

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Darlington County

S.C. SUPREME COURT

Honorable Larry B. Hyman, Circuit Court Judge

JAMECO ABDUL TONEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001899

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

COURT OF GENERAL SESSIONS

Jameco Abdul Toney,
PLAINTIFF,

TRANSCRIPT OF TRIAL
C/A #: 2011-GS-16-00811

v.

State of South Carolina,
DEFENDANT.

DARLINGTON COUNTY COURTHOUSE
NOVEMBER 18-20, 2013

BEFORE:

HONORABLE R. FERRELL COTHRAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Zack Farr
Attorney for the State of South Carolina

Public Defender Christie Wise
Attorney for Jameco Abdul Toney

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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(Jury Selection begins Toney v. State of SC)

4

1 The Court: If you would give us the jury five and
2 five.

3 Clerk: Okay if your name is called now if you will
4 just bring whatever you brought with you today, come
5 forward stand at the rail. Face back this way like I am
6 facing now for me please. Juror number 69 Arthur Jett. What
7 says the State?

8 Mr. Farr: Please excuse Mr. Jett.

9 Clerk: You have been excused from this particular case
10 if you will just have a seat back out there for me Mr.
11 Jett. Juror number 67, Sherry James. What say the State?

12 Mr. Farr: Please present Ms. James.

13 Clerk: What say the defense?

14 Ms. Wise: Please seat this juror.

15 Clerk: Please have a seat in the juror box for me Ms.
16 James. Juror number 94 Aaron Osborn. What say the State?

17 Mr. Farr: Please excuse Mr. Osborn.

18 Clerk: You have been excused from this particular case
19 Mr. Osborn please have a seat back out there. Juror number
20 56 John Howle. What say the State?

21 Mr. Farr: Please present Mr. Howle.

22 Clerk: What say the defense?

23 Ms. Wise: Please excuse this juror from this case.

24 Clerk: You have been excused from this case. Juror
25 number 16 Alice Caldwell. What say the State?

(Jury Selection begins Toney v. State of SC)

5

1 Mr. Farr: Please present Ms. Caldwell.

2 Clerk: What say the defense?

3 Ms. Wise: Please seat this juror.

4 Clerk: Please have a seat on the juror box for me Ms.
5 Caldwell. Juror number 101, Ryan Ridenhour. What say the
6 State?

7 Mr. Farr: Please present this juror.

8 Clerk: What say the defense?

9 Ms. Wise: Please seat this juror.

10 Clerk: Please have a seat in the juror box Mr.
11 Ridenhour. Juror number 17 Billy Campbell. What say the
12 State?

13 Mr. Farr: Please present Mr. Campbell.

14 Clerk: What say the defense?

15 Ms. Wise: Please seat this juror.

16 Clerk: Please have a seat in jury box for me. Juror
17 number 33 Tyrone Edge. What say the State?

18 Mr. Farr: Please present Mr. Edge.

19 Clerk: What say the defense?

20 Ms. Wise: Please excuse this juror.

21 Clerk: You have been excused from this particular case
22 Mr. Edge if you will just have a seat back out in the
23 audience for me please. Juror number 90 Heather Neal. What
24 say the State?

25 Mr. Farr: Please present Ms. Neal.

(Jury Selection begins Toney v. State of SC)

6

1 Clerk: What say the defense?

2 Ms. Wise: Please seat this juror.

3 Clerk: Please have a seat in the juror box for me Ms.

4 Neal. Juror number 72 Marie Lampkin. What say the State?

5 Mr. Farr: Please present Ms. Lampkin.

6 Clerk: What say the defense?

7 Ms. Wise: Please excuse this juror from this case.

8 Clerk: You have been excused from this particular case

9 thank you just have a seat. Juror number 31 Jimal Durant.

10 What say the State?

11 Mr. Farr: Please excuse this juror.

12 Clerk: You have been excused from this particular case

13 Mr. Durant. Juror number 62 Earl Jackson Jr. What say the

14 State?

15 Mr. Farr: Please excuse Mr. Jackson.

16 Clerk: You have been excused from this particular case

17 Mr. Jackson. Juror number 123 Amanda Toler. What say the

18 State?

19 Mr. Farr: Please present this juror.

20 Clerk: What say the defense.

21 Ms. Wise: Please seat this juror.

22 Clerk: Please have a seat in the jury box. Juror

23 number 45 Barbara Green. What say the State?

24 Mr. Farr: Please present this juror.

25 Clerk: What say the defense?

(Jury Selection begins Toney v. State of SC)

7

1 Ms. Wise: Please seat this juror.

2 Clerk: Please have a seat in the jury box for me Ms.
3 Green. Juror number 53 Jessica Henning. What say the
4 State?

5 Mr. Farr: Please present the juror.

6 Clerk: What say the defense?

7 Ms. Wise: Please seat this juror.

8 Clerk: Please have a seat in the jury box for me.
9 Juror number 136 Ronald Williams. What say the State?

10 Mr. Farr: Please present Mr. Williams.

11 Clerk: What say the defense?

12 Ms. Wise: Please seat this juror.

13 Clerk: Please have a seat in the jury box for me Mr.
14 Williams. Juror number 6 Sandra Asencio. What say the
15 State?

16 Mr. Farr: Please present this juror.

17 Clerk: What say this defense?

18 Ms. Wise: Please seat this juror.

19 Clerk: Please have a seat in the jury box for me.
20 Juror number 77 Andrea Luppe. What say the State?

21 Mr. Farr: Please present this juror.

22 Clerk: What say the defense?

23 Ms. Wise: Please excuse this juror.

24 Clerk: You have been excused from this case. Juror
25 number 80 Charles Martin. What say the State?

(Jury Selection begins Toney v. State of SC) 8

1 Mr. Farr: Please present this juror.

2 Clerk: What say the defense?

3 Ms. Wise: Please seat this juror.

4 Clerk: Please have a seat in the jury box for me Mr.
5 Martin. Juror 116 Anthony Stewart. What say the State?

6 Mr. Farr: Please excuse this juror.

7 Clerk: You are excused from this particular case Mr.
8 Stewart. Juror number 28 Cindy Dove. Any cause from the
9 State?

10 Mr. Farr: None.

11 Clerk: What say the defense?

12 Ms. Wise: Please excuse this juror.

13 Clerk: You have been excused. Juror number 89
14 Rodriguez Moses. Any cause from the State?

15 Mr. Farr: None.

16 Clerk: Any cause from the defense?

17 Ms. Wise: None.

18 Clerk: Then you will have a seat in the jury box.

19 The Court: One alternate or two?

20 Mr. Farr: Two.

21 The Court: Okay.

22 Clerk: Juror number 3 Antonio Alford. What say the
23 State?

24 Mr. Farr: Please excuse this juror.

25 Clerk: You have been excused this particular case Mr.

(Jury Selection begins Toney v. State of SC)

9

1 Alford. Juror number 34 William Edmiston. Any cause from
2 the State?

3 Mr. Farr: None.

4 Clerk: What say the defense?

5 Ms. Wise: Please excuse this juror.

6 Clerk: You have been excused from this particular
7 case. Juror number 127 William Vaughn. Any cause from the
8 State?

9 Mr. Farr: None.

10 Clerk: What say the defense?

11 Ms. Wise: Please seat this juror.

12 Clerk: Please have a seat in the first chair outside
13 the jury box for me Mr. Vaughn. Juror number 78 Rosa Mack.
14 What say the State?

15 Mr. Farr: Please present this juror.

16 Clerk: What say the defense?

17 Ms. Wise: Please seat this juror.

18 Clerk: Please have a seat in the second chair outside
19 the jury box for me.

20 The Court: Are there any manners of law pertaining to
21 selections on behalf of State?

22 Mr. Farr: None from the State Your Honor.

23 The Court: On behalf of the defense?

24 Ms. Wise: None Your Honor.

25 The Court: Let me see counsel real quick. Ladies and

(Jury Selection begins Toney v. State of SC) 10

1 gentlemen who were not selected to serve on this case I am
2 going to excuse you and ask you to call back after six
3 o'clock tonight. Don't call before six but keep calling
4 until you get through. When you call you will not get to
5 talk to a real person just kind of answering machine so you
6 can not argue with it. It is just going to tell you what I
7 need you to do. So if you will call back after six it will
8 give you some instructions to either call back later this
9 week or to come back. You have a nice afternoon thank you.

10 **(Jury Panel Excused 11:00)**

11 The Court: Ladies and gentlemen I confirmed with the
12 lawyers, there are some matters of law that I have to take
13 up outside of your presence and we not really sure how long
14 that is going to last. So what I am going to do is excuse
15 you for the rest of the day while I deal with these
16 matters. So you will not be sitting back there in the jury
17 room. I ask you to call back after six o'clock tonight as
18 well. I do not know if we can finish it today whether it is
19 going to run into tomorrow but when you call back there
20 will be a separate message for you because you will be
21 panel one. There will be a message for the entire panel but
22 yours will be panel one. It will either tell you when to
23 come back in the morning or what to do. So if you will call
24 and it is really important that you all either call or come
25 back because you have been selected on this case and I

(Jury Selection begins Toney v. State of SC) 11

1 can't get started unless you come back. If you have an
2 emergency, if the message tells you to be here at nine
3 thirty in the morning, you have an emergency and you can
4 not get here at nine thirty in the morning you need to
5 contact the Clerk's Office and let us know what the problem
6 is. If I don't hear from you then I am going to send a
7 deputy looking for you. If you have an emergency it has to
8 be a real emergency. The fact that you did not want to come
9 or you slept late is not good enough. If I don't finish all
10 these legal matters this afternoon then I don't want you to
11 come back and wait in the morning so that is why that
12 message will be for you to call back after six and it will
13 let you know what time I need you tomorrow. When you get
14 back I am going to give you further instructions but at
15 this point you cannot discuss this case among yourselves
16 you do not know anything about it. You cannot look at
17 anything on T.V. that may be about it and I do not whether
18 it will or not and if there is any articles in the
19 newspaper you can not read them, you can not discuss it
20 with your family, and you can not go home and get on the
21 internet and google anybody. You have to decide this case
22 totally on what you hear in this court room. Having said
23 that you have a nice and I will probably see you in the
24 morning.

25 **(Jury excused for the day 11:03)**

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(DVD played of traffic stop)

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The Court: So now is the plan to break for lunch and come back.

5

(Court Recess for lunch)

6

(Court in session)

7

The Court: You can state I assume it is a suppression motion you can state your motion and why you think it ought to be suppressed.

10

Ms. Wise: Thank you Your Honor I am here today on behalf of my client, Mr. Jameco Toney and we move to suppress the marijuana that was obtained as a result of the traffic search on November 10 or excuse me the traffic stop with the resulting search of the vehicle on November 10, 2010. If it is alright with you what I present we do is call my witness and then we can complete testimony and then I will make my argument.

18

The Court: Ok.

19

Ms. Wise: My first witness and only witness is Mr. Jameco Toney.

21

22

Clerk: If you will come around and be sworn. Put your left hand on the Bible and raise your right. Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing put the truth so help you God?

25

(Suppression Motion/Proffer-Exam of Mr. Toney)

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Mr. Toney: Yes I do.

Clerk: If you will have a seat right here and talk into the mic ok.

Proffer testimony of Mr. Toney - Examination by Ms. Wise:

Ms. Wise: Mr. Toney please state your name for the record.

Mr. Toney: Jameco Abdul Toney.

Q: What is your date of birth?

A: [REDACTED]/1975

Q: Do you remember the date of November 10, 2010?

A: Yes I do ma'am.

Q: What happened that day?

A: I was coming from the Columbia area and when I got to the Darlington County line, I got pulled over.

Q: Ok so you were driving from Columbia to Darlington on November 10th?

A: Yes I was.

Q: What were you driving?

A: A rental car that someone gave me.

Q: Who was that person?

A: Timothy Sanders.

Q: And when you said gave you can you explain to the court a little bit more what you mean by that?

A: I was in a financial bind and I was trying to look

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for a job at the time but I could not find any jobs in the local area so I was trying to move.

3

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Q: Ok, now going back to this car did you know it was a rental car?

6

A: Yes.

7

8

Q: Were you with Mr. Sanders when he rented the vehicle?

9

A: No I was not.

10

Q: How did you get the vehicle?

11

Mr. Toney: Mr. Sanders gave me it.

12

13

Q: Do you ever review the rental agreement of the vehicle?

14

A: No I did not until the day I got pulled over.

15

16

Q: The day you got pulled over. Was this after you got pulled over?

17

A: Yes.

18

19

Q: Did you know that you legally could not drive that vehicle?

20

A: No I did not.

21

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Q: Ok, now rolling back to you were saying you were driving from Columbia and you were pulled over in Darlington. Where were you driving? Do you remember what road you were on?

25

A: I was on I-20 heading towards the airport because

(Suppression Motion/Proffer-Exam of Mr. Toney)

15

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2 Mr. Sanders said the car was late and he wanted me to meet
3 him there.

4 Q: So tell me what happened prior to you getting
5 pulled over.

6 A: What do you mean by prior?

7 Q: Before you noticed the blue lights behind you tell
8 me what you were doing driving.

9 A: I was just basically driving back home like I said,
10 Mr. Sanders told me he wanted to meet to change the car. I
11 wasn't aware of -- the car I was just returning the car to
12 him because he was calling me all morning.

13 Q: Did you pass officer Lawson prior to this?

14 A: Yes.

15 Q: Did you change lanes?

16 A: Yes.

17 Q: Why?

18 A: Because there was another fella on the side of the
19 road so I moved over because the police was right beside
20 the road, the safety person so I moved over and rode for a
21 little while and when I seen the right lane was back open
22 I switched back over at that time.

23 Q: Ok and how did you switch back over, did you look
24 in your review mirrors or side mirrors?

25 A: Yes I did.

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Q: Were there any vehicles behind you that you thought were endanger or you could endanger by changing lanes?

A: No there was not.

Q: When did you notice the blue lights behind you?

A: After I passed I guess the heat truck and I saw that he was approaching me I guess after I had moved over and then I noticed that he was behind me going kind of fast and I just kind of felt that he was going to pull me over. Then when he got close behind then he put the flashers on. So basically I think that's the first cops or whatever they had traffic stopped. I thought I passed those cops maybe thirty seconds to a minute later then I noticed Mr. Lawson.

Q: Ok lets make sure we got this straight. You changed lanes originally because there was an officer pulling over another vehicle and then you changed back to that lane once you thought it was safe to do so?

A: Yes ma'am.

Q: And when you saw the blue lights you stopped?

A: Yes ma'am.

Q: And what happened once you stopped?

A: Mr. Lawson came to the passenger side of the door, he said this car is stolen and he asked for my license.

Q: Did you have any knowledge that this vehicle was stolen?

(Suppression Motion/Proffer-Exam of Mr. Toney)

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2 A: No I did not.
3 Q: Did you give him your license?
4 A: Yes I did.
5 Q: Did you give him anything else?
6 A: No I did not.
7 Q: What about the rental agreement.
8 A: I gave him the rental agreement.
9 Q: And then what happened?
10 A: He went back to his car and then he came back and
11 I got out the car.
12 Q: As we saw on the video.
13 A: He instructed me to get out the car.
14 Q: Yes sir and when he instructed you to get out the
15 car did you all exchange any words and conversation?
16 A: Not really. He was asking me could he search the
17 car and I was like no.
18 Q: Did he ask you if anything was in the car?
19 A: Yes he did on several occasions.
20 Q: What sort of things did he ask you?
21 A: He asked me was there any drugs in the car. Was
22 there any marijuana any cocaine. He also asked me where was
23 I coming from. He asked me a lot a couple of one was
24 related to me and one was not related to me. He asked me if
25 I was related to Leon and then he took my social security

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card for some reason and then I guess he went back to the car.

Q: And then what happened?

A: And then I guess I waited for a minute and he was trying to get a reason to search or whatever because I was telling him no. He called the rental car place, after while after over time then they agreed to let him search the car because he told them about the situation it was in. I guess it was stolen car or I am not sure exactly. Then that is basically it.

Q: Were you ever told that you changed a lane improperly?

A: No I was not.

Q: You were not.

A: I was told that was why he pulled me over, he did not tell me why he pulled me over for improper lane change. No he did not.

Q: How many officers were on the scene?

A: There was Mr. Lawson, his partner. It was Mr. Lawson pull up and then like I said they had another car pulled over so when they finished up with the other car then it was three officers.

Q: And how many police cars?

A: Two police cars. It was four officers and two

(Suppression Motion/Proffer-Exam of Mr. Toney)

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police cars.

Q: Was there a dog in one of the police cars?

A: Yes.

Q: How long would you say you were standing on the side of the road before the rental car company was called?

A: Over thirty minutes.

Q: Did you feel like you could leave anytime?

A: No I did not.

Q: Why not?

A: Because once he pulled me over it just seemed I guess he was looking for something I do not know exactly what. I see what now but I did not know what he wanted. All I know was I did not know any drugs were in the car and I was trying to let Mr. Lawson know that.

Q: When you say Mr. Lawson, do you know Mr. Lawson outside the context of this trial it's self.

A: I saw him before like I guess I had a couple incidents with Mr. Lawson.

Q: Ok can you explain to the court those incidents?

A: I had one incident when I was at my mother's house and someone was shooting a gun in the neighborhood and Mr. Lawson he came back there on private property to my mother house and someone had some marijuana on them and Mr. Lawson wrote them a ticket. He took like he got the cigar or

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whatever and he was like looks like a nicely rolled blunt here and he put the blunt to his mouth and then he took it away.

Q: Anything else?

A: I saw Mr. Lawson the same week that it was in down the road from my momma house cutting doughnuts on Highway 15 North and then he got behind me and this was before anything ever happened. Then he got behind me and then stayed he kept riding by my momma neighborhood for some reason.

Q: Ok, going back to this rental vehicle. Did Mr. Timothy Sanders give you the keys to this car?

A: Yes he did.

Q: Did those keys go to the trunk as well?

A: Yes they did.

Q: Were you handcuffed when you were stopped?

A: No I was not.

Q: Never once?

A: Never once I was never in handcuffs even after the arrest he put me in the car with in the front seat with no handcuffs on or anything. He was like well you need he was trying to get me to tell on people and asked me did I know anyone who was a big drug dealer. Then I would not --- duty so he went to the County and checked me in and then in

(Suppression Motion/Proffer-Exam of Mr. Toney)

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2 front of everyone when I got ready to take my shower going
3 to the back he came up to me. Then he asked me in front of
4 everybody did I want to sign a statement on somebody. I am
5 going to get my paperwork right you need to sign your
6 statements.

7 Q: Ok now going back to the traffic stop on November
8 10, 2010. We saw in the video where you ran when Mr. Lawson
9 approached the trunk. We did not see what happened where
10 you ran. What happened when you ran?

11 A: Ok I ran when I saw them drugs I am not going to
12 lie I was so scared I was shocked. That I took off but I
13 thought about what I was doing I was like well there is no
14 reason to run from the situation so I tramped back around
15 at that time and when I came back I walked over to the
16 other there was another police car and I started telling
17 those officers what was going on with the whole situation.
18 But I did not get into an altercation I thought about when
19 I turned around he had the gun pointed at me so I turned
20 around and I came back to the scene and then I talked to
21 the officer. I did not know what was going on.

22 Q: Ok have you had any prior run in with the law. We
23 heard on video where you had a prior conviction. Any other
24 prior run ins with the law other than what we already
25 disclosed in court today?

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A: No ma'am.

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Q: Have there ever been interactions where you and law enforcement where you felt threatened or coerced in anyway or in danger?

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A: Yes ma'am.

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Q: Explain that.

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A: My 1999 charge I was pretty much got into with two police officers and they slandered my name. They called me name they made jokes. I had a bad night that night. I resisted I had a resisted arrest charges that night because they was like we got this nigger right here and they start saying stuff like that so it's like when I see police I am automatically I'm just kind of scared of them.

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Q: Were you nervous on November 10, 2010 after you pulled over?

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A: Some what just because of like I said I have been arrested and I had just a bad incident in the past so I was really nervous but I was kind of nervous because of the past. I had the same things going real bad in my life and just pretty much kind of scared of the police. Tell you point blank I am scared of the police.

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Ms. Wise: Thank you Mr. Toney. I believe that is all of my questioning. Please answer any questions the prosecution might have for you.

(Proffer-Cross of Mr. Toney by Mr. Farr)

23

1 (Cross by Farr)

2 Q: Did you, I was not paying attention at first. What
3 is your education background?

4 A: My educational background, diploma at the time.
5 Since then I went on I graduated from Tech last year. I am
6 going to Coker College right now I am a full time student
7 and I have above a 3.0 GPA. Everybody said I needed to go
8 in that.

9 Q: Are you employed right now?

10 A: No sir my record list --- so it is kind of hard for
11 me to get a job right now sir, but I am still trying.

12 Q: What do you mean your record list? What is your
13 record?

14 A: I am not sure, I am sure my lawyer know this. All
15 I know is when I checked my record I had nineteen charges
16 on there. In the last ten years but I have only been
17 arrested like one time.

18 Q: Meaning you have only been arrested since when?

19 A: From the charge from 1999. That is it but when I
20 got pulled over I went and got Jim and he checked my record
21 and I already all type of drug charges on my record and I
22 am thinking that it part of the reason why I have not been
23 able to get a job. Some kind of way I guess identity fraud
24 or whatever some kind of way like all kinds of stuff was on
25 my record. My criminal record I had all type of arrest my

(Proffer-Cross of Mr. Toney by Mr. Farr)

24

1 driving record. I tried to get --- a couple of places real
2 bad identity theft. I was at school and got my car stolen.

3 Q: Are you talking about the '99 charge in Georgia you
4 got convicted on?

5 A: That was in ...

6 Q: Ok which one you talking about?

7 A: I only got in trouble, I got in trouble twice.

8 Q: But you just said earlier you were in trouble on
9 once.

10 A: I am sorry because that was my first charge. I
11 plead first offender so when I --- it's not on my record
12 anymore. I did what I had to do they did not send me to
13 prison in Dillon they sent me to the Center which I did
14 time and payed my fine out and I pleaded first offender in
15 Georgia so that is not suppose to be on my record. Like I
16 said I will tell you there is two incident, one was
17 involving two ounces of marijuana and the last one it
18 involved 3.25 pounds of marijuana and that was the one that
19 I went to prison for.

20 Q: Did you know about the 2.5 pounds then?

21 A: Yes sir I did but once I got out of prison I
22 understand where I messed up when I was young. That
23 happened when I was twenty-two, twenty-three. I am thirty
24 eight now. So I understood my past mistakes I tried to stay
25 away. I ditched all my old friends.

(Proffer-Cross of Mr. Toney by Mr. Farr)

25

1 Q: So you said you did time served in Georgia?

2 A: I did not go to prison I just went to the Center in
3 Georgia.

4 Q: What is that probation?

5 A: No it is like a place where somebody that never
6 been in prison before. I was there and they were suppose
7 run all time together but when I got that --- they did not
8 help me on my paper work so they put me back on probation
9 after I got back home. Like I said it was two incidents and
10 both of them five or six months in between.

11 Q: So there is two incidents not just one?

12 A: Yes but like I said that one it should not even be
13 on my record, went to the Center under that and I paid out
14 my fine.

15 Ms. Wise: Your Honor I have no stipulating for his
16 past record if that is what the prosecution.

17 Mr. Farr: What I am trying to get here is there is
18 only one on his record Your Honor not two like he is
19 saying.

20 The Court: Well the only one on his record is the
21 South Carolina charge.

22 Mr. Farr: That is Georgia there is no South
23 Carolina...

24 Mr. Toney: I went to prison for my South Carolina
25 charge like I said the one on Georgia it should not be...

(Proffer-Cross of Mr. Toney by Mr. Farr)

26

1 The Court: So he is saying he was in prison on the
2 South Carolina charge and the Georgia should not appear
3 because it should have been under --- charge.

4 Mr. Farr: Georgia it was six years probation Your
5 Honor.

6 Mr. Toney: No that is not true you are lying.

7 Mr. Farr: I am moving on.

8 The Court: I assume you have shown her the NCIC?

9 Mr. Farr: Yes sir it is in my file that I gave to her.

10 The Court: You seen the NCIC?

11 Ms. Wise: I have Your Honor and Mr. Toney has
12 maintained his record ...

13 The Court: Where did you serve time? What county were
14 you sentenced out of?

15 Mr. Toney: Lexington County sir.

16 The Court: What judge sentenced you?

17 Mr. Toney: I do not remember sir. I know I was on
18 probation I got it violated and I was out here and you know
19 when you get violated on probation they take all of your
20 time and you have to go to court. I got eighteen months
21 added, that was from the Lexington County charges.

22 Q: At the very beginning Ms. Christie when she started
23 talking to you she asked you what were you doing that day
24 and you said you were at Columbia. Can you go into details
25 what you were actually doing in Columbia?

(Proffer-Cross of Mr. Toney by Mr. Farr)

27

1 A: Sir what I was doing I was trying to get a job.

2 Q: You were trying to get a job?

3 A: Yes sir.

4 Q: Did it have anything to do with child support?

5 A: They had something going on at the unemployment
6 office with my child support. Like I said because I had
7 just left Rossenberry(sp) and I was working at Rossenberry
8 over three years I lost my job and after I lost my job then
9 I got put on child support. They was taking the child
10 support straight out of my unemployment. My daughter is
11 over eighteen now so I am not even on child support
12 anymore. She attends college at Francis Marion University.

13 Q: So are you saying you were in Columbia to get a job
14 not unemployment, child support?

15 A: To get a job at the unemployment office you know
16 how you can go online to check to see the job. I was just
17 trying to get I had trying to get a job.

18 Q: You have an address for the unemployment office?

19 A: I know where it is.

20 Q: You do know where it is at?

21 A: Yes I do know where it is.

22 Q: Well November 10, 2010 did you know where it was
23 at?

24 A: Yes I do know where it is.

25 Q: Have you seen the video?

(Proffer-Cross of Mr. Toney by Mr. Farr)

28

1 A: Yes.

2 Q: Do you remember telling Officer Lawson that you
3 would need to call and get direction, you did not know
4 where it was at?

5 A: No I do not remember telling Mr. Lawson that. I can
6 drive that but I do not know the physical address. I could
7 not tell you the physical address but I can drive you over
8 there now because I know exactly where it is. Like I said
9 I was trying to get rehabilitated because I was out of a
10 job I need to try to find work. That is what I was trying
11 and then I could not find work after that so that is why I
12 went to the unemployment office. There is no reason to sit
13 around and not do anything. So I tried in all ways to do
14 something positive.

15 Q: On November 10, 2010 is when Timothy Sanders gave
16 you the rental car?

17 A: Yes it is. You said?

18 Q: November 10, 2010.

19 A: No that is not when he gave me the rental car.

20 Q: When did he give you the rental car?

21 A: Actually he gave me the rental car, I was in the
22 rental for like four days, four or five days.

23 Q: So he drove the rental car to Columbia to give to
24 you?

25 A: No he gave me the rental car in Florence.

(Proffer-Cross of Mr. Toney by Mr. Farr)

29

1 Q: So how did you get to Florence then?

2 A: You said how did I get to Florence?

3 Q: Yeah you said you picked it up in Florence.

4 A: I was riding, he had another car and he said I am
5 going to give you this rental car and I had his old car.
6 I did not know because I do not have a credit card or
7 anything I could not run a card because I guess I do not
8 have I guess I am poor or whatever I do not have the money
9 like he had. He was a friend trying to help me. So he said
10 he was going to try to help me anyway he could and give me
11 that car to go look for a job. I thought it was a good
12 notion at first but I should not have took that deal now
13 that I see how it ended.

14 Q: You mention that you were in a financial bind and
15 that is why is' gave it to you correct?

16 A: Yeah, it was not that real bad but it was to the
17 point that I did not have a job I was not really bringing
18 nothing in but I still had my unemployment and I was ...

19 Q: How much do you get for unemployment?

20 A: I want to say probably got about one hundred thirty
21 dollars a week after they took out my child support.

22 Q: Do you know how much it cost to rent a car?

23 A: Not exactly, it is according to what kind of car it
24 is. Maybe forty to fifty dollars a day.

25 Q: How much money did you have on yourself that day?

(Proffer-Cross of Mr. Toney by Mr. Farr)

30

1 A: Maybe, I want to say like two hundred and something
2 dollars because I had just went to the ATM in Columbia and
3 I pulled out my money on my card.

4 Q: So that was all your money?

5 A: Yes sir.

6 Q: And you state that when you were passing on the
7 highway that there was an officer on the right side that
8 first lane?

9 A: Yes sir. They had some car pulled I do not know
10 exactly what went on but they pulled that car and I moved
11 over because I was trying to protect the officer because he
12 was on the side of the road.

13 Q: Do you know what he was driving?

14 A: Do I know what he was driving?

15 Q: Yeah November 10, 2010.

16 A: He was driving a black SUV with pink on the side.

17 Q: Was that on the left side on lane two? Was this car
18 on lane two where the median is kind of?

19 A: This car was when I passed this car this car was in
20 the middle sitting right on the Darlington County line on
21 I-20.

22 Q: So it is like where the median is like this lane 2
23 lane 1 he was like this?

24 A: He was I want to say closer to all the way to the
25 right side of the road in the grass. Like in the middle

(Proffer-Cross of Mr. Toney by Mr. Farr)

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1 they have --- right there and we was like sitting on the
2 grass part because when I passed him I seen him pull out.

3 Q: And you said you never saw his lights on until he
4 got behind you?

5 A: He did not turn his lights on until he got behind
6 me.

7 Q: You sure he was not beside you?

8 A: Behind me.

9 Q: So he got behind you and cut his lights on. Mrs.
10 Wise you attorney said did you know drugs were in the car
11 and your answer was I did not know drugs were in the car.
12 Is that correct?

13 A: That is correct.

14 Ms. Wise: Your Honor I do not believe I ever asked him
15 were drugs in the car.

16 Mr. Toney: You did not ask me but I am just trying.

17 Ms. Wise: I am just objecting.

18 Q: Did you know drugs were in the car?

19 A: No I did not.

20 Q: So after Mr. Lawson was searching your car and
21 popped the trunk and he touched the bag. Why did you flee?

22 A: Because I told you sir I got --- I am not scared of
23 the police but I done had bad incidents in the past. I
24 would never be put in a position like that because I'm real
25 scary when it comes to the police I understand the

(Proffer-Cross of Mr. Toney by Mr. Farr)

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1 repercussions.

2 Q: How did you know it was fifteen pounds?

3 A: I just basically guessed because someone had asked
4 me which I am not going to say it had to do something about
5 weed and fifteen pounds and I told them I do not do that
6 anymore. I am not getting involved in that anymore and I do
7 not know to this day I still do not know what weed fifteen
8 pounds I would not know.

9 Q: But you knew earlier, your 2.5 correct?

10 A: That is true sir.

11 Q: So Mr. Timothy Sanders gives you, the car rental
12 agreements in the car correct?

13 A: Yes.

14 Q: And he did not tell you that your name was on it?

15 A: He gave as a friend at that time. I thought he was
16 a friend so I took it as a show of good will. He asked me
17 about something. One thing I do not do is I do not go
18 backwards in life. How can you tell them well ok I am just
19 going to give you this. I did not I do not even know what
20 like I said the guy who I use to talk to over there when I
21 was young he got about forty five years federal time since
22 then I have not got back in. I know I had so many drugs. I
23 did not have that much money to buy it so how would I have
24 some if I do not have money to buy it.

25 Q: You have seen the video?

(Proffer-Cross of Mr. Toney by Mr. Farr)

33

1 A: Yeah I saw the video yes I did.

2 Q: And you remember saying that your friend Timothy
3 Sanders told you to go to Columbia and get the drugs
4 correct you were getting paid.

5 A: No. I'm going to tell you like this. Where the
6 problem come in is that he said that the car was stolen in
7 the video.

8 Q: Who said that the car was stolen?

9 A: Mr. Lawson came up that was one of the first things
10 he said, he said that this car was stolen and asked for the
11 rental agreement, and my license. Ok at that point I am
12 thinking if he gave me this car and he reported it stolen
13 and it has got these drugs in it I was going to get
14 something done about Mr. Sanders because I felt that I did
15 not know for sure and I still do not know for sure whether
16 he did it or not but it just seemed to me that he was
17 trying to set me up. So I drove the lead detective over
18 drugs right to Mr. Sanders.

19 Q: You also gave him your social security card?

20 A: No he took my social security card.

21 Q: How did he do that?

22 A: It was in my wallet and he said you know how you
23 got your license and stuff out he said he took it out and
24 he put it in his pocket.

25 Q: He put it in his pocket?

(Proffer-Cross of Mr. Toney by Mr. Farr)

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1 A: Yes he did.

2 Q: Did you ever get it back?

3 A: No I did not sir.

4 Q: Going back to Ms. Wise as she said you had a couple
5 run ins with Mr. Lawson.

6 A: Yes sir I have.

7 Q: The second one you talked about is cut doughnuts.
8 Can you clarify what you mean about cut doughnuts?

9 A: Doing like in the middle of the highway.

10 Q: In the highway?

11 A: In the middle of the highway in the middle of
12 Highway 15 North in Hartsville right by the marquee between
13 Market and Patrick Highway he was in the middle of the road
14 cutting doughnuts like actually going round and round
15 revving up the motor doughnut going around and around in
16 circles. When I pulled out he stopped cutting doughnuts
17 revved up his motor and just let the car just sit there and
18 then when I passed to go to my mom's house he got up right
19 behind him. This was before any of this happened.

20 Q: So this happened before November 10, 2010?

21 A: Yes it did.

22 Q: So when you say Mr. Lawson pulled you over you
23 actually knew him?

24 A: I honestly was scared because I did not know what
25 was going to happen. Like I said that is kind of what

(Proffer-Cross of Mr. Toney by Mr. Farr)

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1 persuaded me to go out of town because of that event. He
2 was basically intimidating me with that.

3 Q: That was before November 10, 2010 correct?

4 A: Yeah but that was also the reason for me to go out
5 of town because I was not sure exactly what was going to
6 happen. I knew I was not selling drugs anymore that is all
7 I knew at that time. I wanted to know why he was on me like
8 that.

9 Q: You were selling drugs before?

10 A: I said I was not selling. I have not sold basically
11 since I got caught since 1999, 2000.

12 Q: And you said it took when Ms. Wise asked you how
13 long it took for Mr. Lawson to call the renters company you
14 said thirty minutes correct?

15 A: I am not sure I am not sure I do not want to say an
16 exactly amount of time. It has been so long ago it is kind
17 of hard for me to remember exactly when. All I know is he
18 told me that the car was stolen and he called the rental
19 place and that is how he got the permission to search the
20 car that is all I know.

21 Q: So assuming he said it was stolen he brought you
22 out and then he called the rental company correct?

23 A: He called them soon like I said I do not know
24 exactly when I was letting him I guess basically let him do
25 his job.

(Proffer-Cross/Redirect of Mr. Toney)

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1 Q: He was just doing his job?

2 A: I guess at that time. He was doing it the way he
3 wanted to do it.

4 Q: What is a general search to you?

5 A: A general search is basically going through the car
6 and seeing what was in the car.

7 Mr. Farr: That is all I have Your Honor.

8 The Court: Anything else?

9 **(Redirect by Wise)**

10 Q: Mr. Toney you find the need to collaborate a lot
11 when you are asked questions don't you?

12 A: That is a bad habit of mine.

13 Q: I think so yes sir. Going back to the rental
14 agreement, briefly yes or no. Did you or did you not know
15 that you could drive that car?

16 A: No I did not.

17 Q: Did you think you could drive that car legally?

18 A: Yes I did.

19 Q: Did you learn that you could not drive it legally
20 after being pulled over by Mr. Lawson?

21 A: Yes I know now.

22 Ms. Wise: Thank you. No further questions Your Honor.

23 The Court: You can step down. Anything else from the
24 defense?

25 Ms. Wise: As far as testimony from this witness nothing

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 Your Honor.

2 The Court: Ok.

3 Mr. Farr: Your Honor I would like to call Mr. Brad
4 Lawson.

5 The Court: Ok.

6 Clerk: Please put your left hand on the Bible and raise
7 your right hand. Do you swear the testimony you give this
8 court is the truth, the whole truth, and nothing but the
9 truth so help you God?

10 Lawson: Yes I do.

11 Mr. Farr: Can you state your name please.

12 Lawson: Brad Lawson

13 **(Exam by Farr)**

14 Q: What is your occupation?

15 A: Currently I am working at the Kershaw County
16 Sheriff's Office as the Lieutenant over the narcotics
17 division.

18 Q: What law enforcement agency on November 10, 2010
19 were you employed by?

20 A: Darlington County Sheriff's Office.

21 Q: How long have you been, how long were you employed
22 at Darlington Sheriff's Office?

23 A: About ten years.

24 Q: How long have you been at Kershaw?

25 A: Just a little over two.

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 Q: Before Darlington County Sheriff's Office did you
2 have any experience before then? Did you go to a school
3 before Darlington County Sheriff?

4 A: No I had no experience in law enforcement prior.

5 Q: In them ten years did you have any experience
6 training?

7 A: Yes.

8 Q: Can you please tell me your training.

9 A: I had numerous I do not know probably two to three
10 hundred hours worth of training regards to cases like this.
11 Working interstate large amounts of drugs. Types of criminal
12 activity going up and down the interstate along our
13 highways. Numerous hours of training in that and of course
14 various other types of training.

15 Q: What are your present duties today?

16 A: Present duties today is working narcotics, strictly
17 narcotics.

18 Q: On November 10, 2010 what were your present duties?

19 A: Present duties at that time was working the highway
20 on I-20, major highways throughout the county.

21 Q: Are you like the supervisor out there?

22 A: It had not been, out there yes I was. I was
23 supervisor over our unit but out there yes I was.

24 Q: Were you the only person on the road that day?

25 A: No there was actually three of us, myself, David

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 Zeller, and Kyle all three out there together.

2 Q: Around twelve fifteen, twelve eighteen, how did you
3 get involved in this matter on November 10, 2010?

4 A: Well I was sitting stationary around the one twenty
5 nine mile marker which is right at the old rest area which
6 is now a parking area for commercial vehicles, monitoring
7 east bound traffic. When I observed a tan Chevy Malibu pass
8 by and as soon as it passed by making an abrupt lane change.
9 Nearly or not creating enough space nearly cutting another
10 car off from the number two lane to the number one lane or
11 from the slow lane to the fast lane which ever one makes
12 more sense. I then pulled out behind that vehicle in an
13 attempt to catch up to it. The driver made another lane
14 change from the fast lane to the slow lane doing the same
15 thing cutting another vehicle off again just not creating
16 enough space to where it was safe to change lanes at that
17 time.

18 Q: When you mean an abrupt lane change, is that like
19 literally cut some body and pushing that person to the curb
20 kind of?

21 A: I am not saying he was about to run someone off the
22 road. It was not enough space to make a safe lane change and
23 I did I explained that to Mr. Toney once he had stopped for
24 that violation. That not only does it nearly cut someone off
25 when you do not create enough space well then it puts that

1 person that you changed lanes in front of following you too
2 close. Which is another problem out there that the speed
3 limit does not cover.

4 Q: When you see that and you are patrolling you are
5 trying to catch up. Did you cut your lights on behind him or
6 on the side?

7 A: Once I got behind is when the actual lights were cut
8 on.

9 Q: Did you notice anything? Why did you try to pull up
10 beside him?

11 A: I try to pull up to the side of just about every car
12 that I stop for a couple of reasons, actually three reasons.
13 I like to see if peoples wearing their seatbelt, how many
14 people are in the car there could be someone laying down
15 that is just kind of a safety thing knowing how many people
16 are in the car, and third and probably most importantly make
17 sure there is no children in the car because we all know
18 some vehicle stops lead into chases and we really do not
19 want to chase a car with a child in the car. So if you can
20 pull up beside it and see that, that is why I pull up beside
21 a vehicle before I stop it.

22 Q: Did you notice anything when you pulled up beside
23 him?

24 A: I did notice that the windows, the rear windows were
25 down approximately two inches or so on both sides of the

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 vehicle.

2 Q: Is that normal?

3 A: No it is not normal especially out here if it is on
4 the interstate that causes a lot of noise within the vehicle
5 so no it is not normal.

6 Q: Did that trigger something?

7 A: It is not consistent with the everyday stops out
8 there. The innocent motoring public that is driving up and
9 down the interstate would not have their rear windows down.

10 Q: Once you finally pulled Mr. Toney over. What did you
11 do next?

12 A: Well I approached on the passenger side of the
13 vehicle. Asked him for his driver's license, the vehicle
14 information like you normally do on every traffic stop. He
15 provided his driver's license, he provided the actual rental
16 agreement to the vehicle. As he handed me those things I
17 could tell that his hands were shaking a little nervous, but
18 as soon as he handed it to me I could tell on the rental
19 agreement that he was not the renter of the car. It was
20 rented by someone else, that person was obviously not in the
21 vehicle because Mr. Toney was the sole occupant of that
22 vehicle. I noticed within seconds of looking at it it was
23 past due and that just comes from looking at them on a daily
24 basis or very regularly knowing where to look on those
25 agreements. Noticed as he was handing me that stuff that he

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 was going above what is normal regular nervousness of a
2 little bit of shaking of the hands that he was breathing
3 very rapidly. His chest and stomach moving very rapid like
4 labor breathing. At that time I asked him to get out of the
5 vehicle and step back to the rear.

6 Q: Can you clarify that he's nervous in his hand? Can
7 you elaborate on that a little bit?

8 A: It was very noticeable that when he handed over his
9 information that his license and his paperwork were shaking
10 as he handed it over.

