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JUN 10 2019

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SC Court of Appeals

S.C. SUPREME COURT

Mr. David Phearouse

5/21/2019

The reason I'm writing you this letter is to show that this are all the issues I have been bringing up since my appeal and my PCR and now on writ. I've been telling my PCR lawyer about the drug dog expert but she made me ~~to~~ abandon this very important issues even though it contradicts every thing the officer said on his report and testimony at the motion to ~~supp~~ suppress and at trial about the drug dog did an aggressive alert and scratched and where he started the dog around calling for back up and there being a McDonalds on the exit I was on before he poked me over. So this is an issue my PCR lawyer made me abandon by telling me at the last minute at my PCR ~~to~~ by telling me ~~to~~ before we went into court sayin that the drug dog expert Jody black

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told her it was a good search and the dog had did a passive alert, witch is a contradiction of what the officer said his dog is trained to do, and his dog is trained to scratch wich that's consider an aggressive alert, and he testified to this on his report and the motion to suppress and at trail.

Also officer Hines testified at the motion to suppress that he had the video, he never said it was missing or nothing he said yes he had a video of the stop. But an hour later at trail on cross examination by Ms Mout's he said he lost it, and at trail My trail lawyer never question him about the video he never asked about it, thats why he was ineffective. Also the officer committed Forgery or an fraud upon the court. Also the officer been found guilty of not turning in evidence before an not just any evidence but drugs. So if his capable of not turning

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in drugs, why would he turn in a video that contradicts his whole ~~whole~~ story, for example the video shows the dog never alerted, it also contradicts his story of where he ~~was~~ started, he started on the front driver side and made his way around the car, that's not true if they see the video. He said I was nervous and not making eye contact, that's a lie if they see the video. He also said I had a son the video shows what I meant when I said my boy that was meaning my male friend. Also the time from Hines video don't coincide with the back up officer video and last but not least he turns off his camera and mic during the search, and according to policy and procedure of the Greenville Sheriff Department he never suppose to turn the camera off or mic ~~during~~ the search, and according to policy and procedure of the Greenville Sheriff Department he suppose to turn the video over to P&E for proper storage. Also he never called for back up according to a detail report of the traffic stop.

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and all this was brought up ~~to~~ or I had made my PCR lawyer aware of it but she failed to bring it up, and I also made my lawyer Mr Garborough aware of all these facts.

Also as you can see by the pictures of the traffick stop there seems to be a 12 min time difference on the videos also I remember a lot more happening with me a officer Hines. That's not on the video so the video has been redacted and because of that I would like to get the video authenticated to see if it has been redacted. and not only that but officer Hines turns the video off during the search. and he was also found guilty of not turning in evidence before and got found guilty and suspended for 2 days. This is stuff my PCR lawyer knew and didn't say nothing about it and as you can see on the Incident detail report it says he pulled me over at 2:39 pm on Jan 21 2005 and his police report says 2:22 pm and 2:29 am

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all this was brought up to my
~~the~~ PCK lawyer and she only brought
up some of this at PCK and all
this has been brought up to my
lawyer Mr Yarborough and I
would like to make^{all} this part of
the record to my writ case so or
to ~~to~~ see or hope the Judges look
at it. PCK lawyer also made me abandon
~~of~~ a very important issue of the drug
dog expert by telling me it was a good
search.

So thank you for your time and
help. God Bless you.

Daniel Lopez

cc/personal files.

Summary

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- 17) Chris Hines - Incident Report, time 14:29 pm
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- 19) Incident Detail Report - shows different ~~time~~
time Jan 21, 2005 2:39 pm. Page 1-2
- 20) Deputy Chris Hines Dicipinary action
~~of~~ ~~of~~ suspension from not turning in Drugs
not following policer and procedure.

DANIEL LOPEZ #

11 MARCH 2019

MECT F-1-200-A

386 REDEMPTION WAY

MCCORMICK, S.C. 29899

RE:

DEAR SIR

I hope you are doing well. I am writing to ASK there is an option to file ineffective Assistance of Counsel (PCR Counsel) on Ms. Susannah Ross? or is there an option to STAY my Petition for Writ to stay and have an issue heard that Ms. Ross dropped because she stated the issue would not help me. I received a letter from Ms. Ross that contradicts what she told me before my PCR hearing. Let me explain:

PCR Counsel Requested And was granted.

1.

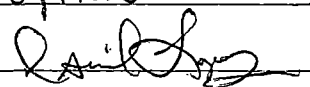
An ORDER FOR Funds TO hire an expert in DOG TRAINING. TO Address the alert of the K9. MS. Ross received the funds and hired Jody BLACK to view the video (police cam from car).

On the Day of the Hearing ms. Ross met with me and STATED Mr. Black was there at the hearing but Ms. Ross decided that he could not help us because in Mr. Black's ASSESSMENT of the video, the K9 did a good search. That was it, and no other details were said. I did not see Mr. Black at the Courthouse either, I assumed Ms. Ross was being truthful in her strategy.

However, The PCR hearing STARTS the Canine officer STATES in testimony that his K9 (Angie) gave an "Aggressive Alert" to identify drugs are present. The Officer testified that the K9 will Scratch when giving an "aggressive Alert". The video cam shows no scratch at all. In closing arguments MS. Ross STATES there was "no Alert" giving at all which was confusing based on what MS. Ross told me earlier that Mr. Black STATED the K9 gave a good search, and his testimony would not help us at all. I started questioning

the validity of Mr. BLACK even existing and was curious to where the funds from the Court order for an Expert actually went. I asked for a receipt from Ms. Ross and I wrote Mr. BLACK and requested the same. I received a letter dated December 5, 2017 from Ms. Ross stating "Again" that Mr. BLACK said the search was good and the Dog gave a "Passive Alert". A Passive Alert is the opposite of an Aggressive Alert (Officer testified K9 gave an Aggressive Alert) That statement further piqued my curiosity as to where the funds actually went and why a passive alert is considered a good search when the officer stated the Dog scratched with an Aggressive Alert.

These lies are crucial because the illegal search conducted by the officer violated my 4th Amendment Constitutional Rights and Ms. Ross has basically caused me to abandon this issue when contradictory STATEMENTS are being made. Do I have options to amend this or ask for leave for the Petition for Writ to file ineffective Counsel or PCR Counsel to have this major issue put on the record. Let me know my options.

Thank you, 

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

December 5, 2017

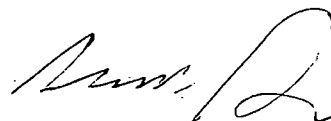
Mr. Daniel Lopez # 355282
McCormick C. I. F3-0236-A
386 Redemption Way
McCormick, SC 29899

Dear Mr. Lopez:

I believe I enclosed a copy of the Notice of Appeal in your case showing your case was appealed. The issue of failing to preserve the record lacked merit. My hearing notes showed a note regarding ineffective assistance of appellate counsel for failing to brief counsel's objection to the State's argument that anyone in chain could be guilty of trafficking. This argument probably lack merit and is was not a winning one because of the difficulty of showing prejudice. Because I did not get the Order of Dismissal until six months after the hearing and I do not get a copy of the hearing transcript, I'm not sure whether I argued it at the hearing. I mentioned it in the Motion to Alter or Amend so if the transcript shows I made the argument, the issue is preserved.

I do not have copies of the PCR transcript or the funding order. You can request them from the clerk. I did not have the expert testify because after he reviewed the tape and we then looked at it together. His opinion was that the search was good and the dog did a passive alert. This would not have helped your case.

Sincerely,



Susannah Ross
Attorney at Law

330 E. COFFEE ST. • GREENVILLE/SC • 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

January 3, 2018

Mr. Daniel Lopez # 355282
McCormick C. I. F3-0236-A
386 Redemption Way
McCormick, SC 29899

Dear Mr. Lopez:

Please find enclosed a copy of the Order for Expenses that was filed in your case. The expert I retained was Jody Black. His bill for \$900 was paid by me with \$900 in funds provided by the indigent defense. His number is (864) 312-4444 and address 910 E. Washington St., Greenville, SC 29601.

Sincerely,



Susannah Ross
Attorney at Law

enclosure

330 E. COFFEE ST. • GREENVILLE/SC • 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

DANIEL JESUS LOPEZ,
APPLICANT.

