

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County

Honorable Lee S. Alford, Circuit Court Judge

RECEIVED
DEC 05 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRONE DEANGELO FLEMING,

APPELLANT

APPELLATE CASE NO 2018-000727

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 10-11, 2018.....	1
JURY VOIR DIRE	5
JURY SELECTION.....	19
PRE-TRIAL MOTIONS	29
TESTIMONY (IN CAMERA)	
JONATHAN MONTJOY	32
TYRONE FLEMING.....	61
MOTION THAT THERE WAS NOT PROBABLE CAUSE TO STOP VEHICLE.....	74
MOTION THAT SEARCH OF APPELLANT WAS TOO INTRUSIVE.....	75
RULING BY THE COURT.....	80
OPENING REMARKS BY THE COURT.....	82
OPENING STATEMENT BY MS. GILMER.....	91
OPENING STATEMENT BY MR. DELANEY.....	95
TESTIMONY	
JONATHAN MONTJOY	99
CARL JENNINGS, JR.....	143
SCOTT RUBY.....	156
DOUGLAS ROBINSON	158
WENDY CHILDERS	169
MARIE WEARING.....	174
JUSTIN LITTLETON	176

STATE RESTS	187
MOTION FOR A DIRECTED VERDICT	188
RULING BY THE COURT.....	190
TESTIMONY	
TYRONE FLEMING.....	193
REPLAY OF IN-CAMERA TESTIMONY	213
CLOSING ARGUMENT BY MS. GILMER.....	216
CLOSING ARGUMENT BY MR. DELANEY	225
CLOSING ARGUMENT BY MS. GILMER.....	231
CHARGE ON THE LAW	237
VERDICT	252
MOTION FOR A NEW TRIAL	253
RULING BY THE COURT.....	253
SENTENCING	258
STATE’S EXHIBIT NO. 1 (AFFIDAVIT)	261
STATE’S EXHIBIT NO. 4 (DMV NOTICE)	263
INDICTMENTS	271
SENTENCE SHEETS	277
CERTIFICATE OF COUNSEL	280

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2017-GS-44-1059

7 TYRONE DEANGELO FLEMING,

2017-GS-44-1441-42

8 Defendant.

9 -----x

10 April 10-11, 2018

11 Union, S.C.

12

13 B E F O R E:

14 HONORABLE LEE ALFORD

15

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

17 MEGHAN M. GILMER

18 Assistant Solicitor

19

20 ERIK DELANEY

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1	<u>I N D E X</u>				
2					
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	Jonathan Montjoy				
5	Ms. Gilmer	32		59	
6	Mr. Delaney		44		
7	Tyrone D. Fleming				
8	Mr. Delaney	61		73	
9	Ms. Gilmer		64		
10					
11	Opening Statements				
12	Ms. Gilmer	91			
13	Mr. Delaney	95			
14					
15	Jonathan Montjoy				
16	Ms. Gilmer	99		138	
17	Mr. Delaney		118		
18	Carl Jennings				
19	Ms. Gilmer	143		152	
20	Mr. Delaney		147		155
21	Scott Ruby				
22	Ms. Gilmer	156			
23	Douglas Robinson				
24	Ms. Gilmer	158			
25	Mr. Delaney		167		

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
3	Wendy Childers				
4	Ms. Gilmer	169			
5	Mr. Delaney		173		
6	Marie Wearing				
7	Ms. Gilmer	174			
8	Justin Littleton				
9	Ms. Gilmer	176		186	
10	Mr. Delaney		183		
11	Tyrone Fleming				
12	Mr. Delaney	194		213	
13	Ms. Gilmer		200		214
14					
15	CLOSING ARGUMENTS				
16	MS. GILMER	216, 231			
17	MR. DELANEY	225			
18	Charge of the Court	237			
19	Verdict of the jury	252			
20	Sentence of the Court	258			
21					
22					
23					
24					
25					

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
State's 1	affidavit		43
State's 2	Drugs		172
State's 3	Drugs		165
State's 4	DMV record		167

1

2

(WHEREUPON, Plaintiff's Exhibit One was premarked.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Ladies and gentleman of the jury panel if you give me your attention please. We about to begin a trial in the matter of the State versus Tyrone Deangelo Fleming. The State charges Mr. Fleming with three offenses. They charge him with possession of marijuana, possession of cocaine and driving under suspension. To these charges the defendant has plead not guilty which then places upon the State the burden of proving the defendant guilty. We are about to begin the trial and the State is represented in this case by Assistant Solicitor Megan Gilmer. If you will please stand up and face the jury so they see who you are. Thank you, you may be seated.

Is anyone on the jury panel related by blood, marriage, friends with or have any type of social, business or professional relationship with Megan Gilmer, if so please stand. Anyone on the jury panel related by blood, marriage, friends with or have any type of social, business or professional relationship with anyone who works in the 16th Circuit Solicitor's office, if so please stand.

The defendant in this case, Tyrone Deangelo Fleming is represented by Eric Delaney with the public

1 defender's office. If you would please stand up and
2 also have Mr. Fleming stand so the jury can see who he
3 is in person. Thank you, you may be seated.

4 Is anyone on the jury panel related by blood or
5 marriage, friends with or have any type social,
6 business or professional relationship with Tyrone
7 Fleming and Eric Delaney, if so please stand. Give us
8 your name and number sir.

9 JUROR: Eric and I are neighbors.

10 THE COURT: What is your number?

11 JUROR: 196.

12 THE COURT: Let me ask you sir whether that
13 relationship with him would interfere in any way with
14 the ability to give both the State and the defendant a
15 fair and impartial trial in this case?

16 JUROR: I'm neighbors.

17 THE COURT: And I'm asking you, given that fact
18 could you give both the State and the defendant each a
19 fair and impartial trial? Could you do that or not?

20 JUROR: No, sir.

21 THE COURT: Well, thank you for your honesty. I
22 will excuse you from this particular case. Stay in
23 your seat please sir and follow instructions. You
24 will get some more instructions.

25 Anyone else? Yes, ma'am. Give me your name and

1 number.

2 JUROR: Kasaundra Hawkins. I know Tyrone.

3 THE COURT: What is your number.

4 Juror: 116.

5 THE COURT: All right, and how do you know Mr.
6 Fleming.

7 JUROR: He's my cousin.

8 THE COURT: All right. Let me ask you, given that
9 relationship -- what cousin is he? First cousin?
10 Second cousin?

11 JUROR: Third.

12 THE COURT: Is there anything about that
13 relationship that interfere in any way with your
14 ability to give both the State and the defendant a
15 fair and impartial trial in this case?

16 JUROR: Yes, it would interfere.

17 THE COURT: Thank you for your honesty. We will
18 excuse you from this case. Stay in your seat and
19 follow instructions.

20 THE COURT: Anyone else? Any one on the jury
21 panel related by blood or marriage, friends with or
22 have any type of social, business or professional
23 relationship with attorney Erik D. Delaney, knee, if
24 so please stand.

25 Anyone on the jury panel related by blood or

1 marriage, friends with or have any type of social,
2 business, professional relationship with anyone in the
3 Union County Public Defender's office. If so please
4 stand.

5 Ladies and gentlemen of the jury panel I am going
6 to go through a list of potential witnesses in this
7 case. All of these witnesses may not be called, but
8 they may be called. So what I am going to ask you to
9 do is when I call the witnesses name if you are related
10 by blood or marriage, friends with or have any type
11 social, business or professional relationship with any
12 of these named potential witnesses, when I call their
13 name I will ask that you please stand; Chief Carl
14 Jennings with Jonesville Police Department, Jonathan
15 Montjoy, M-o-n-t-j-o-y, formerly with the Jonesville
16 Police Department. Yes, ma'am. Please give us your
17 name and number.

18 JUROR: Kendra Scott, 231.

19 THE COURT: How do you know Mr. Johnson?

20 JUROR: I worked with him.

21 THE COURT: Worked with him. Okay. Ma'am, is
22 there anything about that relationship if he were to
23 be called as witness in this case by either side would
24 that interfere in any way with your ability to give
25 both sides a fair or impartial trial?

1 JUROR: Would not.

2 THE COURT: It would not. Okay. Thank you ma'am.
3 You may be seated.

4 Justin Littleton, L-i-t-t-l-e-t-o-n, at the Union
5 County -- works at the Union County Jail. Investigator
6 Scott Ruby, R-u-b-y, at the Union County Sheriff's
7 office. Investigator Wendy Childers with the Union
8 County sheriff's office. Investigator Jeff Lawson
9 with the Union County Sheriff's Office. This is
10 Investigator Lawson right here (Indicating). Thank
11 you sir.

12 Marie Wearing with the South Carolina Department
13 of Motor Vehicles. Douglas Robinson who is with
14 South Carolina Law Enforcement Division. Doris
15 Yarbrough, with the South Carolina Law Enforcement
16 Division. Amy Stephens Black with the South Carolina
17 Law Enforcement Division. Charlotte Crowe,
18 C-r-o-w-e, with the South Carolina Law Enforcement
19 Division. Sharon Hunt with the South Carolina Law
20 Enforcement Division. Tom Alexander with the Union
21 County Municipal County Court.

22 Any member of the jury panel either presently or in
23 the the past ever been employed by or volunteered with
24 any city county, state or other law enforcement agency
25 or law enforcement victim witness's assistance

1 program. If so please stand.

2 Yes, sir, please give us your name and number.

3 JUROR: John McKnight 178, law enforcement,
4 Spartanburg County for 12 years.

5 THE COURT: All right, sir, anything about that
6 employment that would interfere in way with your
7 ability to give both sides a fair and impartial trial
8 in this case?

9 JUROR: No, sir.

10 The court: Anyone else? Is any member of the
11 jury panel, related by blood or marriage to or close
12 personal friend with any person who is now or ever
13 been employed or volunteered with any city, county,
14 state or federal law enforcement agency or law
15 enforcement victim witness assistance program? If so
16 please stand.

17 Is there any member of the jury panel related by
18 blood or marriage to or close personal friends with
19 any person who is now or ever been employed or
20 volunteered with any city, county, state or federal
21 prosecutor's office or prosecutors victim's witness
22 assistance program? If so please stand.

23 Has any member of the jury panel ever been
24 represented by the defense attorney, Erik Delaney or
25 any member of -- well I've already asked that. Any

1 member ever been represented Erik Delaney? If so
2 please stand.

3 Anyone in the jury panel, member of your family,
4 currently being prosecuted or have been prosecuted by
5 Megan Gilmer or another attorney with the the 16th
6 Judicial Circuit, Solicitor's Office.

7 Ladies and gentlemen of the jury panel I have six
8 questions to ask you now and the responses to these
9 questions if you need to respond to them they might be
10 a little personnel. For that reason what I am going
11 to ask, I will go through them. Wait until I gone
12 through all six of these questions. If one or more of
13 these questions apply or you need to respond to one or
14 more of them please come forward at the appropriate
15 time. At the conclusion we will have you come to the
16 center isle and come forward where we can get your
17 responses down front next to the court reporter.

18 Here are the questions; any member the jury panel
19 been arrested for or convicted of any type of drug
20 offense including marijuana or have any member of your
21 family been arrested or convicted for any type of drug
22 offense? Second question, any member of the jury
23 panel have his or her driver's license suspended or
24 has a member of your immediate family had his or her
25 driver's license suspended? Has any member of the

1 jury panel been arrested for or convicted of the
2 offense of driving with a suspended driver's license
3 or has any member of your immediate family been
4 arrested for or convicted or driving with a suspended
5 driver's license. Has any member the jury panel been
6 arrested by the Jonesville Police Department? Has any
7 member of the jury panel been arrested by the Union
8 County Sheriff's Office? Has any member of the jury
9 panel a member of any organization that does not
10 recognize the government of the United States or the
11 State of South Carolina?

12 Now, if you need to respond to one or more of
13 these or one or more of these applies to you I will
14 ask you to come to the second isle and have you come
15 forward one at time and get your responses.

16 THE BAILIFF: Juror number 77.

17 THE COURT: Give us your name for the record.

18 JUROR: Jerry Erwin.

19 THE COURT: Yes, sir.

20 JUROR: I had two cousins went to jail for drug
21 possession and I had my license suspended.

22 THE COURT: All right. Let me ask you given the
23 nature of the charges in this particular case if there
24 is anything about your experience in that regard that
25 would interfere with your ability to give both the

1 state and the defendant a fair and impartial trial?

2 JUROR: Probably so it would, yes, sir.

3 THE COURT: I not require you to sit on this jury.

4 Thank you. Have a seat.

5 THE BAILIFF: Juror number 26.

6 THE COURT: Give us your name for the record.

7 JUROR: Bryan Brackins.

8 THE COURT: Yes, sir.

9 JUROR: I am right now currently under suspension.

10 THE COURT: Would that experience interfere with
11 your ability to give the both the State and the
12 defendant a fair and impartial trial in this case?

13 JUROR: No, sir.

14 THE COURT: Thank you. You may be seated.

15 THE BAILIFF: Juror 188.

16 THE COURT: Your name.

17 JUROR: Melissa Nance. My daughter was arrested
18 for criminal possession.

19 THE COURT: Is there anything about your
20 experience in that regard that would interfere with
21 your ability to give both sides a fair and impartial
22 trial?

23 THE JUROR: No.

24 THE COURT: Thank you.

25 THE BAILIFF: Juror 167.

1 THE COURT: Give us your name.

2 JUROR: Ruth Martin.

3 THE COURT: Yes, ma'am.

4 JUROR: My nephew was arrested for drug possession
5 several times.

6 THE COURT: Okay. Is there anything about that
7 your experience in that regard that would interfere in
8 any way with your ability to give both the State and
9 the defendant a fair and impartial trial in this case?

10 JUROR: No. I just wanted to let you know that.

11 THE COURT: Sure. Thank you.

12 THE BAILIFF: Juror 258.

13 THE COURT: Your name, sir?

14 JUROR: Ryan Thomas.

15 THE COURT: Yes, sir.

16 JUROR: I got driving under suspension about 15,16
17 years ago.

18 THE COURT: Okay. Let me ask you whether there is
19 anything about your experience in that regard that
20 would interfere in any way with your ability to give
21 both the State and the defendant a fair and impartial
22 trial?

23 JUROR: No.

24 THE COURT: Thank you. You may return to your
25 seat.

1 THE BAILIFF: Juror 196.

2 THE COURT: Give us your name.

3 JUROR: My name is James Parham Jr.

4 THE COURT: Yes, sir.

5 THE COURT: I had a family member with driving a
6 vehicle suspended license.

7 THE COURT: Let me ask you is there anything about
8 your experience regarding that that would interfere in
9 any way with your ability to give both the State and
10 the defendant a fair and impartial trial in this case?

11 JUROR: No, sir.

12 THE COURT: All right. Thank you sir.

13 THE BAILIFF: Juror 71.

14 THE COURT: Give us your name.

15 JUROR: Jonathan Earls. I have been arrested in
16 this county and lost my license for DUI but that was
17 like 23 years ago.

18 THE COURT: Let me ask you if there is anything
19 about your experiences in that regard that would
20 interfere in any way to give both the State and
21 defendant a fair trial in this case.

22 JUROR: No, sir.

23 THE COURT: Thank you. You may have a seat.

24 THE BAILIFF: Juror 128.

25 THE COURT: Give us your name.

1 JUROR: Teresa Humphries. I have a niece that was
2 convicted of drugs and just recently went to prison.

3 THE COURT: Okay. Let me ask you whether there is
4 anything about your experiences in that regard that
5 would interfere with your ability to give both sides a
6 fair trial in this case.

7 JUROR: I don't think that would be a problem.

8 THE COURT: Well, I want your honesty. Do you
9 think that your experiences would interfere with your
10 ability to give both the State and the defendant a
11 fair and trial? Could you do that?

12 JUROR: Yes.

13 THE COURT: Thank you ma'am.

14 THE BAILIFF: Juror 250.

15 JUROR: Heather Sowers.

16 THE COURT: Yes, ma'am.

17 JUROR: When you say have you ever been suspended
18 I did when I was 18.

19 THE COURT: Let me ask you whether there is
20 anything about your experience with regard to that
21 that would interfere with your ability to give both
22 the State and the defendant a fair trial in this case?

23 JUROR: No, I haven't been in trouble since then.

24 THE COURT: Thank you ma'am. You may return to
25 your seat.

1 THE BAILIFF: Juror number seven.

2 JUROR: Bonnie Baker.

3 THE COURT: Yes, ma'am.

4 JUROR: I was 23 and I am 47 now. I was 23 and I
5 didn't know I needed to pay my taxes when I sold the
6 car so my license was suspended.

7 THE COURT: Okay. All right. Let me ask you
8 whether there is anything about your experiences in
9 that regard that would interfere in any way with your
10 ability to give both sides a fair trial?

11 JUROR: No.

12 THE COURT: Thank you, ma'am.

13 THE BAILIFF: Juror 266.

14 JUROR: Jeffrey Trantham.

15 THE COURT: Yes, sir.

16 JUROR: Back when I was in high school I got a
17 drag racing offense. It was suspended.

18 THE COURT: Let me ask you is there anything about
19 your experience in that regard that would interfere
20 with you ability to give both sides, the State and the
21 defendant a fair and impartial trial in this case?

22 JUROR: No, sir.

23 THE COURT: Thank you.

24 THE BAILIFF: Juror 21.

25 THE COURT: Give us your name for the record.

1 JUROR: Michael Belue.

2 THE COURT: Yes, sir.

3 JUROR: I was arrested one time over 25 years for
4 drugs.

5 THE COURT: Is this anything about your
6 experiences with regard to that that would interfere
7 in any way with your ability to give both the State
8 and the defendant a fair and impartial trial in this
9 case?

10 JUROR: No, sir.

11 THE COURT: Thank you.

12 All right. Ladies and gentlemen, give me your
13 attention please. I have a couple more questions to
14 ask you.

15 Has any member the jury panel had any prior
16 knowledge about this case from any source before
17 coming here to court today, if so please stand.

18 Has any member the jury panel formed or expressed
19 an opinion as to the guilt or innocence of the
20 defendant, Tyrone Deangelo Fleming, if so please
21 stand.

22 Is there any member of the jury panel have any
23 interest, bias or prejudice for or against the
24 defendant, Tyrone Deangelo Fleming, if so please
25 stand.

1 Can each member of the jury panel give both the
2 state and the defendant, Tyrone Deangelo Fleming, a
3 fair and impartial trial in this case, if not please
4 stand.

5 Ma'am, I excused you earlier. Thank you.

6 Does any member the of the jury panel know of any
7 reason whatsoever why he or she should not serve as a
8 juror in this particular case, if so please stand.

9 Any additional questions for the the jury panel
10 from the State?

11 MS. GILMER: Not from the State.

12 THE COURT: From the defense?

13 MR. DELANEY: No.

14 THE COURT: Madame clerk please give us a jury.
15 Bear with us. Everything is done by computer these
16 days. When your name is called please come forward,
17 turn around, and face the attorney that way. Just
18 come all the way up and face the the attorney that
19 way.

20 THE CLERK: Juror 114, Sharon Harris. What say
21 the State?

22 MS. GILMER: Please present this juror.

23 THE COURT: What says the defense?

24 MR. DELANEY: Please seat Miss Harris.

25 THE COURT: Please have a seat in the jury box

1 ma'am.

2 THE CLERK: Juror number seven, Bonnie Baker.
3 What say the state.

4 MS. GILMER: Please present this juror.

5 THE CLERK: What says the defense?

6 MR. DELANEY: Please seat Miss Baker.

7 THE CLERK: Juror 178, John McKnight. What says
8 the State?

9 MS. GILMER: Please present this juror.

10 THE CLERK: What says the defense?

11 MR. DELANEY: Please excuse Mr. McKnight.

12 THE CLERK: Juror number 20, Cody Belue. What
13 says the State?

14 MS. GILMER: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. DELANEY: Please seat Mr. Belue.

17 THE CLERK: Juror number 287. John Williams. What
18 says the State?

19 MS. GILMER: Please present this juror.

20 THE CLERK: What says the says the defense?

21 MR. DELANEY: Please excuse Mr. Williams.

22 THE CLERK: Juror number 186, Brent Moss. What
23 says the State?

24 MS. GILMER: Please present this juror.

25 THE CLERK: What says the defense?

1 MR. DELANEY: Please seat Mr. Moss.

2 THE CLERK: Juror number 264, Larki Thompson.

3 What says the State?

4 MS. GILMER: Please excuse this juror.

5 THE CLERK: Juror 170, Linda Mayes. What says the
6 State?

7 MS. GILMER: Please present this juror.

8 THE CLERK: What says the defense?

9 MR. DELANEY: Please seat Miss Mayes.

10 THE CLERK: Juror number 95, Amber Gilkison. What
11 says the State?

12 MS. GILMER: Please present this juror.

13 THE CLERK: What says the defense?

14 MR. DELANEY: Please seat Miss Gilkison.

15 THE CLERK: Juror 296, Arlene Wynn. What says the
16 State?

17 THE COURT: Please present this juror.

18 THE CLERK: What says the defense?

19 MR. DELANEY: Please excuse Miss Wynn.

20 THE CLERK: Juror number 42, Jantzen Childers.

21 What says the State?

22 MS. GILMER: Please present this juror.

23 THE CLERK: What says the defense?

24 MR. DELANEY: Please excuse Mr. Childers.

25 THE CLERK: Juro number 46, Jay Coffer. What says

1 the State?

2 MS. GILMER: Please present this juror.

3 THE CLERK: What says the defense?

4 MR. DELANEY: Please seat the juror.

5 THE CLERK: Jury number eight, Jennifer Baker.

6 What says the State?

7 MS. GILMER: Please present this juror.

8 THE CLERK: What says the defense?

9 MR. DELANEY: Please seat Miss Baker.

10 THE CLERK: Juror number 225, Yvette Salter. What
11 says the State?

12 MS. GILMER: Please excuse this juror.

13 THE CLERK: Juror number 214, Lewis Rice. What
14 says the State?

15 MS. GILMER: Please excuse this juror.

16 THE CLERK: Juror number 128, Teresa Humphries.

17 What says the State?

18 MS. GILMER: Please present this juror.

19 THE CLERK: What says the defense?

20 MR. DELANEY: Please seat Miss Humphries.

21 THE CLERK: Juror number 242, Linda Smith. What
22 says the State?

23 MS. GILMER: Please present this juror.

24 THE CLERK: What says the defense?

25 MR. DELANEY: Please seat Miss Smith.

1 THE CLERK: Juror number 258, Ryan Thomas. What
2 says the State?

3 MS. GILMER: Please Excuse This Juror.

4 THE CLERK: Juror 58, Tamara Dawkins. What Says
5 the State?

6 MS. GILMER: Please Present This Juror.

7 THE CLERK: What Says the Defense?

8 MR. DELANEY: Please Seat Miss Dawkins.

9 THE CLERK: Juror 133, Ronnie Jenkins. What Says
10 the State?

11 MS. GILMER: Please Present This Juror.

12 THE CLERK: What Says the Defense?

13 MR. DELANEY: Please Excuse Mr. Jenkins.

14 THE CLERK: Juror Number 26, Bryan Brackins. What
15 Says the State?

16 MS. GILMER: Please Present This Juror.

17 THE CLERK: What Says the Defense?

18 MR. DELANEY: Please Seat Mr. Brackins.

19 That is 12. You Want One Alternate?

20 THE COURT: Right. The Next Will Be For the
21 Alternate.

22 THE CLERK: Juror Number 18, Ashley Beheler.

23 MS. GILMER: Madame Clerk Can You Repeat the
24 Number. I Apologize.

25 THE CLERK: Eighteen.

1 MS. GILMER: Please Present This Juror.

2 THE CLERK: What Says the Defense?

3 MR. DELANEY: Please Seat Miss Beheler.

4 THE CLERK: That is 12 and One Alternate.

5 THE COURT: Any Questions Concerning the Selection
6 Process From the State?

7 MS. GILMER: No Objection, Your Honor.

8 THE COURT: From the Defense?

9 MR. DELANEY: No, Your Honor.

10 THE COURT: Ladies and Gentlemen of the Jury Panel
11 That Was Not Selected For This Particular Case, I Want
12 to Thank You For Your Patience. You Are Free to Go At
13 This Time. What We Would Ask to You Do is Call in to
14 Your Voicemail Number Tonight After Six O'clock. Any
15 Time After Six O'clock and You Will Get Instructions
16 As to Whether to Call Back Or Report Back As the Case
17 May Be. Call Back to Your Voice Number Tonight.

18 (WHEREUPON, the Jurors Not Selected Leave the
19 Courtroom.)

20 Ladies and Gentleman of the Jury Panel Give Your
21 Attention Please. We Wanted to Get a Jury Selected in
22 This Case So We Can Figure Out Those Who Weren't
23 Necessary to the Case and Get That Done. We Still
24 Have Some Preliminary Matters That We Need to Take Up
25 Out of Your Presence Before We Actually Started With

1 the Trial and So I Will Go Ahead and Release You At
2 This Time For the the Day and Ask You to Be Back in --
3 the Bailiff Will Show You Where to Come Back to the
4 Jury Assembly there At 10:30. We Have Other Matters
5 to Attend to But Be Back At 10:30.

6 Let Me Caution You. Please Not to Discuss This
7 Case Among Yourselves. And Please Do Not Discuss This
8 With Anyone Else You Might See on the Overnight Recess
9 of Court and That is Very, Very Important That You Not
10 Discuss the Case Among Yourselves Or Anyone Else.

11 Please Do Not Go on to Any Kind of Electronic Device
12 to Try and Find Out Anything About This Case and That
13 is Very Important. We Are Well Aware That There Are
14 Many Electronic Devices the Jury Can Go on and Try to
15 Gain Information. It is Very Important Until This
16 Case is Over and the Verdict is in. It is Very
17 Important That You Not Do That. If Someone in Your
18 Family That You Get Home Wants to Find Out Something
19 About This Case Just Tell Them You Can't Talk About
20 the Case Because You Don't Know Much About It At This
21 Point Anyway. Please Tell Them You Can't Talk About
22 It. If There Should Be Any Media Coverage of the Trial
23 and there May Not Be, But If there Should Be Any Media
24 Coverage of This Trial Please Do Not Read, Listen Or
25 Watch Any Media of the Trial Until After the Trial is

1 Over and the Verdict is. Shouldn't Be Any Media
2 Coverage, But If There If Someone Wanted to Save It
3 For You Until After the Trial You Are Welcome to
4 Listen to It Or Watch It After the Trial is Over. And
5 the Reason For This There is No Way We Can Guarantee
6 the Accuracy of Any of the Information Found About
7 This Case.