11 Q: Is that normal for most you pull over?

12 A: I would say that a lot of people have a little bit
13 of nervousness when it comes to just a little bit of the
14 shaking of the hand even on a normal traffic stop, yeah that
15 can happen. But it is not normal for a traffic stop for
16 someone to have labored breathing where you can actually
17 just see their chest rising and falling through their shirt
18 that is not normal.

19 Q: What do you mean by labored like really deep
20 breaths...

21 A: Chest pounding being able to see their actual chest
22 move under their shirt.

23 Q: You asked him to get out. Did you ever ask for his
24 social security card?

25 A: Never during the time of the traffic stop, no. Yeah

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 I got it sometime though because I actually made a copy of
2 it, it is in the case file. I did not ask him for his social
3 security card on the side of the road as far as any part of
4 the traffic stop no.

5 Q: Did you ever tell him that it was stolen at the very
6 beginning?

7 A: No sir I never once said that.

8 Q: At the time you pulled out --- did the victim ever
9 appear under the influence of alcohol or drugs to impair his
10 ability to understand what was going on?

11 A: Was he?

12 Q: Yeah.

13 A: No.

14 Q: Did the defendant have any physical or mental
15 disabilities to the extent that he was impaired and would
16 not be able to understand the stop?

17 A: No not at all. He actually even told me why he
18 thought he committed those violations with something to do
19 with tire pressure if I am not mistaken.

20 Q: Did you ever tell him why he was pulled over?

21 A: I did, when I first approached when I got him out I
22 actually explained it of what he did. Telling him I think it
23 was on the video definitely explained to him what he did.

24 Q: Once you told him what he was pulled over for is
25 that when you started writing out. What did you tell him?

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 A: Well at that point then I started asking him about
2 the rental agreement because I could tell that of course by
3 the date it was pass due and he was not the person on the
4 rental agreement. I did not see no additional drivers on the
5 rental agreement so yeah I elaborated on that a little bit
6 speaking with him about this rental agreement. Of course I
7 do not know if it is stolen I never told him it was stolen.
8 I never had even run the tag yet other than to give that to
9 dispatch whenever I stopped the car. So I just asked him a
10 few questions related to the rental car, how he got the car,
11 why he had the car, who gave it to him, things of that
12 nature.

13 Q: So just to make sure that I understand. Did you
14 start writing your warning ticket when you told him what he
15 was pulled over for?

16 A: After I told him what he was being pulled over for
17 and once trying to clarify some of the rental car issues.
18 Then yes I did start to write my warning.

19 Q: What goes into writing a warning ticket?

20 A: Well I mean I had a lot of information that comes
21 from their vehicle paperwork, their driver's license.

22 Q: Do you ever run checks on those?

23 A: Yeah you run your basic driver's license check, your
24 vehicle information.

25 Q: Once you, were you running checks on this car or his

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 driver's license?

2 A: Yes I did, I do not remember exactly what time or
3 when I did it. Yes I did have dispatch run his driver's
4 license and it was some time after that I remember having
5 them run the vehicle, run the license plate.

6 Q: During the time you were getting all that checked
7 did you ask, did you talk to Mr. Toney at all?

8 A: Yes, absolutely.

9 Q: Did you ask him any questions?

10 A: I did.

11 Q: Do you know what the questions were?

12 A: Well I have to admit I noticed and I am going to ask
13 everybody it the same question all the time. Of course I
14 asked him where he is coming from and where he was going
15 because that is something that we all have in common on any
16 traffic stop. We are all coming from somewhere and we are
17 all going.

18 Q: Did he say where he was coming from?

19 A: Yes he said he was coming from Columbia.

20 Q: Did he tell you what he was doing in Columbia?

21 A: At first it was something about child support and
22 then in a minute it changed to the unemployment office. In
23 which he did not know where it was he did not know how to
24 get there. He told me he had to make a phone call to find
25 out where it was and when he said those sorts of things it

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 made that like he had never even been to the unemployment
2 office and what did not make no sense to me. Also knowing
3 that there is an unemployment office in Hartsville it just
4 did not make a whole lot of sense of what he was doing.

5 Q: Did he tell you how long he was in Columbia for?

6 A: All I knew of was that day.

7 Q: So he only told you one day?

8 A: Yes it was for them, it was just only a few hours it
9 was not. He never told me had been there for several days.

10 Q: At that time you were asking these questions did any
11 of this trigger you being like that this is weird little
12 stuff going on?

13 A: Well absolutely because I could tell that the car
14 was rented out of Florence which that did not make a whole
15 lot of sense to me because no one looking at his license and
16 seeing where Mr. Thompson lived at. There is a rental car
17 there is an Enterprise place in Hartsville on forty-fifth
18 street. Why would you go all the way to Florence with
19 another guy Timothy Sanders to rent a car in Florence to
20 drive back down I-20 to Columbia and back to Florence. That
21 did not make a whole lot of sense to me since you know there
22 is a rental company right there in Hartsville.

23 Q: How far is Hartsville away from Florence?

24 A: Hartsville to Florence to the airport I am going to
25 say forty five minutes.

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 Q: Do you remember where Mr. Toney lived?

2 A: Yes, he actually lives on the northern part of
3 Hartsville probably I am going to say like two and a half
4 minutes from the rental company.

5 Q: So you are doing the background check on his car and
6 Mr. Toney and you are asking him a few questions like where
7 you been and it did not make sense. At what time did you
8 call the rental company?

9 A: Well I still through talking to him he just
10 continued to get nervous. It never you know with me telling
11 him what it was, the traffic violation that it was. He
12 continued to get even more nervous that never got any
13 better. His carotid artery in his neck was pulsating the
14 whole time talking to him. He talks with hand, he started
15 getting crust, cotton mouth. I actually even asked him one
16 time a couple of times if he was ok and you could tell he
17 was still nervous. He started getting white crust built up
18 into the corners of his lips. So then I asked him if he had
19 ever been in any trouble before and that was while I was
20 writing my warning ticket. He told me about his drug history
21 report. He clearly stated it. With all of the things that he
22 was, with his nervous behavior, the things with the rental
23 car. Everything with that it led me to think that possibly
24 he was involved in some kind of criminal activity.

25 Q: Just so we go back a little bit. What do you mean by

1 the artery in his neck, what do you mean by that?

2 A: Your carotid artery in your neck when ever someone
3 is extremely nervous and I have seen it several times out on
4 the roadway. You can see it actually jumping out of their
5 neck, pulsating.

6 Q: What do you mean by dry mouth? Does that mean after
7 you brush you teeth you get the white stuff or is it like
8 saliva?

9 A: This is like dried white crust I guess saliva that
10 ends up just from having cotton mouth, nervousness.

11 Q: Did that give you reason to ask Mr. Toney to search
12 his car?

13 A: Those are the reasons why I wanted to search his
14 car. The third party rental car where the renter was not
15 present. The rental car was two days past due. From having
16 the windows rolled down while traveling down the highway.
17 His hands shaking nervous. His breathing heavily, his chest
18 rapidly rising and falling. His carotid artery pulsating. Of
19 course him having cotton mouth as we just said with the
20 white crust in the corners of his lips. The arrangement with
21 that rental car from Florence Hartsville made no sense to
22 me. He did not know the location where he said he had been
23 in Columbia. He spoke with his hands kind of nervous
24 speaking with his hands as he talked to me. I noticed while
25 talking to him he kept looking back to the car. So all of

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 those things yeah and at one time he hinted only once he
2 said that he was in a hurry to leave. All of those things
3 led me to want to search his car because in my experience in
4 working the interstate. All of those things are consistent
5 with someone who is involved in criminal activities.

6 Q: Before you called the rental company did you ask Mr.
7 Toney if there was any drugs in the car?

8 A: Yes.

9 Q: What drugs did you ask him that were in the car?

10 A: I tried to go through all of your major drugs
11 anytime I ask somebody that cocaine, heroine, crack,
12 marijuana I do not know if I said meth but I normally ask
13 that. When I said marijuana I noticed there was a,
14 everything else he stayed looking at me. When I said
15 marijuana Mr. Toney looked back at the car.

16 Q: What do you mean by looking back when you said
17 marijuana? You mean like this or do you mean like he was
18 going to flee?

19 A: Well it was not like he was going to flee at that
20 point whenever I said that. It is just whenever he went to
21 speak to me whenever he would say no on the other drugs he
22 would be looking at me and when I said marijuana he turned
23 and said no. No while looking back at the car. There was
24 definite difference in how he answered me to marijuana
25 versus all the other things I asked him.

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 Q: Now you ask him the question. Now you call the
2 rental company correct?

3 A: Yes sir.

4 Q: What was your purpose of calling the rental company?

5 A: Well being that it is that third party rental I had
6 no back up at the time. So I was calling into see of course
7 I want to see what is going on with the vehicle. It could be
8 stolen and just not entered into NCIC or whatever I mean I
9 do not know. It could be an array of things could be going
10 on with this vehicle. So that is why I called.

11 Q: During that conversation did you ask for a simple
12 search?

13 A: Yes I did ask them for a simple search.

14 Q: Did the rental company give you consent to search?

15 A: Yes.

16 Q: Did the rental company ask you to repossess the car?

17 A: Yes.

18 Q: At that time you were going to search the car?

19 A: Yes.

20 Q: You were making this stop correct?

21 A: Oh yes absolutely.

22 Q: Did you delay after you got consent from the rental
23 company?

24 A: Oh yeah a little bit because I was hoping I would be
25 able to get some backup. The two guys that were actually

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 working with me out there they actually had something going
2 on with both of their traffic stops ironically. That it just
3 kind of made it hard for them to get to me at that
4 particular moment.

5 Q: Did you call to see if you were able to get backup?

6 A: Yes, I think you can hear it on the video. I called
7 on the radio a couple of times. I actually talked with
8 Officer Zeller on the phone because then he was telling me
9 what he had on his traffic stop and I told him well for him
10 to go ahead and try to finish up with what he was doing
11 before he came.

12 Q: Then when you got on the phone with Mr. Zeller did
13 the defendant keep talking to you?

14 A: Yeah.

15 Q: Did you feel that he was trying to delay the search?

16 A: I think so. That is when he tried to justify I think
17 with why he did what he did as far as the traffic violation.
18 Not the first time I heard that when ever it comes to
19 searching a car and there being something illegal in the
20 car. Is someone trying to then deflect now let us go back to
21 why you stopped me and just trying to deflect, is the way I
22 took it.

23 Q: Is that a tactic for most traffickers?

24 A: In my training and experience yes that it sure is.

25 Q: Once you told Mr. Toney that you were going to

1 search the car. Did he say anything further to you?

2 A: Yes he did you know initially he told me it was not
3 a general search and then no I could not, but yeah I, once
4 I told him what the rental company told me. Then he said
5 well go ahead and search it.

6 Q: Because this was not his car?

7 A: Yes he did say this is not my, he did make a
8 statement that it was not his car.

9 Q: When you were searching did you notice anything
10 inside the car?

11 A: Not really anything up front other than it was
12 clean. So there really was not a whole lot up front at all.
13 I think there was a plastic bag in the floor board but there
14 was really nothing up front in his car other than that.

15 Q: So when you popped the trunk open what did you see?

16 A: The plaid tote bag.

17 Q: What kind of bag was it?

18 A: Plaid.

19 Q: Was it insulated?

20 A: It is not insulated it is kind of a it is not nylon.
21 I do not know how to explain what it is.

22 Q: Was the bag open?

23 A: It was open on top. It's more of a plastic tote bag.

24 Q: Did you see what was inside of it?

25 A: No you could not see exactly what was inside of it,

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 but when I reached in to touch it I could feel the large
2 bricks.

3 Q: When you felt, when you feel large brick did you
4 know what that was?

5 A: Well yeah I suspected that to be a large amount of
6 some type of illegal drug.

7 Q: Did you ask Mr. Toney what it was?

8 A: Yes I pulled that bag toward me, put my hand on top
9 of it because there was some jeans or some sweat pants or
10 a shirt or something laying on top. I do not remember
11 exactly what it was it might of been something other than
12 that.

13 Q: Did Mr. Toney tell you what it was at that time?

14 A: Not at that time.

15 Q: What did he do?

16 A: At that time when I put my hand on it and I looked
17 at him and I said what is this. Well he took off running.

18 Q: So he ran?

19 A: He ran yes.

20 Q: He abandoned that bag?

21 A: He abandoned the bag.

22 Q: How far did he run?

23 A: Twenty yards maybe it was not very far, fifteen
24 yards. He ran beside my vehicle and then behind my vehicle
25 like he was going to run up the entrance ramp to the

(Proffer Brad Lawson-Exam by Mr. Farr)

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1 interstate. Once I commanded him to get on, he ended up
2 getting on the ground with out any problems.

3 Q: Did you ask him again what was in the bag?

4 A: I did later but at that point he actually
5 volunteered at saying there is fifteen pounds in the bag and
6 I did it as a favor. I went to pick it up for somebody in
7 Columbia.

8 Q: So he said, basically he knew what was in the bag?

9 A: Yes.

10 Q: He did it for a favor? He said he was getting paid?

11 A: Yes.

12 Q: So did you ever handcuff him?

13 A: Yeah oh yeah he was handcuffed whenever he gave up
14 and I got him he was on the ground he was handcuffed at that
15 point. Never taken out of handcuffs.

16 Q: Where did you put him after you handcuffed him?

17 A: I actually escorted him. I walked him back up to in
18 front of my vehicle sort of but off to the side. Had him sit
19 down on the ditch bank right there. Then the Deputy Zeller
20 and Hause arrived.

21 Q: So then he was under arrest. Did you make any
22 threats or promise for his safeness that he would volunteer?

23 A: Any threats or promise no. He kept talking and then
24 Deputy Zeller actually read him his Miranda Rights from a
25 card out of his wallets.

(Proffer Brad Lawson-Exam/Cross by Ms. Wise)

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1 Q: Before your words that was video or after?

2 A: It was after, the initial was him making statements
3 as soon as the stop was over I guess as soon as I handcuffed
4 him. Once I walked him back up to the vehicle and sat him
5 down on the ditch line. Explaining to Deputy Zeller and
6 Hause what I had what was going on. Deputy Zeller read him
7 his Miranda Rights.

8 Q: Did he understand his Miranda Rights?

9 A: Yeah he plainly stated that yes he understood and he
10 kept ...

11 Q: Did he waive them?

12 A: Yes.

13 Q: So he waived his Miranda Rights?

14 A: Yes.

15 Q: That he was more than willing to make a statement?

16 A: Yes, he mentioned again fifteen pounds again and
17 that he was doing he went to pick it up for somebody and he
18 actually said he wanted to deliver it. At one time he said
19 he thought he was set up he made a comment that he thought
20 somebody set him up. That that is how we knew about it which
21 was false and he wanted to deliver it to the guy in
22 Florence.

23 Q: I am going to take this way back just one quick
24 question. Mr. Toney at first said it took you thirty minutes
25 and then Mr. Toney then corrected me and said that as soon

(Proffer Brad Lawson-Exam/Cross by Ms. Wise)

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1 as you pulled it out you called the rental company. Is that
2 true and accurate?

3 A: As soon as I pulled him out, that is when I noticed
4 the rental company.

5 Q: How long did it take you a couple of minutes?

6 A: Yeah it was a few minutes before I called the rental
7 company. Like I said I am just trying to figure out myself
8 and explain why I stopped him and figure out what is going
9 on first.

10 Mr. Farr: That is all I got Your Honor answer any
11 questions Ms. Wise has.

12 Ms. Wise: Thank you Officer Lawson please bare with me
13 I have a bunch of papers here.

14 (Cross by Wise)

15 Q: Going back to what Mr. Farr was asking you about
16 when you stopped Mr. Toney. Your original purpose for the
17 traffic stop was an improper lane violation, correct?

18 A: Yes ma'am for lane change.

19 Q: What statue would that fall under? Do you know off
20 the top of your head and I apologize if I caught you off
21 guard.

22 A: You probably did on that right this minute because
23 I have not dealt with --- I do not have that in front of me.
24 I do not know ever traffic statue by number right off hand.
25 I know some but not every one of them.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: You remember your incident report that you filled
2 out as a result of this traffic stop?

3 A: Yes ma'am.

4 Q: When did you feel that incident report out?

5 A: I do not know what day. It would have been a few
6 days afterwards that I actually did do the actual report. It
7 was probably several days I went in and did some things to
8 the report. It was not that same day.

9 Q: So it was some time after that?

10 A: Yeah it was a little bit of time after.

11 Q: You testified earlier that you were sitting
12 stationary on I-20 on the one twenty nine mile marker?

13 A: Yes ma'am.

14 Q: You pulled Mr. Toney over for improper land
15 violation?

16 A: Yes ma'am.

17 Q: When you pulled Mr. Toney over he gave you
18 immediately his license and rental agreement, correct?

19 A: That is correct.

20 Q: Now you have watched the video in court today. The
21 sound monitor it is a little shot correct?

22 A: It is a little difficult.

23 Q: When you turn the sound up you are able to hear
24 words very distinctively correct?

25 A: Yes.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: We saw on the time stamp that your video clock and
2 I am sorry I am very ignorant about the way traffic stops
3 are recorded in law enforcement vehicles, but it looks like
4 the video was turned on around 12:19:18 does that sound
5 correct and you want me to turn this on we can go through it
6 if you would like to look at it we are going through it.
7 What ever you prefer.

8 A: It does not matter.

9 Q: Well we will just say that you are in agreement that
10 it was 12:19:18 when the video was turned on?

11 A: If you say so that is fine.

12 Q: You were clocked at going because I saw the miles
13 per hour clock at the top of the screen. You were clocked
14 at going eighty five miles per hour when it was turned on
15 correct?

16 A: That is possible I do not know if that thing is
17 accurate I do not know but if you say then I will.

18 Q: Then at 12:19:32 we see you clocked at one zero
19 seven mile per hour correct?

20 A: I honestly do not know I have never payed attention
21 to that on there.

22 Q: At 12:19:37 we saw on the big screen and if you want
23 to look at it again we can, but we see what you describe as
24 the improper lane change correct?

25 A: I do not understand about this camera --- I will

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 explain this to you since we did not turn it on. This thing
2 does not show the initial part that I see. It comes it turns
3 on when you turn the blue lights on and then it because it
4 is always recording. So it backs up about I do not know if
5 mine at that point was set thirty seconds or a whole minute.
6 I know there is a setting on it.

7 Q: That is what I wanted to ask you about because we do
8 not see the initial lane change.

9 A: You are not going to.

10 Q: We see that second one correct, what you said was
11 the second one?

12 A: You see parts of the second one I guess from a
13 distant as I am trying to catch up.

14 Q: Yes sir when you are going one hundred and seven
15 miles per hour?

16 A: I guess you have to go fast to catch up with
17 someone.

18 Q: The video is turned on around 12:19. Why is it that
19 we do not hear the internal mic the wireless mic turned on
20 until about three minutes later?

21 A: That is a good question as far as we did have some
22 issues with our mics at one time. Now I do not remember if
23 it was around at that time frame myself and Deputy Hause we
24 had the same types of camera systems in the vehicle. We both
25 started having issues with our mics I do not know if it was

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 around the same time frame. Now anyone that has a camera
2 system from the time you see the camera cut on the audio
3 seemed to have a delay as well. Now if you are referring to
4 when I walked up to the car there is no audio.

5 Q: Yes sir.

6 A: If I am not mistaken I walked back to my vehicle is
7 that correct?

8 Q: I do not think so.

9 A: I think I had to check on my mic maybe I noticed
10 that there was a problem.

11 Q: What I recall is at this is time stamp 12:20:15 we
12 hear the internal mic sound come on but we do not hear the
13 wireless mic. This is when Mr. Toney is pulled over and
14 around 12:21:50 correct me if I am wrong Mr. Toney hands you
15 his driver information from the testimony we heard he handed
16 you his license and his rental agreement correct?

17 A: That is what he handed me.

18 Q: So is it fair to say within one in a half, two
19 minutes max you have in your hands his license and his
20 rental agreement or the rental agreement for that vehicle?

21 A: Yes ma'am.

22 Q: Did you look over that rental agreement when you got
23 it?

24 A: Yes I glanced at it.

25 Q: You saw that he was not listed on that rental

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 agreement?

2 A: Absolutely.

3 Q: Then we have about 12:22 on the time stamp if you
4 will recall the wireless mic turned on and so why was the
5 mic -- Tell me are you able then to hear what is being said
6 between law enforcement and whoever they are speaking with?

7 A: Yes.

8 Q: So we are able to hear that now and shortly after we
9 hear the wireless mic turned on so that we are able to hear
10 the conversation between you and Mr. Toney. We see that you
11 tell and we hear that you tell Mr. Toney to step out of the
12 vehicle correct?

13 A: Yes ma'am.

14 Q: You explain why he is stopped for an improper lane
15 traffic violation correct?

16 A: Yes ma'am.

17 Q: At about 12:22 about three minutes after questioning
18 begins correct? About 12:22 about three minutes then you
19 start questioning Mr. Toney?

20 A: Yes.

21 Q: Letting him know that he has made an improper lane
22 change, 12:23 we will see and we hear on the video that Mr.
23 Toney he had been in Columbia that morning correct?

24 A: That is correct.

25 Q: About 12:24 we are able to hear Timothy Sanders name

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 mentioned if we turn the volume way up correct?

2 A: Yes.

3 Q: We hear you say the only place in Hartsville to rent
4 a car is at Enterprise correct?

5 A: I am sorry.

6 Q: Only place in Hartsville to rent a car is in
7 Hartsville, excuse Enterprise?

8 A: That is the only one that I know of is Enterprise
9 yes ma'am.

10 Q: Did you ever inquire into whether why this vehicle
11 was rented from Florence instead of the Enterprise in
12 Hartsville? I guess not from Mr. Toney but potentially from
13 Mr. Sanders.

14 A: No I never asked someone.

15 Q: There could of been a promotion at the Avis Budget
16 Rent-A-Center correct?

17 A: Could have been a what.

18 Q: A promotion by one day get two free for all we know?

19 A: I guess it could have been.

20 Q: About 12:25 and this is where this happened here
21 about 12:25 this is about six minutes into this stop we hear
22 you ask Mr. Toney well why did not Timothy Sanders let you
23 use his car. We hear some conversation about Mr. Toney
24 saying his vehicle is not in working condition correct?

25 A: Yes there was a conversation about both of them.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: So Mr. Toney told you his vehicle was out of
2 commission he did not have a working vehicle?

3 A: That is what he told me yeah.

4 Q: Then about eight to nine minutes into the stop a
5 whole bunch of questioning begins. You ask Mr. Toney about
6 his prior convictions correct?

7 A: I did.

8 Q: He reveals the '99 drug charge correct?

9 A: He did.

10 Q: When you asked him right?

11 A: I do not remember what year he told me as far as on
12 the side of the road.

13 Q: But he revealed a conviction when you asked right?

14 A: He revealed a conviction for marijuana charges yes.

15 Q: About 12:29 or so it looks like he license begins to
16 be run correct?

17 A: If you say so.

18 Q: It sounds like again his prior record is discussed
19 some more. We hear conversation of child support coming in
20 correct?

21 A: He mentioned something about child support.

22 Q: On the video you distinctly hear not talking about
23 unemployment and child support issues together. At one point
24 the unemployment office in Columbia is discussed later on
25 the child support is discussed.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 A: He actually mentioned child support at the very
2 beginning if I am not mistaken. It was very brief, very
3 brief.

4 Q: About 12:30 this eleven or so minutes into the stop.
5 You begin asking Mr. Toney if there is anything illegal in
6 the car, marijuana correct?

7 A: Yes ma'am.

8 Q: Any drugs correct?

9 A: Yes.

10 Q: Heroin correct?

11 A: Yes.

12 Q: Cocaine correct?

13 A: Yes.

14 Q: What does Mr. Toney tell you?

15 A: He tells me no there is no drugs.

16 Q: You ask him about gun, explosives, alcohol correct?

17 A: Yes.

18 Q: What does he tell you?

19 A: No.

20 Q: You then go right back and ask him about drugs
21 correct?

22 A: I do but I think I was in interrupted by I do not
23 know if it was dispatch calling me on the radio or my
24 partner calling me on the radio. So yes then I answered them
25 of course and then I go back to finishing what I was in the

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 middle of.

2 Q: But he answered you again correct?

3 A: Yes.

4 Q: What does he say?

5 A: He tells me no.

6 Q: You ask him who his old lady is correct?

7 A: I think so.

8 Q: Yes sir and that is on the video you can hear on the
9 sound. You ask him who is cousin is and who his friends are
10 correct?

11 A: Yes.

12 Q: You ask him two distinct names on there specifically
13 correct? Whether he knows them, whether he is related to
14 them correct?

15 A: I do not yes, yeah I did.

16 Q: You then asked him again are there any drugs in the
17 car correct?

18 A: I asked him a couple times yes.

19 Q: You asked him again is there any cocaine in the car
20 correct?

21 A: I do not know that I asked him cocaine twice, but
22 again like I said I was interrupted with the thing on the
23 radio so I may actually been absolutely could have.

24 Q: Yes sir and shortly after that we then heard Mr.
25 Toney say I am hungry and I need to go to the bathroom

1 correct?

2 A: He does mention that.

3 Q: About 12:30 1'ish we are about twelve or so minutes
4 into this stop. After he says he needs to go to the bathroom
5 you then say again you got anything illegal in the vehicle
6 correct?

7 A: Yes and why is because when I asked him about
8 anything that could be illegal in the vehicle and he looked
9 back at the car when I mentioned marijuana, makes me think
10 there is possibly marijuana in the car. Well soon after that
11 he is wanting to go to a bathroom.

12 Q: Yes sir and I understand that. How come we did not
13 see that in the video?

14 A: We are off to the side instead of standing in front
15 of him between vehicles which is pretty dangerous if someone
16 hits the rear of my vehicle that is why we are off to the
17 side.

18 Q: Then when did you all go off to the side?

19 A: Went on to the side whenever I actually I got back
20 in my car either to grab my warning ticket, use my radio.

21 Q: About eight minutes or so after the stop I believe
22 it is twelve minutes after the stop. I believe it is
23 12:27:04 on the time stamp correct?

24 A: It could have been me trying to get my radio or hear
25 better on the radio or something in the car.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: Yes sir but in those first eight minutes do we ever
2 see Mr. Toney looking back at the vehicle or we can not
3 really see correct?

4 A: No you can not see everything no.

5 Q: Do we see him fidgiting or shaking as visibly as
6 papers in his hands as you were explaining in the video?

7 A: You are probably not going to.

8 Q: Going back about 12:32 we can hear on the audio Mr.
9 Toney saying how nervous he gets around cops because he was
10 beat up by one correct?

11 A: There was different times we talked about him being
12 so nervous, because I asked him.

13 Q: If you want me to turn on the video I will be more
14 than happy to.

15 A: No that is fine.

16 Q: About 12:32:03 you again ask him about cocaine,
17 crack, heroin, drugs correct?

18 A: Are you going to another time from what you was on
19 a minute ago?

20 Q: 12:32:03, yes sir this a completely different time.

21 A: I do not remember asking him, what are you on the
22 third time. I am not real sure I do not think I asked him
23 cocaine and all that three times.

24 Q: That is fine we can turn it up if you want whatever
25 you all want to do. Again he says no. 12:32 about fifteen

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 (seconds later you hear the audio again same set of questions.
2 are asked he says no, correct?

3 A: He says no about what I ask.

4 Q: Then you asked can I search the car correct?

5 A: I guess.

6 Q: What did he say?

7 A: He said you mean a general search and I said no the
8 entire car. I was not going to take the general search as
9 yeah that is ok for me, because I did not want to do a
10 general search I wanted to search the car.

11 Q: Yes sir and he says no?

12 A: Yeah and then I can not allow that it is not my car.

13 Q: Ok, then 12:33 excuse about 12:33:35 into the stop
14 we hear you all talking about how he really and truly has to
15 be a permissive driver on the rental agreement correct?

16 A: I'm sorry say that again I am sorry.

17 Q: We hear you telling Mr. Toney that really and truly
18 he has to be a permissive authorized driver on the rental
19 agreement?

20 A: Yes if I am not mistaken after I spoke to the rental
21 company.

22 Q: I apologize sir I have not heard on the video at
23 this point rental company coming in.

24 A: Yeah I may have told him that twice. I know I
25 mentioned something to him after I talked to the rental

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 company see I could have told him that he is not permissible
2 to drive.

3 Q: Shortly after that do you remember Mr. Toney telling
4 you that he needs water because he has cotton mouth?

5 A: Yeah that is because I had talked to him about being
6 so nervous. Yes and yeah he did mention he needs water
7 because he did have cotton mouth.

8 Q: Then after that and I know and we can turn on video
9 if you want to see the time stamp but we hear you or we hear
10 a voice on the telephone with the rental company about
11 12:34:23 correct?

12 A: Yes.

13 Q: About fifteen minutes into the stop correct?

14 A: I do not know how long it was into the stop but if
15 you say so that is fine.

16 Q: About 12:36 this about seventeen minutes into the
17 stop. Now we have a representative from the rental company
18 give permission to search the car correct?

19 A: Yeah he told me that on the phone that the contract
20 was null void however it was put, to search it and tow it..

21 Q: About two minutes later we can hear a dog barking in
22 the back of the car correct?

23 A: Yes.

24 Q: Who's dog was that?

25 A: That is probably mine.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: Ok can you explain to me what the dog was doing. Is
2 that your drug dog? And I am sorry I am ignorant ...

3 A: Yes.

4 Q: Why wasn't the dog being used in this stop?

5 A: Well the reason why I did not use the dog was, I am
6 by myself. I like to have a partner watching the roadway
7 because you can see through the video we are parked somewhat
8 close to the shoulder of the road to the side of the road.
9 So I like to have a partner watching that roadway behind me
10 for mine and my dog's safety. I did not have that luxury at
11 that particular moment. I felt like I could not watch my dog
12 the way I needed to for having to watch him or vise versa.
13 So that is why I did not use my dog. That is why I elected
14 not to use my dog.

15 Q: On the time stamp you will see about at 12:40 we
16 hearing you say to Mr. Toney, you ain't getting so nervous
17 you want to run. Does that sound correct?

18 A: Yes I did say that because at one point he actually
19 turned to act like he wanted to walk back to the car during
20 all of this. He turned and made a step or two with his back
21 to me like he was going to walk back to the car and that is
22 whenever I said that former statement. That is whenever,
23 because I know he did turn at one particular spot right
24 there whenever we were talking about that to walk back
25 toward the vehicle.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: Do you remember Mr. Toney saying shortly after what
2 you just discussed with me about telling him do not get so
3 nervous you want to run. I wish I would have known I was in
4 violation of the rental agreement, about 12:40 on this
5 video.

6 A: Do I recall him saying that?

7 Q: Him saying I wish I would have known that I can not
8 drive this car?

9 A: I do not know he may have.

10 Q: Shortly there after do you remember saying to him is
11 there anything in the car?

12 A: I may have asked that again before I actually went
13 up there. I will ask anybody before I actually go to do the
14 physical searching of the car. Give them another chance in
15 case they want to own up to something that is in there. Yeah
16 absolutely.

17 Q: And then he answered you and you respond back why
18 did you not want me to search the car?

19 A: Yeah I probably did, I did.

20 Q: About a minute and a half after that this is about
21 12:41:27 on the video we see you walk to the passenger side
22 of the car to begin the search correct?

23 A: Yes ma'am.

24 Q: You started at the passenger side correct?

25 A: I did.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: You walked around the back of the car pass the trunk
2 to the driver side to then search correct?

3 A: Yes ma'am.

4 Q: Mr. Toney never tries to run when you approach trunk
5 when you are walking around the vehicle like that correct?

6 A: He does not try to run at that point he does
7 actually move and some different body changes but no as far
8 as trying to run no.

9 Q: Yes sir but he is back in the line of sight at this
10 point on the dash cam correct?

11 A: Yes he is back into the line of sight.

12 Q: You begin searching the driver's side do not turn up
13 anything correct?

14 A: That is correct.

15 Q: And then you approach the trunk we see you lay your
16 hand, you open the trunk we see you put your hand down on
17 the tote bag correct?

18 A: Yes ma'am.

19 Q: And you ask him what is in the bag correct?

20 A: Yes.

21 Q: And that is when we see him walk correct?

22 A: That is when he bolts.

23 Q: Where did he bolt to?

24 A: In between the roadway and my vehicle on the
25 driver's side and then behind my vehicle.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: On the video we see the time stamp him bolting
2 running about 12:44:38 correct?

3 A: If you say that is the time then yes.

4 Q: Ok and then we saw it on the video I want to say it
5 was a scuffle but we saw everybody getting themselves
6 situated, getting him secured as you testified in the same
7 place. At what point did other officers arrive on scene?

8 A: I do not know how much time. It was not very long.

9 Q: How many officers were on the scene?

10 A: Me initially until I got him detained, then two more
11 came.

12 Q: Were there ever --- was there another officer?

13 A: I think there was just three of us. Now later on
14 some other officers came whenever he wanted to deliver the
15 stuff the marijuana to the guy in Florence so more people
16 and that just never happened. But as far as the whole time
17 that you see here it is just three of us. It is me, Deputy
18 Zeller, and Deputy Hause.

19 Q: After Mr. Toney ran you are saying you cuffed him
20 correct?

21 A: Yes ma'am.

22 Q: And that was immediately once you got him or once
23 you got him I do not know what the proper protocol or
24 language is but that was immediately once you got him under
25 you alls control, correct?

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 A: Yes ma'am.

2 Q: So he is handcuffed and then there is some strings
3 of some other questioning correct? While he is handcuffed
4 such as where are you taking this marijuana correct?

5 A: Yeah that came up of where you staying where you got
6 it from.

7 Q: We hear you asking Mr. Toney you did not think this
8 was dirty correct?

9 A: Ask him what?

10 Q: You did not think it was dirty talking about the
11 marijuana correct?

12 A: I am not sure what you are talking about thinking
13 what was dirty.

14 Q: We can hear on the audio if we crank the audio up
15 someone and it might not be you hear and I believe it is you
16 saying, you do not think this was dirty correct? If you do
17 not remember that is fine.

18 A: I do not know what you mean. I do not, that could
19 have been in some other conversation I am not really sure.

20 Q: Ok well shortly after that this is about 12:49:40
21 into the video into the video on the time stamp of the
22 video. Do you remember telling Mr. Toney I was fixing to let
23 that dog out on your butt correct?

24 A: Yeah I probably did I said that before.

25 Q: And for a couple of minutes conversation is going on

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 between Mr. Toney and law enforcement correct?

2 A: Yes.

3 Q: Not until 12:51:07 on the time stamp do we hear Mr.
4 Toney's Miranda Rights being read, correct?

5 A: I do not know what time they were read I guess but
6 yeah they were read somewhere along that time frame yes.

7 Q: Immediately after them being read Mr. Toney is being
8 --- you hear a dog barking in the background, three law
9 enforcement officers are on scene. We hear someone ask Mr.
10 Toney are you sure you want to keep talking and he replies
11 yes sir correct?

12 A: Yes he did.

13 Q: What did he say after that?

14 A: As far as I can remember he mentioned it being
15 fifteen pounds again. He wanted to deliver the marijuana to
16 Mr. Sanders at the airport.

17 Q: How much longer were you all on scene and when I say
18 you all I mean law enforcement. How much longer was law
19 enforcement on scene after the time we saw the video turn
20 off?

21 A: How much longer after the video is turned off I am
22 not sure. We were trying to set something up to try and make
23 this delivery happen. I do not know how much longer. I do
24 not know I would be lying if I told you a time because I
25 honestly do not know.

(Proffer Brad Lawson-Cross by Ms. Wise)

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1 Q: Did Mr. Toney receive a traffic ticket violation as
2 a result of this stop?

3 A: He was issued a warning ticket as a result of this
4 stop not a ticket or a fine, a warning.

5 Q: When was he issued that?

6 A: Well it was wrote down on the side of the road but
7 I did not it did not get handed to him on the side of the
8 road. It got handed to him after I do not know if I give it
9 to him on the way to the jail or if I gave it to him after
10 the jail but it was sometime. I think I might of handed it
11 to him on the way to the jail because I am the one that
12 transported him.

13 Ms. Wise: That is it I appreciate you answering my
14 questions.

15 Mr. Farr: I have no further questions Your Honor. I
16 would like to call Mr. William McKenzie to the stand.

17 The Court: How long do you think Mr. McKenzie is going
18 to be on the stand? How long do you think he is going to be
19 up there?

20 Mr. Farr: For me probably ten twelve minutes.

21 The Court: Alright we are going to take a two minute
22 break.

23 (Court Break)

24 (Court in session)

25 The Court: Alright I am sorry you can call your next

(Proffer William McKenzie-Exam by Mr. Farr)

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1 witness.

2 Mr. Farr: I would like to call Will McKenzie to the
3 stand your honor.

4 Clerk: Place your left hand on the Bible and raise your
5 right hand. Do you solemnly swear that the testimony you
6 give this court is the truth, the whole truth, and nothing
7 but the truth so help you God?

8 McKenzie: I do.

9 **(Exam by Farr)**

10 Q: Can you please state your name please?

11 A: William McKenzie.

12 Q: What is your occupation?

13 A: CSR, customer service representative.

14 Q: Who is your employer?

15 A: Avis Budget Rental Car or Avis Budget.

16 Q: How long have you been with them?

17 A: Six years.

18 Q: What are your typical duties.

19 A: I do certified clerical work, I do for certain cars.

20 Q: Clerical work you mean you keep like business
21 records right?

22 A: Oh yeah.

23 Mr. Farr: Your Honor may I approach?

24 The Court: Yeah.

25 Q: I am giving you what is State's exhibit number

1 three. Do you know what that is? Yes or no.

2 A: Yes.

3 Q: How do you recognize that?

4 A: That is a standard contract when you rent the
5 vehicle.

6 Q: Who is rented as?

7 A: Timothy Sanders.

8 Q: You know who Timothy Sanders is?

9 A: He is a gentlemen we rented a car back on the 6th of
10 November.

11 Q: Do you see Jameco Toney's name on there?

12 A: No sir.

13 Q: To have a extra to have another person passenger or
14 to drive it. Is there an extra charge?

15 A: To drive yes extra paper work and extra charge.

16 Q: How was this paid?

17 A: This was paid on a credit card.

18 Q: Is it normal to pay with a credit card?

19 A: On that location yes sir. We only take payment on
20 credit cards.

21 Q: So no cash?

22 A: Only on return.

23 Q: So you can pay with cash on return?

24 A: You can pay with cash.

25 Q: Was there any promotion that day?

(Proffer William McKenzie-Exam by Mr. Farr)

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1 A: No sir.

2 Q: So you had to pay with the credit card?

3 A: Yes.

4 Q: Is there a signature on that?

5 A: Yes sir.

6 Q: Whose signature is on that?

7 A: I believe it to be Mr. Sanders.

8 Q: Is there a TS?

9 A: Yes.

10 Q: Is there a lot of TS on there?

11 A: A lot of TS.

12 Mr. Farr: May I approach Your Honor.

13 The Court: Yes sir.

14 Q: Can you read that part right there for me?

15 A: No additional operators are authorized to drive
16 without Budget's prior written approval, written terms and
17 conditions of the vehicle rental vehicle applicable to state
18 laws.

19 Q: So that says no other authorized driver may drive
20 without you alls approval?

21 A: Without written approval.

22 Q: Written approval. Is there an extra charge for
23 extra?

24 A: Thirteen dollars a day.

25 Q: Thirteen dollars. Does this one have an extra?

(Proffer William McKenzie-Exam by Mr. Farr)

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1 A: No sir.

2 Q: How do you know that?

3 A: They would be listed in the charges on the right
4 hand side.

5 Q: And there is no extra charge?

6 A: No sir it is just the hourly and daily.

7 Q: Did you receive a phone November 10, 2010 from Mr.
8 Brad Lawson?

9 A: Yes sir.

10 Q: What was that conversation about?

11 A: He informed me that he stopped a vehicle with an
12 unauthorized driver and I informed him --- He asked if he
13 could search the vehicle. I told him yes he could search the
14 vehicle, but the unauthorized driver needed to have the
15 vehicle towed and also to not let him drive under the
16 contract.

17 Q: Is that the normal procedure?

18 A: Yes sir.

19 Q: Will you go into the little details of your normal
20 procedures with situations like that?

21 A: For that situation?

22 Q: No when somebody is not an authorized driver and
23 they get caught on it.

24 A: Any unauthorized driver if it was to come down to
25 it, an officer can take them to jail for driving a stolen

(Proffer William McKenzie-Exam by Mr. Farr)

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1 vehicle.

2 Q: November 10, 2010 when Mr. Brad Lawson called, did
3 you give him permission to search?

4 A: I sure did.

5 Q: Did you also give him authority to tow the car?

6 A: Yes I did.

7 Q: Do you also give out terms and conditions to Budget?

8 A: Yes sir.

9 Q: You also have them on your computer?

10 A: Yes.

11 Q: For public access?

12 A: Yes.

13 Q: When somebody is authorized to drive. Who in that
14 authorized family may drive?

15 A: A spouse or whatever you call it.

16 Q: Domestic partner?

17 A: Domestic partner.

18 Q: And that is the only people in that family may
19 drive?

20 A: Correct.

21 Q: Is there also repossessing in that terms and
22 condition?

23 A: Yes sir.

24 Q: How may one have their car repossessed?

25 A: Any unlawful condition or by having an unauthorized

1 driver operating the vehicle.