EX PARTE
ORDER FOR EXPENSES

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2016-CP-23-1299

ENTERED COMPUTER

2017 APR 12 AM 9 10

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENSIMMER

Jr

THIS MATTER CAME BEFORE me, *ex parte*, pursuant to 17-3-50 (B) and (C) of the 1976 S.C. Code of Laws, as amended, and based upon a request by Applicant's appointed counsel for fees for the services of a investigator with expertise in the area of vehicle pulls by police and and search and seizure. This Motion was based upon the following facts:

1. Applicant has a PCR hearing scheduled for April 18, 2017, for his October 13, 2009, conviction for trafficking. He was tried in his absence and sentenced to a mandatory minimum of twenty-five years.
2. The in-car video of the vehicle stop and drug dog search was misplaced and not produced at the 2009 trial but has been recovered for the PCR hearing.
3. An expert review of the video would assist appointed counsel and the hearing judge in assessing Applicant's case.

Upon hearing the arguments of Counsel for the Applicant, it appears and I so find that the services of a qualified professional are reasonable and necessary for the representation of the Applicant. I further find that, because of the seriousness of the charges for which Applicant was convicted and in light of the circumstances surrounding this case, payment of these services is necessary to ensure effective assistance of counsel and that such payment is appropriate. Finally, even though the total amount of these services exceeds the limit specified in S.C. Code § 17-3-50 (B), I find the excess amount of these services appropriate, pursuant to S.C. Code § 17-3-50(C), based upon the above listed facts upon which this motion was based. Therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Counsel is authorized to expend a reasonable sum in an amount up to \$1000.00 (one thousand) pursuant to the billing statement of the retained expert for the expenses of an evaluation and court appearances necessary for the defense without further Order of this Court.

AND IT IS SO ORDERED.

Perry H. Gravely
Perry H. Gravely
Circuit Court Judge

Dated: 4/6/17
Greenville, South Carolina

SCANNED



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

1330 Lady Street, Suite 401

Post Office Box 11433

Columbia, South Carolina 29211-1433

Telephone: (803) 734-1343

Facsimile: (803) 734-1345

E-Mail: executive@sccid.sc.gov

Hugh Ryan, Esq., Executive Director
Hervey Young, Deputy Director and General Counsel
Lori Frost, Assistant Director

March 18, 2019

Daniel Lopez 355282

FIA260

McCormick Correctional Institution

386 Redemption Way

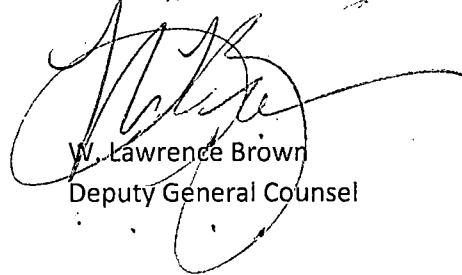
McCormick, SC 29899

RE: Case # 2016-CP-23-1299 (PCR) Expert Witness Funding

Dear Mr. Lopez:

We received your letter dated March 11, 2019 inquiring as to whether funding for an expert witness in your Post-Conviction Relief action has already been paid out and, if so, to whom. Our records indicate that payment was made on May 25, 2017 to Johnny Black, 5163 Jug Factory Road, Campobello, SC 29322, in the amount of \$900 for "Case Review, Video Examination and research regarding expert opinion." That matter was handled through your attorney in the PCR action Susannah Ross.

Sincerely,



W. Lawrence Brown
Deputy General Counsel

Cc: Susannah Ross, Esq.

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what -- at this point, I was still on the roadside and didn't have a backup officer there at that point. So I was trying to do the least intrusive method with him, and kind of keep him at ease a little bit. He wouldn't -- when I first asked him, he didn't give me a -- he just kind of shrugged his shoulders and didn't say yes, didn't say no. I had Deputy McBee on the way as a backup officer.

Then he told me he just wanted -- he needed -- he was ready to go. When I tried to ask him, you know, give me a -- you know, ask for a yes or no answer, he really wouldn't answer. Finally, he just asked if he could go.

At that point, you know, trying to make -- waiting on Deputy McBee to arrive, I told him, I said, well, I was going to detain his car. I was going to run my K9 around the vehicle. If the K9 alerted, then we would, obviously, search the vehicle. That would give us the probable cause we needed to search the vehicle.

At that point, I told him that he was free to leave, trying to keep him at ease. Because, at this point, like I said, I don't know what he's up to. Obviously, there's something going on.

Shortly thereafter, Deputy McBee pulls up. And I begin to get K9 -- Angie, who's my K9, out of the vehicle and run her around the vehicle. As I stated earlier,

wanted to leave

by the way, I was trying to keep him at ease -- I was keeping my car in front of a detention

gain resaid McBee pulls and he started to get his K9 out to run her around with if clearly shows on McBee's video

in his police report he said I gave him consent to finish the K9 around when McBee got there

if he felt something was going on why did he search me?

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Angie was certified through the national -- North American Police Work Dog Association weekly training. She was certified in the odors of marijuana, cocaine, crack cocaine, methamphetamine, heroin, and Ecstasy.

Q Where did Mr. Lopez go while you --

A At this point, he's standing on the side of the road. He, actually, told us told me I could run the dog on

the car. He's, actually, standing probably about 30 feet away from the car on the side of the road, away from the roadway, away from the flow of traffic. Deputy McBee goes and stands with him as I run Angie down the car.

~~As a standard practice, I run -- I always start on the driver's side front of the vehicle and work down the driver's side to the rear, around the back, and then back around the front of the vehicle. As we came down the driver's side, she was doing her free air sniff. We got to the left rear door seam area of the vehicle, a four-door -- a Dodge Intrepid, a four-door vehicle.~~

~~At that point, she stopped and went back, started breathing heavily and started scratching. Based on our training, I -- that was a -- my -- she was telling me that she's smelling one of the odors that she's trained in.~~

Q ~~Do all drug dogs scratch when they alert?~~

A ~~It's different. It's usually -- that's called an aggressive alert. There's usually an aggressive alert,~~

first he stated in the previous page he got the dog and started walking her around the car's so his story keeps changing to?

~~Handwritten scribble~~

He keeps admitting that the dog scratch

so because his story keeps changing is he lying or something?

1 which is a scratch. Some of them, actually, sit down. It
 2 really depends on the way they were trained. She was
 3 trained to scratch. But some of them will, actually, sit
 4 down at the -- where they smell the odor that they're
 5 trained in.

6 I continued to work her around the backside of the
 7 vehicle. When we got around to the back to the rear tire
 8 well -- the right rear tire well, the breathing changed.
 9 She began sniffing intently, and then started scratching,
 10 kind of up in the tire well. So, at that point, she's
 11 indicating to me, once again, that she was smelling the --
 12 one of the trained odors that she was trained in.

13 Q Does her action of scratching tell you where she is
 14 smelling this item?

15 A Based on the wind patterns of the car -- I mean,
 16 you've got car -- you've got -- the car is on the side of
 17 the road. Normally, it will give you a general area. You
 18 know, in a sterile environment, the dogs can pretty
 19 much -- can pinpoint a lot of times the odor -- the actual
 20 source of where the odor is coming from.

21 In this type of environment, you've got cars going
 22 by. You're out there, actually, kind of on a -- right off
 23 an overpass. The wind is blowing. So you can, actually,
 24 take the odor and swirl it around, or push it from one
 25 direction of the car to the other.

She was trained to scratch
again he says the dog scratched

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

2 Is that -- did that happen?

3 A. Yes.

4 Q. Okay.

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

6 MR. NEELY: No redirect from the State.

7 THE COURT: All right. You can step down.

8 MR. NEELY: At this time the State would rest.

9 THE COURT: All right. Any reply from the Applicant?

10 MS. ROSS: No -- no, Your Honor.

11 THE COURT: All right. Anything else then from -- I'd
12 be glad to hear brief closing remarks if y'all would like to
13 make them.

14 MS. ROSS: Well, I did a lot going to the ineffective
15 assistance of counsel. I believe Your Honor was taking
16 notes. And that was my allegations there.

17 We also have ineffective assistance of appellate
18 counsel for failing to brief on page 465 or any other
19 arguments that Mr. Scalzo did effectively object to. But
20 our issue was he didn't lay a record strong enough to
21 support the Court of Appeals coming to a fair opinion on the
22 trial in absence or the search and seizure.

23 And a lot of that was not Mr. Scalzo's fault. A lot of
24 it had to do with the non-existence of this tape. I will
25 allow the tape to stand on its own for Your Honor, but I

1 would argue that it did amount to a due process violation.