8 You Are Going to Take an Oath in the Morning.
9 When You Come in the First Thing in the Morning We
10 Will Do That Before We Get Started But Under That Oath
11 Your Decision As to Whether the State Has Presented
12 Its Case Against This Defendant on Each of These Cases
13 You Will Have to Decide That Based Solely on the Sworn
14 Testimony and Evidence That Comes in During the Course
15 of the Trial and Not From Any Other Source, Not From
16 Any Other Information You Might Receive. And So Just
17 Please Don't Talk to Anybody About It. Don't
18 Communicate About It. Get Your Information Here in
19 the Courtroom, Sworn Testimony and Evidence Submitted
20 in to the Record Then You Can Base It on That and That
21 Alone. Then You Know Your Getting Accurate
22 Information As You Can and Judge It Accordingly. But
23 Again, Thank You Very Much For Your Patience and Your
24 Service This Week. You Are Free to Go At This Time.
25 Be Back in the Jury Assembly Room At 10:30 in the

1 Morning.

2 Thank You.

3 (WHEREUPON, the Jury Leaves the Courtroom.)

4 THE COURT: All Right. We Will Take Up Pretrial
5 Matters At 9:30 in the Morning. So We'll Resume At
6 9:30 in the Morning and Get Started. Thank You.

7 (WHEREUPON, court was adjourned for the day.)

8 (WHEREUPON, the trial continued on April 19,
9 2018.)

10 THE COURT: Counsel, ready to proceed this
11 morning.

12 MS. GILMER: We are Your Honor.

13 Your Honor, due to the State directly indicting
14 the defendant on some charges because of prior
15 incidents Your Honor, just to keep the record clear,
16 we are going to go ahead and just read the Indictments
17 to the defendant.

18 THE COURT: All right. Your Honor.

19 MS. GILMER: First Your Honor, 2017-GS-44-1059,
20 Your Honor, it's a direct Indictment for the offense
21 of possession of cocaine, third or subsequent offense
22 that Tyrone Deanagelo Fleming did in Union County on
23 or about March 14th of 2017 possess a quantity of
24 cocaine, a controlled substance, under provisions of
25 section 44-53-110 of the code of laws of South

1 Carolina, 1976 as amended, such possession not having
2 been authorized by law in violation of section
3 44-53-370, the code of laws of South Carolina.

4 And then as to 2017-GS-44-1441, it is for the
5 offense of driving under suspension, second offense,
6 that Tyrone Deangelo Fleming did in Union County on or
7 about March 14th of 2017 drive a motor vehicle on a
8 public highway of this state when his license to drive
9 was canceled, suspended or revoked, such not being the
10 first offense within a period of five years including
11 and immediately proceeding the forgoing date in
12 violation of section 56-1-460 code of laws of South
13 Carolina. And then, Your Honor, the possession of
14 marijuana indictment was as originally charged.

15 THE COURT: All right. Counsel, have you received
16 copies of these Indictments?

17 MR. DELANEY: We have Your Honor.

18 THE COURT: Direct Indictments?

19 MR. DELANEY: Yes.

20 THE COURT: Have you had an opportunity to go over
21 those with the defendant?

22 MR. DELANEY: Yes, Your Honor.

23 THE COURT: All right. And you are prepared to go
24 to trial on these charges?

25 MR. DELANEY: We are judge.

1 THE COURT: All right, thank you. We are ready to
2 proceed.

3 Do you want to just run through this pretrial
4 motion list of the defense?

5 MR. DELANEY: Yes, Your Honor.

6 THE COURT: Go ahead.

7 MR. DELANEY: Okay. First motion we have, motion
8 to determine if the State has complied with Rule 5 and
9 Brady.

10 MS. GILMER: We have Your Honor.

11 MR. DELANEY: And then Your Honor, our second
12 motion would be a motion to determine if the State is
13 planning to use any Lyle testimony in this case.

14 MS. GILMER: Your Honor, the only issue would be
15 when the witness from the South Carolina Department of
16 Motor Vehicles testifies. She will be speaking of how
17 the defendant's license is suspended so we would seek
18 to introduce that and we may have some things in
19 pretrial, but not anything else in front of the jury
20 Your Honor.

21 MR. DELANEY: Our next motion, judge, would be a
22 motion to sequester witnesses for the State and the
23 defense. I have had discussions with the solicitor
24 about that.

25 MS. GILMER: And the the only other issue, Your

1 Honor, was Miss Lawson, from the Clerk of Court's
2 office. She was on the original witness list but was
3 not announced yesterday and it is my understanding Mr.
4 Delinquency would not have any problem with her
5 staying. We anticipate her testimony would be if the
6 defendant was convicted of the possession of cocaine
7 by the jury. She would be testifying to his priors,
8 Your Honor, before the Court.

9 THE COURT: All right. My understanding and the
10 reason I didn't announce her to the jury was because
11 we had discussed her possibly testifying and it
12 wouldn't be necessary for her to testify before the
13 jury and if necessary you stipulate that these are
14 records that she has in her possession without having
15 her to testify. Is that correct?

16 MR. DELANEY: Yes, judge, in front of the jury.

17 THE COURT: That is the reason I didn't announce
18 her to the jury based on that conversation.

19 MS. GILMER: Yes, sir.

20 THE COURT: Go ahead proceed.

21 MR. DELANEY: Next motion judge would be to
22 determine any prior record should my client choose to
23 testify. I think that is something we can get figured
24 out should he choose to testify.

25 MS. GILMER: Yes, Your Honor. We would just ask

1 to have that heard at a later time if the defendant
2 does choose to testify.

3 THE COURT: All right.

4 MR. DELANEY: And my last two motions, judge, both
5 deal with the stop of the vehicle in this case and
6 then the search of my client after the initial stop of
7 the vehicle.

8 THE COURT: All right.

9 MR. DELANEY: There are a couple of witnesses who
10 will testify here.

11 THE COURT: Does the State have any other motions?

12 MS. GILMER: We do not Your Honor.

13 THE COURT: Let's proceed on that motion.

14 MS. GILMER: Yes, Your Honor. May I have one
15 moment.

16 THE COURT: For the record your motion is --
17 motion number seven on your list, motion to determine
18 if the officer had probable cause and reasonable
19 suspicion to stop the vehicle the defendant driving
20 and number eight, motion to determine the validity of
21 the search conducted on the defendant. That is for
22 the record.

23 All right proceed solicitor.

24 MS. GILMER: Thank you, Your Honor. Your Honor
25 the State would call officer Jonathan Montjoy.

1 JONATHAN MONTJOY, called as a witness, having been
2 duly sworn by the clerk, was examined and testified as
3 follows:

4 MS. GILMER: May it please the Court.

5 THE COURT: Solicitor.

6 DIRECT EXAMINATION

7 BY MS. GILMER:

8 Q Would you please state your name for the record.

9 A John Montjoy.

10 Q And were you employed with the Jonesville Police
11 Department on March 14th of 2017?

12 A Yes.

13 Q And how long had you been with the Jonesville Police
14 Department?

15 A At that time roughly about a year, four or five months.

16 Q Are you currently working for the Jonesville Police
17 Department?

18 A No, ma'am.

19 Q Why not?

20 A I actually own my own tree business so I doing that
21 full time.

22 Q Are you currently taking a break from law enforcement?

23 A Yes.

24 Q What is your prior law enforcement experience? Have
25 you had any experience prior to Jonesville Police Department?

1 A Yes. I have been in law enforcement for right around
2 14, 15 years. I started when I turned 21. Went to the academy
3 and got my certification through the academy. *worked at
4 started this, before they and then if this I went to Duncan,
5 after spending about eight years there went to Blacksburg and
6 tried to get a little the closer to home came to work at
7 Jonewville.

8 Q And when did you leave the Jonesville Police
9 Department?

10 A It was December the 12th I think is the actual date.

11 Q Of 2017?

12 A 2017, yes.

13 Q And with your academy training did you undergo classes
14 on traffic stops?

15 A Yes. There is actually -- the academy at the time was
16 a nine-week course and during that nine weeks there's roughly
17 about a week that you go through the process of making traffic
18 stops and all that, and throughout the whole process you go
19 through the law training and the laws.

20 Q And drug detection is that a class that you take at the
21 academy?

22 A They don't actually have that at the academy but I took
23 classes outside of that and trained for narcotic work.

24 Q So you have continuing classes in training to be a law
25 enforcement officer, correct?

1 A Yes, every year you are mandated to take so many hours
2 and some advance classes.

3 Q All right. I will turn your attention to March 14,
4 2017. Were you working with Jonesville Police Department on
5 that date?

6 A Yes.

7 Q And turning your attention to approximately 4:40 that
8 afternoon did you make a traffic stop?

9 A Yes, I made a traffic stop on Main Street inside the
10 city limits in Jonesville.

11 Q And what was the reason for that traffic stop?

12 A The vehicle that I stopped the windshield was cracked,
13 shattered on one side, so we stopped it for an equipment
14 violation.

15 Q And when you say at windshield was cracked where was
16 the crack on the windshield?

17 A From the mirror in the center of it to the right side
18 over the passenger seat. It was in that area. And it was
19 roughly probably about the size of maybe a small basketball or
20 something of that size. It had spidered out.

21 Q It had been spidering, is that what you say?

22 A Like a spiderweb.

23 Q And that windshield from what you could tell did it
24 appear to be dangerous to the driver as far as its location on
25 the windshield?

1 A Right. Yeah, it appeared that it would have obstructed
2 his view and be dangerous preventing him from seeing stuff from
3 all angles of the seat.

4 Q Did you believe that would also post a risk of
5 dangerous driving?

6 A Right. He might not be able to see something and have
7 accident due to it.

8 Q And did you -- who was the driver of the vehicle?

9 A Mr. Tyrone Fleming.

10 Q And when you first observed his vehicle where were you
11 in relation to his vehicle?

12 A I was sitting on Main Street roughly probably 75 feet
13 up from where Moore Street comes in. Kind of the front yard of
14 a house right there with a clear line of site to Moore Street
15 and Main Street:

16 Q And was this daylight hours or night time?

17 A It was full daylight.

18 Q And when you conducted the traffic stop on the vehicle
19 did you activate your blue lights?

20 A Yes, I did.

21 Q And upon stopping the the defendant's vehicle did you
22 identify him as the driver?

23 A Right. He was only person in the car. He was the sole
24 occupant and he didn't have any ID on him but he did give me his
25 name and date of birth.

1 Q And did you make any other observations upon that
2 initial contact with with the defendant?

3 A Yeah. As I was standing at the driver's side of the
4 car I could smell an odor of marijuana in the vehicle.

5 Q Okay, and so you said the defendant did not have any
6 identification on him. What did you do at that point?

7 A At this point I went back to my control unit and
8 actually gave dispatch his name and date of birth so they could
9 check it through NCIC system to see if he had a valid drivers
10 license.

11 Q And did you determine whether he had a valid driver's
12 license?

13 A Right. Dispatch responded back and said that the
14 license was actually suspended.

15 Q And what did you proceed to do at that point?

16 A At this point I went back up to the vehicle and stepped
17 the passenger out and told him that I could smell the odor of
18 marijuana in the vehicle and that was the probable cause for
19 searching the car at that time was the odor of marijuana. So I
20 sent him back to the patrol unit and began to search the vehicle
21 and check a couple more things as far as to see if he had any
22 outstanding warrants on him.

23 Q At that point had you made a decision whether to place
24 him under arrest for driving under suspension?

25 A Yes. As soon as the license come back suspended I knew

1 at that point he was going to jail to driving under suspension.

2 Q So that he was prior to searching the vehicle?

3 A Right.

4 Q And did you locate anything in the vehicle?

5 A Throughout the vehicle there was a little bit of
6 marijuana residue throughout the vehicle. There was not a large
7 quantity in the vehicle when we searched.

8 Q And did you do a search incident to arrest of the
9 defendant?

10 A Yes. Prior to actually putting handcuffs on him we
11 patted him down, searched him, and that's when I felt the small
12 bag of what come to be a bag of marijuana in his crotch area and
13 I asked him to retrieve it for me just due to safety issues and
14 all and once he retrieved it then he was he placed in handcuffs
15 and we patted him down more to make sure there was nothing else
16 on him before we put him in the patrol unit to make sure that he
17 wasn't able to retrieve anything out of his pants and that's
18 when I did feel another small bag on him.

19 Q Okay. And what do you recall him wearing as far as his
20 lower half around the area where you found the marijuana?

21 A He had on pants and up under had some style of shorts.

22 Q And when you when doing the pat down where were your
23 hands? Were you under clothing, over clothing?

24 A Everything was on the exterior of his clothing.

25 Q And just to be specific exactly where did you first

1 feel the marijuana?

2 A It was around his testicles and leg area where it all
3 comes together there.

4 Q And so you said at that point you did feel something
5 else.

6 A Right.

7 Q Did you have any idea what that was you were feeling
8 whether it was a weapon or -- what did you feel exactly?

9 A I could tell it was another small bag of some sort
10 because you could feel the knot or the hardness of it where it
11 had been tied together but did not know that it was drugs or
12 anything what it was exactly but we just knew that it was there
13 and it needed to be retrieved due to safety issues.

14 Q And that was going to be my next question. What is the
15 importance of why do you search someone prior to putting them in
16 a patrol vehicle?

17 A Because even though they are handcuffed they still have
18 the ability to get their hands into their waistband or in their
19 pants and actually they can pull weapons out or they can pull
20 evidence out and actually destroy it so you can not recover it
21 whenever you get to the detention center to retrieve it.

22 Q And did you transport the defendant to the Union County
23 jail?

24 A Yes, I did.

25 Q Before we get there I do want to ask you, did you have

1 any prior knowledge or prior dealings with the defendant?

2 A I had spoke to him one time before in a driveway and he
3 had told me his name that day and all and we had a short
4 conversation and that's the only the prior knowledge or contact
5 I had with him.

6 Q Were you aware of any criminal activity in the past by
7 the defendant?

8 A No.

9 Q What about any dealings with drug possession by the
10 defendant?

11 A Of course I had people say, hey, this guy has had prior
12 drug charges or stuff like that but as far as me having personal
13 interaction with him dealing drugs or anything like that we had
14 no prior interaction.

15 Q But did you know working in the law enforcement did you
16 know this defendant was involved in that?

17 A Yes, I knew he had priors.

18 Q Okay. I am going to move now to the Union County Jail.
19 Did you -- when you transported the defendant was it routine
20 transport?

21 A Yes, it was just the short five minute drive from
22 Jonesville to Union County Jail where we take him inside and
23 begin the booking process.

24 Q And were you met by a jail officer that assisted you or
25 did the booking process for this defendant?

1 A Yes, since we are going to the booking area we have
2 some more paperwork that we have to fill out and I was met by
3 the jailer and informed him that he had some kind of small bag
4 concealed on his person.

5 At this point they take him into a separate room where they
6 did the actually strip search of him to retrieve it just so they
7 are not carrying it in the jail and for medical purposes so that
8 nothing happens.

9 Q And did you -- let me back up. Do you recall the name
10 of the jailer? Was it Justin Littleton that assisted you in the
11 booking?

12 A Justin Littleton, yes.

13 Q And did the two of you both do the search of the
14 defendant at the jail?

15 A Yeah, per the policy you have to have two people in
16 there. So I went in there with him and stood by while he
17 instructed him how to undress and to do the strip search.

18 Q And what do you recall about that interaction with the
19 defendant when that search was being conducted?

20 A When it got time to actually took his pants off and got
21 time to bend over or to cough he kept wanting to walk away or
22 walk up against to the corner of the wall and didn't want to
23 actually want to cooperate and eventually he did and when he did
24 a small bag of cocaine fell out of his rectum onto the ground.

25 Q And did you make any observations about the bag?

1 A It was a small bag and it did actually come out of his
2 rectum when he squatted.

3 Q And did you know that just by seeing it or was there
4 any other description of the bag?

5 A Yeah, on the bag itself was a little bit of feces where
6 it came out.

7 Q And what was the defendant's demeanor while this was
8 going on?

9 A He was real combative. Didn't really want to
10 cooperate. Kept trying to get away from the situation while we
11 were asking him to do stuff.

12 Q And was there any video to your knowledge in that area
13 of the jail?

14 A Not to my knowledge. There is not a video camera in
15 the area where they actually do the strip search.

16 Q Was this like a bathroom location of the jail?

17 A Yeah, there's a shower in there and a toilet so
18 afterwards they can clean up before they actually dress out and
19 come outside.

20 Q At any point was the defendant Mirandized?

21 A Yeah, we -- when I placed him in the car I always read
22 him the Miranda.

23 Q Was there any statement given by the defendant or any
24 questioning on your part?

25 A No. He really didn't want to talk much at all. He

1 kept saying there wasn't nothing down there. There is nothing
2 down there.

3 Q Was this during the transport?

4 A During the transport.

5 Q Did he make any statements about calls?

6 A After everything was found he kept telling the jailer
7 call Sherfield. Call Sherfield.

8 Q And do you have any knowledge who Sherfield or what
9 that meant?

10 A Yeah, Sherfield is the -- I think he's the captain in
11 the sheriff's office. He actually works in narcotics.

12 Q Is it your understanding he would work with a
13 confidential informant?

14 A He quite often does interview them or talk to them.
15 Try to see if they want to help out.

16 Q And in just not going too much into this, was the
17 evidence you recovered was it packaged in a BESTPAK and secured
18 in the evidence room at the Jonesville Police Department?

19 A Yeah, everything was recovered and put into evidence
20 bags and logged in and dropped into evidence for further
21 testing.

22 MS. GILMER: If I could have just one moment Your
23 Honor.

24 Q And Officer Montjoy, did you have any kind of in-car
25 recording system in your vehicle or any bodycam, body cameras

1 on that date?

2 A At this point we did not have body cameras yet in
3 Jonesville and the in-car system was actually down. We don't
4 control fixing them. We can't fix them. We are not certified
5 to fix them so if they go down we have to wait until a certified
6 technician can fix them.

7 Q And did you actually submit an affidavit regarding that
8 problem?

9 A I did.

10 Q Okay.

11 MS. GILMER: And Your Honor, if I may approach the
12 witness?

13 THE COURT: Yes.

14 Q I am showing the witness what has been marked as
15 Exhibit One. Do you recognize that?

16 A Yes. This is the affidavit that I signed and certified
17 that the recording system was down in that vehicle that day.

18 Q So it was actually the day of the traffic stop?

19 A Right.

20 Q And did you include that in the original case file?

21 A Yes, it's in the file.

22 Q Okay.

23 MS. GILMER: And Your Honor, I would just move to
24 make this a Courts Exhibit, number 1 and just publish
25 it to Your Honor.

1 (WHEREUPON, a document was handed to the Court.)

2 MS. GILMER: Thank you. I have no further
3 questions at this time Your Honor.

4 CROSS EXAMINATION

5 BY MR. DELANEY:

6 Q Good morning officer.

7 A Good morning.

8 Q So from what I can tell from the report, March 14th,
9 2017 that's the day of this incident, correct?

10 A Correct.

11 Q Okay. And do you remember -- well, I guess before I
12 get into this -- Jonesville Police Department you had been
13 working there as of this date over a year, 15, 16 months?

14 A Yes, sir.

15 Q Okay. And then you had worked in law enforcement for a
16 number of years before then?

17 A Yes, sir.

18 Q We've heard that you left the Jonesville Police
19 Department in December of last year, is that correct?

20 A Correct.

21 Q And now you are not working in law enforcement any
22 more?

23 A Not at this time.

24 Q Did you leave on your own or was that a decision made
25 by somebody else?

1 A Right. I left on my own. Yes.

2 Q Why did you leave?

3 A I just -- I was only working part time there. I
4 actually own a tree business which is a full time job.

5 Q Okay. So you were actually -- you were part time? You
6 were doing part time at Jonesville?

7 A We did roughly I think it was anywhere from 30 to 40
8 hours a month.

9 Q A month?

10 A Yeah, just to keep our class one going.

11 Q Okay. So your primary job at that time was working
12 your business?

13 A Right.

14 Q And you said that is a tree business?

15 A Yes.

16 Q Okay. And this would keep your -- what you said your
17 classification?

18 A Yeah, your class one certification.

19 Q You had to work so many hours a month?

20 A Right.

21 Q And how long had you been doing -- is that from your
22 15, 16 months or so at Jonesville Police Department is that how
23 your employment was, part time?

24 A Yes. When I was hired that is what it was. It was
25 just a part time position.

1 Q Now, do you remember on this particular day was this a
2 weekend or week day?

3 A It was a week day.

4 Q Tuesday, does that sound right?

5 A Yes.

6 Q Okay, and I think we heard it was late afternoon, 4:40
7 p.m.?

8 A Yes, there about's.

9 Q That is according to your report, is that right?

10 A Right.

11 Q Okay. And do you remember the weather that day?

12 A Yes, it was sunny that day. It was not raining or
13 anything.

14 Q No rain that day. Okay. The best you can remember it
15 was a clear day?

16 A Yeah.

17 Q Sun was out?

18 A Yes.

19 Q And I am trying to get an idea --

20 MR. DELANEY: May I approach, Your Honor?

21 THE COURT: Yes.

22 Q I want to hand you up a full head shot of that's the
23 Jonesville area/Union County, Main Street; is that correct?

24 A Yes, it is.

25 Q Is that overhead photo there does that -- would that

1 show where you were located that day?

2 A I was located on South Main Street but it's not where
3 you have the mark.

4 Q Well, you can disregard that. I am just asking you
5 where -- from your testimony, where you're saying you were at?

6 A Yes.

7 Q Could you show me where you were at? Could we have the

8 --

9 MR. DELANEY: May I approach, Your Honor.

10 THE COURT: You may approach.

11 A We were located right there. (Indicating).

12 Q Okay.

13 A And that's the front yard of the house.

14 Q If you show the judge. Were you sitting stationery
15 there?

16 A Yes, stationery.

17 Q And then you saw -- is it your testimony you saw Mr.
18 Fleming's car come up?

19 A Moore Street approaching Main.

20 Q And take a right on Main?

21 A Yes, sir.

22 Q And when he pulled -- so were you able to see the car
23 when he pulled up to the intersection?

24 A Yes, you can see Moore Street. You have a pretty good
25 line of sight because it is not really that big of a roadway and

1 there is no big obstructions.

2 Q What side of the road were you sitting on? Were you in
3 the road?

4 A I was sitting on the front yard of that house between
5 their and the sidewalk right there. (Indicating)

6 Q What direction would you be facing?

7 A We would be facing going towards Union, not going
8 towards Jonesville.

9 Q And I guess that's I am trying to think -- south.

10 A South. Traveling south.

11 Q Okay. All right. And you said you saw -- you saw a
12 crack in the windshield?

13 A Yes, like I said, it was size of a small basketball
14 with the spidering of it where something had struck the center
15 of it and spidered out.

16 Q And how far would you say you were away from the car
17 when you noticed that?

18 A Across the front yard to where that car was on the road
19 probably 60 feet.

20 Q And that's when you decided at that point to make a
21 traffic stop?

22 A Yes.

23 Q And that was for, you said, you thought it was a safety
24 concern for the driver and other drivers?

25 A Right. Yes.

1 Q If it's a smaller crack in the window -- I guess a
2 crack windshield is that more discretionary as far as officers
3 whether or not to stop a vehicle?

4 A It's all an equipment violation. Your windshield is
5 suppose to be intact at all times but in this case it's a big
6 safety issue because it obstructs his view.

7 Q Okay. And we heard testimony that you you submitted an
8 affidavit on the day of March the 14th that your in-car video
9 system was not properly working, is that correct?

10 A Correct.

11 Q From what you can remember did it stop working that day
12 or was it not working before then?

13 A It was not working prior to that and I had made note
14 and told my command staff that it wasn't working. But
15 Jonesville is a small agency. There's only so many cars.
16 Basically one per person that works there. So we didn't at that
17 time have a spare cars to operate out of.

18 Q Okay. So how long had you been going without an in-car
19 video system would you say?

20 A I would say maybe two months or so. They didn't put it
21 as a pressing issue.

22 Q And you -- and Jonesville PD at that time you guys were
23 not required to wear any type of a body cam?

24 A Right. Body cam policy and body cams hadn't come out
25 at that point.

1 Q Can you recall when that policy changed?

2 A It was probably toward the summer time. I can remember
3 summer.

4 Q So at least a few months after?

5 A Right.

6 Q -- March?

7 A Yes.

8 Q And did you ever -- did you ever understand what was
9 wrong with the in-car video?

10 A It had something to do I think with the recording
11 system of it. Like actually taking it from the camera back down
12 to the hard drive recording. Some kind of communication
13 problem.

14 Q And you have a company here in town that fixes for you
15 all?

16 A That I really don't know. That is not in my job
17 description there.

18 Q Do you I guess -- do you let your supervisor --

19 A Right. The Chief it's a small agency.

20 Q If something is wrong with the equipment?

21 A Yes.

22 Q Okay, and you're just hoping that you get it back
23 pretty soon it sounds like?

24 A Correct.

25 Q Okay. And you hadn't had any -- what made you think

1 about doing the affidavit on this particular day? Had you done
2 prior affidavits in cases that you had?

3 A If we had a case that needed an affidavit then we did
4 them as far as general section cases, yeah.

5 Q Okay. And so you get in behind Mr. Fleming and do you
6 follow him for any period of time?

7 A We -- I activated the blue lights as soon as I pulled
8 off to pursue him.

9 Q Okay. And had you up until that point I know you had
10 testified that you did not as far as you knew of Tyrone Fleming
11 but you hadn't had many dealings with him in the past?

12 A Right.

13 Q Prior to stopping him that day was there any type of
14 investigation you were a part of that was focusing on Tyrone
15 Fleming?

16 A No.

17 Q And you get behind him. He stops. He pulls over, is
18 that correct?

19 A Right. I get behind him and he pulls into a driveway
20 right there to the right and that's where I make initial contact
21 with him.

22 Q Okay. And you determine that it's not his vehicle,
23 correct?

24 A Yes. Yes, he told me. He gave me the registration.
25 It was registered to somebody else.

1 Q Okay.

2 A And when you stop a vehicle you call in the tag number
3 as you are stopping it so dispatch gives it back to you pretty
4 quick.

