25 selection process, through the answers you've given me,

1 through the oath that you'll take soon, that we maintain
2 the purity of the process. That you're going to make a
3 decision just on what happens in this Courtroom and
4 nowhere else.

5 One of those legal matters needs to be taken care
6 of right now. I need -- the lawyers have alerted me
7 that there is a legal matter that we need to resolve.
8 It won't take very long. I'm going to ask you to go
9 back to your jury room. Mr. Frazier will be able to
10 show you where that is. While you're back there I've
11 got a job for you to do. I want you to select a
12 foreperson from among the first twelve of you. The last
13 juror selected, she's an alternate. She will always
14 occupy that seat she's in now. She's here just in case
15 something were to happen to one of the first twelve of
16 you. If an emergency come up in your home, if an
17 illness befalls you, so that we wouldn't have to start
18 the trial all over again, we could continue. She's
19 every bit as much a part of the jury as anyone else
20 because she needs to listen just in case she needs to
21 fill in one of your slots. But from the first twelve I
22 need you to select a foreperson. The foreperson will
23 occupy the front row, the seat closest to the witness
24 stand here.

25 What the foreperson does is when you're back in

1 that jury room you may have some needs, some inquiries.
2 The temperature may need adjusting. You may need a
3 snack. You may have a question of the Court. What the
4 foreperson will do will be that individual who is the
5 liaison with the Court. If you have a need, if someone
6 needs to call if we're running late and make sure a
7 child gets picked up, whatever it may be, the foreperson
8 would write out that need, give it to the bailiff, we'd
9 get it to the appropriate person, be it I or be it the
10 clerk or a staff member, to see if we could take care of
11 that need for you. Sort of be the presiding officer,
12 the liaison with the Court.

13 Sometimes as the trial progress there might be
14 exhibits offered into evidence and one of the lawyers
15 might want to pass it around and show it to the jury.
16 They'll hand it to the foreperson and let him or her
17 look at it and pass it around to others.

18 Ultimately what the foreperson will do, when you
19 have heard all of the evidence and I've instructed you
20 on the law, the foreperson will be the one who will
21 facilitate that deliberation to make sure everyone has
22 their say in the deliberations as to their view of the
23 evidence, help the discussions along and ultimately
24 write out the verdict form that the jury finds in the
25 case.

1 So while you're back there from the first twelve of
2 you you'll need to select a foreperson and that
3 foreperson will occupy the seat I designated and the
4 alternate will occupy her seat and the rest of you may
5 like a front row seat, a back row seat, or switch seats
6 or have your own seat as you come and go during the
7 course of the trial.

8 At this time I'll ask you to go back to your jury
9 room. Let me remind you again not to discuss the case.
10 We'll call you back in just a few minutes when we have a
11 chance to resolve this legal matter. You may retire to
12 your jury room at this time.

13 (WHEREUPON, the jury exited the open Court at
14 approximately 11:14 a.m.)

15 THE COURT: All right, solicitor, I believe we
16 have some testimony on the suppression hearing. Do
17 y'all want to have a break before that or after that?

18 MR. POSEY: I'd just as soon go through,
19 Judge.

20 THE COURT: Okay. Let's go ahead and have
21 that and we'll take a short break.

22 MS. MONTS: Your Honor, again, I would say
23 that our first argument is State v. Wellons. The
24 Defendant did not have a valid expectation of privacy in
25 the vehicle because he was a non-valid driver in that

1 rented vehicle and he did not rent the vehicle.

2 In the alternative, we would argue that the officer
3 did have articulable suspicion and we would call Lance
4 Corporal Shannon Chasteen.

5 MADAM CLERK: Shannon Chasteen, if you would
6 come forward. Place your left hand on the Bible and
7 raise your right to be sworn in. Do you swear or affirm
8 that the testimony you're about to give is the truth,
9 the whole truth, and nothing but the truth so help you
10 God?

11 MR. CHASTEEN: Yes, ma'am, I do.

12 MADAM CLERK: Thank you. You may be seated.
13 Would you please State your full name for the record?

14 MR. CHASTEEN: Richard S. Chasteen.

15 MADAM CLERK: Thank you.

16 RICHARD SHANNON CHASTEEN,

17 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. MONTS:

20 Q. Trooper, where are you currently employed?

21 A. With the South Carolina Highway Patrol.

22 Q. How long have you worked with the Highway Patrol?

23 A. Since 2002.

24 Q. And in February of 2008 where were you assigned?

1 A. To the Aggressive Criminal Enforcement Unit here in
2 the Upstate.

3 Q. And what training in that area did you have?

4 A. I received training from the Department. It
5 consists of a thirty-eight hour class, or pardon me,
6 thirty-two hour class of aggressive criminal enforcement
7 training.

8 Q. Did you attend any intervention classes?

9 A. That's the class I referred to.

10 Q. And did you have any on-the-job training with other
11 officers prior to being sent out on your own?

12 A. Yes, ma'am. I've been in law enforcement since
13 2000, so I've got ten years of on-the-job training.

14 Q. And on February 19th of 2008 do you recall what
15 area you were working?

16 A. Yes, ma'am.

17 Q. Where was that?

18 A. On I-85 here in Greenville County?

19 Q. At approximately three fifty that afternoon where
20 were you located?

21 A. I was on I-85 looking at northbound traffic there
22 about the forty-two mile marker.

23 Q. Were you still or moving?

24 A. I was sitting stationary, sitting still.

25 Q. And at that time what were you looking for?

1 A. I was just monitoring the flow of northbound
2 traffic looking for any violations of the traffic law.

3 Q. At approximately three fifty that afternoon did you
4 see any traffic violations?

5 A. Yes, ma'am, I did.

6 Q. What did you observe and describe the vehicle?

7 A. I observed a burgundy SUV following a commercial
8 vehicle at a distance that was unreasonably close.

9 Q. And if you recall what lane they were in and
10 describe what that infraction was?

11 A. I don't recall if they -- I know they were either
12 in the middle lane or the far right lane. I don't
13 recall the exact lane. I do know that they was
14 following a, I want to say, it was a tanker vehicle too
15 close. I pulled out to stop the vehicle for that
16 violation. When I say too close it was, you know, a
17 distance of less than a car and a half length at speeds
18 around sixty miles per hour.

19 Q. And what did the vehicle do once you pulled out
20 into traffic?

21 A. The first thing I observed when I entered into the
22 flow of traffic was the burgundy SUV immediately
23 switched to the far left hand lane.

24 Q. And was your blue light on at this time?

25 A. No, ma'am.

1 Q. At what -- did it come on?

2 A. Yes, ma'am. It did when I caught up to the vehicle
3 and was behind it.

4 Q. And do you have a video that comes on?

5 A. Yes, ma'am, it comes on with activation of the blue
6 lights.

7 Q. And what did the driver of the SUV do once you got
8 closer to it?

9 A. Like I stated earlier, before I really even entered
10 traffic flow good he switched immediately from the lane
11 that he was established in behind the CMV, switched over
12 to the far left hand lane and slowed down well under the
13 posted speed limit.

14 Q. Is that a traffic infraction?

15 A. Yes, ma'am, it is. State law requires slower
16 moving traffic to stay in the right hand lane.

17 Q. And please continue. Did the car eventually pull
18 over?

19 A. Yes, ma'am. After catching up to the vehicle, I
20 activated my blue lights initiating a traffic stop on
21 the burgundy SUV and he came to a stop in the emergency
22 lane around the forty-three mile marker.

23 Q. Could you tell prior to stopping the car how many
24 occupants were in the vehicle?

25 A. I knew -- well, I could see two people in there.

1 Q. And please continue. What happened when you
2 stopped and got behind them?

3 A. I stopped the vehicle or turned my blue lights on
4 the vehicle and stopped it there around the forty-three
5 mile marker. I got out of my vehicle and made a
6 passenger side approach to the burgundy SUV. That's
7 where I made contact with the driver and the passenger
8 in the vehicle.

9 Q. And which door did you go to?

10 A. To the front passenger door.

11 Q. And what did you observe about the vehicle when you
12 approached?

13 A. I'm not sure I understand what you ...

14 Q. How many occupants and anything else that you
15 observed?

16 A. Right. Like I said earlier, there was two people
17 in there, what I thought to be two people in there on
18 the initial stop. When I got up to the vehicle, I
19 confirmed there were two people in the vehicle, a driver
20 and a passenger.

21 Q. And did you ask them for any paperwork?

22 A. I did. I asked the driver to produce a driver's
23 license and a vehicle registration. That's when I
24 learned that it was a rental and he had produced a
25 rental agreement.

1 Q. Who was the driver and who was the passenger?

2 A. Mr. Hill was the driver of the vehicle.

3 Q. And what did you observe about the rental agreement
4 once you received it?

5 A. At that point in time I really hadn't looked at the
6 rental agreement, I just asked for it. And I was kind
7 of holding onto it because I was waiting for the
8 license, waiting for all of the documentation. I don't
9 really look at it until I get back to the vehicle. I
10 did make several observations as I stood there at the
11 passenger door of the vehicle.

12 Q. What were they?

13 A. First and foremost was just the nervousness of both
14 of the occupants. I noted that neither would make eye
15 contact with me. I noticed Mr. Hill could not sit still
16 in his seat, almost in a state of panic there, but just
17 real fidgety. I noticed as he handed me his rental
18 agreement the -- his hands were noticeably trembling,
19 shaking. I could see the female passenger's neck or
20 heart beating in her neck. I noticed there was, there
21 was fast food clutter about the vehicle, energy drinks,
22 a couple of other small drinks, fast food wrappers. I
23 wasn't up there very long before I got the rental
24 agreement and the driver's license.

25 Q. And what is your procedure at that point, what are

1 your steps?

2 A. At that point in time based on my training and
3 experience, I've already noticed an indicator for
4 potential criminal activity. I asked Mr. Hill to get
5 out of the vehicle and step back to my vehicle so a
6 warrant could be issued for the following too close and
7 impeding traffic violation.

8 Q. Did the change in driving that the Defendant did,
9 was that of any information to you?

10 A. Absolutely. That was the first indicator that
11 something could possibly be wrong.

12 Q. And why is that?

13 A. It's just -- he's creating distance between me and
14 himself. He's either just -- it's just a matter of
15 getting away. In his mind he's creating distance.

16 Q. And please continue. What are your next steps
17 regarding the paper work?

18 A. Like I said, Mr. Hill produced the required
19 documentation that I asked for. I returned back to my
20 car. I stood him at the front passenger quarter panel.
21 I stood in the door of my car and began to study the
22 documentation that he had given me.

23 Q. And did you speak to Mr. Hill at this time?

24 A. We talked -- we may have talked some, but at this
25 point in time, I'm looking at the documentation that he

1 give me. I immediately noticed that the rental
2 agreement was not in his name nor was his name anywhere
3 on the rental agreement. I asked him, I asked him who
4 rented the vehicle and he implied that the passenger
5 did.

6 Q. Did you subsequently determine whether the
7 passenger had rented the vehicle?

8 A. At that point in time I did. I returned back to
9 the car and asked Ms. Rodgers, the passenger, if I could
10 look at her ID to compare to the rental agreement. She
11 produced identification that did not match the rental
12 agreement either. And that's when I asked her about who
13 rented the car and a little bit about what they had been
14 doing.

15 Q. Was there any valid driver present in the vehicle?

16 A. There was not.

17 Q. Please continue. What information did you obtain?

18 A. Me and Ms. Rodgers talked. She stated that they
19 had been to Atlanta, Georgia to shop mainly for shoes.
20 They also visited with some of her family and that Mr.
21 Hill was her boyfriend.

22 Q. And did you go back and talk to Mr. Hill again?

23 A. Yes, ma'am, I did. After I got her identification,
24 I returned back to my patrol vehicle and continued on
25 with the stop.

1 Q. Did you notice anything unusual about Ms. Rodgers'
2 behavior?

3 A. I did earlier. I don't think I mentioned this to
4 begin with earlier. When I went up there I did -- I
5 think I mentioned that she failed to make eye contact.
6 But earlier she had been holding her head as if maybe
7 she was sick or her head hurt severely. When I went
8 back up there she was no longer holding her head.

9 Q. Did you obtain any information about where they had
10 been?

11 A. I did. I said they had been to Atlanta, Georgia,
12 mainly to shop, shop for shoes.

13 Q. And where had the car been rented?

14 A. The vehicle had been rented in Virginia.

15 Q. Did you observe anything inside the vehicle? Was
16 there any luggage inside the vehicle?

17 A. No. I think there was a small bag in there. But
18 that was another indicator that there was no luggage
19 present in the vehicle for such a long trip.

20 Q. Did you at some point explain the stop to Mr. Hill?

21 A. In what regards?

22 Q. Regarding why you pulled him over and what your
23 procedure would be?

24 A. Right. I initially told him the reason for the
25 stop on my first approach.

1 Q. And ---

2 A. I also informed him that he would be written a
3 warning.

4 Q. Did his demeanor change once you advised him of
5 that?

6 A. No. Normally it does when someone finds they're
7 getting a warning, but he continued to grow more nervous
8 as the traffic stop continued.

9 Q. Did you observe anything about his standing outside
10 the vehicle?

11 A. Well, once again he couldn't stand still, just
12 anxious, folding, unfolding his arms, or crossing and
13 uncrossing his arms, just repeated foot movement. And
14 he also at this point had an accelerated pulse visible
15 in his neck.

16 Q. Did you ever ask him about the contents of the
17 vehicle?

18 A. I did. We talked -- me and him talked while I was
19 writing the warning out and we talked about that
20 incident and several other things.

21 Q. Did he have a change in demeanor or did he look
22 anywhere when you asked him about the contents?

23 A. I did. When I asked him about his responsibility
24 for the contents of the vehicle, he immediately looked
25 back to the car and stated that everything was hers.

1 Q. Did you subsequently go back and speak to Ms.
2 Rodgers any more?

3 A. I did. After talking with Mr. Hill, I went back to
4 the vehicle to look at the VIN number and while I was up
5 there I spoke with Ms. Rodgers again.

6 Q. What did you notice about her demeanor?

7 A. Once again, she's still continuously nervous. I
8 also -- not only noticed her nervous behavior, but I
9 compared their stories. I asked her the questions that
10 I had asked Mr. Hill. And I just noticed their stories
11 were very conflicted and nothing -- I mean, obviously,
12 they didn't have the same travel itinerary when they
13 were down there. They were very different.

14 Q. And what was Mr. Hill's?

15 A. Mr. Hill stated they had traveled down to Atlanta
16 the day before, so you've got a long trip from
17 Chesapeake, Virginia down to Atlanta. They had went
18 down to party and see a good friend of his. I think his
19 name was Tony. And they had stayed in the rented SUV
20 that night, not really stayed anywhere, just kind of out
21 and about on the town.

22 Q. Had you called for back-up at any point?

23 A. When I got back to the vehicle from receiving the
24 license and rental agreement, I called for back-up with
25 the change in driver behavior and the occupant's nervous

1 behavior, I already felt that they were possibly
2 involved in some type of criminal activity. I went
3 ahead and called for my partner then.

4 Q. And who was that?

5 A. Trooper Bennie Dowis.

6 Q. How long did it take him to arrive?

7 A. Not long. Less than five minutes, around that
8 time.

9 Q. Why is it that your assignment was to work I-85?
10 What is your job on that interstate?

11 A. Like I stated earlier, I'm assigned to the
12 Aggressive Criminal Enforcement Team and our job is
13 criminal intervention, so that's why we work mainly the
14 interstate highways.

15 Q. And in your training that you obtained in that area
16 what did you learn about any cities or that interstate?

17 A. That interstate 85 first and foremost is a well
18 known drug corridor and I-85 is a well known hub city
19 for drug activity. It's a source city.

20 Q. What is? I'm sorry.

21 A. A source city.

22 Q. What is?

23 A. Atlanta, Georgia.

24 Q. Do you know at that time if the rental car was
25 overdue?

1 A. No. I didn't notice that until I got back to my
2 vehicle. Are you talking about before I stopped the
3 car?

4 Q. No. I mean, after you got the paper work?

5 A. Yeah, after I got the paper work I knew it was
6 overdue.

7 Q. Does Trooper Dowis have a drug canine?

8 A. He does.

9 Q. Thank you. I have no further questions. Please
10 answer any questions of Mr. Posey.

11 MR. POSEY: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, sir, you may cross examine.

14 CROSS EXAMINATION

15 BY MR. POSEY:

16 Q. Just a few questions. Did your eyes or your sense
17 of hearing or sense of smell pick up anything in the
18 vehicle that would say there were drugs in the vehicle?

19 A. Drugs particularly?

20 Q. Yes?

21 A. No.

22 Q. Okay. What other criminal activity, if any?

23 A. I felt they were involved in criminal activity.

24 Q. What articulable sensory perception gave you that

1 reason to believe that?

2 A. It's a totality of -- it was observations
3 throughout the whole traffic stop.

4 Q. I'm asking the specific question of your sight,
5 sound, touch, feel. What articulable sense told you
6 there was criminal activity -- that demonstrated there
7 was criminal activity in that car?

8 A. I'm not sure I understand. I reckon my sight and
9 sound. What I observed and heard throughout the stop.

10 Q. And from what I heard, most of that related to the
11 passenger and driver's nerves. Was that pretty much ---

12 A. The driver. I'm sorry. I'm sorry. I cut you off.
13 Try it again, please.

14 Q. I would say everything you've testified to relates
15 to their nervousness; is that correct?

16 A. Not everything. No, sir.

17 Q. What besides the nervousness could you see, hear or
18 detect with your senses?

19 A. Just like I said, comparing their stories, you've
20 got their conflicting stories, coupled with their
21 nervous behavior, coupled with the fact that they're
22 driving a third party rental vehicle which does not
23 belong to either one of them, the fact that they took an
24 eight hour trip, nine hour trip from Chesapeake,
25 Virginia to Atlanta, Georgia, stayed a very short time,

1 turned around and went back. Like I said, it's a
2 totality of the circumstances.

3 Q. Let me ask you about this. Did you check with Avis
4 to see if either one of them had the ability to drive
5 that car?

6 A. I don't work for Avis. No, sir.

7 Q. But you're saying they're not authorized but you
8 didn't check with Avis to see if they were authorized;
9 did you?

10 A. They're not listed on the rental agreement as
11 authorized drivers.

12 Q. I understand that, but I'm asking did you check
13 with Avis to see if they were authorized?

14 A. No.

15 Q. Okay. Was there anything illegal to the sight of
16 your eyes in that car?

17 A. No.

18 MR. POSEY: Judge, I have no further questions
19 at this time.

20 THE COURT: Any redirect?

21 MS. MONTS: No, Your Honor.

22 THE COURT: Thank you, sir. You may step
23 down.

24 MR. CHASTEEN: Thank you, sir.

25 THE COURT: Any other witnesses from the

1 State?

2 MS. MONTS: Not on this issue, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. POSEY: No witnesses from the defense,
5 Your Honor.

6 THE COURT: All right. Let's take a short
7 break and I'll review the cases.

8 MR. POSEY: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. MONTS: Your Honor, I do have some cases
11 if you ---

12 THE COURT: All right. I'd be glad to hear if
13 you'll give me the citations, Ms. Monts, or if you have
14 copies, either way.

15 MR. MONTS: I have copies, Your Honor, but
16 they're marked up.

17 THE COURT: Okay. I'll be glad to -- tell me
18 what you got as far as citations or names.

19 MS. MONTS: Your Honor, U.S. v. Verada, 289 F.
20 Supp 2d 1291. U.S. v. Branch, 537 F.3rd 828.

21 THE COURT: Is this all on the issue of the
22 rental agreement or is this ---

23 MS. MONTS: Just articulable suspicion in
24 general.

25 THE COURT: Okay.

1 MS. MONTS: State v. Tindall, 665 S.E.2d 188.
2 The cite on the rental agreement, Your Honor, is U.S.
3 vs. Wellons, W-e-l-l-o-n-s, 32 F.3rd 117. There are two
4 non-published cases from the U.S. Court of Appeals
5 Fourth Circuit that -- more recent than that that do
6 quote Wellons. They are U.S. v. Luster, L-u-s-t-e-r,
7 which is 2009 Westlaw 1178527 and U.S. v. Mincey, M-i-n-
8 c-e-y, 2008 Westlaw 5063872.

9 THE COURT: All right. We'll take a short
10 break.

11 (WHEREUPON, the Court stood at recess for a short
12 break).

13 THE COURT: Keep your seat, ladies and
14 gentlemen. All right. I've had a chance to briefly
15 review the law. And as far as the State's position of
16 the standing, I find that the cases of Sam Wellons and
17 others, and I'm finding that he did not have standing
18 based upon that law, but I do that with reservation
19 because of what our United States Supreme Court has done
20 more recently in the right of standing of folks in
21 residences and somewhat expanded that, whether that
22 would apply to an automobile. And I don't know that
23 these unpublished opinions reference that recent case
24 that has come out in the last year or so.

1 And of course unpublished cases don't have any
2 precedential value anyhow. I can't remember the name of
3 the case and I apologize. It was a U.S. Supreme Court
4 case that came out just last year I think. I haven't
5 been able to get the name of it.

6 I ruled with the State with that reservation but
7 going to the other ground of the unconstitutional
8 intention and the articulable reasons for the delay,
9 I've reviewed Williams and I've reviewed Tindall and
10 even Riviera, I think, offers something, decided last
11 year in our State. I think Tindall is closer on point
12 here, although there's a lot of factors in Riviera that
13 our Appellate Court could look at. But I've tried to
14 weigh it all and from the evidence that I've heard, I
15 think there has been sufficient showing of articulable
16 suspicious reasons by the officer. And I know that
17 nervousness can go both ways and the conflicting stories
18 can go both ways and the luggage not being in the back
19 seat. Some people carry it in the luggage compartment
20 of their automobiles rather than there, so that could go
21 both ways. But looking -- weighing the testimony that's
22 been offered and what I have heard, I think there's
23 enough factors that show he did have a reasonable basis
24 for the detention.

1 Particularly, I'm more concerned about the amount
2 of the distance that the car was traveling without any,
3 at least part of the evidence was, without any rest.
4 More particularly on the rental agreement, the fact that
5 there was no authorized -- or he was not an authorized
6 driver of the rental agreement, that it had expired.
7 All of the other facts recited I think weigh in favor of
8 the detention being proper.

9 So, I will allow -- I deny your motion to suppress
10 the evidence, Mr. Posey. Anything else we need to take
11 care of before the jury comes back.

12 MS. MONTES: Not from the State, Your Honor.

13 MR. POSEY: No, sir, Your Honor.

14 THE COURT: Do you have a witness that you can
15 get up and down before one o'clock after your opening
16 statements? Or do you want to make opening statements
17 -- or is there a short witness that you have?

18 MS. MONTES: Your Honor, I would start with the
19 original officer. Of course, I believe his testimony
20 would be shorter than it was for the hearing, but that
21 would be who I would start with.

22 THE COURT: Well, we can go a little later,
23 maybe. I think we can get one witness in. All right.
24 If you'll bring our jury in. For your information Mr.
25 Graffia is the foreperson.

1 (WHEREUPON, the jury entered the open Court at
2 approximately 12:10 p.m.)

3 THE COURT: Thank you for your patience with
4 us, Mr. Foreman, ladies and gentlemen. We are now ready
5 to proceed with the trial. I'm going to at this time
6 ask the Clerk to administer the oath to you. If you'll
7 listen carefully to the oath that you take, that you
8 will well and truly try this case, the meaning of that
9 oath, after which we'll then hear the opening statements
10 from the attorneys. I'll remind you what the attorneys
11 say to you is not evidence. Nevertheless, I urge you to
12 listen carefully as they address you. They can perhaps
13 you give valuable insights and help you as the case
14 progresses. Ms. Lanfear, you may swear the jury.

15 MADAM CLERK: Would you please stand and raise
16 your right hand? The response to the oath is I will.
17 You shall well and truly try the case 2008-GS-23-6996,
18 The State versus Travell Levone Hill, indicted for
19 trafficking cocaine, and a true verdict rendered
20 according to the law and the evidence, so help you God?

21 (WHEREUPON, all jurors answered in the
22 affirmative.)

23 MADAM CLERK: Thank you.

24 THE COURT: Solicitor, you may address the
25 jury.

OPENING STATEMENT

1
2 BY MS. MONTIS:

3 May it please the Court. Mr. Foreman, ladies and
4 gentlemen of the jury, again, my name is Joyce Montis. I
5 work for the Thirteenth Circuit Solicitor's Office. It
6 is my job to prove to you beyond a reasonable doubt that
7 the Defendant is guilty of the charge pending against
8 him. Right now this is just a charge. But at the end
9 of the trial when His Honor directs you to go back and
10 deliberate, then he will either be found guilty or not
11 guilty.

12 That charge is trafficking in cocaine. And
13 trafficking in cocaine, you will hear definitions at the
14 end when His Honor instructs you on the law at the end
15 of the trial, but basically you can do many things.
16 It's the weight -- many things with the actual cocaine,
17 but it's the weight of the drugs that makes it
18 trafficking. The lowest level of trafficking is ten
19 grams. We are up to -- the highest level of trafficking
20 in the South Carolina laws which is over four hundred
21 grams. You will hear testimony that there was a kilo,
22 about almost 1.25 kilograms, which is over a thousand
23 grams of cocaine in the vehicle that the Defendant was
24 driving.

25 Now, the trafficking, you will hear can either be

1 bringing it into the State. It can be simply possession
2 which is the easiest thing to prove as far as
3 technicalities. You can be an accessory. You can be an
4 aider or an abetter. You can provide money. There's
5 different ways. But you have to be doing something with
6 an amount of cocaine. In this case the charge is over
7 four hundred grams of that. And the State believes that
8 we will prove to you beyond a reasonable doubt that the
9 Defendant is guilty of trafficking in more than four
10 hundred grams of cocaine.

11 You will hear testimony from the witness stand from
12 the troopers. You will see the video from when the
13 trooper stopped the vehicle. So, once His Honor
14 instructs you at the end, once you've heard the
15 witnesses testimony, you've seen any physical evidence
16 that you will have to take back and you've observe the
17 video, the State believes that you will find the
18 Defendant guilty of trafficking in cocaine from a
19 February 19th, 2008 car stop on I-85 here in Greenville
20 County. Thank you.

21 THE COURT: Mr. Posey?

22 OPENING STATEMENT

23 BY MR. POSEY:

24 May it please the Court, Ms. Monts? Mr. Foreman,
25 ladies and gentlemen of the jury, my name is Chris Posey

1 and I represent Mr. Hill in this case. At this point in
2 time he is clothed in innocence. What we clothed in
3 innocence. It means he is wrapped in innocence. The
4 only thing I'm going to ask you to do at this time is
5 listen to all the evidence that is presented to you.
6 And as you listen to the evidence know the State's
7 burden is proof beyond a reasonable doubt. His Honor
8 will define that for you at the end of the case and I'll
9 have an opportunity to speak to you again towards the
10 end of the case about that as well. Hold the State to
11 their burden with every witness, with the statements
12 they make, and with any physical evidence they present.
13 Everything you listen to, listen to it with that
14 burden in mind. I think at the end of this trial if you
15 do that you will find the State will not meet their
16 burden and you will find Mr. Hill not guilty. I thank
17 you in advance for your time and your attention to this
18 case. Mr. Hill thanks you as well. And as I said I
19 will get a chance to speak to you again at the end of
20 the trial. Thank you, ladies and gentlemen.

21 THE COURT: You may call your first witness,
22 Ms. Monts.

23 MS. MONTS: Your Honor, the State calls Lance
24 Corporal Shannon Chasteen.

25 MADAM CLERK: Corporal Chasteen, if you will

1 come forward, place your left hand on the Bible and
2 raise your right to be sworn. Do you swear or affirm to
3 tell the truth, the whole truth, and nothing but the
4 truth so help you God?

5 MR. CHASTEEN: Yes, ma'am, I will.

6 MADAM CLERK: Have a seat. Would you please
7 State your full name for the record?

8 MR. CHASTEEN: Richard S. Chasteen.

9 MADAM CLERK: Thank you.

10 SHANNON CHASTEEN,

11 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. MONTS:

14 Q. Corporal, please tell the jury where you're
15 currently employed?

16 A. I'm employed with the South Carolina Highway
17 Patrol.

18 Q. And how long have you worked for the Highway
19 Patrol?

20 A. Since 2002.

21 Q. And what is your current position there?

22 A. I'm assigned to the Aggressive Criminal Enforcement
23 Unit or the ACE team.

24 Q. And where were you assigned on February 19th of
25 2008?

1 A. Here in the upstate to the I-85 corridor.

2 Q. And regarding your training what did you obtain in
3 training?

4 A. I've had ten years of on-the-job experience.

5 Additionally, I've had two week long or four day courses
6 sponsored by the South Carolina Department of Public
7 Safety. It consisted of thirty-two hours a class.

8 Q. And where were you assigned on February 19th of
9 '08?

10 A. I was assigned, like I said, here to the Upstate
11 unit on the I-85 corridor.

12 Q. At approximately three fifty that afternoon where
13 were you and what were your duties?

14 A. We're a traffic based unit with traffic safety
15 coming first and foremost. We enforce traffic laws
16 first and foremost. I was assigned, like I said, to the
17 I-85 -- Interstate 85. I was sitting stationary on the
18 northbound side of I-85 at about the forty-two mile
19 marker, just sitting there watching northbound traffic.

20 Q. And were you in a marked vehicle?

21 A. I was in a fully marked patrol car.

22 Q. And what were you looking for?

23 A. I was just looking for all sorts of traffic
24 violations.

25 Q. At approximately three fifty did you observe any

1 traffic violation?

2 A. I did. I observed a following too close violation.

3 Q. And what type of vehicle was this and what is that
4 term, what is that charge?

5 A. First and foremost, the charge of following -- or
6 the violation of following too close simply is what is
7 stated. It's following another vehicle at a distance
8 that's not reasonable. You don't have the distance or
9 the time to react if something -- if the car were to
10 stop suddenly. It's following too close. I mean, it is
11 what it is.

12 Q. And what type of vehicle did you observe make this
13 infraction?

14 A. I observed a newer model Ford Expedition SUV
15 following a commercial vehicle too close.

16 Q. What is a commercial vehicle?

17 A. A CMV. A truck and trailer.

18 Q. And please continue. What did you do once you
19 observed that infraction?

20 A. I observed this. Like I say, I was sitting
21 stationary there at the forty-two watching traffic. I
22 observed this burgundy SUV following the commercial
23 vehicle too closely. Immediately after observing the
24 violation I moved out into traffic to stop the vehicle.
25 My first observations or my second observation of this

1 vehicle was when I moved out into traffic the SUV that I
2 observed earlier following too close immediately shot
3 over to the far left hand lane and established his lane
4 of travel there versus where he was.

5 Q. Did you notice anything about his pace?

6 A. I did. At the point in time when I observed the
7 violation, everyone was running around the posted speed
8 limit which is sixty mile an hour. I don't know exactly
9 how fast they were going but everybody was running
10 thereabouts. The burgundy SUV, like I said, moved to
11 the far left-hand lane and immediately slowed down to
12 around fifty-five mile an hour.

13 Q. And is this an infraction?

14 A. It is. By State law you are required -- slower
15 moving traffic is required to stay in the right-hand
16 lane.

17 Q. And what did you do once you observed these two
18 infractions?

19 A. Once I moved up to this vehicle, now having a
20 violation of two South Carolina traffic laws, I
21 initiated my blue lights and stopped the driver for the
22 violations.

23 Q. And did you have a video recorder on your car?

24 A. I did.

25 Q. At what point did your video recorder come on?

1 A. The video recorder comes on at activation of the
2 blue lights.

3 Q. And how -- describe how the vehicle pulled over.
4 Was it immediate or was it -- did it take awhile?

5 A. Like I said, he had slowed down, or the driver had
6 slowed down when I caught up to him to around fifty-five
7 mile an hour. But I activated my blue lights and he
8 gradually made his way from the left lane to the
9 emergency lane and stopped there in the emergency lane
10 about the forty-three mile marker.

11 Q. And is that on the right side or the left side?

12 A. On the right side of the roadway.

13 Q. And was this location in Greenville County?

14 A. It was.

15 Q. And what did you do once you stopped the vehicle?

16 A. Initially before stopping the vehicle the stop is
17 called out with dispatch. Once the vehicle came to a
18 stop I exited my patrol car and approached the
19 violator's vehicle on the passenger side.

20 Q. At this point had you called for any back-up?

21 A. No, ma'am.

22 Q. Please continue. What did you do once you
23 approached the vehicle?

24 A. On approach to the vehicle you try to take a
25 precursory look of the vehicle just to see what you're

1 facing out there to see what's going on. Like I said,
2 it was an SUV. The back glass was somewhat tinted, but
3 it was a factory tint, but I could see inside the car.
4 I noticed there was not a whole lot in the car as I
5 walked up and passed it. Once I get up to front
6 passenger door that's where I stop and contact the
7 driver and the passenger of the vehicle.

8 Q. Were there any more people in the vehicle?

9 A. No, just two people.

10 Q. And did you say which side did you approached?

11 A. The passenger side.

12 Q. And please continue. What did you ask for when you
13 got to the window?

14 A. I greeted the driver and the passenger, state the
15 reason for the stop to let them know what's going on and
16 asked for his driver's license and a registration.

17 Q. Did you receive these documents?

18 A. He produced the driver's license, the driver did,
19 and they informed me that it was a rental vehicle and
20 produced a rental agreement.

21 Q. And did you have any further discussion with them
22 at that time or did you go investigate the paperwork?

23 A. It was minimal. While they were looking -- the
24 conversation there at the vehicle initially was minimal.
25 I noted several observations as I stood at the vehicle

1 waiting for the driver to produce the required
2 documentation.

3 Q. What did you notice?

4 A. I noticed that both the driver and the passenger
5 were extremely nervous. I noticed the passenger was
6 holding her head as if she had a headache or maybe she
7 was sick or something. No eye contact whatsoever from
8 her. I noticed the driver was very nervous, fidgety in
9 the seat, couldn't sit still, his hands were trembling.
10 This was very noticeable when he handed over the vehicle
11 registration or the vehicle rental agreement and the
12 driver's license. I mean, you could literally see his
13 hands trembling as he handed those documents over. I
14 noticed that the driver refused to make eye contact,
15 just very, very limited eye contact.

16 Q. Did you notice any trash or anything inside the
17 car?

18 A. I did. I also noticed that there were a couple of
19 energy drinks, large energy drinks, a couple of other
20 drinks and there was fast food clutter laying about the
21 vehicle.

22 Q. Did you notice any bags at this point?

23 A. I want to say there was a small store type bag that
24 if you bought something they would put something in it
25 for you to take out of the store, but there was no

1 luggage in the vehicle.

2 Q. And did you then investigate the rental agreement?

3 A. At this point in time after having received the

4 driver's license and rental agreement, I asked the

5 driver to step out of the vehicle.

6 Q. And where did you ask him to go?

7 A. I asked him to step out of his car and back to mine

8 where I could conduct my stop there.