2 Q: At anytime?

3 A: At anytime.

4 Q: Without notification?

5 A: Correct.

6 Q: These terms and conditions are handed to the
7 authorized driver and they have to sign for this correct?

8 A: Well they signed the contract in the jacket.

9 Q: So the authorized driver would have this?

10 A: Yes sir.

11 Q: Has the terms of conditions changed since 2010?

12 A: A few words like domestic partner.

13 Mr. Farr: I have no further questions Your Honor.

14 The Court: Ms. Wise.

15 Ms. Wise: I have no questions Your Honor.

16 The Court: Ok you can step down.

17 Mr. Farr: Your Honor is it ok if he leaves?

18 The Court: You have any problem if he leaves?

19 Ms. Wise: I have no objections Your Honor.

20 Mr. Farr: The last person the State would like to call
21 Your Honor is Mr. Zeller.

22 Clerk: Please place you left hand on the Bible and
23 raise your right. Do you solemnly swear the testimony you
24 give this court will be the truth, the whole truth, and
25 nothing but the truth so help you God.

(Proffer David Zeller-Exam by Mr. Farr)

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1 Zeller: I do.

2 (Exam by Farr)

3 Q: Can you please state your name please?

4 A: David Zeller.

5 Q: What is your occupation?

6 A: Deputy Sheriff, Darlington County Sheriff's Office,
7 investigator for the Sheriff's Office.

8 Q: How long have you been with the Darlington County
9 Sheriff's Office?

10 A: Almost seven years.

11 Q: Have you always been that?

12 A: Yes sir.

13 Q: Have you had any previous law enforcement experience
14 before this?

15 A: Not to speak of no sir.

16 Q: What are your present duties?

17 A: I am a sergeant in investigations, criminal
18 investigation for the Sheriff.

19 Q: How did you become involved on November 10, 2010?

20 A: Well we had a criminal intervention unit in our
21 Sheriff's Office which they still currently have, but we
22 were all working the interstate that day. Corporal Lawson
23 and Kyle Hause was designated you know mainly to the
24 interstate. Then we had a couple other guys that worked kind
25 of street crime unit interstate and any type of criminal

1 element interstate or in our county.

2 Q: Who was supervising you that day?

3 A: Corporal Lawson.

4 Q: And you were on the highway correct?

5 A: Yes sir.

6 Q: What were you doing on the highway that day?

7 A: We were looking for any type of violation out on the
8 interstate to maintain the safety of the interstate.

9 Q: Did you have somebody pulled over around about 12:35
10 that day?

11 A: I had somebody right at the same time that Corporal
12 Lawson had somebody.

13 Q: Did he ever radio you during that time or did you
14 radio him?

15 A: I do not remember I think we spoke on the phone or
16 tried to get together on the radio but all three of us had
17 a car stopped at one time so it was kind of chaotic. I think
18 all three of us had something at one time.

19 Q: When did you show up on the scene?

20 A: I showed up I heard Corporal Lawson come across the
21 radio with some type of duress saying that he needed help,
22 he needed one of us down there. I stopped immediately what
23 I was doing cut my stop lose and immediately went to
24 Corporal Lawson.

25 Q: When you showed up was he in handcuffs?

(Proffer David Zeller-Exam by Mr. Farr)

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1 A: He was.

2 Q: Did you read him Miranda Rights?

3 A: Yes I did.

4 Q: How did you do that?

5 A: From a card.

6 Q: Do you have that card today?

7 A: Yes sir I keep it in my wallet.

8 Q: Can you show me?

9 A: Sure.

10 Q: Is that the normal card that you use when you pull
11 people over or read Miranda Rights?

12 A: Yes sir it is the one I got from the academy.

13 Q: I was just making sure that you still had it on you
14 today. When you pulled up was the defendant under any
15 influence of alcohol or drugs to not understand what was
16 going?

17 A: I do not think so.

18 Q: Did he have any physical or mental disabilities that
19 impair him from understanding his Miranda Rights?

20 A: No sir.

21 Q: Did he at that time waive his Miranda Rights to you?

22 A: He did, he just kept on he sighted the other
23 incidents while I was trying get the Miranda Rights out.

24 Q: He made it like monetary statements? So he was more
25 than willing to volunteer on these statements?

(Proffer David Zeller-Exam/Cross by Wise)

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1 A: Yes sir.

2 Q: Did you ever promise him anything for saying this?

3 A: No.

4 Q: Did you ever threaten him for his statements?

5 A: No sir.

6 Q: To the best of your knowledge did the defendant's
7 statements were they truly and voluntarily given?

8 A: Yes sir.

9 Mr. Farr: That is all I have Your Honor. Please answer
10 any questions Ms. Wise might have.

11 (Cross by Wise)

12 Q: Were you present during any discussions between Mr.
13 Toney and law enforcement about potentially delivering these
14 alleged drugs to Mr. Timothy Sanders?

15 A: Yes ma'am.

16 Q: There was discussion of that?

17 A: I do not know if it was to Timothy whoever I do not
18 know that part of it. All I know is I remember him saying I
19 will deliver it right now. He said he will cooperate in any
20 way. But I mean you have to understand, if I may Your Honor.

21 The Court: Yes.

22 A: When I showed up he was already in handcuffs and
23 that whole part of the video that you saw. That was all done
24 just with Corporal Lawson. When I showed up and I said hey
25 lets Mirandize him so we did. I said do you understand and

(Proffer David Zeller-Cross by Ms. Wise)

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1 I think you can hear on the video he said yes. He just
2 started spouting off about wanting to go deliver the
3 marijuana and how much it was.

4 Q: Have you had any prior interactions with Mr. Toney
5 prior to this?

6 A: Never.

7 Q: That was the first time you met him and seen him?

8 A: To my knowledge yes ma'am.

9 Ms. Wise: That is it no further questions Your Honor.

10 Mr. Farr: Nothing further from the State Your Honor.

11 The Court: Ok, anything from.

12 Ms. Wise: Nothing further Your Honor.

13 The Court: Ok. Do either side want to argue anything?

14 Ms. Wise: I would like to Your Honor. Can I ask just
15 for scheduling purposes. Would you like for me to argue the
16 evidence suppression motion in conjunction with the Jackson
17 v Denno motion?

18 The Court: What ever you are more comfortable. You can
19 bifurcate or you can do it all together.

20 Ms. Wise: Ok do you have a preference? I will just go
21 ahead and compile it all together. Might we approach the
22 bench for one second I believe there might be an issue
23 involved.

24 The Court: Ok

25 **(Counsel approaches the bench)**

(Motion by Ms. Wise)

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(Defendant's motion)

Ms. Wise: Thank you Your Honor I am going to address the two motions separately. The first motion I am going to address is the motion to suppress the evidence obtained as the result of an unlawful search of the vehicle. The second motion that I am going to argue is that my client's statements were taken involuntary and any waiver that he might of give was done so without proper doing. As far at the motion to suppress the evidence I am going to look at two different things. First the propriety of the traffic stop, second reasonable suspicion. In regards to the propriety of the traffic stop. Terry vs Ohio I can provide you with the case log if you would like, requires a two prong test. First that whether the officers action was justified at its inception and second whether the officer subsequent actions were reasonably related and scoped to the circumstances that justified this stop. In response that first prong the officers action being justified at its inception. I believe that the testimony shown today including the evidence that we saw on the dash cam video shown that there existed no probable cause for Mr. Toney to even be pulled over in the first place. I believe that the probable cause that we were able to decipher out of today's testimony, Officer Lawson explained was an improper lane change violation. We did hear my client say the trooper

(Motion by Ms. Wise)

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1 unable to hear on the dash cam video that it was because the
2 vehicle was stolen but we hear no evidence from law
3 enforcement supporting that. In regards to an improper lane
4 change, I believe that South Carolina law defines an
5 improper lane change and this is South Carolina code 56-5-
6 1900. As a vehicle shall be driven as nearly as practical as
7 possible entirely within a single lane and shall not be
8 moved until the driver has first ascertained that such
9 movement can be done with such safety. I believe that Mr.
10 Toney's testimony today clearly establishes that he did this
11 lane change clearly with safety. He explained how he checked
12 his rear view mirror, he I believe he said that he checked
13 both the side view mirrors. We heard evidence that there was
14 on traffic problems created as a result of this lane change
15 and we heard testimony that or we know testimony was
16 presented that many other drivers on the road were not put
17 in any sort of danger or traffic patterns were jeopardized.
18 Therefore I am arguing that there was no probable cause
19 based off of South Carolina statute for which Mr. Toney was
20 issued the citation for Mr. Toney to even receive this
21 traffic violation and therefore I believe leaving any
22 probable cause that there might of been. I will next argue
23 that if you do deem that there was in fact a traffic
24 violation so giving Officer Lawson probable cause to pull my
25 client over. I believe that this stop was measurable

(Motion by Ms. Wise)

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1 extended at the time reasonably necessary to effectuate its
2 initial purpose. It was not limited as Terry necessitates in
3 the scope and duration thus violating the defendants
4 constitutional rights and again at anytime if you would like
5 any of this case file I have it already I can provide it to
6 you. I have provided the prosecution with this case log. In
7 regards to scope, State vs Percardo is a 2005 South Carolina
8 case that I can provide you a copy with if you would like.
9 Sets forth the an investigative methods employed should be
10 the least intrusive needs reasonably available to verify and
11 dispel the officers suspicion in a short period of time. In
12 State vs Riviera it is also a South Carolina case that I can
13 also provide you a case log for says an officer's questions
14 are reasonable and they are tangentially related to the
15 purpose for the stop. Then looking at the duration component
16 of this prong as US vs Sharp 1985 sets forth which I can
17 also provide you says, whether the police diligently pursue
18 the needs of investigation that was likely to conform or
19 dispel their suspicions quickly during which time it was
20 necessary to detain the defendant if justified. As Illinois
21 vs Caballes sets forth which I can also provide you case law
22 for a seizure violates the fourth amendment if it is
23 prolonged beyond the time reasonably required to complete
24 its missions. As part of this statute the case that I just
25 referenced says police diligence involves requesting

(Motion by Ms. Wise)

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1 driver's license and a vehicle registration, running a
2 computer check, and issuing him a ticket. United States vs
3 Branch sets forth I can provide you copies of that case log
4 as well. If a police officer observes a traffic violation he
5 is justified for stopping the vehicle for long enough to
6 issue a driver citation and determine that the driver in
7 entitled to operate his vehicle. Lengthening the detention
8 I believe for further questioning beyond that tangentially
9 related to the initial stop is acceptable only after the
10 officer has an objectively reasonable and articulable
11 suspicion, a legal activity has occurred or is occurring, or
12 the initial detention has become a consensual encounter.
13 Right on par with the case at hand today is United States vs
14 Digiovanni it is a fourth circuit case from 2011 which I can
15 also provide you a copy for also getting the duration
16 component. Which sets forth where a defendant was pulled
17 over on I-95 for following too closely. The officer
18 immediately instructed the defendant to exit the car and
19 asked numerous questions pertaining to his travel history
20 and itinerary. Only a few of which related possibly to the
21 justification for the stop. This case then set forth that
22 the officer embarked on a sustained investigation into the
23 presence of drugs instead of either completing the warning
24 ticket or beginning the driver's license check and I believe
25 from the testimony that we heard today as well as the dash

(Motion by Ms. Wise)

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1 cam video that was admitted into evidence. The same factual
2 truth for this case in hand. Ten minutes into the stop the
3 officer returned to his patrol vehicle to radio for back up
4 and complete the warning ticket and call in a license check.
5 This is the Digiovanni case the fourth circuit case.

6 The Court: That was Trooper Chris Conner from Maryland
7 State Patrol.

8 Ms. Wise: Then fifteen minutes into the stop the
9 officer returned the defendants license and warning ticket
10 and immediately returned to the subject of the drugs. The
11 fourth circuit held that the officer did not diligently
12 pursue the traditional purposes of the traffic stop and this
13 is what I believe is identical to the case at hand today.
14 Specifically holding back the defendants fourth amendment
15 rights were violated when the police officer engaged in a
16 blended process of conducting a routine traffic stop and
17 drug investigation. By asking questions related both to the
18 traffic stop and the drug investigation and where the
19 unrelated questions constituted the bulk of the interaction
20 between the trooper and the vehicle's occupants. Here we
21 believe that law enforcement measurably extended the length
22 of the traffic stop beyond the time reasonably necessary to
23 effectuate the initial purposes of the stop and instead
24 embarked on a sustained course and investigation into the
25 presence of drugs that constituted by far the bulk of the

(Motion by Ms. Wise)

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1 encounter. Approximately one minute into the traffic stop we
2 heard that Officer Lawson had already obtained all of the
3 evidence necessary to conclude that the defendant had
4 committed the improper lane change violation. However he
5 spent the remainder of the stop roughly approximately thirty
6 nine to forty minutes of which was recorded pursuing the
7 drug investigation. Initially and I have no problem
8 contesting that these unrelated questions did not extend the
9 duration of the stop unnecessarily. I do believe that this
10 stop measurably was extended unnecessarily when my client
11 was continued to be questioned without as much as even
12 contacting the rental company when he discovered the
13 defendants name was not on the agreement. As we heard
14 Officer Lawson testify within mere minutes of pulling Mr.
15 Toney over he had all the evidence necessary in front of him
16 to learn that Mr. Toney was not a permissive user on the
17 rental agreement but it was not until nearly fifteen minutes
18 into the stop that law enforcement began to attempt in
19 contacting the rental car company. Once consent was given by
20 the rental car company that he would search the stop.
21 Another six or seven or so minutes elapsed before the search
22 was even begun. Five minutes then elapsed from the time that
23 my client was handcuffed, questioning continued he was then
24 Mirandized. Now I just believe that this is the very core of
25 what --- that I have discussed with you today go to in this

(Motion by Ms. Wise)

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1 blended process, and I believe it is the barrage of other
2 questioning that we heard multiple instances where my client
3 was asked about illegal drugs in the car of which he
4 honestly responded. Multiple instances where, I felt like it
5 was almost a fishing expedition. My client was asked a
6 question he answered it. Then asked the same questions again
7 he answered it. Our opinion is there comes a point where
8 police activity has to be restrained and has to be curtailed
9 in a little bit more. I will then discuss the reasonable
10 suspicion that I have talked to about in response to the
11 State contending that Officer Lawson was entitled to abandon
12 the initial purpose of the traffic stop because he obtained
13 reasonable suspicion that another crime was afoot. I too
14 believe that this was without merit. Reasonable suspicion is
15 the part that requires a particularized and objective bases
16 that would lead one to suspect another of criminal activity.
17 The burden is on the State to articulate facts sufficient to
18 support reasonable suspicion. It requires most importantly
19 more than a hunch but less than probable cause. I believe
20 that per the testimony that we have seen today, the video,
21 the evidence, all we have seen is some sort of near hunch
22 that is forbidden in constitutional law. The Digiovanni case
23 that we were just discussing, discusses innocent travel,
24 factors that amount to reasonable suspicion including
25 collectively, substantial portion of innocent travelers for

(Motion by Ms. Wise)

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1 the requirement of reasonable suspicion will be satisfied.
2 I do not believe that the State's burden of proof today in
3 eliminating enough of the innocent traveler based off of
4 what we heard. Based on the interdiction protocol that law
5 enforcement discussed, based off of the methods and tactics
6 used to pull over this client in the forty nine minute long
7 search of his vehicle at a traffic stop. I just think
8 something is amiss here. We heard Officer Lawson testify
9 that his reasonable suspicion centered around the third
10 party rental and renter was not present. Rental of the car
11 was two days past due, both the rear windows were partially
12 rolled down. Mr. Toney had nervous hands, Mr. Toney was
13 breathing heavily, Mr. Toney had cotton mouth. Arrangement
14 to rent the car in Florence was not normal, he did not know
15 the location of where he said he had been in Columbia, he
16 spoke with his hands when talking, he kept looking back at
17 the car. He had prior drug history, he looked at the car
18 when asked about marijuana which I have been unable to see
19 from the video of evidence, he was in a hurry to leave.
20 Those factors that Officer Lawson articulated as his
21 reasonable suspicion I do not believe disqualify enough
22 innocent travelers opinion of this state's thoroughfare
23 roadways so to constitute not only pulling this gentlemen
24 over but detaining him for close to an hour. In regards to
25 the nervousness that the State focused on I can provide you

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 with case law showing how mere nervousness alone is not
2 enough to sustain a reasonable suspicion. I am nervous right
3 now according to the testimony we heard today I would be
4 investigated for drug issues you know. I do just ask you to
5 really consider the evidence that we heard on the video
6 surveillance, evidence we heard on the dash cam versus the
7 testimony that we heard in court versus my client's
8 testimony. I do believe that there potentially could be some
9 credibility issues between what was presented on the stand
10 as to what we saw on the video. That is a major cause for
11 concern for me. In closing I would just like to point out in
12 regards to the evidence suppression. Police authority is not
13 absolute, it is circumscribed by individual rights. It
14 supports an even greater danger to society than the
15 contraband in this case. I whole heartedly believe that is
16 the case right here and if you want me now to address my
17 statements, the involuntary statements that I believe were
18 taken. I can do that or we can address the ...

19 The Court: Let us let them counter and then go back.

20 (Counter by Farr)

21 Mr. Farr: May it please the court Your Honor. The first
22 issue I have with her suppression motion is my understanding
23 of the fourth amendment is that the defendant has to have a
24 protection under the fourth amendment. No where was there
25 any testimony that he deserved protection under the fourth

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 amendment. Because first the United States vs Wellons which
2 is a fourth circuit case Your Honor. This is the leading
3 case, every other circuit has adopted it or added to it. The
4 third circuit Ms. Wise sent me one that she wanted to use
5 from 2000, but there is a new that just came out in 2011
6 that excepted this one as basically saying an unauthorized
7 driver of a rental car has no legitimate expectation of
8 privacy in a car and therefore has no protection under the
9 fourth amendment. So in no way has she stated that he has
10 the protection under the fourth amendment Your Honor and may
11 I approach with the case?

12 The Court: Yes sir.

13 Mr. Farr: I did tell Ms. Wise about the case. Second of
14 all Mr. Toney abandoned the property and under State vs
15 Dupree which is a South Carolina Supreme Court case says
16 once a defendant abandons a property that property no longer
17 has the fourth amendment protection on it and that is State
18 vs Dupree 1995 Your Honor.

19 The Court: Tell me how did he abandon this property?

20 Mr. Farr: He fled and the case talks about when the
21 defendant in here throws down the drugs in this case that
22 they consider that abandonment.

23 The Court: Okay. Alright I will look at that case. I
24 mean that is exactly what happened in the Prevett case he
25 fled. Any litany of these cases for that and this new case

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 at the Court of Appeals per I guess a month and a half ago
2 or more, but I will look at that case. I don't know if you
3 have much of an abandonment argument in this case, but we
4 will see.

5 Mr. Farr: Now, I would argue, Your Honor, that he just
6 does not have fourth amendment protection in this case.

7 The Court: I understand that and if he does not have
8 fourth amendment protection all this is moot, but go ahead.

9 Mr. Farr: Your Honor if you do agree that he does have
10 standing I would like to argue under her first thing that
11 the State had probable cause to stop Mr. Toney. From the
12 testimony from Mr. Lawson and Mr. Toney said that he was
13 told that he violated the motor vehicle code in this case it
14 was driving to close or cutting other drivers off is enough
15 to provide probable cause to make the traffic stop. So I
16 believe in this case that you should deny that motion that
17 the State lacked probable cause to stop Mr. Toney. In the
18 second one she argues that the State lacked reasonable
19 suspicion of criminal activity by Mr. Toney. From the
20 testimony of Mr. Lawson and testimony of the defendant, Mr.
21 Zeller, and Mr. McKenzie, the State would like to show that
22 there was --- that the officer had an objective reasonable
23 and suspicion of illegal activity that had occurred or was
24 occurring. In this case from the very beginning of the stop
25 he violated the traffic violation. Second his windows were

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 rolled down which triggered that he might be trying to keep
2 the smell down of so much marijuana being in the trunk from
3 the testimony. When he was giving over the rental agreement
4 and the license his hands were shaking, he was breathing
5 heavy. So there is four indicators. And when he stepped out
6 Mr. Lawson told him what he was being pulled over for, he
7 started rambling on and I feel he was trying to delay Mr.
8 Lawson's writing a citation. While Mr. Lawson was writing
9 the citation Mr. Lawson asked him a few questions. He said
10 that he was in Columbia just for the day for child support
11 and clearly as Ms. Wise pointed out on the time that she was
12 giving one minute later he said that he was in Columbia for
13 unemployment. So you have got child support, unemployment,
14 and he also stated he did not have a job. He was saying he
15 had not had a job for a year or so, as Mr. Lawson said he
16 testified to. He was still breathing heavy at this as Mr.
17 Lawson also said the nervousness never settled down it kept
18 getting worse and worse. During these questions Mr. Toney's
19 artery in his neck was pulsating, he had cotton mouth, he
20 didn't rent the car from which Mr. Lawson testified again is
21 two minutes away from his address instead he went to
22 Florence to get the car to meet up with Mr. Timothy Sanders.
23 He didn't know the location in Columbia he said he would
24 have to call but he was just there probably a couple hours
25 from Columbia before they pulled him over. He was speaking

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 with his hands which is another indicator Mr. Lawson said
2 that it is what drug activity people speak with their hands.
3 Every time he asked about marijuana he looked back at the
4 car. He had a prior history which triggered the stop also
5 furthered the stop. After he called the rental company Mr.
6 Lawson got consent to search and he was delaying to get
7 backup to help him on this search because he wanted safety
8 that was his number one priority because he was by himself,
9 he had the defendant. Yes, he did have a dog as Ms. Wise
10 says but he felt more comfortable to be able to get a better
11 read in his search was to have backup that was another
12 reason why he was delayed a little longer. At that time he
13 had, he already made up the decision that he was reposing
14 the car and that was from the testimony of Mr. McKenzie.
15 There was enough from the State to say that there was
16 objectable reasonable why this stop was lengthened because
17 there was enough suspicion as Mr. Lawson has stated for the
18 longer stop for the search. I know Ms. Wise says that she
19 only mention nervousness. Nervousness alone is not enough
20 for this but I have listed, I know Mr. Lawson listed
21 fourteen but I know there is about twenty or so that show
22 that criminal activity was occurring at this time. Your
23 Honor she mentioned the case of Digiovanni and one thing I
24 noticed in there is that the traffic stop is actually over
25 from the time he gave over the license and everything back.

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 In this case the license and everything was never given back
2 so the stop is still concurrent and that....

3 The Court: What about State vs Tindal, that is the
4 leading case in this case was South Carolina Supreme Court
5 and in that case as soon as the Officer told the driver he
6 was giving him a warning ticket the purpose of the stop
7 ended because his investigation at that point was over and
8 therefore everything after that he did not need. You know
9 that started this whole litany of State vs Tindal and they
10 said he did not have to issue him the ticket. The fact that
11 as soon as he told him he was going to issue him a warning
12 ticket and in this case he testified that he was going to
13 write him a warning ticket and once he made that call
14 everything else, the purpose of the stop is ended because he
15 knows what he is going to do.

16 Mr. Farr: Your Honor I know that cases from Moore the
17 one in 2013 allowed the officer to even if he said he was
18 giving a warning ticket while he was talking and still
19 filling it out as Mr. Lawson was talking about was filling
20 it out was allowed to ask questions because he already had
21 enough indicators to believe that a criminal activity was
22 occurring.

23 The Court: Now once he has indicators that the criminal
24 activity is occurring he can extend the stop, but once the
25 purpose of the stop is over he has to have those indicators

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 before the purpose is over. That is what Tindal and
2 everybody says. If you had the indicators before you can
3 extend the stop, but you have got to have the indicators
4 before the purpose of the stop is ended. That seems to be
5 the pivotal issue. Moore had a lot more indicators than you
6 did and Judge Lockemy went to this factors and basically
7 said everything you had was hogwash that it does not extend.
8 That is exactly what Judge Lockemy is saying in that
9 opinion. Now when you look at that in the Prevett issues, I
10 do not know Prevett it went all the way to the Supreme
11 Court, Supreme Court changed the standard to measurable.
12 They are looking close at the time and you look at from the
13 time the purpose of the stop ends and then how much time is
14 measured from the end of it. Judge Lockemy talks about all
15 these indicators, he talks about the carotid artery and he
16 talks about all these indicators showing that that is not
17 necessarily signs of criminal activity. That that is signs
18 of normal people do and they listed a whole litany of them
19 in that case. Now of course Justice Few disagrees with him
20 and he dissents strongly he just didn't have enough votes in
21 that case but anyway I cut you off go ahead and finish and
22 then we will talk about this.

23 Mr. Farr: Your Honor just to clarify his testimony was
24 that the stop was never over. I understand that you are
25 saying once he said that he is writing a ticket that ends

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 but this case he had not indicators to prolong the stop.

2 The Court: I said, that is what he is saying. Then the
3 question is what are all those indicators and he listed
4 these indicators and the fact that he was nervous and his
5 hands were shaking and the fact that he could see his chest
6 rising and falling and the fact that he could see his
7 carotid artery and he kept looking back at the car. Those
8 are all indicators that he listed that allowed him to
9 prolong the stop. Those are the same indicators that were
10 listed and more that Judge Lockemy said was not enough.
11 Anyway you know once the purpose of the stop is ended. Once
12 his investigation the reason the stop is ended then he can
13 not hold him any longer unless he has those indicators,
14 unless he has articulate suspicion of why he has a right to
15 extend the stop. It is somewhere between a fishing
16 expedition and probable cause. If he had probable cause he
17 would not have any of this because once you get probable
18 cause you can search that vehicle one or two ways probable
19 cause and with consent. If you got probable cause you can
20 search it. You got to have consent it has got to be a lawful
21 stop and a lawful seizure. When the seizure becomes unlawful
22 then consent and everything else goes down the tube and that
23 is kind of where Prevett and Kyle and Moore end. Tindal and
24 Prevett are the last ones that came out of the Supreme
25 Court. Now Court of Appeals I am stuck with what the Court

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 of Appeals says that is the law until Supreme Court changes
2 it. Go ahead you can argue.

3 Mr. Farr: I have nothing further, Your Honor.

4 The Court: Now of course if your case law was right on
5 Wellons and we don't even get to the issues of whether
6 Prevett, I mean, if you are right on that he does not have
7 standing to object, the fourth amendment does not apply, the
8 search is good at least under that theory. Do you have
9 anything to counter this case?

10 Ms. Wise: The Wellons case I do Your Honor. My first
11 point ...

12 The Court: I wonder why they did not do that because it
13 was a rental car in Prevett and Moore. Okay I am sorry go
14 ahead.

15 Ms. Wise: Although I understand Wellons I believe the
16 facts of Wellons are remarkably different from this case. I
17 think Wellons you have two additional co-defendants along
18 with a defendant attesting the issue who all conspired
19 together to rent this rental car. Only one of their names
20 was on the rental agreement as I believe the testimony and
21 evidence shown today. My client obtained this rental car
22 innocently. He testified while he did not read the rental
23 agreement how he believed that he was able to legally drive
24 this car and we heard it on the video as well as Officer
25 Lawson's testimony that my client in fact says, well I wish

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 I would have known that before I got in this car. Where as
2 in Wellons it is clear that the defendant were an issue in
3 standing clearly knew that he was not permissive user of
4 this car, clearly knew that he was legally able to drive
5 this car, and I would also like to point out that in Wellons
6 all three of these co-defendants who conspired or what I
7 believe conspired to rent this car together at some point or
8 another during the duration of this entire encounter were in
9 the vehicle together although Wellons himself was pulled
10 over alone in the vehicle. The other co-defendants were in
11 the vehicle at one time or another. Where as with my client
12 he was in this vehicle the entire time by himself. He
13 obtained the car, the key to the vehicle's ignition, as well
14 to the trunk where I believe that he was able to then assert
15 a fourth amendment right of privacy. He had a reasonable
16 expectation of privacy in that vehicle and I would just like
17 to point out that the cases that Wellons relies on it's
18 reasoning are also different from the facts at hand today.
19 In United States vs --- that case the defendant was aware of
20 the rental agreement's condition that forbid not only the
21 use of the rental agreement for illegal purposes as well as
22 the use of the car by unauthorized users. The testimony
23 today is clearly different I can provide you with a copy of
24 this case. I provided the prosecution a copy of that case.

25 The Court: What is the name of that case?

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 Ms. Wise: United States vs Gosgrove it deals with a
2 stolen car it is not a car that has been acquired innocently
3 as in the case today. I would also like to point out that in
4 Unites States vs Catiból(sic) and I am probably butchering
5 that I apologize but I will provide you a copy of that.
6 Possession of the vehicle is intrusted to the defendant
7 along with the keys to the ignition and the trunk, standing
8 was found in that case. I can provide you a copy of that.
9 The last case that I am going to mention is United States vs
10 Dorch(sic) and I will give you that case as well. Where
11 standing again is alluded to and the court specifically says
12 that essentially a government ask us to find officers have
13 reasonable suspicion to suspect drug trafficking anytime
14 someone is driving a rental car that is not rented in his
15 name. That I believe goes right to the facts of this case I
16 believe my client has full standings to contest the validity
17 of search of the vehicle he was driving. He was alone in
18 this vehicle, he had the keys to the ignition as well as to
19 the trunk. He had a reasonable expectation of privacy to
20 this vehicle. He testified that he did not read the rental
21 agreement. He testified that all though he knew he was not
22 a permissive user on the rental agreement he still believed
23 that he was legally able to drive that car. I believe that
24 standing does attach in this case as it is different than
25 Wellons.

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 The Court: Anything else the State want to tell me?

2 Mr. Farr: Can you give the cases real quick just the
3 dates and the years.

4 Ms. Wise: The cases are all on Wellons. They cited on
5 the last page.

6 Mr. Farr: Your Honor I am still going to stand the
7 ground that he does not have fourth amendment right. Going
8 through his testimony, his own testimony said that he was
9 riding with the defendant to the Florence, Timothy Sanders,
10 to the rental place. So he knew good and well that this was
11 a rental car and that he knew good and well that he was not
12 on there as Ms. Wise pointed it out. That he should have
13 been on the renter agreement. That he was never put on
14 there. That was from Ms. Wise bringing out Mr. Lawson out
15 and that is even on the video. Ms. Wise brought that out at
16 12:40, 12:41 he specifically stated that he was not on there
17 and that given right there meant that he was not suppose to
18 be an authorized driver. He is unauthorized, he does not
19 have any protection under the fourth amendment. That was
20 from his testimony and Ms. Wise bringing that out from Mr.
21 Lawson.

22 Ms. Wise: If I might counter that Your Honor I am not
23 contesting that in any way, shape, or form. My issue is
24 Wellons relies on the mere fact I believe that all of these
25 drivers who are not listed on the rental agreement and

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 therefore do not have standing acquired these vehicles with
2 some sort of way that suggest --- that suggest a non
3 innocent nature. That is not what I am saying about my
4 client. My client testified that he fully believed that he
5 was legally able to drive this car. He had permission from
6 the individual that he believed was legally entitled to
7 drive this and I believe that there needs to be taken into
8 some sort of account my client's position and my client's
9 understanding. Yes he is not on the rental agreement we are
10 not arguing with that. Yes he knows he is not on the rental
11 agreement. I am not saying though that he does not know that
12 he is not able to drive this car. He believed that when he
13 got into that car he not only had a legal right to drive it
14 but that he had a reasonable expectation of privacy in that
15 car. He is the only individual in the car. He had the keys
16 to that car's ignition as well as the keys to that car's
17 trunk. He was pulled over. If he does not have a reasonable
18 expectation of privacy I am afraid that that impairs a major
19 constitutional --- I believe that that impairs a major
20 constitutional rights of every single person in this room
21 today.

22 The Court: Okay thank you. Anything else on this?

23 Mr. Farr: None from the State Your Honor.

24 The Court: Now we are going to Jackson v Denno issues.

25 Ms. Wise: As far as the Jackson v. Denno issue Your

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 Honor I would move to suppress any and all evidence of
2 statements made by my client not only about law enforcement
3 but any statement that are heard or potentially be heard on
4 the video statement. I will first argue that... I will first
5 argue about the statements allegedly made by my client prior
6 to the search, not prior to the search of the vehicle but
7 prior to him being handcuffed. I believe it is safe to say
8 that this entire process from the time that we heard the
9 dogs barking on that video as well as the testimony where my
10 client was told to stand by the side of the police vehicle
11 on the side of I-20 during rush hour traffic cars are going
12 by eighty ninety. Officer Lawson's case at one point a
13 hundred and seven miles per hour. My client never could have
14 felt that he was free to leave. My client never could have
15 felt that he was not in some sort of custodial interrogation
16 position and I move to have all of those statement
17 suppressed. I absolutely believe that the questioning that
18 was revealed in today's testimony by Officer Lawson what is
19 in the vehicle, what is in the vehicle, what is in the
20 vehicle were known to illicit or were likely to illicit an
21 incriminating response. Mr. Toney was in as I said police
22 custody and any reasonable person in his same position would
23 have understood and to believe to be in police custody. He
24 had faced the threat after we saw him run. I believe of
25 being tased and maybe he did not I apologize but he was in

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 fact handcuffed so the statements that came after that he
2 should have been read his Miranda Rights. Not five or six
3 minutes after he is placed into handcuffs, surrounded by law
4 enforcement and continues to talk. Once he was read his
5 Miranda Rights I believe that was an involuntary waive of
6 those rights based of his prior background that he expressed
7 to the court. The police brutality that he claimed he
8 suffered in 1999 when he was allegedly beat up by police
9 officers as well as what he revealed to the court his prior
10 interactions with Officer Lawson. I believe that this
11 gentlemen in his position based off what any other gentlemen
12 or female in his position would believe that he was not free
13 to leave and that he, excuse me that he was not free to
14 leave and that any question by the police was reasonably
15 likely to illicit an incriminating response. I believe that
16 custody needs to be determined by the objective analysis of
17 what a reasonable man in the suspects position would have
18 understood himself to be in custody. As I said earlier had
19 to do with the interrogation and I apologize Your Honor, but
20 as far as it being a voluntarily, knowingly, and intelligent
21 waiver I believe that today's testimony shows none of that
22 was the truth. Although they will say that was an excited
23 utterance. We also heard testimony that twenty minutes prior
24 to that Mr. Toney gave an excited utterance. That first
25 excited utterance if that is what they are going to argue as

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 an excited utterance he should have been read his Miranda
2 Rights then not five minutes prior to the stop being over
3 with the entire stop was forty minutes long. I will move to
4 suppress all of his statements made to Officer Lawson, made
5 of video, and I will be happy to hear what Mr. Farr has to
6 say in response to that.

7 The Court: OK yes sir.

8 Mr. Farr: Your Honor may it please the court. The State
9 Your Honor I understand does have the burden to make sure
10 that theses statements were voluntary and intelligent and
11 knowingly given. Just from the testimony from the defendant,
12 Mr. Lawson because they are both basically the star
13 witnesses in this. You have the defendant saying he was
14 never handcuffed at one point at all. He is never
15 handcuffed, but we do know Mr. Lawson corrected that and
16 said he did handcuff him at that time. You also heard from
17 the video and the testimony he never asked him any question.
18 The defendant just kept voluntarily these thing I am not
19 going to say excited utterance because I believe he was
20 volunteering these questions because he already knew he was
21 caught. He was caught red handed with these drugs in his
22 possession. He was not under any alcohol or drugs or
23 physical or mental disability. We also heard the defendant
24 testify that he has already got a high school education, he
25 has tech degree, and now he is going over to Coker College

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 over there to get an even better degree. So he is very well
2 educated. His prior history of drugs, he understands the
3 law, he understands being read his Miranda Rights and you
4 can hear as soon as he got done Mr. Lawson asked him do you
5 want to keep talking. It was a split second yes and yes, he
6 waived everything because he was ready to set up the so
7 called Timothy Sanders in this case. There was no threats as
8 Ms. Wise say, threatening him because of his past. Mr.
9 Lawson testified that he did not know or have any
10 interaction with him. I believe just from that and the
11 testimony, the video, the defendants own testimony. I
12 believe the State has proved by the evidence that these
13 statements were knowingly, voluntarily given, and
14 intelligently given and we would ask you to not suppress all
15 his statements Your Honor on the video or anything like
16 that. We believe the State has met it's burden.

17 The Court: Well it appears at least from the video that
18 I have observed that, that he was in custody. I do not think
19 a normal person would believe that at that point they could
20 leave. So he was clearly in custody so the first prong was
21 there. He is in custody therefore before you could
22 interrogate him you know you had to read him his rights. Now
23 the questions when he was interrogated he said no he did not
24 give any incriminating statements. Now when he did give
25 incriminating statements it did not appear to be resulting

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 as a police interrogation. Nobody was asking him questions
2 or interrogating him at the time he gave those incriminating
3 statements at least some of them that I heard. Now at one
4 point he was read his rights and then after that once he is
5 read his rights and it appeared from at least what I that he
6 knowingly and intelligently understood those rights. So any
7 questioning after he was read his rights is admissible. The
8 issue is whether and I do not recall any of the statements
9 he made about the drugs being a result of interrogation. He
10 voluntarily stated nobody was asking him any questions. So
11 Miranda issues was one he has to be in custody, he was in
12 custody. Two if you are going to interrogate him and
13 question him in any way you have got to read him his rights
14 before you can do that. The problem in this case he was not
15 being interrogated when many of the incriminating statement
16 were made, they were just spontaneous and he said them
17 without being interrogated. So I do not think it comes under
18 the case law. Miranda requires an interrogation so at least
19 as far as those are concerned. Now if I missed one on there
20 and a question was asked before his rights were given and he
21 gave an incriminating statement that is not coming in,
22 because once he is asked questions and his right are not
23 read to him and he makes an incriminating response that it
24 is violation of Miranda and it does not come in. From what
25 I can tell and I could not hear the audio very well on that

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 tape when I heard it and I guess you are going to have to
2 get a lot closer to it and slow it down to be able to hear
3 everything. I assume you all have had the benefit of doing
4 that but I can tell you right now if it ever gets to the
5 jury they are not going to understand or hear ninety percent
6 of what is on there because I had a lot of difficulty trying
7 to do that myself. So now if there is statements that I
8 missed that was a result of questioning they do not come in
9 ok. Alright anything else?

10 Mr. Farr: None from the State Your Honor.

11 The Court: I will go read these cases and let you all
12 know about the other issues.

13 **(Court dismissed for the day 11-18-13)**

14 **(Court in session 11-19-13)**

15 **(Motion by Wise)**

16 The Court: Ms. Wise you want to as we discussed in
17 chambers the legal points you brought up and you brought me
18 some additional case law today and if you will argue those
19 and we can deal with it.

20 Ms. Wise: Thank you Your Honor I am going to be arguing
21 today the issue of standing and whether Mr. Toney as an
22 unlisted driver on the rental agreement or is not being
23 listed as a driver on the rental agreement has standing to
24 contest the validity of this search. I believe that he does
25 have standing to contest the validity of this search. What

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 I first like to bring to the court's attention is that like
2 the Federal Constitution, South Carolina Constitution
3 protects against unreasonable search and seizures.
4 Specifically Article 1 Section 10 states that the rights of
5 the people to be secured in their persons, houses, papers,
6 and effects against unreasonable searches and seizures in
7 unreasonable invasions of privacy shall not be violated.
8 South Carolina vs Forester leading case on this issue sets
9 forth specifically that State Courts may afford more
10 expansive rights than the rights conferred by federal law.
11 That South Carolina Courts can interpret the State
12 protection against unreasonable searches and seizures in
13 ways to provide greater protection than federal law. I think
14 it is important to play out that the South Carolina
15 Constitution when I believe and when this case was handled
16 in 2000, one of only ten states in the entire country that
17 it's Constitution expressly provide for an express
18 protection of a right to privacy. What I believe is
19 paramount to the fundamental values of this state is an
20 individual defendant's right to privacy. State vs Forester
21 specifically mentions that the South Carolina Constitution
22 within express right to privacy prevision included in the
23 article prohibiting unreasonable searches and seizures. They
24 have an interpretation offering a higher level of privacy
25 protection than the fourth amendment. I can provide you this

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 case if you would like a copy for the record. I would also
2 like to point out to the court the State vs Austin. Also
3 holding that State Courts may interpret their own
4 constitutions in such ways as to expand the Federal
5 Constitution of law. Moving on from that I would like to
6 make the court aware of State vs McKnight it is a South
7 Carolina case from 1987 stating that one contesting legality
8 of the search need on show that the State is attempting to
9 introduce the evidence against him. I believe from the
10 testimony that we heard yesterday that is very pertinent to
11 my client here. There is evidence being admitted against him
12 to incriminate him. I believe that because of that he has
13 the full right to contest the validity of the search that
14 lead to the exposure of that evidence. In United States vs
15 Mubdi it is a fourth circuit case that I believe shows that
16 Wellons the case that we discussed yesterday and the case at
17 issue today is not absolutes. Mubdi specifically states in
18 footnote five that in Wellons the evidence sought to be
19 suppressed was the fruit of an unlawful search. Mubdi
20 contended however that the evidence he seeks to suppress is
21 the fruit of an unreasonably long seizure and I would like
22 to point out that the court does not actually address this
23 issue but it does not explicitly say that it does not
24 address this issue but it does not need to address this
25 issue which I think is proof that this Wellons case is not

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 a blanket determinative rule for every single criminal
2 defendant that is pulled over on our nations roadways and
3 thoroughfares that is not a listed driver on the rental
4 agreement and therefore can not argue that he or she has
5 standing. There is a United States Supreme Court case
6 Brendlin vs California that I believe also addresses these
7 issues. It is a 2007 case stating specifically that all
8 individuals in vehicles are seized for fourth amendment
9 purposes and so be a challenge as it stops
10 constitutionality. Again my client I believe was in this
11 vehicle that was seized therefore he was seized for fourth
12 amendment purposes and he has the ability to challenge the
13 constitutionality of that stop. Brendlin also sets forth
14 that no reasonable person in his position when the car was
15 stopped would have believed himself predetermining the
16 encounter. I think that is telling to the case at hand. This
17 again is not a blanket approach. It looks at a reasonable
18 person perspective it looks at what my client in the
19 position that he was in on November 10, 2010 reasonably
20 believed was happening and what he reasonably thinks his
21 rights to be. Finally I would say that I believe as the
22 countless cases from 1994 when Wellons was addressed up
23 until today show Wellons was never once been write upon or
24 sighted upon any published opinions of this state. I think
25 that says a lot right there and I believe that my client as

(Motion by Ms. Wise/Counter by Mr. Farr)

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.1 a criminal defendant has the right to contest the validity
2 of this search. He has the standing to contest what happened
3 to him on November 10, 2010 because to me it is a scary
4 thought to think that law enforcement based off of these
5 cases based off of what the prosecution provided yesterday
6 and basically pulled over any individual in a rental car
7 that is not the permissive driver of that car and have their
8 way with them. I do not think that that is right for that
9 argument Mr. Toney does have standing to contest these
10 issues.