5 Q And the vehicle belonged to a gentleman by the name of
6 Cedric Woods, is that correct?

7 A That might be the name on it, yeah.

8 Q And you know that name, is that right?

9 A I don't know Cedric. I never met Cedric.

10 Q Okay, and in the law enforcement community it's not
11 someone that you're --

12 A I never had any dealings with him or anything like
13 that.

14 Q And you were not part of any investigation that day
15 focusing on Cedric Woods?

16 A No.

17 Q Okay, and so you get some basic information from Mr.
18 Fleming. He tells you he doesn't have a license on him. You
19 run his license, correct? It comes back suspended?

20 A Correct.

21 Q At that point I think we heard you get Mr. Fleming out
22 of the car, is that correct?

23 A Yes.

24 Q Okay. And do you then -- when you get him out of the
25 car do you search him at that point?

1 A At that point I just do a quick Terry frisk of his
2 front pockets.

3 Q You are doing a quick pat down. You're looking for any
4 weapons?

5 A Any large weapons that are evident at that point.

6 Q Okay. And then do you put him in cuffs at that point?

7 A No, I don't.

8 Q Okay and where is?

9 A He's at the front of my patrol unit.

10 Q Do you have any other -- is any other officers arriving
11 at that time?

12 A There was an Officer George that worked at Jonesville
13 for a short period of time that responded on scene as backup
14 officer for me.

15 Q You said that is is Officer George?

16 A Yeah.

17 Q Was there another officer that arrived too?

18 A The Chief arrived at the end of it, but everything had
19 already been finished up at that point.

20 Q So when the Chief arrived was Tyrone I guess getting
21 ready to be transported at that point?

22 A At that point I mean everything had been decided he was
23 going to jail and all that and when the Chief arrived we are
24 doing his search of his person, placing him in cuffs and
25 carrying him to jail.

1 Q At what point does Officer George arrive?

2 A He arrives when I do the initial search of the vehicle.

3 Q So George is there when you are searching the vehicle
4 and then when you search Tyrone again?

5 A Right.

6 Q Okay. And he is with Jonesville? He was with
7 Jonesville Police Department?

8 A Yeah, he was at Jonesville and then I think he was
9 working at sock factory at that time after he left there. I
10 don't really know. He is not from here. I don't know him
11 personally.

12 Q What was he doing while you were searching?

13 A He actually helped me search the car a little bit and
14 then he was in and out of the cars as we were searching.

15 Q So after you searched the car you said you found some
16 marijuana residue in the car?

17 A Right.

18 Q Was it -- did you collect what you saw in the car?

19 A No, it was like in the carpet and stuff like that. I
20 didn't actually take a fine tooth comb and scrape it up or
21 anything like that.

22 Q So after going through the car do you find anything
23 else in the car besides you say some-residue in the carpet?

24 A I think that's all. To the best of my knowledge that's
25 all we found.

1 Q No paraphernalia?

2 A I don't think so.

3 Q No large amounts of money?

4 A No. It would all have been logged if it was found.

5 Q No other drugs?

6 A Right.

7 Q Okay. So you leave the car. Then you focus back on
8 Tyrone at that point?

9 A Yes.

10 Q Okay. And he is searched more thoroughly at that
11 point, is that right?

12 A Right.

13 Q Okay. What type of a search are you doing? You're
14 doing a little more than just going through his pockets at that
15 point?

16 A Right, I'm not emptying out his pockets but I am doing
17 a thorough pat down of his person to make sure there's nothing
18 concealed under his waistband or in his pants or anything like
19 that that he would be able to reach or get to even though he did
20 have handcuffs on.

21 Q So when you are searching him at this point he's cuffed
22 at that point?

23 A No. No, I did not cuff him for the fact if he did have
24 a small bag in his crotch area I always give him the option to
25 retrieve it themselves versus me having to put my hand down

1 their pants and retrieve it or them destroying it on the way to
2 jail and having to do a strip search at the jail.

3 Q Right. With your training when you do a search
4 incident to arrest, its not common-- you're not trained to be
5 going into underwear at that point, is that correct?

6 A Yeah, it's a Terry frisk is the proper name of it where
7 you are frisking to make sure there is no large weapons or
8 anything.

9 Q And you are doing that outside of the clothing?

10 A Correct.

11 Q If you think a more thorough -- if you think somebody
12 is concealing something -- you handle cases where people have
13 things in their rectum or in their genital area. They can hide
14 it in some of those areas. If you suspect that there's other
15 types of searches that will be done, correct?

16 A Correct. When they get to the jail they can actually
17 do a strip search of them before they dress them out and change
18 them in to this uniform at the jail.

19 Q Right. And that's where officers they can check or
20 have someone squat and check in someone's rectum and genital
21 areas, is that correct?

22 A Yes, and also it becomes a health issue in case they
23 have illegal drugs in there and it could erupt in the body and
24 cause them to die.

25 Q And that's not something that would be done at the

1 scene when you are searching somebody incident to arrest,
2 correct?

3 A Right. We would not strip search at the scene.

4 Q Right. If someone is suspected to have something in
5 their rectum area would an officer try to retrieve something
6 like that at the scene or would that be referred to at the jail?

7 A That would be referred to the jail where they could
8 actually strip search and possibly it would extract itself
9 whenever they did bend down verses having to take him to the
10 medical facility and have a doctor retrieve it.

11 Q Okay, and you testified when you're searching Tyrone it
12 was in the -- I think you described it as at crotch/groin area?

13 A Crotch/groin.

14 Q You felt what you suspected was a small piece of a
15 baggy, is that correct?

16 A The marijuana bag, yes. I felt it first and he
17 retrieved it for me and then throughout the the rest of the
18 process I could feel another small baggy which was in the rectum
19 area and you could actually feel the knot where the bag had been
20 tied together.

21 Q So the marijuana you said you felt in the crotch area
22 and at that point when you felt it you asked Mr. Fleming to
23 retrieve that?

24 A Yes.

25 Q Okay. And so basically you told him to go into his

1 pants and pull it out?

2 A Right.

3 Q Okay, and did he do that?

4 A Yes, he did retrieve it for me.

5 Q Okay. And you said that was marijuana?

6 A Yes.

7 Q And how small, I guess a gram or so, does that sound
8 right?

9 A I have the actually sheet right here in front of me.
10 It was one point one gram.

11 Q It was a small amount?

12 A Yes.

13 Q And then you testified that you felt another baggy, is
14 that correct?

15 A Yes.

16 Q You said in his rectum area?

17 A In the rectum/crotch area, yes.

18 Q Now the rectum you felt it in his butt?

19 A The rectum whole, the butt hole.

20 Q Right. Why -- why were you doing that invasive of a
21 search at that time? Wouldn't that be something that would be
22 better done -- if you suspect he has something in the rectum why
23 not have a more thorough search? Why not have a cavity search
24 or strip search done at the jail? Why were you doing that on
25 the scene?

1 A Because even though they are handcuffed behind him
2 there's a possibility he could possibly still reach down there
3 going to the jail and destroy something or he could possibly
4 pull out a small knife or some kind of weapon if it's back
5 there.

6 Q Are you -- you're not trained to do that, are you, to
7 do that invasive of a search on someone at a traffic stop?

8 A They train you to pat down their legs up to their
9 crotch area or the waistband and the crotch area, yes, where
10 everything can be concealed on a person.

11 MR. DELANEY: I have no further questions.

12 MS. GILMER: I just have a few Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. GILMER:

15 Q Officer Montjoy, would you consider Jonesville Police
16 Department to be a small agency?

17 A Yes, it's a very small agency.

18 Q What would you estimate as far as how many officers on
19 the road at once?

20 A If they're overlapping shifts there maybe two. But the
21 majority of time it's only one person working.

22 Q And you I believe on direct said that the defendant had
23 on jeans or pants and then some shorts on underneath, is that
24 correct?

25 A Yes.

1 Q In your experience often times do individuals where
2 some type of shorts under their pants to conceal items?

3 A Most of times if they are concealing something it is
4 going to be in the pants under the pant that they are wearing on
5 the exterior, yes.

6 Q Is that why you do that thorough of a search, not just
7 the outer clothing?

8 A Yes.

9 Q And Mr. Delaney was asking you about the search when
10 you felt the knot on the baggy of the cocaine. You didn't do a
11 full cavity of the defendant at the scene did you?

12 A No, I did not actually go in to any of his clothing or
13 on his person or any cavity of his person.

14 Q So when you felt this knot. Was it over the clothing
15 of the shorts that he had on underneath his pants?

16 A Yes.

17 Q And because of where you suspected that baggy to be is
18 that why you transported the defendant to the jail instead of
19 trying to retrieve that property then?

20 A Right. Yes.

21 MS. GILMER: I have no further questions Your
22 Honor. Thank you.

23 THE COURT: Thank you sir. You may stand down.

24 MR. DELANEY: Judge, at this time if the State
25 doesn't have anyone else to call we would call Tyrone

1 Fleming.

2 THE COURT: Okay.

3 TYRONE FLEMING, called as a witness, having been
4 duly sworn by the clerk, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. DELANEY

8 Q Would please state your name for the record?

9 A Tyrone Fleming.

10 Q And Mr. Fleming I want to refer your attention back to
11 the day that you hear us talking about already today, March the
12 much 14th, 2017. Okay. Whose car were you driving that day?

13 A Cedric Woods.

14 Q Do you remember the condition of the car specifically
15 was there any damage to the windshield?

16 A I'd seen a little minor scratch. I'd seen like a small
17 scratch on the passenger's side above the sun visor. It was
18 estimated two inches. Just a little right above the passenger's
19 side sun visor.

20 Q How big was it would you say?

21 A Like maybe two or three inches. Just a little bitty
22 scratch on the passenger side.

23 Q And did you ever get a ticket that day or citation for
24 a cracked windshield from Officer Montjoy?

25 A No, sir.

1 Q Okay. Now, Officer Montjoy got behind you that day, is
2 that correct?

3 A Yes, sir.

4 Q And did he turn on his flashers?

5 A Uh-huh.

6 Q You have you to answer yes or no?

7 A Yes, sir.

8 Q Did you pull over?

9 A Yes.

10 Q Okay. What did you -- what happened after you pulled
11 over?

12 A I pulled over. Officer Montjoy got out of the car,
13 came to me.

14 Q And then I guess did he give -- did you give him or did
15 you tell him you didn't have a license or didn't have one on
16 you?

17 A Yeah. I told him I didn't have my license on me.

18 Q Okay. Did he then go run -- you heard he ran your
19 information?

20 A What he did, he said I already know you have no license
21 from the last time when I went and run your name and then he
22 went to his car.

23 Q Okay. At some point does the officer have you get out
24 of the car?

25 A I stayed inside the car until another officer came.

1 Q Okay. Did those officers at some point did they get
2 you out of the car?

3 A Yeah, Montjoy.

4 Q And when he gets you out of the car do you get patted
5 down?

6 A I did. Yeah, I get patted down.

7 Q Okay, do they then search your car?

8 A Uh-huh.

9 Q Is that a yes or no?

10 A Yes, sir. Yes, sir.

11 Q And do you then are you -- where are you at now? Are
12 you in the front the car or the back the car?

13 A On the back. In front of his cruiser camera on the
14 car.

15 Q Okay. Where is the other car at?

16 A My car?

17 Q No, you said there was another officer that arrived?

18 A The car, they were on the side of the road.

19 Q Okay. Okay. What happened? Did the officer search
20 you again?

21 A Yeah.

22 Q What happens then? What happens when the officer
23 searched you again?

24 A He get through searching the car. I am going to search
25 you again. So I am faced like this (indicating), so he grabbed

1 -- he went down like this and he came up and grabbed my genital
2 area. He grabbed me. What is that? That's when he put the
3 handcuffs on me and went behind me and start putting his hand up
4 my rectum. He got something and he start pushing his hands
5 forward like up and down through my pants. I had shorts on
6 where he was through the pants like pushing his hand up in there
7 telling me you got something up here. You got something. In my
8 rectum pushing his fingers up and he grabbed my testicle. What
9 are you doing to me? He threw the handcuffs on me and proceeded
10 on pulling his hands up my rectum. Then I was placed -- I was
11 put in the car and transported.

12 Q Okay. Did you ride in the front seat or the back seat?

13 A Front seat.

14 Q Okay, and then you were taken to the jail?

15 A Yes.

16 MR. DELANEY: I have no further questions.

17 MS. GILMER: Your Honor, I have just a few
18 questions.

19 CROSS EXAMINATION

20 BY MS. GILMER:

21 Q All right Mr. Fleming, so you were driving. This was
22 on March 14th of 2017?

23 A Yes, ma'am.

24 Q And you admit to driving that day?

25 A Yes, ma'am.

1 Q Okay. And you knew your license was suspended?

2 A Yes, ma'am.

3 Q All right. And you didn't have a driver's license to
4 give the officer, is that correct?

5 A Yes, ma'am.

6 Q And you said you saw a scratch. Was this on the
7 windshield of the vehicle you were driving?

8 A Yes, ma'am, above the sun visor on the passenger side.

9 Q And what kind of vehicle was this you were driving?

10 A Grand Marquis.

11 Q All right. And you said the was just above the sun?

12 A Uh-huh.

13 Q But you did see something on the windshield? There was
14 a problem with the windshield?

15 A He brought it to my attention. I was like, really. It
16 wasn't busted. It was just a little bit of a scratch. He said
17 I pulled you over for a cracked windshield. That's when I
18 noticed a little bitty scratch that he was talking about, but I
19 didn't see it.

20 Q So Officer Montjoy did tell you when he pulled you over
21 it was for a cracked windshield?

22 A After. After he asked me about my license being
23 suspended he did tell me when he was going walk off. Yeah, by
24 the way, I pulled you over for that little cracked windshield by
25 the way.

1 Q By the way. As he was walking over?

2 A Walking away to get back to his car.

3 Q And you were driving with a suspended license?

4 A Yes, ma'am.

5 Q Okay. And how long had your license been suspended?

6 A I never had any license. I never had any license.

7 Q How old are you Mr. Fleming?

8 A I'm 29.

9 Q All right. And at that point Officer Montjoy he goes
10 and he runs your information, correct?

11 A Uh-huh.

12 Q All right, so he comes back and he gets you out of the
13 car?

14 A Uh-huh.

15 THE COURT: Sir, please answer yes or no.

16 A Yes. Yes. Sorry.

17 THE COURT: She can't record that.

18 Q So he gets you out the car and at that point he tells
19 you he smelled marijuana, is that correct?

20 A No.

21 Q Okay. When did he tell you he smelled marijuana?

22 A He never did tell me he smelled marijuana.

23 Q He never told you smelled marijuana?

24 A No.

25 Q But he started searching your car, is that right?

1 A Yes.

2 Q And there was some marijuana residue in the car?

3 A I ain't seen none. That's what he said. I was taken
4 to jail. I never know.

5 Q Okay. Had you smoked any marijuana in that car?

6 A No, it ain't my car.

7 Q But you did have marijuana on your person, correct?

8 A Yes.

9 Q So you admit to possessing marijuana that day?

10 A Yes.

11 Q And you had that marijuana in a baggy?

12 A Yes, a little grocery sack. Yes.

13 Q And that was -- that marijuana was concealed under your
14 shorts?

15 A No, genital area.

16 Q Where on your genital area?

17 A Under my second.

18 Q Under what?

19 A Under up -- under my -- right here. (Indicating). In
20 my crotch area.

21 Q Okay, so you had it hidden there?

22 A It was there.

23 Q And you had on pants. You had jeans that day?

24 A I had on basketball shorts on me and Nike sweatpants
25 and brief boxers.

1 Q So you had three different articles of clothing or two?

2 A Three.

3 Q Three. So you had a sweatpants and then basketball
4 shorts and then boxer shorts?

5 A Yes.

6 Q Okay. And then Officer Montjoy when he was searching
7 you he had his hands over the basketball shorts, correct?

8 A Over the Nike sweats.

9 Q Over your Nike sweats. That's what you had on outside.
10 Okay, so that's where he patted you down. Was that first pat
11 down?

12 A That's the second pat down.

13 Q So he was over your Nike pants.

14 A Uh-huh.

15 Q And that when he felt the marijuana, correct?

16 A Yes.

17 Q All right. And he actually allowed you to get the
18 marijuana out, is that right?

19 A Yes, after he grabbed me I was like, oh, I'll get it
20 for you. That's I wanted him to stop. So I gave him the baggy
21 because I wanted him to stop. Get his hand off.

22 Q So your saying he grabbed you. Did he grab your penis?
23 Did he grab your testicles? Where did he grab you?

24 A He grabbed my penis and testicles lifting them up.
25 That's how I knew felt the marijuana right there.

1 Q Okay, so he grabbed them full hand, grabbed your
2 testicles. Okay.

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

4 Q And then he pulled them up and then did he allow to you
5 get the marijuana out?

6 A Yes, ma'am.

7 Q Okay. So you pull out the marijuana after he allowed
8 you to get it out?

9 A Yes, ma'am.

10 Q All right. And you gave him the marijuana?

11 A Yes, ma'am.

12 Q And we are talking about what a gram of marijuana, is
13, that correct.

14 A Half a gram.

15 Q About half of gram. How much would that be to smoke?
16 How far would that get you?

17 A I don't know.

18 Q Okay. And you not only had marijuana but you also had
19 cocaine on you, is that correct?

20 A No.

21 Q You didn't have any cocaine on you that day?

22 A No. No.

23 Q All right, well where did this cocaine from they found
24 at the jail?

25 A When they wanted the shake down it was on the ground, so

1 I kicked it out of the way (indicating). I was like, do you see
2 this. I was like -- because I was upset. So then they finally
3 unleashed the handcuffs and I take off the clothes and squat and
4 cough against the wall and they gave me jumpsuit and told me
5 come on. That was it.

6 Q Okay. I'm not quite understanding. I'm not following
7 you there. So walk me through it again. You're saying it was
8 on the ground at the jail or at the traffic stop?

9 A It was in the jail in the shakedown cell where they
10 take everybody to where they perform a strip search and dress
11 them out area.

12 Q So was this in a bathroom?

13 A Yes, ma'am.

14 Q All right. Did you see shower in there?

15 A Yes, ma'am.

16 Q So you were in there and you were in there with Officer
17 Montjoy?

18 A Yes, ma'am.

19 Q Was there someone else in there?

20 A Yes, Justin Littlejohn.

21 Q So he was a jail worker that was there?

22 A Yes, ma'am.

23 Q So you're saying when you go into that bathroom there
24 is already a baggy of cocaine laying on the ground. Is that
25 what your testimony is?

1 A It must have been. It wasn't mine.

2 Q Okay. So you just kicked it out of the way and you
3 said at that point you told them, hey, there's some cocaine
4 laying on the ground?

5 A Yes, ma'am. I pointed it out to them and kicked it out
6 of the way.

7 Q And then they stripped searched you is that correct?

8 A Yes, ma'am.

9 Q And did it they allow to you take your clothes off
10 yourself?

11 A Yes, ma'am.

12 Q Okay. And at that point did you do the squat and cough
13 where you squat down and cough?

14 A Yes, ma'am.

15 Q And isn't that when the cocaine fell out?

16 A No, it was already on the ground. It was already out.
17 I didn't even take my clothes off yet. I was still in
18 handcuffs.

19 Q And where was it laying on the floor?

20 A It was like little bit over, a little bit up in the
21 jail on the ground. I kicked it out.

22 Q Where was it the in relation to the shower?

23 A It was about I want to say a foot away from the shower.

24 Q And how is it packaged?

25 A I just seen like a little bag it looked like. Just

1 laying. It looked like almost two grams, two or three grams.

2 To be exact I can't really by looking at it.

3 Q So you think it was about two grams?

4 A It looked like.

5 Q All right, are we talking about crack or was it powder
6 cocaine?

7 A I can't really tell. I can see but I can't really tell
8 it was crack or powder.

9 Q But you know it was about two grams?

10 A It looked like the size.

11 Q All right. And I am just going to go back a minute to
12 this search that happened when you said on the side of the road.
13 So you said that after -- your testimony is that after Officer
14 Montjoy grabbed your penis and testicles he let's you retrieve
15 the marijuana, is that correct?

16 A Yeah.

17 Q And then he goes back over your clothing and pats you
18 down again?

19 A Yes, ma'am.

20 Q In your buttocks area?

21 A Yes, ma'am.

22 Q And at that point you say he starts sticking fingers up
23 inside you?

24 A Yes.

25 Q About how far would you say his fingers went inside

1 you?

2 A All the way in there.

3 Q All the way in?

4 A All the way in.

5 Q So all the way like up to knuckles all the way in your
6 rectum?

7 A In there. In the whole. Like in the whole. In the
8 whole I felt his fingers.

9 Q And what happened to the bag of marijuana -- the bag of
10 cocaine that was up there when he was putting his fingers in
11 there?

12 A This was no cocaine in there.

13 Q So you didn't have any cocaine?

14 A No.

15 Q He's just putting his fingers up your rectum just to be
16 doing that?

17 A Yes, to search.

18 MS. GILMER: Have I no further questions. Thank
19 you.

20 MR. DELANEY: Just some quick questions.

21 REDIRECT EXAMINATION

22 BY MR. DELANEY:

23 Q Did you make any complaints about this to anybody?

24 A As soon as I got released I left several phone calls to
25 Chief of Jonesville, Carl Jennings. Nobody respond. I went as

1 far as calling news channel to try and get them to -- tried to
2 call SLED but the phone went down so I never pursued it no more.
3 But I had hearing right after that for the driving and marijuana
4 so I went to my hearing. I seen the Officer Montjoy there. I
5 told the judge what happened. Explained to him and he told me I
6 need to talk with the Sheriff Carl, the Chief of Jonesville. So
7 I spoke with him. Mr. Carl told me, wait right here. He was
8 going to retrieve Montjoy, but Montjoy never came out and Carl
9 came out and said officer explained to me what he done to you.
10 He performed a cavity search on me and he can do that. So the
11 other officer in the room, I asked him if this -- how he can do
12 that and they said I don't know. Go speak to a lawyer.

13 MR. DELANEY: Okay. Thank you, judge.

14 THE COURT: Have a seat.

15 MS. GILMER: I have nothing further Your Honor.

16 THE COURT: I have here your motion.

17 MR. DELANEY: Thank you judge. First motion it
18 would be the standard motion we would make as far as
19 the stop of the car. We understand there's testimony
20 that there was a traffic violation. My client
21 contends that, you know, there's no dispute that there
22 was a crack in the windshield in this case from either
23 party. The size, what an officer can see that
24 day, I guess that's what would be in dispute. So we
25 would make a motion that there was not probable cause

1 to stop the vehicle. But what I would ask the Court
2 to focus more on in this case here and I think my
3 stronger argument I would contend I have for the Court
4 here today would be the search at the scene. I would
5 argue to the Court that this search that was done was
6 to intrusive. That type of search should have been
7 done not at the road side, not at the scene, not after
8 one has been placed under arrest for driving under
9 suspension and possession of marijuana. If it's
10 suspected that someone -- and the officer testified if
11 you suspect someone has something in their rectum this
12 is -- you know, not that uncommon for police officers,
13 narcotic officers who has had narcotic training to
14 deal with this type of situation. If they suspect
15 something in their rectum I would argue to this Court
16 the officer at the scene shouldn't be going into
17 someone's rectum and looking. That needs to be done
18 in a more secured environment. There needs to be
19 multiple officers. There is protocol to do that. The
20 officer testified that he was -- and in the officer's
21 words he was looking you know with his hands in his
22 butt hole is what the officer testified too.

23 THE COURT: I don't think that was his testimony.
24 I think his testimony was he patted him down back
25 there and what he found was a knot like on a bag and

1 he assumed something was there. He didn't say he went
2 as far as your client says.

3 Now I know the defendant says he did further then
4 that. He went further then that. But that wasn't his
5 testimony. As I recall it he testified that he patted
6 him down back there and checked him back there and
7 felt a knot like on a bag. Something tied up. That's
8 what I recall his testimony. Now your client said
9 something different but that's not what the officer
10 said. Okay.

11 MR. DELANEY: And I -- you know, I just think if
12 they are feeling a knot in his rectum I just don't see
13 how they are not going to far.

14 THE COURT: I don't think it makes any difference.
15 What else have you got to say?

16 MR. DELANEY: That's what I am arguing judge, is
17 that the search exceeded the scope of searching
18 incident to arrest and we ask that anything that was
19 found allegedly later at the jail should be suppressed
20 and that would be specifically the cocaine in this
21 case.

22 THE COURT: I don't need to hear from the State on
23 this one.

24 Let me say first of all, I'm not going to recite
25 all the case law on this. There was something fairly

1 recent on this, South Carolina Supreme Court even from
2 the Federal Court in Michigan, U.S. Supreme Court. If
3 you had a cracked windshield he wants to say it was a
4 couple of cracks up there. The officer said that this
5 was a size of small basketball. That something hit
6 the windshield and cracked it up. They can stop him
7 for that. There is no question there is a safety
8 violation you can't see through it. Furthermore, even
9 if you have a small cracked windshield it can suddenly
10 shatter. Everybody knows once you get a crack in
11 windshield you better go ahead and get it taken care
12 of. It might last for a while but at some point the
13 whole thing can go like a spider all across the
14 windshield. But it's a safety violation. They can
15 stop him if it is not intact and it has got cracks in
16 it. So it was a legitimate stop to check the
17 windshield and he could have given him a citation for
18 it. It wasn't his car. He didn't give a citation for
19 it. He gave some more serious violation is what he
20 charged him with.

21 Now, once he stopped him and he had asked for his
22 license he has no license. He is driving under
23 suspension. Okay, when he check that out he is
24 driving under suspension. Once he found out he's
25 driving under suspension that's a violation of the

1 law. That alone right there gives him cause to arrest
2 him, search him and how he searched him we talked
3 about that, about he had a right to do it. He also as
4 the officer testified that he smelled the odor of raw
5 marijuana and then he said that he saw some scattered
6 around on the floor, a minute amount, but there was
7 something in there. He could smell it. He then -- he
8 had first done a little pat down search of the pockets
9 and that. I guess looking for a weapon to make sure
10 there is no weapon and then had him go to the back of
11 the car. At that point he finds out that he is
12 driving under suspension. Has no license. Not only
13 does he not have it his in possession which is a
14 violation of the law but he doesn't have any. Driving
15 under suspension while your license is suspended is a
16 violation of the law. You can be arrested and taken
17 in at that point and booked.