9 Q. Is that standard procedure?

10 A. Yes, ma'am, it is.

11 Q. And please continue. What did you say to him?

12 A. Once back at my vehicle -- pardon me for just a

13 second. Once back at my car I took a minute to overlook

14 or look over the driver's license and the rental

15 agreement he give me. Immediately upon inspection of

16 the rental, I noticed that there was a name not on there

17 -- the name on there did not match his and also that the

18 vehicle was overdue, meaning it should have been turned

19 into the rental agency prior to my stopping him in it.

20 Q. I'm going to hand you State's Exhibit 1. Can you

21 please identify this document?

22 A. Yes, ma'am. This is the rental vehicle that Mr.

23 Hill handed over to me that day that I stopped him.

24 Q. And did you keep custody of that document?

25 A. I did.

1 Q. And what information did you obtain from that
2 document?

3 A. Just when you rent a vehicle, it's got the time and
4 place that it was rented, who rented it, the method of
5 payment, and when the vehicle was due back in.

6 Q. Where was it rented?

7 A. It was rented in Virginia, Norfolk International
8 Airport.

9 Q. And who was the renter?

10 A. Ms. -- pardon my pronunciation if I get it wrong,
11 Lenise or Lenise Martin.

12 Q. And was that person in the vehicle?

13 A. No, ma'am.

14 MS. MONTS: Your Honor, we move State's
15 Exhibit Number 1 into evidence.

16 THE COURT: Any objection?

17 MR. POSEY: No objection, Your Honor.

18 THE COURT: Without objection, State's Exhibit
19 Number 1 is into evidence.

20 (WHEREUPON, State Exhibit Number 1 was admitted
21 into evidence.)

22 Q. Describe what other information you can obtain from
23 that document?

24 A. Well, going back to -- once I realized that the
25 vehicle was a rental and that Mr. Hill did not have --

1 his name did not match anyone on here, that's when I
2 began to really, really pay attention closely to what
3 was going on. But this vehicle -- this rental agreement
4 should include or should show who the authorized driver
5 or possessor of that vehicle is. That's the purpose of,
6 you know, in the paperwork.

7 Q. Was there any other authorized driver besides the
8 renter on that document?

9 A. No, ma'am.

10 Q. And what was the date that the car was rented, if
11 you can tell?

12 A. It was rented February the 12th. I'm sorry. Let's
13 see. Yes, February 12th.

14 Q. And when was it due back?

15 A. February the 17th.

16 Q. Did you know the status of that vehicle at that
17 time regarding whether it was a stolen vehicle or not?

18 A. No. I just know that the person on the rental
19 agreement is not present in the vehicle.

20 Q. Can you tell from that document what states that
21 car is allowed to be driven in?

22 A. Most of the time -- I'm sitting here looking at
23 this one, but most of the time, yes, you can. I'm not
24 sure on this one. I'd have to read it completely back
25 over. I didn't see where there's a State restriction on

1 this one.

2 Q. And did you call for back-up at this time or at any
3 time?

4 A. I did. Once given the -- the very first thing that
5 caught me odd about this stop was the fact that the guy
6 changed lanes and drastically changed lanes which is not
7 normal, not normal or consistent with the regular
8 motoring public. That was the first little clue or
9 indication that something may be wrong. Once I get
10 there and compare the -- or observe the nervous behavior
11 and the lack of luggage or anything really present
12 inside the vehicle, and I get back there and see that
13 it's actually a third party rental vehicle, at this
14 point bells are going off in my head. Something's
15 wrong. That's when I called for my partner.

16 Q. And who is that?

17 A. Brad Dowis.

18 Q. And does he have a drug canine?

19 A. He does.

20 Q. Do you recall approximately how long it took him to
21 arrive?

22 A. It didn't take him long, five minutes or so.

23 Q. And what were you doing during that time?

24 A. When I noticed that Mr. Hill didn't match the name
25 on the rental agreement, I asked him who rented the car

1 and he stated she did and indicated toward the truck,
2 obviously to the passenger in the truck or the SUV. I
3 returned back to the SUV and asked her for
4 identification for purpose of comparing to the name on
5 the rental agreement. It turned out that the passenger,
6 Ms. Rodgers, she had ID but she didn't have any right to
7 this vehicle as well. She was not included as an
8 operator or authorized driver on this vehicle as well.
9 Just briefly while I was up there I asked her where they
10 had been and she said to Atlanta, Georgia to shop for
11 shoes. I asked her -- she said Atlanta, Georgia to shop
12 for shoes and to visit some of her family. And she also
13 said that her and Hill were boyfriend/girlfriend and
14 were involved in a relationship.

15 Q. Did you find out what duration of time they had
16 been down there?

17 A. Not at this point. I just mainly went up there to
18 get her ID to compare the rental agreement. I went back
19 to my car and began writing the warning like I initially
20 told Mr. Hill that he would be receiving for the
21 violation. During that time of writing the warning we
22 talked and he related several things to me.

23 Q. What did he tell you?

24 A. He related to me that he and Ms. Rodgers were on
25 their way home to Chesapeake, Virginia, coming from

1 Atlanta, Georgia. He had stated they had arrived there
2 on the 18th, the day before, and were now headed back.
3 That they had went down to party and visit with one of
4 his friends named Tony and really hadn't stayed
5 anywhere, just kind of partied it up, visited with Tony
6 and headed back. They had stayed in the SUV. No hotel
7 rooms or anything like that is what I'm getting at.

8 Q. And did you write them a ticket at that time?

9 A. I'm in the process of writing the warning at this
10 point in time, yes, ma'am.

11 Q. And when does Officer Dowis arrive?

12 A. Like I said he arrives within five minutes of my
13 calling. I called him when I noticed that it was a
14 third party rental vehicle.

15 Q. And what do you do when you finish writing the
16 ticket?

17 A. Normally, you explain the warning and return their
18 documentation and the warning back to them.

19 Q. And did you ever ask the passenger out of the
20 vehicle?

21 A. Eventually I did. Like I said once -- while me and
22 Hill were talking I learned these things. I noticed
23 several things while we were sitting there talking. I
24 noticed although I told him that he was getting a
25 warning, that he continued to be nervous and, you know,

1 common sense reason, hey, this guy's just getting a
2 warning. There's no reason to be nervous. He continued
3 to be nervous which I found odd. By nervous I mean he
4 just couldn't stand still. He was folding and unfolding
5 his arms, just general nervous behavior. No eye
6 contact, looking around, just nervous. But after
7 talking to him I went back up to look at the VIN number
8 on the SUV, and again I spoke with Ms. Rodgers and asked
9 her some of the same questions I asked him. Ms. Rodgers
10 indicated to me that they had in fact went to Atlanta
11 mainly to shop. When I asked her about the name of the
12 stores or anything like that she couldn't give me any
13 details, any details that in my mind if a lady went to
14 shop somewhere she'd remember what store she went to.
15 She couldn't remember what store she went to. I asked
16 her other things about her trip. She said that they
17 stayed with Danielle. I asked who Danielle was and she
18 indicated to me that Danielle was a cousin of some kind
19 to her or kind of her cousin, and they really didn't do
20 anything else. Now they were headed back home to
21 Virginia.

22 Q. And did she say how long they had been down there?

23 A. I don't -- I didn't indicate or I don't have in my
24 report that I asked her how long.

25 Q. And please continue. When did Trooper Dowis

1 arrive?

2 A. He's probably arriving on scene right around this
3 time. When I go back or when I leave the vehicle and go
4 back to finish up the warning he's getting there. Like
5 I said, it didn't take him five minutes or so to get
6 there after I called.

7 Q. And did you give Mr. Hill a ticket for his traffic
8 infractions?

9 A. I did. I wrote him a warning ticket for the
10 following too close and impeding traffic.

11 Q. And what did you ask after that?

12 A. Immediately after issuing the warning or explaining
13 and issuing the warning, I asked Mr. Hill for consent to
14 search his vehicle.

15 Q. Were you given consent?

16 A. No. I was refused consent to search the vehicle.

17 Q. And what did you ask Officer Dowis to do?

18 A. I asked Trooper Dowis to allow his dog, a scan of
19 the vehicle.

20 Q. Were you familiar with Trooper Dowis' canine and
21 had you worked with him?

22 A. Yes, ma'am.

23 Q. Where is Mr. Hill and Ms. Rodgers while Trooper
24 Dowis is running his dog?

25 A. Up to this point directly after the refusal, Mr.

1 Hill is standing at my car with me. Ms. Rodgers is in
2 her vehicle and Trooper Dowis is back there with me.
3 Before Trooper Dowis runs his dog, we ask Ms. Hill out
4 of the vehicle for officer safety reasons.

5 Q. And did any other officers or troopers arrive at
6 this point or later?

7 A. Later on in the stop they did.

8 Q. And what do you observe visually about the canine?

9 A. As to what regards?

10 Q. Where does Trooper Dowis take the canine?

11 A. He takes the canine from his car to Mr. Hill's --
12 to the vehicle in Mr. Hill's possession.

13 Q. And where do you observe it, if you do, where do
14 you observe the canine go?

15 A. He starts, he starts at the front of the vehicle
16 and I noted that he never made it all the way around the
17 vehicle. He allowed the dog into the car before he even
18 made it around one time.

19 Q. What does that, from your training and experience
20 and working with him, what does that tell you?

21 A. That his dog has alerted on that car to the
22 presence of the odor of some type of illegal drugs.

23 Q. Once Trooper Dowis gets the canine out of the
24 vehicle what do you do?

25 A. I informed Mr. Hill and Ms. Rodgers that their

1 vehicle now would be searched based on probable cause.

2 Q. And where does Trooper Dowis go?

3 A. He puts his dog up and comes back and stands by
4 with Mr. Hill and Ms. Rodgers.

5 Q. And did you know where inside the vehicle that the
6 canine had indicated?

7 A. No, I just know that it had indicated on the
8 vehicle.

9 Q. And when you went to search did you know exactly
10 where to look?

11 A. No. I just started my search.

12 Q. And did you look in the front and the back of the
13 vehicle?

14 A. I think if I recall I started at the front
15 passenger door and started moving in a clockwise
16 rotation around the vehicle.

17 Q. And describe the inside of this SUV. Are there two
18 rows of seats or three rows or just describe it?

19 A. It's a Ford Expedition. I mean, you've got the
20 front passenger compartment. Directly behind that
21 you've got a bench seat. And I don't recall a third row
22 seat or not. It's a Ford Expedition.

23 Q. And is the back, the rear end a storage area?

24 A. Right. You've got a storage area at the rear tail
25 gate.

1 Q. Did you notice anything inside the vehicle, any
2 luggage, any packages, anything?

3 A. There was like a bag -- like I stated earlier, it
4 was like a bag that you would receive from a store when
5 you bought something. It was like a pair of shoes, but
6 nothing -- I mean, really no volume of contents. I
7 mean, it was pretty bare.

8 Q. And at that point did you locate anything illegal?

9 A. No.

10 Q. What did Trooper Dowis do?

11 A. While I was searching Corporal Mark Howard arrived
12 on the scene and took Trooper Dowis' place in standing
13 by with the two occupants of the vehicle. Trooper
14 Dowis, having watched his dog indicate on the vehicle
15 went up there and located the cocaine that was later
16 found in the vehicle

17 Q. And did you see where he located it?

18 A. Yeah, after he located it I did.

19 Q. Did he show it to you?

20 A. He did.

21 Q. Where did he show it to you?

22 A. It was under the carpet on the front passenger
23 side. They had peeled the carpet back and laid it up
24 under there and laid the carpet back down.

25 Q. At that point was anyone placed under arrest, at

1 that point?

2 A. After the cocaine was found both Mr. Hill and Ms.
3 Rodgers were placed under arrest for trafficking
4 cocaine.

5 Q. And did you take the cocaine out of the car at that
6 time?

7 A. Not immediately I didn't. We have certain
8 procedures that we have to follow once we're involved in
9 a seizure on the interstate that result -- I mean, that
10 consist of notifying your chain of command and all that
11 stuff. So it wasn't immediately taken out but it was
12 taken out, you know, later, a short time later right
13 there on the side of the road.

14 Q. And who took custody of it?

15 A. I did.

16 Q. And did you keep it in your custody?

17 A. I did, up until I turned it over to a secure
18 holding facility.

19 Q. And how many -- describe how the substance was
20 packaged from what you observed and what you took
21 custody of.

22 A. To explain to you what I found or actually what
23 Brad Dowis found, it was a kilogram and a kilogram of
24 cocaine and eight ounces of cocaine. The kilogram was
25 packaged separately in a typical kilogram shape,

1 rectangle. The eight ounces was packaged in a plastic
2 bag that's loose as I call it. But the kilogram was
3 wrapped in plastic with brown tape and it was obvious
4 what the smaller package was. You could see the white
5 powder through the plastic. But they were laying side
6 by side there under the carpet.

7 Q. And when you say you took it to a locked facility,
8 where was that?

9 A. That was at our Greenville ACE office.

10 Q. Describe how secure it is?

11 A. Only certain members of the Highway Patrol have
12 access to that office. Inside that office is a box and
13 only two people or actually only two people in the
14 upstate have a key, along with CEF, Central Evidence
15 Facility. So, not just anybody can walk into this
16 office and certainly no one can open -- no one but a
17 couple of people can open this safe that the drugs are
18 stored in.

19 Q. And did you subsequently take it to the Greenville
20 Law Enforcement Center property and evidence room?

21 A. I did the following day. Due to the time the
22 seizure was made, it was after business hours by the
23 time we got done, so we had to secure the cocaine
24 overnight. The following day during business hours I
25 took possession of the cocaine again from the safe and

1 turned it over to the Greenville County lab for
2 analysis.

3 Q. And is that a locked secure area?

4 A. The County?

5 Q. Yes, sir?

6 A. Yes, ma'am.

7 Q. Could you walk in or was it a locked area?

8 A. No, I have to be let in.

9 Q. I'm going to hand you State's Exhibits 2 and 3.
10 Can you please identify these?

11 A. Yes, ma'am. This is -- marked as Exhibit 2 is the
12 actual cocaine that was located in the vehicle. This is
13 marked -- Exhibit 3 is the packaging which the cocaine
14 was packaged in.

15 Q. And how many -- in State's Exhibit 2 describe what
16 you see in there and how many packages are there?

17 A. Just like I said, it's a kilogram of cocaine still
18 maintaining pretty much its shape and also you've got
19 another package aside from the kilogram, it's just a
20 white powder.

21 Q. When you saw these inside the vehicle were they
22 packaged separately?

23 A. They were.

24 Q. Please describe what Exhibit 3 is?

25 A. This is the packaging that, like I said, that this

1 was contained in prior to the analysis. This is what it
2 was packaged in when I found it.

3 Q. So, what color did you see when you saw the
4 packages in the vehicle?

5 A. The kilogram was packaged in clear plastic with
6 brown packing tape. I'm sure you'll get a chance to
7 look at that. You can see the brown packaging tape in
8 there. And the eight ounces or the loose cocaine was
9 just a blob laying there in a plastic bag. It didn't
10 have no shape or form. It's just eight ounces of
11 cocaine in a plastic bag laying beside the kilo.

12 Q. And did you transport either Mr. Hill or Ms.
13 Rodgers to the Law Enforcement Center?

14 A. I transported Mr. Hill.

15 Q. And is the person, Mr. Travell Hill, who you
16 arrested on February 19th of 2008 in the Courtroom
17 today?

18 A. Yes, ma'am.

19 Q. Where is he seated?

20 A. He's sitting right here with the white striped
21 shirt on, white shirt.

22 Q. And did you provide to Court today a copy of your
23 recording from your car?

24 A. I did.

25 Q. I'm going to hand you State's Exhibit 4. Can you

1 please identify this?

2 A. This is a copy of the video footage caught from my
3 in-car camera on this incident.

4 Q. And what type of recording media is in your
5 vehicle?

6 A. VHS.

7 Q. And how do you know this is a copy of that VHS
8 tape?

9 A. Because I made the copy.

10 Q. And did you mark on this?

11 A. Right. It's got my initials and it's got the date
12 there.

13 Q. Is that the date you viewed this copy?

14 A. Right.

15 MS. MONTs: Your Honor, we'd enter the DVD
16 into evidence as State's Exhibit 4.

17 THE COURT: Any objection to the ---

18 MR. POSEY: No objection as long as it's
19 played:

20 THE COURT: Exhibit 4 is admitted into
21 evidence without objection.

22 (WHEREUPON, State Exhibit Number 4 was admitted
23 into evidence.)

24 MS. MONTs: Your Honor, we would like to
25 publish the DVD and the audio is -- we'll just turn it

1 down. The audio is very noisy, just a lot of racket and
2 we can fast forward. There's about -- the entire tape
3 is a little over an hour and we just want to fast
4 forward about 30 minutes of it just so they can get an
5 idea of what, of what was taking place on the side of
6 the road. So it should -- I would think it would only
7 take five minutes or so just to fast forward through
8 there to see the car stopped.

9 THE COURT: Obviously, Mr. Posey, if you want
10 to play more of it, I'm confident you've had a chance to
11 review it.

12 MR. POSEY: I have reviewed it, Your Honor,
13 and I would say there's really only about five minutes
14 worth of watching on there.

15 THE COURT: You'll have the right on cross
16 examination to play other parts if still needed.

17 MR. POSEY: Yes, sir.

18 Q. And Trooper, describe any technical difficulties
19 that you have with your recording device in your
20 vehicle?

21 A. It's a manmade piece of machinery. It lives a
22 hard life. It lives in the back of a patrol car,
23 bouncing -- gets bounced around, kicked around. The
24 footage is not always the best. I mean, that's simply
25 all I -- that's all I can tell you. Sometimes it works

1 great, sometimes not so great, you know. But you know,
2 we're required by policy to run this. And the end
3 result is what you see. Like I said, sometimes it's
4 good, sometimes it's not.

5 (WHEREUPON, State Exhibit Number 4, DVD, was played
6 in open Court.)

7 MS. MONTS: Your Honor, I believe we may need
8 a few minutes to correct this.

9 THE COURT: I'll tell you what let's do. This
10 might be a good time to take a lunch break. We'll just
11 let you go on to lunch now. If you'll be back at two
12 o'clock we'll be ready to start back then and give us
13 time to get the equipment working.

14 Let me remind you while you're out for lunch,
15 ladies and gentlemen, you shouldn't discuss the case
16 with each other or with anyone else. Don't let anyone
17 discuss the case with you. That's an important concept
18 and you've made a commitment to decide this case on what
19 happens in the Courtroom, the evidence you hear in this
20 Courtroom, not from any other source whatsoever.

21 Don't let anyone talk to you about the case. If
22 someone were to approach you and want to give you
23 information or ask you questions, please excuse yourself
24 from that person as quickly as you can. If you can get
25 the name of that individual please report it back to us

1 and we'll take care of that. I don't expect anything
2 like that to happen. I do want to remind you of the
3 importance of fulfilling your obligations to decide this
4 case just on what happens here.

5 Have a good lunch, ladies and gentlemen. I'll see
6 you back at two o'clock and we'll be ready to start
7 then.

8 (WHEREUPON, the jury exited the open Court at
9 approximately 12:53 p.m.).

10 THE COURT: Officer Chasteen, you may step
11 down. Let me remind you during the break you should
12 not be discussing your testimony with anyone. We will
13 call you back on the witness stand when we start back at
14 two.

15 MR. CHASTEEN: Yes, sir. Thank you.

16 (WHEREUPON, the Court stood at recess for a lunch
17 break.)

18 THE COURT: Thank you. Please be seated.
19 Officer Chasteen, you can come back around, please, sir.
20 You're still under oath, let me remind you, sir.

21 MR. CHASTEEN: Yes, sir.

22 THE COURT: Are you ready for the jury to come
23 back?

24 MS. MONTS: Yes, Your Honor.

25 THE COURT: Bring the jury in, please.

1 (WHEREUPON, the jury entered the open Court at
2 approximately 2:00 p.m.)

3 THE COURT: Solicitor, you may continue your
4 examination of the witness.

5 MS. MONTS: Your Honor, I believe we're ready
6 to publish portions of the DVD that has been admitted
7 into evidence.

8 (WHEREUPON, State Exhibit Number 4, DVD, was played
9 in open Court.)

10 Q. Trooper Chasteen, who were the other troopers
11 besides yourself in that video?

12 A. It was Lance Corporal Dowis, Corporal Howard and
13 Corporal Owens.

14 Q. And which officer had the -- was running the
15 canine?

16 A. Lance Corporal Dowis.

17 Q. And who was the person not in uniform?

18 A. Corporal Owens.

19 Q. Was he on duty that day?

20 A. He was not.

21 Q. And to describe in the video that we just saw, when
22 was the cocaine actually taken out of the car?

23 A. That video obviously was cut and pasted. You just
24 seen portions of it. And as I explained to you earlier
25 it's just a poor quality video. But the cocaine was

1 actually taken out right there at the end of the video
2 where you see me walk from the apex of the passenger
3 door to the back storage area and I lay it there in the
4 storage area and you got the guy in the white, which is
5 Corporal Owens, he's standing right in front of it so
6 you can't hardly see it. But it's right there at the
7 end of the video, or the stoppage of the video, is when
8 the cocaine was taken out from under the carpet and laid
9 it in the back of the truck or the SUV.

10 Q. And was the cocaine located right then when we saw
11 on the video or had it been located previously?

12 A. No, it was located much earlier. As I stated
13 before lunch, I started the search of the vehicle and
14 when Corporal Howard arrived on the scene, Lance
15 Corporal Dowis came up and began to search the vehicle
16 and he found it pretty much right after he got up there.
17 He seen where his dog indicated earlier and that's when
18 -- when you see him walk up to the cars is pretty much,
19 you know, just a few seconds later is when the cocaine
20 was located.

21 Q. And why was it not retrieved from the location at
22 that time?

23 A. Because you've still got two people, two suspects
24 that's involved in a dangerous felony that are not in
25 custody, so you don't want to be juggling cocaine and

1 two people at the same time. You always secure the
2 people, the suspects first, and retrieve the evidence
3 later.

4 Q. Trooper, I'm going to hand you again State's
5 Exhibit 2. Can you please identify any of your markings
6 when you took custody of these?

7 A. Inside this outer plastic is another closed
8 evidence bag. It's a South Carolina Highway Patrol
9 evidence bag. Simply, it's got pertinent information as
10 it relates to the suspects and the time of the stop, who
11 collected the evidence, case number and all that. I
12 think all my handwriting is pretty identifiable. It's
13 pretty poor in quality. But it's -- on the South
14 Carolina Highway Patrol evidence bag, it's my
15 handwriting.

16 MS. MONTS: Thank you, Trooper. I have no
17 further questions.

18 THE COURT: You may cross examine the witness.

19 MR. POSEY: May it please the Court, Your
20 Honor.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. POSEY:

24 Q. Trooper Chasteen, you said you began your
25 investigation basically observing and talking to Mr.

1 Hill and Ms. Rodgers; is that correct?

2 A. Yes, sir.

3 Q. I believe you stated there was some inconsistencies
4 in their statements. Did you ever figure out which one
5 was actually giving you inconsistent statements and who
6 might telling the truth?

7 A. No, sir, just comparing the two statements made by
8 both parties.

9 Q. So you don't have any idea who was telling you the
10 truth and who wasn't?

11 A. No, sir.

12 Q. Let me go back to the rental agreement.

13 MR. POSEY: Your Honor, may I approach?

14 THE COURT: You may, sir.

15 Q. I believe it's Ms. Martin or Ms. David; is that
16 right, that rented ---

17 A. Yes, sir, Lenise Martin.

18 Q. Did you ever determine who that person was?

19 A. According to the passenger it was Ms. Rodgers'
20 mother.

21 Q. Ms. Rodgers' mother?

22 A. Yes.

23 Q. Ms. Rodgers' mother is the person who rented this
24 car?

25 A. According to her, yes.

1 Q. Let me go to where the cocaine was found. It was
2 found -- can you tell me precisely where again?

3 A. Yes, sir. In the front passenger, front passenger
4 compartment under the carpet.

5 Q. Okay. The front passenger compartment. Is that
6 under -- are you talking underneath the seat or
7 underneath the floor?

8 A. No, under the floorboard area.

9 Q. Was it totally concealed under there?

10 A. Yes, sir.

11 Q. Had the carpet been replaced, tacked down, or ---

12 A. No, it had just been peeled back and rolled back
13 over the top of it.

14 Q. Who was sitting in that seat?

15 A. Ms. Rodgers was in the passenger seat.

16 Q. I believe we've all seen the packaging. Please
17 explain to the jury again how the packaging on the
18 largest package, what was surrounding the cocaine, how
19 was it packaged?

20 A. With plastic and packaging tape.

21 Q. Okay. Like you buy at the UPS store or a FedEx
22 store?

23 A. Yes, sir.

24 Q. Anything like that. Was it ever submitted for
25 fingerprint analysis?

1 A. I think I marked fingerprint analysis on there, but
2 I don't think I filled out the form completely so it was
3 not actually printed or it was actually not analyzed for
4 latents.

5 Q. Okay. So, we don't know who had touched it or who
6 didn't touch it?

7 A. No, sir.

8 Q. Okay. The same thing with the smaller package?

9 A. Yes, sir. They were both submitted at the same
10 time.

11 Q. Do you have any physical evidence that shows that
12 Mr. Hill ever possessed that cocaine, other than driving
13 the car? That he even knew it existed?

14 A. Just the totality of the circumstances, sir.

15 Q. Did Mr. Hill ever admit to you that the cocaine was
16 his?

17 A. No, sir.

18 Q. That he had anything to do with it?

19 A. No, sir.

20 Q. Did Ms. Rodgers tell you at the time that you
21 placed her under arrest that it was Mr. Hill's drugs or
22 anything of that nature?

23 A. No, sir.

24 Q. Did anything identify it on the packages that would
25 pertain directly to Mr. Hill?

1 A. No, sir.

2 Q. Going back to the car one minute, did you ever
3 interview Ms. Martin, supposedly Ms. Rodgers' mother or
4 anything, did you ever talk with her?

5 A. I talked with Ms. Rodgers' father afterwards.

6 Q. Did he confirm that the mother had in fact rented
7 the vehicle?

8 A. Sir, it's been so long I don't remember that
9 conversation.

10 MR. POSEY: Your Honor, beg the Court's
11 indulgence a moment.

12 THE COURT: Yes, sir.

13 MR. POSEY: Your Honor, I have no further
14 questions.

15 THE COURT: Anything on redirect?

16 MS. MONTS: No, Your Honor.

17 THE COURT: Thank you, Officer Chasteen. You
18 may step down.

19 MR. CHASTEEN: Thank you, Your Honor.

20 MR. MONTS: Your Honor, the State calls
21 Trooper Brad Dowis.

22 THE COURT: Come around and be sworn, please,
23 sir.

24 MADAM CLERK: Officer Dowis, come forward.

25 Place your left hand on the Bible and raise your right

1 to be sworn in. Do you swear or affirm to tell the
2 truth, the whole truth, and nothing but the truth so
3 help you God?

4 OFFICER DOWIS: I do.

5 MADAM CLERK: Thank you. You may be seated.
6 Please state your name for the record.

7 OFFICER DOWIS: Brad Dowis.

8 MADAM CLERK: Thank you.

9 BRAD DOWIS,

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. MONTS:

13 Q. Trooper, please tell the jury where you're
14 currently employed and how long you've worked there?

15 A. I'm currently employed with the South Carolina
16 Highway Patrol. I've been there since 2000.

17 Q. And what is your current position there? What are
18 your duties?

19 A. I'm a canine handler assigned to the Aggressive
20 Criminal Enforcement team for the Upstate.

21 Q. And on February 19th of 2008 was that your same
22 assignment?

23 A. Yes, ma'am.

24 Q. Did you receive training in this area?

25 A. I did.

1 Q. And the dog that you received, did that dog receive
2 training in this area?

3 A. Yes, ma'am, she did.

4 Q. Can you describe some of that training, please?

5 A. We through an initial two week training period to
6 kind of get me acquainted with the dog where a bond is
7 formed between myself and the dog so I know how the dog
8 normally behaves and how she reacts to certain
9 situations and stuff like that. The initial training
10 period also showed me how the dog alerts and indicates
11 to the odor of the presence of illegal narcotics.

12 Q. And what is your dog's name and age?

13 A. Her name is Chloe and she's a ten year old Labrador
14 Retriever.

15 Q. And at that time in November of '08 how long had
16 you worked together?

17 A. I got Chloe in July of '07, so probably eight or
18 nine months.

19 Q. And do you know why this particular breed of dog
20 was selected to be a drug canine?

21 A. Law Enforcement I know uses Labradors for their
22 sense of smell.

23 Q. And what odors was Chloe trained to detect?

24 A. She was trained to detect marijuana, cocaine,
25 methamphetamines and heroin.

1 Q. And please describe the certification process.

2 A. After our initial two week, two week bonding
3 period and our training together, we certified through
4 an outside agency that basically comes in and they'll
5 do hides in vehicles in different areas of the vehicles
6 and they'll hide dope in a house and a different area
7 of the house and stuff like that to see how accurate the
8 dog is and see how well she performs and also to see if
9 I, as a handler, picks up on these alerts by the
10 canine.

11 Q. And are you certified as a team or individually?

12 A. Certified as a team.

13 Q. And what test do you have to pass in order to be
14 certified along with Chloe? Is there a certain number
15 of hides?

16 A. I can't remember the exact number of hides. It's
17 left up to the outside certifying agency exactly how
18 many hides. I would say there were probably five hides
19 in vehicles and five or six hides inside different areas
20 of a building.

21 Q. And do you have continued training with Chloe?

22 A. I do.

23 Q. How often?

24 A. We recertify every year with an outside agency and
25 we attempt to have monthly training sessions to keep the

1 dog on her toes and me on my toes.

2 Q. And please describe what an alert is and how does

3 Chloe alert.

4 A. An alert is something that a handler will pick up

5 on after working with a dog. An alert is basically a

6 change in body posture that you will see. When the dog

7 first senses a smell of odor of narcotics, her body

8 posture will change. She may turn away, her nose may

9 raise to where the odor is and her respiration also

10 changes. You'll see her nose start working actively,

11 it'll start pulsating more, sniffing kind of like a hog.

12 You can tell a difference in the respiration of the dog

13 and body language.

14 Q. Does she pull or go in a certain direction when

15 that happens?

16 A. She does at certain times, yes. If I'm leading her

17 around a car she may pull me back to the odor.

18 Q. And what is an indication and how does she

19 indicate?

20 A. An indication is actually where the dog is trying

21 to pinpoint the odor. After she smells the odor you'll

22 see the body movement, the body posture change and

23 you'll see the respiration go up, and then the dog will

24 attempt to actually pinpoint the odor. And she will --

25 when she gets as close as she can to the odor, when she

1 determines exactly where that odor is coming from, her
2 next step will be to indicate and Chloe actually
3 indicates by scratching.

4 Q. And what factors affect the dog's ability to locate
5 a smell, an odor?

6 A. There's numerous different factors. I mean, some
7 people use masking agents. I've seen mustard and grease
8 used, laundry detergents, even outside wind currents can
9 affect how the dog alerts in the case.

10 Q. And in this situation that we're here for today did
11 the wind currents with the cars and the trucks going by
12 on the interstate affect where an odor would be coming
13 from?

14 A. Any time you're on the interstate, obviously you've
15 got heavy traffic on I-85. And anybody who's been on I-
16 85 in Greenville County knows it's non-stop. And
17 there's a huge wind current out there and any time
18 you're working the interstate, yeah, you do have wind
19 currents that affect the odor of narcotics.

20 Q. And what does the seam or crack in a vehicle do?

21 A. The seams and cracks in the vehicles will let the
22 odor escape from inside the vehicle.

23 Q. And particularly in this case what -- when do you
24 let the dog inside the vehicle?

25 A. After an alert, after I see that the dog's body

1 posture has changed and her respiration has changed and
2 she has alerted, then at that time I'll let the dog
3 inside the vehicle.

4 Q. Now, is an alert something that someone who is not
5 trained with this particular dog able to observe?

6 A. Yes, ma'am. That's possible. You can actually see
7 her turn her back toward the vehicle and you can kind of
8 see her body posture change when she goes into an alert
9 mode.

10 Q. And does Chloe live with you? Are you her twenty-
11 four hour caretaker?

12 A. Yes, ma'am.

13 Q. And do you take her to the veterinarian when she
14 needs checkups?

15 A. Yes, ma'am.

16 Q. And do you feed her every day?

17 A. I do.

18 Q. And in this case why did you go to this scene?

19 Were you called by Trooper Chasteen or was there someone
20 else that called you?

21 A. I'm sure that Trooper Chasteen called me to the
22 scene.

23 Q. And do you recall at what point or how long it took
24 you to arrive there? Where would you have been?

25 A. When we work on the interstates, we work as a

1 fairly tight knit group so we're usually within two or
2 three, three or four miles of each other at all times.
3 So I would say no more than five minutes.

4 Q. And when you arrived at the scene what did you
5 observe?

6 A. I observed Trooper Chasteen had a SUV pulled over
7 onto the right-hand side of the roadway.

8 Q. Were there any occupants out at the time you
9 arrived or were they still inside the SUV, if you
10 recall?

11 A. I'm sure that the male subject was already out of
12 the vehicle. I'm not sure, when I arrived if the female
13 subject was out or not.

14 Q. And did Trooper Chasteen ask you to do anything
15 once you arrived?

16 A. He asked me to run the canine for a refusal.

17 Q. And describe what steps you took to do that.

18 A. I get my leash and go to the back of my patrol car,
19 I get canine Chloe. And the way I'll start -- I start
20 my scan of the vehicle, I'll take her to the very front
21 of the car and I'll start on the passenger side tail
22 light -- I'm sorry, the passenger side head light and
23 then she and I will start our round around the car to
24 determine if she'll alert on the car or not.

25 Q. And in this case describe what she did. Did she

1 make any alerts for you?

2 A. She did alert. She alerted. We did not make it
3 past -- we did not make it past the driver's side door
4 until she had turned. Her body posture had changed.
5 Her respiration went up. And it was obvious that she
6 was alerting on the driver's side door seam.

7 Q. Now, does that mean she has at that time found one
8 of the substances that she's trained to detect?

9 A. It doesn't mean she -- she's smelled the odor. She
10 hadn't pinpointed where the odor was coming from, but
11 she had smelled the odor at that point, yes.

12 Q. And what did you do once she showed you that she
13 was alerted?

14 A. I let her inside the vehicle so that she could
15 pinpoint the odor.

16 Q. And what did you observe her do?

17 A. I saw her go almost immediately to the passenger
18 side of the vehicle. And again her respiration went way
19 up, sniffing very hard, and she indicated by scratching
20 on the passenger side seat, front seat.

21 Q. At that point what do you do?

22 A. I give her a reward. Any time she locates the odor
23 of illegal narcotics, I'll reward her by giving her a
24 towel. And I gave her her towel or her reward and then
25 she and I went back so that I could secure her back into

1 my patrol vehicle.

2 Q. And did you tell Officer Chasteen anything at that
3 point?

4 A. I'm sure that I told him that there was -- that
5 canine Chloe had alerted and given an indication on the
6 vehicle.