11 The Court: When you talked about the Mubdi case didn't
12 in that case they uphold the search saying that the seizure
13 was lawful and they listed the factors. One of factors being
14 a rental car they did not discuss. You know his expectation
15 of privacy but they listed a number factors which are pretty
16 well on point in this case and said the totality of those
17 factors. One of which being he was an unauthorized driver of
18 a rental car gave the officer the right to extend the stop
19 right?

20 Ms. Wise: Yes sir and what I am focusing on in the
21 Mubdi is that the issue is brought up that not necessarily
22 are we talking about here evidence sought to be suppressed
23 as a result of the fruit of an unlawful search, but evidence
24 sought to be suppressed as the result of an unreasonably
25 long seizure and I think that it is telling that Mubdi

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 raises this argument. The court does not say that you have
2 no standing to raise this argument about the result of an
3 unreasonably long seizure. The court does not address it
4 because they already addressed these other issues. They do
5 not flat out prohibit like black and white rules saying no
6 Wellons does not even allow that to be said and I think
7 there are cases therefore that that might be an issue that
8 might be brought to light.

9 The Court: So your argument do you think that State vs
10 McKnight that these fourth circuit cases dealt with West
11 Virginia, Georgia, that South Carolina has a different set
12 of rules because of McKnight?

13 Ms. Wise: I do not want to use the broad term that
14 South Carolina has a different set of rules, but I think
15 that McKnight makes clear that South Carolina courts respect
16 the individual liberties of those individuals that are
17 stopped during, excuse me not those individuals that are
18 stopped for a vehicle search. But those individuals that
19 have evidence that are used against them in court. I
20 believe that that case makes clear that those individuals
21 have the right to challenge that evidence and I believe that
22 that case makes clear that those individuals's rights to
23 challenge that evidence is of importance.

24 The Court: Of course the State's contention was that he
25 does not have standing to challenge because Mubdi says the

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 fact that he is an unauthorized driver of a rental car he
2 has no expectation of privacy in the rental car. Then you
3 have got the issue of the other case that says, that the
4 rental company has the right to allow the officer to search
5 the car. They have the authority to give that permission. In
6 your argument that you think the South Carolina Constitution
7 awards a greater degree of privacy or has stronger, in
8 Article one Section ten then the fourth amendment of the
9 United States Constitution? It gives a stronger right of
10 unlawful search and seizure than the United States
11 Constitution?

12 Ms. Wise: I believe that, I am sorry can you ask that
13 again.

14 The Court: Your argument was that the States have the
15 authority to increase the rights above the United States
16 Constitutional rights and that Article ten, I mean Article
17 one Section ten of South Carolina Constitution gives more
18 rights under search and seizure than the United States
19 Constitution of the Fourth from Article 4.

20 Ms. Wise: I believe that there is an interpretation
21 offering a higher level of privacy and protection than the
22 fourth amendment, yes I do. Again I will reason with that
23 based off the fact that there are ten states in this country
24 that have constitutions that pertain a clause discussing
25 individual's rights to privacy and unreasonable searches and

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 seizures. South Carolina is one of those and I think that
2 shows the paramount importance of those rights.

3 The Court: Well is that not exactly what the fourth
4 amendment says the individual has, rights to privacy against
5 unlawful searches and seizures by the government. That is
6 exactly what the Fourth Amendment says. Of course the issue
7 in this case is based from this fourth circuit opinion. He
8 does not have standing because he does not have any
9 reasonable expectation of privacy in the car. He certainly
10 has on his person and that is what I talked about. If the
11 officer had searched his person and found an illegal
12 substance in his pocket, he certainly has a right to
13 challenge that. He has an expectation of privacy on his
14 person. The question in this case is whether he had an
15 expectation of privacy in a car that he was not authorized
16 to have or to drive and the Fourth Circuit and I understand
17 that the federal circuit across the country are split on
18 that issue, but the Fourth Circuit takes the opinion that he
19 does not have any. As well as the rental company has the
20 authority to tell the police to search the car and that is
21 kind of where we fall. The other case said that the search
22 was good because of the factors that they found there was
23 enough factors to extend the traffic stop and one of the
24 factors that they considered was the fact that he was an
25 unauthorized driver of the rental car but they did not go

(Motion by Ms. Wise/Counter by Mr. Farr)

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1 and this a 2012 case, they did not go back and discuss the
2 factors in Wellons. I do not know whether it is because
3 nobody raised it.

4 Ms. Wise: If I might interject I would just like to
5 reiterate the points that I brought up yesterday about I
6 believe that the facts of Wellons are different to the
7 extent that in Wellons I believe that the driver of the
8 rental car in Wellons did not necessarily have the innocence
9 that my client here today --- You heard on the stand
10 yesterday my client say that yes he knew that he was not on
11 the rental agreement but he did not know that therefore was
12 not, that he therefore did not know that he was not legally
13 able to drive that car. I think in Wellons as is the cases
14 that Wellons relies on it is clear that the drivers of those
15 rental cars were perfectly aware of not only that they were
16 not listed on the rental agreement but that they did not
17 have the legal right to drive that vehicle and I think as my
18 client made clear yesterday from his testimony on the stand.
19 Although yes and I fully concede that he is not listed on
20 the rental agreement he knows he is not listed on the rental
21 agreement. I do not think that it was made clear that he
22 knew that he legally could not drive that vehicle. Whereas
23 those folks in Wellons I believe is a different case and a
24 different situation and I am not sure if the Fourth Circuit
25 would go so far as to say in a case where you have an

(Motions/Jury sworn)

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1 individual driving a vehicle not listed on the rental
2 agreement but does not know that he does not have the legal
3 right to drive that car. I do not know if Wellons in the
4 Fourth Circuit, excuse me I do not know if the fourth
5 circuit would go so far as to say that in that case a third
6 party driver not listed on the rental agreement does not
7 have standing and unfortunately there is no case law to
8 address that in this case this has never been addressed in
9 this circuit.

10 The Court: The Melendez case it was the most reason one.
11 In my recollection they did deal with that issue. Of course
12 in Wellons my understanding of the facts was three of them
13 went to rent the car and they only put it in Dixon's name and
14 that Dixon and the other individual flew back and Wellons
15 drove the rental car back and was stopped and a search ensued
16 and that is how we got there. You made a very good argument
17 and it is an interesting argument and I am surprised that
18 this issue in the litany of cases that have come through
19 South Carolina in the last ten years that this was not
20 raised. I don't know of any cases and I assume that you have
21 done a lot of research as well, that our South Carolina
22 Supreme Court has ruled on Wellons and whether it applies or
23 whether it does not apply. I know in Tindal he was in a
24 rental car and it was a third party rental but it does not
25 tell us in the facts at least if it did I missed them. The

(Motions/Jury sworn)

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1 fact that he did not rent the car well he still could have
2 been an authorized driver, because the testimony yesterday
3 from Hertz is even though it is rented in someone else's name
4 you pay thirteen more dollars you can add another name to
5 drive your car. Whether that was the fact in the other cases
6 that have come through dealing with rental cars I do not
7 know. But it appears, you know, I am in the fourth circuit
8 and the Wellons seems to be the law as recorded in the past
9 of '94 in the 2008 case and I have not seen anything that
10 overturned it. Cert was denied the Supreme Court and it seems
11 to me it is still the law in this case so I respectfully deny
12 your motion. Are we ready to bring the jury in?

13 Clerk: Yes sir.

14 (Jury in 10:12 a.m.)

15 (Clerk swears Jurors)

16 Jury: I will.

17 The Court: Ladies and gentlemen I am just going to give
18 you some brief opening remarks to kind of explain to you what
19 your duties are in this trial and what I need you to do. This
20 defendant, Mr. Toney, is charge under this indictment with
21 the crime of trafficking in marijuana, and to this indictment
22 he has entered a plea of not guilty. Therefore it puts the
23 burden on the State to prove each and every element of this
24 indictment to you beyond a reasonable doubt. I will explain
25 to you at the end of this trial when I charge you on the law

(Jury instructions)

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1 the elements of this crime that you are to consider. What I
2 need you to do is sit there and determine what the true facts
3 are in this case. It is my job to tell you what the law is
4 and to rule upon the admissibility of the evidence that comes
5 before you. Your job is to consider that evidence and come
6 up with the true facts of this case. I cannot, I am not
7 allowed to have an opinion about the facts in this case and
8 you are not allowed to have a different opinion as to what
9 I tell you the law is in this case. You have got to accept
10 the law as I give it to you and you apply the facts that you
11 determine to be true to reach a verdict that speaks the truth
12 in this case. Now in determining what the true facts are in
13 this case. You are going to make that determination through
14 the evidence that comes into this case and the evidence is
15 going to come into this case basically three forms. First of
16 all through sworn testimony from this witness stand. The
17 witnesses will come before you and be sworn in under oath and
18 testify and you have got to determine their believability
19 based on their demeanor and whether you think they are
20 telling you the truth or whether they are not. You use your
21 common senses and your normal senses in fact that you deal
22 with everyday in making that determination. The other forms
23 of evidence either through exhibits that are introduced into
24 evidence and any stipulations made by the attorneys. Those
25 are the three forms of evidence that you will hear in this

(Jury instructions)

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1 case to determine what the true facts are. Now the lawyers
2 are going to make opening statements to you in a few minutes,
3 that is not evidence. Even the questions the lawyers ask are
4 not evidence and the closing arguments of the attorneys in
5 this case are not evidence. The evidence comes to you from
6 this witness stand or the exhibits or stipulations by the
7 parties and that is what you are to use to determine what the
8 true facts are in this case. Now as I have explained to you
9 the defendant has entered a plea of not guilty the State has
10 to prove each and every element to you beyond a reasonable
11 doubt. Now what I want you to do is keep an open mind, listen
12 close to the evidence, and if at anytime, I am going to try
13 to break every hour, hour and a half and usually I try to
14 break at the end of a particular witness's testimony and not
15 stop in the middle of it but sometime we may have to. But if
16 any of you need a break before then, if you are uncomfortable
17 and you need a break raise your hand because I need you to
18 be paying close attention and if you are uncomfortable you
19 can not pay attention. So if you need to stop just raise your
20 hand and let me know we will take a break. We will come back
21 out and continue this case. Now as I told you a little bit
22 yesterday when we take these breaks you may want to go back
23 into the jury room and discuss among yourselves what this
24 witness said or what that witness said and I am going to
25 instruct you can not talk about this case among yourselves.

(Jury instructions)

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1 You can not talk about it when you go home at night with your
2 family and the reason you can not talk about it among
3 yourselves is because if you do if after the first witness
4 you go back there and start discussing what you think this
5 case about or what this witness said then at the end of the
6 case you are going to want to defend that opinion you had the
7 first day. I do not want you to start forming an opinion and
8 sharing those opinions with your fellow jurors until you have
9 heard all of the case. Until you have heard the entire case
10 as well as the law that I am going to charge you and then and
11 only then will it be proper for you to discuss the case and
12 share your opinions with you fellow jurors. That is why that
13 rules in place and the same way when you go home at night.
14 You can not read anything about this case, you can not look
15 on the internet about anything about this case, and you can
16 not talk about with your family and I know when you get home
17 your family is going to want to know what you have been doing
18 all day. You are going to have a tendency to want to tell
19 them, but if your family is anything like my family they are
20 going to have an opinion as to what you ought to do. They
21 have not been here they have not heard the evidence. You have
22 got to decide this case totally on what you hear in this
23 court room. Now in a few minutes the attorneys are going to
24 make an opening statement to you. As I told you that is not
25 evidence. They are simply going to tell you or give you some

(Jury instructions)

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1 kind of road map as to where they think the evidence is going
2 to take you in this case or not take you in this case and
3 establish their different roles. At the end of the case they
4 are going to get up and make an argument with you as to what
5 the evidence they think shows in this case. That is not
6 evidence either. You decide this case based on what you hear
7 from this witness stand. Now the defendant in this case does
8 not have to prove anything. They do not have to put up any
9 evidence. They do not have to make an opening statement. They
10 do not have to make a closing statement. The burden is upon
11 the State of South Carolina to prove each and every element
12 of this indictment beyond a reasonable doubt. Now most times
13 the attorneys for both sides do make an opening and closing
14 statement and whether they put up any evidence or not I do
15 not know but you can not consider that because the State had
16 the burden of proof in this case. If you will pay close
17 attention to the attorneys they will make an opening
18 statement to you and then once the opening statements are in
19 I am going to a brief recess to setup some things for the
20 first witness to testify so I will send you back to the jury
21 room, but if you will pay close attention to the attorneys
22 and we will get started.

(Opening by Farr)

24 Mr. Farr: May I please the court Your Honor?

25 The Court: Yes sir.

(Jury instructions)

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1 Mr. Farr: Ms. Wise. Good morning ladies and gentlemen
2 I just want to thank you all for being here this is really
3 a true honor for you all to be picked and selected as a
4 juror. I know earlier, yesterday, while I was picking you
5 all, up until today I was not able to speak to you all but
6 I know it was a long process it took a couple of hours for
7 everything but you all understand why it is important. So you
8 all could be seated what we think, for a juror to be fair and
9 impartial in this case. This case is about a person that
10 decided to get in a rental car drive up to Columbia he gets
11 some marijuana. On his way back he gets pulled over. At that
12 time officers finds the drugs on him. That is what this case
13 is about. The defendant in this case, Mr. Toney, Jameco
14 Toney is the defendant in this case. That is who was arrested
15 that is who had the drug charges. He knowingly had the drugs
16 on him, and it is my job as the State to prove beyond a
17 reasonable doubt that the defendant is guilty of trafficking
18 marijuana. I am going to do that through a video, through
19 testimonies of officers, we brought the rental guy here to
20 testify and you all job is to listen to what they say and
21 apply that to the law when the judge charges law at the end.
22 I believe you all have the easiest job in all of this because
23 you all get to sit there and pay attention while we have to
24 get testimony out of the witnesses to let you all know what
25 really happened. Hopefully through all that that you all come

(Opening by Ms. Wise)

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1 back and find the defendant accountable for his actions and
2 find him guilty.

3 The Court: Ms. Wise.

4 Ms. Wise: May I please the court.

5 The Court: Yes ma'am.

6 (Opening by Ms. Wise)

7 Ms. Wise: Council, ladies and gentlemen of the jury good
8 morning. My name is Christie Wise and I am an attorney hear
9 with the fourth circuit public defenders office in
10 Darlington. I am here today on behalf of my client Mr. Jameco
11 Toney. You will also see at out table Mr. Richard Jones
12 deputy public defender of the Fourth Judicial Circuit. You
13 will also out in the court room Mr. Toney's father. We
14 sincerely appreciate each and every one of you while being
15 here today for your invaluable time and services. Your role
16 is instrumental to this case and the judicial system. When
17 I was in law school one of my favorite professors shared with
18 me a quote that sticks with me today. And it says. Every
19 truth has two sides. It is as well look at both before we
20 commit ourselves to either. Ladies and gentlemen today this
21 is what I ask each and everyone of you all to do. To listen
22 to the other side of this story, listen to the truth. We are
23 here because Mr. Toney has been accused of having over
24 fourteen pounds of marijuana in the trunk of the vehicle he
25 was driving. I believe that through the course of the day you

(Opening by Ms. Wise)

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1 will see that the evidence just is not there to sustain a
2 conviction against Mr. Toney and that he is not guilty of a
3 crime of which he is charged. I am not trying to discredit
4 law enforcement. I am not trying to discredit the
5 prosecution. These folks do a fine and commendable job with
6 protecting and serving this community, I am just simply
7 trying to show the truth. Before I talk with you about what
8 I believe the truth to be I want to make one fact perfectly
9 clear to each of you all. I do not contest the fact that a
10 little over fourteen pounds of marijuana was found in the
11 trunk of that vehicle. That issue however is not an issue in
12 this case, but one of the issue here is whether Mr. Toney is
13 guilty of trafficking those drugs. I believe that through the
14 course of the day you will see that the State has not
15 presented the evidence necessary to show that on November 10,
16 2010 Mr. Toney trafficking marijuana. This is a criminal case
17 which means that your role as the jury centers upon two
18 crucial principals, presumption of innocence and beyond a
19 reasonable doubt. The defendant the person accused of a
20 crime, Mr. Toney, is presumed innocent. The prosecution, the
21 government, they have the burden of proof. This burden never
22 shifts to us the defendant and requires the State establish
23 each and every element of the events Mr. Toney is charged
24 with beyond a reasonable doubt. This means Mr. Toney does not
25 have to prove anything. As the judge told you he does not

(William McKenzie-Exam by Mr. Farr)

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1 have to put up witnesses he does not have to testify. He is
2 innocent until the government proves him guilty beyond a
3 reasonable doubt. What is reasonable doubt simply put
4 reasonable doubt is a kind of doubt is a kind of doubt that
5 after considering everything you simply are not sure. You
6 have your doubts, you have your questions, your
7 uncertainties. In order to convict Mr. Toney you must be
8 firmly convinced that he is guilty. Ladies and gentlemen I
9 ask you at this time to withhold your judgement until you
10 have heard all of the evidence from all of the witnesses. I
11 am confident that upon hearing the evidence and the lack of
12 evidence you will render a verdict in this case that will be
13 fair. I believe that the State will not be able to prove that
14 beyond a reasonable doubt that Mr. Toney trafficked marijuana
15 on November 10, 2010. Thank you.

16 The Court: I hate to send you back to the jury room but
17 we've got to get setup. I will get you back out just as quick
18 as I can and I remind you do not discuss the case.

19 (Jury excused from courtroom)

20 The Court: Okay. We will take a break until you are
21 ready.

22 (Court break was taken)

23 The Court: Bring the jury in.

24 (Jury enters courtroom)

25 The Court: Mr. Solicitor you may call your first

(William McKenzie-Exam by Mr. Farr)

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1 witness.

2 Mr. Farr: The State would like to call William McKenzie
3 first.

4 Clerk: If you will come around to be sworn. Place your
5 left hand on the Bible and raise your right. Do you solemnly
6 swear the testimony you give this court will be the truth,
7 the whole truth, and nothing but the truth so help you God?

8 Mr. McKenzie: I do.

9 Mr. McKenzie - Examination by Mr. Farr:

10 Q: Will you please state your name for the record?

11 A: William McKenzie.

12 Q: What is your occupation?

13 A: Customer Service Representative for Avis Budget.

14 Q: Who are you employed by?

15 A: Avis Budget Rental Company.

16 Q: Has it always been Avis Budget?

17 A: Avis.

18 Q: You have been there for six years?

19 A: Yes sir.

20 Q: What is your typical duties?

21 A: I do clerical work and I rent the vehicles.

22 Q: What do you mean by clerical work?

23 A: Paperwork filing and contract.

24 Q: When you mean paperwork do you mean filing receipts?

25 A: I file yeah contract receipts.

(William McKenzie-Exam by Mr. Farr)

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1 Mr. Farr: Your Honor may I approach witness?

2 The Court: Yes sir.

3 Q: I am handing you what is State's exhibit number
4 three, just look at it. Do you recognize it?

5 A: Yes sir.

6 Q: Can you identify what that is?

7 A: It is a Budget rental agreement.

8 Q: Is that from you all office?

9 A: Yes sir.

10 Q: Whose receipt is that?

11 A: Timothy Sanders.

12 Q: Timothy Sanders would be the authorized driver?

13 A: Correct.

14 Mr. Farr: Your Honor I would like to move into evidence
15 for admission State's exhibit number three.

16 The Court: What says the defense?

17 Ms. Wise: No objection Your Honor.

18 The Court: It's in without objection.

19 (State's Exhibit Number Two was admitted)

20 Q: On that receipt does that authorize who?

21 A: According to this contract the only authorized driver
22 is Timothy Sanders.

23 Q: Is there any additional authorized drivers?

24 A: No sir.

25 Q: So is Jameco Toney's name of there?

(William McKenzie-Exam by Mr. Farr)

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1 A: No sir it is not.

2 Q: It is not and I would like to ask you to read this
3 that right there.

4 A: No additional operators are authorized are permitted
5 with the terms and conditions of this rental agreement or
6 accepted as the State policy.

7 Q: So to have another authorized driver it has to be a
8 written?

9 A: It has to be written approval there is also a fee
10 that they charge the person has to be on there.

11 Q: How much does an extra authorized driver cost?

12 A: Thirteen dollars a day.

13 Q: How must one person pay to rent a car?

14 A: It varies depending on which car you rent.

15 Q: How may one person pay for it?

16 A: Pay for it with a major credit card only.

17 Q: So no cash?

18 A: No sir.

19 Q: Just credit card only?

20 A: Right.

21 Q: When was the due date on that?

22 A: It was due back November 8th.

23 Q: How did you get involved in this case?

24 A: I was contacted by the officer being stop by a driver
25 of one of our vehicles.

(William McKenzie-Exam by Mr. Farr)

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1 Q: Was that on November 10, 2010?

2 A: Yes sir.

3 Q: So that would be two days later?

4 A: Correct.

5 Q: So that was expired?

6 A: Correct.

7 Q: Do you remember what officer called you?

8 A: Mr. Lawson.

9 Q: What did Mr. Lawson say to you?

10 A: He asked me if Mr. Toney was authorized to drive the
11 vehicle and I told him that he was not on the contract. He
12 asked me what would we do with him and I told him since he
13 was an unauthorized driver we needed to tow the vehicle.
14 After that he asked if he could search the vehicle and I told
15 him yes.

16 Q: So Budget is the rightful owner?

17 A: Yes.

18 Q: So you have the authority to repossess the car?

19 A: Correct at any time.

20 Q: Do you all leave does Budget also give out terms and
21 conditions?

22 A: Yes sir.

23 Q: In the terms and conditions does the authorized
24 driver have to sign the terms and conditions?

25 A: Yeah that is what this is. This is the original

(William McKenzie-Exam by Mr. Farr)

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1 signed paperwork or copy of it.

2 Q: Other than the authorized what people in his family
3 may drive it?

4 A: Him or his spouse or a significant other.

5 Q: What is you all policy on repossessing a car?

6 A: Any illegal activities or vehicle used in them.

7 Q: What about an unauthorized driver?

8 A: That yes.

9 Q: That it is a violation written in the contract?

10 A: Yes sir.

11 Q: On that contract that you got there are signatures
12 correct?

13 A: Yes there is a legible signature.

14 Q: How many initials are there on that?

15 A: Five initials.

16 Q: Five initials?

17 A: And one signature.

18 Q: What are the letters of the initial?

19 A: T. S.

20 Q: Do you think in your opinion that stands for Timothy
21 Sanders?

22 A: Yes.

23 Q: Timothy Sanders initialed everything in there to
24 saying he understands the rules and the terms of conditions?

25 A: Yes sir.

(William McKenzie-Cross by Ms. Wise)

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1 Mr. Farr: That is it Your Honor. That is all I have for
2 this witness, Your Honor.

3 The Court: Okay Ms. Wise.

4 (Cross by Wise)

5 Q: You testified that Mr. Timothy Sander's name was on
6 the rental agreement, his signature was on the rental
7 agreement?

8 A: Yes ma'am.

9 Q: His initials five times are on the rental agreement?

10 A: Yes.

11 Q: Do you know Timothy Sanders personally?

12 A: No ma'am.

13 Q: Do you know my client Mr. Jameco Toney personally?

14 A: Never met him I have never seen him until today.

15 Q: How long have did you say you worked in the rental
16 car industry?

17 A: Six years.

18 Q: In your six years have you seen vehicles turned in
19 late?

20 A: Yes ma'am.

21 Q: Have you seen drivers of vehicles that are not on the
22 rental agreement?

23 A: Very few most of the time people return back
24 themselves they do not want an unauthorized driver to return
25 them.

(W. McKenzie-Cross/David Zeller-Exam by Mr. Farr) 139

1 Q: Was this vehicle returned to you by an authorized
2 driver?

3 A: I do not know I did not do the return.

4 Ms. Wise: I do not think I have anything further. Thank
5 you sir.

6 The Court: Anything further from the State?

7 Mr. Farr: I have nothing further Your Honor.

8 The Court: Okay you can step down.

9 Mr. Farr: Your Honor may he be excused for the day?

10 The Court: Any problem?

11 Ms. Wise: No objection Your Honor.

12 The Court: You may be excused.

13 Mr. Farr: The State would like to call Officer Zeller.

14 Clerk: If you will place you left hand on the Bible and
15 raise your right. Do you solemnly swear the testimony you
16 give this court will be the truth, the whole truth, and
17 nothing but the truth so help you God?

18 Mr. Zeller: I do.

19 (Exam by Farr)

20 Q: Will you please state you full name?

21 A: David Michael Zeller.

22 Q: What is your occupation?

23 A: I am an investigator for Darlington County Sheriff's
24 Office.

25 Q: Have you always been employed by Darlington County

(David Zeller-Examination by Mr. Farr)

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1 Sheriff's Office?

2 A: Not always just for the past about seven years.

3 Q: Where were you before Darlington?

4 A: Before Darlington I worked in Police Emergency
5 Services as a firefighter and a couple spare jobs because
6 firefighters usually have a second job.

7 Q: On November 10, 2010 who were you employed by?

8 A: Darlington County Sheriff's Office.

9 Q: What was your duty that day? Excuse me let me
10 rephrase. What was your title?

11 A: My title would have been traffic unit, that is the
12 title of our unit. I mean my title would have been deputy you
13 know I was a deputy then.

14 Q: Did you have any training in law enforcement?

15 A: Yes sir I of course through the Criminal Justice
16 Academy for National Criminal Enforcement Association.

17 Q: On November 10, 2010 how did you become involved in
18 this case?

19 A: Well I had a car stopped and Corporal Lawson had a
20 car stopped. I was dealing with the person that I had on the
21 road side and he called for backup. So I immediately stopped
22 what I was doing and went to him.

23 Q: When you arrived on the scene what did you do?

24 A: I was walking up and Corporal Lawson had the
25 defendant in handcuffs and I immediately walked up to him and

(David Zeller-Examination by Mr. Farr)

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1 read him his Miranda Rights.

2 Q: How did you read him his Miranda Rights?

3 A: I read it off the card a Miranda card.

4 Q: Did Mr. Toney waive his Miranda Rights?

5 A: Yes sir he did.

6 Q: Did he make any --- did he want to talk to law
7 enforcement?

8 A: Yes.

9 Q: What did he say after he waived his Miranda Rights?

10 A: I do not remember exactly what he said verbatim but
11 what he was trying to do was he was wanting to deliver the
12 marijuana to wherever it was going to try and cooperate with
13 us. He wanted to deliver the dope.

14 Q: What do you mean he wanted to deliver the marijuana?

15 A: He said he was taking it somewhere and he was gonna
16 like I said I do not remember verbatim. He wanted to take it
17 to the guy that is was going to.

18 Q: So Mr. Toney was just a delivery person?

19 A: I am not sure. I mean, I don't know.

20 Mr. Farr: I have no further questions Your Honor. Please
21 answer any question Ms. Wise has.

22 The Court: Ms. Wise.

23 (Cross by Wise)

24 Q: Thank you Officer Zeller. You testified that you were
25 the officer that read Mr. Toney his Miranda Rights?

(David Zeller-Cross by Wise)

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1 A: Yes ma'am.

2 Q: So you were not there prior to his Miranda Rights
3 being read?

4 A: No ma'am.

5 Q: So you did not see what happened at all before that
6 time?

7 A: No ma'am.

8 Q: Did you complete any sort of written reports on this
9 accident?

10 A: No ma'am.

11 Q: So you are just sitting there testifying about what
12 happened three years ago?

13 A: Ma'am we have a report that is in the system that the
14 arresting officer documents plus it is on video.

15 Q: So you are relying on the arresting officers report?

16 A: Not only on that audio, on that video clearly hear
17 me tell him his Miranda Rights.

18 Q: Yes sir and I am asking about what you testified to
19 him allegedly saying after those Miranda Rights. You said you
20 do not quite remember but think he wanted to cooperate.

21 A: You can also hear that on the video.

22 Q: But again you did not create any sort of reports or
23 refresh your memory of that day?

24 A: No ma'am.

25 Ms. Wise: I think that is it Officer Zeller thank you.

(Kyle David Hause-Examination by Mr. Farr)

143

1 Mr. Farr: Your Honor may Mr. Zeller be excused for the
2 day?

3 The Court: Any objection?

4 Ms. Wise: No objection.

5 Mr. Farr: The State would like to call Deputy Hause.

6 Clerk: Please put your left hand on the Bible and raise
7 your right. Do you solemnly swear the testimony you give this
8 court will be the truth, the whole truth, and nothing but the
9 truth so help you God?

10 **(Exam by Farr)**

11 Q: Will you please state your full name for the record?

12 A: Yes Kyle David Hause.

13 Q: What is your occupation?

14 A: I am a Deputy Sheriff.

15 Q: Where at?

16 A: Darlington County.

17 Q: You always been in Darlington County?

18 A: No I worked for Hartsville City for about three four
19 years before I came to the Sheriff's Office.

20 Q: So how many years have you been in law enforcement?

21 A: Since 2005.

22 Q: On November 10, 2010 who were you working for?

23 A: Darlington County Sheriff's Office.

24 Q: On that present day on November 10, 2010 what were
25 your duties that day?

(Kyle David Hause-Examination by Mr. Farr)

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1 A: We were assigned to the traffic unit.

2 Q: On that day who was your supervisor?

3 A: Corporal Lawson.

4 Q: Was he out there?

5 A: Yes sir.

6 Q: How did you become involved in this case?

7 A: I was out there on another traffic stop during that
8 time.

9 Q: Were you ever called for backup?

10 A: Yes sir.

11 Q: By who?

12 A: Corporal Lawson.

13 Q: Why did he need backup?

14 A: He called and said he needed another unit immediately
15 the guy had run.

16 Q: Did you show up on scene?

17 A: Yes sir.

18 Q: What was your involvement during that scene?

19 A: When I got there the suspect was already handcuffed.

20 Q: Did you have any involvement in transferring the
21 marijuana?

22 A: Yes I went to the post office.

23 Mr. Farr: Your Honor may I approach the witness?

24 The Court: Yeah.

25 Q: Look at this. Do you recognize all that?

(Kyle David Hause-Exam cont'd/Cross by Ms. Wise)

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1 A: Yes sir.

2 Q: Does it look in the same form as today?

3 A: Yes sir.

4 Q: Your Honor the State would like to move State's
5 exhibit five, five through thirteen for identification
6 purposes.

7 The Court: Are you offering them as evidence or you
8 offering them for ID?

9 Mr. Farr: ID.

10 The Court: Okay well that is nothing she needs to
11 respond to. You just identified five through thirteen for ID
12 ok.

13 (State's Exhibit's Five through Thirteen for ID)

14 Q: After you weighed the marijuana did you take it back
15 to Darlington County?

16 A: Yes sir I took it back to Darlington.

17 Mr. Farr: I have no further questions. Please answer any
18 questions Ms. Wise ask you to.

19 (Cross by Wise)

20 Q: So just to be clear you testified that you arrived
21 on the scene about how long into this stop about what time
22 would you say?

23 A: I am not sure exactly what time I got there.

24 Q: Did you file police order reports on this incidents?

25 A: No.

(Kyle David Hause-Cross by Ms. Wise)

146

1 Q: So you are just back to what you remember today?

2 A: Yes ma'am and what is in the report, the incident
3 report.

4 Q: Who wrote that incident report?

5 A: Corporal Lawson.

6 Q: You testified that you transported the Marijuana
7 along with Officer Lawson to the Post Office?

8 A: Correct.

9 Q: What did you do at the Post Office?

10 A: Transported it, to find out it's weight.

11 Q: When you said it was weighed what do you mean?

12 A: They put it on a scale and weighed it.

13 Q: And who is they?

14 A: Corporal Lawson with the group of Post Office
15 managers.

16 Q: This is what is by the field weight?

17 A: Yes.

18 Q: It came out to about what?

19 A: It was around sixteen pounds.

20 Ms. Wise: That is it sir thank you.

21 The Court: Anything further from the State?

22 Mr. Farr: Nothing further from the State. Your Honor may
23 he be excused for the day?

24 The Court: Any objection.

25 Ms. Wise: None at all.

(Garry Billiottt-Examination by Mr. Farr)

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1 The Court: He can.

2 Mr. Farr: The State would like to call Officer Billiott
3 now.

4 Clerk: Please place your left hand on the Bible and
5 raise your right. Do you solemnly swear the testimony you
6 give this court will be the truth, the whole truth, and
7 nothing but the truth so help you God?

8 Mr. Billiott: I do.

9 **(Exam by Farr)**

10 Q: Can you please state your full name for the record.

11 A: My full name is Garry Billiott. My last name is
12 spelled B as in Bravo I-L-L-I-O-T.

13 Q: Where are you currently employed?

14 A: I am currently employed with the Darlington County
15 Sheriff's Office.

16 Q: What is your title?

17 A: My title is Sergeant basically crime scene
18 investigator.

19 Q: What are your duties at the Sheriff Department?

20 A: I am a crime scene investigator. I respond to the
21 different crime scenes I help process them. I am also a
22 evidence custodian so I work in the evidence room logging
23 evidence place it where it needs to be placed. I also do
24 processing and like I said kind of multi.

25 Q: How long have you been employed with Darlington?

(Garry Billiottt-Examination by Mr. Farr)

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1 A: I have been employed for approximately it has been
2 about almost ten or eleven years now.

3 Q: What is your educational background?

4 A: Educational background I have Bachelor's in Criminal
5 Justice I also have a Bachelor's in Psychology and along with
6 also a certification in particular to forensic fields
7 discipline such as finger prints, crime scene processing such
8 as that.

9 Q: What specialized training have you received
10 particularly in the field of marijuana analysis?

11 A: I have successfully completed a marijuana analysis
12 class, certification program that was sponsored through SLED
13 which is South Carolina Law Enforcement Division. In that
14 part of the test is where we are given fifty unknown samples
15 that we have to correctly identify one hundred percent
16 accuracy and then there is also eighty percent on a written
17 exam and I successfully completed in October of 2010. My
18 expiration would have actually been up this year the end of
19 December but then I re-certified in October this year so now
20 my certification will not expire until 2016.

21 Mr. Farr: Your Honor at this time the state would move
22 and have him as an expert witness.

23 The Court: Says the defense?

24 Ms. Wise: Excuse me Your Honor in what?

25 Mr. Farr: In marijuana analysis.

(Garry Billiottt-Examination by Mr. Farr)

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1 Ms. Wise: No objection.

2 The Court: Court so finds.

3 Q: How many samples have you done over your career?

4 A: About approximately about two hundred and fifty
5 samples.

6 Q: Have you ever testified as a marijuana analysis in
7 the state of South Carolina courts?

8 A: Yes I have.

9 Q: How many times have you done that?

10 A: I have done that once this would be my second time.

11 Mr. Farr: State would like to approach the stand.

12 The Court: OK.

13 Q: Do you recognize that?

14 A: Yes I do.

15 Q: What is that?

16 A: This is a copy of my report, a marijuana analysis
17 report that I had done back in August 15, 2012.

18 Q: Has it been edited or changed?

19 A: Not that I can notice.

20 Q: It is true and accurate?

21 A: Yes.

22 Mr. Farr: Your Honor at this time State would like to
23 move State's exhibit four into evidence.

24 The Court: What says the defense?

25 Ms. Wise: No objections Your Honor.

(Garry Billiottt-Examination by Mr. Farr)

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1 The Court: Alright. State's Exhibit Number Four is
2 admitted into evidence.

3 (State's Exhibit Number Four is admitted)

4 Q: Did you in this case have also need to receive the
5 evidence in this case?

6 A: Yes I did.

7 Q: Was the evidence sealed when you first received it?

8 A: It was in a plaid tote bag and the packages some were
9 wrapped in like cellophane and others were wrapped in kind
10 of like a plastic saran wrap. Most of those types of packages
11 were sealed.

12 Mr. Farr: Your Honor, may I ...

13 The Court: Yes.

14 Q: Is that the same stuff that you received in evidence?

15 A: Pretty much like I said I actually repackaged this
16 after. What I received was the tote bag with the individual
17 packages and then once I did my analysis went in and took the
18 samples I actually repackaged this.

19 Q: Is all that true and accurate has anything been
20 tampered with?

21 A: Not that I can --- pretty much after I repackaged it
22 I resealed it back up and put my initials and date. It looks
23 to be the same pretty much as I sealed it.

24 Mr. Farr: Your Honor at this time the State would like
25 to move to evidence exhibit five through thirteen.

(Garry Billiottt-Examination by Mr. Farr)

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1 The Court: What say the defense?

2 Ms. Wise: Which exhibits are those is that actually
3 marijuana I am going to object I do not believe it is ...

4 Mr. Farr: I understand Your Honor.

5 Q: When you analyze marijuana would you have analyzed
6 it if it was not sealed?

7 A: Yes I would have made note of it in my report that
8 is was not sealed or properly maintained.

9 Q: Have you had a chance to analyze the evidence to
10 date?

11 A: Yes I have.

12 Q: What kind of test did you perform?

13 A: We performed two types of test. We have been trained
14 to do a microscopic test that you actually look at the plant
15 material through a microscope. You are looking for a certain
16 characteristics that are particular to marijuana and then we
17 also do a chemical test as well. Both of those test have to
18 be positive for us to say that it is marijuana that is
19 marijuana on file.

20 Q: What were your findings?

21 A: My findings were that I tested I weighed out seven
22 bags. I took about seven samples I had taken from each of the
23 bags and pretty much I found that all the results were
24 positive to marijuana the marijuana that was found. The total
25 was the final results six thousand seven hundred and thirty

(Garry Billiottt-Examination by Mr. Farr)

152

1 five grams or translated to ounces two hundred and thirty
2 seven point seven one ounces and translated to pounds
3 fourteen point eight three pounds we had of a class one
4 schedule drug.

5 Q: Can you go into a little bit more details of how you
6 tested this for marijuana?

7 A: Yes, with the microscopic test like I said the first
8 thing we do in terms when you receive the sample like I said
9 when I got this I pretty much had to, when we weigh we
10 actually weigh with out the packaging. So we took it out of
11 the packaging that is the reason why a lot of this as you can
12 see has been taken out of the original container that it was
13 in. We weigh it so that we just weigh the plant material
14 itself and then we put back in packaging and we seal it as
15 I have done. I will take a small sample so that I can
16 actually do my chemical and microscopic test in the lab. Like
17 I said I took a sample from each of those and after we said
18 like I said we weighed it took our sample. In the lab we do
19 the microscopic we look at underneath microscope and there
20 is certain hairs that can be seen under the microscope and
21 particularly three hairs that we look for. There is a
22 unicellular simple hairs, multicellular or what is also know
23 as glandular hairs and particularly with marijuana has brown
24 sugar sort of kind of cinnamon type appearance and that is
25 actually where THC or what is known active degree in

(Garry Billiottt cont'd Exam/Cross by Ms. Wise)

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1 marijuana Tetrahydrocannabinol and then finally there is
2 something they call cystolithic hairs and with those they
3 kind of resemble almost bear claws. We look through those
4 hairs and if those are present we can actually see with a
5 microscopic sample that actually is possible. If we go on to
6 take that sample and we do a chemical test of it and a
7 typical test is known as the Duquenois-Levine test. With that
8 add a reagent we add chloroform and we add hydrochloric acid
9 and with each of those chemicals they have a reaction and we
10 look at the reaction. If the reaction is what we are looking
11 for then pretty much we can say that it is positive. Now in
12 order for us to finally say that the final result that the
13 microscopic and the chemical both have to be positive and I
14 did that for each of these samples each of these seven
15 samples I tested.

16 Q: You had seven positives?

17 A: Seven positives through the microscopic seven
18 positives through the chemical.

19 Q: For every one of them?

20 A: Yes.

21 Q: What about false positives?

22 A: False positives that does happen we talked in our
23 training about sage and thyme. We actually when we had
24 chemicals that your color changed but it is not specifically
25 the color change we are actually looking for. Plus once we

(Garry Billiottt-Cross by Ms. Wise)

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1 add the chloroform to it there is a color that we note in the
2 chloroform layer that does not transpond plus also the
3 microscopic test when you look at it underneath the
4 microscope it is not going to have all the hairs that we are
5 looking for so it would be negative from microscopic.

6 Q: Did you have any false positives in this test?

7 A: No I did not.

8 Q: Your report is true and accurate as to that?

9 A: Yes it is.

10 Mr. Farr: I have no further questions.

11 (Cross by Wise)

12 Q: The results of this report. When was this marijuana
13 tested?

14 A: I tested this marijuana on August 15, 2012,
15 8/15/2012.

16 Q: So nearly two years after this alleged incident
17 occurred on November 10, 2010?

18 A: That is possible.

19 Q: You testified that the marijuana chemically tested
20 positive correct?

21 A: That is correct.

22 Q: In layman's terms the plants were marijuana. Do you
23 testify that you have about total eleven years of experience?