18 Next he smells marijuana. That's another reason
19 to search. Okay. If he smells marijuana that gives
20 him probable cause, at least suspicion, which is all
21 that is necessary. But I submit to you that would be
22 probable cause if he smells the marijuana and he's
23 trained to smell it and knows what it smells like.
24 Then he does he says a more thorough search. He finds
25 what he feels like is a baggy in his crotch area. He

1 asked him to get it out. Allows him to get it out.
2 The defendant Fleming to get it out. He gets it out.
3 Now he has got marijuana. That is another charge that
4 he can arrest him for and take him in and search him
5 and do a full body search on him. So he has got
6 without a license, number one. He would have probably
7 only ticketed him for a windshield, but he is driving
8 without a license, driving under suspension. He got
9 the marijuana. He can charge him for that. Once they
10 done that obviously they can arrest him and take him
11 in to book him and that's what he did.

12 Now he did say he did a more thorough search in
13 the -- you call it the rectum area, the buttocks area.
14 Checked him down there and what the officer testified,
15 as I recall his testimony, he felt something like tied
16 together in a knot or something like that. So he felt
17 like based on his experience there was drugs in his
18 rectum. He didn't try to get it out then. He took
19 him on in. Now your client gets upset because they
20 searched him and got in his private area. That's what
21 they can do. They have right to do that. So he can
22 complain all day long. They have a right to search.
23 And once they got illegal activity and they are going
24 to arrest him they do a complete search and they did
25 and he gave reasons for that. People get these drugs

1 out and try to swallowed them and then have to take
2 them to the hospital because they swallowed them.
3 It's dangerous to them. They can die so they do what
4 they can to protect them. Even handcuffs wouldn't
5 totally protect them because they still got freedom of
6 their hands. You got one officer in a car. Okay.
7 And so, they take him in.

8 Now of course he has testified -- your client
9 testified, well, there were drugs laying on the floor
10 in there when they took me in there. It was cocaine
11 laying on the floor in a bag. Nobody saw it but me,
12 but I pointed it out to them that it was in there.
13 That's his testimony.

14 Their testimony is that he tried to avoid taking
15 his clothes off and do the strip search thing. He
16 resented that. He got up against the wall and kind of
17 had a problem with all of that. But finally he took
18 his clothes off and when he did squat the drugs fell
19 out of his rectum and there was even feces on the bag
20 itself when it dropped out. No question that it came
21 out of his rectum. Not that it was already lying on
22 the floor. In any event, I guess that's a question
23 for the jury. Let them decide that, which version is
24 true. But that is their testimony. So I am denying
25 any motion to suppress the evidence.

1 I think if you follow it from the beginning, the
2 stop. They had a reason to stop. They had a reason
3 to search. They had a reason to arrest. Once they
4 arrested they have a right to search incident to the
5 arrest and he testified that they're not going to do a
6 full cavity search out in the roadway. They take him
7 to the jail to do that and they did do that.

8 So I deny your motion to suppress. Anything else?

9 MR. DELANEY: That's all I have Your Honor.

10 THE COURT: Okay. All right, no other motions we
11 will be ready for the jury. Do you need a short
12 break?

13 MR. DELANEY: Yes judge.

14 THE COURT: Let's take about five minutes or so.
15 No longer then that because we are already thirty
16 minutes past.

17 MS. GILMER: Yes, Your Honor.

18 (WHEREUPON, there was a brief recess taken)

19 THE COURT: Counsel ready to get started?

20 MS. GILMER: Yes, Your Honor.

21 THE COURT: Bring the jury in. The clerk will
22 swear the jury first thing and then I have a little
23 preliminary instruction to give the jury and then
24 we'll go in to opening statements.

25 Please bring the jury in.

1 (WHEREUPON, the jury enters the courtroom.).

2 THE COURT: Good morning ladies and gentlemen of
3 the jury panel. I apologize for keeping you back in
4 the jury room this long. We had some pretrial matters
5 we had to take care of and finish up before we begin.
6 I would have brought you in later if I realized it was
7 going to take as long.

8 In any event, we are ready to get started now and
9 I will ask the clerk if she will to swear the jury in.

10 (WHEREUPON, the jury panel was sworn in.)

11 THE COURT: Before we actually get started I will
12 give you what I call a preliminary instruction with
13 regard to the format of the trial and what to expect.
14 I expect most of you have not served on a general
15 session jury panel before and this information might
16 be helpful to you in making you feel more
17 comfortable in these unfamiliar surroundings.

18 First thing that will happen after I completed
19 this instruction to you is the attorney for the State,
20 the assistant solicitor, will make an opening
21 statement to you and then the attorney for the
22 defendant will have opportunity to address in an
23 opening statement.

24 Now these opening statements by the attorneys are
25 not evidence but you should pay close attention

1 because they are in essence going to identify to you
2 what they perceive or say what the issues in this case
3 are.

4 After they make their opening statements to you
5 then the State will proceed by presenting their
6 testimony and evidence they want you to consider. The
7 reason the State goes first is that the State has the
8 burden of proof in this case. There is no burden of
9 proof upon the defendant to prove his innocence. The
10 burden of proof is upon the State of South Carolina to
11 prove the charges against this defendant by evidence
12 that satisfies you, the jury, beyond a reasonable
13 doubt before you can determine a verdict of guilt. If
14 the State fails to meet that burden of proof then your
15 verdict must be not guilty. After the assistant
16 solicitor has presented to you the evidence they want
17 you to consider on behalf of the state then the same
18 opportunity will be afforded to defense. The
19 defendant may, but is not required to present any
20 testimony or evidence because the State has the burden
21 of proving the defendant guilty beyond a reasonable
22 doubt. The defendant does not have to prove he is
23 innocent. He is presumed innocent and that
24 presumption stays with him throughout the trial and
25 may only be removed if the State meets its burden of

1 proving the guilt of the defendant beyond a reasonable
2 doubt.

3 Now what is evidence? Evidence is the sworn
4 testimony you hear from the witness stand to my left,
5 exhibits admitted into the evidence for your
6 consideration by me, the presiding judge, and any
7 stipulation or agreement of counsel as to facts. Now
8 exhibits may take many forms such as documents,
9 pictures, video tapes, maps and so for. Stipulations
10 are agreements of facts by the attorneys. If the
11 attorneys enter into a stipulation of fact that will
12 be made known to you and you can consider it along
13 with all the other testimony and evidence in the case,
14 give it such weight that you deem appropriate once you
15 begin your deliberations.

16 Sworn testimony, exhibits and stipulations are the
17 only evidence you may consider in your deliberation of
18 the innocence or guilt of the defendant. You may not
19 consider anything you heard from any other source
20 about this case in making your decision because that
21 is not evidence. After you have heard all the
22 evidence then the attorney's for the State and the
23 defendant will once again appear before you and make
24 what we call closing arguments. We call them
25 arguments because the attorneys are allow at that time

1 to argue their position in an attempt to persuade you
2 of your view or position as to the facts. When you
3 heard final arguments from counsel I will then charge
4 you, which is instruct you as to the law that applies
5 to the issues in this case. You will then retire to
6 the jury room to deliberate and reach your verdict.
7 That's how a case is tried in general sessions court
8 whether it be this case or any other case. Some cases
9 take a half a day or a day. Some cases take weeks but
10 the same format applies in every case. As a trial
11 Judge I have three functions to perform during the
12 trial. I am the presiding officer and therefore see
13 that the trial is run in an orderly manner. I decide
14 based on rules of criminal procedure whether the
15 testimony and exhibits are admissible into evidence
16 for your consideration. At the conclusion of the
17 trial I instruct you as to the law you must apply to
18 the facts in this case in reaching your verdict.

19 You, ladies and gentlemen are also judges in this
20 case. You are the judges of the facts. In other
21 words you determine the truth of the facts in this
22 case. Under our constitution I am not permitted as
23 the judge of the law to have an opinion about the
24 facts. That is not my function and I am not even
25 permitted to express an opinion if I had one as to the

1 facts in this case. So you, the jurors, determine
2 what is the truth of the facts.

3 Now, I do not permit jurors to take notes during
4 the trial because it's my experience that while
5 writing notes you may miss something very important
6 for you to hear and you may fail to observe a witness
7 when testifying. It is important that you pay careful
8 attention to all testimony and introduction of
9 evidence since you must judge the credibility or the
10 believability of the witnesses and the weight to give
11 all the evidence introduced into this case in
12 determining the truth of the facts.

13 Now during the trial the attorneys may object to
14 the admissibility of certain testimony or other
15 evidence. I will either sustain the objection which
16 means I agree and it may not be made part of the
17 record for your consideration, or I will overrule the
18 objection which means as the Judge of the law I have
19 determined that it is admissible as part of the record
20 for your consideration. The mere fact that I have
21 admitted it does not mean that I must believe it or
22 disbelieve it. I simply determined that it is
23 admissible under our rules and it is up to you then to
24 believe it or disbelieve it and to assign such weight
25 to it as you determine to be appropriate.

1 At the conclusion of the trial when we send you to
2 the jury room. The exhibits that were admitted into
3 evidence will be sent to the jury room for you to exam
4 further and to consider. I remind you that one of the
5 most important aspects of your duty as a juror is the
6 oath that you have taken, to well and truly try this
7 case and determine the truth of the facts in this
8 case. That oath once again is a very simple way in
9 saying that you are the soul judge of the facts in
10 this case. As jurors in this case it will be your
11 exclusive duty to determine the facts in this matter.
12 You are to evaluate the evidence that is received
13 during the course of the trial and to give such
14 evidence whatever value, weight or effect that you
15 deem appropriate with the goal of reaching the truth
16 as to these facts. In doing so you will have
17 fulfilled your obligation as jurors and that is to
18 give both the State and the defendant a fair and
19 impartial trial in this matter.

20 Ladies and gentlemen, whatever your verdict in
21 this case it must your unanimous verdict. All 12
22 jurors must agree on the verdict which the foreperson
23 will be authorized to write on behalf of the jury.
24 Ladies and gentlemen, you are not to discuss this case
25 at any time during the trial until I tell you and that

1 will not occur until you received all the evidence and
2 I have instructed you on the law. You should not
3 discuss the case amongst yourselves and you should not
4 discuss it with your family, friends or anyone else
5 that you might see on recess of court. Should you see
6 someone and ask you something about the case you say
7 well, what's wrong with me discussing the case as we
8 go along among ourselves or someone else. The problem
9 with discussing the case as we go along is once you
10 start discussing the case you start forming opinions,
11 and it wouldn't be fair to both sides of this case if
12 you wouldn't wait until you hear all the testimony and
13 evidence and I've instructed you on the law that
14 applies before you start forming an opinion. Until
15 then you should keep an open mind. Wait until you
16 have all the information you need before you start
17 forming opinions in this case. If anyone should
18 directly try to discuss the case with you you should
19 not discuss it with them but leave and report that to
20 me and I will deal appropriately with that person.
21 You report it to the clerk's office, bailiff,
22 whatever, they'll let me know and I will deal
23 appropriately with that person. No one should try and
24 discuss the case with you. If they do I want to be
25 made aware of it.

1 I instructed you yesterday that if there should be
2 any media coverage of this trial please do not read,
3 listen to, watch any media coverage of the trial until
4 after the trial is over. Because you have to decide
5 this case based on the evidence presented in the
6 courtroom only. And again, I remind you that that
7 includes any kind of electronic device you might have
8 to try and find out anything about this case. Please
9 do not do that. There's no way we can assure the
10 accuracy of any account of this trial other than the
11 sworn testimony and evidence that comes in during the
12 trial.

13 I am concerned about your comfort and your ability
14 to see and hear the testimony and the evidence so you
15 you can properly do your job. I try and take a break
16 every hour, hour and a half.. If you need a break
17 before the time a break is taken please raise your
18 right hand and let me know and I will take a break as
19 quickly after that as I can. If you can not see or
20 hear something you need to see or hear during the
21 trial I will try to anticipate that, but some of you
22 are much further away from the witness stand or where
23 the attorneys might be standing. So if you can not
24 please do not hesitate, raise your right hand and let
25 me know and I will make sure that you are able to hear

1 or see so you can properly do your job. If you wish
2 to indicate to the Court other than needing a break or
3 the inability to see or hear please write the message
4 down on a tablet that will be provided for you back in
5 the jury room. Give it to bailiff. The bailiff will
6 give it to me. I will either respond in like manner
7 or I'll bring you back out in the courtroom and
8 respond as the case need be. That's how we should
9 communicate now that you have been sworn as jurors in
10 this case.

11 I'll explain the role of the alternate. Ma'am, the
12 role of the alternate is the same as the first 12
13 jurors chosen and that is to listen carefully to the
14 testimony and evidence because if for any reason any
15 member of the first 12 jurors chosen had to be excused
16 on an emergency basis, it happens occasionally, then
17 you would automatically fill in for the missing juror.
18 You couldn't do it if you hadn't listened carefully to
19 the testimony and evidence. We do ask the alternate
20 to stay in the same seat throughout the trial. And I
21 am going to ask you when you go back in to the jury
22 room, take your first break I will ask you to -- well,
23 never mind. I might do that on my own.

24 In any event, that concludes my opening
25 instruction to you. We are at that part of the trial

1 now where counsel will make opening statements to you.
2 Please listen attentively as counsel addresses you in
3 opening statement. Solicitor.

4 MS. GILMER: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. GILMER: Your Honor, ladies and gentlemen of
7 the jury, on March 14, 2017 Officer John Montjoy was
8 doing routine patrol in Jonesville. He was an officer
9 with the police department there and as he was
10 patrolling he noticed a vehicle, a car coming down the
11 road towards him that had a busted windshield. So
12 Officer Montjoy got behind the car, turned on his blue
13 lights and stopped the car. In the car he made
14 contact with the defendant, Tyrone Fleming. Tyrone,
15 Mr. Fleming was the only person in the car and he was
16 driving the car. Upon making contact with Mr.
17 Fleming, Mr. Fleming told the officer I don't have my
18 driver's license. So the officer goes to step back
19 and run his information through his system in the car
20 to determine is this the individual whom he is telling
21 me to be, does he have a valid driver's license.
22 However prior to stepping back to his car not only
23 does the officer suspect this person does not have a
24 license, he doesn't have a license on him, but he also
25 smells the odor of marijuana. You may hear the term

1 raw marijuana. Meaning marijuana that has not been
2 smoked. And Officer Montjoy he is here today and he
3 is going to speak to you about what occurred that day
4 and I anticipate he is going to tell you that during
5 the stop of the defendant's vehicle he determined he
6 did not have a license, he had smelled that the odor
7 of marijuana and after smelling that he asked the
8 defendant to step out of the vehicle. A search was
9 done of the car. There was some marijuana residue
10 found and Officer Montjoy placed the defendant under
11 arrest for driving under suspension. He determined
12 running that information he did not have a valid
13 driver's license. At that point prior to putting the
14 defendant in his patrol vehicle Officer Montjoy
15 searched the defendant. Not Officer Montjoy is going
16 to tell you why this is done. Why searches of the
17 defendants are done prior to being place in a patrol
18 car with that officer and he is here to tell you about
19 that. He will tell you and I anticipate that during
20 that search not only was a baggy of marijuana
21 recovered from the defendant's person, but also he
22 suspected he had more drugs based upon something that
23 he felt. He felt a baggy. So Officer Montjoy took
24 the defendant back to the county jail after he was
25 arrested to book him in to the jail and because of his

1 suspicion he and a jail officer conducted another
2 search of the defendant. And I anticipate they are
3 going to tell you about how a baggy of cocaine was
4 recovered from the defendant.

5 Now you are going to hear about where these
6 baggies were recovered. It maybe a little sensitive,
7 uncomfortable to a few of you but we anticipate you
8 are going to hear that the cocaine came from the
9 defendant's rectum or buttock's area and the marijuana
10 came from his genital area. So you are going to hear
11 testimony about that.

12 Now you will hear from a few witnesses today.
13 This is not going to be the most complex case and
14 hopefully not the most lengthy case. We anticipate
15 probably be done with this trial today. But you are
16 going to hear from a few witnesses. You'll hear from
17 Officer Montjoy as I told you about. You will hear
18 from the jail officer, Officer Littleton, who will
19 tell you about his encounter at the jail that day with
20 the defendant and you will also hear from a couple of
21 witnesses just to follow the drug trail. The drugs
22 eventually go to the state law enforcement division
23 where they are then tested by a drug analyst. You
24 will hear from that individual as well and he will
25 tell you what results he got after testing the drug.

1 So it is not going to be a very complex trial. What I
2 ask of you and I will have another opportunity to
3 speak with you at the end of this trial and probably
4 going to ask you similar to what I am going to say
5 now. Three important things that I want you to keep
6 in mind.

7 First, is to give the State, to give the
8 defendant, Mr. Fleming a fair trial. The second is to
9 keep your eye on the ball. So important to see that
10 big picture. Not let details that don't matter murky
11 up something that shouldn't be murky up. But keep
12 your eye on the ball.

13 I use to play softball growing up and my poor dad
14 probably still has the bruises to show for it where he
15 would pitch to me and I'd hit balls back and he just
16 got battered. But he would tell me, "Keep your eye on
17 the ball" and that's such an important thing. But
18 most importantly, the third thing I am going to ask of
19 you is to use your common sense. That is the most
20 important thing that you brought in this courtroom
21 here today is your common sense because that's
22 something that nobody can take away from you.

23 So I ask you to listen to the testimony, the
24 evidence presented and take all that back at the end
25 of this case and in to that jury room along with your

1 common sense. At that time the State feels that you
2 will have enough evidence to be able to find the
3 defendant guilty of possession of cocaine, possession
4 of marijuana and driving under suspension.

5 Thank you.

6 THE COURT: Counsel.

7 MR. DELANEY: Thank you, judge.

8 Good morning. Before I get talking a little bit,
9 it's not going to be for too long, but it's going to
10 be a few minutes. As you heard these are opening
11 statements so I am not going to be up here arguing a
12 whole lot right now. That is reserved for the closing
13 part of the case where both sides make this arguments.

14 My name is Eric Delaney. I'm with the public
15 defender's office. My client as you heard is Tyrone
16 Fleming sitting at the table over there. Also sitting
17 at the table is Investigator Gary Barnsworth who works
18 in the public defender's office. I appreciate
19 everybody being here today showing up for jury duty.
20 It's a big deal. It's a big deal to show up. A lot
21 of people don't. You guys obviously answered that
22 call and I know possibly most -- and it's natural --
23 you were picked and I think I saw most heads go down
24 as you walked over here and you were hoping you could
25 get out of here. And that's totally understandable.

1 But you know, this is -- and I think you will see --
2 you guys have an important job. Without you this
3 process of having a trial, having a jury trial it
4 can't work. It can't work without you all.

5 I think I read something in the paper a few weeks
6 ago it was out I think out of Denver. They didn't
7 have enough people to show up for jury duty. So, I
8 think it was the judge just ordered that they had to
9 go out on the street and pick random people to come
10 in. So it's a big deal. The courtroom was full
11 yesterday and you guys are participating members of
12 the community and without you it doesn't work.

13 We all have important jobs in this courtroom but
14 you all have the most important job. As you heard
15 already some preliminary instructions from the judge
16 you all determine what happened. You all determine
17 the facts of this case and ultimately you all
18 determine is Tyrone Fleming guilty or is he not guilty
19 and we'll talk a little bit more about that. Judge
20 Alford has already instructed you about how you come
21 to that decision and what leads you there and things
22 like that. But I just wanted to say, you know, I
23 appreciate you all being here. This case -- I'm not
24 going to promise that it will be done today. It may
25 be. The good thing is you are not on a case that is

1 going to last all week. Things can always move a
2 little slower than we expect at times, but we could be
3 done today. At the latest it will be early tomorrow.
4 You all will have the case. You go back into the room
5 and you start deliberating. So, you know, you will
6 have a case that is going to go pretty fast but that
7 doesn't make it any less important for this process
8 and most importantly for my client. This is still
9 important stuff. We are in General Sessions Criminal
10 Court. It's a big difference between this courtroom.
11 This courtroom does a lot of different things in Union
12 County. It holds criminal general session court, it
13 also holds civil court and a lot of cases come through
14 this courtroom and there is a big difference from
15 what's going to be involved with a civil case versus
16 criminal case. The biggest difference is what they
17 call the burden, the burden of proof. Okay.

18 In this case here today you have heard the State
19 they have the burden. They must prove to you this
20 case. And what is that standard they have to prove,
21 in a criminal case it is beyond a reasonable doubt.
22 Okay. Civil case is a mere preponderance of the
23 evidence. So in a civil case which is usually about
24 money, property, if one sides proves a little bit more
25 than the other side then they met their burden.

1 In a criminal case the burden is much higher. The
2 State has to prove a whole lot more than just a little
3 more. Okay. It is beyond a reasonable doubt.
4 Reasonable doubt has been defined as the kind of doubt
5 that would leave a reasonable person hesitant to act.
6 It would leave a reasonable person not firmly
7 convinced and that's something you are going to hear
8 me talk about more in the closing of this case. Are
9 you firmly convinced? Are you hesitant to act?
10 Because I will tell you if you are you must find my
11 client not guilty.

12 I am going to make it easy on a couple of these
13 cases. I am going to tell you right here right now my
14 client is guilty of driving under suspension. My
15 client is guilty of possession of marijuana. What my
16 client is not guilty of, ladies and gentlemen, is
17 possession of cocaine and that's what we are going to
18 contend that the the State is not going to be able to
19 meet their burden in this case. You will hear
20 testimony in this case. Individuals will get up here
21 and testify. They are going to tell you what they
22 remember happened over a year ago. Okay. And what I
23 want you to ask yourself is what evidence is going to
24 be produced. What could have been produced to
25 corroborate, to back up what is being said on this

1 stand because I am going to contend there's a bunch of
2 things that could have made your job a lot easier
3 today but it wasn't done. What I am going to ask you
4 you to do at the close of this case is yes, find my
5 client guilty of what he is guilty of; driving under
6 suspension, possession of marijuana.

7 Thank you very much.

8 THE COURT: The State call their the first witness
9 please.

10 MS. GILMER: Yes, the State calls Officer Jonathan
11 Montjoy.

12 JONATHAN MONTJOY, called as a witness, having been
13 duly sworn by the clerk, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. GILMER:

17 Q Would you please state your name for the record?

18 A Jonathan Montjoy.

19 Q And were you employed with the Jonesville Police
20 Department on March 14, 2017?

21 A Yes.

22 Q And how long had you been with the Jonesville Police
23 Department?

24 A At that time about a year and four months, a year and
25 five months. Somewhere in there.

1 Q And how long have you been a law enforcement officer?

2 A All together right at about 15 years.

3 Q Would you please tell me about your prior law
4 enforcement experience with agencies you were with and for how
5 long?

6 A I was with Woodruff Police Department which is who
7 actually sent me to the academy right after I turned 21. I was
8 there for almost two years. From there I went to Duncan Police
9 Department where I was there for eight years I think it was.
10 From there to Blacksburg and from Blacksburg down to Jonesville.

11 Q And when you started with Jonesville Police Department
12 were you actually part time or full time?

13 A I was part time. It has always been a part time
14 position.

15 Q And why were you part time?

16 A Actually I own a tree cutting business and that's
17 pretty much my full time job.

18 Q So you decided to be part time when you came to
19 Jonesville?

20 A Yes.

21 Q And have you since left Jonesville Police Department?

22 A Yes, I did.

23 Q And why is that?

24 A To focus more on my full time business and focusing on
25 that.

1 Q And when did you move over to the tree service business
2 for your full time business?

3 A It's always been full time but strictly tree service it
4 was back in December.

5 Q 2017?

6 A Yes.

7 Q And to become a a law enforcement officer what do you
8 have to do?

9 A The State has an academy me that every officer in the
10 State of South Carolina has to complete and pass. When I went
11 it was a nine-week course that you had to pass. At the end of
12 every week you actually had a test and throughout the weeks you
13 had several tests you had to complete and if you did not pass
14 them you were kicked out.

15 Q And after the academy are there continuous classes and
16 courses you have to take to keep your certification as an
17 officer?

18 A Yes, you got to get so many hours a year of continuous
19 education and the state mandates stuff.

20 Q And what subject areas or topics do these classes
21 cover?

22 A They range from all different things. The majority of
23 the extended education stuff that I have been to has been
24 narcotic work.

25 Q Narcotic work?

1 A Yes.

2 Q And were you patrolling with the Jonesville Police
3 Department on March 14, 2017?

4 A Yes.

5 Q And I'm going to turn your attention to around 4:40
6 that afternoon. Do you recall if it was daylight hours?

7 A Yes, it was daylight.

8 Q And do you recall the weather on that date?

9 A It was sunny. It wasn't rainy or cloudy.

10 Q And did you make a traffic stop on a vehicle with a
11 busted windshield?

12 A Yes.

13 Q Okay. Would you please tell the jury about that stop
14 as far as what led to the stop and what you observed on your
15 initial encounter after the stop?

16 A I was sitting on South Main, just a little bit up from
17 Moore Street inside the city limits of Jonesville and I observed
18 a vehicle traveling down Moore Street that did have a busted
19 windshield towards the passenger side of the windshield. At
20 this point I activated the blue lights and conducted a traffic
21 stop on the vehicle. The vehicle came to a stop in a driveway
22 there on Main Street and I approached the driver's door and
23 spoke to the driver. I asked him for his license and the
24 registration for the vehicle. He stated he didn't have any
25 license on him. I got his name and date of birth and went back

1 to the patrol unit and ran his name and date of birth.

2 Q And this traffic stop that you made was that here in
3 Union County?

4 A Yes.

5 Q And when we say busted windshield what do you mean by
6 that?

7 A It was on the passenger side, upper side of it and it
8 was almost as if a baseball or golf ball or something had struck
9 the windshield and caused it to spider into the size of a small
10 basketball.

11 Q And where this was located you as an officer did you
12 feel that it could cause a danger to the driver or other drivers
13 on the road?

14 A Yes, it could cause the windshield to eventually cave
15 in at that point or it could have obstructed the driver's view
16 of oncoming traffic from the side or if there was a car exiting
17 a driveway or something he could not see it due to the
18 obstruction in the windshield.