7 Q. And did any other troopers arrive on the scene?

8 A. Not exactly at that point. I think Officer
9 Chasteen began a search of the vehicle. And I actually
10 stayed back with the two occupants of the vehicle just
11 for safety purposes. We don't want both of us to be up
12 there and the occupants be left back at the vehicle by
13 themselves. So one of us had to stay back. I think a
14 few minutes into Lance Corporal Chasteen's stop,
15 Corporal Howard arrived on the scene which freed me up
16 to allow me to go help Lance Corporal Chasteen search
17 the vehicle.

18 Q. And when you went to the vehicle to search where
19 did you go?

20 A. I went to the front passenger side of the vehicle
21 where canine Chloe had indicated that the illegal
22 narcotics was coming from or the illegal narcotics was
23 coming from.

24 Q. And describe what you saw when you searched there?

25 A. I almost immediately saw a bulge in the front where

1 your feet would be if you're in the passenger seat of
2 the car where you would rest your feet. The carpet was
3 raised slightly. You could see if this is under the
4 carpet it's going to raise the carpet up slightly. So,
5 I took the carpet, I pulled the carpet back where it's
6 tucked up under by the factory. It's tucked up under
7 the moldings of the inside of the car. I took the
8 carpet, untucked it, pulled it back and the cocaine had
9 been hidden actually where it met the carpet and the
10 passenger seat.

11 Q. Was this some kind of after factory hidden
12 compartment?

13 A. No, ma'am.

14 Q. Did you show Officer Chasteen the cocaine, where it
15 was laying?

16 A. Yes, ma'am.

17 Q. And who later took custody of it?

18 A. Lance Corporal Chasteen.

19 MS. MONTS: Thank you. No further questions.

20 THE COURT: Mr. Posey, you may cross examine.

21 MR. POSEY: May it please the Court, Your
22 Honor, just a couple of questions.

23 CROSS EXAMINATION

24 BY MR. POSEY:

25 Q. You didn't participate in any of the before

1 investigation or anything after the finding of the
2 drugs; did you?

3 A. No, sir.

4 Q. Basically you ran the dog and you were the one who
5 uncovered the actual substances; is that correct?

6 A. That's correct.

7 Q. Any other involvement or any other follow-up
8 investigation on your part?

9 A. No, sir.

10 MR. POSEY: I have no further questions, Your
11 Honor.

12 THE COURT: Thank you, sir. You may step
13 down. You may call your next witness.

14 MS. MONTS: Your Honor, the State calls Tyra
15 Rodgers.

16 MADAM CLERK: Ms. Rodgers, if you would come
17 forward and place your left hand on the Bible and raise
18 your right to be sworn in. Do you swear or affirm to
19 tell the truth, the whole truth, and nothing but the
20 truth so help you God?

21 MS. RODGERS: I do.

22 MADAM CLERK: Thank you. You may be seated.
23 Would you please say your name for the record.

24 MS. RODGERS: Tyra Rodgers.

25 TYRA RODGERS,

1 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. MONTS:

4 Q. Ms. Rodgers, please tell the jury in February of

5 '08 where you lived?

6 A. February '08, I lived in Norfolk, Virginia.

7 Q. And at that time did you know Travell Hill?

8 A. Yes.

9 Q. What was your relationship with Travell Hill?

10 A. We were messing around, dating, whatever.

11 Q. And speak real clear so we can hear you.

12 A. We were messing around, dating.

13 Q. Was he dating other people as well?

14 A. Well, I found out in the end he was.

15 Q. How long in February of '08 had you known him?

16 A. Just for a couple of months.

17 Q. And on February 19th of '08 what vehicle were you

18 driving?

19 A. A Ford Expedition.

20 Q. And where did you get that vehicle?

21 A. Avis Airport.

22 Q. And did you own a car at that time?

23 A. No.

24 Q. Did Travell Hill own a car at that time?

25 A. Yes.

1 Q. On February -- how often would you see Travell back
2 then?

3 A. He used to come by like sometimes during the day
4 time, mostly at night, so I mean in a week's time I
5 would probably see him just like four times.

6 Q. And did he have a job?

7 A. Not that I know of.

8 Q. Were you working at the time?

9 A. Yes.

10 Q. Where did you work?

11 A. I was working at 7 Eleven on Monticello Avenue.

12 Q. And did you have any children?

13 A. Yes, at that time, one.

14 Q. How old and what gender?

15 A. It was a little girl and at that time she was three
16 and a half, four.

17 Q. On the evening of February 18th did you speak with
18 Travell Hill?

19 A. Yes.

20 Q. What did you speak with him about?

21 A. He called me and asked me would I like to go
22 shopping in Georgia.

23 Q. And what did you say?

24 A. I said yes.

25 Q. Did you have money to go shopping in Georgia?

1 A. Well, around this time it was tax season, so, yes.

2 Q. And what time did he want to go shopping down in

3 Georgia?

4 A. Well, he wanted to leave that night. It was

5 probably roughly anywhere between twelve midnight to

6 maybe two o'clock in the morning.

7 Q. So now we're into February 19th; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. Do you know why he wanted to leave early

10 midnight to two a.m.?

11 A. No. He didn't ask me about the trip until maybe,

12 like I said, that afternoon.

13 Q. And whose vehicle did you take?

14 A. The Ford Expedition that was rented for me.

15 Q. Was that at your suggestion or his suggestion?

16 A. At his suggestion.

17 Q. Was he living in the same city you were at that

18 time?

19 A. He was basically in between like Virginia Beach and

20 he had family also in Chesapeake. Oh, and in Norfolk.

21 Q. So, describe what happens -- where are -- do you go

22 pick him up or does he come to your house or how does

23 that work?

24 A. I go to pick him up -- well, I meet up with him out

25 Ocean View and at that point he drives to Norfolk to

1 drop his car off.

2 Q. And how long had you rented this car for?

3 A. I had got the rental car on maybe like the 12th, as
4 it says on the paper, because I had used the rental car
5 to get my license on February the 14th. And I had the
6 rental car rented for at least a week to two weeks.

7 Q. Had Travell used your car on occasions prior to
8 this date?

9 A. Yes.

10 Q. And describe again, where do you meet him to go to
11 Atlanta?

12 A. I meet him out Ocean View. He was at someone's
13 house and I met him out Ocean View to go follow him to
14 drop his car off in Norfolk.

15 Q. Is that a street or a housing area?

16 A. Ocean View is in Norfolk as well. It's just on
17 another side of Norfolk.

18 Q. Describe what you did then once you picked him up?
19 Who drove?

20 A. Once I picked him up, I followed him in my car and
21 he was driving his car. He dropped his car off in
22 Norfolk off of Rockingham Street and I got into the
23 passenger seat and he got into the driver's seat,
24 because I didn't know how to get to Georgia.

25 Q. And please describe -- do you head straight to

1 Georgia at that time?

2 A. We stop and -- well, he went into the inside of the
3 house, the residence in which he parked his car and came
4 out with some money. And we went and gassed up the car
5 and we got onto the road.

6 Q. Who paid for the gas?

7 A. Travell.

8 Q. Did you see how much money he had?

9 A. I know it was a lot of money because it was like a
10 knot of money.

11 Q. I'm sorry?

12 A. It was like two knots to a knot of money, so it was
13 a lot of money.

14 Q. What do you mean a knot?

15 A. Like circle money.

16 Q. So, please continue. So you got in the car in the
17 passenger seat and what did you do during the trip?

18 A. Well, mostly during the trip I slept. And if we
19 stopped for gas or anything, because it was a big car,
20 so if we stopped for gas, I'll wake up, I'll go to the
21 bathroom, and like get something to eat.

22 Q. Did you have any clothes for this trip?

23 A. No. I didn't grab any clothes.

24 Q. How long was the trip for?

25 A. It was supposed to be until the following day.

1 Q. Okay. If you're leaving at midnight do you mean
2 would you spend the next night there?

3 A. Yes.

4 Q. How long was the drive approximately?

5 A. From Virginia to here it takes like seven hours, so

6 I would say roughly, give or take, anywhere between

7 eight to nine hours.

8 Q. And did you drive any during that eight to nine
9 hours?

10 A. No.

11 Q. Did you stop and see anybody or anyone on the way
12 down to Atlanta?

13 A. No.

14 Q. What did you do when you got to Atlanta and what
15 time was it?

16 A. When we got to Atlanta -- by the time we got to
17 Atlanta it was probably -- I know the mall was already
18 opened so we went straight into like to the mall.

19 Q. Now, how did you know that Travell wanted to go
20 take you shopping in Atlanta?

21 A. He said it. And also he gave me money before we
22 left, because I told him I didn't believe that we were
23 going shopping. And he gave me money just for assurance
24 that we were going to go shopping.

25 Q. How much money did he give you?

1 A. Like three to four hundred dollars.

2 Q. Why didn't you believe that you were going down to

3 Atlanta to go shopping?

4 A. I just didn't believe it. I really just didn't

5 believe it until he put the money into my hand and I

6 actually believed it.

7 Q. And describe when you got to the mall. Do you know

8 where in Atlanta you went to a mall?

9 A. It was called Greenbrier Mall.

10 Q. I'm sorry, what time did you say it was around?

11 A. I know the mall was open, so I'll say probably

12 anywhere between ten to twelve noon we were at the

13 mall.

14 Q. And this was after driving straight through from

15 Virginia?

16 A. Yeah, and making stops just for like gas and food.

17 Q. And describe what you were to do once you got to

18 the mall?

19 A. Well, when we got to the mall we were actually

20 supposed to go in the mall and shop, get clothes,

21 whatever, and resume to go get a hotel room.

22 Q. And what actually took place?

23 A. Well, when we first got there he asked to use my

24 phone. He made a phone call.

25 Q. Did he have a phone?

1 A. Yes. He had a phone. But his phone didn't work
2 because it's like an in-state phone and which if you go
3 out of State with it and you don't have mobile minutes
4 on the phone, it won't work.

5 Q. So, describe -- what did he do with your phone?

6 A. So, he asked to use my phone. I let him use my
7 phone. He made a phone call. Basically the phone call,
8 I overheard it, it was in reference to drugs and I guess
9 the amount of money that was going to be paid or that
10 the person wanted. So ---

11 Q. What were the words that you heard?

12 A. Cocafina and basically calling out numbers as in
13 saying something like two five zero zero zero. And at
14 that point I resumed to ask Mr. Hill like what was going
15 on. And he said that they were going to score, which
16 means that they were going to purchase drugs. And I
17 said that I didn't want to have anything to do with it
18 and it was not to be placed and put in my car, because
19 I'm a single parent and I only have one child and I have
20 nobody else.

21 Q. And what did he say after you told him that?

22 A. Well, they resumed -- I went into the mall. He
23 resumed -- he went into the shoe store which was on the
24 right-hand side when you first walk into the mall. And
25 I went straight ahead which was a Wachovia that was

1 inside of the mall. I went into Wachovia and withdrew
2 some money out of my bank account along with the money
3 that he had gave me. Once I came out of Wachovia -- I
4 was in Wachovia all about maybe ten, fifteen minutes.

5 Once I came out of Wachovia I went back to the shoe
6 store in which he had met up with some cousins up
7 there. He had three cousins that he also met up there.
8 And I went to look for them and they couldn't be found.

9 Q. Where did he first meet up with these cousins?

10 A. In the front of the building.

11 Q. Was that before you went into the Wachovia that you
12 saw them?

13 A. Uh-huh (affirmative).

14 Q. Did you know them?

15 A. No. I've never seen them before.

16 Q. How did you know they were his cousins?

17 A. Because he said they were his cousins.

18 Q. Did he introduce you?

19 A. No.

20 Q. So, please continue. What did you -- after you
21 went looking for him and his cousins ...

22 A. I went into the shoe store and I asked the guy
23 where was the guys that were in the store. He told me
24 that they had purchased -- one of them had purchased
25 some shoes and they had left out of the store. I

1 literally walked around the mall and which I couldn't
2 even shop because I was looking around the mall because
3 he had my keys. And I looked around the mall. I walked
4 around that mall at least about two or three times
5 because it's only but so big and it's only one floor.
6 So, I couldn't find him.

7 Q. Where was the car parked and could you see it?

8 A. The car was parked outside the same door in which
9 he went to the shoe store. So, once I walked outside
10 the door, I seen that my car was there. And I resumed
11 to go back inside of the mall and I got a phone call
12 within the time. That's why I started searching for
13 them because I got a phone call from the person who
14 rented the car for me stating that they wanted that car
15 back into Virginia. If I didn't bring that car back
16 into Virginia that they were going to file a police
17 report and report the car stolen.

18 Q. Who was it that rented the car for you?

19 A. Ms. Lenise.

20 Q. Is that a friend or relative?

21 A. That's one of my friend's mothers who rented the
22 car for me.

23 Q. And why did she want the car back?

24 A. She said because I didn't ask her if I could take
25 that car out of the State. And the car was due back the

1 day that we were coming back to Virginia.

2 Q. And did you keep an eye on the car while you were
3 looking around?

4 A. Yes.

5 Q. Why did you do that?

6 A. Because I didn't have my keys to the car and I
7 overheard the conversation in regards to drug activity.

8 Q. And did you ever see Mr. Hill again?

9 A. By the time I met back up with Mr. Hill, I was
10 sitting in the food Court in the mall and he walked up.
11 I was sitting there. He walked up. I asked him if he
12 would like something to eat. He said yes. I ordered
13 his food and paid for it and we sat down. And I told
14 him that we had to get back to Virginia because Ms.
15 Lenise called my phone and she was tripping and that she
16 wanted me to bring the car back or she was going to
17 report the car stolen.

18 Q. And were you upset with him for being gone so
19 long?

20 A. Yes, I was upset.

21 Q. And what happened when you told him that you needed
22 to return?

23 A. He was a little upset and a little furious like he
24 wasn't ready to get back on the road and go back to
25 Virginia.

1 Q. I'm sorry. What did you say?

2 A. He was very furious. He wasn't ready to get back
3 on the road and go back to Virginia.

4 Q. Did he raise his voice?

5 A. No.

6 Q. What did he say to you?

7 A. He was just like, why do we have to go back to
8 Virginia? Why do we have to leave now? And I kept
9 explaining that the car was going to be reported stolen
10 and that it wouldn't fall back on anybody but me because
11 she rented that car for me.

12 Q. Did you ever see the cousins then when you met back
13 up with Hill?

14 A. Yes, they walked inside of the mall in the food
15 Court with him as well.

16 Q. And how long did you all stay together?

17 A. We was in the food Court just enough time basically
18 for everybody to eat and we left.

19 Q. And did you have a spare set of keys to the rental
20 car?

21 A. No.

22 Q. What did you notice when you went back to the car?

23 A. That there was a brand new pair of shoes in the
24 car.

25 Q. Had that new pair of shoes been in the car before

1 you went into the mall?

2 A. No, because I found out about the shoes when I went
3 looking for them, the guy said they had purchased some
4 shoes.

5 Q. So, what -- how did those shoes get in your car?

6 A. I assumed that Mr. Hill put them in the car. They
7 were his shoes.

8 Q. Ms. Rodgers, why are you here testifying today?

9 Are you under subpoena?

10 A. What do you mean by subpoena?

11 Q. Are you testifying?

12 A. Oh, is that the question? I'm sorry. Yes, ma'am,
13 I am testifying.

14 Q. Why are you testifying today?

15 A. Basically because I don't want to have to take the
16 fall for anybody and I just feel like it's the right
17 thing to do. As I explained, I'm a single parent of two
18 now and I just feel like it's the right thing to do.

19 Q. Who is the father of your second child?

20 A. Mr. Hill.

21 Q. What took place once you left Atlanta? Who drove
22 from the mall?

23 A. He drove from the mall. I had told him I had a
24 terrible migraine because Ms. Lenise was still calling
25 my phone and we were basically back and forth, back and

1 forth arguing, so I had a terrible headache and my
2 stomach wasn't feeling too well. So Mr. Hill started to
3 drive. And at that time I fell asleep. And when I was
4 awakened, he woke me up to tell me that we were being
5 pulled over by the police. So, I said you have your
6 license. I have my license and I have the rental
7 agreement, so we're fine. And I laid my head back
8 down.

9 Q. Had you bought anything when you were at the mall
10 that whole time?

11 A. No. I didn't even get a chance to buy anything.
12 The only thing that I got out of the mall was money out
13 of my bank account from Wachovia.

14 Q. And why didn't you have time to shop?

15 A. Because by the time I got to the mall all about a
16 good thirty minutes of being in the mall, I received a
17 phone call from Ms. Lenise and she was just in a rage.
18 And she wanted that car back to Virginia and she wanted
19 it back now.

20 Q. How long did you spend looking around the mall
21 looking for Mr. Hill?

22 A. I spent at least an hour and a half to two hours
23 looking for Mr. Hill.

24 Q. And did you ever see him in the mall?

25 A. No. The mall is only but so big. It's not big at

1 all.

2 Q. Did you ever see his cousins in the mall?

3 A. No.

4 Q. And describe when you were pulled over.

5 A. When we were pulled over the officer had came to
6 the car. He came to the passenger side of the car. He
7 asked for license and registration. And that's when Mr.
8 Hill presented his license and I got the rental
9 agreement out of the glove department box. So, that's
10 when he asked Mr. Hill to step out of the vehicle. And
11 at that time, he walked Mr. Hill back to the police car
12 and I was still sitting in the passenger seat. So, he
13 walked back to the car. He asked me where had we been?
14 and I said we were coming from Greenbrier Mall in
15 Atlanta, Georgia. I said we were going to see my friend
16 Janelle and Shauna, but they didn't answer the phone.
17 So, he walked back to Mr. Hill and I guess he said
18 something to Mr. Hill. He came back up there to me and
19 asked me a couple more questions in regards to who
20 rented the car for me, how long was -- did I have the
21 car and, you know, after he got the license and saw
22 everything didn't link up together. So, then he went
23 back to Mr. Hill. He came back to the car for a third
24 time. And at this time, I'm not for sure if it was him
25 or the other officer that was just up here, they asked

1 me basically what belonged to me in the car. And I
2 basically pointed out, I was like, you know, these are
3 my snacks in the front, you know. This is my pocketbook
4 and this is my rental car. So, at that time he asked me
5 could I step out of the passenger seat and I said sure.
6 And at that time when I stepped out that's when the
7 canine dog started circling around the vehicle. And he
8 came back. Once the dog circled around the vehicle, he
9 said, Ms. Rodgers, why is the dog alerting your vehicle?
10 And I said, what do you mean alerting your vehicle? He
11 said maybe have you smoked weed or there's been some
12 kind of drug activity in your vehicle. I said, no, I
13 don't even do drugs. So, at that time they resumed to
14 search the vehicle and they searched it. They walked
15 one -- the officer walked back to his police car, then
16 he came back, then he walked back again and that's when
17 him and the canine officer went back to the car and they
18 searched the car and they found drugs in my car. And at
19 that time the police tackled Mr. Hill to the ground and
20 handcuffed him and basically they placed both of us
21 under arrest. They took us to Greenville County jail.
22 And at that time they were talking to me because I did
23 have money that was in the car. It was like seven
24 hundred dollars. So, we got to the jail and basically
25 they told me, you know, I can use my Fifth Amendment and

1 not say anything at all or I can go ahead and speak.

2 And I just said I didn't know the drugs were in my
3 vehicle at all and that I don't make enough in a year --
4 because I asked them how much did something like that
5 roughly cost. I said I don't even make that in a year
6 to even think about paying for that.

7 Q. Did you notice anything on the floorboard by your
8 feet while you were riding?

9 A. No. I was so upset about arguing with Ms. Lenise
10 about the rental car. As soon as I got into the car I
11 went to sleep. I had a terrible migraine headache and
12 my stomach was hurting really bad. I was actually
13 pregnant at that time and didn't even know.

14 Q. Isn't it unusual or had you done that before going
15 from Virginia down to a seven, eight hour, nine hour
16 drive in the middle of the night to go shopping?

17 A. It's not -- like I did it before, like I've been on
18 road trips to go to New York. I've drove down every
19 Fourth just to go shopping. I've even caught the
20 Chinese bus and went down there to go shopping. It's
21 just like different styles and different trends. And
22 like, I mean, I guess I was just naive, I should say.

23 Q. But you knew -- had known Mr. Hill for awhile up in
24 Virginia?

25 A. Yes, ma'am.

1 MS. MONTS: Thank you. I have no further
2 questions.

3 THE COURT: Mr. Posey?

4 MR. POSEY: May it please the Court, Your
5 Honor.

6 CROSS EXAMINATION

7 BY MR. POSEY:

8 Q. Ms. Rodgers.

9 A. Yes, sir.

10 Q. You testified that Mr. Hill came up to you shortly
11 before y'all left and just said let's go to Georgia and
12 go shopping; right?

13 A. Yes, sir.

14 Q. You're the mother of you said one -- how old was
15 your child at the time?

16 A. She was at least three and a half, four. She was
17 four to be exact.

18 Q. So, nine, ten, eleven o'clock at night a man comes
19 up to you and says, let's go shopping in Georgia, you
20 jump in a car, you're going to leave your three year old
21 child, jump in the car and go to Georgia?

22 A. I didn't have her that night.

23 Q. Okay. You said you were testifying here today
24 because you didn't want to take the fall. In fact,
25 you're supposed to be sitting at that table today;

1 aren't you?

2 A. I still have charges pending against me.

3 Q. And what do you expect to happen to those charges?

4 A. Nothing was offered to me, nothing was promised to
5 me. I'm still ---

6 Q. That's not my question. What do you expect to
7 happen?

8 A. What I expect is, I guess, the right thing to
9 happen.

10 Q. Well, what do you consider to be the right thing?

11 A. Whoever did it should take the wrap for it.

12 Q. In other words, you expect to walk away scot-free;
13 is that true?

14 A. No, because I still have pending charges against
15 me, sir.

16 Q. That's not my question, do you have pending
17 charges. My question is, at the end of this case do you
18 expect to go to jail?

19 A. I can't answer that because I'm not on trial
20 today.

21 Q. I'm asking you what are your expectations -- when
22 your case is disposed of, what is your expectation?

23 A. That I have a fair trial just like Travell Hill.

24 Q. So, you're telling this jury that you expect to sit
25 in a chair just like that and go to trial for

1 trafficking cocaine over four hundred grams?

2 A. That's my charge. Yes, sir.

3 Q. That's not what I'm asking.

4 MS. MONTS: Objection, Your Honor. Asked and
5 answered.

6 MR. POSEY: Your Honor, she hasn't answered
7 the question yet.

8 THE COURT: Hang on just a minute. Let her
9 finish answering and then you ask her another question.
10 You're both talking at the same time. The Court
11 reporter can't take two people's testimony at the same
12 time. You ask the question, let her answer it, and then
13 you ask another question. Okay?

14 Q. So, you expect to have a jury trial on the charge
15 of trafficking cocaine greater than four hundred grams?

16 A. I guess that's what I'm supposed to have. I'm
17 still on trial or I still -- I have a charge of drug
18 trafficking, so ...

19 Q. Do you expect to be convicted of drug trafficking?

20 A. No, I don't.

21 Q. So, you don't expect to spend any time in jail for
22 drug trafficking?

23 A. I mean, that's -- I don't expect to, but I don't
24 know what the jury is going to say.

25 Q. If you were not sitting there testifying today,

1 where would you be sitting?

2 A. I would still have a jury trial.

3 Q. Where would you be sitting today if you were not
4 sitting where you are right now?

5 A. As a Defendant.

6 Q. At that table? Am I correct?

7 A. Yes, sir.

8 Q. You were scheduled to go to trial today; correct?

9 A. Yes, sir.

10 Q. And when did you make this revelation to decide to
11 testify?

12 A. I've been talking to my lawyer, so I guess would
13 that be lawyer/client confidentiality. I spoke to my
14 lawyer ---

15 Q. Not as far as the time, maybe the conversation.

16 When did you first have this conversation with Mr.
17 Farnsworth, who is your lawyer?

18 A. I had my first meeting with my lawyer and I spoke
19 and told my lawyer back in July, August, when I came to
20 see him, that I wanted to cooperate and that I was going
21 to tell the truth.

22 Q. When did you first meet with the prosecutor to go
23 over your testimony?

24 A. I met with my lawyer Friday and I asked for him to
25 schedule a meeting with the prosecutor. Well, I asked

1 that before I even got the paper in the mail. I just
2 got the notice that I had to come to Court a week and a
3 half ago.

4 Q. So, you met with Ms. Monts to go over your
5 testimony for the first time last Friday?

6 A. I told her what I had to tell her, yes, sir.

7 Q. Okay. Let me go over your time frame one more
8 time. You don't know what time you left Virginia. It
9 was somewhere between twelve and two?

10 A. Yes, sir.

11 Q. A nine hour drive to the south side of Atlanta,
12 Georgia to the Greenbrier Mall which is on the south
13 side of Georgia, Atlanta, Georgia. That's a nine hour
14 drive. You were there, according to your testimony,
15 approximately thirty minutes before you received a phone
16 call from Ms. Martin wanting her car back; is that
17 correct?

18 A. Yes.

19 Q. Okay. You spent the next hour and a half to two
20 hours hunting for Mr. Hill?

21 A. Yes.

22 Q. You left Virginia at two o'clock in the morning, an
23 eight or nine hour drive, ten, eleven o'clock ---

24 A. I said between twelve midnight to two.

25 Q. Which is it closer to, twelve or two? It's a big

1 difference.

2 A. I'm not for sure but I know it was in between them
3 hours.

4 Q. So, basically what time did you leave the State of
5 Georgia? What time did you leave Atlanta?

6 A. I'm not for sure. I was too upset.

7 Q. Let's talk about that trip back. You testified a
8 minute ago that you were upset, basically fell asleep
9 and were out of it the whole way home; is that correct?

10 A. Until we got pulled over.

11 Q. Five minutes before that you said you were on the
12 phone with Ms. Martin every thirty minutes -- every few
13 minutes, which one was it?

14 A. No, that's not what I said.

15 Q. Yes, it is, ma'am.

16 A. What I said was I had got into an argument with her
17 and Mr. Hill said that he would drive. That's what I
18 said.

19 Q. You also said that you didn't know how to get to
20 Georgia; is that true?

21 A. Correct. I don't know how to get to Georgia.

22 Q. But yet you testified at the end of your
23 examination with Ms. Monts that you had actually made
24 that trip before in one night?

25 A. No, that's not what I said. I said New York.

1 Q. I believe you said New York and you said down here
2 too.

3 A. No, I said New York.

4 Q. Okay. A lady you know rents a car for you to drive
5 to Georgia, the drugs are underneath your feet in a
6 hump. The officer testified to the hump. I understand
7 that. And you're telling this jury you didn't
8 understand there was a big hump underneath your feet?

9 A. No. I've never been involved in any drug
10 activities. So if I say not to do something, you know,
11 at least I expected him to respect me a lot more because
12 I've asked him not to do other things and he haven't did
13 it. So, when I got into that car, I went straight to
14 sleep. When Mr. Hill woke me up it was to, we're
15 getting pulled over. So, when I got in that car, I
16 didn't get into my car to search my vehicle. I didn't
17 think that he would betray me like that or do something
18 like that to me ---

19 Q. Why? You just said he ---

20 A. -- because he knows -- say that again.

21 Q. You just said he's done it before, so why wouldn't
22 you expect it again?

23 A. No, he's never -- I've asked him not to do
24 something before and he didn't do it. That's what I
25 said.

1 Q. A man you barely know you say has a drug
2 conversation, you get in a car that you've ridden down
3 there with a big hump in the floorboard underneath your
4 feet and you want this jury to believe you didn't know
5 what was in the car?

6 A. I didn't know that it was in the car.

7 Q. Did you ever show the officer your bank
8 transaction? You said you went and got three, four
9 hundred dollars from your bank. Did you ever show the
10 officer that's where you got your money from?

11 A. I'm not for sure if I showed them the receipt or
12 not.

13 Q. Okay.

14 A. But I'm pretty sure I had the receipt on me.

15 Q. Okay. But you didn't bother to show it to law
16 enforcement that night?

17 A. No.

18 Q. Okay.

19 A. Not that I know of, but I don't remember.

20 Q. Where do you live now?

21 A. North Carolina.

22 Q. Just to make sure we understand, you heard a drug
23 conversation, you didn't believe there was any drugs in
24 your car, though?

25 A. No, because he had three cousins up there as well

1 that he met and his three cousins had had a car that
2 they drove.

3 Q. Okay. Where did the cousins go?

4 A. When they left the mall, I don't know where they
5 went. But I know when the police stopped us and we were
6 on the side of the street his cousins drove by.

7 Q. Okay. Did you tell the police that?

8 A. No.

9 Q. Why not?

10 A. What purpose would it serve that his cousins rode
11 by to the police after they just found this in my car.

12 Q. You seem to be willing to give all this information
13 now. Why weren't you willing to give it all back then?

14 A. I didn't have a lawyer.

15 Q. What's that got to do with it?

16 A. I'm not going to speak unless I have a lawyer.

17 Q. And you're not going to tell the truth unless you
18 have a lawyer, is that it?

19 A. No, it was -- I wasn't going to talk until I had my
20 lawyer. I have a right for a lawyer and I wanted a
21 lawyer.

22 Q. And yet it was this past Friday the first time you
23 told all this to Ms. Monts?

24 A. Excuse me?

25 Q. It was this past Friday ---

1 A. I spoke with Ms. Monts on other occasions.

2 Q. That's not what I'm asking. When did you tell all
3 this to Ms. Monts the first time?

4 A. I spoke to Ms. Monts on other occasions.

5 Q. When did you tell her all the information you
6 testified to today?

7 A. I told her everything Friday and I've told her
8 other information as well some other times.

9 Q. That's all I needed to know. Thank you very much.

10 A. Thank you.

11 THE COURT: Any redirect?

12 MS. MONTS: No, Your Honor.

13 THE COURT: Thank you. You may step down, Ms.
14 Rodgers.

15 MS. RODGERS: Thank you.

16 THE COURT: You may call your next witness.

17 MS. MONTS: Your Honor, the State calls James
18 Armstrong.

19 MADAM CLERK: Please come forward. Place your
20 left hand on the Bible and raise your right to be sworn
21 in. Do you swear or affirm to tell the truth, the whole
22 truth, and nothing but the truth so help you God?

23 MR. ARMSTRONG: Yes, ma'am, I do.

24 MADAM CLERK: Thank you. You may be seated.

25 Would you please state your full name for the record?

1 MR. ARMSTRONG: James William Armstrong,

2 JAMES WILLIAM ARMSTRONG,

3 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. MONTS:

6 Q. Mr. Armstrong, please tell the jury where you're
7 employed?

8 A. I'm employed with the Greenville County Department
9 of Public Safety, Forensics Division, Crime Laboratory.

10 Q. And in what capacity do you work with the Crime
11 Laboratory?

12 A. I have a dual responsibility. My main title is a
13 criminalist. We are split between a file examiner and a
14 forensic drug chemist.

15 Q. Can you please give us the extent of your
16 education?

17 A. Yeah. I have a bachelors of science degree in
18 chemistry from Erskine College. I've attended the South
19 Carolina Criminal Justice Academy and the Police Academy
20 for various reasons and concerns in my job
21 responsibilities. I've attended the Forensic Chemist
22 seminars sponsored by the Drug Enforcement
23 Administration in Washington, DC. I've trained in the
24 area of drug identification for approximately one year
25 under the direction of a lab supervisor. I've attended

1 numerous instrumental analysis schools concerning the
2 instruments I use in my analysis. And I've testified as
3 an expert in the area of drug identification no fewer
4 than one hundred and twenty-seven times in Federal,
5 State, and local Courts.

6 MR. POSEY: Judge, we have no problem with Mr.
7 Armstrong's qualifications and would deem him as an
8 expert in the area.

9 THE COURT: Ladies and gentlemen, normally a
10 person can't testify to opinions about things. A person
11 can testify to what they observed, what they saw or
12 heard or sensed by one of their senses. But we do have
13 an exception.

14 When a person is qualified because of education or
15 experience, that person can give an opinion in that
16 field of expertise and give the reason for the opinion.
17 The fact that this witness is considered an expert in
18 the field of drug identification, things that he can
19 give an opinion, does not mean that you must accept that
20 opinion. It's evidence for you to consider as you would
21 any other evidence.

22 With this witness being qualified you may further
23 examine him, Ms. Monts.

24 Q. And Mr. Armstrong, at the crime lab, how do you get
25 substances that you test?

1 A. Most of the time the officers will take evidence to
2 our property and evidence room. It's in the basement of
3 the Law Enforcement Center. And I go down to the
4 property and evidence room and sign out by way of a
5 property and evidence sheet which indicates the reason I
6 have the evidence, and take it back to my office for
7 analysis.

8 Q. Describe the security at the property and evidence
9 room?

10 A. One, the entire Law Enforcement facility is
11 actually under a locked system where you have to have an
12 access key card to enter various sections of the
13 building. And once you get to the property and evidence
14 section there are only four employees that have access
15 to this room. In this room there is a large vault which
16 is like a bank vault, probably twelve or fifteen foot
17 long by twelve or fifteen foot wide that actually
18 contains all of the drugs or narcotics or suspected
19 controlled substances. And only, I think, three of the
20 employees actually have the combination to that vault.
21 Now, all that behind the locked area is also under
22 constant surveillance of video cameras. And when we
23 sign items out a guy actually goes into the room and
24 actually brings stuff to you. You sign them out at a
25 window. And that area is also under constant

1 surveillance with the video cameras as well.

2 Q. And is a case number assigned to any substance that
3 you analyze?

4 A. Yes, ma'am. Any agency that comes into the law
5 enforcement facility to ask for testing from the lab, if
6 it is not a Greenville County case or a Greenville
7 County agency, they will actually assign a case number,
8 such as Highway Patrol or Pickens County, if they bring
9 us anything from outside of Greenville, we'll assign it,
10 we'll assign it an eleven case number. It has an eleven
11 prefix with the year and then a case number that's
12 assigned afterwards.

13 Q. If you would please take a look at State's Exhibit
14 2. Can you identify this?

15 A. Yes, ma'am, I can.

16 Q. And do you have any markings on that? And how can
17 you identify it?

18 A. The outermost bag has my initials and the date
19 where I sealed the item when I finished my testing. On
20 the inside of the bag also has the case number written
21 with my initials and date where I had opened the bag.
22 There's another item here which also has my initials and
23 date where I opened, along with the item numbers, my
24 initials, and the weight of the substance.

25 Q. And did you in fact check these substances out from

1 the property and evidence room at the Greenville County
2 Law Enforcement Center?

3 A. Yes, ma'am, I did.

4 Q. Do you recall the date that you did that?

5 A. I received these items on February 25th, 2008.

6 Q. And when you take them and analyze them, is that in
7 a secured and locked area?

8 A. Yes, ma'am.

9 Q. And once you finish your analysis where do you take
10 this?

11 A. Once my analysis is complete, all the evidence is
12 sealed back, and then the evidence goes back to the
13 property and evidence room for storage.

14 Q. And did you, in fact, take this item back to the
15 property and evidence room?

16 A. Yes, ma'am, I did.

17 Q. And did you produce a report based on your analysis
18 on these items?

19 A. Yes, ma'am, I did.

20 THE COURT: Any objection?

21 MR. POSEY: No objection to the report, Your
22 Honor.

23 THE COURT: Exhibit 4? 5? Exhibit 5 is into
24 evidence without objection.

25 (WHEREUPON, State Exhibit Number 5 was admitted)

1 into evidence.)