24 A: Ten eleven years of law enforcement experience now
25 in terms of testing marijuana and analyzing it last three

(Garry Billiottt-Cross by Ms. Wise)

155

1 years.

2 Q: So it is safe to say you know your marijuana. You
3 have handled about two hundred and fifty or so samples you
4 testified?

5 A: That is correct.

6 Q: When you weighed the marijuana you explained that the
7 packaging was taken off of the marijuana that is why the
8 weight was lower than the field weight we heard earlier of
9 about sixteen pounds?

10 A: That is correct. One of the reasons we pretty much
11 whenever we do weigh we do not weigh the packaging. We want
12 to get an actual true weight. Just the plant material itself
13 and like I said after doing several weights of those the
14 total weight came out to be fourteen point eight three
15 pounds.

16 Q: I am not the expert here you are but correct me if
17 I am wrong. There are two separate types of marijuana plants
18 correct there is the male plants and there is female plants?

19 A: That is correct.

20 Q: Male plants legal to possess correct?

21 A: As far as I know yes ma'am.

22 Q: Female plants you cannot possess?

23 A: Females are those ones that you can't.

24 Q: When you weigh that marijuana you weigh all the plant
25 together correct?

(Garry Billiottt-Cross by Ms. Wise)

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1 A: That is correct.

2 Q: Everything put on the scale?

3 A: Like I said it was all compressed in block forms so
4 yes whatever was in the package that is what I weighed.

5 Q: In your two to three years in doing marijuana expert
6 analysis I guess you have stumbled across the marijuana
7 deposition in the South Carolina Code of Laws correct?

8 A: Yes.

9 Q: What is marijuana defined as?

10 A: Marijuana is defined as basically the plant material
11 and actually in terms of you are asking me to quote
12 something.

13 Q: Actually I have the statute right here.

14 A: I also have it right here if I can refer to it.

15 Q: Absolutely would you mind reading it out loud to the
16 jury and this is Section 44-53-10 defining marijuana?

17 A: I do not want to misquote. Marijuana means, (1) all
18 species or variety of marijuana plant and all parts thereof
19 whether growing or not. Is this the same statute that you
20 have?

21 Q: Yes sir.

22 A: (2) the seed of the marijuana plant; (3) the resin
23 extracted from any part of the marijuana plant; (4) every
24 compound, manufacture, salt, derivative, mixture, or
25 preparation of such plant, it's seed, or resin.

(Garry Billiottt-cont'd cross/Redirect by Mr. Farr) 157

1 Q: Right below that does it say what marijuana does not
2 mean?

3 A: It does say marijuana does not mean, (1) the mature
4 stalks of the marijuana plant or fibers produced from these
5 stalks; (2) oil or cake made from the seeds of the marijuana
6 plant; (3) any other compound, manufacture, salt,
7 derivatives, mixture, or preparation of the mature stalks
8 (except the resin extracted therefrom); (4) the sterilized
9 seed of the marijuana plant which is incapable of
10 germination.

11 Q: Can you testify that you had everything all together?

12 A: In terms of yes I did but in terms of what it says
13 marijuana does not mean mature stalks there was no mature
14 stalks. When you think of a mature stalk you think of an
15 actual pulled part of the plant. There was no mature stalks
16 in any of this.

17 Q: What about the seeds?

18 A: The seeds there were seeds present I did make note
19 of that in my report.

20 Q: Do you have any idea whether those were sterilized
21 or not considering to the statute not what marijuana is?

22 A: I can describe in terms of what the seeds looked like
23 but I could not tell you pretty much whether or not they were
24 sterile or not.

25 Q: Do seeds affect the weight of the marijuana?

(Brad Lawson - Examination by Mr. Farr)

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1 A: To some degree but not really. I would not say it
2 would be like totally shift the weight of it.

3 Ms. Wise: Thank you sir I appreciate it I have no
4 further questions.

5 Mr. Farr: Can I just ask a couple questions?

6 The Court: Okay.

7 (Redirect by Farr)

8 Q: Who did you get the marijuana from?

9 A: I actually at this point and time I was the actual
10 evidence custodian so I went up stairs and looked in the
11 computer where it was stored at. Went up to the section where
12 it was stored at and took it out of evidence and took my
13 samples of what I needed to.

14 Q: Who placed that in evidence?

15 A: Placed it into evidence I actually have the evidence
16 form here. Investigator Officer, we have Brad Lawson's name
17 was on the evidence report along with people recovering...
18 That was placed into evidence and the evidence was stored
19 again at the time was at the time when I was working evidence
20 at the time was Russ Howle. He logged it in November 10,
21 2010, 1600 hours.

22 Mr. Farr: That is all I have Your Honor.

23 The Court: Anything further?

24 Ms. Wise: Nothing further Your Honor.

25 The Court: Ok you can step down.

(Brad Lawson - Examination by Mr. Farr)

159

1 Mr. Farr: Your Honor may Mr. Billiott be excused for the
2 day?

3 The Court: Any objection?

4 Ms. Wise: None Your Honor.

5 Mr. Farr: I would like to call Brad Lawson to the stand
6 Your Honor.

7 The Court: Ok.

8 Clerk: Put your left hand on the Bible and raise your
9 right. Do you solemnly swear the testimony you give this
10 court will be the truth, the whole truth, and nothing but the
11 truth so help you God?

12 Mr. Lawson: I do.

13 **(Exam by Farr)**

14 Q: Will you please state your full name for the record?

15 A: Brad Michael Lawson.

16 Q: What is your occupation?

17 A: At this current time I am employed with the Kershaw
18 County Sheriff's Office as a Lieutenant over the narcotics
19 division.

20 Q: How long have you been at Kershaw?

21 A: Just a little over two years.

22 Q: Have you been at any other agency before Kershaw?

23 A: Yes prior to that I worked for the Darlington County
24 Sheriff's Office for about ten years.

25 Q: So how long have you been in law enforcement?

(Brad Lawson - Examination by Mr. Farr)

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1 A: Twelve years.

2 Q: What are your present duties today?

3 A: My present duties today, I am the Lieutenant over the
4 narcotic division in Kershaw County Sheriff's Office.

5 Q: November 10, 2010 you were employed with Darlington
6 County Sheriff's Office?

7 A: Yes that is correct.

8 Q: What were your present duties that day?

9 A: At that particular time I was the Corporal over our
10 --- whatever you want to call it our traffic unit. Myself and
11 Deputy Hause who was up here earlier we were assigned to work
12 interstate I-20 and major highways within in this county and
13 I was supervisor as far as being on the interstate.

14 Q: On November 10, 2010 around twelve and some change
15 what happened?

16 A: Well I was sitting stationary around the one twenty
17 nine mile marker on I-20 if you have ever been out there it
18 is where the old rest area is it is a parking area now for
19 commercial vehicles. While I was sitting stationary at that
20 particular location I was monitoring East bound traffic the
21 traffic that is coming from Columbia headed towards the beach
22 or Florence just to let you know which way the traffic was
23 going. While at that location a tan colored Chevy Malibu
24 passed by. When it did it was traveling into the I would say
25 the number two lane number one lane but just to clarify that

(Brad Lawson - Examination by Mr. Farr)

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1 is when I say number two lane, number two lane would be the
2 slow lane the right hand lane. Number one would be the lane
3 that you are suppose to use for passing the fast lane. The
4 Chevy Malibu was traveling in the slow lane the number two
5 lane as soon as it passed by me I noticed it made an abrupt
6 lane change over to the fast lane. When doing so he nearly
7 cutoff another car, just did not create enough space the
8 driver of that vehicle did not create enough space to make
9 a safe lane change. So at that time I pulled out behind the
10 Chevy Malibu. Once I did that in an attempt to catch up with
11 that vehicle he made another lane change from the fast lane
12 back to the slow lane.

13 Q: When you were pulling up to the Chevy Malibu did you
14 get right behind it?

15 A: Not at first.

16 Q: Did you pull beside it?

17 A: Yes I did pull beside the Chevy Malibu.

18 Q: Why did you pull beside it?

19 A: After seeing the two lane change violations when he
20 changed back it was the same thing did not create enough
21 space it was nearly cutting off another vehicle just not
22 making a safe lane change. But before turning on the blue
23 lights to make that traffic stop I pulled up beside the
24 Malibu for about three reasons. Reason why I do it is to make
25 sure people are wearing their seatbelts you can not always

(Brad Lawson - Examination by Mr. Farr)

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1 see peoples seatbelts from riding behind, so you want to get
2 a good look at that. I want to know how many people are in
3 the car. That is a safety issue for me I want to make sure
4 there is no more heads that pop up out of the back seat that
5 has happened before. I guess most importantly we have all
6 seen car chases I mean traffic stops leading to car chases.
7 I want to make sure and do everything I can to make sure
8 there is no children in the car and so that is why I pull up
9 beside the vehicle before I pulled in behind to actually
10 initiate the traffic stop.

11 Q: Did you notice anything when you pulled beside it?

12 A: Yes when I pulled beside it I noticed that the rear
13 windows were down on the vehicle approximately I say two
14 inches. It looked like it was on both sides it definitely was
15 on the driver's side. That kind of drew my attention because
16 if you have ever ridden down the interstate at seventy plus
17 that is a God awful noise that comes through your windows
18 that it is kind of hard to listen to. So that just kind of
19 drew my attention to why is that the way it is.

20 Q: When did you eventually turn on the blue lights?

21 A: Once I pulled from beside the Chevy Malibu I pulled
22 back behind it and then turned on the emergency blue lights.

23 Q: Did you ever get out of the car?

24 A: Yes I then got out I approached on the passenger side
25 of the Chevy Malibu. Made contact with the driver the driver

(Brad Lawson - Examination by Mr. Farr)

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1 was the sole occupant of that car. It turned out to be Mr.
2 Toney here, he was able to be identified from his South
3 Carolina driver's license that he handed me along with the
4 rental when I asked him for the paperwork of the vehicle he
5 handed me a rental contract, vehicle rental contract which
6 was Avis Budget.

7 Q: Is Mr. Toney in the room today?

8 A: Yes.

9 Q: That is him?

10 A: Yes sir.

11 Q: When he handed you the driver's license and the
12 rental agreement what did you do next?

13 A: Well I noticed whenever, I noticed that whenever he
14 handed me that information he seemed to be nervous his hands
15 were shaking. But that was not the only nervousness that he
16 showed. To go beyond hand shaking you could tell that he had
17 labored breathing you could easily see his chest rising and
18 falling his stomach rising and falling he was breathing very
19 heavily very nervous type breathing. At that point well I
20 noticed right off the bat that the rental agreement he was
21 not the person that rented the car. I noticed that the rental
22 was two days late that is was suppose to be due back on the
23 eighth and here we are on November 10th. I knew that that
24 rental agreement was past due. After noticing that I noticed
25 it was a Timothy Sanders that rented the car and of course

(Brad Lawson - Examination by Mr. Farr)

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1 there was not a Timothy Sanders in there Mr. Toney was the
2 only one in the car. So I asked him to exit the car.

3 Q: Is it a process to ask people to step outside the
4 car?

5 A: Yes I cannot say that I ask everyone to step out of
6 the car but if I pick up on certain things that are
7 inconsistent out of the thousands of traffic stops that I
8 made out on the interstate. Whenever I see something that is
9 totally inconsistent with what I call the innocent motoring
10 public. Then I am going to get that person out and I am going
11 to speak with them a little more.

12 Q: When he stepped out of the vehicle did you tell him
13 why he was pulled over?

14 A: I did, I explained to him why I pulled him over yes.

15 Q: Did you go into details of why you pulled him over?

16 A: I did, I did.

17 Q: At that time you told him what you were pulling him
18 over for did you start writing your warning?

19 A: Well not right off the bat I did not start writing
20 my warning. I wanted to speak with him about the rental
21 agreement because that is I did not know what was going on
22 with this car as far as him not being on the rental agreement
23 and him being any, his name anywhere to be an authorized
24 driver or anything and it is two days late. You know I do not
25 know what is going on with this car so I spoke with him for

(Brad Lawson - Examination by Mr. Farr)

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1 a moment about that just trying to find out who did you get
2 it from, where did you get it from, and I asked him where he
3 was headed and where he was coming from.

4 Q: You mention about where he was coming from. Where did
5 he say he was coming from?

6 A: At Columbia, Columbia unemployment. When I asked
7 what he was doing in Columbia he said at first he mentioned
8 something about child support that was very brief and then
9 he went on to state about he had been there to the
10 unemployment office.

11 Q: You said that you knew where Mr. Toney was from?

12 A: Yes well yes from his driver's license I noticed that
13 he was from I think Cherry Laurel Drive over in the northern
14 part of Hartsville.

15 Q: Does Hartsville have an unemployment office?

16 A: Yes.

17 Q: Did that not seem odd?

18 A: Yeah that did seem a little odd to me of why you know
19 why would you go all the way to Columbia to go to the
20 unemployment office. I guess though that when you start
21 adding up these things it just did not make a whole lot of
22 sense.

23 Q: You mention the rental agreement. Where was the
24 rental from?

25 A: It was from the Florence Airport.

(Brad Lawson - Examination by Mr. Farr)

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1 Q: Again you said Mr. Toney is from Hartsville?

2 A: Yes.

3 Q: Is there a rental place in Hartsville?

4 A: There is an Enterprise Leasing on North Fifth Street
5 probably about I say about two and a half minutes probably
6 from where he stays from where Mr. Toney stays.

7 Q: And all this is formulating in your head?

8 A: Yeah all of this is starting to formulate that this
9 is totally different from just your normal routine traffic
10 stop. These things are starting to build and make me think
11 something is going on here that is just not quite right.

12 Q: You ask then Mr. Toney a few questions correct?

13 A: Yes.

14 Q: When did you start checking into the car?

15 A: Like I said I asked him a few questions about the
16 rental agreement because that is what concerned me at that
17 moment and you know just where he was coming from and where
18 he was going. Then I began to then I got my warning book out
19 of my vehicle begin to start writing I think send to dispatch
20 start to running his driver's license and at some point I had
21 them run the vehicle tag as well.

22 Q: During the check did you ask him a few more
23 questions?

24 A: Yeah I always do general conversation.

25 Q: During that general conversation did you ask if

(Brad Lawson - Examination by Mr. Farr)

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1 anything was inside the car?

2 A: Yes.

3 Q: What did you ask is in the car?

4 A: Well I asked him was there and if I am correct on
5 what the video shows exactly has any alcohol, explosives,
6 anything of that nature in which he responded no. I was then
7 interrupted by a radio one of my fellow officers actually
8 called me on the radio so then I went into ask him after that
9 I asked him if he had any illegal drugs. Went into cocaine,
10 heroine, I even asked him about marijuana. When I asked him
11 about marijuana he gave a different reaction than what he did
12 to everything else I asked him.

13 Q: When you mean a different reaction could you just
14 clarify that reaction?

15 A: Yes well when I asked him alcohol, guns, whatever
16 else it was he told me no, but he never looked away from me.
17 You know he was still facing me as I was talking to him, but
18 when I mentioned marijuana he turned his head and looked back
19 at the car which was totally different from anything else I
20 had asked him.

21 Q: When you mean like he turned around like this or did
22 he turn his full body?

23 A: At that point he turned his head and looked back at
24 the car.

25 Q: After you asked a few questions did you ask to search

1 the car?

2 A: I did.

3 Q: What did he first say?

4 A: Well, he says well you mean a general search. Well
5 I did not want to do a general search I wanted to search the
6 car I said the entire car. He says well I can not allow that
7 it is not my car.

8 Q: After he said that is when, what did you do next
9 after that?

10 A: Well I ended up calling the rental company and spoke
11 with Mr. McKenzie who was here a little earlier and told him
12 what was going on with the vehicle and he basically told me
13 that the vehicle ...

14 Ms. Wise: Objection Your Honor this is hearsay.

15 The Court: The contract is in evidence and Mr. McKenzie
16 has testified.

17 Ms. Wise: I agree and there was no testimony presented
18 that Mr. McKenzie actually consented to search of the
19 vehicle.

20 The Court: You all approach a minute.

21 (Counsel approach)

22 The Court: I will allow the question.

23 Q: Mr. Lawson will you continue what I asked you?

24 A: Well I spoke with Mr. McKenzie on the phone and
25 explained to him what was going on with this who was driving

(Brad Lawson - Examination by Mr. Farr)

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1 it, what the contract because I actually had the rental
2 contract that was in the car with me. I explained to him what
3 was going on and he told me that they were in violation of
4 the contract that it was basically null and void to search
5 the car and have it towed.

6 Q: After he told you that it would be towed and you
7 could search it. Were you interrupted after that?

8 A: Yes I explained to Mr. Toney what I was going to do
9 and at one point he actually even turned to walk towards the
10 car and I had to tell him and this appeared on the videos of
11 me telling him do not go back to the car I can not remember
12 my exact words at this moment but I am telling him not to
13 go back to the car.

14 Q: Did any of the officer call you during that time?

15 A: Yes well we had like I said I was I guess the acting
16 supervisor out there so I had to keep up with what was going
17 on. My other two officers that were with me they both had
18 traffic stops going on at the same time. Just ironically we
19 all three had something in the cars that we had to stop. That
20 does not happen everyday it just happened this day, so the
21 radio was a little chaotic. One of them was wanting somebody
22 to help them, I needed somebody to help me. I actually had
23 a phone call with Deputy Zeller who was up here earlier. As
24 far as just him telling me what he had on his traffic stop
25 so yeah we were interrupted from time to time as far as

(Brad Lawson - Examination by Mr. Farr)

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1 whenever I went back to search the car we were interrupted
2 because of those types of situations.

3 Q: After all the interruptions did you initially go
4 search the car?

5 A: I did.

6 Q: When you searched the car did you find anything?

7 A: Well not up front but you know when I first started
8 and it is unfortunate that I had to do this by myself it is
9 not normal how we do business searching a car by ourselves
10 it is not safe. So I started checking under the seats first
11 it was my first thing because I wanted to make sure there was
12 no guns it is very common to have guns in a car we see it all
13 the time I just wanted to make sure there was no guns under
14 the seat. Anything that he could possibly run back up to the
15 car and get a hold of so that was my first thing that I
16 searched. From there on I kind of watched him while I am
17 doing that. I am trying to wait for one other officers to get
18 there too, but whenever I finished on the passenger side
19 which is always where I start at I have a systematic search
20 that I do. I start on the front passenger seat. As soon as
21 I leave there and go to walk to the driver's side you can see
22 Mr. Toney clearly on video he moves from where he was
23 standing like he wants to get a better look or view of what
24 I am fixing to do to that car. That to me I must be getting
25 close to something that is how I look at it. Then I checked

(Brad Lawson - Examination by Mr. Farr)

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1 under the driver's seat pop the trunk and when I go to the
2 trunk there is nothing but a plaid tote bag in the trunk.

3 Q: Was the top to the bag open?

4 A: It was not closed completely it had some maybe some
5 jeans or some sweat pants sweat shirt there was something
6 laying on top of it but when I went to pull it towards me.
7 Well I touched the side of it briefly and I could feel the
8 what felt like large bricks or large bundles to me I
9 suspected that to be a large bunch of illegal drugs. When I
10 pulled it to me closer to me in the trunk and I touched the
11 top of it I looked back to Mr. Toney and I said what is this.
12 He was silent for just a second and then he bolts off and
13 takes off running beside in between my vehicle and the
14 interstate and then eventually behind my vehicle and he ended
15 up giving up. I commanded him to stop he ended up getting on
16 the ground and he was handcuffed right after for no further
17 issues.

18 Q: After you handcuffed him and a few minutes you read
19 his Miranda Rights correct?

20 A: I did not read his Miranda Right. At that point
21 whenever I had him on the ground is whenever I called for the
22 other two officers to get down there to me and they dropped,
23 of course, but they could tell the distress on the radio they
24 dropped whatever they were doing and come to me. Once Deputy
25 Zeller and Deputy Hause had gotten on the scene Deputy Zeller

1 eventually he read his Miranda Rights to him which he stated
2 I am sure.

3 Q: Mr. Toney waived them right?

4 A: He did.

5 Q: Did he make any statements after his Miranda Rights?

6 A: He did.

7 Q: What did he say?

8 A: Well he was stating that it was that is fifteen
9 pounds in the trunk. I am just doing somebody a favor you
10 know I went to Columbia to get it he told us that he went to
11 Columbia to pick it up. That he was just doing someone a
12 favor and that he was meeting Mr. Sanders back at the
13 airport. They was going to switch the marijuana from the
14 rental car to I guess the car that they took I guess they had
15 to get to Florence I am sure another vehicle. Exchange the
16 drugs from one car to the other and turn the rental car in.
17 He wanted to, said he wanted to make a delivery. What we call
18 a controlled delivery. It happens from time to time and that
19 what he wanted to do. He wanted to, said he wanted to make
20 that delivery to who he was taking the marijuana to.

21 Q: Was Mr. Toney under any influence of alcohol or drugs
22 at the time?

23 A: Not that I am aware of he did not appear to be no.

24 Q: Did he have any physical or mental disabilities at
25 the time?

(Brad Lawson - Examination by Mr. Farr)

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1 A: No sir.

2 Q: Did you make any promises to him?

3 A: No not at all.

4 Q: His statement were freely given?

5 A: Yes.

6 Q: Did he make a statement of being paid for this?

7 A: It does seem like there was a mention of him being
8 paid to do this. I do not know of anybody that is going to
9 do that for free.

10 Q: Have you ever seen Mr. Toney before November 10,
11 2010?

12 A: No sir I had no idea who he was.

13 Q: That was the first time you met Mr. Toney?

14 A: That is the first time I ever met Mr. Toney that I
15 am aware of.

16 Q: This did happened in Darlington County correct?

17 A: Yes it did.

18 Mr. Farr: May I approach the witness Your Honor?

19 The Court: Yes.

20 Q: You can see right here State's exhibit five through
21 thirteen correct?

22 A: Yes.

23 Q: Do you know what that is?

24 A: Yes well that is the plaid tote bag that was in the
25 trunk and I guess everything that was in it. It just happened

1 to be repackaged up I guess.

2 Q: Is it in the same state or has it been changed?

3 A: Well other than let me see.

4 Q: I will go make sure it is correct.

5 A: Lets see we got it should be I guess five of these
6 one, two, three, four, five of what appears to be of what I
7 know what I thought would have been in a one pound packages
8 you know from the side of the road. Along with the smaller
9 one that was in. So yes other than the one Mr. Billiottt it
10 look like in lieu of him having to take them out and wrap
11 them these do look the same.

12 Q: What about the two brown bags?

13 A: Well I guess he has reset them.

14 The Court: Are there anything beside are there any
15 plastic inside there?

16 Mr. Lawson: I would assume so Your Honor I would think
17 there probably.

18 The Court: Are there any plastic bags in there?

19 Mr. Farr: They are actually as basically just pulled
20 plant material.

21 The Court: Well if you open it do not open it all the
22 way it may spill out everywhere. I do not want it spilling
23 all over the court room.

24 A: The way I can explain it, of course, the video will
25 show it but the larger package out of about these five that

(Brad Lawson - Examination by Mr. Farr)

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1 were located it was all saran wrap cellophane wrap together
2 as one big bundle. And in doing this enough and seeing enough
3 of these types of packages you know it looked about to be
4 approximately about ten pounds or so. Well yeah this is some
5 of the it has some of the cellophane wrapping, I'm trying to
6 do this without pulling it out and getting it everywhere but
7 this is some of the cellophane wrapping that was around it
8 yes that is one of the larger pieces of marijuana.

9 Mr. Farr: Your Honor at this time the State would like
10 to move into evidence State's exhibit's five through
11 thirteen.

12 Ms. Wise: May I just look at it I have not seen it.

13 The Court: Sure. Defense have any objection?

14 Ms. Wise: No objections Your Honor.

15 The Court: Okay it is in without objection.

16 (State's Exhibit Number Five through Thirteen admitted into
17 evidence)

18 Q: Is that marijuana still true and accurate as today
19 as it was November 10, 2010?

20 A: Yes sir.

21 Mr. Farr: Your Honor may I approach the witness.

22 The Court: Yes sir.

23 Q: Can you just look at these. Do you recognize that?

24 A: Yes I do.

25 Q: That is State's exhibit number two that I handed you.

1 You recognize that?

2 A: Yes I do.

3 Q: Is that clearly and accurately depict the subject
4 matter?

5 A: Yes this picture that I took on the roadside of the
6 tote bag inside of the trunk from a distance with the license
7 plate North Carolina license plate for the Chevy Malibu. I
8 always take side angle of the vehicle and then once we pulled
9 it out and put on the hood of the vehicle and also a picture
10 of the that rear window rolled down.

11 Q: Has the picture been altered or deleted in anyway?

12 A: No.

13 Mr. Farr: Your Honor at this time the State would move
14 the State's exhibit two into evidence.

15 The Court: What says the defense?

16 Ms. Wise: No objection.

17 The Court: In without objection.

18 (State's Exhibit Number Two was admitted)

19 Q: When you grabbed the marijuana out of the car did you
20 struggle at first?

21 A: Well I mean I hope I can lift fifteen pounds but you
22 got it inspected the vehicle it does catch you I mean anytime
23 you pick up something that is fifteen pounds or plus you
24 expect to pick it up and it be easy so yeah. When you pick
25 it up it is heavier than what you expect.

(Brad Lawson - Examination by Mr. Farr)

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1 Mr. Farr: I have no further questions Your Honor at this
2 time. Please answer any question Ms. Wise has.

3 Ms. Wise: Your Honor may we approach the bench.

4 The Court: Ladies and gentlemen we are going to stop for
5 lunch right now because the next portion of this evidence may
6 take an hour, hour and a half or longer and so nobody wants
7 to go to lunch at two o'clock and so we are going to stop
8 now. A quarter to two does that give everybody enough time?
9 Does that give you all enough time to eat an hour and a half?
10 I remind you please do not discuss this case and do not let
11 anyone discuss it with you. I will see you back in the jury
12 room at a quarter two.

13 **(Jury lunch break)**

14 The Court: Are there any matters that we need to take
15 up before we break for lunch?

16 Mr. Farr: None from the State Your Honor.

17 The Court: You are still on the stand so that means you
18 cannot discuss your testimony. I will see you all a quarter
19 to two.

20 **(Court dismissed for lunch)**

21 **(Court in session)**

22 The Court: Anything before we bring the jury in?

23 Mr. Farr: None Your Honor.

24 Ms. Wise: None from us.

25 **(Jury in 1:50 p.m.)**

(Brad Lawson - Examination by Mr. Farr)

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Mr. Lawson - Continued examination by Mr. Farr:

Mr. Farr: May it please the court?

The Court: Yes sir.

Mr. Farr: Mr. Lawson, may I approach the witness Your Honor?

The Court: Yes sir.

Q: Mr. Lawson I am handing you what has been marked as State exhibit number one will you look at it please. Do you recognize that?

A: Yes.

Q: What is that?

A: That is a copy of the in car camera of the video.

Q: Talking about in car camera do you have one in your car?

A: Yes.

Q: On November 10, 2010?

A: Yes sir.

Q: How does that work?

A: Well I mean it is footage of an actual camera that is inside your car. It shows everything that goes on in the front of my car. Working microphone that records all of the audio.

Q: What do you mean how does it work?

A: Well it is actually turned on once you hit the it is somehow wired to your blue lights so when ever you hit your

(Brad Lawson - Examination by Mr. Farr)

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1 blue lights or your siren that is whenever it triggers the
2 camera to come on. This particular I think it is an icop it
3 is the actual name of it. It has a delay a little bit so you
4 do not it has a thirty second. It is always recording so to
5 speak but it only goes back from the time you turn the blue
6 lights on you can either go back I think a setting to whether
7 it goes back either thirty seconds prior to you turning the
8 blue lights on or a whole sixty minutes, sixty seconds I am
9 sorry. Thirty seconds to a minute and I do not know which
10 setting that was on, on that particular day it was one of the
11 two.

12 Q: Is that going to initially show the number one
13 traffic stop I mean the traffic violation?

14 A: Yes.

15 Q: It is going to show the number one traffic violation?

16 A: The number one I am sorry. No it will not show the
17 first traffic violation that I witnessed it does not have
18 that on it. It is very rare that is captured on there for
19 these types of cameras.

20 Q: On that CD is that going to be a true and accurate
21 depiction of what happened November 10, 2010?

22 A: Yes it is.

23 Mr. Farr: Your Honor at this time the State would like
24 to move into evidence State's exhibit number one.

25 The Court: Okay what says the defense?

(Brad Lawson Exam/Cross by Ms. Wise)

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1 Ms. Wise: No objections Your Honor.

2 The Court: Okay.

3 (State's Exhibit Number One was admitted)

4 Mr. Farr: Your Honor at this time the State would like
5 to publish this to the juror.

6 The Court: Ladies and gentlemen they are going to
7 publish this piece of evidence to you. It is a video and
8 audio tape of the camera in the patrol tape. A portion of the
9 audio portion of this I have ruled as not admissible under
10 our rules and so there is certain portions it may be needed
11 by the prosecutor because I have ruled as a matter of law
12 certain portions of the audio are not admissible for your
13 consideration. So that just explains to you why some of it
14 may be needed. It is difficult to hear certain portions of
15 this and you need to listen real close and I believe we will
16 do everything we can to get you but I can not guarantee you
17 are going to be able to hear all of it because of road noise
18 and traffic issues some of it is difficult.

19 **(DVD played at this time)**

20 Mr. Farr: May I please the court Your Honor?

21 The Court: Yes sir.

22 **(Continued Examination by Mr. Farr)**

23 Q: Officer Lawson quick questions. The date stamp on the
24 video is that true and accurate, 11/10/10?

25 A: Yes it is.

(Brad Lawson - Cross Examination by Ms. Wise)

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1 Q: Is the time accurate?

2 A: The time.

3 Q: Yes when it start and when it stops?

4 A: Yes.

5 Q: Everything on the video is true and accurate?

6 A: That is correct.

7 Q: Nothing has been edited or changed?

8 A: Nothing has been edited or changed.

9 Mr. Farr: I have no further questions at this time Your
10 Honor. Please answer any questions Ms. Wise ask you.

11 (Cross by Wise)

12 Q: We heard your testimony, we just watched the video.
13 Can you talk with us a little bit more about your experiences
14 in law enforcement?

15 A: My experiences in law enforcement.

16 Q: Yes sir. When did you become an officer?

17 A: 2002.

18 Q: When you first became a police officer where did you
19 start working?

20 A: I started working at Darlington County Sheriff's
21 Office.

22 Q: In any special unit or division?

23 A: I spent about two and a half years working on the
24 road answering calls. Then I think it is 2005 I went into
25 working narcotics. Did that for I am going to say four years

(Brad Lawson - Cross Examination by Ms. Wise)

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1 somewhere along in there. After that 2009 when Sheriff took
2 over I then became part of what is called the special
3 enforcement unit is the name for it but traffic unit whatever
4 you want to call it and that is when I began working the
5 highways and most of the time was at that.

6 Q: With the special enforcement unit can you explain to
7 the jury a little bit more about sort of what your job duties
8 would entail being a special enforcement unit officer?

9 A: Well we did about everything I guess that is why they
10 named it that. We did anything from working traffic to dog
11 calls you know K-9s so we got called out for anything bad
12 going on we usually got called out for.

13 Q: Would you say that a large portion of your job dealt
14 with narcotics?

15 A: In most of my career yeah most of it has dealt around
16 narcotics. Most of my training has been through either
17 different types of narcotics classes or classes dealing with
18 say criminal activities that is running up and down our
19 interstates or on major highways within our county.

20 Q: What is criminal activity running up and down our
21 interstates? What are signals or indicators?

22 A: There is a lot but the best one to explain that would
23 be anything that is the way I like to put it is anything that
24 is inconsistent with an innocent motoring public. Your
25 everyday traffic stop I have made thousands of stops. Those

(Brad Lawson - Cross Examination by Ms. Wise)

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1 things that you are taught in training to and through just
2 your experience at it that you pick up on it just does not
3 seem right. It is absolutely out of the ordinary from every
4 traffic stop that you ever made.

5 Q: Anything in particular of the vehicles when your on
6 the interstate that an officer is trained to look for that
7 might lead to suspicion of criminal activity?

8 A: There is a number of things I mean you can spend all
9 day up here talking about it because everything is different,
10 every car is different, every person is different, every stop
11 is different.

12 Q: But there are no special indicators that you would
13 look for with individuals on the roadway that you believe
14 might lead to the discovery of drug related incidents?

15 A: Individuals?

16 Q: Individuals or vehicles.

17 A: Or vehicles?

18 Q: Yes sir.

19 A: I have been doing this for years and I have come
20 across things with all types of different individuals all
21 types of cars.

22 Q: Do you have any sort of profile or is that ever taken
23 into consideration? Is there ever any sort of individual that
24 you believe is more likely to have drug evidence on him or
25 her as opposed to another individual?

(Brad Lawson - Cross Examination by Ms. Wise)

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1 A: If I may kind of interpret my own way. Someone who
2 a particular person who is involved in illegal activities I
3 think that is about it. I do not know a criminal looks like
4 anybody your everyday gentlemen. I do not know what you mean
5 by profiling.

6 Q: Now do you have in front of you a copy of the
7 incident report?

8 A: I do, yes ma'am.

9 Q: That incident report is that what you filled out in
10 regards to this incident on November 10, 2010?

11 A: Yes ma'am.

12 Q: You heard testimony earlier in the day that the other
13 officers involved in this investigation relied on your
14 incident report correct?

15 A: I think they also they rely on what is not
16 necessarily my report but what they heard and seen on the
17 scene.

18 Q: But I believe we did hear Officer Zeller I believe
19 it was him testify that he could not remember a good chunk
20 of that day so he did rely on what was in this incident
21 report correct?

22 A: I do not know that he relied on this incident report.
23 He was not there for most of the stop.

24 Q: No what day was this incident report filled out?

25 A: I am not exactly sure what day I actually filled it

(Brad Lawson - Cross Examination by Ms. Wise)

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1 out because there are times where if I have a case like this
2 I may go and put the vital information inside of the report
3 and sometimes I like to review things before I do a report.
4 There are times where and I guess in that system I do not
5 know if it documents it, it probably does everyday that you
6 go in to that report and try to do something it probably
7 documents it. I do not know exactly what day I did it on but
8 there is a lot of time where I may use a notebook or
9 Microsoft Word or something and write my narrative out and
10 then attach to that report in the Sheriff's Office system at
11 a later date. So I do not know what day I actually wrote the
12 narrative I know it was not that day I do know that.

13 Q: So sometime after that.

14 A: It was sometime after that.

15 Q: Was it approved at some point by yourself?

16 A: Yes it would have been.

17 Q: And what date was that approved?

18 A: It looks like on the twenty eight.

19 Q: So eighteen days later?

20 A: Yeah.

21 Q: Now looking at this incident report do you mind if
22 we just walk through it page by page about what is reported?

23 A: Yes ma'am.

24 Q: Alright you testified on November 10, excuse me, do
25 not testify that you report that on November 10 you are

(Brad Lawson - Cross Examination by Ms. Wise)

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1 sitting stationary on I-20 correct your are at the one twenty
2 nine mile marker?

3 A: Yes ma'am.

4 Q: You discuss that a driver makes an unlawful lane
5 change by nearly cutting off another vehicle correct?

6 A: That is correct.

7 Mr. Farr: Your Honor I want to object right here so she
8 is asking him questions. She is telling him and not asking
9 him.

10 The Court: It is cross examination and she can do that.

11 Ms. Wise: Thank you sir. Going back to what we were
12 talking about.

13 Q: You discussed how in this report that you pulled out
14 behind this vehicle correct?

15 A: That is correct.

16 Q: Then the vehicle was observed changing lanes again
17 correct?

18 A: Yes ma'am.

19 Q: So you then right in the report that you turned on
20 emergency blue lights to conduct a lawful traffic stop
21 correct?

22 A: Yes ma'am.

23 Q: Just before stopping the car both rear windows were
24 observed to be rolled down approximately two inches correct?

25 A: Yes ma'am.

(Brad Lawson - Cross Examination by Ms. Wise)

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1 Q: What significance does those windows rolled down have
2 to do with anything?

3 A: Well you know that is just, that one thing in and of
4 itself does not mean nothing but it is I guess, but to me as
5 I stated earlier that causes a lot of noise going those
6 speeds down the interstate. In my experience a lot of times
7 when people having their rear windows cracked going down the
8 interstate I have more times than not found illegal drugs
9 within that vehicle and that is so that they either air the
10 car out and make sure there is no odor or I would say in a
11 mind set you may think there is odor. Well if I am letting
12 it air out and I cannot smell it well then the police cannot
13 smell it. That would be the significance of it being down and
14 my mind set of what I have seen that the windows rolled down.

15 Q: Yes sir and in the facts why was not the front
16 windows be rolled down?

17 A: I can not answer that why the front windows are not
18 rolled down.

19 Q: So we then see on the incident report where you pull
20 the vehicle over correct?

21 A: Yes ma'am.

22 Q: You report that you approached on the passenger side
23 correct?

24 A: That is correct.

25 Q: You asked for the driver's license and vehicle

(Brad Lawson - Cross Examination by Ms. Wise)

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1 information correct?

2 A: Yes ma'am.

3 Q: And a rental agreement was provided to you correct?

4 A: That is correct.

5 Q: Coming out of Avis Budget Rental at Florence Airport
6 correct?

7 A: Yes ma'am.

8 Q: You wrote in your incident report that as the driver
9 handed over these items it was observed that his hands were
10 shaking nervously correct?

11 A: Yes ma'am.

12 Q: You noticed that this driver was breathing heavily
13 correct?

14 A: Yes ma'am.

15 Q: Chest rapidly rising and falling correct?

16 A: That is correct.

17 Q: Flood over onto the next page. You testified excuse
18 me I keep on saying testified I apologize. You reported that
19 and we are looking at that first paragraph that starts off
20 on that next page. You got the defendant out of the vehicle
21 correct?

22 A: I did.

23 Q: Brought him to the rear of the vehicle?

24 A: Yes.

25 Q: The defendant Mr. Toney stated that the car was

(Brad Lawson - Cross Examination by Ms. Wise)

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1 having air pressure issues correct?

2 A: He did not state that at that point, no.

3 Q: But that is what is in the report.

4 A: I know that is initially wrote it on the report no.
5 I might be off on where I wrote it in my report but when
6 write through this I did not mean that is the exact time he
7 said that. Later in conversation and as it is on the video
8 I think you can plainly hear him tell me that, but it is
9 later in conversation. When I write that I did not mean it
10 was at that particular moment of the traffic stop. I just
11 wrote that because it is related to me explaining the stop
12 for him. He will later almost try to justify I guess to me
13 why he did what he did and I that is why I wrote I guess
14 right there because those two situations are related if that
15 make sense to you.

16 Q: You write in this report that you ask Mr. Toney if
17 he or Timothy Sanders had a personal car correct?

18 A: Yes I did ask him that.

19 Q: He stated that both of them did. That they decided
20 to rent a car for the trip instead correct?

21 A: Yes.

22 Q: Is that different from what we heard on the video?

23 A: Say that again I am sorry.

24 Q: Is that different from what we heard on the video?

25 A: What did you ask me? Say that again I am sorry.

(Brad Lawson - Cross Examination by Ms. Wise)

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1 Q: Yes sir stating that Mr. Toney and Timothy Sanders
2 both stated that they had a vehicle that they rented this car
3 instead correct?

4 A: Yes that was spoke about on the side of the road with
5 Mr. Toney. We did speak about him having a car and Mr.
6 Sanders having a car and those issues with both of those
7 cars.

8 Q: Going on further into the incident report you again
9 talk or you again report that the whole time speaking Mr.
10 Toney was nervously talking with his hands correct?

11 A: Yes he was.

12 Q: What is the significance there?

13 A: Again and I always what I have to go on is my
14 training and experience and what we see in training and what
15 I have seen in real life experience is with me is people talk
16 and people use their hands when they are nervous when they
17 talk.

18 Q: You discussed also that his carotid artery was
19 pulsating?

20 A: His carotid artery yes I did state that and I am
21 sorry I may not have given everything whenever I testified
22 earlier. I do not think I even mentioned that earlier but it
23 is in the report.

24 Q: What is your carotid artery explain that to the jury
25 please.

(Brad Lawson - Cross Examination by Ms. Wise)

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1 A: Well I say carotid I may be saying that wrong but it
2 is your main artery in your neck and someone who is under
3 extreme nervousness or showing extreme nervousness it is very
4 common for that to pulsate. You can actually see it it looks
5 like a heart beat pulsating in your neck. It was very obvious
6 with Mr. Toney on the side of the road that day. Which is
7 very uncommon from anybody else on a normal traffic stop that
8 has no reason to be nervous. Not something that you see with
9 everyone that you stop.

10 Q: Do you see every person that you stop talk with their
11 hands?

12 A: Yeah not every person, again I can stop anyone in
13 this room and they may have a couple signs of nervousness
14 okay. Shaking hands that is just a piece of the puzzle or
15 talking with your hands that is just a small piece of the
16 puzzle. He showed so many different signs of nervousness. His
17 nervousness never went down it kept elevating. From shaking
18 hands it never calmed down. Then it went to talking with the
19 hands and from there it went to carotid artery and as you can
20 clearly hear in the video it goes into talking about having
21 cotton mouth. People who get nervous get cotton mouth, he had
22 white crust even start to form up in the corners of his
23 mouth. He even states he needs something to drink.

24 Q: Have you ever talked to Mr. Toney one on one outside
25 of the court room and seeing cotton mouth on him?

1 A: No I do not know him outside of this traffic stop and
2 this court room so no.

3 Q: Were you able to see him being nervous on the video?

4 A: No you can not see everything on the video.
5 Absolutely not and there is a reason for that. If you would
6 like I can explain that.