19 Q And is that an offense that you can routinely stop
20 vehicles for?

21 A Yes.

22 Q And you said you made contact with the driver. Who did
23 you identify the driver as?

24 A Mr. Tyrone Fleming.

25 Q And do you see that individuals sitting in the

1 courtroom today?

2 A Yes, he is sitting at the table over there in the
3 middle.

4 Q Would you describe an article of clothing he is
5 wearing?

6 A A white long sleeve shirt with a tie on.

7 MS. GILMER: Your Honor, may the record reflect
8 the witness has identified the defendant.

9 Q So you said that the defendant told you he did not have
10 a license?

11 A Right.

12 Q Prior to going back to your patrol vehicle to run his
13 information did you make any other observations?

14 A Yes. I could smell the odor of raw marijuana while at
15 the window there at the driver's door coming out of the car.

16 Q Okay, and what does raw marijuana mean?

17 A It is the odor of marijuana that has not been smoked or
18 any other use of it.

19 Q And have you had dealings with marijuana before?

20 A Yes, quite often.

21 Q How would you describe the odor of raw marijuana? Can
22 it be strong or weak.

23 A Yes, it all depends on the quality of marijuana. There
24 is different qualities as far as different growers, but some is
25 stronger than others, but it all still has the marijuana smell.

1 Q And at that point did you step back to your vehicle and
2 run the defendant's information?

3 A Yes, I did.

4 Q And what do you do when you run his information? What
5 all does that entail?

6 A We have to call our dispatch through our radio and give
7 him the name of the defendant or name of the driver along with
8 their date of birth and then they have to run it through this
9 data base, NCIC and they inform us the status of it and the
10 number of it.

11 Q And did you learn anything about the status of the
12 defendant's drivers license?

13 A Yes, informed us that they were suspended.

14 Q And what did you do at that point?

15 A At this points I walked back up to the car and asked
16 Tyrone to step out of the car and step toward the rear of the
17 vehicle and I did a quick pat down of his pockets to make sure
18 there were no large weapons at that point and informed him that
19 I was going to search the car. I could smell the marijuana
20 coming out of the car. So at this point I began to search the
21 car. My backup officer had arrived on the scene and he helped
22 me search the car a little bit. Then he stepped out of the car
23 while I continued to search and he come back. After searching
24 the car I found many light traces of marijuana residue in the
25 carpet of the car. I didn't actually scrape any of it up. Went

1 back to Mr. Flemings there and did a more thorough pat down of
2 his person at that point.

3 Q Let me stop you there. You said you a did pat down the
4 first time for weapons. Why is that done?

5 A Well, it's for officers safety because while we are at
6 the car and some times our back will be turned to the defendant.
7 We don't want him to have access to a weapon that could possibly
8 injury us or worse.

9 Q At that point did you make a decision or had you made a
10 decision whether to place the defendant under arrest?

11 A Yes. When we knew that his license was suspended we
12 made the decision to place him under arrest for driving under
13 suspension.

14 Q And by placing him under arrest would you then
15 transport him to Union County Jail?

16 A Yes.

17 Q And what do you typically do with a suspect prior to
18 transporting him to the jail?

19 A Prior to transporting him to jail we pat him down to
20 make sure -- a little bit more of a pat down to make sure they
21 are not concealing anything in their pants or in their waistband
22 or in their crotch area that they would have immediate access to
23 even though they have hand cuffs on that they can still reach
24 with their hands and grab.

25 Q And did you conduct a search on this defendant?

1 A Yes, I did.

2 Q And was he handcuffed at the time of the search?

3 A Not at the time of the search he was not hand cuffed,

4 Q Do you recall what type of clothing the defendant was
5 wearing?

6 A He had on a pair of pants and up under the pants he had
7 a pair of shorts on.

8 Q And when you were searching him did you locate
9 anything?

10 A Yes. When I was searching him in the crotch area,
11 patting him down on the outside of his clothing I could feel a
12 small baggy. I asked him to retrieve it for me and it was a bag
13 of marijuana, a small bag of marijuana.

14 Q And where was this bag when you felt it?

15 A It was in the groin, crotch area where the leg and
16 the crotch all come together in that area.

17 Q And were you under any clothing when you were
18 conducting this search?

19 A No, everything was done on the outside of his clothing.

20 Q What is the importance of doing this type of search
21 when you arrest someone and prior to transporting them
22 somewhere?

23 A Just so they don't if there is something they don't
24 have access to it so they can destroy it on the way to the
25 jail or if it was a small weapon then they would have access to

1 harm the officer on the way to the jail.

2 Q And when you transport a suspect do you have a cage or
3 what you call a barrier between you and the suspect?

4 A The patrol unit that I was actually driving does not
5 have a cage or barricade in between the front and the back seat
6 so we transport everybody in the front street directly beside
7 us.

8 Q Does that make it easier to watch the individual?

9 A It does. That way there is another level of security
10 because we can actually see what the defendant is doing.

11 Q And so you said that you allowed the defendant to hand
12 you the marijuana once you felt it?

13 A Yes.

14 Q And was there anything that transpired -- did you feel
15 anything else when you were doing a search of the defendant?

16 A After recovering that bag I continued to pat the
17 defendant down and in the rectum area of the butt I could feel a
18 hard knot as if it was a knot on a plastic bag that had been
19 tied. I did not retrieve it. I did not enter his clothing at
20 any time to try to get the baggy.

21 At this point his handcuffs were on and we transported him
22 to the detention center and allowed them to do the strip search
23 at the detention center.

24 Q And Officer Montjoy, as an officer when you are having
25 to search someone or pat down someone is that a pleasant

1 experience for the officer?

2 A No, it is not what we wake up every morning wanting to
3 to.

4 Q So patting down outer clothing is not a pleasant
5 experience?

6 A Right.

7 Q But is it something that is necessary for the job?

8 A Yes, it is required of our job to make our job safe.

9 Q And have you worked narcotic cases before? You
10 mentioned before that you had classes or training on narcotics?
11 Have you worked them before?

12 A Yes. Quite often.

13 Q With searching the groin/genital area, the buttock
14 area, are those places that some times individuals hide weapons
15 or narcotics or contraband?

16 A It is because it's a natural cavity that they have
17 quick access to that they can put stuff in.

18 Q And so when you felt the knot on the baggy -- let me
19 back up on that.

20 This knot that was on the bag, why did that stand out? Why
21 did you think this might be some type of narcotic that he was
22 hiding?

23 A Because when they break down drugs and put them in
24 smaller baggies and then tie the baggies up to seal them because
25 they had to tear a bag to make a smaller bag.

1 Q And so at that point did you feel that knotted bag was
2 in a location where it was not just a simple pat down search but
3 a further search needed to be done?

4 A Yeah, it was something that I couldn't retrieve on the
5 side of the road.

6 Q And did you transport the defendant to the Union County
7 Jail?

8 A Yes.

9 Q And what occurred when you got him to the jail? Is
10 there a booking process?

11 A When we arrived at the jail you go into the jail and
12 there is a booking counter there where there is more paperwork
13 that we have to fill out. And at this point I told the jailer
14 that he had a knot in his rectum area that was possibly another
15 bag of narcotics. So we took him into a room where they do all
16 the strip searches when they suspect somebody has brought some
17 kind of illegal contraband into the jail.

18 Q And at the time -- before we get in to that, at the
19 time were the Jonesville Police Department Officers equipped
20 with any body cameras?

21 A No, we did not have body cameras and did not have a
22 policy on body cameras at that point.

23 Q And where the defendant was taken for the strip search
24 is that somewhere where cameras would be allowed anyway?

25 A No, there would not be cameras in there because this is

1 a shower and bathroom area.

2 Q So this is kind of like a bathroom where the defendant
3 was taken --

4 A Yes.

5 Q -- at the jail. Okay. And officer with the Jonesville
6 Police Department, did you have is an in-car recording system in
7 your vehicle?

8 A No, the in-car camera was actually out of service at
9 that point and I was unable to use it at the traffic stop.

10 MS. GILMER: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 MS. GILMER: Your Honor, I am showing the witness
14 what is going to be State's Exhibit One.

15 Q Officer, what is this that you are looking at?

16 A This is the affidavit that we signed stating that the
17 in-car camera system was not working at the time of the traffic
18 stop.

19 Q And when did you complete that affidavit?

20 A On the 14th, the day of.

21 Q So the day of the traffic stop is when you did that?

22 A Yes.

23 Q And did you include that with the police report and the
24 case file that you have in this file?

25 A Yes, they are all together.

1 MS. GILMER: And Your Honor, if I may approach the
2 witness again.

3 THE COURT: Yes, ma'am.

4 MS. GILMER: And Your Honor, I would ask to move
5 into evidence what has been marked as State's Exhibit
6 One.

7 THE COURT: Any objection?

8 MR. DELANEY: No objection judge.

9 THE COURT: It will be without objection.

10 MS. GILMER: Thank you, Your Honor.

11 (State's Exhibit One, Affidavit, received in
12 evidence as of this date.)

13 Q And Officer Montjoy, that issue with your camera is
14 that something you had experienced before?

15 A Right. I had told my command staff about it, but its
16 not something that we can fix ourselves. You have to be
17 certified technician to fix the camera and as small of an agency
18 as we are we did not have any spare cars to put one down until
19 we could take time to fix it.

20 Q And how small an agency is Jonesville Police
21 Department?

22 A Fully staffed there is four people there, so it's a
23 really small department.

24 Q All right. Are resources limited?

25 A Yes.

1 Q And are you required -- is there any kind of policy
2 where it says you have to have your in-car video system on or
3 working?

4 A No, there is not actually a policy.

5 Q So you just did the affidavit just to show this is why
6 I don't have this, is that correct?

7 A Yes.

8 Q But you not required to have it?

9 A No.

10 Q As far as -- let's talk about when you get back to the
11 Union County Jail. Did you make contact with a booking officer
12 there?

13 A Yes.

14 Q Was that Officer Justin Littleton?

15 A Yes.

16 Q And is that typical policy when you book someone in the
17 jail the jail officer steps in at that point?

18 A Yes, they step in and take over as far as they search
19 him again. Pat them down when they bring them into the jail.

20 Q And did you relay to Officer Littleton your suspicions
21 about the defendant having some type of contraband on him?

22 A Yes, I did, and that's when we escorted him to the
23 room to do the strip search.

24 Q And again, what is the importance of searching a
25 defendant prior to him going in to jail?

1 A Just to make sure he doesn't carry a weapon into the
2 jail or doesn't have something on him that he can destroy in
3 between that short transport.

4 Q Is there an importance of trying to keep inmates from
5 passing contraband to other inmates in the jail?

6 A Yes, that is also an issue there.

7 Q What about any medical issues of any suspect if they
8 have contraband inside their body?

9 A Yeah, often some times they will swallow them or put
10 them up their rectum and if they were to bust open in them that
11 amount could possibly cause them to OD and die due to not taking
12 it in moderate amounts.

13 Q So when the defendant was searched at the jail you and
14 Officer Littleton were in this bathroom area?

15 A Uh-huh.

16 Q And was the defendant clothed when he went in to the
17 bathroom area?

18 A Yes, he still had on all his clothing.

19 Q And will you tell the jury about that process of what
20 happened once you got in the bathroom?

21 A Once we got him into the bathroom they removed -- he
22 removed his clothes himself. We don't physically take his
23 clothes off of him and it's a step-by-step as far as take your
24 shirt off, take your jacket off and when it came to taking the
25 lower clothing off he was wanting to kind of be hostile about it

1 and not comply to start with it. And then once he did have his
2 pants off as far as the process where you have to be bend over
3 and cough and squat he was not wanting to do that. He was
4 trying to kind of walk away and get over towards the wall and
5 then at this point eventually he did cough and squatted and
6 that's when the bag of cocaine came out of his rectum.

7 Q And did you make the any observations about the bag?

8 A Yeah, the bag had a little bit of feces on it when it
9 was laying on the ground there.

10 MS. GILMER: And Your Honor, if I may approach the
11 witness.

12 THE COURT: Yes.

13 (State's Exhibit One and Two, Drugs, marked for
14 identification as of this date.)

15 Q Officer, I am showing you what has been marked as
16 State's Exhibit Three and State's Exhibit Two. When you
17 recovered the marijuana and the cocaine from the defendant what
18 did you do with each of those items?

19 A Both of the items were put into evidence. Dropped into
20 evidence bags. The cocaine was put in to what we call BEST bag
21 and sealed and the marijuana was put into an evidence bag and
22 both of them were dropped into the evidence room.

23 Q And evidence room where is that located?

24 A That is located at the Jonesville Police Department.

25 Q And who has access to that room?

1 A Chief Jennings is the only person.

2 Q And that is a secure location.

3 A Yes.

4 Q And each of those drugs were packed separately, is that
5 correct?

6 A Correct.

7 Q And when you package something do you put the date on
8 it, case number, anything else?

9 A We do. It all has a chain. It has the date, the case
10 number, the date we drop it and where we drop it.

11 Q And to your knowledge does that stay sealed until it
12 goes to SLED or the State Law Enforcement division?

13 A Yes, it stays sealed until it goes there and then they
14 have to document it and that they opened it and tested it.

15 Q And so just to confirm in both exhibits, evidence
16 State's Exhibit Two and Three both of those were packaged and
17 you dropped them off at the evidence location or evidence
18 locker, evidence room at Jonesville Police Department, is that
19 correct?

20 A Correct.

21 MS. GILMER: Your Honor, if I may approach the
22 witness again.

23 Q And just to be clear that is the marijuana that you
24 recovered from the defendant that was in his crotch area?

25 A Yes.

1 Q And then the other exhibit that's what you collected at
2 the Union County Jail what was in his rectum, is that correct?

3 A Correct.

4 Q During the traffic stop did you give the defendant any
5 type of citation at the scene?

6 A No, we did not actually give him a citation for the
7 cracked windshield. We actually once we got to the jail we gave
8 him driving under suspension and his simple possession citation.

9 Q And then once you got to the jail cocaine was
10 discovered was he then arrested for an additional charge?

11 A Right. Then there was additional charge on his booking
12 and we had to obtain a warrant for that.

13 Q And all of this that we talked about happened here in
14 Union County is that correct?

15 A Correct.

16 MS. GILMER: If I may have just one moment Your
17 Honor.

18 I have no further questions at this time Your
19 Honor.

20 MR. DELANEY: Judge, may we request a very brief
21 restroom break?

22 THE COURT: Okay. All right. Ladies and
23 gentlemen of the jury panel we are going to take a
24 short break at this time. Allow you to refresh your
25 yourself during this break. Please do not discuss the

1 the case.

2 I am going to ask juror number 46, Jay T. Coffey
3 to serve as foreperson of the jury. If you will serve
4 as foreperson of the jury and bailiff will put you in
5 the appropriate seat when you come back and keep that
6 same seat throughout.

7 Thank you. Please retire to the jury room. We
8 will take about ten minutes or so.

9 (WHEREUPON, the jury leaves the courtroom.)

10 THE COURT: Officer, you can stand down during
11 the break refresh yourself. You cannot discuss the
12 case with anyone though. Please do not discuss the
13 case. Thank you.

14 (WHEREUPON, there was a brief recess.)

15 THE COURT: Please bring the jury back.

16 (WHEREUPON, the jury enters the courtroom.)

17 THE COURT: Counsel ready to proceed?

18 MR. DELANEY: Yes, judge. Thank you.

19 CROSS EXAMINATION

20 BY MR. DELANEY:

21 Q Good afternoon officer.

22 A Good afternoon.

23 Q We heard during your testimony that you started your
24 police career, career in law enforcement 15 years ago or so?

25 A Right and it was about a month after turned 21.

1 Q And then that's when you went to the police academy and
2 got a bunch of training there?

3 A Correct.

4 Q Is that correct?

5 A Yes, sir.

6 Q Okay. And have you I guess throughout your career have
7 you had to do some continuous training throughout?

8 A Yes, you have to do so many hours a year. So much
9 state mandated stuff.

10 Q Okay. Some of that training that you get at the
11 academy or get continuing training teaches you I guess
12 importance of doing certain type of investigations, how to
13 conduct investigation, what evidence to look for; is that
14 correct?

15 A Correct.

16 Q Okay. And there is a lot of other things to, correct?

17 A Correct.

18 Q Have you had some training with narcotics in the past?

19 A Yes.

20 Q And then have you received training in, you know, I
21 guess locating and documenting evidence?

22 A Yes.

23 Q Received training in writing various types of reports?

24 A Correct.

25 Q Do you receive training in terms of any type of

1 forensic evidence, how to gather that?

2 A Yeah. Just minor training in that because that's
3 normally a crime scene does forensic stuff.

4 Q And things -- you learn during your training things can
5 be sent to SLED and they can analyze or do some forensic
6 analysis there, is that correct?

7 A Correct.

8 Q Okay. And we heard that you were at the Jonesville
9 Police Department for about 15 or 16 months at the time that you
10 stopped Mr. Fleming in March of 2017?

11 A Correct.

12 Q And we heard at that time you were, I think your main
13 business, or your main work was your business, tree service; is
14 that correct?

15 A Correct.

16 Q Okay. And you have your own company?

17 A Yes.

18 Q What's the name of that company?

19 A It's under my name.

20 Q Is it just you?

21 A Yes, and there are some subs that work for me every now
22 and then.

23 Q And that was your primary full time job was that; is
24 that correct?

25 A Correct.

1 Q Okay. And the law enforcement side of things that was
2 part time, is that correct?

3 A Correct.

4 Q You were working I guess it would be thirty or forty
5 hours a month?

6 A Yeah, that is about what we discussed earlier, yes.

7 Q So that could be ten hours a week or so?

8 A Yeah, that or 20 hours every other week. It just
9 varies.

10 Q Okay. And we heard testimony that you left the
11 Jonesville Police Department in 2017, is that correct?

12 A Yes.

13 Q Was that in December of 2017?

14 A Correct.

15 Q And why did you leave?

16 A Pursue my tree business. I do it full time. I am
17 doing it all the time.

18 Q But you were already doing that full time, right?

19 A Right, but was expanding.

20 Q Okay. And did you get fired?

21 A No, sir, I did not get fired.

22 Q Was there any disciplinary issues going on?

23 A No, sir.

24 Q Okay. But you decided to leave on your own in December
25 of 2017, correct?

1 A Correct.

2 Q Now, March the 14th, 2017 that was a Tuesday is that
3 right?

4 A Correct.

5 Q And that was obviously we're talking over a year ago,
6 right?

7 A Yes.

8 Q Okay. Your memory is pretty good going back.

9 A Pretty good.

10 Q And your -- this happened late afternoon-ish, early
11 evening, is that correct?

12 A Late afternoon.

13 Q Okay. Around four, 4:40 p.m.?

14 A Right.

15 Q And what do you remember the weather like that day?

16 A It wasn't raining or overcast. It was pretty sunny
17 day.

18 Q You don't remember any rain that day, any fog that day?

19 A No, sir.

20 Q Nothing like that. Was it cooler?

21 A It was March. I can't remember the actual temperature.
22 I had a short sleeve shirt or maybe long sleeve. I don't know.

23 Q But you do remember it was clear. Okay. And where --
24 you were on Main Street. Were you sitting in your vehicle on
25 Main Street?

1 A Correct, yes.

2 Q Okay. You were watching traffic?

3 A Watching traffic flow, yes.

4 Q And at some point you see a vehicle you testified to
5 had a basketball or small basketball size crack in the
6 windshield, is that correct?

7 A Yes.

8 Q Okay. And you testified that is your reason why you
9 stopped the car?

10 A Yes.

11 Q Okay. Did you take any pictures of this crack?

12 A No, sir.

13 Q And we heard testimony that you did not give a citation
14 for this crack?

15 A No, sir.

16 Q But you did give citation tickets for other charges,
17 correct?

18 A Correct.

19 Q And we heard that there is no in-car video that would
20 show this crack in windshield, correct?

21 A No, sir.

22 Q And there is no in-car video in this case period,
23 correct?

24 A No, it was inoperable at the time of the stop.

25 Q And you filled out it looks like affidavit for failure

1 to produce video tape, is that correct?

2 A Yes.

3 Q Okay. And it says that you checked the box where it
4 says that your system was inoperable, or inoperable condition,
5 is that correct?

6 A Correct.

7 Q How long had it been inoperable for?

8 A Maybe for a couple of months. I mean we tell. That's
9 about the extent that we can do is tell them and they fix what
10 they can fix.

11 Q So you had no in-car video for a couple of months?

12 A Correct.

13 Q And we heard testimony that a little over a year ago
14 Jonesville PD officers were not wearing body cams?

15 A No, sir, they were not.

16 Q Okay. And did you not have a body cam at that time?

17 A No, sir.

18 Q Some officers will have their own body cams that aren't
19 issued by the department. Did you have one of those?

20 A No, sir.

21 Q So there is no video captured on that day, correct?

22 A Correct.

23 Q And with these in-car video cameras there are ways and
24 you are trained to position your car in certain ways to capture
25 a traffic stop, is that correct?

1 A If you have one, correct.

2 Q If one is working right. And it can also be used to
3 obviously if you get somebody out the car you can take them to
4 the front of your car and then the camera can view?

5 A Correct.

6 Q Okay. What was wrong with your camera?

7 A I think it was some kind of miss communication between
8 the actual lens recording it down to the hard drive to the
9 actually camera system. I am not certified technician so I
10 can't technically really say.

11 Q And that took months to fix?

12 A Yeah, I think they actually have to send them off or
13 something. That's not really in my job description.

14 Q Do you have any paperwork for the work that was done on
15 this system?

16 A No, sir that's not --

17 Q That's no, you don't?

18 A No, I don't. That's not mine job title.

19 Q When did you get the camera back?

20 A It was -- I think they had sent it off some time while
21 I was maybe out on vacation or something because it was working.
22 Several months after that I think it started it was working.

23 Q Several months after you remember having it working
24 again?

25 A Yes, somewhere around there.

1 Q And then several months after this in March is that
2 when you started wearing a body cam as well?

3 A Yeah, that's when we actually there was a policy
4 implemented and we actually purchased them.

5 Q Did any other officer -- so you make a traffic stop on
6 Mr. Fleming is that correct?

7 A Yes. Okay, he pulls over.

8 A Correct.

9 Q You pull over as well?

10 A Correct.

11 Q You get out and you approach the car is that correct?

12 A Yes.

13 Q And you start questioning him about license,
14 registration. Go back to the car, run his info, correct?

15 A Correct.

16 Q Okay. At that time does another officer show up?

17 A An Officer George which was employed at the Jonesville
18 Police Department also he actually arrived on scene also as
19 backup officer.

20 Q Officer George arrives on scene?

21 A Yes.

22 Q And he comes in his police cruiser?

23 A Correct.

24 Q His lights on?

25 A I don't think his lights were on.

- 1 Q Okay. He pulls unto the scene as well?
- 2 A Yes.
- 3 Q Any other officers come?
- 4 A Towards the end of it the chief shows up.
- 5 Q Why does the Chief show up?
- 6 A He was just out on patrol so he just stopped by.
- 7 Q That's not unusual for the chief to show up at a
- 8 traffic stop?
- 9 A No, this is a small town. It's only about one square
- 10 mile so you pretty much overlap each other while riding down the
- 11 road.
- 12 Q Okay. So you make a determination that you hear from
- 13 dispatch that Mr. Fleming's license is not valid, it's
- 14 suspended, is that correct?
- 15 A Correct.
- 16 Q Okay. Do you then get him out of the vehicle?
- 17 A Yes.
- 18 Q Okay. And you do a pat down of him?
- 19 A Right.
- 20 Q And that's something you are trained to do, right?
- 21 A Correct.
- 22 Q You want to for your safety your checking, you get
- 23 someone out of the car if they have any weapons on them,
- 24 correct?
- 25 A Correct.

1 Q Okay. Is this primarily what you are looking for at
2 that point?

3 A Yeah, at that point any large weapons that can possibly
4 cause damage.

5 Q And during this standard pat down that you do looking
6 for weapons it's not uncommon when you do a pat down if somebody
7 got something, a bulge in their pocket or in their jacket or
8 something like that? It's not unusual to come across that at
9 that time, is that correct?

10 A Correct.

11 Q So you did that and you did you that pat down of Mr.
12 Fleming, correct?

13 A Correct.

14 Q No weapons were found on him?

15 A No weapons.

16 Q You didn't feel any obvious bulges or anything like
17 that --

18 A No, sir.

19 Q In his pockets or anything like that. And we heard he
20 was wearing pants, is that right?

21 A Yes.

22 Q And you said a pair of shorts?

23 A Yes.

24 Q And was he wearing underwear?

25 A I didn't go that far into it. I didn't go inside his

1 clothing so I don't if he had underwear on under his shorts.

2 Q Okay. So he had at least two layers of clothing on.
3 If he had underwear on that would be three layers of clothing,
4 correct?

5 A Correct.

6 Q After you pat him down where do you turn your attention
7 after the initial pat down?

8 A That's when we actually go back to the car and begin to
9 search the car and that's where we see light traces of residue
10 in the carpet.

11 Q You find a small amount. You said traces of marijuana
12 that were kind of stuffed in the carpet of the car, is that
13 right?

14 A Fibers of the car.

15 Q But not enough or you didn't gather any from the car or
16 anything of that nature, is that correct?

17 A Correct.

18 Q And during your search of the car was anything else
19 found as far as that was illegal?

20 A Not to my knowledge.

21 Q Okay. Well, you searched the car, right?

22 A Right.

23 Q And you would know if there was something additional in
24 there?

25 A Correct.

1 Q And their wasn't any large amount of money or scales or
2 other baggies, nothing like that, correct?

3 A No, sir.

4 Q Okay. No cocaine was found in the car?

5 A No, sir.

6 Q You didn't see any white powder or specs or anything in
7 the carpet or anything like that?

8 A No, sir.

9 Q Okay. And this car belonged to ultimately someone
10 else, correct?

11 A Yeah, it wasn't register to Tyrone. It was registered
12 to a third party.

13 Q And it's not someone that you were familiar with?

14 A No, sir.

15 Q But you later learned that car -- I guess you learned
16 later that car belonged -- the owner of that car was Cedric
17 Woods, is that correct?

18 A Yeah, I think that's who it was register to, Cedric.

19 Q So, after you search the car, then you go to search Mr.
20 Fleming again, is that correct?

21 A Right.

22 Q Okay.

23 A We do a little more thorough pat down of his person.

24 Q You said it's your concern at that point, again, any
25 type of weapon maybe small, or something like that that could be

1 concealed, concern for that, or the destruction of any drugs I
2 think that's is what you testified to, correct?