2 Q. And did you analyze the two substances in this bag
3 separately?

4 A. Yes, ma'am.

5 Q. And how did you receive them? Were they bagged
6 separately or what condition were they in?

7 A. It appears that the items were sealed in one
8 container which actually had the two items individually
9 packaged as well.

10 Q. And when you make your analysis do you also weigh
11 the substance?

12 A. Yes, ma'am, I do.

13 Q. Can you please publish your results of these two
14 items?

15 A. Item 1(a) found to be a block of powder substance
16 which is wrapped in plastic. I found that to contain
17 cocaine with a weight of 971.81 grams. Item 1(b) was a
18 bag containing three bags with powder substance. I
19 found it to contain cocaine with a weight of 215.98
20 grams.

21 Q. And where do you get the information at the -- the
22 typed in information under the words drug analysis
23 report?

24 A. All the information that I receive for the
25 informational purpose, such as the agency, case number,

1 incident date, and received date will come from our what
2 we call the laboratory request form. And in order for
3 us to work a case we actually have the officers fill out
4 a request form which gives us permission to touch their
5 evidence. And they also have to fill out the reason why
6 they want us to work it and what type of testing they're
7 looking for. So we have them fill out that form and
8 that form is where I get all my information from on
9 generating the report from.

10 Q. And is that a handwritten report?

11 A. Yes, ma'am, it is.

12 Q. And the case number and agency number, are those
13 consistent throughout the procedure through the
14 process?

15 A. Yes, ma'am.

16 Q. And the other information is just information that
17 you get from the officer; is that correct?

18 A. That is correct.

19 Q. And is it possible that you change any number up
20 from the handwritten note that the officer ---

21 A. Yes, ma'am that's very possible.

22 Q. And how many grams are in a kilogram?

23 A. A kilogram is one thousand grams.

24 MS. MONTS: Your Honor, we also move to enter
25 State's Exhibits 2 and 3 at this time.

1 MR. POSEY: No objection.

2 THE COURT: Without objection, Exhibits 2 and
3 3 are entered into evidence.

4 (WHEREUPON, State Exhibit Numbers 2 and 3 were
5 admitted into evidence.)

6 MS. MONTIS: Thank you. I have no further
7 questions.

8 THE COURT: Cross examination?

9 MR. POSEY: No questions, Your Honor.

10 THE COURT: Thank you, Mr. Armstrong, you may
11 step down.

12 MR. ARMSTRONG: Thank you.

13 MS. MONTIS: Your Honor, may I ask that Mr.
14 Armstrong be excused.

15 THE COURT: Without objection, Mr. Armstrong
16 may be excused.

17 MR. POSEY: No objection, Your Honor.

18 THE COURT: Call your next witness.

19 MS. MONTIS: Your Honor, that is the State's
20 case.

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 this will be a good time for us to take a break. We've
23 got some matters we need to take care of. I ask you to
24 go back to your jury room, don't discuss the case at
25 this time. We'll call you back in just a few moments

1 and we'll take a short break.

2 (WHEREUPON the jury exited the open Court at
3 approximately 3:24 p.m.).

4 THE COURT: Are there any matters we need to
5 take care of before I talk to your client about his
6 right to testify, Mr. Posey?

7 MR. POSEY: Judge, I make a motion for a
8 directed verdict. I think the State has failed to meet
9 its burden of proof. I think the only thing they've
10 shown is that Mr. Hill was in a car where a substance
11 was found. They have no testimony with him ever in
12 possession of this substance or placing the substance in
13 the car. In anyway manipulating the substance. He was
14 the driver of a vehicle registered to somebody else who
15 turns out to be the friend of a witness. It's found on
16 her side of the car. Basically the only thing they've
17 shown here is mere presence, Your Honor, and I would
18 just ask the Court to direct a verdict of not guilty
19 based on the State's lack of proof.

20 THE COURT: Ms. Monts?

21 MS. MONTIS: Your Honor, the State believes
22 there is plenty of circumstantial evidence in this case
23 to bind this over as a jury question. We believe that
24 the case law says that the Defendant is in charge of
25 the premises which would include a car that drugs were

1 found in. That he can -- that can be evidence of
2 knowledge and the right to execute control over the
3 item.

4 In addition to that we've got testimony from Ms.
5 Rodgers saying that he was the only one with the keys
6 during the amount of time. We believe there's plenty of
7 circumstantial evidence for the jury to find the
8 Defendant guilty of the charges.

9 THE COURT: Mr. Posey, I must view all of the
10 evidence in the light most favorable to the non-moving
11 party and I think it is a jury question of substantial
12 circumstantial evidence for the case to go to the jury.
13 I respectfully deny your motion.

14 MR. POSEY: Thank you, Your Honor.

15 THE COURT: If you would come forward with Mr.
16 Hill, I'd be glad to give him his rights about his
17 testimony and then we'll take a short break for you to
18 talk to him any further that you may need. Mr. Hill, if
19 you would raise your right hand. Do you swear or affirm
20 the testimony you're about to give me will be the truth,
21 the whole truth, and nothing but the truth so help you
22 God?

23 MR. HILL: Yes, sir.

24 THE COURT: Mr. Hill, we've reached a stage in
25 the proceedings where you can present a defense if you

1 choose to. And I need to explain certain rights that
2 you enjoy and I want to make sure you understand those
3 rights. I know you have legal counsel to help you with
4 those. I need to be satisfied in my own mind that you
5 understand these rights.

6 Our Constitution of America says that no person can
7 be compelled in any criminal case to be a witness
8 against himself. That's our Fifth Amendment to the
9 Constitution. It means you can't be required to
10 testify. You have a right to testify if you want to in
11 your own behalf. Nobody can make you testify. It's a
12 personal right that you enjoy and no one can waive this
13 right except for you.

14 You obviously can decide to testify if you choose
15 to. If you do that you'll be governed by the same rules
16 as govern other witnesses who testify and you can be
17 examined and cross-examined on any relevant issue in the
18 case.

19 In addition to that, if you have any conviction in
20 your past that involved dishonesty or a false statement
21 or a crime that's punishable by imprisonment for more
22 than one year and if the Court determines that the
23 probative value of admitting this evidence outweighs
24 any prejudicial affect to you, the Solicitor would be
25 able to introduce your record to attack your

1 credibility.

2 If you decide to testify, Mr. Hill, this decision
3 on your part must be freely and voluntarily and
4 intelligently made by you with the knowledge of the
5 protections that you have under the Fifth Amendment of
6 our Constitution. Also, with the knowledge of the
7 consequences of your decision to testify.

8 Now, if you decide not to testify I'll instruct the
9 jury that they cannot give that fact that you did not
10 testify any consideration whatsoever, that there's to be
11 absolutely no prejudice to you because you exercised
12 your right not to testify. This decision is left
13 entirely up to you.

14 You can talk with your attorney, you can talk with
15 friends, family, anyone you want to talk with, but
16 ultimately that's a decision that you and you alone will
17 have to make. Do you understand what I've explained to
18 you, Mr. Hill, about everything?

19 MR. HILL: Yes, sir.

20 THE COURT: Do you have any questions of me?

21 MR. HILL: No, sir.

22 THE COURT: Have you talked with your attorney
23 about this?

24 MR. HILL: Yes, sir.

25 THE COURT: And I'll give you additional time.

1 We'll take a short break now that you may talk with your
2 attorney. So that he can make an intelligent decision
3 about this is there's any prior record for which he
4 could be impeached?

5 MR. POSEY: Yes, sir.

6 THE COURT: And you have shared that with the
7 State? Or the State has shared all that with you?

8 MR. POSEY: Yes, sir.

9 THE COURT: And you shared that with your
10 attorney -- with your client?

11 MR. POSEY: Yes, sir.

12 THE COURT: All right. You're well aware of
13 what he could be impeached on.

14 MR. POSEY: Judge, unless he's changed his
15 mind I think he can tell you what his decision is.

16 THE COURT: Okay. You believe you want to
17 testify or not?

18 MR. HILL: No, sir.

19 THE COURT: You don't want to testify? All
20 right, sir. We'll take a short break anyhow and if you
21 decide you want to, you certainly have a right to. You
22 can return to your seat, Mr. Hill.

23 MR. POSEY: Thank you, Your Honor.

24 THE COURT: Mr. Posey, do you intend to put up
25 any other defense?

1 MR. POSEY: No, sir, Your Honor. The defense
2 will rest at the appropriate time, as well.

3 THE COURT: All right. I'll let you do that
4 on the record in front of the jury. Are we ready for
5 argument and charge then this afternoon?

6 MR. POSEY: Yes, sir.

7 MS. MONTS: Yes, Your Honor.

8 THE COURT: Okay. Any requests for charge
9 other than -- I'll show you a verdict form in just a
10 little bit to make sure the verdict form is in ---

11 MR. POSEY: I would just ask the Court - and I
12 think it's probably part of your standard charge anyway
13 - is the mere presence.

14 THE COURT: The mere presence.

15 MS. MONTS: Your Honor, we just ask for aide
16 and abet which I believe is in the statute if that's
17 where you have it.

18 THE COURT: Okay. Aiding and abetting. All
19 right. Let's take a short break and I'll have a verdict
20 form for you and we'll be ready to go in about ten
21 minutes.

22 (WHEREUPON, the Court stood at recess for a short
23 break.)

24 THE COURT: All right. Are we ready to
25 proceed, ladies and gentlemen?

1 MS. MONTS: Yes, Your Honor.

2 MR. POSEY: Yes, Your Honor.

3 THE COURT: You've had a chance to look over
4 the verdict form and it was in order; is that correct?

5 MR. POSEY: Yes, Your Honor.

6 MS. MONTS: Yes, Your Honor.

7 THE COURT: And again, Ms. Monts, for your
8 benefit the definition of trafficking, of course, does
9 include the transferring and the aiding and abetting, so
10 that language will be in there when I instruct the jury.

11 All right. When we have the jury back, Mr. Posey,
12 I'll ask you for your defense and you can rest on the
13 record and then we'll be ready for the argument. Please
14 have the jury come in, Mr. Frazier.

15 (WHEREUPON, the jury entered the open Court at
16 approximately 3:46 p.m.)

17 THE COURT: Mr. Posey, you may present your
18 first witness.

19 MR. POSEY: Your Honor, the defense rests.

20 THE COURT: Mr. Foreman, ladies and gentlemen,
21 you've heard all the testimony that's to be presented in
22 this case. Now, it's the time for the attorneys to make
23 a closing statement to you. I've told you along that
24 what they say to you is not evidence. But nevertheless
25 I urge you to listen carefully as they address you now.

1 I'm confident they can give you some important
2 principles that you need to be aware of as you start
3 your deliberations.

4 After they've had a chance to address you in their
5 closing statements, I'll instruct you on the law and
6 the case will be yours to decide. I urge you to listen
7 carefully as the attorneys address you. Ms. Monts?

8 CLOSING STATEMENT

9 BY MS. MONTS:

10 Mr. Foreman, ladies and gentlemen of the jury, a
11 puzzle. A puzzle is what you have just heard from the
12 testimony on the stand and the physical evidence that
13 you will have to take back with you in the jury room.
14 You've got pieces of a puzzle and it is your job as the
15 twelve jurors back there deciding what the facts are
16 that happened on this incident date, and you will have
17 to put these pieces together and decide what happened.

18 Is the Defendant guilty? Has he been proven guilty
19 beyond a reasonable doubt? The State believes it has
20 proven to you beyond a reasonable doubt because when His
21 Honor charges you on the law he will not say it must be
22 beyond all doubt because very few things in this world
23 can be proven beyond all doubt. But beyond a reasonable
24 doubt. And that's where your common sense, your
25 backgrounds, your experiences come in.

1 What do you believe happened on this date? There
2 were two people charged, the driver, Mr. Hill, and the
3 passenger, Ms. Rodgers. You heard Ms. Rodgers testimony
4 from the stand. She is not on trial today. She has
5 been charged. This is not her day on trial. This is
6 Mr. Hill's day in trial. This is for the jury to decide
7 whether or not Mr. Hill is guilty.

8 And ladies and gentlemen, when His Honor instructs
9 you on the charge of trafficking you will hear that
10 trafficking includes providing financial assistance or
11 otherwise aiding, abetting, attempting or conspiring to
12 either sell or manufacture or bring into the State or
13 being in possession. So it's many different ways that
14 trafficking can be formed.

15 And again, it's more than four hundred grams. And
16 the chemist told you, between the kilo that was packed
17 solid and then the other approximately eighth of an
18 amount of cocaine, that was over eleven hundred grams of
19 cocaine. So, we've got over four hundred grams. So,
20 it's up to you to decide was the Defendant involved in
21 any of these bringing into the State, aiding, abetting,
22 conspiring, providing financial assistance.

23 And you've got many ways that you twelve jurors
24 deliberating can decide this. Trafficking -- I'm going
25 to abbreviate. Trafficking more than four hundred

1 grams. And the trafficking can be, and I'm going to use
2 some simple examples because -- and I'll go through the
3 whole testimony.

4 But aiding and abetting, who drove the entire way
5 up and back? Mr. Hill. He is aiding and abetting the
6 fact that this cocaine was in the car that was stopped
7 here in Greenville County.

8 What else do you know besides the fact that it was
9 over four hundred grams? You've got the testimony from
10 the officers on what happened and what lead to their
11 articulable suspicion from the factors at the scene that
12 lead to them running the drug dog. Once the drug dog
13 alerted on the passenger floorboard they then found the
14 drugs and charged both of the people in the car. Who
15 else are they going to charge but both of the people in
16 the car. There's no way at that point to say which one
17 of these people is guilty and which one of these people
18 is not guilty because there is no way to get inside a
19 person's head and know what they know. And that's why
20 we use circumstantial evidence.

21 And His Honor will talk about direct evidence and
22 circumstantial evidence and both carry the same weight.
23 Circumstantial evidence is when you have - and I'll use
24 the puzzle example - pieces of a puzzle and you add them
25 up to come up to a conclusion.

1 Well, what do you know from this case? Some of
2 this is from what Ms. Rodgers testified to and some of
3 it is from what the officers said too. Now, His Honor
4 will instruct you, witnesses from the stand, their
5 believability and credibility is for you to decide. You
6 can believe all of what a witness says, part of what a
7 witness says, or none of what a witness says. And take
8 Ms. Rodgers, for example. You can believe everything
9 she said, none of what she said, or pieces of what she
10 said. And that is up to the twelve of you to decide.

11 But even taking some of the information she said,
12 she said - and I'm going to abbreviate - she said that
13 she and Mr. Hill had a relationship up in Virginia. She
14 had known him for several months. They eventually now
15 have a child together. So, she knows him. What else
16 did she tell you about him? He had no job. What do you
17 know? He did have a car. He chose not to take his car
18 to Atlanta. Think about that. Why would he choose not
19 to take his own car? To detach himself from the
20 criminal activity that he was planning to do.

21 So, even though he has a car at midnight, the night
22 before the car stop, he chooses not to take his car. He
23 calls up one of his girlfriends and says, hey, let's
24 take your car and drive down to Atlanta. We'll go
25 shopping. He has to convince her to go because she

1 doesn't believe he's really going shopping because she
2 knows him. She knows he has no job. She's thinking,
3 gee, in the middle of the night we're driving down to
4 Atlanta, an eight or nine hour drive, and he says, okay,
5 we're going shopping. Here's three or four hundred
6 dollars so that you can shop when we get down there.
7 So, he's got to give her money to convince her to go
8 shopping down there.

9 She said that he had used her car on previous times
10 so she's allowed him to use her car on previous times.
11 That's how close they are.

12 What happens when they get to Atlanta? He uses her
13 phone, again, detaching himself from the situation. He
14 doesn't use his own phone, he uses her phone to make the
15 call to set up the delivery. What does Tyra Rodgers
16 tell you? She heard them talk about a code name,
17 cocafina, and an amount, two five zero zero zero,
18 twenty-five thousand dollars worth of cocaine. She
19 tells him, don't put that stuff in my car.

20 Once she tells him that, what does he do? He
21 disappears for an hour and a half or so in the mall.
22 She says she's looked all over. She says she keeps
23 looking out, her car didn't go anywhere, but he was
24 nowhere to be seen.

25 When she does catch up with him at the food Court

1 about an hour and a half later -- and remember she
2 doesn't have her keys. Who's got the keys? Mr. Hill
3 has the keys to the car. What's in the car that wasn't
4 in the car that she can visibly see? A pair of shoes.
5 So she knows he has been in the car to put those shoes
6 that he bought and she saw him go in the shoe store.
7 There's a pair of shoes that are in the car that were
8 not in the car. So she knows he has been in that car.

9 What do you know on the way down? Not only did he
10 give her money to convince her to go with, he paid for
11 the gas on the way down. And remember, this is an SUV.
12 This is an Expedition. It is not economical to drive
13 nine hours to Atlanta to go shopping. This is where our
14 common sense comes in. Nine hours in an SUV that you
15 have to fill up with gas a couple of times to go
16 shopping. And what do you do when you get there? You
17 make a phone call and you have to come back home to
18 Virginia.

19 Like I said, you can believe all of Ms. Rodgers'
20 testimony, part of it or none of it. But the parts of
21 it that makes sense really makes sense when you put it
22 into the fact that they're going down there because Mr.
23 Hill has set up a drug deal.

24 And what else do we know about Mr. Hill on the way
25 down there? Not only -- find out ways that he's

1 detaching himself from this because although he's in
2 charge if he gets stopped he knows that if it's his car
3 that's going to be more evidence that it's his. If he's
4 got a large amount of money on him that's going to be
5 more evidence that it's his. And what do you know of --
6 another thing that Ms. Rodgers said, that he had a
7 couple of - I forgot - I think she said knots of money
8 when they got into -- when she picked him up at this
9 house somewhere in Ocean View, I think she said, a
10 couple of knots of money. He doesn't have that on him
11 when the police arrest him. But what is in the car?
12 Over eleven hundred grams of cocaine.

13 What else did he do? He showed that he was in
14 control again because he drove the entire way. What
15 else -- where were the drugs? The drugs were on the
16 passenger side of the vehicle, passenger side of the
17 vehicle. Again, detaching himself from this because if
18 they get pulled over and for some reason Highway Patrol
19 or whoever gets enough articulable suspicion to run a
20 drug dog and the cocaine is found, hey, it's not mine.
21 It's on the passenger side. Can't be mine. Detaching
22 himself from the situation.

23 What else does he say when the Officer says is
24 anything in that car yours? He says, no, it's all hers.
25 Again, trying to point the finger at this woman. Common

1 sense. Why in the world does he call up Ms. Rodgers
2 late at night to drive down to Atlanta? For a cover.
3 What better cover than to have a female in the car with
4 you? What better cover than to be in a car that is not
5 yours? He planned this out. He took the steps
6 necessary to make it come true and took the steps
7 necessary to detach himself as much as he could in case
8 what he didn't want to happen, being caught by the
9 police, came through.

10 What else do you know? The cousins that he met --
11 and we don't know if they're really cousins. That's
12 just the word that's used. The cousins that he met at
13 the mall stayed with Mr. Hill at the mall. They were
14 eating at, I think, Chic-fil-a or at the mall. Anyway,
15 and after Mr. Hill and Ms. Rodgers left headed back
16 north to Virginia and got stopped by the police, the
17 cousins came by on the road. Why? Protecting their
18 stuff. Protecting their stuff. They're not going to
19 let this much dope out of their sight without another
20 vehicle to follow and protect it.

21 What else did Ms. Rodgers told you? She's now got
22 a child by the Defendant. That's hard to get on the
23 stand and tell what she had to tell with someone that
24 you have a child with.

25 And again, she doesn't want to be found to be the

1 guilty one. But ladies and gentlemen, two people are
2 charged with this. There is not one's guilty and one's
3 innocent because using your common sense, and you can
4 decide what the truth is, Ms. Rodgers may know more than
5 she said on the stand. She may have known they were
6 going down there for a drug deal and just thought I'll
7 take this opportunity to spend some of his money and buy
8 something down at the mall, have a quick trip. She
9 knows him. She dated him. She knew him for months. He
10 borrowed her car in the past. She knows what kind of
11 person this is. She's -- no one is saying that she is
12 not involved in this. No one is saying she's not guilty
13 of assisting in this. There are two people. Two people
14 are guilty. But today's trial is for Mr. Hill and his
15 involvement in the trafficking of cocaine. Two people
16 were involved in the trafficking of cocaine.

17 Again, what Ms. Rodgers said, some of it's
18 believable, some of it's not. Who leaves in the middle
19 of the night for a nine hour trip to go on a shopping
20 trip. They're going to spend the night. There's no
21 luggage in the car. Part of it might be true, part of
22 it might not be true. That's up for you to decide.

23 You will have the video DVD back there that -- if
24 you ask that His Honor will allow you to watch. We fast
25 forwarded through it, but it's an hour and eleven

1 minutes on the side of the road, so we hit the main
2 points when we showed it to you. But the entire thing
3 is in evidence. If you want to see any of it you can.
4 We just hit where the two people had gotten out of the
5 car, where the canine ran around the car and where they
6 actually pulled the drugs out.
7 So, that is in evidence. The actual cocaine and
8 the packaging is in evidence. The actual rental
9 agreement is in evidence and the lab report showing that
10 the total weight was well over four hundred grams. It
11 was eleven hundred and some grams total, is in evidence.
12 So you have five pieces of evidence in the back,
13 physical evidence for you to touch, feel, look at,
14 whatever you want. You've got the testimony from the
15 witness stand, from the officers, from the chemist and
16 from Ms. Rodgers. You can believe all of it, part of
17 it, or none of it.

18 But whichever part of it you and your common sense
19 and backgrounds and experiences decides is the truth and
20 is what happens, it all points to Mr. Hill being
21 involved in trafficking cocaine. Whether he provided
22 the twenty-five thousand or whatever amount of money
23 that was in his pocket when he went down, the fact that
24 he drove the car aides and abets, the fact that he had
25 the connections down there, his cousins. Any one of

1 those things is enough to meet our burden of beyond a
2 reasonable doubt. And here we have several ways.

3 At the beginning of this trial the jury raised
4 their hands to swear to tell -- to come up with a
5 truthful verdict. And the State believes once you have
6 debated and gone over evidence and remembered what the
7 testimony was that the truthful verdict on Mr. Hill is
8 guilty of trafficking cocaine more than four hundred
9 grams. Thank you.

10 THE COURT: Mr. Posey, you may address the
11 jury.

12 CLOSING STATEMENT

13 BY MR. POSEY:

14 May it please the Court and Ms. Monts. Mr.
15 Foreman, and ladies and gentlemen of the jury, first of
16 all let me thank you for your attention during the case
17 and your consideration in this matter on Mr. Hill's
18 behalf.

19 We are a nation of stereotypes and Ms. Monts is
20 asking you to buy into one of the biggest stereotypes
21 there is today, that a female cannot be a king pin or a
22 large drug dealer. She wants to put all the blame on
23 Mr. Hill. Ms. Rodgers, she finally said at the end
24 that, you know, yeah, she's kind of bad, but I want you
25 to believe all the stuff against Mr. Hill. Don't buy

1 into the stereotype. The real drug dealer did testify
2 today. Ms. Rodgers.

3 And let's talk about what she said. Let's talk
4 about believability. Use your common sense. How many
5 of us is going to jump in a car between ten a.m., two
6 a.m., whatever, twelve midnight, two a.m., whatever she
7 said, to drive from Norfolk, Virginia to Atlanta,
8 Georgia to go shopping for a pair of shoes nonetheless.
9 Common sense.

10 Who's going to do that? Who's going to leave a
11 child to go do that? It's funny she had the right
12 answer for that when you get asked about that. She said
13 she had never been to Georgia before, didn't know how to
14 get to Georgia, so Mr. Hill drove. Yet, I swear and you
15 believe what your ears heard, I heard she said she had
16 been to Georgia before and we're going to talk about
17 where else she said she had been at the end.

18 You're going to jump in a car and go to Atlanta,
19 Georgia with a man who you say has no job, has a car,
20 you've known for a couple of months, yeah, I'm going to
21 get in the car and go to Georgia with him. That's real
22 unbelievable.

23 Let's talk about the other things she said, these
24 cousins. What proof do we have there was any cousins
25 besides Ms. Rodgers? She was away from Mr. Hill,

1 according to her testimony, for an hour and a half. Who
2 could have put the drugs in the car besides Mr. Hill?
3 Ms. Rodgers. She said she saw a pair of shoes in the
4 car. Well, that proves one thing. If she didn't buy
5 them who bought them? Mr. Hill. He might have been
6 shopping for shoes. She might have been shopping for a
7 kilo of cocaine. She claimed she had to go get money
8 out of a bank. Did she show the officer the receipt?
9 No.

10 It's amazing that it took almost two -- a year and
11 a half for her to come to all these revelations that
12 last Friday she finally tells Ms. Monts. Four days
13 before she's supposed to sit in this Courtroom and go to
14 trial she comes to all these revelations and she
15 mentioned it today. She was arrested. Use your common
16 sense. If you didn't know this was in your Court and
17 you're going to let the officers put handcuffs on you
18 without screaming and yelling a little bit. Ms. Monts
19 asked you to use your common sense. I'm asking you to
20 use your common sense. If this wasn't yours would you
21 might have screamed and yelled to tell them everything
22 you've been doing for the last few hours? Use your
23 common sense.

24 Almost a year and a half later she comes up with
25 all these great stories. Ms. Monts calls it a puzzle.

1 I call it a grab bag. Let's throw it up there and let's
2 see what might stick. Believe this part, don't believe
3 that part. But believe the part that says something bad
4 about Mr. Hill, that says something else. I don't
5 believe it. You don't get it both ways, ladies and
6 gentlemen. You don't get it both ways.

7 I'm going to deviate for a minute. I want to talk
8 about what they could have done. Take Ms. Rodgers'
9 testimony. What could they have done to slam the door
10 on that to make you believe? Did they fingerprint?
11 Whose prints are on here? They can't tell you because
12 they did not do it. Oh, I submitted -- I wrote it on
13 the form, but I forgot to submit it. Easy. But did
14 they do it? No. Did they do any follow-up
15 investigation on the statements either one of them gave
16 to law enforcement? How do they know who's telling the
17 truth? They didn't do any investigation. All they tell
18 is inconsistent stories, that's the end of it. Why
19 don't we look into who's story is actually inconsistent
20 and who might be telling the truth. They didn't take
21 the time. They stopped the ball short of the goal line.
22 They could have done it. What's so hard about it?
23 Let's talk about what they did prove. They proved that
24 Travell Hill was in a car where drugs were found. Plain
25 and simple. His Honor is going to tell you that's not

1 enough. Mere presence is not enough to convict
2 somebody. Ms. Monts is all about the aiding and
3 abetting. Oh, he drove the car. He didn't know the
4 drugs were in the car. I don't care how far he drove
5 that car. He's not guilty of a thing. She did not
6 prove to you beyond any doubt, much less a reasonable
7 doubt, that he absolutely knew those drugs were in the
8 car. She didn't do it.

9 You've got to rely on one person. If you believe
10 he knew drugs were in the car, one person, Ms. Rodgers,
11 you've got to believe her. That's the only person that
12 puts him with drugs. Otherwise, he's driving a car with
13 drugs in it and that's it.

14 Now, let's talk about what we do know. We've got a
15 kilo of cocaine under the passenger seat -- under the
16 passenger floor board. Ms. Rodgers didn't notice that
17 big hump coming back from Georgia that wasn't there when
18 she was supposedly going to Georgia. The car was rented
19 for her by a friend. One thing you never heard is how
20 did the friend know she was in Georgia? You never heard
21 that. You're going to call up at two o'clock in the
22 morning, hey, I'm driving your car to Georgia. I doubt
23 it.

24 What Ms. Rodgers testified to made very little
25 sense except for one thing. She finally, after back and

State of South Carolina vs. Travell Hill (2008-GS-23-6996)
Charge

157

1 forth for a few minutes, she finally admitted she
2 doesn't expect to go to jail or be convicted for any of
3 this. She has no expectation of it. Use your common
4 sense. She's here to save her skin and she would say or
5 do anything she could to do that.

6 You also heard testimony, I believe it was from the
7 officer, that Atlanta was a drug hub. And I'm going to
8 leave you with this. I may have been mistaken about Ms.
9 Rodgers saying she'd made these kind of trips to Georgia
10 before, but I know I'm not mistaken that said she's made
11 these kind of trips to New York before. If Atlanta is a
12 drug hub, I submit to you that New York might be the
13 king of drug hubs. And she's made the same similar
14 trips. But what she didn't say is she made them with
15 Travell Hill. She said I made those trips. There's
16 your drug dealer.

17 What they have proven to you that Travell Hill was
18 riding -- was driving the car that the drugs were found
19 in. I will give them that all day long. That is called
20 the mere presence. Outside of that they have proven
21 nothing beyond a reasonable doubt. Ms. Rodgers herself
22 is reasonable doubt. That's what you've got to believe
23 to convict Travell Hill of trafficking, whether you use
24 aiding, abetting, possession, whatever part of that
25 statute you want to use. She's thrown it all at you so

Charge

1 you can try to grab one of them, but she's proven none
2 of them beyond a reasonable doubt.

3 Again, ladies and gentlemen, I thank you for your
4 attention. I thank you for listening to me. Mr. Hill
5 thanks you. And I would ask you to go back and do the
6 right thing and find Travell Hill not guilty because the
7 State has failed to prove their case beyond a reasonable
8 doubt. Thank you.

9 CHARGE

10 BY THE COURT:

11 Mr. Foreman, ladies and gentlemen, it's now my
12 responsibility to instruct you on the law of the case.
13 I remind you the fact that the Defendant in this case
14 has been arrested and charged and indicted is not
15 evidence. It's not any evidence of guilt and should not
16 create any presumption of guilt on your part. The
17 indictment is merely the paper by which the case is
18 brought before this Court so that it can be disposed of
19 by a jury such as you.

20 The Defendant has entered a plea of not guilty to
21 the indictment and that places the burden on the State
22 to prove guilt beyond a reasonable doubt. A person
23 charged with committing a criminal offense in South
24 Carolina is never required to prove himself innocent.
25 That's an important rule of law that a Defendant in a

1 criminal trial, no matter how serious the charge may be,
2 will always be presumed innocent for the crime for which
3 the indictment was issued unless guilt is proven to you
4 by evidence satisfying you of that guilt beyond a
5 reasonable doubt. Presumption of innocence doesn't end
6 when you begin your deliberations. It accompanies the
7 Defendant throughout the trial until you've reached a
8 verdict of guilt based upon the evidence satisfying you
9 of that guilt beyond a reasonable doubt.

10 Presumption of innocence has often been described
11 as a robe of righteousness that's placed about the
12 shoulders of a Defendant and remains with that Defendant
13 until it's been stripped from him by evidence satisfying
14 you of that guilt beyond a reasonable doubt. The
15 presumption of innocence isn't a mere legal theory.
16 It's not just a legal phrase that's used. It is a
17 substantial right to which every Defendant is entitled
18 unless you, the jury, are satisfied of that Defendant's
19 guilt beyond a reasonable doubt.

20 You may ask yourself what is a reasonable doubt in
21 the law. A reasonable doubt is the kind of doubt that
22 would cause a reasonable person to hesitate to act. The
23 State having the burden of proof beyond a reasonable
24 doubt is a standard of proof that may differ from other
25 experiences you've had. Some of you may have served as

Charge

1 jurors before and the judge told you it was only
2 necessary to prove a fact was more likely true than not
3 true by what was called the greater weight of the
4 evidence or the preponderance of the evidence. That's
5 the standard of proof in civil disputes, civil cases.
6 But in criminal cases the State's proof is more powerful
7 than that. It must be proof beyond a reasonable doubt.
8 That would be proof that leaves you firmly convinced of
9 the Defendant's guilt.

10 While there are very few things in the world that
11 we know with absolute certainty, in criminal cases, the
12 law doesn't require proof that overcomes every possible
13 doubt. If, based upon your consideration of the
14 evidence, you are firmly convinced of the Defendant's
15 guilt of the crime charged then you must find the
16 Defendant guilty. If, on the other hand, you think
17 there's a real possibility that the Defendant is not
18 guilty then you must give the Defendant the benefit of
19 that doubt and find him not guilty.

20 Now, I remind you that during the course of these
21 proceedings you and I have had certain duties to
22 perform. As the trial judge it's my responsibility to
23 preside over the trial of the case and to rule on the
24 admissibility of evidence that's been offered during the
25 trial. And of course you're to consider only the

1 competent evidence that is before you. You're to
2 consider the testimony that's been presented from the
3 witness stand, the exhibits that have been made a part
4 of the record and that alone.

5 My job also is to charge you the law that's
6 applicable to the case. As the presiding judge I'm the
7 sole judge of the law. It's your duty as jurors to
8 accept the law and apply the law exactly as I state it
9 to you. You may already have an idea of what the law is
10 or maybe even a notion of what the law ought to be in a
11 case like this. But if you have such an idea or a
12 notion and it's not consistent with what I now tell you
13 the law is, then you must abandon those ideas because
14 under your oath you have sworn to accept the law and
15 apply the law as I state it to you.

16 Every case that's tried in this Courtroom before a
17 jury, the jury becomes the sole and exclusive judge of
18 the facts in a case. The trial judge cannot intimate or
19 state or comment on or make any statement whatsoever to
20 a trial jury about the facts in the case. Since you,
21 the jury, are the sole judges of the facts, please don't
22 infer from what I've said during the course of the trial
23 or any rulings I've made on the admissibility of
24 evidence or otherwise, anything I say to you now during
25 the course of this instruction to you, that I have an

1 opinion about the facts in the case. I don't have an
2 opinion. Our Constitution in South Carolina prohibits
3 the judge from having an opinion about the facts of the
4 case.

5 It's a matter solely for you, ladies and gentlemen,
6 to determine. It's your duty to make that determination
7 as to the effect and the value, the weight and the truth
8 of the evidence that's been presented to you during the
9 trial.

10 Normally there are two types of evidence. There's
11 direct evidence and there's circumstantial evidence.
12 Direct evidence is the testimony of a person who claims
13 to have actual knowledge of a fact such as an
14 eyewitness. It's evidence which immediately establishes
15 the main fact to be proved.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances that indicate the existence of a
18 fact. It's evidence which immediately establishes
19 collateral facts from which the main fact may be
20 inferred. In other words, circumstantial evidence is
21 based on inference and not on personal knowledge or
22 observation.

23 The law makes absolutely no distinction between the
24 weight or the value to be given either direct evidence
25 or circumstantial evidence nor is a greater degree of

1 certainty required of circumstantial evidence than of
2 direct evidence. You should weigh all of the evidence,
3 ladies and gentlemen, and after weighing that evidence
4 if you're not convinced of the guilt of the Defendant
5 beyond a reasonable doubt then you must find the
6 Defendant not guilty.

7 Necessarily, you must determine the credibility of
8 witnesses who testified in the case. Credibility simply
9 means believability. It's your duty as jurors to
10 analyze and evaluate the evidence and determine which
11 evidence convinces you of its truth. In determining the
12 believability of the witnesses who testified, you can
13 believe one witness over several witnesses. You can
14 believe several witnesses over one witness. You can
15 believe part of the testimony of a witness and reject
16 the remaining part of the testimony of that very same
17 witness. In your discretion you can believe the
18 testimony of a witness in its entirety, you can reject
19 the testimony of a witness in its entirety.