7 Q: Yes sir.

8 A: That is a safety issue. Some officer choose to do
9 things in front of their vehicle where everything is on
10 camera. I do not because you see every day somebody getting
11 tunnel vision, seeing blue lights on the side of the road and
12 they run into the back of a police car and who gets
13 sandwiched in between them. Whoever you have stopped or that
14 officer gets sandwiched in between those two vehicles so the
15 reason why I am off camera is I am off standing in the apex
16 of my door with him standing at my wheel well and that allows
17 me to be able to see behind me at cars approaching so that
18 if something drastic like that does happen I can see that and
19 get both of us out of the way. So that is why we are off
20 camera. So no you are not going to see every little thing
21 that I have stated here. You are not going to see all those
22 signs of nervousness.

23 Q: Can you flip over to the next page of your incident
24 report. You report that you asked for consent to search the
25 vehicle due to the following reasons and can you go through

(Brad Lawson - Cross Examination by Ms. Wise)

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1 some of these if you do not mind?

2 A: Yes ma'am.

3 Q: What is number one reason?

4 A: A third party rental car and the renter was not
5 present.

6 Q: The second reason the rental car was two days past
7 due correct?

8 A: That is correct.

9 Q: Reason number three both rear windows partial rolled
10 down while traveling correct?

11 A: Yes ma'am.

12 Q: Number four Mr. Toney had nervous shaking hands
13 correct?

14 A: Yes.

15 Q: Number five Mr. Toney was breathing heavily correct?

16 A: Breathing heavily with his chest rapidly rising and
17 falling.

18 Q: Number six his artery was pulsating in his neck
19 correct?

20 A: That is correct.

21 Q: Number seven he had cotton mouth correct?

22 A: Yes.

23 Q: Number eight arrangement to rent the car in Florence
24 was not warranted correct?

25 A: Yes.

(Brad Lawson - Cross Examination by Ms. Wise)

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1 Q: Why was that not warranted?

2 A: Well I will tell you it is not normal because of the
3 rental company being in Hartsville where Mr. Toney lived. It
4 just did not seem normal. Why would you travel all the way
5 to Florence why would both of you travel all the way to
6 Florence to rent a car when it takes --- it is about two and
7 a half minutes from Mr. Toney's house to the Enterprise
8 Leasing on North Fifth Street. Give or take a little bit. To
9 drive clear across Florence to the airport I am going to say
10 at least forty five minutes. So you drive all the way there
11 in a car that supposedly both of you have issues with. Your
12 cars do not work well but you drive it all the way to
13 Florence to the airport to rent a car to then go back another
14 forty five minutes just to where to get to Columbia. That
15 just did not make that just did not make a lot of sense to
16 me and that is just a small piece of the puzzle.

17 Q: Enterprise Rental Car is in Hartsville correct?

18 A: That is correct.

19 Q: It was Avis Budget they rented from in Florence
20 correct?

21 A: Yes.

22 Q: Did you have any knowledge of about any promotions
23 that Avis Budget might of been offering for a reasoning of
24 going to Florence?

25 A: I would have no idea about any promotions at Avis

(Brad Lawson - Cross Examination by Ms. Wise)

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1 Rental.

2 Q: Did you ask at all about personal preferences of why
3 Mr. Timothy Sanders preferred to go to Florence to rent a car
4 and not Hartsville?

5 A: I did not ask that but I did know that in the back
6 of mind I am not going to call him out on everything I picked
7 up on, because if I do that then that is going I do not know
8 how he is going to react I do not know what all is going on
9 with him. I know something is going on. That could be the one
10 thing that tips him over to hey he knows what I am up to.
11 Fight or flight that is what people go into to so I am going
12 to try to de-escalate that. I am not going to bring up every
13 issue and point it out to him.

14 Q: Going back to the incident report you continue to say
15 the following reasons for why consent was asked to search the
16 car. Because Mr. Toney spoke with his hands when talking
17 correct?

18 A: Yes ma'am.

19 Q: That kept looking back at the car correct?

20 A: Yes he did.

21 Q: When in the video do we see him looking back at the
22 car?

23 A: You may not see that. It might have been when we were
24 off to the side, but he does keep looking back at the car.
25 Which is very --- I have found to be very common with someone

(Brad Lawson - Cross Examination by Ms. Wise)

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1 having something illegal in the car they keep looking back
2 at the car.

3 Q: We are going to talk a little bit about the video
4 now. We just watched the video correct?

5 A: Yes ma'am.

6 Q: You testified that that was from your car on November
7 10, 2010 correct?

8 A: That is correct.

9 Q: I believe the time stamp on the video was around
10 12:19:18 correct?

11 A: Yes.

12 Q: That is twelve o'clock in the afternoon, twelve
13 nineteen in the afternoon about eighteen seconds into that
14 correct?

15 A: Yes I think that I do not have all the times
16 memorized from the video.

17 Q: We saw you turn on the video about 12:19:18 then
18 correct?

19 A: Again I can not sit here and tell you every time is
20 correct. I have not memorized I have not wrote down every
21 single time of everything happening.

22 Q: If you want us to turn it on we can go through it.

23 A: I do not know every single time.

24 Q: Is it fair to say that what we see on the video is
25 accurate?

(Brad Lawson - Cross Examination by Ms. Wise)

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1 A: Absolutely and I stated that a minute ago. Everything
2 on that video is absolutely accurate.

3 Q: So when you turned your video on you are going eighty
4 five mile per hour down the road correct?

5 A: Probably.

6 Q: About fifteen seconds later you got up to one hundred
7 and seven miles per hour correct?

8 A: If it shows it and I probably did.

9 Q: It does, that is what it shows.

10 A: I might have that is very possible.

11 Q: About five seconds after we see you clocked at one
12 hundred and seven miles per hour we see what looks like the
13 vehicle that my client was allege to have been driving then
14 change lanes correct?

15 A: Yes ma'am.

16 Q: Was that the purpose for the stop?

17 A: That particular no it was two different lane changes
18 was the purpose of the stop.

19 Q: But we do not see the first one on video?

20 A: No you are not going to because the camera gets like
21 I stated earlier the camera does not get activated and goes
22 back either thirty seconds or sixty seconds from the time you
23 cut the blue lights on.

24 Q: Why was it that we did not hear the microphone turn
25 on until a certain time?

(Brad Lawson - Cross Examination by Ms. Wise)

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1 A: I thought about that I do not remember exactly. I
2 know that we were having some issues with our body mics, the
3 microphones in the camera. After a years time you start
4 having problems with the batteries have to replace the
5 battery. I may have had it in the car charging that day and
6 when I got out of the vehicle I always try to look back
7 because in your windshield you can look at your camera
8 system. There is a light that blinks or stay steady and I
9 always try to look back and see if my light is flashing. Well
10 if it is not flashing or not on I know my mic is not working
11 or even my camera is not working properly. All I can assume
12 is that I looked back I noticed that my camera was not
13 working correctly or my mic was not working. Again I do not
14 know if I had it on. I could have had it in the car charging
15 because I was having battery issues or I had to go through
16 the settings just to make the mic come on. I do not know but
17 that is why I walked back to the car and of course you can
18 see at that moment that is whenever the body mic started
19 working.

20 Q: What constitutes an improper lane change in South
21 Carolina so to constitute someone being pulled over?

22 A: Well you have to make lane changes safe. You can not
23 just you have to have a safe distance between you and that
24 other vehicle before you change lanes in front of them. I
25 mean I am not saying that he nearly cut somebody off by mere

(Brad Lawson - Cross Examination by Ms. Wise)

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1 inches because that did not happen but there is still a safe
2 distance that you are suppose to be. There is numerous other
3 traffic things that fall into the cause of that. Whenever he
4 changes lanes in front of someone and does not create enough
5 space well what does it do then it causes that person to
6 following him to close. If he has to slam on breaks for some
7 reason well then they are going to rear end him.

8 Q: About how long into the stop did you learn that Mr.
9 Toney was not an authorized driver on the rental agreement?

10 A: I noticed right away when he handed me the rental
11 agreement. That just comes from years of looking at a rental
12 agreement from making lots of traffic stops. You can learn
13 to notice right quick that he was not that there was another
14 persons name on there compared to his license.

15 Q: What is the procedure when you are aware that there
16 is an unauthorized driver of a rental car driving a rental
17 vehicle? Do you immediately need to contact the rental
18 company?

19 A: No not always you have to well that is why I talked
20 to Mr. Toney about how did he get this car. I am going to
21 find out what he is telling first on how he got it. Again it
22 could be someone's spouse driving the car which is and even
23 if he had to ask questions to find those sorts of things out
24 and yes it is very common that once I ask a few questions and
25 find out something is not right with this agreement and what

(Brad Lawson - Cross Examination by Ms. Wise)

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1 is going on here with the parties involved in this rental
2 car. Then yes it is very common for me to call or a lot of
3 officers to call the rental company and say what is going on
4 with this, because there is no time where they have told me.
5 I have seen ones out of date then where they call me out an
6 extension. There has been more times before where someone was
7 not authorized to drive it. We have called before and they
8 tell us that we find out it is stolen. I mean there has been
9 an array of so many different things that can be going on
10 with those cars. So I mean it is not uncommon for me to call
11 whenever I found out that one it is out of the, the contracts
12 out of date and that someone else rented it and that person
13 is not in the car.

14 Q: When did you make the call to handle that?

15 A: It was during the traffic stop.

16 Q: Do you remember about how long into the traffic stop?

17 A: No I do not know exactly how it was no.

18 Q: Would it be okay to say about fifteen minutes based
19 off of what we just saw?

20 A: It could have been fifteen minutes.

21 Q: So in that fifteen minutes prior to you making a
22 telephone call to the rental company when did you learn that
23 the car was in fact rented in the name of a gentlemen by the
24 name of Timothy Sanders?

25 A: I think I found out that it was rented by Timothy I

(Brad Lawson - Cross Examination by Ms. Wise)

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1 seen the name on it and through speaking to Mr. Toney I think
2 he even threw the name out the defendant about Timothy
3 Sanders.

4 Q: On that rental agreement receipt that we heard about
5 earlier today you had in your possession Timothy Sanders
6 credit card information correct?

7 A: You know I did not look on there for his credit card
8 information Ms. Wise.

9 Q: Well you had in your possession information that he
10 had rented this car in Florence and he had paid for this car
11 in Florence correct?

12 A: Yes I knew that it was rented from Florence at the
13 Florence Airport. My concerns on a rental car agreement is
14 not someone's credit card information on there. I am looking
15 at who rented it, who is in possession of it, when it was
16 rented, and where it was rented from. How long have they had
17 this car, because where it is rented from tells you a lot
18 that is the things that I look at.

19 Q: Prior to you calling the rental company to let them
20 know that you had just pulled over a car where there was a
21 driver driving it that was not on the rental agreement. You
22 began questioning Mr. Toney correct about what was in the
23 car?

24 A: Yes.

25 Q: We saw that on the video you asked him was there

1 contraband correct?

2 A: I asked him numerous different types of contraband
3 yes ma'am.

4 Q: Would you say he answered you honestly and candidly
5 every single time you asked him a question?

6 A: Did he answer me honestly?

7 Q: Did he answer you that is what I am asking you.

8 A: He answered me now honestly you said honestly. I do
9 not think he answered me honestly but he answered me.

10 Q: Well you questioned him correct?

11 A: Yes ma'am.

12 Q: He answered you correct?

13 A: He gave me an answer yes.

14 Q: You did not like the answer you got so you questioned
15 him again correct?

16 A: No no it has nothing to do with it.

17 Q: That is not what we are going to hear on the video?

18 A: No I do not think so.

19 Q: So you did not ask him was anything illegal in the
20 vehicle?

21 A: If I remember correctly I asked him first about
22 alcohol, guns, explosives and he says no. There is a point
23 in there where I got a call on the radio from I think Deputy
24 Hause asking me was I on a traffic stop. That interrupted my
25 questioning to me on what was in the car. I then asked him

(Brad Lawson - Cross Examination by Ms. Wise)

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1 there was a time whenever I asked and I could be out of order
2 with what I say here, cocaine, heroin, I go through a lot of
3 different drugs. Then there is another time if I am not
4 mistaken Mr. Toney actually even ended up saying that and I
5 do not remember exactly what he said if you want to play it
6 again that if you want to play it again that is fine, but he
7 ends up saying something that takes me off. I know what it
8 was it is whenever the part comes up about his girlfriend or
9 his about having the same name as his cousin. He mentions
10 something that takes me off from my question and that is
11 whenever we start talking about his having the same name as
12 his cousin or however that came up. Then I went back in and
13 finished my questioning. I had not gotten to I had asked him
14 about guns, alcohol, explosives, I mentioned cocaine, heroin
15 I had not gotten finished with my questioning. Then I went
16 in and I asked him about marijuana and there was I kind of
17 did do over. So it was not me drilling him is there something
18 in the car, is there something in the car it is nothing like
19 that. I never got a chance to finish.

20 Q: So we are going to hear that on the video?

21 A: I could say it again I do not know but it is not a
22 repeated over and over trying to drill it out of somebody no.

23 Q: Again about fifteen minutes into this stop is when
24 the rental company was contacted correct?

25 A: I do not know the time frame Ms. Wise I do not know

(Brad Lawson - Cross Examination by Ms. Wise)

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1 what time is was again I have not memorized it I have not
2 wrote times. I do not know that it was fifteen minutes I
3 honestly do not.

4 Q: Well in the video did we hear your dog barking?

5 A: Yes you could.

6 Q: Can you tell the jury a little bit about your dog
7 where was the dog at?

8 A: Well the dog was --- it is a narcotic detection dog.
9 Beside from being a full patrol dog she does anything from
10 apprehension, to trafficking, narcotic detection. The dog is
11 actually in an enclosed steal cage where I drive I drove a
12 Chevy Tahoe the rear seat to the Chevy Tahoe was taken out
13 and a dog cage is inserted in that location.

14 Q: She was in the car that day correct? She was not used
15 in this stop?

16 A: Yeah she always in it.

17 Q: She was not used in this stop?

18 A: No she was not used in this stop and the reason why
19 is well as you can see I did not have any back up at the
20 time. I like to have an officer, you see how close we are to
21 the road we are pretty close I mean it is the interstate. I
22 like to have an officer stand, my backup officer, stand on
23 the edge of the roadway and watch traffic for me. For my
24 safety, my dog's safety, for everyone's safety. I cannot do
25 and watch my dog the way I need to if I am having to worry

(Brad Lawson - Cross Examination by Ms. Wise)

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1 about traffic coming up on me. I can not watch Mr. Toney who
2 is giving me all these nervous behavior, I do not know what
3 he is capable of. I can not watch him like I am suppose to
4 because I need to watch my dog. I am trained to look at my
5 dog and all these different indicator that the dog gives
6 reactions that the dog gives to let me know that there is
7 narcotics present or vice versa if I am watching my dog well
8 I can not watch the traffic I can not watch Mr. Toney and his
9 reactions. That is why I elected not to use my dog. Most of
10 the time I do. This situation just happened to be totally
11 different from a lot of other traffic stops that I have had
12 so that is why I did not use the dog.

13 Q: Going back to Timothy Sanders did you ever attempt
14 to contact him?

15 A: No I did not have a way to contact him. We did speak
16 about delivering the marijuana to him.

17 Q: But you did not have a way of contacting him?

18 A: Not that I am aware of I did not have a way to
19 contact him.

20 Q: Did you ever do any fingerprinting on any of the
21 evidence that we have seen defended today?

22 A: No there is no fingerprints that were done. I did not
23 feel no need to.

24 Q: What about DNA evidence?

25 A: No there is no DNA evidence done on it. I did not

1 feel no need to.

2 Q: Despite these drugs being found in a car that does
3 not belong to my client?

4 A: Well and the reason why I felt like we did not need
5 to is because Mr. Toney was the only person in the car. He
6 done told me that he drove the car to Columbia. He told me
7 that he picked up fifteen pounds of marijuana as a favor and
8 he was wanting to deliver it to the guy. I did not see no
9 need in doing finger prints and also all of his reactions I
10 felt like he knew it was in there. There was no need to do
11 that.

12 Q: Did you ever call Avis or Budget to investigate or
13 discuss this case further?

14 A: Did I call who I am sorry.

15 Q: Avis or Budget Rent-A-Car to investigate or discuss
16 this case further?

17 A: Did I call I am sorry I am not understanding what you
18 are saying.

19 Q: Did you ever other than the testimony we heard this
20 morning. Did you ever contact the rental company to
21 investigate this case further?

22 A: No, the only thing I did was call Avis Budget however
23 you want to call it on the side of the road. What you hear
24 on the video and what he testified to that is the only time
25 I talked with them. I may have called them at a later date

(Brad Lawson - Cross Examination by Ms. Wise)

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1 and said hey this is where your car is if you want to come
2 pick it up, but as far as to do any further investigating no
3 ma'am.

4 Q: You testified that you did not know Mr. Toney at all
5 prior to this.

6 A: No ma'am I sure did not.

7 Q: But you knew that his house was two minutes from the
8 rental car company?

9 A: Yeah because look I grew up in Hartsville. If you
10 want to know the truth I know the last name Toney I have no
11 idea who he is.

12 Q: But you did talk to him about his cousin?

13 A: Yeah that was just general conversation because I
14 could see that he was getting on the edge of nervousness that
15 is kind of, sometimes look when you know you got somebody and
16 you know that they are up to no good and that get to that
17 level that you feel like they are fixing to fight or run on
18 you. You bring up different conversation and sometimes ---
19 You want to try and make them feel as calm as you can again
20 I am out there by myself. So yeah there was things, me
21 talking about his cousin it means nothing to me. That is just
22 a bs conversation that is all that was, but to go back to
23 what you said. When I looked at his driver's license it
24 showed Cherry Laurel. I grew up in Hartsville, that is all
25 I ever done as far as law enforcement was work for Darlington

(Brad Lawson - Redirect by Mr. Farr)

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1 County Sheriff's Office I am very familiar with the roads in
2 Hartsville. I grew up probably five minutes in walking
3 distance. I grew up right there so I knew quickly where that
4 was related to Enterprise in Hartsville.

5 Q: Now you testified or we heard testimony that there
6 was a sweater and jeans on top of the tote bag in that
7 vehicle correct?

8 A: I am going to say sweater and I do not remember there
9 was like a pair of jeans, pair of sweat pants, a sweater or
10 sweat shirt there was something of that nature on top.

11 Q: Where are those today?

12 A: They were probably left they are not, maybe in the
13 trunk of the car.

14 Q: No fingerprints on those as well?

15 A: On a pair of jeans.

16 Q: Yes sir.

17 A: I do not know that that could happen. I mean I do not
18 know I am not a forensics expert but I do not now but no
19 ma'am absolutely not again I did not feel a need to have
20 anything like that done.

21 Ms. Wise: Can I have a moment please Your Honor?

22 The Court: Yes ma'am.

23 Ms. Wise: Thank you Your Honor no further questions for
24 this witness.

25 The Court: Anything further from the State?

(Brad Lawson - Redirect by Mr. Farr)

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1 Mr. Farr: Yes sir one second Your Honor.

2 (Redirect by Farr)

3 Q: A couple of questions Mr. Lawson. Ms. Wise asked you
4 the difference between a regular motorist and I guess drug
5 activity. Can you go a little more into that the difference
6 between a regular motorist that has been pulled over and one
7 that has been --- has drug activity going on?

8 A: Yes again I have had so many hours of training in
9 these types of situations or just type of work. Numerous
10 hours in different organizations in this type of stuff. That
11 through that training and through just years of experience
12 in being out there on the road you know there might be days
13 where you make five stops. There might be a day where you
14 make twenty stops and when you put that into years, thousands
15 of stops that I make. Through that time you learn that you
16 know yeah there is a sense there is a little bit of
17 nervousness with just about anybody since they are being
18 pulled. When you take the general and I hate to keep saying
19 this innocent motorist public and you know your normal
20 traffic flow your normal people running down the roadway.
21 When you explain to them why they are stopped and they find
22 out that it is just a simple traffic violation that they
23 usually their nervousness it comes down for the most part.
24 You may have somebody that is still just a tad bit nervous
25 I mean they still may have a shaking hand when hand them the

(Brad Lawson - Redirect by Mr. Farr)

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1 stuff back but their level of nervousness does not rise and
2 continue to rise as far as like I spoke. Carotid artery I
3 mean that is just not normal with a normal person being
4 stopped with a simple traffic violation and cotton mouth and
5 stuff things of that nature. All those levels of nervousness
6 are so much different from your everyday stop right there
7 than anybody. I mean you know you get into and it is very
8 very common that drug traffickers use rental cars and they
9 do not have those cars put in their name. I can only I can
10 honestly say that there has only been probably one time that
11 I had a drug trafficker have the rental car in their name.
12 Out of however many and I do not even know how many there is
13 that I made with cases just like this. One time that I can
14 recall it was in their name, usually it is in someone else's
15 name and when that renter is not present that is a clue to
16 us to find out what is going on. It is not normal to rent a
17 car in your name and you not being the one to drive that just
18 does not happen on a daily basis. If you rented it and pay
19 for it you are going to want to drive it.

20 Q: Ms. Wise was talking about your speed can you
21 elaborate of that a little bit because?

22 A: Yes. I do not know what Mr. Toney was running that
23 day I was not I did not have radar on him to be telling what
24 his speed was. I would be lying if I even guessed what his
25 was I do know this that I mean obviously he was passing

(Brad Lawson - Redirect by Mr. Farr)

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1 people to make lane changes in front of people. The average
2 speed out there I would say is at least seventy, you got some
3 people that go a little slower seventy five maybe average I
4 do not know. So I would guess it is somewhere along in there
5 he could have been running eighty for all I know. Well if
6 somebody is running that fast me running eighty or eighty
7 five I sure am not going to catch up to them. If I am running
8 eighty I am never going to catch up to them, eighty five is
9 going to take a long time. So you have to escalate those
10 speeds to catch up with vehicles on the interstate. They are
11 traveling fast you have to travel faster than them to catch
12 up with them.

13 Q: Ms. Wise also asked the question Mr. Toney knew it
14 was fifteen pounds correct?

15 A: Oh yeah he clearly stated it was fifteen pounds.

16 Q: He wanted to help by setting up the other guy
17 correct?

18 A: Yes he did.

19 Q: By delivering it to him?

20 A: By delivering it.

21 Q: And it was in the correct?

22 A: Yes that is correct. He wanted to deliver it and
23 there is a point in video where you hear me saying I have to
24 go through a process. When you are going to do what we call
25 a controlled delivery like this time is of the essence.

(State Rest/Motions Renewed)

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1 People getting this much drugs or more there is a time frame.
2 If it is not delivered on that within the time frame usually
3 it is not going to happen they are not going to accept it it
4 is not going to go down. Then they think oh Lord this person
5 has been stopped this person has been caught I am fixing to
6 get set up. That is why you heard that comment in there time
7 is of the essence and time ran out that is why we did not get
8 to go with it it just did not seem to work out.

9 Q: Ms. Wise was harping on the window. In your expert
10 not your expertise but your training. Why have the two back
11 windows rolled down?

12 A: Well I mean you know I know I was asked about why ---
13 I really do not know. I guess because you got all your drugs
14 in the trunk.

15 Q: To mask the odor?

16 A: Yes it is to help eliminate whatever odor there may
17 be in the car or whatever in your mind, because if you drive
18 with this much in your car you have got to think there is
19 possibly some odor coming in somewhere that is in your mind.
20 So you either smell it and you roll it down and get it out
21 or it is in your mind that it has got to be smelling so I
22 want to roll these down to ensure that.

23 Mr. Farr: That is all the questions I have Your Honor.

24 The Court: You can step down.

25 Mr. Farr: I have no other witness Your Honor the State

(Motion)

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1 will rest.

2 The Court: Okay ladies and gentlemen I have to take up
3 some matters of law outside of your presence. I am going to
4 send you to the jury room right quickly and then I will bring
5 you back out. I remind you please do not discuss this case.

6 (Jury break)

7 The Court: You have any motions?

8 Ms. Wise: Your Honor I just renew our previous motions
9 as well as I move for a directed verdict. I do not believe
10 the evidence has been presented to sustain this charge.
11 Specifically I would argue that I do not believe that it has
12 been affirmatively and clinically established that the weight
13 in questioning exceeded ten pounds we hear testimony from Mr.
14 Billiott that there were particles in the plant that were
15 weighed that might not necessarily have been, should have
16 been weighed based off the legal definition of marijuana. For
17 that I believe, a dismissal in the case.

18 The Court: You know I understand but there is evidence
19 in the record that it was in excess of ten pounds and that
20 a question of fact that the jury whether they are going to
21 believe that the state has proved beyond a reasonable doubt
22 that it was in excess of ten pounds in light of your cross
23 examination but I think that is a question of fact and I
24 respectfully deny your motion. Mr. Toney we have reached a
25 point in this trial where you have a right to present

(Motion)

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1 evidence you understand that. You also have a right to
2 testify in this case and if you choose to testify you are
3 going to be treated like any other witness. You are going to
4 be subject to cross examination. Any criminal record that
5 qualifies under the law could be brought out against you. Do
6 you understand that?

7 Mr. Toney: Yes Your Honor.

8 The Court: You also have a right not to testify and if
9 you choose to remain silent I will instruct the jury that
10 that is your constitutional right and that they can not
11 consider that in any way in their deliberations against you.
12 They can not even discuss in the jury room that you in fact
13 did not testify in this case. Do you understand that?

14 Mr. Toney: Yes Your Honor.

15 The Court: Now this constitutional right is yours. Your
16 lawyer can advise you as to what she thinks or give you her
17 legal opinion as to what you should and should not do but it
18 is ultimately your decision. Do you understand that?

19 Mr. Toney: Yes Your Honor.

20 The Court: You can follow her advice or you can not
21 follow her advice but to waive your rights and to testify
22 will ultimately be your decision. You got any questions you
23 want to ask me concerning your rights to testify?

24 Mr. Toney: No Your Honor.

25 The Court: Have you had an opportunity to discuss that

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1 decision with your attorney?

2 Mr. Toney: I am trying to discuss that with her now.

3 The Court: Alright then I can give you all a few minutes
4 to talk about that and then let me know if in fact well let
5 me ask you this. Do you plan on calling any other witnesses
6 with exception of him if he decides to testify?

7 Ms. Wise: No sir.

8 The Court: So since it is almost three thirty if he
9 chooses to testify I propose that we take that testimony this
10 afternoon and try to finish all of the testimony today. If
11 he does not testify we probably still ought to stop and do
12 closing arguments and charge in the morning unless somebody
13 disagrees with that and gives me some reason we should not.
14 I will take about fifteen minute break or so and if you will
15 just come after you have had a chance to talk to him. You
16 come back there and get me we will come out and either
17 continue the evidence in this case or I will send the jury
18 home for the evening.

19 **(Court break)**

20 **(Court in session)**

21 The Court: Mr. Toney have you made a decision of whether
22 you want to testify or not?

23 Mr. Toney: Yes I have Your Honor.

24 The Court: And what is that decision?

25 Mr. Toney: My decision is no Your Honor.

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1 The Court: Ok thank you sir. Then I assume that you do
2 not intend to offer any evidence.

3 Ms. Wise: We do not Your Honor.

4 The Court: So what I propose to do then is bring the
5 jury out, send them home for the day, have them come back I
6 guess is nine thirty the right time to come back we do not
7 have any issues in morning. Doing closing argument and
8 charge.

9 Mr. Farr: I have no issues.

10 Ms. Wise: Other than some issues that we might need to
11 address after this today and talk about I do not see any
12 issues.

13 The Court: Okay that will be good. Bring in the jury.

14 (Jury in)

15 The Court: Okay ladies and gentlemen you have heard all
16 of the evidence that you are going to hear in this case. The
17 next stage of the trial in this case is the closing arguments
18 of the attorneys and my charge on the law. Then I will give
19 you this once we start the next stage nobody gets to go home
20 until you all have a verdict. It is four o'clock and I
21 promised you all earlier in the week that I would try to get
22 you all home by five so we are going to stop here for the day
23 simply because I have no control you know it is probably
24 going to take an hour or two to do the closing arguments and
25 charge. Then you have to deliberate and I can not let you go

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1 home so we are going to stop now. You go home for the evening
2 and come back at nine thirty in the morning and at that point
3 we will do the closing arguments of the attorneys, I will
4 charge you on the law that you are to use in this case, and
5 then you can go back to your jury room and make your decision
6 as far as the verdict is concerned. Now when you first get
7 here in the morning I need you to do a favor for me. I do not
8 know any of you so I want you to select your own foreperson.
9 I figured out that juries you all spent the last day or so
10 together. Juries do a better job of selecting their
11 foreperson than I do so first thing in the morning before
12 you come out and you all get in there you decide who is going
13 to be the foreperson of this jury. That person has no greater
14 vote than any one else they simply preside over the
15 deliberation when I give you this paper to sign and sign the
16 verdict form when you have reached an unanimous verdict. So
17 if you will do that when you first get here in the morning
18 and you can come out and let me know who the foreperson will
19 be. Then we will do the closing arguments of the attorneys
20 and I will charge you on the law and give you this case to
21 decide. I remind you that you can not discuss it yet. We
22 should finish this case tomorrow so tomorrow night you can
23 talk about it with anybody you want to but for one more night
24 you can not talk about it. I will see you in the morning at
25 nine thirty.

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(Jury dismissed for the day)

1
2 The Court: The marijuana I need it secure enough I am
3 not going to send an open bag of marijuana in the jury room.
4 Sometime I do not know if it would happen here but it
5 happened other jurisdictions that you do not get all back
6 what you sent. Somehow we need to package it and seal it so
7 the jury can not get in it. If they want they want to send
8 these drugs back to the jury I need them sealed in some
9 package where the jury can not get to them.

10 (Court dismissed)

11 (Court in session 11-20-13; Jury in)

12 The Court: Did you want to have something on the record?

13 Ms. Wise: I do Your Honor our position is we rest our
14 case and renew our motions.

15 The Court: Thank you and we will deal with that but we
16 are going to. Now ladies and gentlemen you have heard all the
17 evidence that you are going to hear in this case. Now you
18 will hear the closing arguments of the attorneys after which
19 I will charge you in the law and give you this case to
20 decide. So make sure you pay close attention to the attorneys
21 they will give you there closing arguments. Mr. Solicitor.

22 Mr. Farr: May I please the court Your Honor?

23 The Court: Yes sir.

24 Mr. Farr: Good morning ladies and gentlemen of the jury.
25 I want to start off by thanking you all today. I really

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1 appreciate you all for being here for three days. I know
2 Monday was a short day, then yesterday was an extremely long
3 day, and then today is finally us closing and then judge will
4 do the jury charge and then you will go back there and
5 deliberate and talk amongst yourselves. The case is the State
6 of South Carolina vs Jameco Toney and the State has the
7 burden of the proof. We have to prove beyond a reasonable
8 doubt that the defendant was trafficking marijuana within one
9 hundred pounds. As you all have heard all the witnesses and
10 testimony in the videos that is everything out there in you
11 all's lap to take back there. But as was said on November 10,
12 2010 just as any other normal day around twelve thirty,
13 twelve fifteen there is a tan Malibu driving down highway I-
14 20 and there is an Officer, Brad Lawson, he is at the
15 intersection and he notices a traffic violation improper lane
16 change. Pulls out chasing, following trying to catch up and
17 he notices a second violation at the same time another
18 improper lane change. As he's headed down, he moves right
19 beside the tan Malibu and he does that for one reason for
20 safety and he had three reasons why. To check to see if there
21 were children, to make sure there is a seatbelt for a
22 seatbelt violation, and also not to see if there was anybody
23 else inside the car. While he was driving by he notices the
24 back windows rolled down. You heard him testify going down
25 the highway at seventy miles per hour that creates a lot of

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1 noise. Also when we heard by cross examination by the defense
2 it was brought up that that is to mask the odor of usually
3 drug trafficking usually to mask so the smell from the car
4 can get out so it eliminates the odors so maybe the dog or
5 whatever the police officer does not smell it. Then he pulls
6 behind the tan Malibu and he puts his blue lights on. At that
7 time the tan Malibu pulls off to the side of the highway.
8 When Officer Lawson walks up to the passenger side he ask the
9 defendant for car registration and license. Instead of
10 getting the car registration he hands him the rental
11 agreement and at that time when he is passing it over through
12 the passenger side he notices his hands shaking. As he has
13 stated that happens a lot when you pull people over but that
14 is an indicator it starts triggering in his head the
15 Officer's head. The officer noticed when he handed him the
16 rental agreement --- and he asked him at that time to step
17 out of the car and he mentioned yesterday during cross
18 examination by the defense attorney that he does not always
19 pull everybody out but once it was a rental agreement it was
20 something that he wanted to be on the safe and call. Check
21 out and make sure this car was not stolen or anything to make
22 sure that everything was good to go. While he was out and
23 he's standing in front of the car he is breathing funny. You
24 know just regular normalness, nervousness but one thing that
25 was noticed and that was asked the difference between a

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1 regular motorist versus a drug trafficking motorist. And what
2 was said was there is no difference everybody is nervous. But
3 drug trafficking nervousness increases. Here he had general
4 conversations with him and the nervousness kept going on.
5 That is why he asked about I guess his cousin because he
6 heard the last name Toney before and he is from Hartsville.
7 As he has pulled him out and he talks about why he pulled him
8 over he talks about you have to have enough space because if
9 you do not have enough space you can cut somebody off they
10 slam on the brakes and run into the back of you. At that time
11 he goes into asking him more about the rental agreement and
12 he ask who is Timothy Sanders who is that. He talks about his
13 friend, his friend gave him the car so he could go to
14 Columbia. He asked why he was in Columbia he said, that he
15 was there for child support and then clearly we also have on
16 video that basically a minute later it was brought up again
17 and he said he was there for the unemployment office. Which
18 was odd to the officer because there is actually an
19 unemployment office in Hartsville where the defendant is
20 from. So another issue these things are adding up because odd
21 things are happening and he noticed that the rental car was
22 rented in Florence and there is an Enterprise in Hartsville
23 which is two minutes away from Mr. Toney's house. Another
24 indicator that something is not right in this situation. So
25 he starts asking a little bit more general questions trying

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1 to ease Mr. Toney's nervousness but he is still nervous
2 because he ends up getting cotton mouth dry mouth just from
3 the nervousness. Then the officer gets interrupted because
4 there are other officers out on the highway and they are
5 talking about other traffic stops that they have. Then he's
6 asking about, what has he done with that conversation with
7 officers because he is the supervisor out on the highway. He
8 asked if there is any guns, bombs or anything in the car and
9 Mr. Toney says no. Again the officers interrupted again
10 because the officer has pulled over a car and needed help to
11 make sure he is doing everything correct and then when he is
12 off that Mr. Lawson again asked Mr. Toney are there any drug
13 and he listed them meth, crack, marijuana but when he asked
14 about marijuana Mr. Toney's body changed and he looks back
15 at the car and then he says no. Again that was odd that you
16 would look at somebody straight in the face and you are
17 asking them a question and then all of sudden the body turns
18 and go no, there is something up. At that time and you all
19 saw it about twelve thirty one, twelve thirty two Mr. Lawson
20 call the rental company. That is where Mr. McKenzie becomes
21 involved in this case. He called the rental company Mr.
22 McKenzie and he just wants to check out he give the receipt,
23 he gives the number of the car and he calls and he says that
24 a Jameco Toney is driving the car and you all can see this
25 the evidence that I presented and you all will get to see.

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1 Jameco Toney's name is not on here it is Timothy Sanders and
2 you all will get to see this you all will get to take it back
3 there. You all can also see that Mr. Timothy Sanders also
4 initialed it five times where he initialed. Mr. McKenzie's
5 testimony was that under their procedures an unauthorized
6 driver is a violation of the rental agreement. So at that
7 time the rental company is the official owner he has the
8 right to consent for a search. He gave consent to search the
9 car, William McKenzie for Budget, he also told the officer
10 to tow the car. You all also heard William McKenzie go
11 through the procedures of what they do and they say an
12 authorized driver, that whole family using is spouse and
13 domestic partner but if you want an additional driver you had
14 to pay an extra fee which he said is thirteen dollars. The
15 only way you can pay for the rental is through a credit card.
16 I know the defense was getting out there saying that they
17 were looking at a deal or something like that but it was paid
18 through a credit card. You all get to see it, it's all on
19 there but this rental car was over due two days. It was
20 suppose to be due 11/8/2010 that was another violation of the
21 rental agreement. Because Mr. Toney was an unauthorized
22 driver he never had the right to consent and you all saw the
23 video where he said this was not his car. Now after the
24 rental company has told Mr. Lawson that he can consent to
25 search and had the right to tow, be able to get it towed. We

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1 get back to the story about to the incident Mr. Lawson again
2 interrupted because now he has two officers that have pulled
3 people over and they are needing help and that takes a few
4 minutes to make sure everything goes right. After he is done
5 talking with these officers the defendant as you all saw on
6 the video brings up more conversation of why he had an
7 improper lane because something about his tires were low air
8 pressure light in his car and that took a couple minutes the
9 defendant was trying to stall see if he was going to change
10 his mind not to search the car. As Mr. Lawson is searching
11 the car he goes to the front passenger side first. He did it
12 for safety reasons and he wanted to make sure there was not
13 a gun up under the seat or anything like that the defendant
14 could run up there and get it. As he is doing that and you
15 all saw on the video the defendant is slowly moving toward
16 the car the front of the car that you all saw on the video.
17 As he is walking around the car on the video Mr. Toney is
18 still in front of the car so you can see more if more in the
19 video. He checks the driver side and as he pops the trunk and
20 you all saw in the video Mr. Toney does this puts his hands
21 on the shirt --- as soon as he puts his hands on the bag that
22 bag that you all get to see and Mr. Lawson asked him a few
23 questions he takes off running. He runs about twenty yards
24 Mr. Lawson asks him to get down he does handcuffs him takes
25 him off to beside of the truck. Ladies and gentlemen this

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1 is what was discovered, fifteen pounds. You all get to see
2 all of that stuff. Remember fifteen pounds. That is what
3 Jameco Toney said ladies and gentlemen after he is read his
4 Miranda Rights and he waived them. The exact weight fifteen
5 pounds is what he said. You all get to see all that you all
6 get to take all that back too. So he waived his Miranda
7 Rights they asked how much weight was in here he stated
8 fifteen pounds. He also wanted to finish delivering the drugs
9 of Mr. Timothy Sanders at the Florence Airport. The officers
10 said, wait and you all also heard Mr. Lawson say time is of
11 the essence, time ran out they were not able to do the
12 controlled delivery. Just a few things about Mr. Lawson's
13 testimony you all will probably hear this later on through
14 the defense. You will probably hear something about the
15 camera. You will probably hear that the first traffic
16 violation was not on there. Mr. Lawson corrected everybody
17 or corrected that and said it is not going to be on there.
18 The way the video camera is set up it is suppose to go back
19 thirty or sixty seconds. He started driving he took basically
20 three minutes to pull Mr. Toney over. You will also hear
21 something about speeding, you also heard Mr. Lawson say he
22 had to catch up. Yes he was probably going over a hundred
23 miles per hours but halfway through he went back down to
24 seventy miles per hour once he got close enough that he could
25 catch up. You will probably also hear something about the

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1 camera not hearing volume for the first few minutes. Mr.
2 Lawson corrected that by saying he had problems with the
3 video camera at first and when he went to the car and he was
4 at the passenger side asking questions he looked back and saw
5 a light and that meant something was not working so he went
6 back and cut the mic on and everything else was working. You
7 will also probably hear that you do not see the defendant on
8 the video. Mr. Lawson also corrected that and said, for
9 safety reason he likes to put the defendant in the position
10 that Mr. Lawson can stand like this and see oncoming traffic
11 like this for safety issues and he has always done that
12 throughout his twelve years of being a police officer. Then
13 you have got David Zeller and Kyle Hause they are other
14 officers. They were the other officers that were calling and
15 interrupted Mr. Lawson because they also had traffic stops,
16 but they both had to stop their traffic stops in midstream
17 because they were called to backup because the defendant had
18 ran. David Zeller he read his Miranda Rights, you all heard
19 it knowingly he voluntarily waived his Miranda Rights. He was
20 not under any influences, he did not have any mental
21 disabilities that he did not understand why he was being
22 stopped. He was very freely giving the message that he went
23 to Columbia, he picked up the drugs. He came back he was
24 suppose to deliver them to Mr. Timothy Sanders at the airport
25 and drive all the way back to Hartsville with the fifteen

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1 pounds of marijuana, back in his community. Kyle Hause he
2 showed up he watched it all but his main thing was he went
3 with Mr. Lawson to the post office to weigh the marijuana.
4 At that time through the cross examination it was weighed
5 sixteen pounds and the reason it was sixteen pounds was
6 because you had the bag and all the wrappers that was wrapped
7 on it. Then lastly we had Garry Billiott an expert in
8 marijuana analysis ladies and gentlemen. He told you about
9 his school, he told you about he was certified, and he also
10 told you he had done over two hundred and fifty samples. He
11 also told you that he did two types of test with the
12 marijuana. The two types of marijuana test he did was the
13 microscopic which he puts the marijuana he takes a sample of
14 each individual bag that he has right there and he takes a
15 little sample of it puts it under the microscope he looks
16 for bear claws and some hairs. That you all can see on this
17 test that are put into evidence. You all can read this test
18 and see it. That is what he was look for he was also looking
19 for unicellular and multicellular, to be honest with you I
20 do not have a clue when it comes to that kind of stuff. I am
21 just reading what he had on his report so you all have this
22 report you all will be able to read it. He cut these, then
23 cut the ten pound block into two block to take a sample
24 because it was just to big, so that is why there is seven
25 bags. After each sample that he did each one tested positive

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1 for marijuana. There was no false positive and the weight
2 came out to be 14.83 pounds. The reason for that is he had
3 to take all the wrappers off of each individual marijuana in
4 each bag. You will probably hear the definition of marijuana
5 being read to you so I am going to do the same. Marijuana
6 means all species or variety of marijuana plants and all
7 parts thereof whether growing or not. The seeds of marijuana
8 plant. You also hear every compound, manufactured salt,
9 derivative, mixture, or preparation of the marijuana or
10 marijuana seed, definition of marijuana. What they are going
11 to harp on is sterilized seeds. Ladies and gentlemen you can
12 look at these bags you can touch them and you can look for
13 the seeds. The expert said that the seeds would not
14 drastically change the weight, but again when you all go back
15 there you all can pick this up and look through and touch and
16 look for the seeds. Also, as the expert said there was no
17 mature stalks in this. Again the weight is 14.83 pounds
18 ladies and gentlemen. Yes you will probably hear something
19 about DNA, this is not CSI on TV this is real life. We do not
20 know how to get DNA on every single little item. There is no
21 DNA on this test that we know of. You have Jameco Toney he
22 was driving the car. He went to Columbia, he had the drugs
23 in his trunk. When he fled they read him his Miranda Rights
24 he waived them and told him exactly how much the drugs
25 weighed pretty accurate. He also said he was delivering it

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 229

1 to Mr. Timothy Sanders. Then they were bringing it back to
2 Hartsville, but a few more issues in the traffic stop that
3 were red flags. Jameco Toney and Timothy Sanders both had
4 personal cars. Why would you drive forty five minutes to
5 Florence to rent a car when Enterprise in Hartsville is two
6 minutes away if your car is that bad. Yes Mr. Lawson had a
7 dog in his car, he will probably tell you that he pulled the
8 dog out and he ran it around the car. We also questioned that
9 because he said for safety issues he likes to have somebody
10 else watching the defendant just in case of cars and then he
11 can watch his dog one on one and see if the dog reacts to
12 anything but in this case he had no backup the other guys
13 were on the side of the street pulling people over for their
14 traffic stop and that is why he did not use his dog. He had
15 to do it by himself and then after he fled that is when the
16 backup came, they did not even get to finish their traffic
17 stop they had to let the people go. Again, it is the State's
18 duty to prove beyond a reasonable doubt that Mr. Toney was
19 trafficking marijuana. The judge will charge you with what
20 reasonable doubt is. I can read it to you but whatever he
21 charges is the correct law. Reasonable doubt, I will give you
22 an example it is basically saying there is no fish in the Pee
23 Dee River but we all know that the Pee Dee River is full of
24 fish. That is just an example of how substantial reasonable
25 doubt is, but he will probably tell you something. You have

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 230

1 got to really think about that. That is why I gave you an
2 example of that, but again I believe the State has proved
3 beyond a reasonable doubt that Mr. Toney was trafficking
4 marijuana because he had the car, the drugs were in his car
5 and he had actual possession. He knew where the drugs were
6 going because he was delivering it to Timothy Sanders at the
7 Florence Airport. He had physical possession, he knew the
8 exact weight, and ladies and gentlemen I believe that I
9 proved the case of trafficking at the end. I want you all
10 to find him guilty. Thank you all ladies and gentlemen.