3 A Correct.

4 Q And you testified that you were searching the I think
5 you said the crotch or the groin area of Mr. Fleming, correct?

6 A Correct.

7 Q And I think you said kind of the corner of his leg in
8 the groin area you felt a I guess a baggy, is that correct?

9 A Correct.

10 Q Okay. And that was through at least two layers of
11 clothes, correct?

12 A To my knowledge it was two layers of clothes.

13 Q Okay. When you say at least -- at least two layers,
14 correct?

15 A Correct.

16 Q And that was in -- what kind of bag was that in?

17 A Some sort of plastic bag.

18 Q Right. Like this plastic bag right here? Does that
19 look --

20 MR. DELANEY: If I may approach Your Honor.

21 THE COURT: Yes, sir.

22 A Yes.

23 Q And this isn't I guess your typical -- this is a little
24 bigger type of bag, correct?

25 A It is some kind of like grocery sack or something.

1 Q Yeah. Okay. It is not the little corner piece of a
2 little plastic baggy. It's little bigger, right?

3 A Yeah.

4 Q Okay. And you said you felt this in his groin area?

5 A Correct.

6 Q Okay. And then when you felt that you asked Tyrone to
7 retrieve it?

8 A Correct.

9 Q And did he do that?

10 A Yes, he did. He retrieved it for me.

11 Q And is that something as far as -- a lot of times that
12 is something as an officer you will try and stay away from as
13 far as having someone go into their clothing or under their
14 clothing to bring something out. That's something you have to
15 be careful with?

16 A At that point I had determined this was not a weapon at
17 that spot right there. So, yes, I did give him the opportunity
18 to retrieve it so I would not have to enter his clothing and go
19 towards his private areas of his body.

20 Q Okay. And so he gave you this small bag of it looks
21 like it was about a gram or so of marijuana, correct?

22 A Correct.

23 Q Now next you testified that you continued to search,
24 correct?

25 A Correct.

1 Q And in his rectum area is where you say you felt a
2 little knot of a baggy; is that correct?

3 A Correct.

4 Q And?

5 MR. DELANEY: May I am approach?

6 THE COURT: Yes, sir.

7 Q Does that appear to be the baggy?

8 A Yes.

9 Q And there was a little -- you said a little knot in
10 this baggy here?

11 A Correct. ,

12 Q Okay. And were you able to feel that in his rectum?

13 A Right. His rectum area.

14 Q Rectum area?

15 A Yes.

16 Q Okay. Was it in his rectum?

17 A Where the actual hole is on the butt it was right
18 around that area. I didn't actually go in and stick my hand in
19 there to see if it was shoved up in the actual hole but that's
20 where it was located. Right there. That area.

21 Q Okay. So your testimony is that you put your hand --
22 and you didn't go under his clothes?

23 A Never went under his clothes. No, sir.

24 Q This is on top of of his pants, is that correct?

25 A Correct.

1 Q His pants. You were able to feel -- you said you
2 didn't go -- you didn't insert anything into him?

3 A No, sir.

4 Q But you put your hand up next to his -- you testified
5 his hole, is that correct?

6 A Well, his rectum area. The crack, the leg, all that
7 comes together right there.

8 Q And were you able through at least two pairs of
9 clothing, you were able to feel a little knot in this bag?

10 A Correct.

11 Q Why didn't you ask him to retrieve it like you did the
12 marijuana?

13 A Because at this time he was actually handcuffed. After
14 he retrieved the marijuana I put the cuffs on him.

15 Q Okay. And you know -- you know what a cavity search
16 is, correct?

17 A Correct.

18 Q Okay. That's not something you are trained to do road
19 side?

20 A No, sir.

21 Q Where does that take place?

22 A A cavity search or strip search normally take place at
23 a controlled facility such as the jail in doors where there is
24 not a public eye from outside looking besides the people
25 actually doing the cavity search.

1 Q But again were you able to feel what you say is this
2 baggy in his rectum area, correct?

3 A Correct.

4 Q Through his clothes?

5 A Yes.

6 Q And did not ask him to retrieve anything there?

7 A No.

8 Q Then you wanted him to be -- I guess what was the next
9 step then?

10 A The next step was he was placed under arrest, carried
11 to the detention center. At that point was where he was given a
12 strip search and the bag was recovered.

13 Q Okay. So the bag was recovered from what we heard in a
14 -- you said a shower. It was like a shower slash bathroom area
15 of the jail?

16 A Right. It's a room, probably six by eight room. It
17 has a shower and toilet in it and little open area right there.

18 Q And that's for various other uses. Other inmates can
19 be brought in there or inmates that are booked in that can be
20 used --

21 A That's where we do a search, yes.

22 Q And you know from -- I know you don't work at the jail,
23 but that's something that people -- and obviously when you are
24 booking someone in your concern is someone bringing something
25 into the jail, correct?

1 A Correct.

2 Q Did you take any pictures of what was found at the
3 jail?

4 A No, sir. We're not issued cameras.

5 Q You don't have a camera? You don't have a camera?

6 A No, sir, I don't.

7 Q If you wanted a camera you couldn't get a camera with
8 anybody in the police department?

9 A There's probably one in the police department that I
10 have to call and get somebody to transport it down to get it.

11 Q Doesn't that make it -- and I understand if you are
12 having problems with the video but doesn't that make it a
13 problem sometimes documenting cases or evidence that you have?

14 A Normally on crime scene, such as breaking and entering,
15 they call in a person to come in and do that.

16 Q And you testified that there was feces on the bag?

17 A Correct.

18 Q Okay. And you didn't have that bag tested for any type
19 of DNA or anything like that, is that correct?

20 A No, sir.

21 Q Okay. And that's something you could have done,
22 correct?

23 A It's not standard procedure, no, sir.

24 Q That's not standard procedure?

25 A No, sir.

1 Q If you had DNA on a bag --

2 A Not on drug cases they don't normally test them for DNA
3 on small bags.

4 Q You said Officer George was there, correct?

5 A Correct.

6 Q And was he there when were you searching Mr. Fleming?

7 A Correct. He was my backup officer.

8 Q He was your backup officer.

9 MR. DELANEY: One second Your Honor I want to
10 check my file real quick.

11 Q When did you actually place Mr. Fleming under arrest?

12 A He was under arrest as soon as I knew the driver's
13 license was suspended. I actually didn't put handcuffs on him
14 until whenever he retrieved the bag out of his pants.

15 Q So when you got him out of the car the first time he
16 was placed under arrest for driving under suspension?

17 A He was going to jail at that point for driving under
18 suspension.

19 Q How much training were you going through? You said you
20 were working part time with the Jonesville Police Department
21 guess for almost a year and a half. Were you going through any
22 type of training at that time? I know you received a bunch
23 fifteen years ago or so.

24 A You have to do training. Every year it's mandated by
25 State to keep your certification, yes, sir.

1 Q And what kind of training is that?

2 A It just varies from different stuff. There's all kinds
3 of continued education that you can get.

4 Q And did you take any statements from Mr. Fleming?

5 A No, sir.

6 Q Okay. And in your training do they teach you as far as
7 the proper way to search and things of that nature?

8 A Correct. At the academy you go through a search and
9 arrest process, yes.

10 Q Right. And is it -- if you suspect somebody has
11 something in their rectum area at that time are you not trained
12 to have them taken to a more secure facility for a search?

13 A And that's when we carry them to the jail. That was a
14 more secured facility where they were searched.

15 Q Right. But that was after you had felt you said this
16 little knot in this baggy, correct?

17 A In his rectum yes.

18 MR. DELANEY: Thank you officer.

19 REDIRECT EXAMINATION

20 BY MS. GILMER:

21 Q Officer Montjoy, what kind of cell phone do you carry?

22 A It's old. Kind like a flip phone.

23 Q So it's kind of an old dinosaur of a phone?

24 A Yeah, it's not a smart phone.

25 Q And just to be clear, Mr. Delaney asked you about DNA

1 testing on a bag. Do you need DNA testing if you find the drugs
2 on an individual in their possession?

3 A No, ma'am.

4 Q And Officer Montjoy, I just want to be clear. There
5 were two separate -- there was a pat down initially that was
6 done when you had the defendant step out of the vehicle, is that
7 correct?

8 A Correct. And then a more thorough search when you
9 placed him under arrest and were transporting him to county
10 jail?

11 A Correct.

12 Q So the pat down is it for basically officer safety so
13 you can continue what you are doing on scene, is that correct?

14 A Yes.

15 Q And then a search is for officer safety, suspect
16 safety, trying to prevent evidence destruction as far as a
17 search prior to being transported?

18 A Correct.

19 Q So the search is going to be more thorough than pat
20 down, is that correct?

21 A Correct.

22 Q And typically if someone has on multiple layers of
23 clothing are you going to search to make sure that they don't
24 have something in pockets underneath the first layer?

25 A Yeah, we do a pat down to make sure there is nothing

1 concealing. .

2 Q And was that done on this defendant?

3 A Yes.

4 Q So at any point did you have skin to skin contact with
5 the defendant?

6 A No.

7 Q However, did you search the inner clothing, the layers
8 that he had on?

9 A I didn't actually go inside his clothing. Everything
10 was done from the outside feeling through.

11 Q So you could feel the layers enough where you could
12 feel everything, correct?

13 A Correct.

14 Q And at any point was there any intrusion into any body
15 cavities' of the defendant?

16 A No.

17 Q So you could feel this knot outside of his body, is
18 that correct?

19 A Correct.

20 Q And do you take photographs of routine traffic stops?

21 A No.

22 Q So speeding, busted windshield, would that be something
23 you would take photographs of?

24 A No, not on the normal occasion.

25 Q And when the defendant was taken to the Union County

1 Jail did you observe anything out of the ordinary in this
2 bathroom that he was taken in for the search?

3 A No. That was just a standard bathroom that they use
4 for that type of stuff.

5 Q Would you have noticed if there were any other inmates
6 around?

7 A Yes.

8 Q Were there any inmates in that room with you and
9 Officer Littleton?

10 A No, it was just the three of us.

11 Q Was there any evidence from other cases in that room?

12 A No.

13 Q Any contraband in that room?

14 A No.

15 MS. GILMER: I have no further questions Your
16 Honor.

17 THE COURT: Thank you, sir. You may stand down.
18 Counsel approach just a minute.

19 (WHEREUPON, there was an off the record
20 discussion)

21 THE COURT: All right. Mr. Foreman, ladies and
22 gentlemen the jury panel we are trying to decide if
23 it's a good time for a break or to go a little longer.
24 We decided we'll go ahead and break for lunch at this
25 time. So by the courtroom clock it's ten minutes to

1 one. I am going to ask you to be back in the jury
2 room at ten minutes to two. That's an hour. That
3 will give everybody an hour for lunch. So at ten
4 minutes to two. So we will break until then. Thank
5 you. Please do not discuss the case.

6 (WHEREUPON, the jurors leave the courtroom.)

7 THE COURT: Anything we need to take up out the
8 presence of the jury?

9 MS. GILMER: No, Your Honor.

10 MR. DELANEY: No judge.

11 THE COURT: All right. Let's try and resume ten
12 minutes to two then.

13 (WHEREUPON, court was in recess for lunch.)

14 THE COURT: Will counsel approach just a minute
15 please.

16 (WHEREUPON, there was an off the record
17 discussion.)

18 THE COURT: Are you ready to proceed?

19 MS. GILMER: Yes, Your Honor, we are.

20 MR. DELANEY: Yes.

21 THE COURT: Please bring the jury in.

22 (WHEREUPON, the jury enters the courtroom.)

23 THE COURT: Counsel ready to proceed.

24 MS. GILMER: Thank you Your Honor please the
25 Court, the State calls Chief Carl Jennings.

1 CARL JENNINGS, called as a witness, having been
2 duly sworn by The Clerk, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MS. GILMER:

6 Q Would you please state your name for the record?

7 A Yes, ma'am, Chief Carl Harris Jennings, Jr.

8 Q And Chief Jennings, where are you employed?

9 A Jonesville Police Department.

10 Q And how long have you been employed there?

11 A Four years.

12 Q And your title as Chief, are you actually the Chief of
13 Jonesville Police Department?

14 A Yes, ma'am.

15 Q And along with being Chief is one of your duties
16 maintaining evidence that is collected in criminal cases?

17 A Yes, ma'am.

18 Q And whenever it's collected where is it stored?

19 A In our evidence room.

20 Q Is that located at Jonesville Police Department?

21 A Yes, ma'am.

22 Q Is that a secured location?

23 A Yes, ma'am.

24 Q How does it work when an officer collects evidence in a
25 case?

1 A When they collect evidence they turn it over to me and
2 then I store it into the evidence room.

3 Q Are you the only individual that has access to that
4 room?

5 A Yes, ma'am.

6 Q And I am going to show you --

7 MS. GILMER: If I may approach the witness, Your
8 Honor.

9 THE COURT: Yes, ma'am.

10 Q I am showing the witness what has has been previously
11 marked as State's Exhibit Two and State's Exhibit Three. Chief
12 Jennings is that evidence that was collected in a criminal case
13 that a Jonesville Police Department officer worked?

14 A Yes, ma'am.

15 Q And how do you know that?

16 A Because it has on our chain of custody; Jonesville
17 Police Department and case numbers relate to the cases on the
18 package.

19 Q And is that information related to the defendant,
20 Tyrone Fleming?

21 A Yes.

22 Q As to both of those exhibits?

23 A Yes, ma'am.

24 Q And when that evidence comes into the evidence room is
25 it sealed and marked?

1 A Yes, ma'am, it is.

2 Q Okay. And so that evidence stays in the evidence room
3 until -- it either stays there or until it is transported
4 elsewhere?

5 A Yes, ma'am.

6 Q Okay. In this case that particular evidence did you
7 take that to Scott Ruby with the Jonesville Sheriff's Office?

8 A One of the evidence that needed to be tested in South
9 Carolina SLED office I did transfer chain of custody to Scott
10 Ruby who transferred to SLED to be tested.

11 Q And was that suspected cocaine?

12 A Yes, ma'am.

13 Q All right, and what did you do with the suspected
14 marijuana?

15 A It was stored and we tested that. We did not test any
16 drugs in our facility so I brought it to the sheriff's office
17 and had them test the marijuana because they are alicensed to
18 test it and we had them test the marijuana.

19 Q Is it your understanding that SLED does not test
20 marijuana in small amounts?

21 A No.

22 Q So that is your understanding?

23 A Yes.

24 Q All right. So when you took the marijuana to the
25 sheriff's office do you recall who you gave it to for testing?

1 A Yes, ma'am.

2 Q Who did you give it too?

3 A I gave it to Detective Wendy Childers.

4 Q And after testing was completed did Investigator
5 Childers give the marijuana back to you?

6 A The chain of custody came back to me.

7 Q Okay, and did you actually bring the marijuana with you
8 to court today?

9 A Yes, ma'am.

10 Q Okay. As for the cocaine evidence you said that was
11 sent to SLED by Scott Ruby?

12 A Yes, ma'am.

13 Q Was that cocaine evidence ever returned to you?

14 A I went and picked it up on February the 6th, 2010.

15 Q And you physically picked it up from SLED?

16 A Yes, ma'am.

17 Q And did you bring that with you to court today?

18 A Yes, ma'am.

19 Q And after that was returned from SLED was it kept in
20 the evidence room at Jonesville Police Department?

21 A Yes, ma'am.

22 Q So up until today when it came to court?

23 A Yes, ma'am.

24 Q And both of those pieces of evidence during your
25 transport of the suspected cocaine to SLED was that evidence

1 properly packaged and sealed?

2 A Yes, ma'am. We seal it in what we call a BEST bag and
3 it is sealed and sent to SLED that way.

4 MS. GILMER: If I may approach the witness Your
5 Honor.

6 THE COURT: Yes, ma'am.

7 MS. GILMER: Thank you. I have no further
8 questions at this time.

9 MR. DELANEY: A couple of questions chief.

10 CROSS EXAMINATION

11 BY MR. DELANEY:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Do you get involved -- you said you're the only one
15 that has access if you all get some narcotics or some type of
16 evidence you will put it in the evidence room in Jonesville, is
17 that correct?

18 A Correct.

19 Q And then are you also involved in making requests to
20 have any type of analysis done by SLED on any of the objects
21 that are found?

22 A Yes.

23 Q Okay. In this case here did you make any request to
24 SLED to have anything analyzed as far as fingerprints DNA those
25 type of things?

1 A Anything we need testing that's what we send to SLED to
2 test it. Like if we needed drugs tested, a certain amount of
3 drugs we send it to SLED to get it tested to make sure that's
4 what it is.

5 Q Sure. Sure. Now you can also request other types of
6 analysis to be done on things, correct?

7 A Correct.

8 Q And what type of analysis would that be?

9 A Just anything. If we want to do blood, urine, anything
10 that we need to test we go through SLED.

11 Q If you think you have DNA on something and you think
12 it's important to the case you could request SLED to check see
13 if there's DNA?

14 A If we were looking for it, yes, we could request them
15 to check it.

16 Q Okay. Do you recall the incident that we are here for
17 today?

18 A Yes, sir.

19 Q Were you -- did you arrive at the scene at some point
20 that afternoon?

21 A Yes, sir.

22 Q Okay. At what point did you arrive at the scene?

23 A I arrived at the scene when they had stopped the
24 individual and had him outside the car.

25 Q Okay. And was there -- were you -- how many officers

1 were there when you arrived?

2 A Two.

3 Q And that would be Officer Montjoy and then we've heard
4 in this trial there was an Officer George there as well?

5 A Correct.

6 Q At that time were you aware that Officer Montjoy was
7 having issues with his video in his car?

8 A Yes, sir.

9 Q From your understanding how long had those issues been
10 going on for?

11 A Well, we had to send the camera off. It had to be
12 months. We had issues with the watch guard video camera that we
13 he had, an in-car video.

14 Q Are all your cars equipped with these cameras?

15 A Yes, sir.

16 Q And at that time with your department did you all --
17 were you all wearing body cams at that time?

18 A We were going through the process of getting them
19 funded through the state and getting them.

20 Q Okay. Were some officers wearing their own or --

21 A No, we didn't have any body cams. We were going
22 through state to be funded to receive some.

23 Q And you know -- would you agree that having video or
24 especially in these cars, in your patrol cars, that can be
25 important?

1 A Correct.

2 Q Okay. But you are saying that there were months that
3 were going by and his camera was getting fixed?

4 A Yes.

5 Q Okay. Did after this date, did you receive any phone
6 calls that you are aware of from Tyrone Fleming to your office?

7 A I received a phone call and actually talked to Mr.
8 Fleming in person.

9 Q And that was after this date?

10 A Yes, sir.

11 Q Okay. And was complaints being made at that time as
12 far as how he was searched on that day?

13 A It wasn't a formal complaint but it was something
14 talked that he did complain that he felt like he, you know,
15 wasn't searched or violated something to that extent.

16 Q Okay. And when you receive a complaint like that do
17 you -- what do you do with that complaint?

18 A I follow up with the officers. Any complaint I get I
19 follow up with the officer.

20 Q Okay. And did you do that in this case?

21 A I did.

22 Q And then after following up with the officer that was
23 the completion of --

24 A After finding out what happened, what took place and is
25 there any validity to it and it ended after that. If I found

1 out this was nothing to the complaint that seemed that it was
2 anything criminal or anything that was the end of it.

3 Q And what you had I guess at that point you didn't have
4 obviously any video to review?

5 A Correct.

6 Q So you were -- you had Mr. Fleming's version and
7 Officer Montjoy's version, is that correct?

8 A Correct.

9 Q That was the investigation at that point?

10 A Correct.

11 Q Okay. And do you as far as training, was it part time
12 with employees at your -- a lot of your officers at the that
13 time were they working part time with the department?

14 A One was a full time officer and Officer Montjoy was
15 part time.

16 Q He was part time. Right. Okay. -And do you still --
17 are you involved with training of the officers?

18 A To a certain extent, yes I have had officers there that
19 did the training but to a certain extent I do train in certain
20 aspects.

21 Q All right. Thank you. Let me ask you this, did you
22 file as part of the investigation was there any report that was
23 done as part of the investigation or when the allegations were
24 raised by Mr. Fleming? Did you file any reports about that?

25 A I did and it wasn't a formal complaint, so you know he

1 didn't come in and put it in writing. I addressed it to Officer
2 Montjoy at the time and then, you know, didn't find anything
3 that seemed to be criminal or misconduct or anything so that's
4 as far as it went.

5 MR. DELANEY: Thank you.

6 REDIRECT EXAMINATION

7 BY MS. GILMER:

8 Q Chief Jennings, do you often get complaints from
9 defendants who are just mad because they have been arrested for
10 criminal offenses?

11 A Yes, unfortunately we do.

12 Q And so after investing this complaint although even
13 though it wasn't a formal complaint by the defendant you found
14 that there was no validity to it, correct?

15 A Correct.

16 Q Now, I want to talk a minute about the in-car video
17 recording system. Jonesville Police Department is a small
18 agency?

19 A Correct.

20 Q Is funding and money and resources a problem as far as
21 being able to get that to buy stuff to help?

22 A Correct.

23 Q Okay. So, what is the process if you need money for
24 something to help benefit your officers or case investigation
25 what's the process for that?

1 A Well, I have to write a grant to seek funding through
2 the State to get anything of that nature like the video cameras,
3 body cameras, things of that nature.

4 Q And what is that process? How time consuming is that?

5 A It is very time consuming. We have to write it up.
6 They have to review it. They have to see if we are worthy to
7 receive the funds for the in-car cameras or the body cameras or
8 anything and then once that process is done then they will write
9 us the money and then we have to search for it or if they have
10 in-car cameras in their supplies they will issue us in-car
11 cameras. So it's a long process.

12 Q Okay. And not even just the process, I want to ask you
13 about the momentary portion of it.

14 So to get these in-car videos you said you had to write a
15 grant or try to get money to actually by the system. Is that
16 money to try to maintain them as well?

17 A Correct.

18 Q And is that the same process for the body cameras?

19 A Correct.

20 Q All right. And are those expensive items?

21 A Yes, ma'am.

22 Q What about the storage. Is it just the the buying the
23 equipment that have you to worry about or are there issues with
24 the financial part of actually storing the video and having that
25 hard drive capability?

1 A Yes, when we write the grant we have to incorporate
2 everything that goes along with the storage and all.,

3 Q And to your knowledge is that an expensive ordeal?

4 A Yes, ma'am.

5 Q So you have to pay for the equipment and then you also
6 have to pay for the storage, is that correct?

7 A Yes, ma'am.

8 Q Do you have the ballpark figure as to what that would
9 cost for even a year to do?

10 A You would have to say the average of a body camera
11 would be anywhere from \$500 and the storage it depends on what
12 type of storage you get. How much you get. I can't really say
13 in excess of how much it is but it can be expensive because you
14 also have to keep that data. So data -- for a certain period of
15 time you have to keep that data and then data bills on top of
16 data and you can't erase it because when you have this type of
17 storage you have to keep it for like thirty days or so or
18 something of that nature. And if you're active and that camera
19 is rolling it builds on top of it so it can get expensive in
20 maintaining it.

21 Q Would you estimate tens of thousands of dollars to do
22 that?

23 A Probably not that expensive, but it's probably about
24 five.

25 Q Would you love to be able to equip your officers with

1 all of the state of art technology?

2 A Yes.

3 Q Is it possible with Jonesville Police Department or
4 Jonesville, the city of Jonesville's financial situation?

5 A Not with our current -- not without help we can't do
6 it.

7 MS. GILMER: Your Honor, I have no further
8 questions. Thank you.

9 MR. DELANEY: Just a couple follow up questions,
10 judge.

11 RECROSS EXAMINATION

12 BY MR. DELANEY:

13 Q All your cars today are the video cameras working in
14 them?

15 A Uh-huh.

16 Q Okay, but back in last year, no?

17 A No.

18 Q And then today all of your officers wear body cameras?

19 A We have body cameras.

20 Q But back in March 2017, no?

21 A No.

22 Q Officer Montjoy left your department in December?

23 A Correct.

24 Q Of 2017?

25 A Correct.

1 Q What is your understanding of why he left?

2 A To further his business.

3 Q Okay.

4 MR. DELANEY: Thank you.

5 THE COURT: Thank you sir. You may stand down.

6 MS. GILMER: The State calls Scott Ruby, Your
7 Honor.

8 SCOTT RUBY, called as a witness, having been duly
9 sworn by the clerk, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MS. GILMER:

13 Q Would you please state your name for the record?

14 A Scott Ruby.

15 Q Investigator Ruby where are you employed?

16 A The Union Sheriff's Office.

17 Q And how long have you been employed there?

18 A Twenty years.

19 Q Do you often make evidence runs -- for lack of a better
20 way to put that -- to SLED down in Columbia?

21 A Yes, ma'am.

22 Q And do you ever get requests from Jonesville Police
23 Department to take evidence of theirs?

24 A Yes, I do.

25 Q And did you receive evidence from Chief Carl Jennings

1 in the Tyrone Fleming case?

2 A I did.

3 Q And did you take that evidence down to SLED?

4 A Yes, ma'am.

5 MS. GILMER: And Your Honor if I may approach the
6 witness?

7 THE COURT: Yes, ma'am.

8 Q I am showing the witness what has been marked as
9 State's Exhibit Three. Is that the evidence that you took down
10 to SLED in Columbia from Chief Carl Jennings?

11 A Yes, ma'am.

12 Q And when you took that to Columbia -- took that to
13 SLED, what did you do with it?

14 A We don't hand them to a person. We put them in an
15 evidence drop box where only drug analyst who are employed by
16 SLED have access to.

17 Q And is that SLED's policy that you do it that way?

18 A That's the only way we can put them in.

19 Q Okay. And when you receive that evidence from Chief
20 Jennings did it appear to have been tampered with in any way?

21 A No, ma'am. It was sealed when I get it.

22 Q And was that your sole involvement in this case?

23 A Correct.

24 MS. GILMER: I have no further questions at this
25 time Your Honor.

1 MR. DELANEY: I have no questions for this witness
2 Your Honor.

3 THE COURT: Thank you sir. You may stand down.

4 MS. GILMER: Douglas Robinson.

5 DOUGLAS ROBINSON, called as a witness, having been
6 duly sworn by the clerk, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. GILMER:

10 Q Would you please state your name for the record?

11 A Doctor Doug Robinson.

12 Q And Mr. Robinson how are you employed?

13 A I am a forensic chemist assigned to the drug analyst
14 department of South Carolina Law Enforcement Division commonly
15 known as SLED.