20 In your discretion you can consider whether a
21 witness has exhibited to you any interest, or bias, or
22 prejudice or other motive in the case. You can consider
23 the appearance and the manner of the witness while on
24 the witness stand. Was he or she straightforward or
25 hesitant in answering? Was the testimony of that

1 witness consistent or inconsistent? How did that
2 witness come to know the facts to which he or she
3 testified? Was the testimony of that witness
4 strengthened or weakened by other testimony and other
5 evidence? It's totally your prerogative, ladies and
6 gentlemen, to determine the credibility of witnesses.

7 Now in order to establish criminal liability,
8 criminal intent it is required and it must be proven by
9 the State beyond a reasonable doubt. Criminal intent
10 always is a matter that must be determined by a jury
11 from the circumstances surrounding the situation.
12 Obviously, there's no way to prove intent to a
13 mathematical certainty. There's no way that medical
14 science can dissect a person's brain and determine what
15 that person had in mind. So the law says that criminal
16 intent may be inferred from the circumstances shown to
17 have existed. It's not necessary to establish intent by
18 direct and positive evidence, but the intent may be
19 established by inference in the same way as other facts,
20 by taking into consideration the acts of the parties,
21 all the facts and circumstances of the case. Criminal
22 intent is a mental stage. It's a conscious wrongdoing.
23 It's up to you to determine what the Defendant intended
24 to do based upon the circumstances shown to have
25 existed.

1 Now, I instruct you and I emphasis to you the fact
2 that the Defendant did not testify is not a factor to be
3 considered by you in anyway in your deliberations. Not
4 to be considered by you in anyway as to the question of
5 guilt or innocence of the Defendant. Should not be
6 considered by you in any manner whatsoever. A Defendant
7 has a constitutional right to remain silent. The
8 assertion of this right must not be considered by you in
9 your deliberations. I repeat, ladies and gentlemen,
10 under your oath you're to draw no conclusions whatsoever
11 from the fact that the Defendant in this case chose not
12 to testify. The fact that he did not testify should not
13 even be discussed by you in the jury room. The burden
14 of proof as I've stated is on the State of South
15 Carolina. The Defendant is not required to prove his
16 innocence. The burden of proof remains on the State to
17 prove guilt beyond a reasonable doubt.

18 Now, in this particular case the Defendant is
19 charged with trafficking in cocaine. The State must
20 prove beyond a reasonable doubt that the Defendant
21 knowingly sold or manufactured or cultivated or
22 delivered or purchased or brought into the State -- into
23 this State or that the Defendant provided financial
24 assistance or otherwise aided, abetted, attempted or
25 conspired to sell and manufacture, cultivate, deliver,

1 purchase or bring into this State or that the Defendant
2 was knowingly in actual or constructive possession or
3 knowingly attempted to become in actual or constructive
4 possession of the drugs. The State must also prove
5 beyond a reasonable doubt that the amount of the cocaine
6 or any mixture of the cocaine was four hundred grams or
7 more.

8 Now, to prove possession the State must prove
9 beyond a reasonable doubt that the Defendant had both
10 the power and intent to control the disposition or the
11 use of the cocaine. Possession may be either actual
12 possession or constructive possession.

13 Actual possession means that the drug was in the
14 actual physical custody of the Defendant. Constructive
15 possession means the Defendant had dominion and control,
16 or the right to exercise the dominion or control over
17 either the drug itself or the property on which the drug
18 was found. Mere presence at the scene where the drugs
19 were found is not enough to prove possession. Actual
20 knowledge of the presence of the drug is strong evidence
21 of the Defendant's intent to control its disposition or
22 use. The Defendant's knowledge and possession may be
23 inferred when a substance is found on the property under
24 the Defendant's control. However, this inference is
25 simply an evidentiary fact to be taken into

1 consideration by you along with the other evidence in
2 the case and to be given the weight that you decide it
3 should have.

4 Two or more persons may have possession of the
5 drugs. The mere presence at the scene is not sufficient
6 to prove someone guilty of a crime. The Defendant's
7 presence where a crime is being committed or the mere
8 association with a person who commits a crime does not
9 make a Defendant an accomplice, or an aider, or abetter
10 to the person committing the crime. The burden is on
11 the State to prove every element of the crime charged.
12 If you find after reviewing all the evidence that the
13 State has proved that the Defendant was only present at
14 the scene of a crime and that they have not proved
15 beyond a reasonable doubt any other participation in the
16 crime, then you must find the Defendant not guilty. The
17 law is that proof at the scene of a crime is not
18 sufficient in and of itself to find someone guilty.

19 Now, Mr. Foreman, ladies and gentlemen, there are
20 two possible verdicts you can find in this case. I have
21 a verdict form for you. You can either find that the
22 State has met its burden of proof, at which point you
23 would find the Defendant guilty of the crime charged.
24 If you find the State has failed to meet its burden of
25 proof your verdict obviously would be not guilty. I

1 believe the verdict form is self-explanatory. Again, if
2 the State meets its burden then the verdict can be
3 guilty. If the State has not met its burden you are
4 required to find the Defendant not guilty.

5 Once you have deliberated and made that finding
6 then, Mr. Foreman, you would simply check the
7 appropriate spot on the verdict form, sign your name as
8 foreperson, date it on behalf of your fellow jurors.
9 Let the bailiffs know you have reached a verdict and
10 we'll receive it back here in the Courtroom.

11 All twelve of you must agree upon a verdict and it
12 must be a unanimous verdict. Your verdict cannot be
13 based upon sympathy or passion, prejudice, emotion, any
14 other consideration not in evidence in the case. I
15 remind you also that while you're free to ask any
16 questions regarding the law on the case, remember it's
17 impermissible for me to answer any questions regarding
18 the facts of the case. That's your duty as the sole
19 fact finders.

20 At this time, Mr. Foreman, ladies and gentlemen,
21 I'm going to ask you to go back to your jury room.
22 Don't start your deliberations just yet. There's one
23 final matter of law I need to take care of with the
24 attorneys. In just a few moments we'll have the verdict
25 forms back for you and we'll have the evidence that you

State of South Carolina -vs- Travell Hill (2008-GS-23-6996)
Charge

169

1 need back for you and we'll instruct you to begin your
2 deliberations. Don't do that just yet while I take care
3 of this matter of law.

4 You may retire to your jury room, ladies and
5 gentlemen.

6 (WHEREUPON, the jury exited the open Court at
7 approximately 4:28 p.m.)

8 THE COURT: Any exceptions to the charge from
9 the State?

10 MS. MONTS: No, Your Honor.

11 THE COURT: From the Defendant?

12 MR. POSEY: No, sir.

13 THE COURT: All right. If y'all will make
14 sure all the exhibits are in order and we'll have the
15 verdict form, we'll let the evidence go back to the jury
16 and they can begin their deliberations.

17 You can have the alternate come out and they can
18 begin their deliberations.

19 (WHEREUPON, the jury began their deliberations at
20 approximately 4:30 p.m.)

21 THE COURT: Ms. Tallon, thank you very much
22 for your participation today. We won't need your
23 services in this case. You are free to go or you're
24 welcome to stay with us. We'd love to have you stay if
25 you'd like. We need you to call back on the number

Charge

1 tonight after six o'clock and there will be instructions
2 about whether you need to report tomorrow or whether you
3 need to call back. Thank you very much for serving with
4 us today.

5 All right. We'll be at ease until we hear from our
6 jury.

7 (WHEREUPON, the Court stood at ease awaiting the
8 verdict of the jury.)

9 THE COURT: All right. We've received a
10 couple of questions from the jury. I'll make these
11 Court Exhibits 1 and 2.

12 I've had a chance to share them with the attorneys
13 already. But for the record they want to know if they
14 can still have prints of the bag for DNA from Exhibit 3
15 and phone records as to times.

16 I'll bring the jury back in and explain to them as
17 I did earlier that I can't give any information about
18 facts and these are factual questions. Sorry that I
19 can't answer them. Again instruct them to determine
20 what the facts are and I can give them any legal help
21 that they need, but to continue their deliberations.
22 Let's have our jury come in, Mr. Frazier.

23 (WHEREUPON, the jury entered the open Court at
24 approximately 5:25 p.m.).

25 THE COURT: Mr. Foreman, ladies and gentlemen,

1 I've received some inquiries from you relating to
2 different matters. Let me remind you, again, I can't
3 give you any instructions on the facts. You've heard
4 all the facts and all the evidence has been presented in
5 the case that for your deliberation.

6 I can certainly answer any legal questions that you
7 may have, but based upon the information you requested I
8 wouldn't be able to answer those questions for you
9 because they are factual in nature and you are to
10 determine.-- the ultimate determiners of the facts, not
11 I. If you have legal questions, I'll be glad to help
12 you in way I can. Be glad to help with any testimony
13 that you need or anything else as far as playing it
14 back. But I can't comment on the facts at all.

15 With that I'll ask you if you would go back and
16 continue your deliberations and if we can help you in
17 anyway, please let us know. You are discharged back to
18 your jury room.

19 (WHEREUPON, the jury exited the open Court at
20 approximately 5:27 p.m.).

21 THE COURT: Any exceptions to the charge from
22 the State?

23 MS. MONTS: No, Your Honor.

24 THE COURT: From the Defendant?

25 MR. POSEY: No, sir.

1 THE COURT: All right. If y'all will make
2 sure all the exhibits are in order and I have the
3 verdict form. We'll let the exhibits and verdict forms
4 go back to the jury. Have the alternate come back out.

5 (WHEREUPON, the jury began deliberating at
6 approximately 4:30 p.m.)

7 THE COURT: Ms. Tallon, thank you very much
8 for your participation today. We won't need your
9 services in this case. You're free to go, you're
10 welcomed to stay with us. We'd love to have you stay if
11 you'd like. I need you to call back on the number
12 tonight after six o'clock. There will be an instruction
13 about when you need to report back tomorrow and when you
14 need to call back. Thank you very much for serving with
15 us today.

16 All right. We'll again be at ease until we hear
17 from our jury.

18 (WHEREUPON, Court stood at recess awaiting the
19 verdict of the jury.)

20 THE COURT: All right. We've received a
21 couple of questions from the jury. I'll make these
22 court exhibits 1 and 2. I've had a chance to share them
23 with the attorneys already. But for the record, they
24 want to know if they can still have prints of the bags,
25 DNA of Exhibit 3, and phone records, as to the times.

1 I'll bring the jury back in and explain to them, as I
2 did earlier, that I can't give them any information
3 about additional facts, and these are factual questions.
4 Sorry that I can't answer them. Again instruct them to
5 determine what the facts are and I can give them any
6 legal help that they need. And let them continue their
7 deliberations. Let's have our jury come in, Mr.

8 Frazier.

9 (WHEREUPON, the jury entered the open court at
10 approximately 5:23 p.m.)

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 I've received some inquiries from you relating to
13 different matters. Let me remind you again, I can't
14 give you any instructions on the facts. You've heard
15 all the facts. All the evidence has been presented in
16 the case for your deliberations. I can certainly answer
17 any legal questions that you may have, but based upon
18 the information you requested, I wouldn't be able to
19 answer those questions for you because they are factual
20 in nature. You're the ultimate determiner of the facts,
21 not I. If you have legal questions I'll be glad to help
22 you in anyway we can. We glad to help you with any
23 testimony that you need or anything else as far as
24 playing it back. But I can't comment on the facts at
25 all. With that I'll ask you if you would go back and

1 continue your deliberations. If we can help you in
2 anyway, please let us know. You're discharged back to
3 your jury room.

4 (WHEREUPON, the jury exited the open court at
5 approximately 5:27 p.m.)

6 THE COURT: Any exception to the charge from
7 the State?

8 MS. MONTS: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. POSEY: No, sir.

11 THE COURT: All right. We'll again be at ease
12 until we hear from our jury. I'll mark these or have
13 these both marked as Court Exhibits 1 and 2.

14 (WHEREUPON, Court Exhibit Numbers 1 and 2 were
15 marked for identification.)

16 (WHEREUPON, the Court stood at recess awaiting the
17 verdict of the jury.)

18 THE COURT: We've got another note from the
19 jury that says they need the board from the prosecution,
20 which I assume means the board that was used in the
21 closing statement. I'm going to write on here, I've
22 talked to the lawyers. I'll just write that that's --
23 the board is not into evidence and to continue your
24 deliberations. That's what I'm going to write down and
25 sign my name. I wanted everybody to know that, and I've

State of South Carolina -vs- Travell Hill (2008-GS-23-6996)
Charge

175

1 talked to the lawyers about that.

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

4 MR. POSEY: Yes, sir.

5 THE COURT: All right. I understand the --
6 based on a bench conference we gave the jury the option
7 to continue with supper tonight or going home for the
8 evening. I think the jury has decided that they could
9 look at this case fresher tomorrow, so I'm going to send
10 them home for the evening. I'll give them proper
11 instruction as far as not discussing the case. We're
12 going to start back at nine o'clock in the morning with
13 the deliberations. You may bring the jury in.

14 (WHEREUPON, Court Exhibit Number 4 was marked for
15 identification.)

16 (WHEREUPON, the jury entered the open Court at
17 approximately 6:24 p.m.)

18 THE COURT: Mr. Foreman, ladies and gentlemen,
19 it's nearly six thirty and you've deliberated long and
20 hard already. Rather than continue the deliberations
21 tonight, I'm going to let you go home for the evening.
22 We'll start back tomorrow with your deliberations at
23 nine o'clock. If you'll be back in your jury room
24 promptly at nine o'clock. When everyone is back in the
25 jury room you can continue your deliberations, Mr.

1 Foreman, but not until everyone is back, of course.

2 While you're gone for the evening, of course, you
3 need to remember the oath you've taken. You need to
4 remember the instructions I've given you. You shouldn't
5 be discussing this case with anyone. You'll have ample
6 opportunity to share your experience of the process and
7 what you've heard with your family and loved ones and
8 business associates and social friends, but while the
9 case is going on is not the time to do that. You can do
10 that later. It would be improper for you talk to anyone
11 about the case, let anyone talk to you about the case.

12 I say this not by an intent to tempt you in anyway
13 but by instruction. It would be improper for you in
14 anyway to do any kind of investigation about the case,
15 to get an encyclopedia, go to the library, get online
16 and try to find out the terms or any information at all
17 about this case. That would be against your oath. It
18 would be against the instructions of the Court. You
19 have everything that you need to decide this case based
20 upon the evidence that's been presented and the law that
21 I've given you and that alone is what you're going to
22 make this determination of. Not on any other extraneous
23 matters whatsoever.

24 With that in mind, have a good evening, ladies and
25 gentlemen. I look forward to seeing you back at nine

1 o'clock. You can begin your deliberations when all the
2 jurors are here at nine o'clock. Have a good evening.
3 I'll see you back tomorrow.

4 (WHEREUPON, the jury exited the open Court at
5 approximately 6:27 p.m.)

6 THE COURT: All right. We'll be at ease until
7 nine o'clock in the morning.

8 (WHEREUPON, the Court stood at recess for the day
9 at approximately 6:27 p.m.)

10 MARCH 31, 2010

11 (WHEREUPON, Court convened with all parties present
12 and the following proceedings were had.)

13 (WHEREUPON, Court Exhibit Number 5 was marked for
14 identification.)

15 (WHEREUPON, the jury entered the open Court at
16 approximately 11:22 a.m.)

17 THE COURT: Mr. Foreman, I understand the jury
18 has reached a verdict; is that correct?

19 MR. FOREMAN: We have, Your Honor.

20 THE COURT: Is it a unanimous verdict?

21 MR. FOREMAN: It is.

22 THE COURT: If you would, please, hand the
23 verdict form to the bailiff. Madam Clerk, you may
24 publish the verdict.

25 MADAM CLERK: Your Honor, this is case number

1 2008-GS-23-6696, the State versus Travell Levone Hill as
2 to the charge of trafficking cocaine. We the jury
3 unanimously find the Defendant, Travell Levone Hill,
4 guilty. Signed Michael Graffia, foreperson.

5 If this is your verdict please raise your right
6 hand. Thank you.

7 (WHEREUPON, all jurors' right hands were raised.)

8 THE COURT: Anything else we need to take care
9 of before the jury is discharged in this case? Anything
10 from the State?

11 MS. MONTS: No, Your Honor.

12 THE COURT: From the defense?

13 MR. POSEY: No, sir, Your Honor.

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 thank you very much for your service. We have some of
16 your fellow jurors downstairs now ready to be selected
17 to start another case. Since you've served on this one,
18 I'm going to just let you call back tonight. We have
19 some trials down for tomorrow as well to take care of,
20 so if you'll call back tonight after six o'clock, there
21 will be instructions on whether you need to come back
22 tomorrow or call back tomorrow. I don't know -- the
23 Courthouse is closed on Friday. I know that. But if
24 we start a trial tomorrow I presume it will be one that
25 will finish tomorrow. We may need your services in the

1 morning. Just follow the instructions on the message
2 after six o'clock tonight. They'll tell you what you
3 need to do for tomorrow.

4 Thank you very much for serving. You've done a
5 valuable service for your community. You've been a
6 judge of the facts and I appreciate that. It's been an
7 honor for me to work with you. I hope I have an
8 opportunity to work with you later, if not this week, in
9 the future.

10 I know being a juror is not an every day service
11 that you render. You may never have an opportunity
12 again. I hope it's been an educational experience for
13 you as best it can and an enjoyable experience.

14 Thank you very much. You're dismissed at this
15 time..

16 (WHEREUPON, the jury exited the open Court at
17 approximately 11:26 a.m.)

18 THE COURT: All right. Anything we need to
19 take care of before sentencing.

20 MR. POSEY: Judge, I make a motion for a
21 judgment notwithstanding the verdict or in the
22 alternative a motion for a new trial.

23 THE COURT: I believe it was a jury issue and
24 the jury has spoken. I'll respectfully deny your
25 motion, Mr. Posey.

1 If you would come forward, please. I'll be glad to
2 hear anything from you or your client. Mr. Posey,
3 anything you want to tell me, sir?

4 MR. POSEY: Judge, Mr. Hill is twenty-three
5 years of age. He is a resident of Virginia. He's a
6 young man. You've heard the case. I would respectfully
7 ask you to impose the minimum sentence. Even with that
8 sentence it's a substantial period of time, part of his
9 life that he will spend in the Department of
10 Corrections, and I would just ask you to impose the
11 minimum twenty-five years in this case.

12 THE COURT: Thank you, Mr. Posey. Mr. Hill,
13 I'd be glad to hear from you if you have anything you
14 would like to tell me.

15 MR. HILL: I just wanted to say that.

16 THE COURT: Any prior record?

17 MR. MONTS: Yes, Your Honor. As a juvenile
18 everything is in Virginia. In '01 a grand larceny, in
19 '02 a failure to appear and a violation of probation, in
20 '03 petit larceny, '03 possession of dangerous dogs, '06
21 in Virginia he has an armed robbery in which he received
22 a twenty year sentence, eighteen years and nine months
23 of that was suspended. That is still hanging over his
24 head. '07 he has a conviction in Virginia for the
25 purchase of beer or liquor by a person under the age of

State of South Carolina -vs- Travell Hill (2008-GS-23-6996)
Charge

181

1 twenty-one. In '07 part of that original robbery
2 conviction was revoked. In '08 he was a fugitive from
3 justice and in '09 a fail to appear. He was extradited
4 back to South Carolina from Virginia. He did not come
5 back to Court willingly.

6 THE COURT: The armed robbery was a twenty
7 year sentence suspended?

8 MR. MONTS: Eighteen years and nine months of
9 it was suspended.

10 THE COURT: Everything was a juvenile record
11 until the armed robbery?

12 MS. MONTS: Correct, Your Honor.

13 MR. POSEY: Judge, I don't know if this will
14 play a factor in what you decide here, but apparently
15 Virginia will not do anything until -- he will be
16 violated for that, but they will not do anything with it
17 until he is through with the South Carolina sentence.

18 THE COURT: Case 2008-GS-23-6996, the sentence
19 of the Court is the Defendant is to be committed to the
20 Department of Corrections for twenty-seven years. I
21 wish you the best, Mr. Hill.

22 MS. MONTS: Thank you, Your Honor.

23 MR. POSEY: Thank you, Judge.

24

25 END OF REQUESTED TRANSCRIPT OF RECORD

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Circuit Court for Greenville
10 County, South Carolina, on the 30 day of March, 2010.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 August 21, 2010

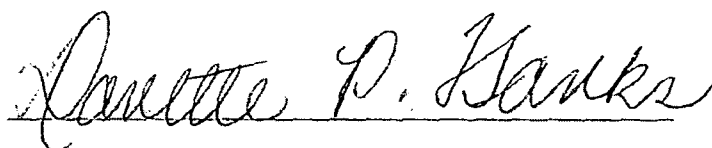
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A handwritten signature in cursive script, reading "Danette P. Hanks", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVELL HILL,

APPELLANT

APPELLATE CASE NO. 2010-158046

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<u>Ferris v. State</u> , 355 Md. 356, 735 A.2d 491 (1999).....	7
<u>Florida v. Royer</u> , 460 U.S. 491, 103 S.Ct. 1319 L.Ed.2d 229 (1983)	7
<u>Pennsylvania v. Mimms</u> , 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).....	7
<u>Rakas v. Illinois</u> , 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).....	11
<u>Rawlings v. Kentucky</u> , 448 U.S. 98 S.Ct. 2556, 65 L.Ed.2d 633 (1980)	11
<u>State v. Forrester</u> , 343 S.C. 637, 541 S.E.2d 837 (2001).....	11
<u>State v. Greene</u> , 330 S.C. 551, 499 S.E.2d 817 (Ct.App.1997)	9
<u>State v. Provet</u> , 391 S.C. 494, 706 S.E.2d 513 (Ct.App. 2011)	9, 10
<u>State v. Rivera</u> , 384 S.C. 356, 682 S.E.2d 307 (Ct.App. 2009).....	9
<u>State v. Tindall</u> , 388 S.C. 518, 698 S.E.2d 203 (2010).....	8, 10
<u>State v. Wallace</u> , 392 S.C. 47, 707 S.E.2d 451 (Ct.App. 2011).....	9
<u>State v. Williams</u> , 351 S.C. 591, 571 S.E.2d 703 (Ct. App.2002).....	9
<u>United States v. Sullivan</u> , 138 F.3d 126 (4th Cir.1998).....	7
<u>United States v. Wellons</u> , 32 F.3d 117 (4 th Cir. 1994).....	10, 11

STATEMENT OF ISSUES ON APPEAL

1. Was the officer's suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment?
2. Did the judge err in finding that appellant lacked standing to challenge the unlawful search and seizure of the rental car he was driving?

STATEMENT OF THE CASE

In October of 2008, the Greenville County Grand Jury indicted Hill for trafficking cocaine, indictment #2008-GS-23-6996. On March 30, 2010, Hill proceeded to jury trial before the Honorable G. Edward Welmaker. The jury returned a verdict of guilty and Judge Welmaker sentenced Hill to 27 years. A timely notice of intent to appeal was filed on April 8, 2008. On July 6, 2011, counsel for Hill submitted a final brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). On February 3, 2012, this Court issued an order denying counsel's motion to be relieved and directing counsel to brief the issue of whether the officer's suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment and any other issues counsel believes are preserved and of arguable merit. This brief of appellant follows.

STATEMENT OF FACTS

On February 19, 2008, Trooper Richard S. Chasteen with the South Carolina Highway Patrol stopped a burgundy SUV on I-85 for following too closely and impeding traffic. Appellant Hill was the driver and Tyra Rodgers was the passenger. (Tr. p. 38, lines 1-2; p. 40, lines 8-14). Appellant provided the trooper with a rental agreement for the vehicle and his driver's license. (Tr. p. 38, lines 5-24). Neither Hill nor Rodgers' name appeared on the rental agreement. (Tr. p. 40, lines 1-14). The SUV had been rented in Virginia. (Tr. p. 41, lines 13-14). The trooper later noticed that the rental vehicle was overdue. (Tr. p. 45, lines 1-6). According to the trooper, he called his partner for back-up after receiving the license and rental agreement. (Tr. p. 43, lines 23 – p. 44, lines 1-3). His partner, Trooper Bennie Dowis, arrived with a drug dog. (Tr. p. 44, lines 1 – p. 45, lines 1-8).

The trooper testified that both Hill and Rodgers were nervous and did not make eye contact during the stop. (Tr. p. 38, lines 13-15). The trooper testified that appellant Hill could not sit still in his seat and was "almost in a state of panic." (Tr. p. 38, lines 15-17). According to the trooper, appellant's hands shook as he handed over the rental agreement. (Tr. p. 38, lines 17-19). (Tr. p. 41, lines 13-14). The trooper noticed fast food wrappers and energy drinks inside the vehicle. (Tr. p. 38, lines 20-22). The trooper did not see any luggage inside the vehicle. (Tr. p. 41, lines 15-19).

Trooper Chasteen asked Hill to step out of the vehicle. (Tr. p. 39, lines 2-7). Hill told the trooper that they had traveled from Chesapeake, Virginia to Atlanta to party and see a good friend. (Tr. p. 43, lines 15-21) The trooper questioned Rodgers as she sat in the

vehicle. Rodgers told the trooper that Hill was her boyfriend and they had traveled to Atlanta to buy shoes and visit family. (Tr. p. 40, lines 17-21).

Trooper Chasteen testified, "Immediately after issuing the warning or explaining and issuing the warning, I asked Mr. Hill for consent to search his vehicle." (Tr. p. 70, lines 12-14). Hill did not consent to the search of the vehicle. (Tr. p. 70, lines 15-16). After Hill did not consent to search, Trooper Chasteen asked Ms. Rodgers to step out of the vehicle. (Tr. p. 71, lines 1-4). Trooper Dowis then ran his drug dog, Chloe, around the car. (Tr. p. 94, lines 19 – p. 95, lines 1-24). Chloe the drug dog alerted on the vehicle. (Tr. p. 96, lines 1-25). Trooper Chasteen then told Hill and Rodgers that their vehicle was going to be searched based on probable cause. (Tr. p. 71, lines 25 – p. 72, line1). Trooper Chasteen searched the vehicle and found a pair of shoes in a bag and, under the carpet on the front passenger side, cocaine. Both Hill and Rodgers were arrested and charged with trafficking cocaine.

ARGUMENTS

1. The officer did not have reasonable suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment.

Prior to trial Hill moved to suppress the drug evidence based on the unlawful search and seizure. (Tr. pp. 5 – 8). The trial judge held a suppression hearing. (Tr. pp. 33-49). After hearing testimony the trial judge denied the motion to suppress stating, “But looking - - weighing the testimony that has been offered and what I have heard, I think there’s enough factors that show he did have a reasonable basis for the detention.” (Tr. p. 50, lines 21-24). The trial judge erred.

Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the vehicle without violating Fourth Amendment proscriptions on unreasonable searches and seizures. Pennsylvania v. Mimms, 434 U.S. 106, 111 n. 6, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). In carrying out the stop, an officer “ ‘may request a driver's license and vehicle registration, run a computer check, and issue a citation.’ ” United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998) (citation omitted). However, “[a]ny further *detention* for questioning is beyond the scope of the [] stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime.” Id. (emphasis added); see Florida v. Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion) (“[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”); Ferris v. State, 355 Md. 356, 735 A.2d 491, 499 (1999) (“Once the purpose of [the] stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”).

The initial traffic stop was legal. Once Trooper Chasteen issued the warning ticket, however, the purpose for the traffic stop was accomplished. The continued detention after the issuance of the warning ticket exceeded the scope of the initial traffic stop and constituted a second seizure. Once Hill elected not to provide consent to search and the drug dog was summoned, Hill was not free to leave. The continued detention is illegal because the trooper lacked a reasonable suspicion of a serious crime.

In State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010), the South Carolina Supreme Court found that the officer's continued questioning exceeded the scope of the initial traffic stop and the officers lacked a reasonable suspicion of a serious crime which might have justified the continued questioning. The Court found that the following four factors asserted by the officers failed to establish reasonable suspicion: 1.) the defendant was driving to Durham to meet his brother; 2.) the defendant was driving a rental car rented the previous day by another individual which was to be returned to Atlanta on the day of the stop; 3.) the defendant did a "felony stretch" on exiting the vehicle; and 4.) the defendant seemed nervous.

In this case, the State presented the following factors in support of the trooper's reasonable suspicion: 1.) Hill was returning to Virginia after a quick trip to Atlanta; 2.) Hill and the passenger, Rodgers, gave the trooper different information about their trip to Atlanta; 3.) Hill was driving a rental car rented by another individual and overdue; and 4.) Hill and the passenger seemed nervous. As in Tindall, these factors do not support reasonable suspicion to justify the continued detention of Hill.

In State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct.App. 2009), the South Carolina Court of Appeals found that nervousness alone did not create a suspicion of criminal activity, the stories told by driver and passenger were not so inconsistent as to indicate criminal activity and the lack of luggage in the backseat provided no basis for a suspicion of criminal activity. In the present case the information about the trip given to the trooper by Hill and Rodgers was not so inconsistent as to indicate criminal activity and the lack of luggage in the backseat provided no basis for a suspicion of criminal activity. Hill and Rodgers' alleged nervousness, standing alone, did not create a suspicion of criminal activity.

The cocaine found as the result of the illegal detention should have been suppressed. See State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App.2002); State v. Greene, 330 S.C. 551, 559, 499 S.E.2d 817, 821 (Ct.App.1997) ("The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded.").

The case is distinguished from State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct.App. 2011) (Cert. granted April 5, 2012) and State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct.App. 2011) (Rehearing denied March 23, 2011; petition for writ of certiorari pending). In Wallace, the Court of Appeals relied on fourteen points that, according to the State, amount to reasonable suspicion of criminal activity. In the present case, the four factors presented by the evidence do not amount to reasonable suspicion to warrant the continued detention. In Provet, the trial court relied on seven points to find reasonable suspicion including a perceived deceptive response when asked from where

Provet was coming. There was no evidence in the present case that Hill's responses were deceptive. Importantly, in Provet the Court of Appeals distinguished the present case from Tindall because the questions asked in the present case were prior to the conclusion of the traffic stop rather than after the purpose of the traffic had been accomplished as in Tindall. Here, the questions were asked **after** the trooper issued the warning. The continued detention in the present case was after the purpose of the traffic stop had been accomplished. The trooper lacked reasonable suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment.

2. The judge erred in finding that appellant lacked standing to challenge the unlawful search and seizure of the rental car he was driving.

During the suppression hearing the State argued that based on United States v. Wellons, 32 F.3d 117 (4th Cir. 1994), Hill lacked standing to challenge the illegal search and seizure because Hill was not a valid driver on the rental agreement. (Tr. p. 7, lines 6-17; p. 49, lines 1-8). The judge agreed stating, "And as far as the State's position of the standing, I find the cases of Sam Wellons [sic] and others, I'm finding that he did not have standing based upon that law, but I do that with reservation because of what our United States Supreme Court has done more recently in the right of standing of folks in residences and somewhat expanded that, whether that would apply to an automobile." (Tr. p. 49, lines 15-22). The judge erred.

First, based on the United States Supreme Court cases of Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) and Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980) the inquiry in search and seizure cases does not go to standing alone but rather to whether the defendant had a legitimate expectation of privacy in the area searched unlawfully. "The question is whether the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." Rakas, 439 U.S. at 140, 99 S.Ct. at 429.

The South Carolina State Constitution provides greater protection against unreasonable searches and seizures than the Federal Constitution. State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001). "The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." Forrester, 343 S.C. at 645, 541 S.E.2d at 841. Given the heightened expectation of privacy in South Carolina, Hill had a reasonable and legitimate expectation of privacy in the rental car he was driving despite the fact that he was not listed on the rental agreement.

Second, the State failed to prove that Hill was an unauthorized driver of the rental vehicle. The driver in Wellons was an unauthorized driver of the rental car and the Fourth Circuit Court of Appeals found that as an unauthorized driver he had no expectation of privacy in the car. In the present case, the rental agreement provides that,

"No additional operators are authorized or permitted without AVIS prior approval in accordance with the terms and conditions of the rental agreement or applicable state law."

State's Exhibit #1, Rental Agreement, R. p. **). The trooper admitted that he did not check with AVIS to determine if Hill was an authorized driver. (Tr. p. 47, lines 3-17). The judge erred in finding that Hill did not have standing to challenge the illegal search and seizure.

CONCLUSION

Based on the above arguments, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of June, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVELL HILL,

APPELLANT

APPELLATE CASE NO.: 2010-158046

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of June, 2012.

Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of June, 2012.

Ramon E. Cuse (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2010-158046

THE STATE,

Respondent,

vs.