2 To get to that level there has to be evidence of bad
3 faith by the State. I don't know if it raises to that. I
4 would let Your Honor make that determination, but also that
5 the evidence -- or that the evidence possessed exculpatory
6 value apparent and the defendant had no ability to obtain
7 that by other means. That's what happened here. It was, we
8 would argue, exculpatory.

9 Viewing the tape we would argue goes to much of the
10 case law that Mr. Scalzo argued and has happened since as
11 far as search and seizure is objecting to the very type of
12 search that this was one where a warning is given and then
13 the search is extended beyond that. We have U.S. --
14 *Rodriguez v. United States*, which is 135 S.Ct. 1609, 2015
15 opinion, but it is an opinion that came out the same year as
16 the Court of Appeals opinion.

17 There's also since then *U.S. v. White*, which is a
18 Fourth Circuit opinion saying burnt marijuana doesn't amount
19 to reasonable and articulable suspicion.

20 *U.S. v. Williams*, Fourth Circuit case, reasonable
21 articulable suspicion has to connect to a criminal act.
22 Here, driving on 85, not a criminal act. Going in a
23 different direction from your home, not a criminal act.
24 Again, this is the type of search and seizure, and it's
25 apparent from the video, that the courts are trying to

1 prevent.

2 Also we have U.S. v. Richardson, which is 385 F.3d 625,
3 which is saying that nervousness is not enough. And we
4 would argue that the video shows that the subjective
5 opinions given by the officer as to his basis for a
6 reasonable articulable suspicion did not amount to that.

7 Also shows that the dog did not alert.

8 There's certainly -- in federal cases judges are
9 beginning to regard the video and look for whether there is
10 an alert and find that there must be some indication of the
11 dog alerting in order to justify a search. That didn't
12 exist here.

13 And the drugs that were found were in the trunk. And
14 you can see there is no alert whatsoever to the trunk. And
15 the packaging of the drugs indicate that there'd be
16 difficulty to smell.

17 So for those reasons we'd argue that this amounts to a
18 due process violation and ask that Mr. Lopez be granted Post
19 Conviction Relief.

20 **THE COURT:** All right.

21 **MR. NEELY:** Thank you, Your Honor. I think that the
22 most important factor here is the Court of Appeals opinion.
23 The only -- the only two things that the Court of Appeals
24 opinion cites that are challengeable as subjective are
25 Lopez's nervousness and his nervous chatter.

where she
admits the
dog did not
alert. →

5/9/2019

Mr Harborough

I'm sorry to bother you one more time sir. but I wanted to make sure to let you know that I don't want no more ~~no~~ extensions or for you to agree for no more extensions from the state of please sir.

Also I told my PCR lawyer ~~and~~ to bring up the Chain of custody of the video but she never did and I also asked you about the chain of custody of the video at the writ of Etivari but you said it didn't matter because the video is his own authenticity, but as you can see the primary officer video and the back up officer video have two different times so that's why I'm questioning the authenticity of the video, and I also ^{told} my PCR lawyer to bring up the fact that ~~the~~ officer Hines admitted to having the video at the motion to suppress

bringing up

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but an hour later at trial he said he didn't have it so that sounds to me like he was lying to the court so he was committing perjury or fraud upon the court. I also made my writ of certari lawyer aware of this facts.

Also my PCR lawyer made me abandon a very important issue, the issue of an expert witness that the court had given us money for an expert witness, on the or what the drug dog did and if he had alerted, 5 minutes before we were suppose to be in court my PCR lawyer came to me and said that the expert was in court but she want goin to use him because she said he told her it was a good alert but he said the dog did a passive alert, but that still contradicted what the officer testified to saying his dog is trained to do an aggressive alert and that's what the officer said the dog did. But later during the PCR the PCR lawyer said the dog didn't alert.

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So the drug dog expert contradicted what the officer said and then PCR lawyer contradicted what the drug dog expert said and what the cop said, so I think my PCR lawyer miss represented me at my PCR and made me abandon a very important issue.

So Mr. Garbborough I am writing you this letter to make you aware of this facts and that I will be sending a copy of this to the supreme court so ~~that~~ they can have ~~clear~~ record of this matter and also because you told me that if we don't get relief here in this court we will be able to bring this up on the Federal habeas level. So I would like this to be on record.

Back
side



Thank You for your time and help.

God Bless You

(c) personal files.

4

Sorry I had also made Mr
Garborough aware of the fact
that my sentence is illegal
because the drug trafficking law
and the mandatory minimum law
and the 85% law never had
the great seal a fixed to it
so the law that I am sentenced
under is not consider law according
to the South Carolina Constitution.
So he said that this wasn't
an issue.

I also told him to have the
Supreme Court judges look at
both of the videos and the VHS tape
to see if there is anything
different from the dvd and the
VHS tape and so they can see
the difference in time from
the back up officer video and
from the primary officer video.

11 March 2019

To whom this may concern

I am writing you to see if you could please help me with this matter.

As you can see the court granted me expense for and expert witness, but I have not yet ~~even~~ spoke to one yet so

I was wondering if the money had been spent and if it was who was it paid at to?

or if you could please send me a copy of the receipt of who it was paid out to please.

Thank you for your time and help.

God Bless You

cc/personal files

Daniel Lopez
Daniel Lopez

(sent copy of expense order)

wrote him 12/20/2018

wrote him again 4/23/2019

MR. BLACK,

I am writing in reference to a matter in which you assisted attorney Susan Ross in ~~the~~ viewing a video from a police officers in car camera where the officer and K9 searched my vehicle.

Ms. Ross states the search was good and a passive alert was given by the K9. However, the officer testified the K9 was trained to give aggressive alert and that is what signal the K9 gave the officer in ~~the~~ the K9's alert. My question is how was it a good search if ~~the~~ your assessment was a passive alert which is opposite of the officer's K9 training that gave an aggressive alert. Can you please produce your notes in your viewing of this video and provide a receipt for your paid service. I thank you for your assistance with this issue. Happy Holidays.