11 (Closing by Wise)

12 Ms. Wise: Your Honor, Counsel, ladies and gentlemen of
13 the jury good morning. The prosecutor brought you lots of
14 information, but he did not lend you the truth. As I told you
15 at the beginning of this trial this is a case about the truth
16 and the unfortunate truth is that this is also a piece about
17 assumptions. About assuming the worst about someone, Mr.
18 Jameco Toney, a modest man from modest means an easy target.
19 I believe that the government has failed to prove beyond a
20 reasonable doubt that Mr. Toney is guilty of trafficking
21 marijuana. Now why do I say this, ladies and gentlemen it
22 basically comes down to what your commonsense tells you and
23 before I go on let me reiterate, I do not contest the fact
24 that these drugs were found in the vehicle he borrowed. That
25 issue however is not the issue in this case. The only issue

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 231

1 here is whether Mr. Toney trafficked these drugs. You heard
2 the testimony. You saw the evidence. Did you also notice what
3 lacked of evidence? Ladies and gentlemen what specifically
4 indicates that Mr. Toney is guilty of trafficking these
5 drugs. I believe that the way these drugs were found, the way
6 that they were investigated, more importantly the way they
7 were not investigated are links to doubt and uncertainty.
8 None the less from this the government wants you to assume
9 that Mr. Toney is responsible for those drugs, was
10 responsible for those drugs. Assume he is a dangerous kingpin
11 drug dealer, a threat to this community. Ladies and gentlemen
12 your commonsense tells you that these assumptions are not
13 enough to convict this man. Remember the presumption of
14 innocence beyond a reasonable doubt. Look at there
15 importance. Look at how they dismantle the State's entire
16 argument. Mr. Toney is innocent until proven guilty and the
17 government has not proven Mr. Toney guilty, because the
18 government did not prove that on November 10, 2010 Mr. Toney
19 trafficked those drugs. If anything I believe that the only
20 thing that has been proven to us is that we do not know the
21 full story. You have seen the gaps, you have seen the
22 uncertainties, you have seen the unanswered questions. In a
23 case such as this with Mr. Toney's very life and well being
24 at stake these gaps, uncertainties, unanswered questions
25 cannot exist, they simply cannot. We heard the testimony of

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 232

1 Officers Lawson, Hause, Zeller though I am not saying are not
2 good people, who are not good law enforcement. I know first
3 hand that these officers are fine individuals, fine cops. But
4 who I believe in this situation did not fully judge and fully
5 evaluate this entire situation. You heard Officer Zeller
6 yesterday testify as to how he did not remember the details
7 of November 10, 2010. That he did not make any reports on
8 this stop. That he merely relied on Officer Lawson's report.
9 You heard Officer Zeller say how he really did not know what
10 happened prior to him arriving to the scene and that he
11 arrived on the scene shortly before reading Mr. Toney his
12 Miranda Rights. Ladies and gentlemen this was almost at the
13 end of the stop. When asked about November 10, 2010 you heard
14 Officer Zeller say I don't remember. What he did remember
15 though was my client an individual cooperating with law
16 enforcement. And Officer Hause an equally fine officer,
17 testified as to how he too did not remember the incident. He
18 too did not fill out a report, he relied on the incident
19 report filled out by Officer Lawson. Officer Hause told us
20 how he assisted in weighing the marijuana, how it was about
21 sixteen pounds. We heard from Officer Billiott who testified
22 how he tested and again weighed the marijuana two years
23 later. He told us how when he weighed it this time it came
24 out to 14.83 pounds and he explained the reason that it
25 dropped was because of the saran wrap of the marijuana.

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 233

1 Ladies and gentlemen for the weight of those drugs to drop
2 over a pound based off of saran wrap to me says a lot. We
3 heard Officer Billiott testify about what marijuana is
4 defined as in this state. You will hear the judge instruct
5 you all on that again later. I believe you heard Mr. Farr say
6 that to you all a minute ago. You heard him also say what
7 marijuana is not in this state. Marijuana does not mean the
8 mature stocks of the marijuana plant or the fibers produced
9 from these stocks and it does not mean the sterilized seeds
10 of the marijuana plant which is incapable of germination.
11 Look at all these packages when you go back, really look at
12 the packages. Look at all of the seeds. See if you see any
13 mature stocks in there, any stems. If the saran wrap can make
14 this weight go from sixteen pounds to 14.83 pounds. I
15 believe that we can also fairly say that this weight might
16 be less with all of these seeds out of here. We don't know
17 though. We didn't hear any testimony. After you look at the
18 marijuana the judge is going to tell you or excuse me the
19 judge is going to tell you and I want you to keep this in
20 mind when you are looking at the marijuana. In order to find
21 Mr. Toney guilty of trafficking as the government pointed out
22 that weight has to be over ten pounds, it might be close.
23 Ladies and gentlemen I want to talk with you a little bit
24 about the testimony we heard from Officer Lawson. In my
25 opinion the government's argument rest upon this testimony.

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 234

1 Officer Lawson testified as to his reasoning for pulling Mr.
2 Toney over, an improper lane change. Ladies and gentlemen you
3 saw that video, I ask you I beg you to come back out here and
4 watch that video again and again and again. You tell me where
5 you see on that video the improper lane changes that was
6 discussed in the testimony yesterday. Do you see that lane
7 change? I see a lane change, I don't see evidence of it being
8 improper. I do not see evidence of it being unlawful. I do
9 not see evidence of it being dangerous to anyone. What I do
10 see is Officer Lawson getting up to one hundred and seven
11 miles per hour in the middle of the day on I-20 with cars
12 around him. Ladies and gentlemen which is the greater threat
13 here? What is his reasoning for pulling over Mr. Toney?
14 Unlawful, I am not sure. Again ladies and gentlemen I am
15 going to discuss, the only evidence that we have is this
16 officer's testimony and these drugs. For amount of drugs that
17 much for my client's well being and life to be at stake I
18 need a little bit more. The State seems to shrug off the need
19 to investigate further. To look for more evidence,
20 fingerprints, DNA. I do not know how that stuff works but I
21 do feel like you need a little bit more. I want to talk to
22 you all a little bit about Timothy Sanders. Mr. Farr harped
23 on the fact that this rental agreement has my clients name
24 nowhere on it and I agree. I has Timothy Sanders's name once.
25 It has his initials five times. This man rented this car, he

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 235

1 was responsible for this car, those drugs were found in his
2 car and you mean to tell me that law enforcement never even
3 attempted in contacting this man to investigate further, see
4 what was going on. My client is sitting here in this court
5 today by himself. We do not know who Timothy Sanders is, we
6 don't know where he is. For all we know he is still out in
7 the streets and law enforcement does not even think it is as
8 appropriate as much to even get in contact with him to see
9 what is going on. Ladies and gentlemen they knew where he was
10 at based off of their testimony that we heard. They knew that
11 he was at the airport based off the testimony that was heard.
12 No one even picked up the phone to even say, hey Florence
13 Deputies can you check this out I have a feeling something
14 illegal might be going on. Nope they get the drugs they
15 charge my client. Ladies and gentlemen I just ask you to
16 please use your commonsense. Do you believe everything that
17 we heard? Do all of the puzzle pieces fit together? According
18 to the testimony this alleged drug trafficking incident that
19 my client is a part of that he is charged with concerns
20 Timothy Sanders just as much if not more as him. We don't
21 know a thing about him. No investigation, no research,
22 nothing. Is this justice? Ladies and gentlemen I want to move
23 onto another point as Officer Lawson's testimony. I ask that
24 you really pay attention to this. There are seemingly small
25 discrepancies that he reported in court that I then discussed

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 236

1 with him about what he had reported in his incident report
2 that differ and then compare that to the video. Please watch
3 that video again. We get three different visions of what was
4 said to of happened on November 10. These little minute
5 details which I agree in the grand scheme of things probably
6 aren't that important, but when you get minute detail after
7 minute detail after minute detail the differences they add
8 up and it makes me wonder what really happened. The testimony
9 that we heard yesterday made it seem like Officer Lawson
10 conducted this stop with efficiency, proper protocol. Ladies
11 and gentlemen the stop of that vehicle was over forty minutes
12 long. My client was pulled over for improper lane change
13 immediately told to get out of his vehicle. How many of you
14 all have been pulled over for a traffic violation on the
15 middle of an interstate highway in broad daylight and told
16 to exit your vehicle? Is that right? My client, he never
17 tried to hold up officers, he never tried to prevent the car
18 from being searched. He answered the questions as they were
19 asked of him and ladies and gentlemen that is something else
20 that I brought up yesterday. Listen on that video and compare
21 it to what you heard on the scene. The government tries to
22 make this look like my client was asked a series of simple
23 questions and they let it be, no. My client was asked every
24 question under the sun in hopes that he would answer
25 something to incriminate himself. He answered no I don't have

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 237

1 drugs in the car, no I don't have contraband in the car, no
2 I don't have stolen goods in the car. Two minutes later asked
3 the same question again no, no, no, no, no continue no, no,
4 no, no, no. Ladies and gentlemen there comes a point to where
5 law enforcement has to take accountability for their actions
6 as well. Is this proper? You hear a lot of testimony and a
7 lot of evidence about my client being nervous. His hand
8 shaken. Ladies and gentlemen I get nervous in front of
9 people, my hands are shaking right now. Officer Lawson
10 seemed to draw on the fact that my client talked with his
11 hands, a indicator right there. Ladies and gentlemen I
12 watched Officer Lawson on that stand yesterday talk the
13 entire time with his hands, but according to that right there
14 that is enough to pull my client over and suspect him of drug
15 trafficking. We heard testimony while on the video did not
16 see, it the testimony that my client looked like he was about
17 to run. How come you don't see it on the video? I don't
18 debate at all that he does run but prior to that I don't see
19 any indication of him wanting to run. In fact there are two
20 different incidents once at the time stamp 12:43:43 where
21 Officer Lawson is right beside the trunk of the vehicle and
22 my client doesn't do so much as flinch. They try to make Mr.
23 Toney thought to be a man with this nervous case of a
24 person, I do not see that. There is nothing on the video of
25 evidence of that. I talked with you a little bit about the

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1 rental agreement. About Timothy Sanders's name being on the
2 rental agreement, about the five initials on the rental
3 agreement. How law enforcement never as much as even
4 contacted him even though this is said to be his car that he
5 had lent to Mr. Toney. Those were his drugs. Also important
6 about that rental agreement is the government's fixation that
7 my client was unauthorized user of that vehicle. I am not
8 saying this is right, but listen to that video very closely
9 you hear Officer Lawson distinctly tell my client you know
10 you are not suppose to be driving this vehicle your name is
11 not on the rental agreement but it happens all the time. If
12 it was so important my client is not a permissive user of
13 that vehicle and not a permissive driver, why would it take
14 Officer Lawson fifteen minutes to then contact the rental
15 company to tell them. Prior to that fifteen minutes lead him
16 in array of questions asking about my client's cousin, asking
17 about my client's old lady, asking about what is in the car,
18 this that, this that, this that. There comes a point of
19 accountability. Ladies and gentlemen please I don't want this
20 to come off as me condemning the police me saying the police
21 are bad. These officers do a fine job in this community. I
22 am talking about right here though in this situation on
23 November 10, 2010. I don't want to discredit anybody of the
24 sacrifices that they make, but I have a problem in what I see
25 as my client Mr. Toney being pegged by the police. Only

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1 because marijuana was found in the trunk of the vehicle that
2 he had gone to drive and now he is being called a drug
3 trafficker and now we are here today. This man's entire life
4 turns today. I talked with you about how Officer Lawson
5 dwelled on the fact Mr. Toney talked with his hands. How
6 many of you all talk with your hands? How many of you all get
7 nervous when you get pulled over by law enforcement? If we
8 follow the line of thinking presented to us in this trial,
9 that coupled with what we have seen in that video means we
10 can and must assume the very worse about Mr. Toney and that
11 is not right. It is not right for him and it is not right for
12 any person in this court room today. If this can happen to
13 him it could happen to anybody. Based off of the testimony,
14 based off Mr. Farr's argument in his closing, anyone of us
15 at some point or another exhibits some sort of behavior that
16 would give law enforcement reasonable suspicion, probable
17 cause, whatever you want to call to question it, is that
18 right. Think about the promise Mr. Farr made to you leading
19 into this trial. That he would prove Mr. Toney guilty, did
20 he. We have not seen Timothy Sanders. Ask Mr. Farr about
21 Timothy Sanders. I don't know who he is, I don't know where
22 he is, but I find that interesting that they don't even as
23 much present him here in the court room to tell what he knows
24 about this situation. You didn't hear anything about how a
25 traffic stop should be reasonably be conducted. Ladies and

(Closing cont'd by Mr. Farr/Closing by Ms. Wise) 240

1 gentlemen what does your commonsense tell you? Is that
2 reasonable and that legal? Remember what I told you about
3 reasonable doubt at the beginning of this trial. That
4 reasonable doubt simply put is a kind of doubt that after
5 considering everything you simply are not sure, that you have
6 doubts. Ladies and gentlemen you have to be firmly convinced
7 that Mr. Toney is guilty of trafficking marijuana. Mr. Farr
8 just told you how I am going to make this seem like
9 reasonable doubt is not a big deal, no. Ladies and gentlemen
10 reasonable doubt is the most important thing I want you to
11 think about and take away from this trial, because it
12 determines my client's life and well-being. This case and Mr.
13 Toney's faith now rest in your hands. When it is over I have
14 a feeling that you, myself, and probably others will from
15 time to time think back and reflect on what happened. It may
16 be during a spare moment. It may be a night when we are
17 trying to fall asleep. Whenever you think of this case you
18 are probably going to ask yourself one thing, did I do Jameco
19 Toney justice, did I do this State justice. If you have any
20 doubts about this case, any doubts whatsoever have them now.
21 For Mr. Toney there is no tomorrow, no second chance. Ask
22 yourself those hard questions now because for him tomorrow
23 will be too late. If during your deliberations you keep that
24 in mind I am certain you will render the only possible
25 verdict in this case, a verdict of not guilty. I say to you

(Closing cont'd by Ms. Wise/Charges by Court)

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1 that this is a case about the truth. The prosecution has not
2 proven beyond a reasonable doubt that on November 10, 2010
3 Mr. Toney trafficked those drugs, because the prosecution has
4 not rendered this we ask that you return the only possible
5 verdict in this case, a verdict of not guilty. Let Mr. Toney
6 return home to his family. Find him not guilty. Thank you.

7 The Court: Okay ladies and gentlemen it is going to take,
8 me probably fifteen or twenty minutes to charge you the law.
9 Do you all need a break, anybody need a break?

(Charges by Court)

10
11 The Court: You have heard all of the evidence in this
12 case and you sat there very patiently and you listened very
13 attentively and I appreciate it. Now I am going to instruct
14 you on the law and under our constitution and code of law you
15 the jury are the only ones that kind can make a finding of
16 facts in this case. I am not permitted to indicate to you how
17 I feel about the facts. So if I said anything or done
18 anything in this trial that you think I have an opinion about
19 the facts you are to disregard that because you and only you
20 are to determine what the true facts are in this case. The
21 same constitution and code of laws that makes you the
22 exclusive judges of the facts makes me the exclusive judge
23 of the law. Therefore if you have an opinion and it differs
24 from what now I tell you the law is, you are under your oath
25 obligated to take the law just as I give it to you and apply

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1 it to the facts that you determine to be true in this case
2 to reach a verdict in this case. The fact that the defendant
3 Mr. Toney was arrested, charged, and indicted in this case
4 is not evidence in this case. It should not be considered by
5 you as evidence of guilt in this case, nor does it create any
6 presumption or inference of guilt. Indictment is simply a
7 formal legal document which contains the charges brought
8 against this defendant and it serves as a formal document
9 that brings this case to be processed through the court
10 system. The defendant in this case has plead not guilty to
11 this indictment and that plea cast a burden upon the State
12 of South Carolina to prove each and every element from that
13 indictment beyond a reasonable doubt. A person charged with
14 committing a criminal offense in South Carolina is never
15 required to prove himself or herself innocent and I instruct
16 you and emphasize to you the fact that the defendant in this
17 case did not testify, is not a factor to be considered by you
18 in anyway in your deliberation or even talk about it or
19 question it on concerning his guilt or innocence. It must not
20 be talked about whatsoever, he has the constitutional right
21 to remain silent and you cannot even discuss it in the jury
22 room the fact that he did not testify in this case. As I have
23 told you it is an important rule of law in this country, that
24 the defendant in a criminal trial will always be presumed
25 innocent in a crime for which he or she is charged unless and

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1 until that guilt has been proven by evidence that satisfies
2 you of that guilt beyond a reasonable doubt. The presumption
3 of innocence is not a mere legal theory. It is not just a
4 legal phrase. It is a substantial constitutional right which
5 every defendant is entitled. The presumption of innocence
6 accompanies the defendant from the time he is charged and
7 throughout this trial until you reach a verdict of guilt
8 based upon the evidence that satisfies you of that guilt
9 beyond a reasonable doubt. A reasonable doubt is a doubt
10 which makes a honest, sincere, conscious juror in search of
11 the truth hesitate to act. Proof beyond a reasonable doubt
12 must therefore be proof such a convincing character of a
13 reasonable person would not hesitate to rely and act upon it
14 the most important his or her own affair. Proof beyond a
15 reasonable doubt could also be described as proof that leaves
16 you firmly convinced of the defendant's guilt. There are very
17 few things in the world that we know with absolute certainty
18 and in a criminal trial the law does not require proof that
19 overcomes every possible doubt. If based on your
20 consideration of evidence you are firmly convinced the
21 defendant is guilty of the crime charged you must find him
22 guilty. If on the other hand you think there is a real
23 possibility he is not guilty, you must give him the benefit
24 of that doubt and find him not guilty. In determining what
25 the facts are in this case you must necessarily pass upon the

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1 credibility. Which simply mean the believability of the
2 witnesses and value or weight given to their testimony. You
3 alone must decide the force and effect of the truth of that
4 testimony. In making this decision there are many things that
5 you may and should consider such as the appearance and manner
6 of the witness on the stand, sometimes referred to as the
7 demeanor of the witness. Was the witness forthright or
8 hesitant. Was the witness's testimony consistent or did it
9 contain discrepance. What was the ability of the witness to
10 know the facts about which he or she testified. Did the
11 witness has cause or reason to be bias or prejudice and favor
12 the testimony that he or she gave. Was the testimony of the
13 witness corroborated or made stronger by other evidence or
14 was it made weaker or impeached by other evidence and
15 testimony. Under the rules of evidence ordinarily we are not
16 --- a witness is not permitted to testify as to opinions and
17 conclusions. An exception to this rule exist for witnesses
18 we call expert witnesses. A witness who by education and
19 experience has become an expert in some art, science,
20 profession, or calling. May state an opinion as to relevant
21 and material matters in which the witness claims to be an
22 expert and they also state the reasons for that opinion. You
23 should consider any expert opinion received in evidence in
24 this case like any other evidence you give it the weight that
25 you think it deserves. If you decide that the opinion of the

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1 expert is not based on sufficient education and experience
2 or if you conclude that the reasons given in support of the
3 opinion are not sound or that the opinion is outweighed by
4 other evidence you may disregard the opinion in it entirety.
5 An expert witness's testimony is to be given no greater
6 weight than that of any other witnesses simply because that
7 witness is an expert and further you are not required to
8 except an expert's opinion even though it is not
9 contradicted. As jurors you have a right to believe a small
10 portion of a witness's testimony and disregard the larger or
11 vice versa. You may believe all of a witness's testimony or
12 none. You may believe the testimony of a single witness
13 against that of many or the other way around. Now criminal
14 intent is a necessary element of each crime and it must be
15 proven by the State beyond a reasonable doubt. Criminal
16 intent is a manner that must be determined by the jury the
17 circumstances surrounding the situation. There is no way to
18 prove intent to a mathematical certainty. There is no way
19 medical science can dissect a person's brain and determine
20 what he or she had in mind. So the law states that criminal
21 intent may be inferred when the circumstances shown to have
22 existed both before and after the fact. This is how you the
23 jury makes a determination as to whether or not the elements
24 of intent were present. Criminal intent is a state of mind
25 that operates jointly with an act or omission in the

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1 commission of a crime. Criminal intent is a mental state of
2 conscious wrong doing. So it is up to you the jury to
3 determine what the defendant intended to do based on the
4 circumstances shown to have existed and I tell you the
5 statement proved criminal intent out of all other elements
6 in this trial. There are two types of evidence which are
7 generally presented during a trial, direct evidence and
8 circumstantial evidence. Direct evidence directly proves
9 existence of the fact and does not require deduction.
10 Circumstantial evidence is proof of a chain of facts and
11 circumstances indicating the existing of the facts. Crimes
12 may be proven by circumstantial evidence the law makes no
13 distinction between the weight of that to be given to either
14 direct or circumstantial evidence. However to the extent the
15 state relies on circumstantial evidence, all of the
16 circumstances must be consistent with each other and when
17 taken together point conclusive to the guilt of the accused
18 beyond a reasonable doubt. If these circumstances merely
19 portray the defendant's behavior as suspicious the proof has
20 failed. The State has the burden to prove the defendant
21 guilty beyond a reasonable doubt and this burden rest with
22 the State regardless of whether the State relies with direct
23 evidence or circumstantial evidence or any combination of the
24 two. Now, I have admitted into the evidence in this case
25 statements allegedly made by the defendant. Before you can

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1 consider these statements as evidence for any purpose you
2 must find that the State has proven beyond a reasonable doubt
3 the answer is yes to both of the following questions. Did the
4 defendant make the statements and was the statement made
5 voluntarily. The word voluntarily means that he freely chose
6 to make the statement and was not induced by the pressure,
7 force, or intimidation. If the statement was voluntarily
8 given it may be used against him. If the statement was not
9 voluntarily given it cannot be used against him. In
10 determining whether or not the statement of the defendant was
11 voluntary you should consider all the facts and circumstances
12 surrounding the statement. Including the defendants age,
13 maturity, his level of education, and intelligence, his
14 physical and mental health, his background and environment,
15 the nature of any questioning, and any other evidence you
16 believe bears the voluntariness of the defendant's statement.
17 If the defendant was in custody at the time the statement was
18 made then you should also consider the place and length of
19 his custody and whether or not he was given or whether or not
20 he understood his constitutional rights or what are commonly
21 referred to as his Miranda Right. These rights are that he
22 had the right to remain silent, that any statement that he
23 made can be used against him in a court of law, and that he
24 has a right to consult an attorney before and during the
25 questioning and that if he cannot afford an attorney the

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1 court would appoint an attorney to represent him at no cost
2 to him and that he had a right to exercise these rights at
3 anytime and terminate the questionings or not answer the
4 question or make any statement. Now the defendant is indicted
5 and charged in this case with the crime of trafficking in
6 marijuana. The State must prove beyond a reasonable doubt the
7 defendant knowingly sold, manufactured, cultivated,
8 delivered, purchased, brought into this State, provided
9 financial assistance, or otherwise aided, abided, attempted,
10 or conspired to sell, manufacture, cultivate, or deliver, or
11 purchase, or bring into this State, this was knowingly and
12 he was in actual or constructive possession and knowingly
13 intended to become in actual or constructive possession of
14 the marijuana. Statements prove beyond a reasonable doubt
15 that the marijuana was ten pounds or more to be convicted of
16 trafficking. To prove possession the State must prove beyond
17 a reasonable doubt the defendant had both the power and
18 intent to control the disposition or the use of the
19 marijuana. Possession may be actual or constructive. Actual
20 possession means that the marijuana was in the actual
21 physical custody of the defendant. Constructive possession
22 means that the defendant had dominion and control or the
23 right to exercise dominion and control over either the
24 marijuana itself or the property on which the marijuana was
25 found. Mere presence at the scene where the drugs were found

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1 is not enough to prove possession. The defendant's knowledge
2 and possession may be inferred when a substance is found on
3 property under the defendant's control. However the inference
4 is simply an evidentiary fact to be taken into consideration
5 by you along with all the other evidence in this case and
6 give it the weight that you decide it should have. Two or
7 more persons may have joint possession of a drug. Now deliver
8 means to actually constructively or attempt to transfer the
9 drugs. Distribute means to deliver other than by
10 administering or dispensing. Now, if you determine that the
11 State has not proven trafficking in marijuana beyond a
12 reasonable doubt you should consider whether the State has
13 proven beyond a reasonable doubt that the defendant is guilty
14 of possession with intent to distribute marijuana.
15 Possession with intent to distribute marijuana contains all
16 the evidence of trafficking except the amount of the weight
17 of the drugs. In addition the State must prove beyond a
18 reasonable doubt that the defendant had the intent to
19 distribute the marijuana. Intent may be shown by actual
20 conduct of the defendant, and other circumstances from which
21 you may naturally and reasonably infer intent. In determining
22 whether the defendant had the intent to distribute the
23 marijuana you may consider the circumstances surrounding the
24 defendants alleged possession, you may consider the amount
25 of the substance alleged to have been possessed, the manner

(Closing cont'd by Ms. Wise/Charges by Court)

250

1 in which it was allegedly possessed, the place where it was
2 allegedly possessed, and any other factor that you consider
3 to be important. You must find that the defendant did not
4 intend to have the marijuana solely for his own use.
5 Possession of more than twenty eight grams or one ounce of
6 marijuana creates an inference that the defendant possessed
7 the marijuana with intent to distribute it. This inference
8 does not relieve the State from proving beyond a reasonable
9 doubt the defendant had the intent to distribute. It is
10 simply an evidentiary fact to be taken into consideration by
11 you. Along with all the other evidence in this case and you
12 give it the weight you decide it should have. Marijuana means
13 all species or variety of the marijuana plant and all parts
14 thereof whether or not growing or not. The seeds of the
15 marijuana plant, the resin extracted from any part of the
16 marijuana plant, every compound, manufactured salt,
17 derivative, mixture, or preparation of the marijuana plant,
18 marijuana seeds or marijuana resin. Marijuana does not mean
19 the mature stalks of the marijuana plant or fibers produced
20 from these stalks, oil, or cake made from the seeds of the
21 marijuana plant or any other compound, manufactured salt,
22 derivative, mixture, or preparation of the mature stalk
23 except the resin extracted from and it also does not mean the
24 sterilized seed of the marijuana plant which is incapable of
25 germination. Ladies and gentlemen you are not parcels or

(Closing cont'd by Ms. Wise/Charges by Court)

251

1 advocates for the State of South Carolina or this defendant.

2 You do not serve as jurors to award your friends or punish

3 your enemies. That system of justice just simply would not

4 be tolerable. You have been selected by both the State and

5 this defendant to be fair and impartial. It is your duty then

6 by your joint deliberation to determine the truth in this

7 case. Giving to the defendant the benefit of every reasonable

8 doubt on each and every issue. Then to the facts that you

9 determine to be true in this case you are to take and apply

10 the law that I have given to you and arrive at a verdict that

11 speaks the truth. When you would have accomplished this you

12 would have satisfied your oath to the State and this

13 defendant. Now Mr. Foreman I had my law clerk prepare a

14 possible verdict form in this case and the form simply states

15 the caption of the case, The State of South Carolina, County

16 of Darlington in the caption and then it gives you possible

17 jury verdicts. The possible verdicts you can have in this

18 case are we the jury unanimously find the defendant Jameco

19 Abdul Toney guilty of trafficking marijuana or guilty of

20 possession with intent to distribute marijuana or not guilty.

21 In the order that I put them in you can draw no conclusions

22 whatsoever we just had to put them in some order. When you

23 have reached the verdict and it must be a unanimous verdict

24 when all twelve of you have agreed on the verdict you are to

25 check which one of these, you can only have one of them, you

(Closing cont'd by Ms. Wise/Charges by Court)

252

1 check the one that you all find that the State has proven
2 beyond a reasonable doubt. Then you will sign it and date it
3 and do you all have a knock system or light system.

4 Clerk: Just knock on the door.

5 The Court: You will just knock on the door and inform
6 the bailiff that you have reached a verdict and he will bring
7 you back out and receive that verdict. Now during your
8 deliberation if at anytime somebody leaves the room, they
9 have to go to the restroom or need a break you got to stop
10 talking about the case because you can only talk about this
11 case when all twelve of you are present in the room. Your
12 verdict as I said must be unanimous by you signing this form
13 you are integrating to the court that all twelve of us agree
14 to the verdict and so at that time we will bring you back out
15 and receive that verdict. Now I am going to send you into the
16 jury room and I have got to talk to these lawyers to see if
17 I have left anything out on my chart. If I have left out any
18 legal instructions that they would like for me to give you
19 I will bring you back out and give you additional
20 instructions. If I have covered everything I will send this
21 verdict form along with the evidence in this case to the jury
22 room. When you receive the evidence and this verdict form
23 that will be the indicator to begin your deliberations and
24 you just simply knock on the door when you have reached the
25 verdict. Now if you have a question you must write that

(Charges cont'd/Verdict)

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1 question down on a piece of paper and give it to the bailiff
2 and then I will bring you out to deal with it. I can tell you
3 right now I cannot answer questions of fact. I can only
4 answer if you have a question about the law if I need to
5 explain the law to you I can answer that. If you have an
6 evidentiary question about a fact I can't answer that. You
7 have heard all the evidence you will hear in this case and
8 you got to decide this case based on what you heard so I can
9 not bring you back out and give you additional information
10 or additional evidence, okay. If you will go to the jury room
11 I will talk to the lawyers and I will either send this in and
12 you can start or I will bring you back out. The two
13 alternates everybody looks like they are healthy and they are
14 going to make it so you all need to stay with me. The rest
15 of you all go to the jury room.

16 **(Jury excused from courtroom at 10:50 a.m.)**

17 The Court: Any exception or deletion of behalf of the
18 State?

19 Mr. Farr: None from the State Your Honor.

20 The Court: What about the defense?

21 Ms. Wise: Nothing Your Honor.

22 The Court: If you all would be sure that all the
23 evidence is accounted for with my court reporter and then we
24 will send it back. I just need you all to be satisfied that
25 everything is there that you all think is introduced because

(Verdict)

254

1 if it does not go back it is not going to be her fault.

2 (Court break)/Deliberations begin at 10:54 a.m.)

3 (Verdict reached 11:18)/ (Jury in 11:19)

4 The Court: Mr. Foreman I understand you all have a
5 verdict.

6 Mr. Foreman: Yes sir we do.

7 The Court: Is it unanimous?

8 Mr. Foreman: Yes sir.

9 The Court: You can hand it to the clerk, please.

10 Clerk: Your Honor, this is case number 2011-GS-16-0811
11 State of South Carolina vs Jameco Abdul Toney. Jury's verdict
12 is we the jury unanimously find the defendant Jameco Abdul
13 Toney guilty of trafficking in marijuana signed Foreperson
14 Ronald Williams November 20, 2013. If this is your verdict
15 will you so signify by raising your right hand, please.

16 The Court: Anything from the State before I release the
17 jury?

18 Mr. Farr: None from the State Your Honor.

19 The Court: Anything from the defense?

20 Ms. Wise: We would like to poll the jury, Your Honor.

21 The Court: Okay.

22 Clerk: Mr. Foreman ladies and gentlemen of the jury the
23 verdict I just published was the verdict you reached in the
24 jury room when I call your name if you will you please stand
25 and I will ask you two question, the first one will be was

(Jury polled)

255

1 it your verdict then and is it your verdict now. You just
2 need to respond yes or no to each one of those questions as
3 they are asked to you, please. Start with the foreperson Mr.
4 Ronald Williams, was it your verdict then?

5 Juror: Yes.

6 Clerk: Is it your verdict now?

7 Juror: Yes.

8 Clerk: Sherry James, was it your verdict then?

9 Juror: Yes.

10 Clerk: Is it your verdict now?

11 Juror: Yes.

12 Clerk: Alice Caldwell was it your verdict then?

13 Juror: Yes.

14 Clerk: Is it your verdict now?

15 Juror: Yes.

16 Clerk: Ryan Ridenhour was it your verdict then?

17 Juror: Yes.

18 Clerk: Is it your verdict now?

19 Juror: Yes.

20 Clerk: Billy Campbell, was it your verdict then?

21 Juror: Yes.

22 Clerk: Is it your verdict now?

23 Juror: Yes.

24 Clerk: Heather Neal was it your verdict then?

25 Juror: Yes.

(Jury polled)

256

1 Clerk: Is it your verdict now?

2 Juror: Yes.

3 Clerk: Amanda Toler was it your verdict then?

4 Juror: Yes.

5 Clerk: Is it your verdict now?

6 Juror: Yes.

7 Clerk: Barbara Green, was it your verdict then?

8 Juror: Yes.

9 Clerk: Is it your verdict now?

10 Juror: Yes.

11 Clerk: Jessica Henning was it your verdict then?

12 Juror: Yes.

13 Clerk: Is it your verdict now?

14 Juror: Yes.

15 Clerk: Sandra Asenico was it your verdict then?

16 Juror: Yes.

17 Clerk: Is it your verdict now?

18 Juror: Yes.

19 Clerk: Charles Martin, was it your verdict then?

20 Juror: Yes.

21 Clerk: Is it your verdict now?

22 Juror: Yes.

23 Clerk: Rodriguez Moses was it your verdict then?

24 Juror: Yes.

25 Clerk: Is it your verdict now?

(Sentencing)

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1 Juror: Yes.

2 Clerk: That is all twelve jurors if your name was not
3 called please stand.

4 The Court: Ladies and gentlemen I appreciate your
5 service this week I am informed by the solicitors office we
6 have enough business to take care of the rest of the week so
7 I can excuse you, you are free to go and you do not have to
8 do this again for three years. You are free to go you do not
9 have to do this again like I said for three years. I have
10 been telling you all week you cannot talk about this case now
11 you can talk about it to anybody you want to. Go home and
12 tell your family what you have done if you don't want to talk
13 about it you do not have to talk about either but you are
14 free to talk about it if you want to. You have a nice day and
15 a nice week thank you so much for your service.

16 **(Jury excused for the week 11:22 a.m.)**

17 Ms. Wise: We would like to review all of our previous
18 motions.

19 The Court: Thank you ma'am and I respectfully deny that
20 I think it was sufficient evidence in this record for the
21 jury to reach the verdict that they had and I respectfully
22 deny your motion.

23 Mr. Farr: Your Honor we are on docket number 2011-GS-16-
24 0811 for Mr. Jameco Toney for the charge of trafficking in
25 marijuana ten pounds or more but less than ten, second

(Sentencing)

258

1 offense Your Honor. As you have heard the facts at the trial
2 the State would seek the full max.

3 The Court: Okay I need the sentencing sheet though. I
4 know the facts in this case but what I don't have a factual
5 base does the defense agree this in fact a second offense.

6 Ms. Wise: Your Honor I would ask that it be reduced down
7 to a first and plead or it be sentenced based off of a first
8 and what I am seeing on his wrap sheet within the five years
9 of this charge the only marijuana conviction he has is a 2006
10 simple possession when he was unrepresented in magistrate
11 court. I would ask that this be the first.

12 The Court: What does the State have that shows this is
13 a second?

14 Mr. Farr: In 2001, he was convicted of simple possession
15 but in 2003 he had manufacturing, Your Honor, he got five
16 years suspended down to two years probation, 2004 again
17 manufacturing he got eighteen months for that.

18 Ms. Wise: We've discussed that I do not think it was a
19 manufacturing I think it was a probation violation in 2004
20 and that was still in the five years of 2010.

21 The Court: What county was all this?

22 Mr. Farr: Darlington County.

23 The Court: Do you have any documentation to prove his
24 conviction?

25 Mr. Farr: Just the NCIC, Your Honor.

(Sentencing)

259

1 The Court: You got anything that will carry any weight
2 NCIC is not --- it is not good enough. You have got to have
3 indictments. Do you all need some time to go look for the
4 indictments?

5 Deputy Clerk: I'm looking now.

6 The Court: I mean the only way the NCIC is good enough
7 if they agree to the NCIC record if not we have to have
8 indictments to make sure it is right because it makes a big
9 difference. Okay we can come back around we resolved the
10 issue on his prior record.

11 Mr. Farr: Yes sir.

12 The Court: He has a conviction in Lexington County for
13 PWID marijuana?

14 Mr. Farr: Yes, Your Honor.

15 The Court: In 2003?

16 Mr. Farr: Yes sir.

17 The Court: You have seen that record now and you
18 understand that?

19 Ms. Wise: I have Your Honor.

20 The Court: Anything else the State needs to tell me?

21 Mr. Farr: None from the State Your Honor.

22 The Court: Yes ma'am.

23 Ms. Wise: Thank you, Your Honor. As Mr. Farr said you
24 heard the facts of the case you were present for the entire
25 case I would like for you to take into consideration and ask

(Sentencing)

260

1 that you take into consideration everything that we heard in
2 this trial. Mr. Toney is thirty eight years old. His mother
3 Mrs. Emma Toney is here present with us in the court room
4 today. His family has been here all week long, his father was
5 here yesterday. Mr. Toney has a nineteen year old daughter
6 he has a finance neither of them could be present today.
7 Since this incident has happened in 2010 Mr. Toney has
8 enrolled in Coker College I have his most recent academic
9 evaluation report if you would like to see that. He has over
10 a 3.0 GPA he is trying to get his business administration
11 degree. Mr. Toney has been unable to maintain a job since
12 obtaining this charge simply because he had the charge on his
13 record. I would like you to take that into consideration. As
14 far as his prior record I would like to make the court aware
15 that the charge that Mr. Farr explained to you from 2003 of
16 March 2003 he actually the conviction was in 2003 excuse me.
17 The charge itself occurred and he was arrested in 1999 so
18 that is a substantial period of time to go as is the fact
19 that this charge that we are here today for is from November
20 2010. Which I would also ask that the court keep into
21 consideration. As I told you he is a business administration
22 major at Coker College, I believe this young man has a lot
23 of potential he has been an absolute delight to work with,
24 he has been very conscious very concerned about the
25 disposition of this case since I have been representing him.

(Sentencing)

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1 I know his family is extremely concerned as well and he would
2 also like to address you when appropriate. I believe he
3 served three days at the detention center on this charge.

4 The Court: Yes sir.

5 Mr. Toney: I would just like to say thanks for the mercy
6 of the court. I feel that I just chose the wrong friends in
7 this situation. I am not saying that the drugs were not in
8 the car. I just really want to plea for the mercy of the
9 court. I have been trying to show the community I graduated
10 from Florence-Darlington Tech last year on the Dean's List
11 and I have been in Coker since last May and I have above a
12 3.0. I was trying to keep myself away from everyone. The only
13 thing I can ask is your mercy at this point, Your Honor.