TRAVELL LEVONE HILL,

Appellant.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	10
Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the cocaine discovered during the course of the traffic stop was not preserved for appellate review because Appellant waived any objection he had to the admission of the evidence by affirmatively indicating he had no objection at the time the evidence was introduced during trial. Regardless, the trial judge properly denied Appellant's suppression motion because the officer developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop after observing numerous suspicious factors prior to detaining Appellant for the sniff search of the rental vehicle. Furthermore, the trial judge properly determined Appellant was precluded from challenging the admission of the cocaine discovered during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle due to the fact he neither rented it nor had any authorization to drive or possess it.	
CONCLUSION.....	30

TABLE OF AUTHORITIES

Cases:

<u>Arizona v. Johnson</u> , 555 U.S. 323 (2009).	14, 15
<u>Burke v. AnMed Health</u> , 393 S.C. 48, 710 S.E.2d 84 (Ct. App. 2011).	12
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).	14
<u>Katz v. United States</u> , 389 U.S. 347 (1967).	27
<u>Illinois v. Caballes</u> , 543 U.S. 405 (2005).	15
<u>Illinois v. Wardlow</u> , 528 U.S. 119 (2000).	16
<u>Maryland v. Buie</u> , 494 U.S. 325 (1990).	14
<u>Maryland v. Wilson</u> , 519 U.S. 408 (1997).	14
<u>Minnesota v. Olsen</u> , 495 U.S. 91 (1990).	27
<u>Muehler v. Mena</u> , 544 U.S. 93 (2005).	15
<u>Ohio v. Robinette</u> , 519 U.S. 33 (1996).	14
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<u>Rawlings v. Kentucky</u> , 448 U.S. 98 (1980).	29
<u>Segura v. United States</u> , 468 U.S. 796 (1984).	26
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).	13
<u>State v. Brockman</u> , 339 S.C. 57, 528 S.E.2d 661 (2000).	13
<u>State v. Burton</u> , 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997).	13
<u>State v. Carlson</u> , 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005).	13
<u>State v. Dicapua</u> , 373 S.C. 452, 646 S.E.2d 150 (Ct. App. 2007).	12
<u>State v. Flowers</u> , 360 S.C. 1, 598 S.E.2d 725 (Ct. App. 2004).	13
<u>State v. Forrester</u> , 343 S.C. 637, 541 S.E.2d 837 (2001).	12
<u>State v. Johnson</u> , 363 S.C. 53, 609 S.E.2d 520 (2005).	11

<u>State v. Khingratsaiphon</u> , 352 S.C. 62, 572 S.E.2d 456 (2002).	13
<u>State v. Lesley</u> , 326 S.C. 641, 486 S.E.2d 276 (Ct. App. 1997).	15
<u>State v. Maybank</u> , 352 S.C. 310, 573 S.E.2d 851 (Ct. App. 2002).	14
<u>State v. McKnight</u> , 291 S.C. 110, 352 S.E.2d 471 (1987).	26, 29
<u>State v. Missouri</u> , 361 S.C. 107, 603 S.E.2d 594 (2004).	27
<u>State v. Pichardo</u> , 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005).	13, 14, 15, 16
<u>State v. Provet</u> , 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011).	16, 18, 19, 23, 25, 26
<u>State v. Rivera</u> , 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009).	13
<u>State v. Robinson</u> , 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012).	29
<u>State v. Rogers</u> , 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004).	11
<u>State v. Rogers</u> , 368 S.C. 529, 629 S.E.2d 679 (Ct. App. 2006).	16
<u>State v. Schumpert</u> , 312 S.C. 502, 435 S.E.2d 859 (1993).	11
<u>State v. Simpson</u> , 325 S.C. 37, 479 S.E.2d 57 (1996).	11
<u>State v. Smith</u> , 337 S.C. 27, 522 S.E.2d 598 (1999).	11
<u>State v. Tindall</u> , 379 S.C. 304, 665 S.E.2d 188 (Ct. App. 2008).	17, 18
<u>State v. Tindall</u> , 388 S.C. 518, 698 S.E.2d 203 (2010).	18, 25
<u>State v. Wallace</u> , 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011).	16, 17, 19, 20, 22
<u>State v. Wiles</u> , 383 S.C. 151, 679 S.E.2d 172 (2009).	12
<u>State v. Williams</u> , 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002).	14
<u>State v. Willard</u> , 374 S.C. 129, 647 S.E.2d 252 (Ct. App. 2007).	16
<u>United States v. Arvizu</u> , 534 U.S. 266 (2002).	25
<u>United States v. Branch</u> , 537 F.3d 328 (4th Cir. 2008).	15, 16, 26
<u>United States v. Cortez</u> , 449 U.S. 411 (1981).	16

<u>United States v. Foreman</u> , 369 F.3d 776 (4th Cir. 2004).	16
<u>United States v. Luster</u> , 324 Fed. App'x 224 (4th Cir. 2009).	28
<u>United States v. Mason</u> , 628 F.3d 123 (4th Cir. 2010).	17, 23, 26
<u>United States v. Mubdi</u> , 691 F.3d 334 (4th Cir. 2012).	23
<u>United States v. Salvucci</u> , 448 U.S. 83 (1980).	28
<u>United States v. Sullivan</u> , 138 F.3d 126 (4th Cir. 1998).	14
<u>United States v. Wellons</u> , 32 F.3d 117 (4th Cir. 1994).	28
<u>United States v. Whitehead</u> , 849 F.2d 849 (4th Cir. 1988).	17
<u>Other Authorities:</u>	
U.S. Const. amend. IV.	13

STATEMENT OF ISSUE ON APPEAL

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the cocaine discovered during the course of the traffic stop was not preserved for appellate review because Appellant waived any objection he had to the admission of the evidence by affirmatively indicating he had no objection at the time the evidence was introduced during trial. Regardless, the trial judge properly denied Appellant's suppression motion because the officer developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop after observing numerous suspicious factors prior to detaining Appellant for the sniff search of the rental vehicle. Furthermore, the trial judge properly determined Appellant was precluded from challenging the admission of the cocaine discovered during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle due to the fact he neither rented it nor had any authorization to drive or possess it.

STATEMENT OF THE CASE

On February 19, 2008, Appellant Travell Levone Hill was arrested following a routine traffic stop that resulted in the discovery of a substantial quantity of cocaine. In October of 2008, the Greenville County grand jury indicted Appellant for trafficking in cocaine in an amount greater than 400 grams. On March 30, 2010, a jury trial was held in the Greenville County court of general sessions with the Honorable G. Edward Welmaker, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of twenty-seven years. Appellant then filed a timely notice of appeal.

Subsequently, Appellant's appellate counsel filed an Anders brief and a petition to be relieved as counsel. Thereafter, on February 3, 2012, the Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue from trial along with any other issues counsel believed were present and of arguable merit: "Was the officer's suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning ticket for the traffic stop under the Fourth Amendment?"

STATEMENT OF FACTS

Around 3:50 p.m. on February 19, 2008, Trooper Shannon Chasteen, a member of the South Carolina Highway Patrol's Aggressive Criminal Enforcement Unit, was patrolling Interstate 85 in Greenville County when he observed a burgundy Ford Expedition following another vehicle at an unreasonably close distance. (R. pp. 33-35; pp. 56-58). In response, Trooper Chasteen immediately moved to initiate a traffic stop. (R. pp. 35-36; p. 58). When he did so, the driver of the Expedition rapidly shifted to the left lane and slowed his vehicle down to a speed well below the posted speed limit. (R. pp. 35-36; pp. 58-59). Trooper Chasteen then caught up to the Expedition and activated his blue lights, and the driver of the vehicle pulled over and stopped in an emergency lane on the side of the highway. (R. p. 36; pp. 59-60).

After stopping the Expedition, Trooper Chasteen approached from the passenger side and looked into the vehicle. (R. p. 37; p. 41; pp. 60-63). Inside, he observed two occupants, numerous large energy drinks and fast food containers, and a single small shopping bag, but he did not see any luggage. (R. pp. 36-38; p. 41; pp. 60-63). He then greeted the driver of the vehicle, Appellant Travell Levone Hill, and the passenger, Tyra Rodgers, and noticed both Appellant and Rodgers seemed extremely nervous. (R. p. 38; pp. 61-62; pp. 113-114). Trooper Chasteen noted Appellant seemed to be "almost in a state of panic" and was repeatedly fidgeting in his seat like he could not remain still, his hands were visibly and noticeably shaking, and he appeared to be attempting to avoid making eye contact with the officer. (R. p. 38; p. 62). The officer also noticed Rodgers was holding her head like she was sick or had a headache, she would not make eye contact with him, and she had a visibly accelerated heart rate. (R. p. 38; p. 62). Trooper Chasteen then advised Appellant of the reason for the stop, told him he would be

receiving a warning citation, and asked for his driver's license and vehicle registration. (R. p. 37; pp. 41-42; p. 61). Thereafter, Appellant provided the officer with a driver's license and a rental agreement instead of a registration, but he continued to behave in an increasingly nervous manner even though he had been advised he would only be receiving a warning ticket, which Trooper Chasteen believed was unusual. (R. p. 37; p. 42; p. 61). Trooper Chasteen then asked Appellant to step out of the vehicle and returned to his patrol car to review Appellant's documents. (R. p. 39; p. 63).

Upon reviewing the information, Trooper Chasteen discovered the vehicle was rented at the Norfolk International Airport in Virginia by Lenise Martin, who was the only authorized driver identified in the rental agreement, on February 12, 2008, and was due to be returned on February 17, 2008, which was two days earlier. (R. pp. 39-40; pp. 44-45; pp. 63-65). Based on Appellant's drastic lane change prior to the stop, the nervousness displayed by the occupants of the vehicle, and the fact the vehicle was rented by a third party, Trooper Chasteen became suspicious something unlawful might be occurring and requested assistance from his partner, Trooper Brad Dowis. (R. p. 39; pp. 43-44; p. 66).

After asking Trooper Dowis report to the scene, Trooper Chasteen inquired of Appellant as to who rented the vehicle, and Appellant stated Rodgers did. (R. p. 40; pp. 66-67). The officer then asked Appellant who was responsible for the property in the vehicle, and Appellant stated Rodgers was. (R. p. 42). In response, Trooper Chasteen returned to the rental vehicle, requested Rodgers' information, and discovered she did not actually rent the vehicle. (R. p. 40; pp. 66-67). He then spoke with Rodgers about the purpose of their trip, and she claimed they went to Atlanta to purchase shoes and visit her family. (R. p. 40; p. 67). After speaking with Rodgers, the officer returned to his patrol

vehicle and began writing the warning citation. (R. p. 40; p. 67). While he did so, Appellant continued to exhibit nervous behavior, repeatedly crossed and uncrossed his arms, constantly moved and looked around, exhibited a visibly accelerated heart rate, and would not make eye contact with the officer. (R. p. 42; pp. 67-69). While Trooper Chasteen prepared the warning citation, he asked Appellant about the purpose of their trip, and Appellant claimed they went to Atlanta on the previous day to party and to visit one of his friends. (R. p. 43; pp. 67-68). Appellant further claimed they slept in the vehicle and did not rent a hotel room. (R. p. 43; p. 68). Once again, Trooper Chasteen returned the rental vehicle, checked the vehicle's identification number, and spoke with Rodgers, who the officer noted was still behaving in a nervous manner. (R. p. 43; p. 69). Upon speaking with her again, Rodgers claimed they shopped while in Atlanta but could not name a single store they visited. (R. p. 40; p. 43; p. 69). She further claimed they stayed with her cousin and did not do anything else on the trip. (R. p. 40; p. 43; p. 69).

After he finished speaking with Rodgers and approximately twelve minutes into the stop, Trooper Chasteen returned to his patrol car, completed the warning citation, and presented it to Appellant. (R. p. 70; State's Exhibit # 4 – Recording from Car). Immediately after issuing the warning citation, Trooper Chasteen asked Appellant for permission to search the vehicle, but Appellant refused. (R. p. 70). Meanwhile, approximately five minutes after Trooper Chasteen contacted Trooper Dowis for assistance, Trooper Dowis arrived at the scene with his drug detection dog, Chloe, who was trained to detect marijuana, cocaine, methamphetamines, and heroin. (R. p. 70; pp. 89-90; pp. 94-95). After Appellant denied Trooper Chasteen's request for consent to search, Trooper Chasteen had Rodgers step out of the vehicle so Chloe could perform a sniff search of the vehicle. (R. pp. 70-71; p. 96). Chloe conducted a brief sniff search

and immediately alerted on the front passenger side of the vehicle. (R. p. 71; p. 96).

Trooper Dowis then secured Chloe in his patrol vehicle and watched over Appellant and Rodgers while Trooper Chasteen conducted a search of the vehicle based on Chloe's alert. (R. pp. 71-72; p. 97). Several minutes later, another officer arrived at the scene, and Trooper Dowis joined in the search. (R. p. 73; p. 97). He went to the area where Chloe alerted, immediately noticed a bulge underneath the carpet on the front passenger side of the vehicle, pulled the carpet back, and found a rectangular package of cocaine and a plastic bag of cocaine. (R. pp. 73-75; pp. 97-98). Thereafter, Trooper Chasteen arrested Appellant and Rodgers. (R. pp. 73-74; p. 77).

Following his arrest, Appellant was indicted for trafficking in cocaine, and he proceeded to trial. (R. p. 10; pp. 183-184). At the outset of trial, Appellant moved to suppress the narcotics discovered during the traffic stop based on the alleged unconstitutionality of the search in which they were discovered. (R. p. 5). In support of the motion, defense counsel argued the officer did not develop a reasonable articulable suspicion of criminal activity during the traffic stop, the stop ended when Appellant was given a warning ticket, and Appellant should not have been asked for consent to search because the vehicle was not rented in his name. (R. p. 6). In response, the State initially asserted Appellant did not have standing to challenge the search because he was not authorized to drive the vehicle. (R. p. 7). Furthermore, the State argued the officer developed a reasonable articulable suspicion of criminal activity during the course of the stop, which warranted Appellant's detention and the use of the drug detection dog for the sniff search on the vehicle. (R. pp. 7-8; pp. 32-33). The trial judge then conducted an in

camera hearing on Appellant's suppression motion, and Trooper Chasteen detailed the circumstances of the traffic stop during the hearing.¹ (R. pp. 34-47).

At the conclusion of the hearing, the trial judge concluded Appellant did not have standing to challenge the search. (R. p. 49). Furthermore, the trial judge determined Appellant's detention was justified under the totality of the circumstances because he found the factors observed by the officer during the traffic stop established a reasonable articulable suspicion of criminal activity. (R. pp. 50-51). Based on those findings, the trial judge denied Appellant's suppression motion. (R. p. 51).

Subsequently, during trial, Trooper Chasteen and Trooper Dowis testified about the circumstances of the traffic stop and their discovery of Appellant's cocaine. (R. pp. 58-75; pp. 94-98). Following their testimony, Rodgers testified about traffic stop and the events leading up to it. (R. p. 100). Rodgers stated Appellant asked her if she wanted to leave Norfolk, Virginia, and go shopping in Atlanta on February 18, 2008, and suggested they begin the trip around midnight or 2:00 a.m. on the morning of February 19, 2008, in the rental vehicle she was driving at the time. (R. pp. 100-102). Rodgers indicated she then met with Appellant at his residence at the agreed-upon time and followed behind him as he drove to another residence to drop off his car. (R. pp. 103-104). After arriving at the other residence, Rodgers testified Appellant went inside, came out with "two knots," which was a substantial quantity of money, and then began driving the rental vehicle to Atlanta. (R. pp. 103-104). Rodgers stated she slept for the majority of the drive to Atlanta, which lasted approximately eight to nine hours, and they went directly to a mall when they arrived between 10:00 a.m. and 12:00 p.m. (R. pp. 104-106). After

¹ During his testimony, he noted Interstate 85 was a well-known drug corridor and Atlanta was a source city for drugs. (R. p. 44).

they arrived, Rodgers testified Appellant borrowed her phone to arrange a drug purchase and told her they were going to purchase some drugs. (R. pp. 106-107). Rodgers claimed she protested and they went into the mall to purchase shoes. (R. pp. 107-108). Rodgers stated Appellant then met with his cousins at the mall and left her for several hours. (R. pp. 107-110). While Appellant was gone, Rodgers indicated the person who rented the rental vehicle called her and told her to immediately return the vehicle. (R. p. 109). Rodgers claimed she then met back up with Appellant, told him the rental vehicle had to be returned, and ate at the mall before returning to the rental vehicle. (R. pp. 109-111). When she returned to the vehicle, Rodgers stated there was a new pair of shoes inside. (R. p. 111). Rodgers testified Appellant then drove them back, she developed a migraine headache, they were stopped by the law enforcement officer, and they both were arrested after the vehicle was searched during the stop. (R. pp. 112-115).

Thereafter, James Armstrong, a forensic drug chemist with the Greenville County Department of Public Safety and a drug identification expert, testified he analyzed the drugs discovered during the traffic stop. (R. p. 127; p. 131). Armstrong testified his analysis revealed the items recovered during the stop were a block of cocaine weighing 971.81 grams and three bags of cocaine weighing 215.98 grams. (R. p. 132). The solicitor then moved to introduce the cocaine into evidence. (R. p. 3; pp. 133-134). In response, defense counsel asserted: "No objection." (R. p. 134). The trial judge then admitted the drugs into evidence without objection. (R. p. 134).

At the conclusion of trial, the jury convicted Appellant of trafficking in cocaine. (R. pp. 177-178). Defense counsel then moved for a judgment notwithstanding the verdict and for a new trial but did not provide any grounds in support of the motions. (R.

p. 179). The trial judge then sentenced Appellant to a term of imprisonment of twenty-seven years. (R. p. 181).

ARGUMENT

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the cocaine discovered during the course of the traffic stop was not preserved for appellate review because Appellant waived any objection he had to the admission of the evidence by affirmatively indicating he had no objection at the time the evidence was introduced during trial. Regardless, the trial judge properly denied Appellant's suppression motion because the officer developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop after observing numerous suspicious factors prior to detaining Appellant for the sniff search of the rental vehicle. Furthermore, the trial judge properly determined Appellant was precluded from challenging the admission of the cocaine discovered during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle due to the fact he neither rented it nor had any authorization to drive or possess it.

Appellant maintains the trial judge erred in denying his motion to suppress the drugs discovered during a search of the rental vehicle Appellant was driving at the time he was stopped for committing traffic violations. Appellant asserts the traffic stop ended when the warning citation was issued and his continued detention while a drug detection dog conducted a sniff search of the rental vehicle was unlawful because the officer had not developed a reasonable articulable suspicion of criminal activity prior to the completion of the original purpose of the stop sufficient to justify the extension of the stop. Appellant further contends the trial judge erred in finding he did not have standing to challenge the admission of the discovered drugs because he had a reasonable expectation of privacy in the rental vehicle and the State failed to prove he did not. Initially, any issue with Appellant's challenge to the trial judge's pre-trial ruling denying the suppression motion is not preserved for appellate review because Appellant waived any objection regarding the cocaine by indicating he had no objection to the admission of the cocaine when it was introduced during trial. Accordingly, Appellant is precluded from raising the issue on appeal. However, regardless of any issue preservation concerns, the trial judge properly denied Appellant's suppression motion because the officer

developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop and was, thus, authorized to reasonably extend the duration of the traffic stop until his suspicions could be confirmed or dispelled. Furthermore, the trial judge properly found Appellant lacked standing to challenge the admission of the cocaine found during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle since he was not authorized to drive or possess it by the owner of the vehicle. For those reasons, Appellant's conviction should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the

introduction of the evidence in question, the aggrieved party does not need to renew the objection.” State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001); see State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009) (“This exception is based on the fact that when the trial court’s ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.”).

In the case at bar, any issue with the admission of the narcotics discovered during the search of the rental vehicle Appellant was driving at the time of the traffic stop was not properly preserved for appellate review. At the outset of trial, Appellant filed a motion in limine seeking the suppression of the narcotics discovered during the search conducted during the stop. Following a pre-trial hearing, the trial judge issued a preliminary ruling denying Appellant’s motion. Thereafter, when the solicitor moved to introduce the narcotics into evidence during trial, Appellant did not renew his pre-trial objection and, instead, affirmatively stated he had no objection to the admission of the cocaine. Cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (“Dicapua’s sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua’s counsel specifically stated he had ‘no objection.’ We find this amounted to a waiver of any issue Dicapua had with the videotape.”). Accordingly, Appellant’s pre-trial objection to the admission of narcotics was expressly waived, and the issue cannot properly be raised or reviewed on appeal. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review.”);

see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (“A party cannot complain of an error which his own conduct induced.”); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) (“This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal.”). Appellant’s conviction should be affirmed.

B. Propriety of the Officer’s Search of the Rental Vehicle

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court’s findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court’s ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge’s ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. That guarantee protects against unreasonable searches and seizures,

including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”).

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). The reasonableness of a stop or detention “is measured in objective terms by examining the totality of the circumstances.” Ohio v. Robinette, 519 U.S. 33, 39 (1996). However, the initiation of a traffic stop is reasonable per se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002).

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and “ordinarily continues, and remains reasonable, for the duration of the stop.” Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and “may request a driver’s license and vehicle registration, run a computer check, and issue a citation.” Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”). “Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.” Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not measurably extend the duration of the stop. Id.; see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) (“The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.”).

Even if a traffic stop is initially lawful, the detention “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

Reasonable suspicion consists of “‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641,

644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). “Reasonable suspicion ‘is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.’ ” State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). “In this highly fact-specific inquiry, reasonable suspicion ‘is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.’ ” State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The reasonable suspicion standard “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). “Reasonable suspicion is more than a general hunch but less than what is required for probable cause.” State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (“Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.”).

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 (“Courts must look at the ‘cumulative information available’ to the officer . . . and not find a stop unjustified based merely on a ‘piecemeal refutation of each individual’ fact and inference[.]” (citations omitted)). Instead, all of the circumstances of the stop must be

considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (“[J]ust as one corner of a picture might not reveal the picture’s subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion.”). “In applying the concept of reasonable suspicion to the various facts of a case, ‘[i]t is the entire mosaic that counts, not single tiles.’ ” Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)).

In several recent cases, South Carolina courts have addressed what constitutes reasonable suspicion of criminal activity in the context of a traffic stop. In State v. Tindall, 379 S.C. 304, 307, 665 S.E.2d 188, 190 (Ct. App. 2008), Tindall was stopped by law enforcement for speeding, swerving, and driving too closely. Shortly thereafter, Tindall was given a warning ticket, but officers continued to question him. Id. Approximately fifteen to twenty minutes into the stop, Tindall consented to a search of the vehicle and cocaine was discovered. Id. Subsequently, the trial court denied Tindall’s motion to suppress the narcotics as the product of an illegal detention and search, and the Court of Appeals affirmed. Id. at 311, 665 S.E.2d at 192.

In affirming the denial of the suppression motion, the Court of Appeals ruled the initial traffic stop ended when Tindall’s license was returned and he was issued a warning. Id. However, the Court determined the officer had a reasonable suspicion of criminal activity warranting Tindall’s further detention based on the existence of the following indicators: (1) Tindall was nervous even after receiving a warning; (2) Tindall was driving a rental car he had not rented; (3) Tindall was only driving one way; (4)

Tindall's planned driving time was approximately eighteen hours in one day; and (5) the cities involved in the trip were known "drug hubs." Id.

However, in a sharply-divided opinion, the Supreme Court reversed the decisions of the trial judge and the Court of Appeals. State v. Tindall, 388 S.C. 518, 520, 698 S.E.2d 203, 204 (2010). The majority of the Supreme Court determined the officer completed the initial purpose of the traffic stop when he informed Appellant he would issue a warning ticket and learned from dispatch Appellant's license and registration were problem-free. Id. at 522, 698 S.E.2d at 205. The majority concluded the information available to the officer at that time was not sufficient to constitute a reasonable suspicion of criminal activity. Id. at 523, 698 S.E.2d at 206. Thus, the majority held "the continued detention was illegal and the drugs discovered during the search of the vehicle must be suppressed." Id.

More recently, in State v. Provet, a law enforcement officer stopped Provet for driving and equipment infractions on Interstate 85 in Greenville County. Id., 391 S.C. at 496, 706 S.E.2d at 514. During the course of the stop, the officer observed several signs of nervousness displayed by Provet, including shaking hands and accelerated breathing. Id. The officer asked Provet several questions about where he was coming from and the purpose of his trip, and Provet provided seemingly deceptive responses. Id. at 497, 706 S.E.2d at 514. The officer additionally observed several air fresheners, numerous fast food bags, a cell phone, and some receipts in Provet's car. Id. at 497, 706 S.E.2d at 515. Based on his experience and observation, the officer believed Provet was involved in criminal activity. Id. Subsequently, after issuing a warning ticket, the officer immediately asked Provet if he had anything illegal in the car and asked for consent to search. Id. at 497-498, 607 S.E.2d at 514. Provet consented and then fled when the

officer attempted to remove a fast food bag from the car that was later discovered to be filled with cocaine. Id. at 498, 706 S.E.2d at 515. During trial, Provet moved to suppress the cocaine as the product of an illegal search, and the trial judge denied the motion, finding the officer had a reasonable suspicion of criminal activity justifying an extension of the traffic stop. Id.

On appeal, the Court of Appeals affirmed. Id. at 496, 706 S.E.2d at 514. Regarding the initial detention, the Court found the stop was proper as the officer's questioning was tangentially related to the traffic stop. Id. at 499, 706 S.E.2d at 516. The Court further found the questioning did not unreasonably extend the traffic stop because the officer had not completed the initial purpose of the stop and the stop was only eleven minutes long. Id. at 499-500, 706 S.E.2d at 516. Regarding the extension of the traffic stop after the warning was issued, the Court determined the officer possessed reasonable suspicion to extend the stop based on the presence of the following factors: (1) Provet's nervous behavior; (2) the fact third-party vehicle registration is common in drug trafficking; (3) Provet's inconsistent or deceptive responses to several questions; (4) the presence of numerous fast food bags, a cell phone, and some receipts; and (5) the presence of numerous air fresheners. Id. at 504-505, 706 S.E.2d at 518-519. Based on the factors present coupled with the officer's considerable experience, the Court concluded the trial court did not err in finding an extension of the stop was justified under the circumstances. Id. at 506, 706 S.E.2d at 519-520.

Most recently, in State v. Wallace, Wallace was stopped on Interstate 85 for committing a traffic violation. Id., 392 S.C. at 50, 707 S.E.2d at 452. The officer took twelve minutes to complete the traffic stop and issued Wallace a citation. Id. However, based on his observations during the stop, the officer continued to question Wallace after

issuing the ticket and requested consent to search the vehicle. Id. Wallace refused consent, and the officer walked a drug-sniffing dog around the vehicle. Id. The dog alerted on Wallace's car, and a substantial quantity of cocaine was discovered inside. Id. During trial, Wallace moved to suppress the drugs found in his vehicle, and the trial judge denied the motion. Id.

On appeal, the Court of Appeals affirmed the trial judge's ruling. Id. The Court determined the following factors observed by the officer during the traffic stop established a reasonable articulable suspicion to extend the duration of the stop: (1) Wallace's abnormal braking after the officer initiated the stop; (2) Wallace's fumbling of his paperwork for an unusually long period of time; (3) the fact the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace and the passenger's inconsistent responses about the trip; (5) Wallace's increasing nervousness throughout the stop; (6) the fact an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone ringing during the stop; (8) the fact drug dealers frequently use decoy cars and communicate via cell phones; (9) the fact the passenger would not look at the officer while they were talking; (10) the fact the passenger was sweating and visibly nervous on a mild day; (11) the fact Wallace changed his story after the officer spoke with his passenger; (12) the fact the car was owned by a third-party, which is common in drug cases; (13) Interstate 85's status as a known drug corridor; and (14) Atlanta's status as a known drug hub. Id. at 55, 707 S.E.2d at 455. While noting none of the factors taken in isolation established a reasonable articulable suspicion of criminal activity, the Court held the presence of all of the factors together established a reasonable suspicion when examined in totality as required. Id.

In the case sub judice, the trial judge properly denied Appellant's suppression motion because the officer observed numerous indicators of criminal activity during the course of the traffic stop before he extended the duration of the stop. Much like in Wallace and Provet, Trooper Chasteen detected multiple suspicious signs of criminal activity during the course of the traffic stop before he issued the warning citation. After observing those indicators, the officer elected to detain Appellant and have a drug detection dog perform a sniff search of the rental vehicle Appellant had been driving before permitting Appellant to leave the scene. As the officer's observations during the stop established a reasonable articulable suspicion of criminal activity, the officer's decision to extend the stop was reasonable and justified under the totality of the circumstances. Therefore, the trial judge committed no error in denying Appellant's pre-trial suppression motion.

During the course of the traffic stop, Trooper Chasteen noticed numerous indicators of criminal activity. Based on those observations, Trooper Chasteen decided to further detain Appellant after confirming Appellant's license was clear and issuing a warning citation. Trooper Chasteen's decision to extend the stop was based on his detection of the following indicators of criminal activity while he was preparing the warning citation and completing the initial purpose of stop: (1) Appellant rapidly changed lanes and slowed down well below the speed limit after the officer moved to initiate the traffic stop, which the officer perceived as unusual and a sign Appellant was trying to distance himself from the officer; (2) Appellant and the passenger avoided making eye contact with the officer during the stop; (3) Appellant appeared to be "almost in a state of panic" and could not remain still; (4) Appellant's hands were noticeably and visibly shaking; (5) the passenger also behaved in a nervous manner even though the traffic stop

was initiated for a driving violation committed by Appellant; (6) Appellant continued to display increasing signs of nervousness even after he was advised he would only receive a warning citation, which the officer believed was an abnormal and unusual response; (7) Appellant was driving a rental vehicle that he was not authorized to drive, that was not rented by anyone in the vehicle, and that was overdue; (8) Appellant repeatedly crossed and uncrossed his arms and looked around after being asked to step out of the rental vehicle while Trooper Chasteen was preparing the warning citation; (9) both the passenger and Appellant's heart rates were accelerated to the point of being visibly detectable; (10) Appellant and the passenger offered inconsistent stories about their trip, with Appellant claiming they went to Atlanta to party, visited a friend, and slept in the rental vehicle the night before and the passenger claiming they went to shop, visited her family, and stayed with her cousin; (11) the passenger was unable to name a single store they visited during the trip even though she claimed the purpose of the trip was to shop for shoes; (12) the vehicle did not contain any luggage even though Appellant and the passenger claimed to have travelled from Chesapeake, Virginia, to Atlanta, Georgia; (13) the city Appellant claimed to have visited for a single day was a known source city for narcotics; (14) Interstate 85 is a known drug corridor; (15) Appellant and the passenger claimed they drove eight or nine hours and were then returning the same distance in one day; and (16) there were numerous fast food bags and energy drinks in the vehicle.

Based on Trooper Chasteen's training and experience, the factors he observed during the course of the traffic stop led him to believe Appellant was involved in criminal activity, and his suspicions of criminal activity were entirely reasonable when considering those factors are considered together under the totality of the circumstances. See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (finding the following factors observed by

an officer during the traffic stop established a reasonable articulable suspicion to extend the duration of the stop: (1) Wallace abnormally braked after the officer initiated the stop; (2) Wallace fumbled his paperwork for an unusually long period of time; (3) the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace and the passenger provided inconsistent responses about the trip; (5) Wallace became increasingly nervous throughout the stop; (6) an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone rang during the stop; (8) drug dealers frequently use decoy cars and communicate via cell phones; (9) the passenger would not look at or make eye contact with the officer while they were talking; (10) the passenger was sweating and visibly nervous on a mild day; (11) Wallace changed his story after the officer spoke with his passenger; (12) the car was owned by a third-party, which is common in drug cases; (13) Interstate 85 is a known drug corridor; and (14) Atlanta is a known drug hub); Provet, 391 S.C. at 504-505, 706 S.E.2d at 518-519 (holding an officer possessed reasonable suspicion to extend the duration of a traffic stop after detecting the following factors during the course of stop: (1) Provet was behaving in a nervous manner; (2) the vehicle Provet was driving was registered to a third party, which is common in drug trafficking; (3) Provet provided inconsistent or deceptive responses to several questions; (4) numerous fast food bags, a cell phone, and some receipts were in Provet's vehicle; and (5) there were numerous air fresheners in the vehicle); see also Mason, 628 F.3d at 129 ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion."); see also United States v. Mubdi, 691 F.3d 334, 344 (4th Cir. 2012) ("The district court also correctly determined that the following suspicious behavior supported York's decision to extend the

investigation: (1) Mubdi took an excessive amount of time to pull over; (2) he was exceedingly nervous; (3) he kept his foot on the car brake instead of shifting the transmission into park; (4) he could not provide details as to his destination or the family member he intended to visit; (5) he did not rent the car, contrary to what he told York; (6) he was not authorized to drive the rental car; and (7) the car was beyond the bounds authorized by the rental contract.”). Thus, Trooper Chasteen was justified in extending the traffic stop after issuing the warning citation, and that proper extension of the stop ultimately led to the discovery of Appellant’s cocaine.

On appeal, Appellant contends Trooper Chasteen improperly extended the duration of the traffic stop after the warning citation was issued because the factors observed by the officer during the course of the stop allegedly did not establish a reasonable articulable suspicion of criminal activity. Appellant further appears to contend Officer Chasteen did not question Appellant until after issuing the warning citation, which Appellant maintains makes his case similar to the situation in Tindall. However, contrary to Appellant’s contentions, the factors observed during the course of the traffic stop, which were highly similar to the factors observed by the officers in Provet and Wallace, established a reasonable articulable suspicion of criminal activity. Furthermore, no testimony or evidence was presented during trial suggesting Officer Chasteen conducted the questioning that led to his reasonable articulable suspicion of criminal activity after issuing the warning citation. Instead, the testimony and evidence established Officer Chasteen began observing the suspicious and concerning indicators of criminal activity at the outset of the stop, detected more indicators when he questioned Appellant and Rodgers while preparing the warning citation, and then issued the warning citation approximately twelve minutes into the stop before detaining Appellant while a

sniff search of the rental vehicle could be performed based on the indicators the officer detected during the course of the stop. Thus, unlike in Tindall, Trooper Owens observed all of the indicators of criminal activity prior to requesting Appellant's consent to search and detaining him further during the course of the canine sniff search of his vehicle. Compare Tindall, 388 S.C. at 522, 698 S.E.2d at 205 ("At this point, the purpose of the traffic stop was accomplished except for the issuance of the warning ticket. However, rather than issue the ticket, the officer continued to question Tindall for an additional six to seven minutes[.]") with Provet, 391 S.C. at 504, 706 S.E.2d at 518 ("Conversely, Owens' series of questions and observations occurred prior to the conclusion of the traffic stop because Owens was waiting to hear from dispatch regarding Provet's license and registration and a warning citation had yet to be issued."). As Trooper Chasteen developed a reasonable articulable suspicion during the course of the initial traffic stop, his decision to extend the duration of the stop after its initial purpose was completed was objectively reasonable under the totality of the circumstances.

During the course of the traffic stop, Trooper Chasteen observed numerous indicators of criminal activity after properly stopping Appellant for committing traffic offenses. Although some of the factors observed by the officer could potentially appear to be consistent with innocent travel to a person without the officer's training and experience, all of the factors taken together established a reasonable articulable suspicion Appellant was involved in criminal activity. See United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from

and deductions about the cumulative information available to them that ‘might well elude an untrained person.’ ” (citations omitted)); see also Mason, 628 F.3d at 129 (“[J]ust as one corner of a picture might not reveal the picture’s subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion.”). Based on the existence of a reasonable articulable suspicion, Trooper Chasteen was justified in extending the traffic stop and having a drug detection dog conduct a sniff search on the rental vehicle Appellant had been driving, and his actions during the course of the stop were entirely reasonable. See Segura v. United States, 468 U.S. 796, 806 (1984) (“By its terms, the Fourth Amendment forbids only ‘unreasonable’ searches and seizures.”); see, e.g., Branch, 537 F.3d at 338 (“[W]ithin minutes of detaining Branch, Officer White had observed enough ‘specific and articulable facts’ to generate a ‘reasonable suspicion’ of illegal activity.”). Therefore, the trial judge properly denied Appellant’s suppression motion, and his ruling was supported by the evidence and testimony presented during trial. Therefore, the trial judge’s ruling should not be overturned on appeal. See Provet, 391 S.C. at 506, 706 S.E.2d at 520 (“[W]e conclude the trial court did not err in finding reasonable suspicion existed to further detain Provet because there is evidence in the record to support the trial court’s ruling.” (emphasis added)). Appellant’s conviction should be affirmed.

C. Appellant’s Lack of Standing to Challenge the Search of the Rental Vehicle

A criminal defendant asserting a challenge to an allegedly unreasonable search and seizure must establish his own personal Fourth Amendment rights were violated by that search or seizure. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987). “[C]apacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the

protection of the Amendment has a legitimate expectation of privacy in the invaded place.” Rakas v. Illinois, 439 U.S. 128, 143 (1978) (citing Katz v. United States, 389 U.S. 347, 353 (1967)). A subjective expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable. Minnesota v. Olsen, 495 U.S. 91, 95-96 (1990).