Sincerely

**GREENVILLE COUNTY SHERIFF'S OFFICE
INCIDENT REPORT**

CASE NUMBER

ADULT/
JUVENILE

AGENCY I.D.
SC0230000

OFFENSE
35A

SLED
SUB-CODE
520

UOF

051010014204

EVENT	INCIDENT TYPE		OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM					
	1. Trafficking Cocaine in excess of 400 grams		YES <input checked="" type="checkbox"/> No <input type="checkbox"/>	YES <input type="checkbox"/> No <input checked="" type="checkbox"/>	Highway/Road/Alley		<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> BUSINESS				
	2. Possession of a Pistol with an Altered Serial Number		YES <input checked="" type="checkbox"/> No <input type="checkbox"/>	YES <input type="checkbox"/> No <input checked="" type="checkbox"/>	Highway/Road/Alley		<input type="checkbox"/> FINANCIAL INST.	<input type="checkbox"/> GOVERNMENT				
VICTIM	3. ***USE OF FORCE***		YES <input type="checkbox"/> No <input type="checkbox"/>	YES <input type="checkbox"/> No <input type="checkbox"/>			<input type="checkbox"/> RELIG. ORGN.	<input type="checkbox"/> SOC/PUBLIC				
	INCIDENT LOCATION (SUBDIVISION, MILL VILLAGE, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		CLOSEST INTERSECTION			ZIP CODE						
	White Horse Rd, And I-85		SAME			29605						
	INCIDENT DATE	TIME	TO	DATE	TIME	WEAPON TYPE	TIME ARRIVED	TIME COMPLETED	PATROL DISTRICT			
	012105	1429					1429	2100	SAME			
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RESIDENT	RACE	SEX	AGE	DAYTIME PHONE	EVENING PHONE				
	C. HINES			W	M	29605	271-5210	SAME				
	ADDRESS		CITY		STATE	ZIP CODE		PATROL DISTRICT				
	4 MCGEE ST		GREENVILLE		SC	29601		CJ11				
	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DAYTIME PHONE	EVENING PHONE		
STATE OF SOUTH CAROLINA												
ADDRESS		CITY		STATE	ZIP CODE		PATROL DISTRICT					
VISIBLE INJURY (VICT. 1) <input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:		COMPLAINT OF ANY NON-VISIBLE INJURIES: <input type="checkbox"/> YES <input type="checkbox"/> NO										
VICTIM (NO. 1) USING ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK		DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK		TYPE:								
TWO-MAN VEH. <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> DETECTIVE/PLAGMT. <input type="checkbox"/> OTHER <input type="checkbox"/>		ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>		J. THIS JURISDICTION 5 - STATE 0 - OUT OF STATE U - UNKNOWN								
SUBJECT	<input type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	
	<input type="checkbox"/> RUNAWAY	LOPEZ, DANIEL JESUS		W	M	34	11-12-1970	602	180	BLK	Brown	
	<input type="checkbox"/> WANTED	ADDRESS		SSN:								
	<input type="checkbox"/> WARRANT	1202 SUMMER RIDGE LANE		258-79-2693								
	<input checked="" type="checkbox"/> ARREST	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		CITY	STATE	ZIP CODE	PATROL DISTRICT					
	<input type="checkbox"/> MISSING			LAWRENCEVILLE	GA	30044	OJ20					
	SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK		ARRESTED NEAR OFFENSE SCENE		YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	DATE/TIME OF OFFENSE		DATE OF ARREST				
	DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK TYPE		Total Arrested: 1		012105 1429		SAME					
	ARRESTEE ARMED <input type="checkbox"/> YES <input type="checkbox"/> NO WEAPON TYPE:		ARRESTED ON CURRENT OFFENSE <input type="checkbox"/> CLEARED BY ARREST ON PRIOR OFFENSE									
	JUVENILE DISPOSITION: 1. <input type="checkbox"/> HANDLED, RELEASED <input type="checkbox"/> REFERRED TO OTHER AUTHORITY		ON VIEW ARREST <input type="checkbox"/> SUMMONED <input type="checkbox"/> CUSTODY									
NARRATIVE	CHARGES		WARRANT #		TICKET #							
	1. Trafficking Cocaine in excess of 400 grams		G-803972									
	2. Possession of a Pistol with an Altered Serial Number		G-803973									
	Arrest Location: SAME AS INCIDENT LOCATION											
	in-Car video time of stop: 1422hrs											
On the above date and time, the subj. above was stopped for a traffic violation and was subsequently arrested on above charges.												
VEHICLE	JURISDICTION OF THEFT:		JURISDICTION OF RECOVERY:		V.I.N							
	<input type="checkbox"/> STOLEN	TAG NUMBER	STATE	YEAR	2B3HD46R3XH710313		VALUE					
	<input type="checkbox"/> RECOVERED	AFD 8621	GA	05								
	<input checked="" type="checkbox"/> SUSPECT	YEAR	MAKE	MODEL	STYLE	COLOR						
<input type="checkbox"/> VICTIM	99	Dodge	Intrepid	sedan	White							
PROPERTY	ADDITIONAL VEHICLE DESCRIPTION											
	Status	Property Type	Quantity	Property Make	Color	Description	Serial #	Value				
	SEIZED	010-Drug/Narcotic	518.5g	COCAINE	White	POWDER SUBSTANCE	N/A	\$10500				
	SEIZED	013-Firearms	1	H&k PISTOL	BLACK	USP 9MMX19	NUMBER OBLITERATED	\$400				
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADMIN. CLOSED		<input type="checkbox"/> ARRESTED UNDER 18		<input type="checkbox"/> EX-CLEARED UNDER 18			
	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> UNFOUNDED		<input checked="" type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEARED 18 AND OVER			
	REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> VICTIM DECLINES COOPERATION 4. <input type="checkbox"/> EXTRADITION DENIED 5. <input type="checkbox"/> JUVENILE NO ARREST											
REPORTING OFFICER (S)		DATE	Unit # / Star #	APPROVING OFFICER		DATE	Unit # / Star #					
C. HINES *469		012105	425	[Signature]		1/25/05	407					
FOLLOW UP INVESTIGATION		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		(OFFICER)								

JAN 27 12:07

1-28-05

OF AGENCY I.D.
SC0230000

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

05000014204

ORIGINAL REPORT STATUS CHANGE ADDITIONAL VICTIMS ADDITIONAL STOLEN PROPERTY INCIDENT TYPE Trafficking Cocaine in excess of 400 grams **Use of Force**
 SUPPLEMENTAL REPORT OTHER ADDITIONAL OFFENDERS ADDITIONAL RECOVERED PROPERTY PATROL DISTRICT 06 PAGE 1 OF 1 PAGES.

On 012105, I was working traffic enforcement on I-85. I had exited off onto Exit 40 to turn from the South bound side of I-85 to the North bound side. I turned around in the parking lot of the Breakers Gas station at Exit 40 where I observed a W/M subj (later ID as David Lopex, 112170) talking on the pay phone standing beside a white Dodge Intrepid at the Breakers Gas station. I did not think anything of this at the time. I then pulled on to I-85N and pulled over to the shoulder to briefly look over some paper work in my patrol car. I then observed the same Dodge Intrepid pass by me traveling I-85n at a high rate of speed and the vehicle began to pass the normal flow of interstate traffic. I attempted to catch up to the vehicle so I could measure his exact speed with radar. I kept the vehicle in sight as I overtook the vehicle and finally caught up to it as the vehicle approached White Horse Rd. (Exit 44). The vehicle was traveling in the #3 lane as it approached the exit and then jerked over at the last minute to exit off onto the exit ramp. As the vehicle exited on to the ramp, I finally measured his speed with police radar at 72 mph (Interstate speed limit is 60). The vehicle then jerked over again to make the final exit onto White Horse Rd. I then engaged my blue lights and stopped the vehicle as it was turning northbound onto White Horse Rd. I approached the vehicle on the passenger side and introduced myself and asked why he was in such a hurry. I explained to him that he was running 72mph on the exit ramp. Mr. Lopez apologized for speeding. I asked for his license, and vehicle paperwork. While he retrieved that info. I observed a cell phone sitting on the front seat and it was on. I also observed another cell phone in the back seat of the car. I asked Mr. Lopez where he was going and he stated he was going home to Georgia (however he was traveling north on I-85 away from Georgia). I asked him where he was coming from and he stated from visiting his boy in North Carolina who was in the Army (Mr. Lopez was originally traveling toward NC instead of away from NC as he claimed). I returned to my vehicle to check his license LA DL he had provided and registration. Mr. Lopez car was registered to 1775 Atlanta Hwy, Gainesville GA 30504. The insurance had a Tucker, GA address, and his license had an address of 2317 W. Esplanade Ave. Kenner LA 70065. I then returned to his vehicle and had him exit so I could verify his address. At which point he provided a 4th address of 1202 Summer Ridge Lane, Lawrenceville GA 30044. I explained to him that I was just going to write him a warning for the speeding. The driver asked if we had been busy and then stated that he worked for Gwinnett County. I asked what he did and then he stated he was a bouncer and that he told on people. Mr. Lopez appeared nervous as I began to write the warning ticket, keeping his hands in his pockets and his nervous chatter. I confirmed again that he was going home to Georgia. Mr. Lopez confirmed he was going to Georgia but was stopping to get something to eat. I asked him what part of North Carolina his boy was in and he began to hesitate and then stated "Fort, uh, Fort, uh, he's in the Army." He stated his baby's mother was in North Carolina and that the baby was sick. I asked him how old his son was and he stated it was his friend's son, and then changed and stated his friend had a daughter. I was confused so I asked Mr. Lopez if the daughter was his, and he said that his daughter was six and lived in CA. During this time, he kept looking down avoiding eye contact and then apologized again for the speeding. I then went to check the VIN on the car. I observed a Gwinnett County Police Dept. patch taped to the dash obstructing the VIN. After checking the VIN, I asked Mr. Lopez where he was going to eat and he said McDonald's (There was a McDonald's at Exit 40 where he was earlier using the pay phone). As I was completing the warning ticket, I asked him if there were any guns in the car he looked down and stated "No", I asked about marijuana or cocaine and he got very serious and had a tense look and stated "No", I then asked if there were any bombs and/or terrorist devices in the car. Mr. Lopez then eased up, smiled and laughed "No". I issued him the warning and returned all of his paperwork and asked if he understood the warning and if he had any questions about it. He replied he understood and did not have any questions. I then asked for consent to search the vehicle (based on the numerous indicators observed from the traffic stop). Mr. Lopez began to laugh nervously and shrug his shoulders and would not give a yes or no answer. I asked him again for a yes or no answer and he stated he just wanted to leave. I advised him that he was free to go, but I was going to keep his vehicle briefly while I ran my K-9 around his vehicle. I explained to him that he was free to leave or he could stay it was up to him. Mr. Lopez stated that I could run my K-9 around his car. I explained to him that if the dog alerted that I would search his car. He asked if the dog does not alert if he would be able to take his car and leave and I told him that if the dog did not alert the car would be free as well. Mr. Lopez stood on the median about 30 feet away from the vehicle. Deputy McBee pulled up as I got out K-9 "Angie". K-9 "Angie" is trained and certified through the North American Police Work Dog Assoc., and trains weekly, in the odors of marijuana, cocaine (and crack cocaine), methamphetamine, heroin, and ecstasy. I began "Angie" on the front driver's side of the vehicle, she worked down the driver's side and when she got to the left rear she pulled back to the left rear door seam and I observed a breathing change and she began to scratch on the door indicating she is sniffing the odor of drugs. I continued to work her around the rear of the car, where she sniffed underneath the trunk and then had a breathing change, I worked her around the right side and she alerted again to the right rear tire well by the trunk (Alert meaning she had a breathing change and then began to scratch indicating that she smells the odor of drugs coming from that area.) I put K-9 "Angie" up and advised Mr. Lopez who was still standing about 30 feet from the car that I was going to search the car. Mr. Lopez became very worried looking and nervous. I asked him what he had in the car and he stated he had a gun in the car. I began to search the car and opened the trunk. There were miscellaneous items in the trunk (bags of tools, and old printer, computer parts, a blue grocery bag of clothes and a gold Cognac bottle box. I briefly searched the trunk and then proceeded to search the rest of the car. In the center console, I located a loaded H&K USP 9mmx19 hand gun in which all the serial number had been scratched off. I seized this weapon and secured it in my car. After looking in the vehicle, I paused and then went and did a detailed search of the trunk. I removed the blue bag of clothes with the Cognac box. I observed plastic inside so I opened the box and observed a hard object wrapped in plastic wrapped and covered with what appeared to be dish detergent. I unwrapped the plastic enough to see a plastic bag with white powder substance inside. At which point,