16 Q How long have you been employed there?

17 A Ten years.

18 Q And what are your duties at SLED?

19 A I primarily focus on the analysis of evidence submitted
20 from agencies throughout the State that is suspected to contain
21 controlled substances.

22 Q And what type of training and education do you have to
23 have to be in that position?

24 A I received my Bachelor of Science in Chemistry from
25 University of South Carolina. After graduating I spent

1 approximately three years performing chemical analysis. Upon
2 being hired at SLED I received legal training from the South
3 Carolina Criminal Justice Academy as well as inhouse training on
4 the analysis of controlled substances through the SLED Drug
5 Analysis Department. I also attended the Drug Enforcement
6 Administration Forensics seminar.

7 Q And have you had the occasion to chemically analyze
8 substances to determine if they are control substances or
9 narcotics?

10 A Yes, ma'am.

11 Q How many times would you say?

12 A Thousands.

13 Q And have you ever had to testify in court before?

14 A Yes, ma'am.

15 Q Regarding -- in your position --

16 A Yes, ma'am.

17 Q -- at SLED. Okay. And have you ever been qualified as
18 an expert in a court of law to testify as to drug analysis?

19 A I have.

20 Q How many times would you say you've been qualified as
21 an expert?

22 A Thirty-one.

23 MS. GILMER: Your Honor, at this time I would move
24 to declare this witness as an expert in drug analysis?

25 MR. DELANEY: No objection.

1 THE COURT: Counsel, let me give the jury the
2 instruction about expert witnesses.

3 Mr. Foreman, ladies and gentlemen of the jury, I
4 charge you that although lay witnesses are limited to
5 testifying about facts within their knowledge, they
6 are not allowed to give opinions. Certain witnesses
7 who by training, education, experience are considered
8 an expert in a particular field may give opinions in
9 that field based upon the facts of the matter and
10 their conclusions and these opinions constitute
11 evidence to be considered by you in connection with
12 all the other evidence and testimony in the case and
13 it is for you the jury to give such weight and
14 experience and discretion you may determine by it you
15 must weigh such evidence and accept or reject it in the
16 the same manner as you treat all other evidence in the
17 case. The value of expert testimony does not depend
18 upon the skill and knowledge of facts but upon the
19 skill and knowledge they actually possess. Expert
20 testimony is given for the purpose of enlightening you
21 and not for the purpose of controlling your judgement.
22 You may proceed.

23 MS. GILMER: Thank you. Your Honor may I approach
24 the witness.

25 THE COURT: Yes, ma'am.

1 This would be the same instruction with regard to
2 anyone who is qualified as an expert witness in this
3 it case.

4 CONT'D DIRECT:

5 Q Mr. Robinson, I am showing you what has been previously
6 marked as State's Exhibit Three. Do you recognize that?

7 A Yes, ma'am.

8 Q What do you recognize that to be?

9 A These are actually several different items in one
10 package in my hand. This outer packaging is a heat sealed
11 plastic baggy referred to as a KAPAC. This is a baggy routinely
12 used by my department to reseal evidence after analysis is
13 complete. Across the bottom my initials and the date it was
14 sealed. Inside of that there is an another plastic bag with
15 distinct patterns across all four sides. This bag is commonly
16 referred to as a BEST bag; best evidence sample testing. This
17 is a type of bag that we distribute to agencies throughout the
18 State as uniform way to package drug evidence and pass it
19 through the chain of custody to the analyst within my
20 department.

21 On the back side there are two ziploc bags. Both have the
22 words bag added. These are ziploc bags that I added to the case
23 so it was not loose within the KAPAC. Each one contains
24 something different. One contains a plastic corner bag and the
25 other a white powder substance that was actually the drug

1 evidence in this case.

2 Q And the extra bag that is included is that the bag that
3 was turned over, it came in, when it came to SLED as far as the
4 the initial substance?

5 A Yes, ma'am. Initially this was received as a plastic
6 corner bag containing the powder substance. I just separated
7 the packaging from the powder substance after analysis.

8 Q And when did you receive that evidence?

9 A May I refer to my notes?

10 Q Yes, if it would refresh your recollection.

11 A I personally receive the evidence on July 19, 2017.

12 Q How does it work when evidence is submitted to SLED?
13 What is the procedure from when it leaves the hands of the law
14 enforcement officer who brings it to SLED?

15 A Once its submitted to SLED there is one of two general
16 ways to do that. It is either delivered personally to our
17 evidence technician or it may be entered into a locker system
18 and then our evidence control technician retrieves it from that
19 secured locker.

20 In this case its based on the chain of custody it was submit
21 into a locker. One of our technicians received it from that
22 locker and secured that in what we refer to as drug evidence
23 intake storage. Secure location within the evidence control
24 department where they store the evidence. When I'm ready to
25 retrieve evidence I personally send an e-mail. I personally go

1 and retrieve the evidence myself. We do not have technicians
2 within our department. So would I send an e-mail requesting
3 generally a group of cases and go down and retrieve that from
4 the technician.

5 Q And do you have information in front of you as to which
6 technician may have had this case? Do you have essentially what
7 is called the SLED chain of custody?

8 A Yes. I have copy of internal electronic chain.
9 Charlotte Crowe received the evidence from the storage locker
10 that I referred to. She then transferred it to that secured
11 area, the intake storage area, and then I received it directly
12 from Doris Yarbrough who also works in the evidence department.

13 Q And then after you were finished testing what is done
14 with the evidence?

15 A After initial bench work or prep is done on the case it
16 will be stored in a secured vault within our department until
17 the case is completed and report has been issued and then I
18 would return that evidence again personally to the evidence
19 control department. After a period of time the agency -- the
20 submitting agency would retrieve the evidence and take it back
21 to their department.

22 Q And do you have information in front of you as to where
23 the evidence went after it left you after testing but before
24 pickup by the the law enforcement agency?

25 A Yes, ma'am. I returned the evidence to Amy Stephens

1 Black on August 18, 2017.

2 Q And then after Miss Black was the drug evidence
3 returned to the law enforcement agency?

4 A It was initially placed on the drugs to return shelf.
5 And that is the last entry I have on this copy.

6 Q Okay. But to your knowledge no other testing was done?

7 A To my knowledge no. There was no other drug testing
8 done.

9 Q And when you received the evidence did it appear to
10 have any tampering? Was it still sealed? Were there any
11 problems with that that you thought, oh, I shouldn't be testing
12 this?

13 A The very first thing we do when I start before I even
14 open it is inspect the bag that it's submitted in. This bag
15 with the pattern, the BEST bag. That's standard protocol. And
16 the words seal and with my initials with the date that I cut
17 into it up here. A similar notation is on my worksheet. So the
18 bag was inspected and all seals were intact.

19 Q And did you conduct an analysis on that?

20 A Yes.

21 Q And what were the results of your analysis?

22 A The evidence that was submitted once it was itemized
23 was a single item, number 1.1. Was described as a plastic
24 corner bag containing powdered substance. The results were
25 cocaine C-2 found in the sample tested. One tested. Net weight

1 0.72 grams, 11.11 grains.

2 Q And is that opinion made based upon your training and
3 experience as analyst?

4 A Yes, ma'am.

5 Q And is that within a reasonable degree of certainty
6 based on your education and experience?

7 A Based on all those things and the instrumentation that
8 we use that can actually identify the compound and exclude other
9 compounds, yes.

10 MS. GILMER: Your Honor, at this time I would move
11 to enter into evidence what has been previously marked
12 as State's Exhibit Three. If I may approach the
13 witness?

14 THE COURT: Yes, ma'am.

15 MR. DELANEY: Your Honor, we would object to the
16 introduction of the cocaine in evidence and renew our
17 objection from earlier in this case.

18 THE COURT: All right, admitted over objection.

19 MS. GILMER: Thank you, Your Honor.

20 (State's Exhibit three, Drugs, received in
21 evidence as of this date.)

22 Q Mr. Robinson, just a few more questions for you.
23 Regarding SLED, is it standard procedure from when you get drug
24 evidence in this case to do any other formal testing like DNA
25 testing?

1 A No, ma'am. The drug analyst department is a separate
2 department from all other departments. The only focus is the
3 analysis of the substance that is suspected to contain or be a
4 controlled substance.

5 Q Is it possible to make a request for more testing to be
6 done?

7 A It is.

8 Q With SLED it's my understanding there are certain
9 policies regarding the amount of evidence that can be submitted
10 by a police agency, is that correct?

11 A I believe so.

12 Q What would you say ballpark -- not even a number. Let
13 me ask this, does SLED receive a large number of evidence?

14 A Yes, ma'am.

15 Q Does SLED do all of the evidence testing in South
16 Carolina?

17 A We offer statewide testing. There are are other
18 smaller labs that are located throughout the State. SLED is the
19 the only lab that is mandated to take evidence from any one who
20 would like to submit to us statewide.

21 Q So that includes all the police agencies in South
22 Carolina?

23 A Yes, ma'am.

24 Q And is there currently a backlog of evidence at SLED to
25 be tested?

1 A My belief -- I know the drug analysis department has a
2 substantial backlog and it is my understanding that each
3 department has backlog of some size, yes.

4 MS. GILMER: I have no further questions, Your
5 Honor. Thank you.

6 CROSS EXAMINATION

7 BY MR. DELANEY:

8 Q Good afternoon Mr. Robinson.

9 A Good afternoon.

10 Q We have heard your department specialty is the drug
11 analysis, correct; the chemical analysis?

12 A Yes, sir.

13 Q And I think we heard a little bit about other -- I
14 mean, do you do other things then the drug analysis, chemical
15 analysis? Do you do any other type of analysis or is that
16 another department?

17 A Each department is its own entity, its own specialty.
18 It takes approximately six months of training just to get
19 started in the drug analysis department. There are other
20 disciplines that is my understanding that take up to two years
21 of training. So it's very specialized and it requires constant
22 training and application. So we stay focused on a single
23 discipline.

24 Q Okay. And some of these other departments that you are
25 aware of those would be where they are looking for DNA or they

1 are analyzing blood, fingerprints, hair, all kind of stuff,
2 correct?

3 A Yes, sir.

4 Q Okay. And requests can be made to these departments to
5 have things analyzed for those types of things, correct?

6 A Yes, sir.

7 Q And your not aware that was done in this case, correct?

8 A Not to my knowledge.

9 Q And if -- I think you said there was a couple of
10 different things in here, correct?

11 A There was a single item that was submitted. There are
12 two separate items now because I separated the packaging from
13 the powdered substance.

14 Q Okay, and one of these packages is what the cocaine was
15 supposedly in when it was found, correct?

16 A The way I received it was the powder substance, the
17 cocaine inside of the plastic corner bag that's now separated in
18 a separate ziploc bag.

19 Q Okay. And if a bag -- a bag has feces on it is that
20 something that could be ultimately tested at SLED to determine
21 someone's DNA?

22 A That is not my discipline. I can't really testified to
23 DNA analysis.

24 Q Okay.

25 MR. DELANEY: No further questions.

1 MS. GILMER: I have no further questions Your
2 Honor.

3 THE COURT: May we have this witness excused.

4 MS. GILMER: Yes.

5 THE COURT: Thank you for coming. You may be
6 excused at this time.

7 MS. GILMER: Your Honor, the State at this time
8 calls Wendy Childers.

9 WENDY CHILDERS, called as a witness, having been
10 duly sworn by The Clerk, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. GILMER:

14 Q Would you please state your name for the record.

15 A Wendy Childers.

16 Q And how are you employed?

17 A I am employed in the Union County Sheriff's Office.

18 Q And how long have you been with the sheriff's office?

19 A Since 2004.

20 Q And do you sometimes test marijuana evidence for
21 Jonesville Police Department?

22 A Yes.

23 Q And to your knowledge does Jonesville Police Department
24 test marijuana?

25 A Not to my knowledge, no.

1 Q And have you -- how long have you been testing
2 marijuana evidence to your recollection?

3 A To my recollection I think since 2011.

4 Q And what type of training and education have you had to
5 test marijuana?

6 A To test marijuana, SLED; South Carolina Law Enforcement
7 Division, has a school, a marijuana school you have to attend to
8 be certified.

9 Q And in addition to that you are a law enforcement
10 officer, is that correct?

11 A Yes.

12 Q And what was your training and education to become a
13 law enforcement officer?

14 A South Carolina Criminal Justice Academy.

15 Q And how long was the program exactly, do you recall?

16 A When I was there it was a nine week program I believe.

17 Q And how long have you been law enforcement officer?

18 A Since 2004.

19 Q And how long have you been testing marijuana?

20 A Since 2011.

21 Q 2011. And have you ever been qualified as an expert to
22 test marijuana or in your testing of marijuana?

23 A No.

24 Q Have you ever testified as to testing marijuana in
25 court?

1 A Yes.

2 MS. GILMER: If I may approach the witness, Your
3 Honor?

4 THE COURT: Yes, ma'am.

5 Q I am showing you what has been marked as State's
6 Exhibit Two, but before asking you questions about that --

7 MS. GILMER: Your Honor, I would just move at this
8 time to qualify this officer as an expert in marijuana
9 analysis.

10 MR. DELANEY: No objection, judge.

11 THE COURT: Without objection she is so qualified.

12 Q What is that that is in your hand, exhibit two?

13 A It is marijuana.

14 Q Okay. And do you know what case that is regarding?

15 A I have a case number, a Jonesville case number,
16 201700025 it appears.

17 Q And do you know which defendant that is regarding?

18 A Tyrone Deangelo Fleming.

19 Q And have you had an opportunity prior to today
20 receiving this evidence?

21 A Yes, I have.

22 Q And where did you receive that evidence or from whom
23 did you receive that evidence?

24 A On February the 6th of this year the chief of police of
25 Jonesville, Carl Jennings presented me with this marijuana to be

1 tested.

2 Q And did you conduct testing on that evidence?

3 A I did.

4 Q And what did you find it to be?

5 A I found that it did test positive chemically and
6 microscopically for marijuana.

7 Q Do you recall the weight of the substance?

8 A The weight was point six grams.

9 Q And what did you do with that marijuana after you
10 tested it?

11 A I handed it right back to Carl Jennings.

12 MS. GILMER: Your Honor, may I approach the
13 witness again.

14 THE COURT: Yes, ma'am.

15 MS. GILMER: Your Honor, at this time I move into
16 evidence what has been previously marked as State's
17 Exhibit Two.

18 MR. DELANEY: No objection.

19 THE COURT: Admitted without objection.

20 (State's Exhibit two, Drugs, received in evidence
21 as of this date.)

22 Q Investigator Childers, was that the extent of your
23 involvement in this case?

24 A Yes.

25 MS. GILMER: I have no further questions at this

1 time Your Honor.

2 CROSS EXAMINATION

3 BY MR. DELANEY:

4 Q And I think my question was just answered, but the
5 extent of your involvement in this case was testing it and it
6 came out to be point six grams.

7 A Yes, sir.

8 Q And that was your role?

9 A Yes, sir.

10 Q Thank you.

11 MS. GILMER: No further questions.

12 THE COURT: Thank you ma'am. Do you wish to have
13 her excused?

14 MS. GILMER: Yes, Your Honor.

15 THE COURT: Thank you for coming. You may be
16 excused.

17 THE WITNESS: Thank you.

18 MS. GILMER: Your Honor, may we take a short
19 recess before I call the next witness.

20 THE COURT: Yes.

21 All right. Mr. Foreman, ladies and gentleman of
22 the jury we will take a short recess at this time.
23 You may refresh yourselves. Thank you.

24 (WHEREUPON, the jurors exit the courtroom.)

25 THE COURT: Ready to proceed?

1 MS. GILMER: We are Your Honor. Thank you.

2 THE COURT: Please bring the jury in.

3 (WHEREUPON, the jury enters the courtroom.)

4 THE COURT: Counsel ready to proceed.

5 MS. GILMER: The State calls Marie Wearing.

6 MARIE WEARING, called as a witness, having been
7 duly sworn by the clerk, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MS. GILMER:

11 Q Would you please state your name for the record?

12 A Marie Wearing.

13 Q Miss Wearing, where are you employed?

14 A South Carolina Department of Motor Vehicles.

15 Q How long have you been employed there?

16 A Twenty-nine years.

17 Q Does the South Carolina Department of Motor Vehicles
18 keep records on driver's license information?

19 A Yes.

20 Q Do you keep records of individuals who have suspended
21 driver's licenses?

22 A Yes.

23 Q And how does the South Carolina Department of Motor
24 Vehicles keep track of that?

25 A It is kept -- first of all it's entered into a computer

1 which is kept on a hard drive.

2 Q Is that statewide records?

3 A Yes.

4 Q And are you the custodian of those records?

5 A Yes.

6 Q Are those records kept in the normal course of your
7 business at the Department of Motor Vehicles?

8 A Yes.

9 MS. GILMER: Your Honor, if I may approach the
10 witness?

11 THE COURT: Yes, ma'am.

12 Q Miss Wearing, I am showing you what has been marked as
13 State's Exhibit Four. Do you recognize that?

14 A Yes.

15 Q And what are those records that I am showing you?

16 A South Carolina driver's license.

17 Q And for whose driving record is that?

18 A Tyrone Deangelo Fleming.

19 Q And Tyron Deangelo Fleming have a suspended driver's
20 license on March 14th of 2017?

21 A Yes.

22 Q And was the defendant notified of that suspension of
23 his license?

24 A Yes.

25 MS. GILMER: Your Honor, at this time I would move

1 to enter into evidence what has been previously mark
2 as State's Exhibit four?

3 MR. DELANEY: No objection judge.

4 THE COURT: It will received without objection.

5 (State's Exhibit four, DMV record, receive in
6 evidence as of this date.)

7 MS. GILMER: Your Honor, I have no further
8 questions.

9 THE COURT: Any questions?

10 MR. DELANEY: I have no questions.

11 THE COURT: Any reason why she can not be excused?

12 MS. GILMER: Not from the State.

13 THE COURT: Thank you. You may be excused.

14 THE WITNESS: Thank you.

15 MS. GILMER: The State calls Justin Littleton.

16 JUSTIN LITTLETON, called as a witness, having been
17 duly sworn by the clerk, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MS. GILMER:

21 Q Would you please state your name for the record?

22 A Justin Littleton.

23 Q And how are you employed?

24 A Ma'am?

25 Q How are you employed?

1 A Right, now I am not employed. I will go back to county
2 Monday.

3 Q And where will you working for the county?

4 A I will be in the jail division.

5 Q Jail division?

6 A Jail division.

7 Q And have you formerly worked at the Union County jail?

8 A Yes, ma'am.

9 Q And when did you work at the county jail?

10 A Last year.

11 Q And for how long did you work there?

12 A Under six months I believe.

13 Q And why did you leave the jail?

14 A I went to work for another company.

15 Q Okay. And you're going back to Union County jail you
16 said next week?

17 A Monday.

18 Q And have you had any prior law enforcement or jail
19 experience?

20 A Yes, sir. I worked for Newberry County for a year and
21 a few months.

22 Q And how old are you?

23 A I will be 23 in June.

24 Q And have you been to the academy?

25 A Yes, ma'am.

1 Q And what is it academy.

2 A The academy is where I was trained and certified as
3 class two officer for corrections.

4 Q And you say class two officer. What does that mean?

5 A It's just you have your class three officer, class two,
6 class one officer. Your class one is the deputies. Class two
7 are jail. Class are like code enforcement.

8 Q And were you working for the Union County jail on March
9 14th of 2017?

10 A Yes, ma'am.

11 Q And during that time you were employed on that date did
12 an named Tyrone Fleming come in to the jail to be booked in?

13 A Yes, ma'am.

14 Q And who brought him to the jail?

15 A Officer Montjoy from the Jonesville Police Department.

16 Q Okay. And do you know why he was being booked into the
17 jail?

18 A I don't remember off the top of my head. I believe
19 there was some drug charge may be. I'm not real sure what the
20 initial at the time.

21 Q What is the the policy when an individual is booked
22 into the county jail?

23 A The policy would be they are brought in, they're patted
24 down at the desk and then they are pictured, fingerprinted and
25 then before they go to the back into the housing unit we have to

1 take their street clothes off of them and put on the jail
2 uniform. During that time we may have to do the strip search as
3 with well.

4 Q I'm sorry you do strip search as well?

5 A Yes, ma'am.

6 Q And in this particular case do you recall Officer
7 Montjoy and the defendant Tyrone Fleming coming into the jail?

8 A Yes.

9 Q And was that same procedure followed, booking,
10 fingerprinting and all that?

11 A Yes, ma'am.

12 Q And in this particular case was there any suspicions
13 that the defendant had additional contraband on him?

14 A I believe Officer Montjoy did say that he may have
15 something else on his body at the time.

16 Q At the jail if there is suspicion of contraband on a
17 defendant or on an incoming inmate, what do you do? What is the
18 policy at that point?

19 A You would take him in and you would go ahead and dress
20 them out. Get them out of their clothes so you could search the
21 clothes. Then while they are in the change-out room you do
22 procedures that is normally call the squat and cough and that
23 would check the body cavity and they are completely naked. So
24 that is pretty much what you do.

25 Q And what is the reason for doing that?

1 A To make sure this is no contraband taken into the unit.

2 Q And in this particular case do you recall a strip
3 search being done of the defendant Tyrone Fleming?

4 A Yes, ma'am.

5 Q What do you mean about that?

6 A I remember -- I remember bringing him in to the dress
7 out room. Mr. Fleming was very, very hard to work with. He was
8 not following verbal commands. He was trying to distract us.
9 Trying to turn around and not really staying and doing what we
10 needed him to do, staying still.

11 At the time when I had him ready to strip search him I was
12 asking -- I introduced myself first. Told him what was going
13 to happen. What we were doing. Why we were doing it and he
14 didn't really want to comply. He started turning around trying
15 to shield himself away from us. Putting his back against the
16 wall and I am not real sure -- I can't really remember what
17 happened up to the point where I did uncover him. He did take
18 his clothes off and there was a small baggy containing a white
19 substance that fell on the floor.

20 Q So he was allowed to undress himself?

21 A Yes, ma'am.

22 Q All right. And this bag you said actually fell on the
23 the floor?

24 A Yes, ma'am.

25 Q When he -- when the baggy fell on the floor did he

1 remove it himself? Did you see where it fell from?

2 A I did not see exactly where it fell from, but it fell
3 when he went to squat so I'm assuming it fell from that area.

4 Q Okay. And I understand it is a sensitive conversation
5 point, but what area you think it fell from?

6 A The rectum area.

7 Q Okay. And so you actually saw this baggy fall from his
8 person?

9 A Yes, ma'am.

10 Q And at any time was there any body cavity searches
11 where you or Officer Montjoy removed something from his body
12 cavity?

13 A No, we are not permitted to touch that area at all.

14 Q So that is not allowed?

15 A No.

16 Q If you suspected someone had something in a body cavity
17 and it did not fall out as it did in this case, what would you
18 do? What would be the next time?

19 A They would be taken to the hospital for medical
20 examiners to see what is in there.

21 Q But in this case that was not necessary, correct?

22 A No, ma'am.

23 Q And the suspected substance that was recovered did you
24 give that to Officer Montjoy?

25 A I did.

1 Q And was Officer Montjoy in the room when all this was
2 going on?

3 A He was.

4 Q All right. So it was the two of you. This room that
5 you guys were in, how would you characterize it? What type of
6 room was it?

7 A It's like a -- maybe like a public rest room at
8 McDonalds. It had a sink, toilet and a shower.

9 Q Is there any cameras in that location?

10 A No, ma'am.

11 Q And did you -- did jail officers have any body cameras
12 videos? Body cameras?

13 A I don't believe there was a video, but we were issued
14 body cameras.

15 Q Is that an area of doing a strip shirt would you have
16 been able to have a body camera activated and recording?

17 A There is not really a clear line on whether you can or
18 can not. I have not been given a clear answer to that question.
19 Out of privacy I have been told do not activate the camera
20 because the inmate is naked. He is completely unclothed.

21 Q Okay. And with the way that the defendant was acting
22 when Officer Montjoy brought him in leading up to the point of
23 going into that bathroom area, how would you categorize his
24 demeanor?

25 A He was irate. He was not wanting to comply. He was

1 very hard to get along with.

2 Q Did you have certain suspicions at that point that he
3 might be hiding something?

4 A Yes.

5 Q And what was that based upon?

6 A The way he was reaching and trying to guard his rear
7 end.

8 MS. GILMER: If I could have one moment Your
9 Honor.

10 Q And when you went into that bathroom area do you recall
11 seeing any contraband lying around?

12 A No.

13 Q Any drugs? Any weapons?

14 A No, ma'am.

15 Q And do you recall what kind of clothing the defendant
16 was wearing?

17 A T-shirt and jeans maybe. I don't remember.

18 Q And so during this entire ordeal in the bathroom both
19 you and Officer Montjoy were present with the defendant; is that
20 correct?

21 A Yes.

22 MS. GILMER: I have no further questions at this
23 time Your Honor.

24 Q Good afternoon. The room that we're talking about at
25 the jail do all inmates go through that room?

1 A Yes, sir.

2 Q And not unusual to find all types of drugs
3 ultimately -- let me rephrase that question. Have you found a
4 lot of different types of drugs in that room?

5 A Not necessarily in Union County but in the past
6 experience with Newberry County in the same type of room I have
7 found drugs, yes, sir.

8 Q And they find -- it's not unusual for people to be
9 bringing in drugs into the jail or trying to at least, correct?

10 A It is not unusual.

11 Q It's not unusual to find meth or cocaine -- or heroin?

12 A Yes.

13 Q -- or pills, I guess, you name it it's possible to
14 find, correct?

15 A Yes.

16 Q And sometimes it makes it to other areas of the
17 detention center, correct?

18 A Yes.

19 Q So you can find it, either yourself or other jailers
20 can find contraband in different areas of the jail, correct?

21 A Yes, sir.

22 Q And as you said everybody goes through this room that
23 has a bathroom you said a shower and just a little sink?

24 A Yes, sir.

25 Q And we heard no cameras inside that room, but when you

1 walk out of that room pretty much there is cameras throughout,
2 correct?