In Appellant’s case, the trial judge properly found Appellant had no constitutional standing to challenge the admission of the cocaine discovered during a search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the area that was searched. During the course of the traffic stop, Trooper Chasteen spoke with Appellant about the rental vehicle he was driving at the time of the stop, and Appellant denied renting the vehicle while incorrectly claiming the passenger was responsible for doing so. Appellant further informed the officer everything inside of the vehicle was the property of the passenger. Subsequently, Trooper Chasteen discovered neither Appellant nor the passenger rented the vehicle or was authorized to drive the vehicle based on the information contained in the rental agreement. The officer further discovered the rental vehicle was due to be returned two days earlier to the rental company in Virginia from which it was rented.

Despite the fact Appellant was driving the rental vehicle at the time of the traffic stop, Appellant’s statements to the officer that he did not rent the vehicle and was not responsible for the property inside of the vehicle demonstrated Appellant did not have a subjective expectation of privacy in the vehicle.² See State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) (“A legitimate expectation of privacy is both subjective

² Notably, during trial, Appellant demonstrated he did not believe he had a legitimate expectation of privacy in the rental vehicle by asserting he should not even have been asked for consent to search the vehicle since his name was not listed in the rental agreement. (R. p. 6).

and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable.”). Furthermore, as Appellant did not rent the vehicle he was driving or have any authorization from the owner of the vehicle to drive it or be in possession of it, Appellant did not have an expectation of privacy in the rental vehicle that would be recognized or accepted by society as a reasonable one. See United States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994) (“[A]ppellant, as an unauthorized driver of the rented car, had no legitimate privacy interest in the car and, therefore, the search of which he complains cannot have violated his Fourth Amendment rights.”); see also Rakas, 439 U.S. at 134 (“A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.”). Instead, Appellant’s possession of a rental vehicle he had no authority to possess and which should have been returned to its owner several days earlier established he did not have a legitimate or reasonable expectation of privacy in the vehicle. See, e.g., United States v. Luster, 324 Fed. App’x 224, 225 (4th Cir. 2009) (“An unauthorized driver of a rented car has ‘no legitimate privacy interest in the car’ and, therefore, a search of the car ‘cannot have violated his Fourth Amendment rights.’ This conclusion is not altered where the authorized lessee allows the unauthorized driver to drive the rental vehicle, as an unauthorized driver still does not have permission of the rental company, the owner of the vehicle.” (citations omitted)). Under those circumstances, Appellant could not challenge the search of the vehicle as a violation of his own constitutional rights. See United States v. Salvucci, 448 U.S. 83, 85 (1980) (“[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth

Amendment rights have in fact been violated.”). Because Appellant failed to meet his burden of establishing he had a legitimate expectation of privacy in the rental vehicle, the trial judge properly found Appellant had no standing to challenge the evidence recovered in a search of that vehicle. See Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) (“Petitioner, of course, bears the burden of proving not only that the search of Cox’s purse was illegal, but also that he had a legitimate expectation of privacy in that purse.”); McKnight, 291 S.C. at 114, 352 S.E.2d at 473 (“One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated.” (italics in original)); see also State v. Robinson, 396 S.C. 577, 583, 722 S.E.2d 820, 823 (Ct. App. 2012) (“For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch.”). Appellant’s conviction should be affirmed.

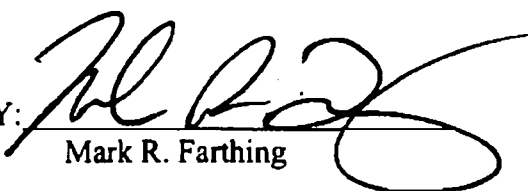
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 1, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2010-158046

THE STATE,

Respondent,

vs.

TRAVELL LEVONE HILL,

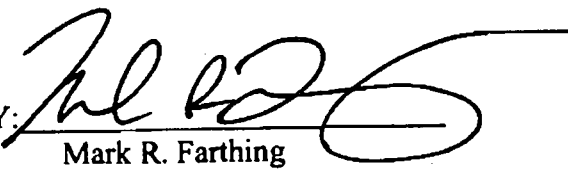
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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Attorney General

MARK R. FARTHING
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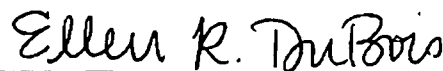
Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 1st day of November, 2012.



ELLEN R. DuBOIS
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Travell Hill, Appellant.

Appellate Case No. 2010-158046

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2013-UP-198
Heard May 6, 2013 – Filed May 15, 2013

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Assistant Attorney
General Mark R. Farthing, all of Columbia, and Solicitor
Robert M. Ariail, of Greenville, for Respondent.

PER CURIAM: Travell Hill appeals his conviction for trafficking cocaine, arguing the trial judge erred in (1) denying his motion to suppress the drug evidence because his Fourth Amendment rights were violated when the officer did not have a reasonable suspicion that he was engaged in a serious criminal activity so as to warrant a continued detention after the issuance of a warning for a traffic stop, and (2) finding he lacked standing to challenge the lawfulness of the search and seizure of the rental car he was driving. Counsel for Hill filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting there were no meritorious grounds for appeal and requesting permission to withdraw from further representation. The Court denied the request to withdraw and directed the parties to file additional briefs. After careful consideration of the record and briefs, the judgment of the lower court is affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Atieh*, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) ("A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review."); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Travell Hill, SCDC No. 00340055)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23-00129

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence General Session Court, Greenville, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-23-6996
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 31, 2010

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 15, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No. 2013-UP-198
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was not effective in that he failed to properly preserve for review the issue concerning whether the search of automobile I was driving was legal.

(b) Trial Counsel was not effective in that he failed to object to charge on the facts given by the trial judge in violation of Article V, Sec. 21 of the Constitution of the State of South Carolina.

(c) Trial counsel was not effective in cross examining Tyra Rogers as to the potential sentence she was facing concerning her pending drug charges.

(d) Trial counsel was not effective in investigating the case and obtaining the cell phone records of Tyra Rogers

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

(a) The trial court heard a motion in limine concerning the search of the vehicle driven by Mr. Hill. The motion was denied at that time. Trial counsel failed to renew the objection at the time the drugs were introduced against Mr. Hill and therefore the issue was lost on appeal.

(b) During the charge to the jury, the trial judge instructed the jury that "The defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control." This charge is an improper statement of the law and is a charge on the facts as the charges tell the jury to place one fact above others.

(c) Tyra Rogers was facing the same charges as Mr. Hill. She testified that the drugs were not hers. Trial counsel should have cross-examined her as to the potential sentence she was facing so the jury could better judge her credibility and establish a reason for her testifying against Mr. Hill.

(d) Tyra Rogers testified that she was asleep on the trip from Atlanta until the time she was stopped. An examination of her phone records would have established that she was not truthful as she had been talking on her cell phone with other people during the trip from Atlanta.

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
 - i. Chris Posey, P. O. Box 426, Greenville, SC 29602
 - ii. Katherine H. Hudgins, S. C. Commission on Indigent Defense, 1130 Lady Street, Suite 401, Columbia, SC 29201
 - iii. C. Rauch Wise, 305 Main St., Greenwood, SC 29646
- (b) the proceedings at which each such attorney represented you:
 - i. Trail
 - ii. Appeal

iii. This post conviction relief hearing petition.

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

A new trial to all issues may be properly presetned.

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

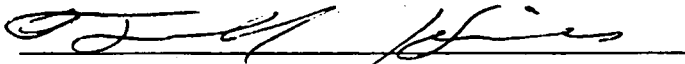
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STATE OF SOUTH CAROLINA)

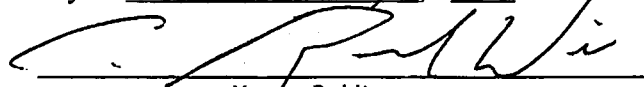
County of Greenville)

VERIFICATION

I, Travell Hill, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 7th
day of JANUARY, 2014.

 (L.S.)
Notary Public

My Commission Expires: 12/7/2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-0129
COUNTY OF GREENVILLE	)	
	)	
Travell Levone Hill,	)	
S.C.D.C. No. 340055,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 9, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2008 term of General Sessions for trafficking cocaine (208-GS-23-6996). Christopher T. Posey, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On March 31, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to twenty-seven years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hill, Op. No. 2013-UP-198 (S.C. Ct. App. filed May 15, 2013). The Remittitur was sent on June 4, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
 - a. Failed to properly preserve for review the issue concerning whether the search of the automobile the Applicant was driving was legal.
 - b. Failed to object to "charge on the facts given by the trial judge."
 - c. Not effective in "cross examining Trya [sic] Rogers as to the potential sentence she was facing concerning [sic] her pending drug charges."
 - d. Not effective in "investigating the case and obtaining the cell phone erecords [sic] of Tyra Rogers."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

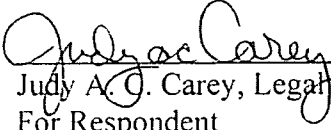
May 28, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2014-CP-23-0129
	)	
TRAVELL LEVONE HILL, 340055	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

C. Rauch Wise, Esquire
305 Main Street
Greenwood SC 29646

DATED this 28th day of May, 2014.


 Judy A. Carey, Legal Assistant
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Travell Hill, SCDC No. 00340055)

AMENDED PCR Application
2014-CP-23-0129

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence General Session Court, Greenville, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-23-6996
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 31, 2010

Revised 3/2003

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 15, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No. 2013-UP-198
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was not effective in that he failed to properly preserve for review the issue concerning whether the search of automobile I was driving was legal.

(b) Trial Counsel was not effective in that he failed to object to charge on the facts given by the trial judge in violation of Article V, Sec. 21 of the Constitution of the State of South Carolina.

(c) Trial counsel was not effective in cross examining Tyra Rogers as to the potential sentence she was facing concerning her pending drug charges.

(d) Trial counsel was not effective in investigating the case and obtaining the cell phone records of Tyra Rogers

(e) The State used testimony of Tyra Rodgers that she did not know the drugs were located in the automobile and subsequently took her plea to possession of cocaine which was contrary to her trial testimony.

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

(a) The trial court heard a motion in limine concerning the search of the vehicle driven by Mr. Hill. The was was denied at that time. Trial counsel failed to renew the objection at the time the drugs were introduced against Mr. Hill and therefore the issue was lost on appeal.

(b) During the charge to the jury, the trial judge instructed the jury that "The defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control." This charge is an improper statement of the law and is a charge on the facts as the charges tell the jury to place one fact above others.

(c) Tyra Rogers was facing the same charges as Mr. Hill. She testified that the drugs were not hers. Trial counsel should have cross-examined her as to the potential sentence she was facing so the jury could better judge her credibility and establish a reason for her testifying against Mr. Hill.

(d) Tyra Rogers testified that she was asleep on the trip from Atlanta until the time she was stopped. An examination of her phone records would have established that she was not truthful as she had been talking on her cell phone with other people during the trip from Atlanta.

(e) During the trial Tyra Rodgers testified that she had no knowledge of the drugs being in the automobile. She was presented as a witness by the state. After the trial the state permitted her to plea guilty to the charge of possession of cocaine which was contrary to her trial

testimony. As a result the state used a witness who committed perjury in her testimony. The state had to know she committed perjury or they could not have accepted her plea of possession of cocaine.

(f) During the plea to the possession of cocaine charge the attorney for the state acknowledged that the agreement with Tyra Rogers was for her to receive a probationary sentence in exchange for her testimony in my case. At the trial, she denied she had any agreement with the state.

12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

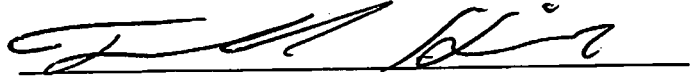
- (b) your trial, if any? yes
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Chris Posey, P. O. Box 426, Greenville, SC 29602
 - ii. Katherine H. Hudgins, S. C. Commission on Indigent Defense, 1130 Lady Street, Suite 401, Columbia, SC 29201
 - iii. C. Rauch Wise, 305 Main St., Greenwood, SC 29646
 - (b) the proceedings at which each such attorney represented you:
 - i. Trail
 - ii. Appeal
 - iii. This post conviction relief hearing petition.
19. State clearly the relief you seek in filing this application:
A new trial to all issues may be properly presetned.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville)

I, Travell Hill, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 13th
day of February, 2015.

 (L.S.)
Notary Public

My Commission Expires: 12/7/2019

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

3
4 TRAVELL L. HILL)
5 PETITIONER,) TRANSCRIPT OF RECORD
6 -vs-) 2014-CP-23-00129
7 STATE OF SOUTH) GREENVILLE, SOUTH CAROLINA
8 CAROLINA,) FEBRUARY 18, 2015
9 RESPONDENT.

10
11 B E F O R E:

12 THE HONORABLE DAN D. HALL, JUDGE.
13
14

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

16 C. RAUCH WISE, ESQUIRE
17 ATTORNEY FOR THE PETITIONER

18 KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT

20
21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

INDEX

1		
2		
3	WITNESSES	PAGE
4	TRAVELL HILL (PW)	
5	DIRECT EXAMINATION BY MR. WISE	5
6	(NO CROSS EXAMINATION)	
7		
8	PETITIONER RESTS - PAGE 16	
9		
10	CHRISTOPHER POSEY, ESQUIRE (RW)	
11	DIRECT EXAMINATION BY MS. RATIGAN	17
12	CROSS EXAMINATION BY MR. WISE	22
13		
14	RESPONDENT RESTS -- PAGE 29	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

		EXHIBITS		
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-1	COURT OPINION		7
4	P-2	TRANSCRIPT OF PLEA		13
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
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(PROCEEDINGS, FEBRUARY 18, 2015)

THE COURT: We are ready?

MS. RATIGAN: Yes, Your Honor.

MR. WISE: Yes.

MS. RATIGAN: May it please the court, Your Honor?

THE COURT: Yes.

MS. RATIGAN: This is the case of Travell Hill versus the State of South Carolina. The docket number is 2014-CP-23-0129.

Mr. Hill was indicted for trafficking cocaine. He was represented on that charge by Mr. Posey.

The case was brought to trial in March of 2010 before Judge Welmaker. On March 31st of 2010 Mr. Hill was found guilty and Judge Welmaker sentenced him to 27 years.

A notice and appeal was filed and perfected by the Office of Indigent Defense.

The Court of Appeals affirmed his conviction and sentence in May of 2013.

This application was timely filed and the State is ready to proceed.

THE COURT: Mr. Wise?

MR. WISE: Yes, sir.

Your Honor, we had filed an amended post-conviction relief petition. We have got -- I actually

1 sent her two copies, one unsigned and one signed.

2 MS. RATIGAN: That's correct.

3 MR. WISE: All right.

4 You can go take the stand.

5 TRAVELL HILL, having been first duly sworn,
6 testified as follows:

7 THE CLERK: Please state your full name for the
8 record.

9 THE WITNESS: Travell Levone Hill.

10 THE CLERK: Thank you. Please be seated.

11 DIRECT EXAMINATION BY MR. WISE:

12 Q. All right, Mr. Hill, if you talk loud enough for me to
13 hear you, this gentleman right here can hear you.

14 A. Yes, sir.

15 Q. All right. And one thing we need to be careful about
16 doing is not shaking your head or saying uh-huh and uh-uh.
17 Answer clearly yes or no so he can clearly get a record of
18 what's being said.

19 A. Yes, sir.

20 Q. And if you happen to say uh-huh or uh-uh, I will
21 correct you and ask you is that yes or no, just so he can
22 have an accurate record.

23 A. Okay.

24 Q. All right?

25 A. All right.

1 Q. Thank you.

2 Please give us your full name.

3 A. My name is Travell Levone Hill.

4 Q. All right. And, Mr. Hill, you are presently
5 incarcerated in the South Carolina Department of
6 Corrections?

7 A. Yes, sir.

8 Q. And you were convicted of what crime?

9 A. Trafficking cocaine.

10 Q. All right. And that was in 2000 and --

11 A. 2010.

12 Q. 2010.

13 And you have filed -- a direct appeal was taken?

14 A. Yes, sir.

15 Q. And you filed -- you subsequently filed a
16 post-conviction relief petition?

17 A. Yes, sir.

18 Q. And you have retained me to do it?

19 A. Yes, sir.

20 Q. All right.

21 If you would, what was the first ground for ineffective
22 assistance of counsel that you think happened in this case?

23 A. The first ground was my lawyer wasn't effective -- he
24 wasn't -- he was not effective in properly preserving the
25 issue concerning the search of the automobile, was it legal

1 or not.

2 Q. Okay. Was that raised at your trial at all?

3 A. They filed a motion but it was never renewed.

4 Q. All right. And I believe that was ultimately -- that
5 issue was appealed to the South Carolina Court of Appeals?

6 A. Yes, sir.

7 Q. All right. And how did they rule?

8 A. They say it wasn't -- it wasn't -- it was -- the lawyer
9 failed to object, so it didn't have any merit.

10 Q. Did they affirm your conviction?

11 A. They affirmed it.

12 Q. Is that a copy of your appeal?

13 A. Yes, sir, it is.

14 Q. Okay.

15 MR. WISE: I would like to introduce a copy of
16 this -- I assume it's in?

17 MS. RATIGAN: That's part of the record. I have
18 no objection.

19 MR. WISE: All right. As our first exhibit.

20 (Court Opinion marked and admitted into evidence
21 as Petitioner's Exhibit No. 1)

22 BY MR. WISE:

23 Q. Now, that issue involved the stop on the highway?

24 A. Yes, sir.

25 Q. And should your lawyer have listed a subsequent

1 objection after when the evidence was introduced?

2 A. Yes, sir.

3 Q. Did the Court of Appeals address the merits of that
4 issue at all?

5 A. They did address it and they were going to hear it, but
6 it wasn't -- like I said, it didn't have any merit because
7 my lawyer failed to object.

8 Q. I believe to give the court a little background, your
9 appellate lawyer originally filed an Anders Brief?

10 A. Yes, sir.

11 Q. And then the court asked for further briefing?

12 A. They wanted to hear more about the case.

13 Q. All right. But they ended up ultimately saying that it
14 wasn't preserved?

15 A. Yes, sir.

16 Q. Okay. And you think that issue should have been
17 preserved?

18 A. Yes, sir.

19 Q. So you could have had a chance to review it on appeal?

20 A. Yes, sir.

21 Q. What's the second issue?

22 A. My second issue is he wasn't effective in he failed to
23 object on the charge of the facts given by the trial judge,
24 the violation of Article 5, Section 21.

25 Q. And what did -- what did he -- do you remember what

1 that charge was?

2 A. It was dealing with inference.

3 Q. All right. And the judge charged the jury that they
4 could draw an inference?

5 A. They can draw an inference on other than the facts.

6 Q. All right. Based upon one fact?

7 A. Based on one fact.

8 Q. And I believe that inference arose out of your
9 controlling the car?

10 A. Yes, sir.

11 Q. Okay.

12 A. My control -- under my control that they can -- well, I
13 can read exactly what he said.

14 Q. Sure, that would be fine. And just refer to the page
15 too.

16 A. My transcript on page 166, the judge stated "the
17 defendant's knowledge and possession may be inferred when a
18 substance is found on the property under the defendant's
19 control."

20 Q. And you were driving the car?

21 A. Yes, sir, I was.

22 MR. WISE: Your Honor, for the record I would pass
23 up to the court a copy of the State v. Yarborough, which is
24 our authority for this being an improper charge to the jury.
25 And, therefore -- and it was the law at the time of this

1 particular trial.

2 BY MR. WISE:

3 Q. What's the third ground?

4 A. My third ground is my lawyer wasn't -- was not
5 effective and he failed to bring up the potential sentence
6 that Tyra Rogers was facing and the pending charges that she
7 was facing too.

8 Q. Who was the -- who is Tyra Rogers?

9 A. Tyra Rogers was my co-defendant, but she became the
10 State's witness.

11 Q. She became the State's witness?

12 A. Yes, sir.

13 Q. Was she charged with the same thing that you were
14 charged with?

15 A. She was charged with the same thing I was charged with.

16 Q. And she testified against you?

17 A. She testified against me.

18 Q. Now, I assume when she testified against you, she
19 didn't admit the drugs were hers?

20 A. She did admit that the drugs were hers.

21 Q. They admitted -- she -- did she admit drugs -- that she
22 knew drugs were in the car?

23 A. No, she admitted -- I mean, she told the State or she
24 said that she didn't know the drugs -- she never knew the
25 drugs wasn't in the car.

1 Q. All right. But at the time of her trial she was
2 looking at the same charge that you were?

3 A. Yes, sir.

4 Q. Do you think it would have helped your case had the --

5 A. It would have helped my case if he would have
6 brought -- if he would have brought up the potential
7 sentence that she was facing --

8 Q. Uh-huh.

9 A. -- they would have -- the jury could have looked at her
10 testimony and her credibility a little bit different.

11 Q. All right. But there was no mention of
12 cross-examination of what sentence she was looking at?

13 A. No, sir.

14 MR. WISE: Your Honor, I would also pass up a copy
15 of the State v. Mozelle, which allows a defendant to
16 cross-examine the testifying witness as to the sentence that
17 they are looking at in that case. All right.

18 BY MR. WISE:

19 Q. And do you think that your lawyer should have raised
20 that objection?

21 A. Yes, sir.

22 Q. Okay. What's the next ground?

23 A. The next one is my lawyer -- well, it's containing the
24 cell phone records of Tyra Rogers, but I wanted to -- I
25 don't really want to go forward with that issue because I

1 really don't have -- I really can't show prejudice right
2 now.

3 Q. We haven't been able to obtain those records either --

4 A. Exactly.

5 Q. -- is that correct?

6 But I think she testified she was asleep all the way
7 up?

8 A. Yes, sir.

9 Q. And you know that not to be true?

10 A. I know that wasn't true.

11 Q. But we can't get the records to prove that that would
12 have been helpful to you?

13 A. Yes, sir.

14 Q. Okay. Now, what's the last ground?

15 A. The last ground is the State used testimony from Tyra
16 Rogers that she did not know the drugs were located in the
17 vehicle and subsequently took a plea of possession of
18 cocaine, which was controversy to her testimony.

19 Q. And in that plea did she admit that the drugs were
20 hers, or --

21 A. Yes, I got -- I got her transcript right here.

22 Q. All right.

23 MR. WISE: Your Honor, we would like to introduce
24 a copy of that transcript.

25 A. Can I read it?

1 MR. WISE: Just one second.

2 A. All right.

3 MR. WISE: All right.

4 MS. RATIGAN: I have no objection, Your Honor. I
5 have provided a copy.

6 MR. WISE: We have provided her a copy too.

7 (Transcript of Plea marked and received into
8 evidence as Petitioner's Exhibit No. 2).

9 THE COURT: The court has been provided with
10 Petitioner's Exhibit 2.

11 BY MR. WISE:

12 Q. All right. And what did she say in that transcript?

13 A. In her transcript, page 27, she says -- "she did
14 testify at the trial against the driver of the SUV --

15 Q. Uh-huh.

16 A. -- and he was convicted.

17 The agreement they had from the State was she recommend
18 probation because she has no prior record."

19 Q. Okay.

20 A. "And based on her cooperation and her testimony,
21 truthful testimony."

22 Q. Did your lawyer ask her about any agreement with the
23 State in your trial?

24 A. He did ask her about that.

25 Q. Did she admit there was any?

1 A. She said there was no plea -- no plea given to her.

2 Q. And in the testimony of your trial did she admit ever
3 knowing any drugs were in the car?"

4 A. Yeah, I got that from the transcript too. If you would
5 like me to read that, I would read that.

6 Q. Sure. And refer to the page for the court's benefit.

7 A. On page 116 of my transcript she stated "and I just
8 said I didn't know that the drugs were in the car."

9 THE COURT: I'm sorry, what page is that again?

10 THE WITNESS: 116.

11 MR. WISE: And I think for the court's benefit,
12 the transcript he's reading from is numbered the same as any
13 transcript that's labeled in this case, because the
14 appellate court -- the appellate lawyers kept the numbers
15 the same.

16 THE COURT: Okay. All right.

17 MR. WISE: We don't have to look at two different
18 page numbers.

19 THE COURT: All right. I do not have a page.
20 Page 16, or 116?

21 THE WITNESS: 116.

22 THE COURT: I do not have a page 116.

23 MR. WISE: Let me check.

24 On the -- excuse me, it's on the original
25 transcript. You are looking at the plea.

1 THE COURT: I'm sorry. I'm sorry. Yeah.

2 MR. WISE: Okay. There we go. I was wondering
3 why you didn't have one.

4 THE COURT: Okay, I'm with you.

5 BY MR. WISE:

6 Q. All right.

7 A. She states "and I just said I didn't know that the
8 drugs were in the vehicle at all and that I didn't make
9 enough money a year because I asked them how much did
10 something like that roughly cost."

11 Q. All right. So she denied ever knowing the drugs were
12 in the car?

13 A. She denied it.

14 Q. Do you think it would have been helpful for the jury to
15 know that she later admitted the drugs were hers?

16 A. Yes, sir.

17 Q. Or she knew the drugs were in the car?

18 A. Yes, sir.

19 Q. All right. Would that have helped you in your defense?

20 A. Yes, sir.

21 Q. All right. Your defense was they weren't your drugs?

22 A. Exactly.

23 Q. Okay. As a result of those errors, do you think that
24 you had a substantial possibility of the jury coming back
25 with a different verdict, had things gone differently?

1 A. Yes, sir.

2 Q. Do you think it was proper for the judge to tell the
3 jury that simply because you were the driver or in control
4 of the vehicle, that they could infer the drugs were yours?

5 A. Do I think it was right?

6 Q. Right.

7 A. No, I don't.

8 Q. All right. And, in fact, the car belonged to whom?

9 A. Tyra Rogers.

10 Q. It was her family's vehicle?

11 A. Yes, sir.

12 Q. Family car, is that correct?

13 A. Yes, sir.

14 Q. Thank you. Answer any questions.

15 MS. RATIGAN: I don't have any -- I don't have any
16 questions of Mr. Hill.

17 THE COURT: Mr. Hill, you can step down.

18 THE WITNESS: Thank you.

19 MR. WISE: That's the applicant's case, Your
20 Honor.

21 THE COURT: All right. Thank you.

22 Ms. Ratigan?

23 MS. RATIGAN: Yes, Your Honor, the State would
24 call Mr. Posey.

25

1 CHRISTOPHER POSEY, ESQUIRE, having been first duly
2 sworn, testified as follows:

3 THE CLERK: Thank you.

4 Please state your full name for the record.

5 THE WITNESS: Christopher Todd Posey.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION BY MS. RATIGAN:

8 Q. Mr. Posey, do you recall representing Mr. Hill on this
9 charge?

10 A. Yes.

11 Q. And were you appointed or retained?

12 A. I was appointed.

13 Q. Did you file the usual Brady and Rule Five motions?

14 A. He -- it's a little unusual. I was appointed in I
15 think it was February the 19th of -- about approximately
16 five weeks before he went to trial. He had had an attorney
17 previously appointed, Mr. Patel.

18 When Mr. Hill was picked up and brought back to South
19 Carolina, I believe it was on the failure to appear warrant,
20 for some reason Mr. Patel then had a conflict and the case
21 was immediately assigned to me. It was already docketed for
22 trial for the March term of court with the orders of no
23 continuances to be given at that time.

24 Q. So discovery had already been provided to Mr. Patel?

25 A. And I got it from Mr. Patel and I believe I then made a

1 copy for Mr. Hill, because he had not previously had a copy
2 of it.

3 Q. And I assume, since he came back on a failure to appear
4 on the bench warrant, that he was in the detention center?

5 A. He was, yes.

6 Q. Did you meet with him at the detention center?

7 A. I think -- I think it was probably eight to ten times
8 we met between the time I was appointed to the time we went
9 to trial.

10 Q. Okay. Did you review the discovery materials with him?

11 A. Yes.

12 Q. Did he tell you his version of what happened that day?

13 A. Yes.

14 Q. Did you formulate a defense?

15 A. Yes.

16 Q. And that was going to be?

17 A. Basically it was because of the drugs were found under
18 her seat, and Mr. Hill maintained that he had no knowledge
19 of the drugs the whole time.

20 Q. Did you speak to the co-defendant's attorney?

21 A. Mr. Farnsworth, I did, yes.

22 Q. And at that point were they about to be tried together,
23 or why would you have spoken to Mr. Farnsworth?

24 A. They were scheduled to be tried together. I think
25 her -- I know they said in the trial her revelations came

1 about four or five days prior to trial.

2 Q. So she went from being a co-defendant to a State's
3 witness, would that be fair to say?

4 A. Yes. And I think I was informed of it a day or two
5 prior to trial.

6 Q. Did that change your trial strategy?

7 A. Not a great deal, because it was -- the trial strategy
8 was always it was not Mr. Hill's drugs. It was the
9 co-defendant's.

10 Q. Did Mr. Hill ever ask you to speak to any witnesses or
11 obtain any evidence on his behalf?

12 A. Not to my recollection. And it's -- you know, it's
13 five, plus, years ago. Right at five years. I don't recall
14 anything specific that he asked me to get.

15 Q. Now, the first of Mr. Hill's issues is that even though
16 there was a suppression hearing in the case, you did not
17 object when the drugs were moved in?

18 A. And I didn't. It was clear from the record. It was
19 just a mistake. I think I was getting my closing argument
20 together at the time because Judge Welmaker was pushing us
21 pretty good to get through that day and it's just a mistake
22 on my part.

23 Q. But you had had a full suppression --

24 A. Yes.

25 Q. -- hearing?

1 Did you perceive to be -- let me strike that.

2 Did you perceive there was a problem with Judge
3 Welmaker's actual constructive possession jury charge?

4 A. I didn't at the time, no. It was pretty -- it's the
5 standard charge.

6 Q. Okay. At the time that y'all went to trial, the
7 co-defendant, Ms. Rogers, was she still facing the
8 trafficking charge?

9 A. Technically, I guess, yes, but after knowing what the
10 court subsequently, and really just based on experience you
11 knew she wasn't facing that any more.

12 Q. Did you have any information from the State about any
13 kind of hard and fast offer or agreement with her?

14 A. No. In fact, they didn't -- it was denied I think all
15 the way around that there was an actual agreement in place
16 at the time, which is not uncommon.

17 Q. And do you recall asking Ms. Rogers during cross if
18 there was an agreement?

19 A. Yeah, I reviewed the transcript and she did deny there
20 was any kind of plea agreement. I believe I asked her
21 several times if she realized she would go to jail if she
22 was convicted of what she was charged with, but --

23 Q. Do you think it would have been of benefit to the case
24 to ask her if she knew how much time specifically she was
25 facing?

1 A. It very well may. The reason I didn't, Judge Welmaker
2 is always -- always took the position that he was the
3 sentencing judge and he was -- he would allow for -- and to
4 ask him about being incarcerated, but specific jail
5 sentences were up to his purview, even though it was a
6 minimum mandatory sentence in this case. So it's just --
7 that was kind of knowing your judge and knowing not what
8 questions he was going to allow you to ask.

9 Q. When did you learn that Ms. Rogers had pled guilty?

10 A. I don't remember exactly. I remember Mr. Farnsworth,
11 he and I had had a discussion and he informed me she had
12 pled. I believe I asked him -- I think I saw him up here
13 and asked him whatever happened with that and he told me.

14 Q. Were you surprised to learn that she pled to
15 possession?

16 A. Not really, no. I'm -- it wouldn't surprise me if they
17 would dismiss the case either, though.

18 MS. RATIGAN: Beg the court's indulgence.

19 (Off the record)

20 (Back on the record)

21 BY MS. RATIGAN:

22 Q. And just to give a tiny bit of background to Judge
23 Hall, the State's case basically was predicated on a traffic
24 stop?

25 A. It was a traffic stop, yes.

1 Q. And basically that the officer developed an articulable
2 suspicion of criminal activity, would that be fair to say?

3 A. That was the State's argument, yes.

4 Q. Okay. Was there an audio or video, do you recall, of
5 the stop?

6 A. I don't believe so, no.

7 Q. If there was a video of the stop, would you have -- and
8 it was in the transcript?

9 A. Yes.

10 Q. And all of that was hashed out in the suppression
11 hearing?

12 A. Yes.

13 MS. RATIGAN: That's all I have, Your Honor.

14 CROSS EXMAINATION BY MR. WISE:

15 Q. Mr. Posey, at the suppression hearing the officer
16 basically testified he called in a drug dog because Mr. Hill
17 was nervous?

18 A. I think he -- and without looking specifically, I know
19 nerves were part of it.

20 Q. Right.

21 A. I think part of it is was the difference between the
22 stories between he and the co-defendant.

23 Q. It was a pretty weak justification for --

24 A. It was -- I thought it was very close to a Williams
25 issue. I know the Court of Appeals and the Supreme Court

1 both have kind of made Williams a very specific thing over
2 the course of time and I'm not sure what would have happened
3 had they reviewed it.

4 Q. With the Court of Appeals?

5 A. With the Court of Appeals.

6 Q. But at least we know the Court of Appeals didn't say
7 "even though it wasn't preserved, we reviewed it and ruled
8 against it," correct?

9 A. Yes.

10 Q. And the sole ground was the ground that it wasn't
11 preserved?

12 A. Yes.

13 Q. Okay. And unquestionably you had the intention of
14 preserving that issue?

15 A. Yeah. Like I said, it was just a mistake and I was
16 thinking -- I think I was busy jotting closing argument
17 down, because we were pushing to get through that day. For
18 whatever reason I don't remember.

19 Q. All right. Now, it certainly would have been helpful
20 for the jury to understand that the co-defendant was up
21 there testifying was looking at 25 years mandatory minimum?

22 A. I have no doubt about that.

23 Q. All right. That would have made them look at her
24 testimony a little closer?

25 A. I would hope so, yes.

1 Q. And are you aware that the South Carolina Supreme Court
2 has ruled in State v. Mozelle that questions as to the
3 punishment of a co-defendant are proper subject to go into
4 on cross examination?

5 A. Yes. Like I said, it was just kind of knowing Judge
6 Welmaker had always frowned deeply upon that and would stop
7 you in your tracks.

8 Q. I understand, but --

9 A. Then, so that was -- like I said, that was the knowing
10 your judge type situation.

11 Q. Right. You didn't think he would follow State v.
12 Mozelle?

13 A. I did not, based on previous experiences.

14 Q. Even though it was a decision that came down in April
15 of 2002 and was the law of the State?

16 A. I -- just in previous trials we had tried the same
17 thing and been cut off.

18 Q. Now, would that have been an issue, been worthwhile
19 preserving it for an appeal, had he not -- had he cut you
20 off?

21 A. It may have been.

22 Q. And without raising it, though, you can't preserve that
23 for appeal?

24 A. No.

25 Q. Correct?

1 A. Correct.

2 Q. Thank you.

3 Do you know of any authority for Judge Hill (sic) for
4 charging the jury that simply because a person is in control
5 of a vehicle, they can infer that that person possesses
6 what's in it?

7 A. The -- that's his standard constructive possession
8 charge. The authority, not specifically off the top of my
9 head right now, no.

10 Q. It's something that you have heard that they can charge
11 as inference?

12 A. Yes.

13 Q. And are you familiar at all with Article 1, Section --
14 Article 5, Section 21 of the South Carolina Constitution
15 that prohibits a judge from charging the jury on the facts?

16 A. Yes.

17 Q. You have heard -- you have heard that concept?

18 A. Yes.

19 Q. Now, whether or not you knew it was Article 5, Section
20 21 --

21 A. Right.

22 Q. But you are pretty well from practicing in the state,
23 you know that a judge can't charge the judge on the facts,
24 correct.