SUBJECT IDENTIFIED		SUBJECT LOCATED		<input type="checkbox"/> ACTIVE	<input type="checkbox"/> ADMIN. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18	<input type="checkbox"/> EX-CLEARED UNDER 18
<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> UNFOUNDED		<input checked="" type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEARED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> VICTIM/DECLINES COOPERATION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> JUVENILE-NO ARREST							
ADMIN	REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER		DATE	UNIT NO. / STAR #
	C. HINES #469	012105	425	<i>[Signature]</i>		1-25-05	407
				FOLLOW-UP			
				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

JAN 27 12:07

OF AGENCY I.D.
SC0230000

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

0 5 0 0 0 0 1 4 2 0 4

ORIGINAL REPORT
 STATUS CHANGE
 ADDITIONAL VICTIMS
 ADDITIONAL STOLEN PROPERTY
 INCIDENT TYPE Trafficking Cocaine in excess of 400 grams **Use of Force**
 SUPPLEMENTAL REPORT
 OTHER
 ADDITIONAL OFFENDERS
 ADDITIONAL RECOVERED PROPERTY
 PATROL DISTRICT 06
 PAGE 2 OF 2 PAGES

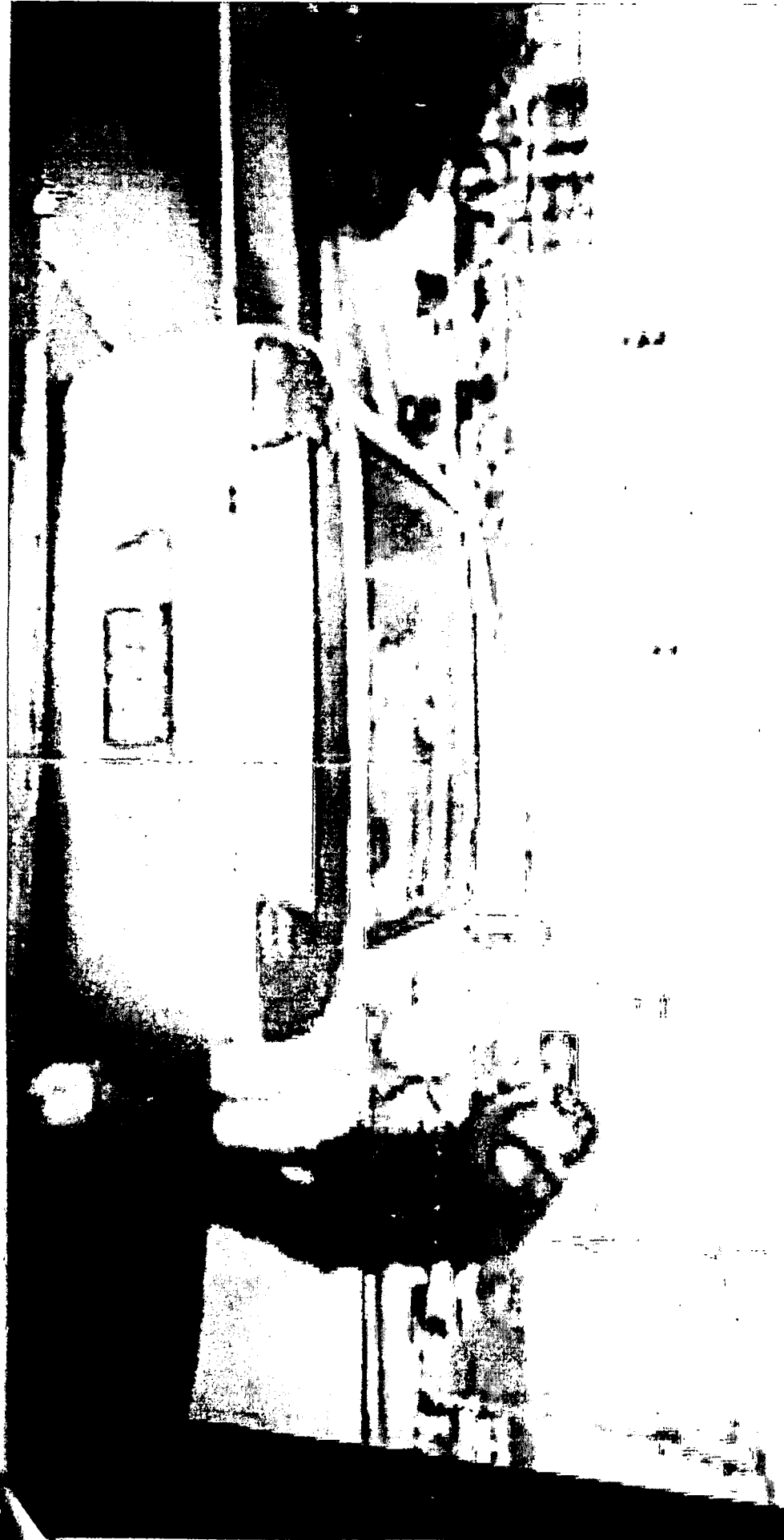
Mr. Lopez was secured in handcuffs and mirnadized. I field tested the powder and it field test positive for cocaine(field weight 518.5 grams) Deputy Rudy arrived to transport Mr. Lopez who was under arrest for the pistol with obliterated serial numbers and Trafficking Cocaine. Sgt. Black was notified and he respond to the scene. Deputy McBee advised that the subj. was delivering the cocaine to Greenville and that he wanted to cooperate with a delivery. Sgt. Black in turn contacted Vice and Narcotics. V&N Deputies (Sgt. Burris and Inv. Perron) arrived and I turned over the investigation concerning the delivery to them. I assisted as they made contact with a the person who was recieving the cocaine. The delivery was supposed to take place at the Waffle House at Augusta Rd. and I-85. V&N made arrangements and planned to meet a guy in a dark colored truck(See V&N Supplementals). When they confirmed the suspect for the take down, I pulled into the Waffle House and blocked the driver's door with my patrol car of a dark colored Ford Ranger Pick Up Tag# 822 RRB. I pointed my sevice pistol at the driver and covered him as Inv. Marchi moved in to secure him in hand cuffs. The suspect(Octavius Nelson) was secured and no further action was taken on my part. I then went and signed the above listed warrants on Mr. Lopez for Trafficking Cocaine in excess of 400 grams and Possession of a Pistol with an Atered Serial Number. I placed all items I seized(Cocaine, pistol, and Cognac box) into Property and evidnece. Mr. Lopez was turned over to V&N who made arrangements to serve the warranta on him and place him into GCDC. Mr. Lopez vehicle was towed by Grady Davis.