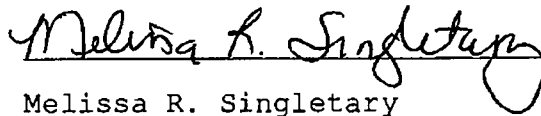
14 The Court: I understand. I have taken into
15 consideration the fact that you have tried to better yourself
16 and that you since these charges you have not gotten into
17 anymore trouble but the problem is these charges are serious,
18 you know, if this was the third you would be looking at a
19 mandatory twenty five years, legislators will not let me
20 suspend it or grant you probation. The sentence of the Court
21 is that you are committed to the State Department of
22 Correction for a term of nine years. Good luck to you.
23
24
25

CERTIFICATE

This is to certify that the transcript in the matter of Jameco Abdul Toney vs. The State of South Carolina, consisting of Two Hundred Sixty-One (261) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 17th day of June, 2014.

A handwritten signature in cursive script, reading "Melissa R. Singletary", is written over a horizontal line.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

FORM 5

STATE OF SOUTH CAROLINA)

County of Darlington)Jameco Abdul Toney 299774)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

17 CP 16 047 0

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 Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Darlington County
Courthouse, Darlington S.C
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2011GS1600811
 (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 20, 2013
- (b) Nine years sentence in the Department of Corrections
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. County of Darlington
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed/reversed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 04, 2016
- ii. received information on April 10, 2017
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 220
- ii. Rule 221(b)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

2017 JUN 16 PM 1:56
CLERK OF COURT
JAMES E. HARRIS, JR.
CLERK OF COURT

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) § 44-53-470
- (b) § 44-53-370
- (c) Con temporary objection rules
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) A offender must be previously convicted
- (b) First offense and second have different penalties
- (c) Sentencing errors are included in this article
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. The decision of the Darlington County Court
- ii. Darlington County Courthouse
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Darlington County Courthouse, Public Sq.
- ii. Darlington S.C. 29532
- iii. _____
- iv. _____

- (c) the disposition thereof:
- i. Original Charge Code 2360/Trafficking in marij. 10 lbs or more 1st
- ii. Charge Description 0402/Trafficking in marij 10 lbs or more 2nd
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. 11/20/2013
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Darlington County Fourth Judicial Circuit Public Defender
- 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?

yes

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

- (a) which grounds have been presented:
i. § 44-53-470
ii. _____
iii. _____
- (b) the proceedings in which each ground was raised:
i. original trial
ii. _____
iii. _____

6 PM 1:56

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) The person who vehicle the drugs were in got convicted
 (b) He didn't have to be present at court or name mentioned
 (c) Timothy Sanders received life for murder in April 2017

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
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. Trial - Christie W. Wise, 100 799 Assistant Public Defender 300 Russell St, Suite 113 Darlington, S.C. 29532
 ii. Appeal - Robert M. Duder, Chief Appellate Defender, South Carolina Commission of Indigent Defense P.O. Box 11589 Columbia, SC 29211-1589
 iii. Appeal - ~~Robert M. Duder~~ Jeffrey S. Stephens, Esq. QUINLEN LAW FIRM P.A. 121 Lady's Island Commons P.O. Box 2450 Beaufort, S.C. 29901-2450
 (b) the proceedings at which each such attorney represented you:
 i. General Session Trial
 ii. Initial Brief, Final Brief, Rule 220, 221
 iii. Initial Brief, Final Brief, Rule 220, 221

19. State clearly the relief you seek in filing this application:
overturned and sentence vacated, or be reduced down to
a first and plead or it be trial as a first. Based off
my criminal record which doesn't have a previous Trafficking
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)

County of Darlington)

VERIFICATION

I, Jameco Abdul Toney, 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.

Jameco Abdul Toney

SWORN to and subscribed before me this 13
 day of June, 2017.

Melissa Spigner (L.S.)
 Notary Public

My Commission Expires: Dec. 1, 2025

2017 JUN 16 PM 1:56
 CLERK OF COURT
 EAST WING - 1000

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

I, Jameco Abdul Toney, 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.

Jameco Abdul Toney
Applicant

SWORN or affirmed to and subscribed before me this

13 day of June, 2017.

Melissa Epinger
Notary Public

My Commission Expires: Dec. 1, 2025

2017 JUN 16 PM 1:56
CLERK OF DISTRICT COURT
DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Jameco Abdul Toney,	)	Case No.: 2017-CP-17-0470
S.C.D.C. No. 299774,	)	
	)	
Applicant,	)	
	)	RETURN, PARTIAL MOTION TO DISMISS,
v.	)	AND MOTION FOR MORE DEFINITE
	)	STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Jameco Abdul Toney (Applicant) on June 16, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the July 2011 term of the Darlington County Grand Jury for trafficking in marijuana, between 10 and 100 pounds, 2nd offense (2011-GS-16-00811)—to wit: he was caught with around 16 pounds of marijuana in the trunk of a rental car while travelling eastbound on I-20, near Lamar. Christie Wise, Esq. represented Applicant, and Zack Farr, of the Fourth Circuit Solicitor's Office, prosecuted the case.

Applicant proceeded to trial before the Honorable R. Ferrell Cothran and a jury. The trial before the jury was brief; the case ultimately turned on the disposition of Applicant's motion to suppress the marijuana obtained as a result of the traffic stop and resulting search. Tr. 12-124. Judge Cothran denied the motion and held that Applicant had no reasonable expectation of privacy in a rental vehicle he was not authorized to drive, that the rental agency had authority to

consent to the search of their rental vehicle, and cited to U.S. v. Wellons, 32 F.3d 117 (4th Cir. 1994). After just under 30 minutes of deliberations, the jury found Applicant guilty as indicted on November 20, 2013. Judge Cothran sentenced Applicant to imprisonment for a term of nine years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Jeffrey S. Stephens, Esq. Appellate counsel raised to the court the issue of:

Did the trial court err by finding that [Applicant] lacked standing to challenge both the search of the rental car he was driving and the unreasonable length of his detention as a 4th Amendment seizure?

Final Brief of Appellant at 1, State v. Toney, App. Case No. 2013-002534. Respondent argued that the issue was not preserved because defense counsel only objected during the hearing on the motion *in limine*, and further that the suppression motion was properly denied. By opinion decided October 19, 2016, the South Carolina Court of Appeals found the issue not preserved, did not comment on the merits, and affirmed Applicant's convictions. State v. Toney, Op. No. 2016-UP-428 (Ct. App. 2016). The Remittitur was issued on November 4, 2016.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Citing to S.C. Code Ann. § 44-53-370 and -470, Applicant argues:
 - a. "[An] offender must be previously convicted"
 - b. "First offense and second have different penalties"
 - c. "sentencing errors are included in this article"
2. Respondent interprets an allegation of ineffectiveness of trial counsel from:
 - a. "contemporaneous objection rules"

Applicant requests relief as follows:

- “overturned and sentence vacated, or be reduced down to a first and plead or it be trial as a first. Based off my criminal record which doesn’t have a previous trafficking”

Attached to and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges the trial court erred in sentencing him pursuant to S.C. Code Ann. § 44-53-470. This allegation should be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegation respecting his 2nd offense status could have been raised at trial and thereafter on appeal. In any event, Applicant has a prior existing conviction for possession with intent to distribute marijuana out of Lexington County upon which the Court relied to support the

sentence as a 2nd offense. Tr. 258-59. That noted, Applicant's allegation that he was erroneously sentenced for a 2nd offense should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V.

Respondent also hereby moves for a more definite statement. Though Respondent, by terribly liberal construction interprets an allegation of ineffective assistance of counsel, the Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. filed July 19, 2017) (Shearouse Adv.Sh. No. 27 at 47). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments

withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

VIII.

WHEREFORE, Respondent respectfully requests that this Court require opposing counsel to amend the application with a more definite statement of Applicant's claims, dismiss the allegations of trial court error, and convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

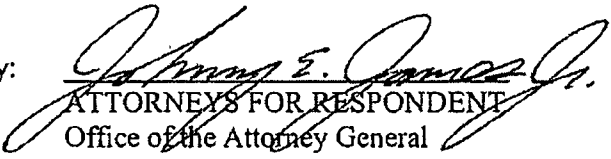
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
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Columbia, S.C. 29211

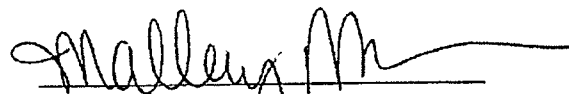
1 Sept., 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2017-CP-16-0470
JAMECO A. TONEY, #299774,	)	
	)	
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 and Partial Motion to Dismiss, and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 1st day of September, 2017.


Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) 2016-CP-16-00470

JAMECO ABDUL TONEY)
) APPLICANT)
) vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
) RESPONDENT

July 23, 2018
Darlington, South Carolina

B E F O R E:

THE HONORABLE LARRY B. HYMAN, JR., JUDGE.

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

LANCE S. BOOZER, ESQUIRE
Attorney for the Applicant

JOHNNY E. JAMES, JR., ASSISTANT ATTORNEY GENERAL
Attorney for the State

CHRISTIE W HENDERSON, Former Public Defender

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

Colloquy 4

CHRISTIE HENDERSON

Direct By Mr. Boozer 7

Certificate of Reporter 18

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EXHIBITS

NO. EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

1
2 THE COURT: This is one that basically involves a
3 Fourth Amendment issue, right?

4 MR. BOOZER: That is correct, Your Honor.

5 THE COURT: Okay. All right. It's my understand
6 that the appellate court never addressed whether or not --
7 I know they found that the issue was not preserved, the
8 Fourth Amendment issue, okay. But I know it was briefed,
9 but the appellate court never ruled on that underlying
10 issue; is that correct.

11 MR. BOOZER: Yes, Your Honor. They said that the
12 issue was not preserved so they couldn't touch it.

13 THE COURT: All right.

14 MR. BOOZER: Well, actually, the ruling was preserved
15 because the lawyer did not object once the marijuana
16 evidence was introduced.

17 THE COURT: Right. Right. Only did it during a
18 motion in limine, but it was briefed I think.

19 MR. BOOZER: Exactly.

20 THE COURT: But the Court never got to it. It just
21 cut it off. It wasn't preserved.

22 MR. BOOZER: Correct.

23 MR. JAMES: Correct, Your Honor. It was fully
24 briefed both on the issue, the preservation issue, as well
25 as the --

1 THE COURT: Fourth Amendment issue.

2 MR. JAMES: -- underlying merits.

3 THE COURT: All right. Okay.

4 MR. JAMES: And just to be clear on the transcript
5 this is matter of Jameco Abdul Toney v. State of South
6 Carolina. Docket Number 2017-CP-17-00470. Mr. Toney is
7 present here in the courtroom today and is represented by
8 Mr. Boozer. There are a couple of housekeeping matters
9 that I would like to take up with the Court at this time.

10 Mainly, in his original application the allegations
11 were very liberally interpreted by the State in order to
12 ensure that the State had the authority to appoint counsel
13 for him. And my understand upon such conversation with
14 Mr. Boozer is that the allegation of ineffective
15 assistance of trial counsel, quote, contemporaneous
16 objection rules, pertains to the matter that we just
17 discussed; that Fourth Amendment objection raised in
18 liminie, and they were not raised again at trial.

19 In his request for relief Mr. Toney indicates, quote,
20 "Overturned and since vacated or be reduced down to a
21 first and pleaded or be a trial first based offering
22 criminal record." He doesn't have previous trafficking.
23 Your Honor, that indicates some desire for relief that is
24 not available in a post conviction relief fashion.

25 THE COURT: Correct.

1 MR. JAMES: So if Your Honor would engage in a
2 colloquy with Mr. Toney to confirm that he does understand
3 what he can get out of a P.C.R. the State would appreciate
4 that?

5 THE COURT: All right, Mr. Toney, do you understand
6 that the only relief that I can give you is to essentially
7 put you back at square one and you try -- your case is
8 tried again. You have your original charges. You go
9 through it all from start to finish.

10 You understand that I can't give you this other
11 relief that you have requested. Do you understand that?
12 I can't reduce your sentence. I can't do these other
13 things that you asked for. You get retried. Do you
14 understand that? I mean that's all I can do on a P.C.R.
15 There is some other relief such as a belayed appeal if
16 that was an issue, but it's not an issue here.

17 Under your petition the only thing I can do is say,
18 'okay, we're going to start again', and they will try you
19 again for the same offenses. Do you understand?

20 MR. TONEY: Yes, Your Honor.

21 THE COURT: It doesn't mean that your charges are
22 dismissed. It doesn't mean that the evidence is
23 suppressed. It doesn't mean any of that. It just means
24 that you start again. Do you understand?

25 MR. TONEY: Yes, I do, Your Honor.

1 THE COURT: All right. Very well. And you wish to
2 proceed?

3 MR. TONEY: Yes, I do, Your Honor.

4 THE COURT: Okay. Mr. Boozer.

5 MR. BOOZER: Thank you, Your Honor. I'll go
6 ahead ---

7 THE COURT: Are you going to call anyone, Mr. Boozer,
8 or are we just going to argue this one purely from a legal
9 standpoint?

10 MR. BOOZER: Judge, probably what we'll do is I'll
11 just go ahead and call his prior counsel.

12 THE COURT: All right.

13 MR. BOOZER: So she can testify why she did ---

14 THE COURT: Okay. Very well. Okay.

15 MR. BOOZER: We call Ms. Wise to the stand.

16 CHRISTIE HENDERSON, after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BOOZER:

20 Q. Ms. Henderson, how are you?

21 A. Well, how are you?

22 Q. Doing just fine. Thank you. Ms. Henderson, did you
23 have occasion to represent Mr. Toney for his case?

24 A. I did.

25 Q. All right. And about how long ago was that? Do you

1 remember that?

2 A. I believe representation began in 2012 and his trial
3 was in 2013.

4 Q. Okay?

5 A. Approximately five or six years ago.

6 Q. Okay. It's been a while.

7 A. It has.

8 Q. All right. Did you represent him for a very long
9 period of time or not a long period of time?

10 A. I have my notes in files. Could I briefly look at
11 those?

12 Q. Sure. Take your time.

13 A. Thank you.

14 THE COURT: Gentlemen, does it really make any
15 difference? I mean isn't ---

16 MR. BOOZER: It doesn't, and I was about to say ---

17 THE COURT: Isn't --

18 MR. BOOZER: --- to move on.

19 THE COURT: Isn't the finding of the appellate court
20 the law that of the case; that it was not preserved,
21 period?

22 MR. BOOZER: Correct.

23 THE COURT: And isn't the only issue then before me
24 is to whether or not that would have made any difference
25 which means I am going to have to rule as to whether or

1 not this is. I mean whether or not Judge Cothran was
2 correct in denying the motion to suppress. I mean isn't
3 that what it amounts to?

4 MR. BOOZER: That's correct. And, Judge, if I can
5 just limit ---

6 THE COURT: Okay.

7 MR. BOOZER: --- maybe three questions to her ---

8 THE COURT: Okay.

9 MR. BOOZER: --- as it relates to that specific
10 issue.

11 THE COURT: All right. Very well.

12 MR. BOOZER: I do want to touch on one issue that my
13 client has in his original allegation is that with him
14 being sentenced as an enhanced offender just to get her
15 understanding of that.

16 THE COURT: Okay.

17 BY MR. BOOZER:

18 Q. Moving forward ---

19 A. Right.

20 Q. --- Ms. Henderson.

21 A. Sure.

22 Q. As a result of this trial was his sentence enhance,
23 do you recall, based on any prior convictions?

24 A. I believe, yes. He does have a prior.

25 Q. What was the prior? Do you remember what that was?

1 A. Give me one minute, and I can -- he had, I believe to
2 my recollection from what I had in my notes he had a
3 conviction for manufacturing. To my recollection he did
4 have a prior manufacturing trafficking.

5 Q. Okay. What that something related to this charge as
6 in, i.e, the drug was a different drug, do you know?

7 A. I honestly can't tell you off the top of my head.

8 Q. Okay.

9 A. I apologize.

10 Q. Okay. That's okay. Let's move on to this. You made
11 your motion in limine at trial about trying to keep out,
12 I guess, marijuana or the search because there was a
13 rental car?

14 A. Correct.

15 Q. All right. Tell me about that. What were you trying
16 to do?

17 A. I was trying to argue that Mr. Toney had a reasonable
18 expectation of privacy in the rental car he was driving.
19 Basically, by my recollection, he had borrowed a car from
20 a third party, Mr. Timothy Sanders. Mr. Sanders had taken
21 out -- had rented the car himself.

22 He was the only permissive driver on the rental
23 agreement, and I was attempting to argue that Mr. Toney
24 had a reasonable expectation of privacy in that vehicle to
25 contest the validity of the search and the resulting

1 marijuana that was seized during the search.

2 Q. And y'all could not mention that guy's name at the
3 trial, right?

4 A. Correct.

5 Q. Sanders?

6 A. No, we couldn't. No. We couldn't.

7 Q. That's right. Y'all could not say his name? Do you
8 recall that?

9 A. No. We would say his name.

10 Q. You could say his name?

11 A. To my recollection, yes.

12 Q. Okay. But the transcript will reflect whether?

13 A. And I think the transcript -- yes, sir.

14 Q. All right. So did you think you had an arguable
15 basis to make that motion in limine?

16 A. I thought so, yes.

17 Q. Okay. Did you think you would be successful?

18 A. I ---

19 Q. At that time?

20 A. At that time I hoped it would be successful. I
21 really -- it was my first experience dealing with that
22 specific issue of a third party driver of a rental car.
23 And to my recollection I think the issue was somewhat
24 unaddressed here in this Court. So I hoped I would have
25 been successful.

1 Q. Okay. So at the time that you were making those
2 arguments there wasn't a whole lot to go by?

3 A. Correct.

4 Q. And, obviously, that motion was denied?

5 A. Correct.

6 Q. And then later on when the marijuana evidence was
7 introduced did you later object or did you not object to
8 it coming in?

9 A. I did not object.

10 Q. Have you read the appellate opinion in this case?

11 A. I have.

12 Q. Would you agree with me when the Appellate Court says
13 because you did not later object that they could not rule
14 or make a finding if the trial court erred in its motion
15 to dismiss to suppress or motion in limine?

16 A. That was my understanding.

17 Q. Okay. So you would agree with me that you didn't
18 take the proper steps to preserve it for appeal?

19 A. I -- correct. I did not preserve the tissue for
20 appeal.

21 Q. Okay. Thank you.

22 MR. BOOZER: That's all the questions that I have.

23 THE COURT: All right. Mr. James, you need to ask
24 her anything?

25 MR. JAMES: I think anything that I have to add is

1 best addressed in argument, Your Honor.

2 THE COURT: Very well. Thank you, Ms. Henderson.

3 You know, and gentlemen, I think this P.C.R. raises a

4 unique question. I just never had one quite like this.

5 So where I have to actually look at an appealable issue

6 that was not addressed by the Court in determining whether

7 or not preserving that issue would have effectively made

8 any difference in the case.

9 I mean that's where we are, really, aren't we? Okay.

10 MR. BOOZER: It is, Your Honor. That's exactly where

11 we are, and I'm not sure if Your Honor prefers that we

12 submit instead of sitting here ---

13 THE COURT: What I would like for you to do, of

14 course, you can do an argument if you want to, I'm not

15 going to rule now. I'll tell you that. I would rather

16 have each of you submit a -- first a brief and, of course,

17 you're going to have to argue it, that issue, and whether

18 or not it -- you know, just because an attorney doesn't do

19 a perfect job doesn't mean you get relief.

20 The issue is whether or not it would have affected

21 the outcome of the trial, and so that's how we're going to

22 have to approach it. And I want you to submit briefs.

23 Thirty days enough?

24 MR. BOOZER: Yes, sir, Your Honor.

25 MR. JAMES: That should be enough, Your Honor.

1 THE COURT: Submit these to me, and then I will
2 contact you back and tell you what my ruling is and we'll
3 go from there.

4 MR. BOOZER: Thank you, Your Honor.

5 THE COURT: Very well.

6 MR. JAMES: If you like make just a very belief
7 summary introduction of what the State intends to argue in
8 its brief and put it all in a brief. Mainly, I just want
9 to hand up copies of two key cases that I ---

10 THE COURT: Well, wasn't it briefed by both party in
11 the Appellate Court?

12 MR. JAMES: Yes, very thoroughly.

13 THE COURT: So that's the reason I was asking. You
14 ought to be able to look at it and see what each party's
15 position is going to be.

16 MR. JAMES: Much of the work has already been done,
17 Your Honor. Plus we have the great contribution of
18 Assistant Attorney General Mark Harley to rely on who is a
19 little bit sharper than I am. I'm just going to hand up
20 for the Court's reference two case; that being the United
21 States v. Wellington. That's 32(f)3(e) 117, 114 ---

22 THE COURT: And that was the case that Judge Cothran
23 relied on.

24 MR. JAMES: That is correct. That is out of the
25 Fourth Circuit United States Court of Appeals. I'm also

1 going to hand up a very fresh copy of Byrd, B-Y-R-D, v.
2 United States. This is a United States Supreme Court
3 opinion that was argued January 9, 2018 and decided
4 May 14th of this year that actually abrogates United
5 States v. Wellington. We believe that much of the
6 argument is actually going to turn around Byrd which is --
7 and some analysis brought out well after trial on this
8 particular issue.

9 THE COURT: Well, are you telling me that Judge
10 Cothran ruled correctly based on the case law, but the
11 Supreme Court said that was bad case law? Is that what
12 you're telling me?

13 MR. JAMES: That is the long and short of it.

14 THE COURT: So where does that leave us? I mean ---

15 MR. JAMES: The summary of the State's argument is
16 very unique. Usually, when there is new case law that
17 comes down I can very quickly and summarily state that
18 counsel is not required to be clairvoyant.

19 In this case Mr. Henderson was holding the crystal
20 ball. She was clairvoyant. She saw what was coming down
21 the pike, and then set the crystal ball down during the
22 course of trial. The law at the time was Wellington under
23 the Fourth Circuit and was applicable to this
24 jurisdiction.

25 However, since that time and very recently the

1 Supreme Court has come down very firmly and stated that
2 Wellington was wrong rule and the case at trial was wrong.

3 THE COURT: The trial counsel was right.

4 MR. JAMES: The trial counsel was right, but he was
5 holding that crystal ball. I've never run into a
6 circumstance where we have fleeting clairvoyants. I do
7 not believe that puts upon Ms. Henderson an obligation ---

8 THE COURT: Well, that seems to bring us to that
9 point, Mr. Boozer. So perhaps you need to talk with
10 counsel and let's see maybe we need to modify the brief
11 that you're going to send, and let's talk about how that
12 would have affected this matter. I mean he seems to agree
13 with you.

14 MR. BOOZER: Correct.

15 THE COURT: About what the law is at the present.

16 MR. BOOZER: And ---

17 THE COURT: And how would that be affected by Judge
18 Cothran's ruling in the past.

19 MR. BOOZER: Back to the future.

20 THE COURT: I would -- it would seem to me that trial
21 counsel's failure to preserve now becomes a greater issue.

22 MR. BOOZER: Correct.

23 THE COURT: If it was bad law, Judge -- if Judge
24 Cothran was correct it wouldn't make any difference, would
25 it. Whether she preserved it or not wouldn't make any

1 difference because when it got to the Appellate Court
2 Appellate Court was going to uphold his denial of the
3 supression motion. But, if in this situation, it would
4 appear that Judge Cothran was correct and if that was
5 still the law it would have made no difference and the
6 outcome of the case because even if he preserved it it
7 would have still been -- he would have been upheld. But
8 now it appears that that law has changed, and how does
9 that shift, make a difference here?

10 MR. BOOZER: I would argue the benefit should come
11 down to him.

12 THE COURT: I mean, otherwise, he would, you know, he
13 would have had the Appellate Court, if they preserve it,
14 Appellate Court would have heard it. They would have
15 affirmed. If she had preserved it they would have
16 affirmed and he would be serving his sentence and that
17 would be the end of it.

18 But it would appear now that she did him a grat
19 service by not preserving it because we might be looking
20 at it years down the road when the law is changed. What
21 do we do there. I don't know. You fellow figure it out
22 and submit a brief. All right and thank you.

23 MR. BOOZER: Thank you, Your Honor.

24 MR. JAMES: Thank you.

25 END OF TRANSCRIPT OF RECORD

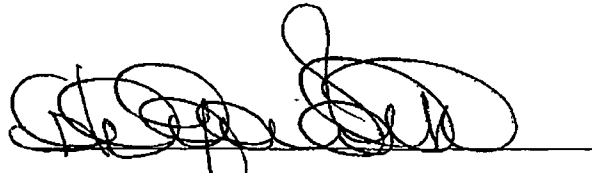
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th 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
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Darlington County, South Carolina, on the 23rd day of
July, 2018.

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

November 28, 2018

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

Q.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) FOR THE FOURTH JUDICIAL CIRCUIT
Jameco Abdul Toney,) Case No.: 2017-CP-16-00470
S.C.D.C. No. 299774,)
Applicant,)
v.) ORDER OF DISMISSAL
State of South Carolina,)
Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Jameco Abdul Toney ("Applicant") on June 16, 2017, and amended by filing on October 27, 2017. Respondent made its return on or about September 1, 2017. The Court convened an evidentiary hearing into the matter on Monday, July 23, 2018, at the Darlington County Courthouse in Darlington, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant did not testify at the evidentiary hearing. Applicant's trial counsel, Christie Wise Henderson, Esq. ("Counsel") briefly testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original transcript, the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant's direct appeal records, the pleadings, and memoranda requested at the conclusion of the evidentiary hearing in lieu of closing arguments. The Court finds as follows:

2018 OCT -9 PM 3:47
FILED
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the July 2011 term of the Darlington County Grand Jury for trafficking in marijuana, between 10 and 100 pounds, 2nd offense (2011-GS-16-00811). Christie Wise Henderson, Esq. represented Applicant, and Zack Farr, Esq., of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable R. Ferrell Cothran and a jury. The jury found Applicant guilty as indicted on November 20, 2013. Judge Cothran sentenced Applicant to imprisonment for a term of nine years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Jeffrey S. Stephens, Esq., who raised the following issue:

Did the trial court err by finding that the Appellant lacked standing to challenge both the search of the rental car he was driving and the unreasonable length of his detention as a 4th Amendment seizure?

Respondent argued that the issue was not preserved because defense counsel only objected during the hearing on the motion *in limine*, and further that the suppression motion was properly denied. By opinion decided October 19, 2016, the South Carolina Court of Appeals found the issue not preserved, did not comment on the merits, and affirmed Applicant's convictions. State v. Toney, Op. No. 2016-UP-428 (S.C. Ct. App. 2016). The Remittitur was issued on November 4, 2016.

Present Application

The present application for post-conviction relief follows. At the evidentiary hearing, Applicant proceeded only on the following allegation:

1. Ineffective assistance of counsel, in that:

- a. "Counsel was ineffective for failing to preserve for appeal whether trial court erred in finding Applicant lacked standing to challenge search of rental car and length of detention."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is

all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Object to Search of Rental Car

Applicant alleges Counsel was ineffective in failing to object to the search of the rental car he was operating during trial, such that the pre-trial ruling on his standing to challenge the search was not preserved for appeal. The Court finds Applicant cannot show any prejudice from

Counsel's failure to preserve the issue for appeal because he had no expectation of privacy in the rental car (1) categorically under the prevailing law in effect at the time of trial or (2) given the particular facts of this case under the prevailing law at the time of the evidentiary hearing. The Court finds Applicant additionally cannot show deficiency on the part of Counsel because the Court can find no precedential basis to hold defense attorneys to a continuing obligation of clairvoyance where they happen upon arguments later validated by holdings issued after trial and appeal.

The Law at Trial

Before a criminal defendant can challenge the propriety of a search or seizure, the defendant seeking to raise such a challenge must establish that his own personal Fourth Amendment rights were violated by that search or seizure in order to be entitled to the benefits of the exclusionary rule. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); see also Rakas v. Illinois, 439 U.S. 128, 132, n.1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure."). That is true because rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969).

The "capacity 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, 439 U.S. at 143 (citing Katz v. United States, 389 U.S. 347, 353 (1967)). A legitimate expectation of privacy is both subjective and objective in nature. State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004). In order to establish a legitimate expectation of privacy, an individual

must show: (1) the individual had a subjective expectation that the area searched would remain free from intrusion; and (2) the individual's subjective expectation is one that society recognizes as reasonable. Id.; see also Minnesota v. Olsen, 495 U.S. 91, 95-96 (1990) (instructing a subjective expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable).

Leading into the November 18, 2013, trial, the prevailing law in South Carolina, as well as other jurisdictions, was that the unauthorized driver of a rental vehicle had no reasonable expectation of privacy because he had no legitimate claim to the vehicle itself, no lawful right to control the vehicle, and no right whatsoever to possess the vehicle. See United States v. Hargrove, 647 F.2d 411, 412 (4th Cir. 1981) ("[O]ne who can assert no legitimate claim to the car he was driving cannot reasonably assert an expectation of privacy in a bag found in that automobile. . . . A person who cannot assert a legitimate claim to a vehicle cannot reasonably expect that the vehicle is a private repository for his personal effects, whether or not they are enclosed in some sort of a container[.]"); see also United States v. Kennedy, 638 F.3d 159, 165 (3rd Cir. 2011) ("An authorized driver on the rental agreement has lawful possession of the vehicle and, within the scope of the rental agreement, may legitimately exclude others from using it. In contrast, an authorized driver has no cognizable property interest in the rental vehicle and therefore no accompanying right to exclude. The lack of such an interest supports the position that it is objectively unreasonable for an unauthorized driver to expect privacy in the vehicle."); United States v. Luster, 324 F.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.” Luster, 324 F.App’x at 225; see also 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.”).

The undisputed facts provide that Applicant was not listed as an authorized driver on the rental agreement, but rather Applicant claimed that he obtained the rental car from one Timothy Sanders, who was the authorized renter of the vehicle. (Tr. 28-29; Tr. 32-33; Tr. 41-46; Tr. 60-61). Under Wellons, good law at the time of trial, the time of appeal, and until May 14, 2018, those facts are dispositive—Applicant had no standing to assert an expectation of privacy as the unauthorized driver of a rental car. As such, Counsel’s failure to renew the objection at trial is of no consequence because it was meritless under long-standing and broadly accepted precedent.

The Law Today

Given the particular facts of this case, Applicant still could not assert a reasonable expectation of privacy in the rental car if trial were held today. On May 14, 2018, the Supreme Court of the United States abrogated the long-standing and broadly accepted precedent articulated in Wellons, and held “that the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy.” Byrd v. United States, 138 S.Ct. 1518, 1531 (2018). The Supreme Court distinguished an unauthorized driver of a rental car from a mere passenger, who would have little expectation of privacy, by observing an unauthorized driver would have complete dominion and control over the vehicle and could exclude others from it. Id. at 1528 (citing Rakas, 439 U.S. at 149). The Supreme Court acknowledged that the inquiry turned on lawful

possession, and noted “a person present in a stolen automobile at the time of the search may not object to the lawfulness of the search of the automobile. No matter the degree of possession and control, the car thief would not have a reasonable expectation of privacy in a stolen car.” Id. at 1529 (quoting Rakas, 439 U.S. at 141, n.9). The Supreme Court left for remand the question of whether Byrd was “no better situated than a car thief” and whether “probable cause justified the search in any event.” Id. at 1531.

Given the facts of the present case, even post-Byrd, Applicant was no better situated than a car thief and had no lawful right to exclude others from the rental car. During the traffic stop, law enforcement contacted the rental car company, confirmed Applicant was an unauthorized driver, confirmed that the rental contract was expired, and confirmed the return of the car was two days overdue. The rental company representative directed law enforcement to reclaim their vehicle, tow it, and authorized law enforcement’s search. (Tr. 69, ll. 8-20; Tr. 80-82; Tr. 133-37, 168-69). In light of these facts, law enforcement had every right to take possession of the overdue rental car, arrange for its towing, and conduct an inventory search, and Applicant had no standing to contest the rental company’s consent thereto. See, e.g. State v. Miller, 423 S.C. 95, 814 S.E.2d 166 (2018) (affirming tow and inventory search of vehicle where defendant was arrested for driving with a suspended license, and the car was neither his nor that of anybody present at the apartment complex at which it was parked); see also United States v. Bullette, 854 F.3d 261, 265 (4th Cir. 2017) (“An inventory search of an automobile is lawful (1) where the circumstances reasonably justified seizure or impoundment, and (2) law enforcement conducts the inventory search according to routine and standard procedures designed to secure the vehicle or its contents.”); United States v. Brown, 787 F.2d 929, 932 (4th Cir. 1986) (“The question . . . is . . . whether the police officer’s decision to impound was reasonable under the

circumstances.”). The alternative position offered by Applicant—that the unauthorized driver of an overdue rental car has standing to object to a search over the consent of the rental company which rightfully owns the car—is facially absurd.¹

Applicant’s Stop and Detention was Reasonable Irrespective of Standing

Applicant also cannot show prejudice from Counsel’s failure to preserve the issue of the validity of the stop and search because it was entirely reasonable and appropriate under the law. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991). Consequently, only unreasonable searches and seizures are constitutionally prohibited, and law enforcement officers are not required to be perfect or mistake-free in order to be in compliance with the requirements of the Fourth Amendment. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977).

Pursuant to the Fourth Amendment, “[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999). For Fourth Amendment purposes, an automobile stop, 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). However, the initiation of an automobile stop is *per se* reasonable when either probable cause exists to believe a traffic violation has occurred or reasonable suspicion exists to believe the occupants of the

¹ If absurdity did prevail, law enforcement couldn’t have known that it needed a warrant to search the overdue rental car driven by a thief. Excluding the evidence would not have deterred any conduct, but would have served no purpose but to frustrate and confuse law enforcement which must already operate an infinite tangle of conditions precedent to any search—as such, application of the exclusionary rule would have been inappropriate, and the lower court’s ruling would have been affirmed on the merits. See, e.g., State v. Brown, 401 S.C. 82, 92, 736 S.E.2d 263, 268 (2012) (discussing Davis v. United States 564 U.S. 229 (2011)) (“[T]he exclusionary rule does not apply when the police conduct a search in accordance with existing appellate precedent.”).

vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (“Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.”); Whren v. United States, 517 U.S. 806, 810 (1996) (“An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”).

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.” State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)). “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.”). Continued questioning beyond the time reasonably necessary required to complete a 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., 367 S.C. at 99, 623 S.E.2d at 848.

Reasonable suspicion consists of “‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). “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).

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. All of the circumstances of the stop, including the officer's own experience and specialized training, must be considered as a whole to determine whether the officer's actions were reasonable in light of all 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."); see also 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)). Thus, the presence of several factors individually consistent with innocent travel can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989).

In the present matter, law enforcement pulled Applicant over after observing Applicant make an unsafe lane change—a traffic violation. See S.C. Code Ann. § 56-5-1900. Therefore, the traffic stop of the rental vehicle was reasonable and proper. Law enforcement promptly discovered Applicant was not authorized to possess or drive the vehicle after reviewing the rental contract provided by Applicant, and further discovered the vehicle was two days overdue. Those two facts immediately constituted reasonable suspicion of criminal activity and necessitated an extension of the traffic stop. Law enforcement also detected numerous other indicators which, taken together, provided for reasonable suspicion of criminal activity:

- (1) The rental vehicle's windows were partially rolled down while it was travelling along the interstate, which the officer knew was commonly used to mask the odor of illegal drugs;
- (2) Applicant exhibited signs of excessive nervousness above and beyond those exhibited by drivers during routine traffic stops conducted by the officer;
- (3) Applicant's nervousness increased over time, which law enforcement identified as unusual;
- (4) Applicant provided inconsistent information about where he had been and did not know where the place he claimed to have been coming from in Columbia was located;
- (5) The responses Applicant provided did not make sense based on the fact he lived in close proximity to an unemployment office and rental agency he bypassed for ones much farther away; and
- (6) Applicant reacted differently and suspiciously looked back at the rental vehicle when asked if there was any marijuana hidden in it.

Given these factors and the considerable experience of the investigating officer, law enforcement had reasonable suspicion to believe Applicant was involved in criminal activity independent of the traffic violation he committed and, as a result, was fully justified in expanding the scope of the investigation and the length of the traffic stop. Accordingly, because law enforcement had probable cause to initiate the traffic stop and detected numerous factors providing for reasonable suspicion that Applicant was involved in criminal activity during the course of the stop, law enforcement's seizure of Applicant during the stop was entirely reasonable and did not violate any of his constitutional rights.

Finally, Applicant abandoned the property. "Abandoned property has no protection from either the search or seizure provisions of the Fourth Amendment." State v. Dupree, 319 S.C.

454, 457, 462 S.E.2d 279, 281 (1995) (citing California v. Greenwood, 486 U.S. 35 (1988)). The same applies when the abandonment is in response to lawful police action. Id., 319 S.C. at 460, 462 S.E.2d at 283 (citing Greenwood). After law enforcement popped the trunk of the rental car and touched a bag contained therein, Applicant fled and abandoned the rental car and its contents, and upon his immediate capture volunteered that there was fifteen pounds of marijuana in the package in the trunk. (Tr. 52-54). Therefore, Applicant can show no prejudice from Counsel's failure to preserve the matter for appeal because even if Applicant had standing to challenge the search, he had *no chance* of invalidating the search and excluding the evidence at trial or otherwise prevailing on appeal.

Counsel's Fleeting Clairvoyance Does Not Obligate Continuing Clairvoyance

Applicant also cannot prevail because Counsel was not deficient in her failure to preserve for appeal the issue of Applicant's standing to challenge the search because defense attorneys are not required to be clairvoyant. It is a long-standing rule that an attorney is not required to be clairvoyant and anticipate or discover changes in the law which were not in existence at the time of trial. Harden v. State, 360 S.C. 405, 409, 602 S.E.2d 48, 50 (2004) (citing Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994)). Typically the rule arises in PCR matters where an applicant alleges defense counsel was ineffective for failing to present *at all* an argument or law not recognized or in effect until after trial. See, e.g. Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992) (counsel not deficient in failing to argue battered spouse syndrome six years before its recognition in State v. Hill²); Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (counsel not deficient in failing to object to "reach the truth" jury instruction five years before its prohibition in State v. Daniels³); Winkler v. State, 418 S.C. 643, 653-54, 795 S.E.2d

² 387 S.C. 398, 339 S.E.2d 121 (1986)

³ 401 S.C. 251, 737 S.E.2d 473 (2012)

686, 692 (2016) (counsel not deficient in failing to object to trial court's refusal to answer jury question about what would happen if they failed to reach a unanimous sentencing verdict, where no precedent existed at the time of trial to support such an objection).

The present facts are somewhat unique, insofar as Counsel briefly "held the crystal ball" and offered an argument for Applicant's Fourth Amendment standing in the pre-trial hearing that channeled elements of the holding in Byrd years later. However, there is no precedent in our law of which this Court is aware to provide that a defense attorney who is temporarily prescient must at all points thereafter be held to the continued maintenance of his or her foresight. Counsel cannot not be held to the standard of an oracle after evidently and unknowingly divining the legal future. Had Counsel not made the prophetic argument at all, there would certainly be no deficiency, so it would be nonsensical to provide greater relief to Applicant by virtue of the fact that Counsel went above and beyond the level of competence expected of attorneys in this state and made an extraordinary, if imperfectly preserved, argument against the tide of precedent.⁴

For all of these reasons, the Court finds Applicant cannot show prejudice or deficiency as required under Strickland, and his request for relief is **DENIED**.

⁴ It is tangential to the rights of the Applicant at issue in a PCR action, but given the concurrent exposure of Counsel to liability that may come with any finding of ineffectiveness, it is reasonable to expect that such a finding could have a chilling effect on the sort of long-shot arguments of defense counsels in the future, to the detriment of defendants and the development of the law generally.

III. CONCLUSION

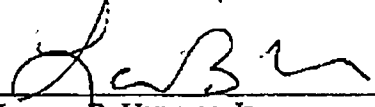
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (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 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of Oct, 2018.


LARRY B. HYMAN, JR.
Presiding Judge
Fourth Judicial Circuit

10-1-18, South Carolina
Cowley

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

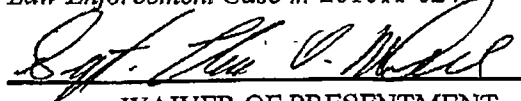
FILED

WITNESSES

Brad Lawson

Darlington County Sheriff

Law Enforcement Case #: 201011-0249



495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J670368

ARRESTED ON: 2010-11-11

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-0811

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
July 2011

THE STATE

vs.

Jameco Abdul Toney

INDICTMENT FOR

Drugs / Trafficking in marijuana, 10 lbs or
more, but less than 100 lbs

§44-53-0370(e)(1)(a)2

CDR Code: 0402

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF DARLINGTON	)	Drugs / Trafficking in marijuana, 10 lbs or more, but less than 100 lbs

§44-53-0370(e)(1)(a)2

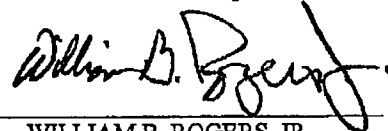
At a Court of General Sessions, convened on July 14, 2011, the Grand Jurors of Darlington County present upon their oath:

TRAFFICKING IN MARIJUANA

CDR: 0402 44-53-0370(e)(1)(a)2

That Jameco Abdul Toney did in Darlington County on or about November 10, 2010, knowingly, sell, manufacture, cultivate, deliver, purchase or bring into this state, or aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession, or knowingly attempted to become in actual and/or constructive possession of a quantity of Marijuana in the amount of ten pounds or more but less than one hundred pounds, Marijuana being a controlled substance under 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, and in violation of Section 44-53-0370(e)(1)(a), S. C. 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.



WILLIAM B. ROGERS, JR.
SOLICITOR