25 A. Yes.

1 Q. And are you familiar at all with the Yarborough case
2 that I mentioned a while ago?

3 A. I am not, to be honest with you.

4 Q. All right. It's a rather old case. It goes back I
5 believe to 19 -- the early 1900's, all right, and it held
6 that you cannot charge a jury that they can infer acceptance
7 of a package because it was left on the loading dock,
8 because to tell a jury they can infer something would be a
9 charge on the facts. You haven't read that case?

10 A. I have not.

11 Q. Have you been to any seminars that have discussed the
12 law of inference in South Carolina?

13 A. Several over the course of years. Criminal law updates
14 every year.

15 Q. Have you read the Belcher case that was decided believe
16 in 2008? That was one to eliminate inference concerning the
17 use of a deadly weapon.

18 A. Yes, I do remember that case.

19 Q. Did you gather from that that the court may be suspect
20 of use of inferences generally?

21 A. I can understand that and appreciate that. I did not
22 catch it at that time, but --

23 Q. Okay. And had you been thinking of Belcher at the time
24 the judge charged that, do you think that you would have
25 raised an objection?

1 A. It may have been something that I would objected to,
2 yes, sir.

3 Q. But, of course, without raising it, you can't preserve
4 it?

5 A. Yes.

6 Q. But you don't know of any cases that hold that a person
7 driving a car entitles the jury to infer that that person
8 possesses what's in there?

9 A. Not specifically to a motor vehicle, no.

10 MR. WISE: Give me one moment.

11 (Off the record)

12 (Back on the record)

13 BY MR. WISE:

14 Q. And Mr. Hill denied possessing the drugs?

15 A. Yes. Of course, I don't think I -- I think there is
16 some questions I never specifically ask.

17 Q. But he didn't testify?

18 A. No, no.

19 Q. But that was his defense?

20 A. Yes.

21 Q. Correct?

22 A. Yes.

23 Q. And he got 27 years?

24 A. Yes.

25 Q. And Ms. Rogers admitted knowing the drugs were in the

1 vehicle, right?

2 A. Subsequent to the trial, yes.

3 Q. And she got probation?

4 A. Yes.

5 Q. All right. And on that issue no one ever told you of
6 any deal that had been made with Ms. Rogers?

7 A. No, she denied it on the record, and --

8 Q. You specifically asked her?

9 A. I believe I did.

10 Q. Yeah. I will save you the trouble of believing it.
11 You did.

12 A. And Ms. Monts denied any deal was in place at the time
13 of trial.

14 Q. And if you had known that she was going to get
15 probation, that would have been very helpful in your
16 defense?

17 A. Been quite helpful I think.

18 Q. All right.

19 MR. WISE: Just one moment.

20 (Off the record)

21 (Back on the record)

22 MR. WISE: Thank you.

23 MS. RATIGAN: I have nothing further for Mr.
24 Posey, Your Honor.

25 THE COURT: Thank you, Mr. Posey. You can step

1 down and you are released.

2 Anything else?

3 MS. RATIGAN: The State would rest, Your Honor,
4 and I think the issues are fairly straightforward, so I
5 would waive any closing, unless you have any questions.

6 THE COURT: Mr. Wise?

7 MR. WISE: Unless you have got some specific
8 questions, we can leave it in your judgment of whether we
9 want to submit proposed orders or what.

10 THE COURT: I'm going to take it under advisement.

11 On the --

12 MR. WISE: I have given you the basic law I have.

13 THE COURT: Yeah. Y'all approach.

14 MR. WISE: All right.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 THE COURT: All right. I understand both
18 attorneys indicate there is nothing further. That concludes
19 this hearing and I will take it under advisement.

20 MS. RATIGAN: Thank you, Your Honor.

21 (END OF REQUESTED TRANSCRIPT OF RECORD)

22

23

24

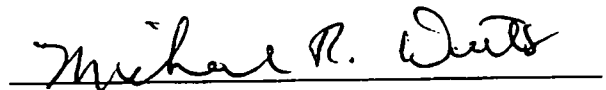
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for GREENVILLE County, South Carolina, on the 18TH day of FEBRUARY, 2015.

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

AUGUST 7, 2015

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

287

Case No. 2014-CP-23-0129

Plaintiff(s) Travell L. Hill

vs.

Defendant(s) South Carolina

PLAINTIFF'S EXHIBITS

DEFENDANT'S EXHIBITS

COURT'S EXHIBITS

1 Court Opinion	1	1
2 Court Transcript	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
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Court
Reporter Michael R. Watts

Clerk of Court Jan White

STATE OF SOUTH CAROLINA

COUNTY OF ~~YORK~~ *Greenville*

Travell L. Hill, SCDC #340055,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Case No.: 2014-CP-23-0129**ORDER**

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 AM 11 39

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 9, 2014. The Respondent made its Return on or about May 28, 2014. An evidentiary hearing into the matter was heard by the undersigned on February 18, 2015, at the Greenville County Courthouse in Greenville, South Carolina. C. Rauch Wise, Esquire, represented the Applicant. Karen C. Ratigan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was witness Christopher T. Posey, Esquire. This Court also had before it a copy of the transcript of the Applicant's guilty plea, both parties' briefs to the Court of Appeals, the records of the Greenville County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the October 2008 term of the Greenville County Grand Jury for Trafficking

Cocaine (2008-GS-23-06996). Christopher T. Posey, Esquire, represented him at trial. On March 30, 2010, Hill proceeded to jury trial before the Honorable G. Edward Welmaker. The jury returned a verdict of guilty and Judge Welmaker sentenced Hill to confinement for a period of twenty-seven (27) years for Trafficking Cocaine.

A timely Notice of Intent to Appeal was filed on April 8, 2008, and an appeal was perfected. A brief was filed on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967) on July 6, 2011. On February 3, 2012, the Court of Appeals issued an order denying counsel's motion to be relieved and directed counsel submit a brief as to several unanswered issues. The Appellant submitted another brief to the Court of Appeals on June 15, 2012. An appeal was heard by the Court of Appeals on May 6, 2013, and the Court issued an unpublished opinion, State v. Travell Hill, Op. No. 2013-UP-198 (filed May 15, 2013.) The Remittitur was sent on June 4, 2013.

The Applicant then filed an application for post-conviction relief on January 9, 2014. A Return was filed by the South Carolina Attorney General's Office on May 28, 2014. An evidentiary hearing was convened on February 18, 2015, at Greenville County Courthouse in Greenville County. The Applicant was present and represented by C. Rauch Wise, Esquire. The Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was not effective in that he failed to properly preserve for review the issue concerning the legality of the automobile search.
2. Trial counsel was not effective in that he failed to object to charge on the facts given by the trial judge in violation of Article V, Sec. 21 of the Constitution of the State of South Carolina.

3. Trial counsel was not effective in cross-examining Tyra Rodgers as to the potential sentence she was facing concerning her pending drug charges.
4. Trial counsel was not effective in investigating the case and obtaining the cell phone records of Tyra Rodgers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel as to Preserving an Objection for Review

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of

reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded. Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).

For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented. Allegro, Inc. v. Scully, 400 S.C. 33, 44, 733 S.E.2d 114, 120 (2012); State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Unless an objection is made at the time the evidence is offered and a final ruling is made, the issue is not preserved for review. State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Because the evidence developed during trial may warrant a change in the ruling, the losing party must renew his objection at

trial when the evidence is presented in order to preserve the issue for appeal. State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997). In most cases, "[m]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) quoting State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996).

Summary of Facts and Testimony

Applicant alleges ineffective assistance of defense counsel because defense counsel failed to properly preserve for review the issue concerning the legality of the automobile search. The trial court heard a motion in limine concerning the search of the vehicle driven by the Applicant and the motion to suppress the evidence was denied at that time. Defense counsel failed to renew the objection at the time the drugs were introduced at trial against Mr. Hill and therefore, the issue was lost on appeal.

On or about February 19, 2008, Trooper Richard S. Chasteen with the South Carolina Highway Patrol stopped a burgundy SUV on Interstate 85 for following too closely and impeding traffic. Applicant Hill was the driver and Tyra Rodgers was the passenger. The vehicle was rented pursuant to a rental agreement signed in Virginia to Lenise Martin, the only identified authorized driver according to the rental agreement. Trooper Chasteen issued a warning ticket and then asked Hill for permission to search the vehicle. Hill denied permission to search. Trooper Chasteen had called for back-up. Trooper Bennie Dowis arrived at the scene along with a drug dog.

Trooper Chasteen testified that both Hill and Rodgers appeared nervous and did not

make eye contact during the stop. Trooper Chasteen asked Hill to step out of the vehicle. Hill told the trooper that they had were travelling from Chesapeake, Virginia to Atlanta, Georgia to party and see a friend. Rodgers told the trooper that Hill was her boyfriend and that they were travelling to Atlanta to buy shoes and visit family.

Trooper Chasteen testified, "Immediately after issuing the warning or explaining and issuing the warning, [he] asked Mr. Hill for consent to search his vehicle." Hill did not consent to the search. After Hill refused to consent to the search of the vehicle, Trooper Chasteen asked Rodgers to step out of the vehicle. Trooper Dowis then allowed his drug dog to perform a sniff search of the vehicle, to which the dog alerted on the vehicle. Trooper Chasteen then told Hill and Rodgers that their vehicle was going to be searched based on probable cause. Trooper Chasteen searched the vehicle and found a pair of shoes in a bag and cocaine under the carpet on the front passenger side floorboard. Both Hill and Rodgers were arrested and charged with trafficking cocaine.

Prior to trial, Hill's attorney defense counsel moved to suppress the drug evidence based on an unlawful search and seizure. The trial judge held a suppression hearing. Hill's attorney argued that Officer Chasteen did not develop a reasonable articulable suspicion of criminal activity during the traffic stop, the stop ended when Hill was given the warning ticket, and Hill should not have been asked for consent to search the vehicle because the vehicle was not rented in his name. The State asserted that Hill did not have standing to challenge the search because Hill was not authorized to drive the vehicle, and that Officer Chasteen developed a reasonable articulable suspicion of criminal activity during the course of the stop, which warranted Hill's detention and the use of the drug detection dog for the sniff search of the vehicle.

At the conclusion of the hearing, the trial judge ruled that Hill did not have standing to challenge the search. Further, the trial judge determined Hill's detention was justified under the totality of the circumstances because he found the factors observed by Officer Chasteen during the stop established a reasonable articulable suspicion of criminal activity. Based on those findings, the trial judge denied Hill's suppression motion.

During trial, Trooper Chasteen and Trooper Dowis testified about the circumstances of the traffic stop and their discovery of Hill's cocaine. Following their testimony, Rodgers testified about the stop and the events leading up to it. Defense counsel failed to object to any of this testimony during the trial.

On appeal, Appellant Hill argued that the trial judge erred in (1) denying this motion to suppress the drug evidence because his Fourth Amendment rights were violated when Officer Chasteen did not have reasonable suspicion that he was engaged in serious criminal activity so as to warrant continued detention after issuing the traffic citation, and (2) finding that Hill lacked standing to challenge the lawfulness of the search and seizure of the car Hill was driving. The Court of Appeals found that the lower court was affirmed pursuant to Rule 220(b) of the South Carolina Appellate Court Rules stating that, "every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." See Rule 220(b), South Carolina Appellate Court Rules (SCACR). Further the opinion stated that the appellate court need not review the remaining issues when its determination of another issue is dispositive. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). Therefore, the Court of Appeals did not render a decision based

on err of the trial court, but simply affirmed the lower court's decision since the appellant failed to preserve the issues on appeal during his trial.

During the Post-Conviction Relief Hearing, defense counsel testified that he did not object to the introduction of evidence relating to the traffic stop and the discovery of Hill's cocaine because of his belief that the trial judge would again rule against his motion to suppress. Defense counsel testified that he had tried numerous drug cases in front of the trial judge, and that from his experience, knew that the trial judge would suppress the evidence, consistent with his ruling in the pretrial evidence suppression hearing. As a result, defense counsel testified that he did not object to the admission of the cocaine when it was being introduced at trial.

It is well established in South Carolina case law that in order to preserve an objection for appeal, the objection must be made at the time the evidence is presented at trial; otherwise, the issue is precluded from being raised on appeal. Further, even if a trial court rules on a motion in limine at a pretrial hearing, this issue is not preserved for review because a motion in limine is not a final determination. Here, defense counsel failed to make an objection to the admission of the cocaine when it was introduced at trial. Despite his knowledge of the trial judge and despite the court denying defense counsel's motion in limine to suppress the cocaine, he must object during trial when evidence of the cocaine is presented in order to preserve the issue for review. Defense counsel failed to protect the record on a matter that substantially jeopardized Hill's rights on appeal. Therefore, defense counsel's performance was deficient, satisfying the first prong of Strickland.

As for the second prong of the test, defense counsel's deficient performance prejudiced Hill such that there is a reasonable certainty that, but for his errors, the result of

the proceeding would have been different. Had defense counsel objected to the admissibility of the cocaine at trial, then that issue would have been preserved for appeal. Since he failed to object, the Court of Appeals refused to review the case. Therefore, defense counsel's failure to object prevented Hill from effectively appealing his case.

Based on all of the information in the record and the testimony during trial, the Court finds that Applicant has proven by a preponderance of the evidence that his defense attorney's representation was not reasonable under the professional norms, and that this deficient performance did prejudice the Applicant such that there is a reasonable probability that, but for defense counsel's errors, the result on appeal would have been different.

Accordingly, this Court finds that the Applicant has proven the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant presented specific and compelling evidence that trial counsel committed the error of failing to object to inclusion of material evidence during his representation of the Applicant.

This Court also finds that the Applicant has proven the second prong of Strickland - that he was prejudiced by trial counsel's performance. But for defense counsel failing to object, the issue would have been preserved on appeal, allowing the Court of Appeals the opportunity to review the issue of admissibility of the cocaine at Mr. Hill's trial. This Court concludes the Applicant has met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra, Butler, supra; and Cherry, supra. Therefore, the application is granted as to ineffective assistance of counsel for failure to object to the introduction of cocaine at trial.

Other Allegations

As to the allegations that (1) trial counsel was not effective in that he failed to object to charge on the facts given by the trial judge in violation of Article V, Sec. 21 of the Constitution of the State of South Carolina, (2) trial counsel was not effective in cross-examining Tyra Rogers as to the potential sentence she was facing concerning her pending drug charges, and (3) trial counsel was not effective in investigating the case and obtaining the cell phone records of Tyra Rogers, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof by preponderance of evidence regarding such allegations. Accordingly, they are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has established constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is granted as to the allegation of ineffective assistance of counsel regarding the failure to timely object to the admission of cocaine during trial. All other allegations are denied and dismissed with prejudice.

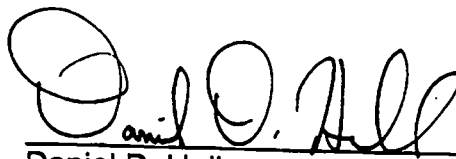
This Court advises Applicant that as to all denied allegations of this proceeding, he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g),

SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is granted as to the allegation of ineffective assistance of counsel regarding the failure to timely object to the admission of cocaine during trial.
2. That the Application for Post-Conviction Relief as to all other allegations must be denied and dismissed with prejudice.

AND IT IS SO ORDERED.



Daniel D. Hall
Presiding Circuit Court Judge

2-25, 2015

Yock, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Travell Levone Hill,)
 S.C.D.C. No. 340055,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2014-CP-23-0129

**MOTION TO ALTER OR AMEND
 THE ORDER**

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 APR 17 PM 3 17

Respondent, by and through undersigned counsel, making a Motion to Alter or Amend, would respectfully show unto this Court:

1. The matter is before the Court by way of post-conviction relief (PCR) application.
2. An evidentiary hearing was held on February 18, 2015 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Applicant testified in his own behalf. Also testifying was Applicant's trial counsel, Christopher T. Posey, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, this Court issued an order dated February 25, 2015 and filed March 19, 2015 granting Applicant's PCR application on one issue. Respondent received this order on March 24, 2015.
5. Respondent moves this Court to alter or amend the final order of dismissal;
6. Respondent notes this Court ruled upon three of Applicant's issues in a summary fashion. See page 10 of the order. Respondent agrees these issues were properly denied. However, Respondent notes specific findings of fact and conclusions of law must be made on all

PCR issues. See S.C. Code Ann. § 17-27-80 (Supp. 2003) (“The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.”); McCullough v. State, 320 S.C. 270, 464 S.E.2d 340 (1995) (admonishing all those involved in PCR matters to be meticulous in preparing and reviewing proposed orders so that the final order sets forth the required findings and reasons for those findings); cf. Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007) (admonishing that counsel should be meticulous in preparing and reviewing written orders).

7. Respondent submits this Motion to Alter or Amend should be granted. Respondent submits this Court should issue a supplemental order in which findings of fact and conclusions of law are made as to each of the three issues.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 1, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 TRAVELL LEVONE HILL, 340055)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2014-CP-23-0129

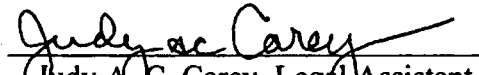
AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 APR 17 PM 3:17

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

C. Rauch Wise, Esquire
305 Main Street
Greenwood SC 29646

DATED this 1st day of April, 2015.


 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
)

Travell L. Hill, SCDC № 340055,

Applicant,

-vs-

State of South Carolina

Respondent.

Motion to Alter or Amend Judgment

2014-CP-23-0129

FILED-CITIZEN OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 APR 14 PM 2 14

Travell L. Hill, the Applicant above named, hereby requests pursuant to Rule 59 of the South Carolina Rules of Civil Procedure that the Court alter or amend the judgment previously entered or amend the findings issued in this matter based upon the following:

1. The Court erred in finding that the Applicant submitted no credible testimony concerning the failure of trial counsel to cross-examine the co-defendant concerning the possible sentence on her pending charges. Trial counsel testified that such testimony would have been helpful to the defense. He further testified that the only reason he did not ask the questions on cross-examination was based upon his experience that the trial judge would not permit such questions. He further acknowledged that such a ruling by the trial judge was contrary to the decision of the South Carolina Supreme Court in *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002). He also acknowledged that the issue could not be preserved for appeal without an objection.

2. The Court erred in finding that the applicant submitted no credible testimony concerning the charge to the jury concerning an inference of knowledge and possession from

being in control of the vehicle which was a charge on the facts. Trial counsel testified he was aware that the Constitution of the State of South Carolina prohibited a trial judge from submitting a charge on the facts to the jury. The Applicant submitted to the Court the South Carolina Supreme Court decision *Yarborough v. Southern R.Y.*, 78 S.C. 103, 58 S.E. 93 (1907) which held that a jury instruction which tells a jury they should infer something from a fact is a comment on the facts to the jury in violation of Article V, § 21 of the Constitution of the State of South Carolina. The State has not submitted any authority to the Court that the trial court's charge to the jury saying "The Defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control." is a proper charge and is not in violation of the *Yarborough* case cited above.

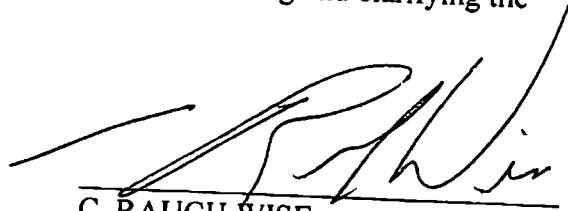
3. The Court erred in finding that the applicant submitted no credible evidence that the co-defendant, who was a witness for the State, was not truthful when at the trial of the applicant she testified that she did not know the drugs were in the automobile. In her plea she acknowledged she knew the drugs were in fact in the automobile. Furthermore, the applicant presented credible testimony at the Post Conviction Relief hearing in the form of a copy of the plea of the co-defendant that the co-defendant had been given a plea deal, contrary to her testimony. The undisputed evidence from the transcript of her plea was that the state and the witness had an agreement for probation and the State offered no testimony to the contrary. At the trial of the applicant the witness had denied she had any agreement with the state in exchange for her testimony.

4. The Order of the Court is unclear as to exactly what relief is given to the Applicant. The Order should be amended to reflect that the Applicant is either given a new trial

because of trial counsels error or a new appeal.

For the forgoing reasons, this Court should re-consider this matter and issue a new order granting the Applicant relief on other grounds submitted at the hearing and clarifying the exact relief to which the applicant is entitled.

March 24, 2015



C. RAUCH WISE
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Greenwood, SC 29646
(864) 229-5010
Rauch@simplepc.net
S. C. Bar № 06188
Attorney for Travel Hill

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 FILED - CLERK OF COURT
 GREENVILLE IN THE COURT OF COMMON PLEAS
 PAUL B. WICKENSIMER

Travell L. Hill, SCDC No. 340055

2015 APR 14 AM 9 11

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 APR 14 PM 2 14

Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent.)
 AFFIDAVIT OF SERVICE
 2014-cp-23-0129

Personally appeared before me Sandy Traynham, who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Applicant in the above entitled case. That on March 24, 2015 she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Motion to Alter or Amend Judgment in the above case addressed to Honorable Daniel D. Hall, 167-1J York Hwy., York, SC, 29745, and to Karen Ratigan, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina.

Sworn to and Subscribed

before me this 24 day

of March, 2015.

Mark Jane Hartner
 Notary Public for South Carolina

My Commission Expires: 11/30/22

Sandy Traynham

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2014-CP-23-0129
COUNTY OF GREENVILLE	)	
	)	
Travell Levone Hill,	)	
S.C.D.C. No. 340055,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN TO MOTION TO ALTER OR
	)	AMEND THE ORDER OF DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	

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GREENVILLE CO. S.C.
PAUL B. WICKES
2015 APR 17 PM 1:17
SINER

Respondent, by and through undersigned counsel, making Return to Applicant's Motion to Alter or Amend Judgment, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief (PCR) action filed January 9, 2014.
2. An evidentiary hearing was held on February 18, 2015 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Applicant testified in his own behalf. Also testifying was Applicant's trial counsel, Christopher T. Posey, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, the post-conviction relief court issued an order dated February 25, 2015 and filed March 19, 2015 granting post-conviction relief on one issue.
5. Applicant – through counsel – filed a Motion to Alter or Amend Judgment dated March 24, 2015 (which was received by Respondent on March 27, 2015).
6. Applicant argues this Court erred in finding no credible testimony was submitted

on several issues: (1) failure to cross-examine the co-defendant about the possible sentence on her pending charges, (2) failure to object to jury charge regarding an inference of knowledge and possession from being in control of the vehicle, and (3) that the co-defendant was untruthful in her trial testimony. Respondent submits this Court's order correctly found "no probative evidence" was submitted as to these allegations. (Order, p.10).

7. Respondent submits Applicant's Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the final order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief on these issues. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

8. Applicant also argues this Court's grant of relief was unclear. To the contrary, the order finds trial counsel was ineffective under the standard set forth in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). The remedy to such would obviously be a new trial. As Applicant already had a direct appeal in this case, he cannot receive another. Cf. Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001) (holding that where appellate counsel was ineffective the remedy is a new trial and not a new appeal).

9. Respondent submits this Court fully reviewed and properly ruled upon all issues and the Motion to Alter or Amend Judgment should be denied.

Respectfully submitted,

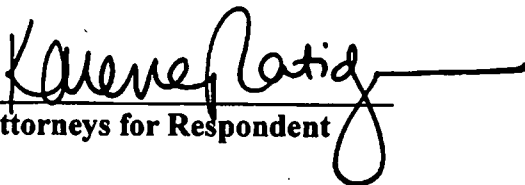
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 1, 2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2014-CP-23-0129

Travell Levone Hill,
S.C.D.C. No. 340055,

Applicant,

v.

State of South Carolina,

Respondent.

SUPPLEMENTAL ORDER

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 JUN 8 PM 2 13

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 9, 2014. A PCR hearing was held on February 18, 2015 at the Greenville County Courthouse. The Applicant was present and represented by C. Rauch Wise, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent. By order filed March 19, 2015, this Court granted relief on a single issue. This supplemental order is to address the remaining issues that were raised at the PCR hearing.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2008 term of the Greenville County Grand Jury for trafficking cocaine (208-GS-23-6996). He was represented by Christopher T. Posey, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On March 31, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to 27 years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate

Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hill, Op. No. 2013-UP-198 (S.C. Ct. App. filed May 15, 2013). The Remittitur was sent on June 4, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to properly preserve for review the issue concerning whether the search of the automobile the Applicant was driving was legal.
 - b. Failed to object to "charge on the facts given by the trial judge."
 - c. Not effective in "cross examining Trya [sic] Rogers as to the potential sentence she was facing concerning [sic] her pending drug charges."
 - d. Not effective in "investigating the case and obtaining the cell phone erecords [sic] of Tyra Rogers."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness and closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

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must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not object to an alleged charge on the facts. The Applicant stated trial counsel should have objected when the trial judge stated the jury could draw an inference in this case because he controlled the car. Trial counsel testified he did not see a problem with the trial judge's jury charges on actual or constructive possession. This Court has examined the jury charges for actual and constructive possession. (Trial transcript, pp.166-67). This Court finds the charges contain proper statements of law and, as such, trial counsel was not deficient in not making an objection. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding the applicant bears the burden of proving the allegations in their PCR application).

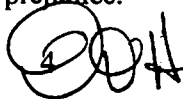
This Court finds the Applicant failed to meet his burden of proving trial counsel did not effectively cross-examine Tyra Rogers. The Applicant stated trial counsel should have questioned Rogers about her pending charge and potential sentence she faced. The Applicant stated Rogers testified at his trial that she did not have a plea agreement with the State but that she ultimately pled guilty to possession. Trial counsel testified both the State and Rogers denied



there was a plea deal in place at the time of trial. Trial counsel testified he did not cross-examine Rogers about her potential sentence because this particular trial judge frowned upon this question. Trial counsel testified he was not surprised to later learn that Rogers pled guilty to possession. Initially, this Court finds credible trial counsel's testimony that the State denied there were any agreements in place with Rogers for her testimony. This Court notes trial counsel questioned Rogers about her pending charges. (Trial transcript, pp.117-19). This Court notes trial counsel also questioned Rogers about whether she had any agreement with the State in exchange for her testimony and she said she did not. (Trial transcript, pp.117-19). Trial counsel's belief at the time of trial was that Rogers did not have an agreement with the State. This Court finds the Applicant has failed to meet his burden of proving any agreement with the State was in place when Rogers testified. The mere fact that she later pled guilty to a lesser charge does not satisfy the Applicant's burden. Trial counsel is not expected to be clairvoyant. See Strickland v. Washington, 466 U.S. at 690, 104 S. Ct. at 2066 ("[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.").¹

This Court finds the Applicant failed to meet his burden of proving trial counsel did not obtain Rogers' cell phone records. The Applicant stated trial counsel should have obtained these records prior to trial because they are now unavailable. This Court finds the Applicant failed to

¹ This Court further finds trial counsel made a strategic decision not to ask Rogers about the potential sentence she faced. Trial counsel testified he was familiar with State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), but that this particular trial judge did not like this line of questioning. Trial counsel testified this was a "know your judge" issue with this judge that he had seen before and opted not to question Rogers on the subject. This Court finds this was a valid strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court also finds the Applicant failed to demonstrate any resulting prejudice.



meet his burden of proving trial counsel failed to properly investigate the case and obtain Rogers' cell phone records. The Applicant has failed to articulate why these records were important for his defense and how he was prejudiced by the lack of said records. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

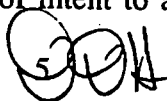
As to these issues, this Court finds the Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance on these issues. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

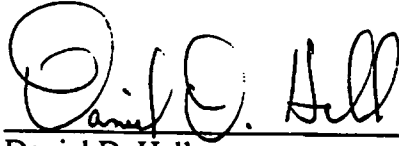
CONCLUSION

This Order serves to rule upon issues not addressed in this Court's original order. Those issues are all denied and dismissed. The ruling in the original order, however, is still in effect. This Court advises the parties that a notice of intent to appeal must be filed within thirty (30)



days from the receipt of this Order. See Rules 203, 206, 243, SCACR.

AND IT IS SO ORDERED this 1st day of June, 2015.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina.



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Travell Levone Hill

AKA:

Race: B Sex: M Age: 23DOB: 1986 SS#: Address: City, State, Zip: Chesapeake, VA 23324DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 400 g or moreINDICTMENT/CASE#: 2008GS2306996A/W#: 1430776Date of Offense: 2/19/2008S.C. Code § : 44-53-0370CDR Code #: 0281

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0281
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Joyce K. Monts
Monts, Joyce K.65331
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 27 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47.12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§ 90.7 (SCCA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter: Hanks

SCCA/217 (11/2009)

Paul B. Wickens

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2137Sentence Date: 3-31-10Wickens

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on **OCT 21 2008** the Grand Jurors of Greenville
County present upon their oath:

That TRAVELL LEVONE HILL did in Greenville County, on or about the 19th day of February, 2008,
knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide
financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the
State or was knowingly in actual or constructive possession of more than 400 grams of Cocaine. This is in
violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jaye Monte
SOLICITOR

WITNESSES

R. Chasteen

S. C. Highway Patrol

2/19/2008

ARREST WARRANT NUMBER

1430776

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

guilty

Foreperson of Petit Jury

Date:

3-31-10

DOCKET NO. 2008-GS-23-

JLK

The State of South Carolina

006996

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2008

THE STATE

vs.

guilty TRAVELL LEVONE HILL

Indictment for

0281

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

ARREST WARRANT

I-430776

5531

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

4-15-08

Greenville

THE STATE
against

SCHP

Travell Levone Hill

Address:

Chesapeake, VA 23324

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5' 11 Weight: 175

DL State: VA DL #: [REDACTED]

DOB: 1986 Agency ORI #: SCSHP0300

Prosecuting Agency: S. C. Highway Patrol

Prosecuting Officer: R. Chasteen - 811

Offense: Drugs / Trafficking in cocaine, 400 g or more

Offense Code: 0281

Code/Ordinance Sec: 44-53-0370(e)(2)(X)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

Travell Levone Hill

on

2-19-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant R. Chasteen

being duly sworn deposes and says that defendant Travell Levone Hill

did within this county and state on or about 02/19/2008

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine, 400 g or more

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFTER A LAWFUL TRAFFIC STOP, THE DEFENDANT WAS FOUND TO BE UNLAWFULLY IN POSSESSION OF 1224 G OF A WHITE POWDERY SUBSTANCE PACKAGED IN PLASTIC AND BROWN PACKING TAPE. THE SAID SUBSTANCE DID FIELD TEST POSITIVE AS COCAINE. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address P.O. Box 1993

Blythewood, SC 29016-

Affiant's Telephone (803)896-5470

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/19/2008 defendant Travell Levone Hill

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 400 g or more

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 02/20/2008

Signature of Issuing Judge

Gaybriel Gibson

Judge Code: 5032

(L.S.)

Judge's Address

Judge's Telephone

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

318

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 02/21/14
 OMCOMITA RELEASE DATE SCREEN C051132
 SCDC# > 340055 LOC: PERRY
 HILL, TRAVELL LEVON SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION.....
 CURRENT SENTENCE: 027-00-000 CONSECUTIVE SENTENCE ...: N
 027-00-000 CURRENT SENT START DATE: 08/12/2009
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 08/06/2034 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 001629 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1541 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 02/19/14

C0511

HILL, TRAVELL LEVON FBI # 591859HC5 SID# SC01804680 SCDC # 00340055

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... PERRY CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 27 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: Q2A0220B

RACE.....: B SEX...: M

PROJ MAXOUT DATE: 08/06/2034

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 27 DATE OF BIRTH...: [REDACTED]/86

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CATEGORY
TRAFFICKING IN COCAINE	27 0 0 GREENVILLE	8/12/20 9 V 4

PRIOR COMMITMENTS OVER 90 DAYS:

10/ 1/ 5 *COMMON LAW ROBBERY

18 YRS 9 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

PROBATION VIOLATION

WANTED

DEPUTY COC VIRGINIA BEACH CATEG: 1

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

11/21/13	EXHIBITIONISM AND PUBLIC	CONVICTED	MAJOR
10/25/13	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
9/ 3/13	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
8/15/13	FALSE STATEMENT TO HARM	CONVICTED	ADMIN
8/15/13	OUT OF PLACE	CONVICTED	ADMIN
3/27/13	REFUSING OR FAILING OBEY	DROPPED	OTHER
4/17/12	EXHIBITIONISM AND PUBLIC	CONVICTED	MAJOR
1/14/11	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
12/28/10	REFUSING TO WORK	CONVICTED	ADMIN

HISTORY OF MOVEMENTS:

12/ 6/12	PERRY	INCARCERATED	ADMINISTRATIVE
12/ 6/12	ANDERSON CO	AUTH ABSENCE (AWL)	MEDICAL
8/ 4/11	PERRY	INCARCERATED	ADMINISTRATIVE
8/ 4/11	KIRKLAND	INCARCERATED	MEDICAL
7/18/11	PERRY	INCARCERATED	ADMINISTRATIVE
7/18/11	ANDERSON CO	AUTH ABSENCE (AWL)	MEDICAL
12/13/10	PERRY	INCARCERATED	ADMINISTRATIVE
12/13/10	ANDERSON CO	AUTH ABSENCE (AWL)	MEDICAL
6/ 8/10	PERRY	INCARCERATED	ADMINISTRATIVE
4/ 5/10	KIRKLAND	INCARCERATED	R&E PROCESSING
4/ 5/10	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	05/30/13	11/22/13	PLACED IN ST/SP CUSTODY	3P5
WARDKEEPER ASSISTANT	01/05/12	3/ 5/12	LATERAL TRANSFER	3F5
FOOD SERVICE AIDE	07/20/10	1/ 4/11	UNSAT JOB PERFORM	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION

DESCRIPTION.

DATE

DATE

REASON

HILL, TRAVELL LEVON FBI # 591859HC5 SID# SC01804680 SCDC # 00340055 (CONTINUE
LVL 3 - FULL TIME(NO EWC) 10/11/12 2/13/13 UNSAT JOB PERFORM
LVL 3 - FULL TIME(NO EWC) 03/05/12 4/18/12 PLACED IN ST/SP CUSTODY
BONUS 15 OR MORE 01/05/12 3/ 4/12 LATERAL TRANSFER
LVL 3 - FULL TIME(NO EWC) 08/02/11 1/ 4/12 LATERAL TRANSFER
BONUS 15 OR MORE 08/09/10 9/ 9/10 POOR ATTENDANCE
***** END OF REPORT *****

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Travell Levone Hill

AKA:

Race: B Sex: M Age: 23DOB: -1986 SS#: Address: City, State, Zip: Chesapeake, VA 23324DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Trafficking in cocaine, 400 g or more

INDICTMENT/CASE#: 2008GS2306996A/W#: 1430776Date of Offense: 2/19/2008S.C. Code § : 44-53-0370CDR Code #: 0281

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0281

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Joyce K. Hanks
Hanks, Joyce K.65331
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 27 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 36-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Hanks

SCCA/217 (11/2009)

Paul B. Wickens

Presiding Judge

Judge Code: 2137Sentence Date: 3-31-10

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Paul B. Wickens

Wickens