SUBJECT IDENTIFIED		SUBJECT LOCATED		<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADMIN. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18	<input type="checkbox"/> EX-CLEARED UNDER 18
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> UNFOUNDED	<input checked="" type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEARED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> VICTIM/DECLINES COOPERATION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> JUVENILE-NO ARREST						
ADMIN	REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER	DATE	UNIT NO. / STAR #
	C. HINES *469	012105	425	<i>[Signature]</i> #33	1/25/05	407
				FOLLOW-UP INVESTIGATION	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (OFFICER)	

JAN 27 12:08 PM '05

478 DRESA HUNNES 425

1940



04631

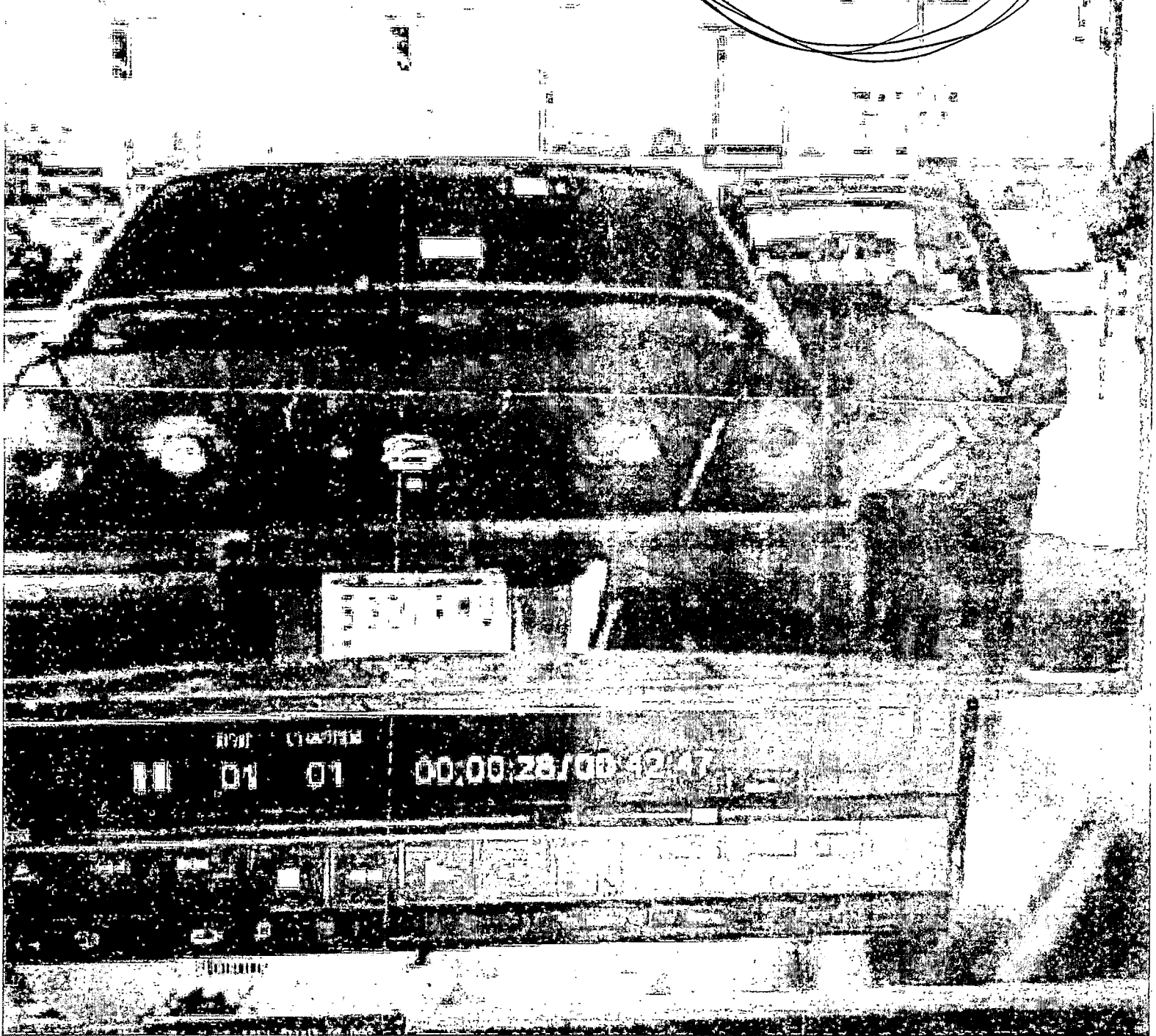
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HIGBEE 428

AT

01/21/2005 L

14 44 31
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RIGHT CHARGED

11

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00:00:28/00:12:17

Incident Detail

Incident Number	Address	Caller Name	Caller Phone
LSO050121014204	185N&WHITE HORSE RD	Not Entered	<null>
Incident Type	Incident Type Description	Location	
56	VEHICLE STOP	Not Entered	

Create Time	Dispatch Time	Arrival Time	Closed Time
Jan 21, 2005 2:39 PM	Jan 21, 2005 2:39 PM	Jan 21, 2005 2:39	Jan 21, 2005 8:19 PM

Dispo Code	Disposition Text
05	INCIDENT REPORT TAKEN

Primary Officer	Star Number	Beat	Agency
HINES, CHRIS	469	S06A	SO

Other Officers Assisting:

Officer	Star Number	Officer	Star Number	Officer	Star Number
None		None		None	

CRIMINAL JUSTICE SUPPORT
RECORDS
4 MCGEE STREET, SUITE 119
GREENVILLE, SC 29601

*need to find out what all
this means - ??*
↓
Comments:

01/21/2005 14:39:32	425 WHITE HORSE I85 GA ASD8621N WHITE DODGE INTREP	<i>he pulled me over or turn lights on</i>
? 01/21/2005 14:39:32	Operator SO396	Created this Event with Single Shot Flag set to Y ?
? 01/21/2005 15:12:05	ON WHITE HORSE ON THE BRIDGE **324	<i>I guess this is the time he actually pulled me over</i>
? 01/21/2005 15:12:14	ON WHITE HORSE NORTH BOUND ON BRIDGE OVER I85	

enroute
wrecker Request

01/21/2005 15:19:39 GRADY DAVIS 10-5 10-55 **324 *what this means?*

01/21/2005 15:21:08 GA AFD8621 ?

01/21/2005 15:22:10 AFD8621 GA/ ?

01/21/2005 15:22:19 SEIZURE → *guess this is when officer*
~~Arrested me~~ *Arrested me*

01/21/2005 15:23:03 GRADY DAVIS WAS 10-3 *cancel*

01/21/2005 15:26:48 CITY WRECKER 10-5 10-55 **324
Stand by
Stay in Vehicle
wrecker Request

01/21/2005 15:35:09 425 ADV 10-11 ON 10-55 **324

01/21/2005 17:33:18 2ND VEH 822RRB BLK FORD RANGER

01/21/2005 17:52:02 425 ADV TO 10-3 REF SEIZURE THEY WILL USE NEXT ON LIST

CRIMINAL JUSTICE SUPPORT
RECORDS
4 MCGEE STREET, SUITE 119
GREENVILLE, SC 29601

1. Ensuring all radar equipment is properly maintained.
2. Maintaining maintenance records.
3. Maintaining calibration records.
4. Ensuring each radar operator is certified.

INDIVIDUALLY OWNED RADAR EQUIPMENT – Field use must be approved by a deputy's supervisor. Equipment is to be calibrated yearly.

ALLOWABLE VEHICLE SPEED TOLERANCE:

In the enforcement of speeding laws, it is the policy of the Sheriff's Office to operate under an **acceptable tolerance level** depending on:

1. Zoning.
2. Traffic conditions.
3. Type of speed detection device used to detect a violation.

Determining an acceptable tolerance level for speeding violations is based on the following:

1. When using stationary radar, hand-held radar, moving radar or other electronic speed detection device, a standard speed tolerance of nine (9) miles per hour above the posted speed limit is permitted.
2. Based on existing traffic conditions, the time of day, weather conditions and related variable factors, a deputy may increase/decrease the allowable tolerance level to facilitate the safe and orderly flow of traffic.

IN-CAR VIDEO CAMERAS:

Vehicles equipped with in-car video cameras are to use the cameras ~~on~~ on all traffic stops. Videotaping aids in prosecution of DUI cases, resolving complaints, and documenting collisions or vehicle pursuits.

COMMUNITY SERVICES TAPE STORAGE - Videotapes used as evidence in traffic related cases are stored in lockers in the Traffic Unit office. Tapes remain in the lockers until 90 days after case disposition. The lockers remain locked at all times. The Traffic Unit Supervisor restricts access to the key to the storage locker.

UNIFORM PATROL TAPE STORAGE – Tapes recording evidence of criminal activity are placed in P&E. Non-evidentiary tapes are stored in Platoon Lieutenants' offices for 90 days.

*Officers
Always
did not follow
this Rules*



Greenville County Sheriff's Office

JOHNNY MACK BROWN, SHERIFF
AN ACCREDITED LAW ENFORCEMENT AGENCY



NOTIFICATION OF FORMAL COMPLAINT

TO: Deputy Chris Hines
FROM: OFFICE OF PROFESSIONAL STANDARDS
SUBJECT: Missing Evidence (Traffic Stop/Drug Case)
DATE: 05-25-00

This is to advise you that a Formal Complaint has been received and recorded by this office. This complaint is regarding an incident which occurred on 10-17-99 at Blue Ridge Drive & Cedar Lane Road
(DATE) (ADDRESS)

in which you were acting as an official/non official representative of the Sheriff's Office.

Please refrain from contacting any individual who may be associated with this investigation. You will be informed of the findings at the conclusion of this investigation. Your cooperation will be greatly appreciated.

I have received a copy of this form and I understand it completely.

JK
OFFICER'S SIGNATURE

5-25-00 1545
DATE/TIME

RECEIVED BY: [Signature]



PERSONNEL ORDER

DATE OF ISSUE

EFFECTIVE DATE

NO.

06-26-00

06-32600

S00-135

SUBJECT

DISTRIBUTION

AMENDS

SUSPENSION/FIELD OPERATIONS/DEPUTY II

B, E, F


N/A

REFERENCE

RESCINDS

N/A

Effective Monday, June 26, 2000, Deputy Christopher Hines is hereby suspended for two (2) days without pay; those days being Friday, June 30th and Saturday, July 1, 2000. This suspension is the result of his violation of Sheriff's Office Rules and Regulations 60.01.



Johnny Mack Brown, Sheriff

ds

cc: Deputy Hines



Sheriff

Johnny Mack Brown
Greenville County Sheriff's Office

November 28, 2018

Mr. Daniel Lopez, 355282
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

Dear Mr. Lopez:

I received your most recent FOIA request, dated November 14, 2018, on November 28, 2018. All of the information and the answers to your most recent questions can be found in the previous responses. The publication and revision dates of General Orders are printed at the bottom each page. General Orders apply to all members of the Sheriff's Office, sworn or non-sworn.

Again, please take note that the South Carolina Legislature amended the Freedom of Information Act in May 2017. The amended statute now reads:

"Section 30-4-30 (A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility..."

As this is now law, I respectfully decline to respond to your request for these records.

As to your request for information regarding information to file a complaint on an officer, you must formally file your complaint with the Office of Professional Standards. Please address any correspondence about such a complaint to that office. Please note that complaints that are not made in a timely manner may result in a determination to not open an investigation.

Sincerely,

Wesley Smith, Legal Investigator



*This is at month days Year
trailer in 10-12-13-2009*

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--A Well, when he -- he goes from having a son to not having a son, to having a daughter. I mean, you know, ages change. I think that speaks for itself.

Q One question would be, did you turn on your recording device in your car?

A Yeah. I do have the -- yeah, I have a videotape of it.

Q Was that recording while you were talking to him?

A I would assume so.

Q All right. And does anything about whether he had a son, or didn't have a son, or whether the son -- whether he was lying about the age of the son, what does that have anything to do with drugs?

A Well, this whole thing is a matter of more or less being deceiving, not forthcoming, trying to distance himself, what he's, actually, doing. Because his whole premise really was he's coming from North Carolina. I was just trying to ask where he was coming from. At that point, he's having to make up another story. It's lie after lie after lie, basically.

Q Well, you say lie after lie after lie. But, in fact, he said fort something, something. He couldn't remember the name of the fort that he had gone to is what you knew. You were assuming that he was lying.

A It -- well, most people, if their son is in the

*I never said I had a son
I said my boy was in the fort*

1 vehicle.

2 I pulled up on the driver's door area of a
3 dark-colored Ford Ranger pickup. I believe it had -- with
4 the tag 822 RRB. I got out of the vehicle, pointed my
5 service weapon at him. I didn't know if he was armed
6 based on what we had just -- gotten a gun off of
7 Mr. Lopez. There was a high probability this gentleman
8 may be armed.

9 One of the vice and narcotics officers and some other
10 deputies went in and, actually, arrested the driver, who
11 was later identified as Octavius Nelson. Once he was
12 secured in a vehicle, that's when I went back and did my
13 paperwork on Mr. Lopez.

14 Q And, at the original scene, was your car equipped
15 with a video recorder?

16 A Originally, it was. That's correct.

17 Q And do you have a video from that scene?

18 A There is -- there was a video. Since this time,
19 our -- I transferred in '06 out of the traffic unit into
20 our aviation unit. Our policy in the traffic division
21 then -- because cameras were just limited pretty much to
22 our traffic division and a few other cars. The
23 supervisors kept a locked video vault in their office,
24 which we kept all of our videos from our traffic stops.
25 Upon me transferring out, my videos remained in that vault

he has
video
*
why
didn't
he have
it in
that
same
day
or a
couple
days
later
like
his was
up at the
did.

under the traffic supervisor's -- he was the one that had access to it.

Approximately a year after being out of the unit, they had a supervisor change down there. And I was directed -- was told to come get -- pick my videos up from southern command out of the vault. When I got down there, there was a box of videos that had my name on them. And I was told that's what -- as I took them -- and I've noticed since this time that that was, actually -- turned out to be about half of the videos I had in there. The other half I don't know as to what happened, if they were disposed of, thrown away, or what. But not all of the videos that I had in that vault were turned back over to me where I keep secure now at my office.

Q And who was your backup officer on that day?

A Deputy McBee was my first backup officer.

MS. MONTS: Your Honor, I'd move State's Exhibit No. 4 into evidence at this time.

THE COURT: Any objection, Mr. Mackenzie, or, Mr. Scalzo?

MR. MACKENZIE: No, sir, Your Honor.

MR. SCALZO: My objection is based on my prior pre-trial motion.

THE COURT: All right. Subject to your former motion, put it in.

1 (WHEREUPON, State's Exhibit No. 4 was admitted into
2 evidence.)

3 MS. MONTS: Thank you.

4 I have no further questions.

5 THE COURT: All right. Mr. Scalzo.

6 Mr. Mackenzie, are you going first?

7 MR. MACKENZIE: I'll go first.

8 CROSS-EXAMINATION

9 BY MR. MACKENZIE:

10 Q Deputy Hines, were you tipped off in any way to be on
11 the lookout for this particular car?

12 A No, sir.

13 Q And, now, all this that took place on the highway, of
14 course, Mr. Nelson wasn't present for any of that; is that
15 correct?

16 A That's correct.

17 ~~Q And Mr. Lopez had a loaded gun in his glove~~
18 ~~compartment?~~

19 ~~A In the center console, yes, sir.~~

20 ~~Q Center console?~~

21 ~~A Yes, sir.~~

22 Q And, in your experience as a police officer, is that
23 unusual in this type of case?

24 A To find guns and drugs, no. That's a -- a lot of
25 times that's a common element.

1 A Yes.

2 Q What did it look like?

3 A It's a whitish powder. Some of it was still part
4 packed, not like crack cocaine, but as if something had
5 caused the cocaine to be under pressure. But most of it
6 was in a packed form.

7 Q And was Mr. Lopez handcuffed?

8 A He was.

9 Q Was he placed under arrest?

10 A He was.

11 Q Was he read his Miranda rights?

12 A Deputy Hines read him his Miranda warnings.

13 Q Did you or somebody else take the -- Mr. Lopez
14 somewhere from that scene?

15 A Yes. Deputy Ruddy was called to transport Mr. Lopez.
16 Deputy Hines and I, as he told you earlier, we both have
17 dogs. We're not allowed to transport with the dogs,
18 obviously, for obvious reasons. Also, we're not allowed
19 by policy to transport prisoners in the front seat of our
20 vehicle.

21 So, at that time, we called for Deputy Ruddy. He
22 responded. And he was placed in the cage portion of his
23 car.

24 Q ~~Was your car equipped with a video recording device?~~

25 A ~~It is. It is now, and it was then;~~ yes.

1 Q And did you have a recorder going on from when you
2 pulled up at the scene?

3 A I did.

4 MS. MONTS: I'd like to have this marked.

5 (WHEREUPON, State's Exhibit No. 7 was marked for
6 identification only.)

7 BY MS. MONTS:

8 Q Deputy, I'm going to hand you what's been marked
9 as State's Exhibit No. 7. Would you, please, identify
10 this?

11 A It's a DVD of the original recording that was taken
12 on the scene from that date.

13 Q Was that provided by you?

14 A Yes, it was.

15 MS. MONTS: Your Honor, we'd move this into evidence
16 at this time.

17 THE COURT: Any objection?

18 MR. MACKENZIE: No, sir, Your Honor.

19 MR. SCALZO: Nothing, other than the basic running
20 objection.

21 THE COURT: All right. Put it in.

22 (WHEREUPON, State's Exhibit No. 7 was admitted into
23 evidence.)

24 MS. MONTS: Your Honor, we would ask to be able to
25 publish the video.

THE COURT: Yes.

(WHEREUPON, a portion of State's Exhibit No. 7 was played in open court.)

MS. MONTS: Your Honor, the sound is not working. We're trying to get somebody over here to get the sound to work on this.

THE COURT: Are you going to have to play it over?

MS. MONTS: Yes, Your Honor.

THE COURT: Well, why don't you stop it until you get somebody up here and get it fixed.

MS. MONTS: It's fixed, Your Honor.

THE COURT: It's fixed?

MS. MONTS: Yes.

(WHEREUPON, a portion of State's Exhibit No. 7 was played in open court.)

MS. MONTS: Your Honor, may we approach?

THE COURT: Yes.

(WHEREUPON, a bench conference was held.)

THE COURT: Take the jury out for a minute, please.

(WHEREUPON, the jury was excused from open court at approximately 11:50 a.m.)

THE COURT: All right. Get it fixed.

(WHEREUPON, a break was taken.)

MS. MONTS: Your Honor, I believe we're ready.

THE COURT: Bring the jury in, please.

CHRIS HINES - DIRECT EXAMINATION BY MR. NEELY

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

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

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

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

8 Q. That was 2005?

9 A. That's correct.

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

11 A. That's correct.

12 Q. And were in air support?

13 A. Air support, correct.

14 Q. For how long?

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

17 Q. This year?

18 A. Correct.

19 Q. So eleven years in air support?

20 A. Right.

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

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

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

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

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

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

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

19 Q. And these videos were VHS tapes?

20 A. Correct.

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

22 A. Correct.

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

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

25 Q. And that was in 2005?

CHRIS HINES - DIRECT EXAMINATION BY MR. NEELY

1 A. Correct.

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

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

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

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

15 A. Correct.

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

18 A. That's correct.

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

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

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

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

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

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

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

25 **MR. NEELY:** May I approach the witness?

CHRIS HINES - DIRECT EXAMINATION BY MR. NEELY

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1 **THE COURT:** Yes.

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

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

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

12 A. That is.

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

15 **THE COURT:** Any objection?

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

18 **THE COURT:** I'm sure somebody has a VHS player around.
19 (Whereupon Defendant's exhibit 1 was marked and
20 admitted into evidence)

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

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

CHRIS HINES - DIRECT EXAMINATION BY MR. NEEDLY

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

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

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

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

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

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

21 Q. And when was that?

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

CHRIS HINES - DIRECT EXAMINATION BY MR. NEELY

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

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

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

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

9 A. I have reviewed.

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

11 A. No, sir.

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

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

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

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

1 9s?

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

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

12 A. Not in K-9, no.

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

15 **THE COURT:** Cross examination.

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

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

19 A. That would be ---

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

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

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

24 A. There -- yes,

25 Q. And I'd just refer you to G022. Do you recognize,

1 that?

2 (Pause)

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

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

10 Q. Okay.

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

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

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

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

17 A. Correct.

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

20 A. The video?

21 Q. Yes.

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

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

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

2 Q. Supervisor or everybody?

3 A. No. The supervisor had the key to it. And if you
4 needed a copy -- if you needed your video, you would go and
5 get the key from him or he would open it up for you and sit
6 there and go through your shelf and get your stuff.

7 Everybody had their own shelf in there to -- with their name
8 on it. So I'd have a shelf with all my videos laid out.
9 And all the traffic guys had their specific videos on the
10 shelves.

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

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

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

CHRIS HINES - CROSS EXAMINATION BY MS. ROSS

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1 down here that you left down here. And that's what --

2 picked up what they had boxed up.

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

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

7 Q. Okay.

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

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

17 Q. Okay.

18 A. So ...

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

21 A. Correct.

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

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

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

2 Is that -- did that happen?

3 A. Yes.

4 Q. Okay.

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

6 MR. NEELY: No redirect from the State.

7 THE COURT: All right. You can step down.

8 MR. NEELY: At this time the State would rest.

9 THE COURT: All right. Any reply from the Applicant?

10 MS. ROSS: No -- no, Your Honor.

11 THE COURT: All right. Anything else then from -- I'd
12 be glad to hear brief closing remarks if y'all would like to
13 make them.

14 MS. ROSS: Well, I did a lot going to the ineffective
15 assistance of counsel. I believe Your Honor was taking
16 notes. And that was my allegations there.

17 We also have ineffective assistance of appellate
18 counsel for failing to brief on page 465 or any other
19 arguments that Mr. Scalzo did effectively object to. But
20 our issue was he didn't lay a record strong enough to
21 support the Court of Appeals coming to a fair opinion on the
22 trial in absence or the search and seizure.

23 And a lot of that was not Mr. Scalzo's fault. A lot of
24 it had to do with the non-existence of this tape. I will
25 allow the tape to stand on its own for Your Honor, but I

1 would argue that it did amount to a due process violation.
2 To get to that level there has to be evidence of bad
3 faith by the State. I don't know if it raises to that. I
4 would let Your Honor make that determination, but also that
5 the evidence -- or that the evidence possessed exculpatory
6 value apparent and the defendant had no ability to obtain
7 that by other means. That's what happened here. It was, we
8 would argue, exculpatory.

9 Viewing the tape we would argue goes to much of the
10 case law that Mr. Scalzo argued and has happened since as
11 far as search and seizure is objecting to the very type of
12 search that this was one where a warning is given and then
13 the search is extended beyond that. We have U.S. --
14 Rodriguez v. United States, which is 135 S.Ct. 1609, 2015
15 opinion, but it is an opinion that came out the same year as
16 the Court of Appeals opinion.

17 There's also since then U.S. v. White, which is a
18 Fourth Circuit opinion saying burnt marijuana doesn't amount
19 to reasonable and articulable suspicion.

20 U.S. v. Williams, Fourth Circuit case, reasonable
21 articulable suspicion has to connect to a criminal act.
22 Here, driving on 85, not a criminal act. Going in a
23 different direction from your home, not a criminal act.
24 Again, this is the type of search and seizure, and it's
25 apparent from the video, that the courts are trying to

1 prevent.

2 Also we have U.S. v. Richardson, which is 385 F.3d 625,
3 which is saying that nervousness is not enough. And we
4 would argue that the video shows that the subjective
5 opinions given by the officer as to his basis for a
6 reasonable articulable suspicion did not amount to that.
7 Also shows that the dog did not alert.

8 There's certainly -- in federal cases judges are
9 beginning to regard the video and look for whether there is
10 an alert and find that there must be some indication of the
11 dog alerting in order to justify a search. That didn't
12 exist here.

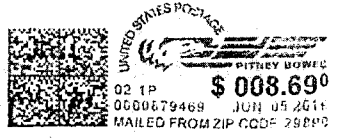
13 And the drugs that were found were in the trunk. And
14 you can see there is no alert whatsoever to the trunk. And
15 the packaging of the drugs indicate that there'd be
16 difficulty to smell.

17 So for those reasons we'd argue that this amounts to a
18 due process violation and ask that Mr. Lopez be granted Post
19 Conviction Relief.

20 **THE COURT:** All right.

21 **MR. NEELY:** Thank you, Your Honor. I think that the
22 most important factor here is the Court of Appeals opinion.
23 The only -- the only two things that the Court of Appeals
24 opinion cites that are challengeable as subjective are
25 Lopez's nervousness and his nervous chatter.

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