3 A Yes, sir.

4 Q And do you know on that particular day I know we are
5 talking over a year ago, do you know who was in that room before
6 my client was taken in there?

7 A I do not recall.

8 Q There would be videos showing who is at least coming in
9 and out of the room, correct?

10 A Yes.

11 Q Okay. And when you describe I think Mr. Flemings
12 behavior as irate that was outside the room?

13 A Yes, sir and inside.

14 Q And inside. But there would have been some video
15 capturing his behavior outside the room?

16 A Yes.

17 Q And you were not wearing -- I guess you wearing but you
18 did not have the -- the body cam was turned off at that time?

19 A Yes.

20 Q And did you take any pictures? Did you take any
21 pictures of what you found or where you found it?

22 A No, sir. I immediately turned it over to Officer
23 Montjoy.

24 Q Okay. Do you have a camera at the detention center?

25 A Excuse me.

1 Q Do you have a camera at the detention center?

2 A Like a camera?

3 Q Yeah.

4 A Not that I know of.

5 Q Okay. And you testified that you -- you would not use

6 your -- if there was any type of more evasive search that needs

7 to be done besides someone squatting, they're taking off their

8 clothes and squatting that's done at the hospital?

9 A It would be.

10 Q You don't do that at the detention center?

11 A No, sir.

12 Q Would there be any reason for you to put your hand in

13 by someone's butt or in the butt hole area?

14 A No, sir.

15 MR. DELANEY: Thank you.

16 MS. GILMER: Just a couple of follow up, Your

17 Honor.

18 REDIRECT EXAMINATION

19 BY MS. GILMER:

20 Q Officer Littleton, squat and cough, is that kind of how
21 it sounds?

22 A Yes, ma'am.

23 Q All right. So procedure is the inmate squads down and

24 coughs and then if there is anything hidden it would then fall

25 out, is that correct.

1 A It's suppose to.

2 Q And in your capacity you were not investigating officer
3 correct?

4 A Correct.

5 Q All right. You were just booking the inmate as they
6 come in?

7 A Yes, ma'am.

8 Q And is that room that you take inmates in for the
9 search, is that a room that is searched to make sure there is no
10 contraband in there?

11 A Yes.

12 Q And is this your sole involvement in this case what you
13 testified too?

14 A Yes.

15 MS. GILMER: I have no further questions Your
16 Honor.

17 MR. DELANEY: Nothing.

18 THE COURT: Thank you sir. You may stand down.
19 Any reason why he can't be excused.

20 MS. GILMER: No, Your Honor, not from the State.

21 THE COURT: Thank you for coming. You may be
22 excused at this time.

23 MS. GILMER: Your Honor at this time the State
24 rests.

25 THE COURT: All right, Mr. Foreman. Ladies and

1 gentleman of the jury panel, the State has rested its
2 case. There is matters I need to take up with the
3 attorneys out of your presence at this time so if you
4 will retire to the jury room. You may refresh
5 yourselves during the break. We will have you back
6 out. Thank you.

7 (WHEREUPON, the jury leaves the courtroom.)

8 THE COURT: I will hear you with regards to any
9 motion you might wish to make at this time.

10 MR. DELANEY: Thank you judge. At this time,
11 first I would like to renew our motion that I had
12 pretrial and renew my objections as far as the search,
13 being an unlawful search at the scene of Mr. Fleming.
14 I renew that objection, judge, and then I would just
15 make a motion at this time, standard motion, for a
16 directed verdict in this case.

17 THE COURT: Does the State wish to be heard?

18 MS. GILMER: Yes, Your Honor, reviewing --
19 looking at the evidence in the light most favorable to
20 the State the State does submit we established a prima
21 facia case for all three charges; the possession of
22 cocaine, possession of marijuana and the driving under
23 suspension.

24 Your Honor, the jury has had heard from two
25 witnesses. One of which states there was a traffic

1 stop for a busted windshield. We contend that was a
2 valid stop. During the traffic stop the defendant was
3 found to be driving under suspension. We had Miss
4 Wearing from the Department of Motor Vehicles
5 establish that as well saying that his license was
6 suspended. He had been provided notice of that as
7 well.

8 Your Honor, as to the marijuana charge and the
9 cocaine charge. Two officers testified as to the
10 cocaine being found. That it dropped from the the
11 defendant's possession, from his body. From his anal
12 cavity. Your Honor, we had an officer testify to
13 finding the marijuana on the defendant's person. The
14 defendant actually handed him the marijuana.

15 So Your Honor, in viewing this in light most
16 favorable to the non-moving party, the State we would
17 submit we have established a prima facia case for all
18 three charges.

19 THE COURT: Well; I think you stated it very well.
20 That would be the court's reason as well. In looking
21 at a motion for directed verdict I am required to look
22 at the evidence in a light most favorable to the party
23 against the motions being made.

24 In this case in looking at the evidence in a light
25 most favorable to State I find there is substantial

1 evidence. I think the solicitor has done a pretty
2 good job of detailing that. I think there is
3 substantial evidence from which a jury can infer the
4 State has proven the elements of these offenses beyond
5 a reasonable doubt. The credibility of the witnesses
6 and the weight of the evidence is a matter for the
7 jury and not for the Court. I find there is
8 substantial evidence that support proof of each of
9 these elements so I will deny your motion for a
10 directed verdict.

11 Now, has the defendant decided if he is going to
12 testify or not?

13 MR. DELANEY: I believe he has Your Honor.

14 THE COURT: Bring him around to the bench. Place
15 him under oath sworn.

16 TYRONE FLEMING, called as a witness, having been
17 duly sworn by The Clerk, was examined and testified as
18 follows:

19 THE COURT: For the record you are Tyrone Deangelo
20 Fleming, is that right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Fleming, we have reached the stage
23 in your trial where you may present a defense. You
24 have a right to testify on your own behalf, however no
25 one can make you testify. In the event you have a

1 record of any conviction for a crime punishable for
2 imprisonment for more than a year and if this Court
3 determines that the appropriate value of admitting
4 this evidence outweighs the prejudicial effect to you,
5 the solicitor may introduce your record for
6 impeachment purposes to attack your credibility. If
7 you elected not to take the stand I would charge the
8 jury that they are not to give the fact that you did
9 not testify any consideration whatsoever, and there is
10 to be absolutely no prejudice to you because you did
11 not testify. It is left entirely up to you whether or
12 not you testify. You may talk with your attorney,
13 your family, friend or anyone else, but the ultimate
14 decision is left entirely up to you.

15 Do you understand it is your decision whether you
16 will or will not testify?

17 THE DEFENDANT: Yes.

18 THE COURT: And have you discussed with your
19 attorney the advantages and disadvantages of
20 testifying?

21 THE DEFENDANT: Yes.

22 THE COURT: And do you wish to testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that your decision?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Thank you. You may return
2 to your seat.

3 Have you gone over the offenses that you might
4 want to use?

5 MS. GILMER: Your Honor, the only offenses that
6 would qualify as far as carrying a penalty of over a
7 year or a crime of dishonesty would be a 2011
8 distribution of crack, first offense, and 2012
9 possession with intent to distribute crack cocaine.

10 MR. DELANEY: We concede that he was convicted of
11 a felony charge on that particular date but we ask the
12 State not to -- I don't think it would be appropriate
13 for the State to be specific as far as the drug.

14 THE COURT: Are both of these felonies?

15 MS. GILMER: They are Your Honor. Yes, sir.

16 THE COURT: Then the State would be allowed to
17 impeach by saying were you convicted of a felony on
18 such and such day and were you convicted of another
19 felony on such and such day without referring to the
20 nature of the offense or the charge. It being a drug
21 charge I think it would be more prejudicial than
22 probative, but I think you are entitled to impeach him
23 with the felonies but not the specific crime itself.

24 MS. GILMER: Yes, Your Honor.

25 THE COURT: Okay. Do you agree with that?

1 MR. DELANEY: I agree with that.

2 THE COURT: That's what we will do.

3 All right. Let's take a short break. You're not
4 going to have any other witnesses are you?

5 MR. DELANEY: No judge.

6 THE COURT: Okay. So we will take his testimony,
7 but I really think we'll do arguments and charge in
8 the morning. I really don't want to get started too
9 late with arguments and charge because it would
10 probably be 5:30 or 6:00 before we get through before
11 and they start deliberating. I think we will finish
12 with the witnesses and do arguments and charge in the
13 morning. Okay.

14 MS. GILMER: Yes, Your Honor.

15 (WHEREUPON, there was a brief recess.)

16 THE COURT: Okay. Bring the jury in please.

17 (WHEREUPON, the jury enters the courtroom.)

18 THE COURT: Counsel ready to proceed?

19 MR. DELANEY: Yes, Your Honor.

20 MS. GILMER: Yes, Your Honor.

21 THE COURT: Please call your witness.

22 MR. DELANEY: Thank you judge. At this time the
23 defense would call Tyron Fleming.

24 TYRONE FLEMING, called as a witness, having been
25 duly sworn by The Clerk, was examined and testified

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. DELANEY:

4 Q Could you please state your name for the record.

5 A Tyrone Fleming.

6 Q Okay Tyrone, you don't have to get so close to that
7 microphone, but the court reporter and the jury here needs to
8 hear you. Okay.

9 Tyrone where are you from?

10 A Union, South Carolina.

11 Q Did you go to school here in Union?

12 A Yes.

13 Q And how old a guy are you?

14 A I'm 29.

15 Q Do you have any children?

16 A Four.

17 Q Okay. Do you remember a little over a year ago in
18 March of 2017?

19 A Yes, sir.

20 Q Okay, and you've heard testimony throughout today,
21 right?

22 A Yes, sir.

23 Q Okay. Now, were you driving silver Mercury that day?

24 A Yes.

25 Q Whose car was that?

1 A Cedric Woods.

2 Q Okay. Why were you driving his car?

3 A I always wash his car for him.

4 Q So you were washing the car, okay.

5 A And he pays me.

6 Q Were you driving that car that day?

7 A Yes.

8 Q Okay. And you were driving in Jonesville?

9 A Yes.

10 Q March 14th?

11 A Yes.

12 Q Where were you going?

13 A To Union.

14 Q Where were you leaving from?

15 A Home.

16 Q Okay. And at some point did you notice that the police
17 were behind you?

18 A Yes, as I pulled out he put the blue lights.

19 Q You saw some blue lights behind you. Okay. What did
20 you do when you pulled over?

21 A I just pulled over. Stopped. Turned the car off and
22 waited for the officer to approach.

23 Q Did you know why you were being pulled over?

24 A Not at the time I didn't. I thought it was dark tinted
25 windows at the time. I thought, but that's the only reason I

1 could think of was dark tinted windows.

2 Q Did you notice was there any type of a crack or mark on
3 the windshield?

4 A Not at the time.

5 Q You never saw a crack?

6 A Until the officer brought it to my attention.

7 Q And then you saw there was a crack in the windshield?

8 A A little scratch on the far passenger side above the
9 sun visor. It was just a little bitty scratch. It wasn't a
10 crack.

11 Q Okay. How big was it?

12 A Two or three inches long. Probably about that big at
13 the most (indicating) on the far passenger side of the sun
14 visor. You know the sun visor, it's just a little bit over
15 there.

16 Q Was it as big as you heard it was testified to earlier
17 today?

18 A No, sir. It was not.

19 Q Okay. And I think you already testified that you
20 pulled over, is that right?

21 A Yes, sir.

22 Q And did you have a valid license at that time?

23 A No, sir.

24 Q Should you have been driving?

25 A No, sir.

1 Q Okay. And did you -- at some point does the officer
2 get you out of the car?

3 A At some point he did.

4 Q He asked you to get out?

5 A Yeah. Yes, sir.

6 Q Okay. And at that time were there any other officers
7 there?

8 A By that time, yeah, another officer had arrived.

9 Q Okay. And when you are taken out of the car what
10 happens at that point?

11 A He patted me down. He escorted me to the back of the
12 car and told the other officer watch me and he searched the car.

13 Q Okay. So you watched him search the car?

14 A Yes.

15 Q And when they were done searching the car did the
16 officer come back to search you again?

17 A Yes, sir.

18 Q Okay. What officer? Was it both officers or was it
19 one particular officer who came to search you?

20 A One particular officer.

21 Q What officer was that?

22 A Montjoy.

23 Q Okay. And did Montjoy start searching you again?

24 A Yeah, he proceeded. Yeah. A little different this
25 time.

1 Q Okay. What do you mean by that? How did he start
2 searching you this time?

3 A Well, the first thing he went down to my leg and
4 touched my genitals and my penis. He grabbed me, you know, like
5 this. (Indicating) I wanted him to stop so I gave him the
6 marijuana so he could stop and then he put the handcuffs on me.

7 Q Okay, let me slow you down a little bit. You said at
8 some point you did give him some marijuana?

9 A Yes.

10 Q Okay. Why did you do that?

11 A Because I just wanted him to stop violating me. You
12 know, I'm a man. You know, who wants another man grabbing my
13 private area, so I just want him to stop so I gave it to him.

14 Q Once you gave the marijuana you were cuffed at that
15 point?

16 A I was cuffed then.

17 Q Okay. And then what happened after he cuffed you?

18 A The officer proceeded with the search putting his
19 finger in my rectum through my sweatpants. He was telling the
20 other officer, we got something here. We got something here.

21 Q All right, and how many layers of clothes did you have
22 on?

23 A Nike sweatpants, basketball shorts and brief boxers.

24 Q Okay. And this was -- this was through, on top of your
25 clothes?

1 A Through one layer of the clothes. He went under the
2 Nike sweats.

3 Q And what happened after that? Did you get put in the
4 car?

5 A Yes.

6 Q Okay. And did you give him any -- did you give the
7 officer any other bags or anything like that?

8 A No, sir.

9 Q Okay. Did you have anything else on you?

10 A No, sir.

11 Q Did you have anything else in the car?

12 A No, sir.

13 Q What did you have? What did you have on you that day
14 Tyrone?

15 A Well, the .6 of marijuana.

16 Q And we heard and you heard obviously testimony you were
17 taken to the jail, right?

18 A Yes.

19 Q Okay. And at the jail we heard they found some cocaine
20 is what they testified to, right?

21 A That's what they are saying.

22 Q Did that cocaine belong to you?

23 A No, sir, it did not.

24 MR. DELANEY: Thank you Tyrone.

25 CROSS EXAMINATION

1 BY MS. GILMER:

2 Q All right, Mr. Fleming, so your testimony is that you
3 were in Jonesville because you were leaving your house and going
4 to Union?

5 A Yes.

6 Q Where were you going?

7 A Going back to my grandmother's house.

8 Q Back to your grandmother's house. And were you in
9 Cedric Woods' vehicle?

10 A Yes, ma'am.

11 Q And where else had you been earlier that day?

12 A Just outside running around. Washing the car.

13 Q And when did you get the car Cedric Woods?

14 A Earlier. The night before.

15 Q And how do you know Cedric Woods?

16 A That's my cousin.

17 Q And so you said you were driving this vehicle and your
18 license was suspended, correct?

19 A Yes.

20 Q So you knew your license was suspended?

21 A Yes.

22 Q All right. And you said you pulled out and officer
23 immediately pulled behind you, is that what your testimony was
24 before?

25 A Yes.

1 Q So you pulled out of where?

2 A Off of Moore Street.

3 Q And what's on Moore Street?

4 A What's on Moore Street?

5 Q Where were you pulling out from Moore street?

6 A It was just a little road I turned off of.

7 Q So you were actually driving down the road. You
8 weren't pulling out driveway or anything like that?

9 A No.

10 Q And at that point did you see the officer?

11 A Yes, I seen him.

12 Q And you were driving towards him?

13 A Not towards him. He was like far back. He was like
14 far back to the left. Far back to the left far to the left and
15 I was coming. He was coming down this way. (Indicating) I am
16 coming this way down the road, side street. He was back a
17 little bit and I was right at the stop sign.

18 Q So he was driving?

19 A No, he was parked.

20 Q He was parked. All right. And he turned on his blue
21 lights and got behind you, correct?

22 A Yes. Yes.

23 Q Okay. And he told you about the problem with the
24 windshield, correct?

25 A After he asked for the license and I told him and I

1 gave him proof of the insurance card. He was about to walk off.

2 Oh, by the way, I pulled you over for that little crack, for
3 that cracked windshield.

4 Q And there was a crack on the windshield, correct?

5 A Yes.

6 Q All right. And you told him you didn't physically have
7 a license with him, connect?

8 A He told me he already knew that I didn't have no
9 license from the last time when he ran my name. He knew.
10 That's what he told me.

11 Q And you knew you weren't suppose to be driving?

12 A I knew that.

13 Q All right. And you testified that you had some
14 marijuana on you?

15 A Yes.

16 Q All right. And had you been smoking marijuana in the
17 car?

18 A No.

19 Q All right. And raw marijuana you can smell that can't
20 you?

21 A The only way you can smell raw marijuana if you were
22 smoking in the car. I assume.

23 Q You're assuming?

24 A Yeah.

25 Q Okay. And so you had this marijuana hidden, correct?

1 A Yes.

2 Q Okay. And this was in a baggy, is that correct?

3 A Yes.

4 Q And you had it hidden you said in your crotch area.

5 Where exactly did you have it hidden?

6 A Under my testicles.

7 Q Under your testicles?

8 A All right. And what were you planning on doing with
9 this marijuana?

10 A Smoke it.

11 Q You were going to smoke it?

12 A Yeah.

13 Q Okay. So you keep it hidden in your genital, your
14 penis, your testicle area and then you are going to smoke it
15 later?

16 A Uh-huh.

17 Q And so had you this marijuana. Officer Montjoy he
18 places you under arrest for driving under suspension, correct?

19 A Know he did not say I wasn't arrest for nothing at the
20 time nothing.

21 Q Okay. You're here today because you were arrested on
22 driving under suspension, correct?

23 A Yes.

24 Q And Officer Montjoy he patted you down when he first
25 got you out of the vehicle, correct?

1 A Yes.

2 Q Had to make sure you didn't have any weapons on you?

3 A Yes.

4 Q And then you're under arrest and he searched you again?

5 A Never stated I was under arrest again. He search me
6 again and he felt that. He grabbed my testicles and my penis.
7 He felt that I had something right there and I gave it to them
8 because I have been violated.

9 Q Okay. So he grabbed your testicles and your penis.
10 Was this through your pants?

11 A Yes, ma'am.

12 Q So through your sweatpants. And he just grabbed it,
13 full hands?

14 A Full hands. Full hands, grabbed it like that.

15 Q Okay, all right. And so at this point you weren't
16 handcuffed?

17 A No, ma'am.

18 Q He asked you to give him the marijuana, correct?

19 A No, I just reached in and handed it to him myself
20 because I wanted him stop touching me down there. I wanted him
21 to stop. So I felt like I am a man, why is he doing this. So I
22 reached in and I said here.

23 Q Okay.

24 A After he grabbed me I just wanted him to stop at the
25 time.

1 Q So you felt violated?

2 A I knew I was violated because I had read law books and
3 study law. I know that I was violated.

4 Q You were violated. Okay. Because you read law books?

5 A Yes, ma'am.

6 Q So you felt violated because he had grabbed your penis
7 and your testicles?

8 A Yes, ma'am.

9 Q All right. And you gave him the marijuana at that
10 point. All right. And that's when he handcuffed you, is that
11 correct?

12 A Uh-huh.

13 THE COURT: Sir, the you can't say uh-huh. Answer
14 verbally yes or no.

15 A Yes.

16 Q And you said that's the point where Officer Montjoy
17 stuck his finger up your rectum, is that correct?

18 A Can you repeat the question again.

19 Q That's the point where you say that Officer Montjoy
20 stuck his fingers up your rectum?

21 A After he handcuffed me?

22 Q Yes.

23 A Yes.

24 Q Okay. And how far did he stick his hand up your
25 rectum?

1 A He fingered. Was touching the hole. He was touching
2 my hole.

3 Q He was touching it or he was inside?

4 A He was inside my whole.

5 Q And how far -- how many fingers was it? Could you
6 feel?

7 A I would say, two.

8 Q Two fingers. And how far were those two fingers up
9 your rectum?

10 A In my hole.

11 Q How far again were they? Would you say tip of the
12 finger? The full hand? How far were those fingers up your
13 rectum?

14 A The tips of the fingers.

15 Q Okay. Do you recall prior testimony where you said it
16 was all the way to the knuckles up your rectum?

17 A No, I never said that.

18 Q You never said that?

19 A No, I never said that.

20 Q So under sworn testimony you have never said his
21 fingers were up to his knuckles up your rectum?

22 A No, ma'am, I did not.

23 MS. GILMER: Your Honor, I believe we are going
24 have to request a recess.

25 THE COURT: Counsel move on. Move on.

1 Q Okay. And this was under your clothing or over your
2 clothing?

3 A Under one layer of my clothes. He was under the Nike
4 sweats.

5 Q What now?

6 A He was up under the Nike sweatpants I had on.

7 Q So he was under the top layer of clothing and that's
8 when his fingers went up your rectum?

9 A Inside my Nike sweatpants. I had sweatpants and
10 basketball shorts. His hand went in Nike sweatpants and was
11 doing like that.

12 Q And he told you at that point he felt something, is
13 that correct.

14 A When put his hand down there and he told the other
15 officer.

16 Q And he transported you to county jail is that right?

17 A Uh-huh.

18 THE COURT: Sir.

19 A Yes. Yes. Sorry.

20 Q And you were seated in the front seat of the parole
21 vehicle, is that correct?

22 A Yes, ma'am.

23 Q And he got you to the jail. And do you remember
24 Officer Littleton who was there?

25 A Yes. Yes, ma'am.

1 Q And Officer Littleton booked you into the jail?

2 A Yes, ma'am.

3 Q Fingerprinted, booked in. All that information was
4 given to them.

5 A Yes.

6 Q Okay. And then you were taken into a bathroom,
7 correct?

8 A No. No. No. Not at first. I came in. They took me
9 straight to the room. Into the shake-down room. I wasn't
10 fingerprinted until later.

11 Q Okay. So you went straight into the bathroom?

12 A Straight into the bathroom. Yes, ma'am.

13 Q And at that point it was Officer Littleton and Officer
14 Montjoy, is that correct?

15 A Yes, ma'am.

16 Q So both of them were in that room with you?

17 A Yes, ma'am.

18 Q And when you went in there, Officer Littleton explained
19 to you why you were in there, correct?

20 A Yes, ma'am.

21 Q And he told you that he suspected that you had
22 contraband on you, correct?

23 A Yes, ma'am.

24 Q And at that point you were allowed to undress, correct?

25 A No, ma'am. I was still in handcuffs at the time and

1 they uncuffed the handcuffs. But I told him, this is baggy. I
2 pointed it out to them. It ain't mine. Kick it out of the way
3 and they proceeded to strip search me.

4 Q Okay. So where was this baggy.

5 A Like a foot away from the -- a foot away from the
6 shower on the floor.

7 Q And how big was this room you were in?

8 A I would say about this size over here. All this area
9 over here. (Indicating). A little small room. It has got a
10 shower, sink, bathroom, toilet. A small bathroom.

11 Q Okay, so a small bathroom. Was it tight fighting with
12 the three of you in there?

13 A No, ma'am.

14 Q Okay. And so the two of them take you in there. You
15 said you with handcuffed?

16 A Yes, ma'am.

17 Q And you were un-handcuffed and allowed to take your
18 clothes off, correct?

19 A Yes, ma'am.

20 Q All right. And at this point you were irate, is that
21 correct?

22 A Yes, ma'am.

23 Q All right. And take you in there and you said this
24 baggy was there. Where was this baggy? Did you see it
25 immediately when you came in the bathroom?

1 A I was getting ready to take my clothes off and I'd seen
2 the bag on the ground and I told -- I kicked it out the way. It
3 ain't mine.

4 Q Okay. And what was was in that baggy?

5 A Looked like white substance.

6 Q Okay. You didn't know what that white substance was?

7 A No, ma'am. It looked like I told you earlier it could
8 have been crushed up crack like you said or cocaine.

9 Q So you knew it was either crack or crack cocaine --
10 excuse me. Or cocaine.

11 A Crack. What you said earlier crack or cocaine. I
12 don't know at the time which one it could be but it looked like.

13 Q How much did it look like?

14 A I told you like two or three grams.

15 Q Okay.

16 A It looked like two or three grams. I don't really know
17 the weight.

18 Q So it appeared to be two to three grams to you?

19 A Yes.

20 Q And this baggy you said was near the shower and you
21 just saw it as soon as you walked in?

22 A When I was getting ready to strip search. Just like
23 the shower in back and toilet right here. Toilet in front of
24 me. I'm over here. Right here. The bag is over a little bit.

25 Q And who did you tell?

1 A I told Montjoy and the jailer.

2 Q You told both of them?

3 A I told both of them.

4 Q Okay. And what did they say?

5 A Where did it come from? And I said I have no idea. It
6 ain't mine.

7 Q How long did it take you get your clothes off?

8 A About two -- two or three minutes.

9 Q Two to three minutes?

10 Q So they had to un-handcuff you and then you took your
11 clothes off and you were in there about two or three minutes?

12 A Yeah.

13 Q All right. And Mr. Fleming, do you consider driving
14 under suspension and simple possession of marijuana those are
15 are pretty minor charges aren't they?

16 A Not really because it's dealing with the law. I am
17 breaking the law so I ain't going to say they're minor. You got
18 to deal with a judge and go to jail. I'm not going to say it's
19 minor. No.

20 Q So that's not minor?

21 A It's not minor.

22 Q What about possession of cocaine, is that minor?

23 A No, ma'am. It's very serious.

24 Q And would you say possession of cocaine is much more
25 serious than simple possession of marijuana or driving under

1 suspension?

2 A To me the marijuana and cocaine is the same in my book.

3 Q It's the same to you?

4 A Yes.

5 Q Okay. And Mr. Fleming is it true that back in October
6 of 2012 you with convicted of two felonies, is that correct?

7 A Yes, ma'am.

8 MS. GILMER: I have no further questions at this
9 time Your Honor.

10 MR. DELANEY: No questions Your Honor.

11 THE COURT: Thank you. You may stand down sir.
12 Any other witnesses for the defense.

13 MR. DELANEY: At this time the defense would rest.

14 THE COURT: Anything in reply?

15 MS. GILMER: Yes, Your Honor. Your Honor, may we
16 approach briefly.

17 THE COURT: Yes.

18 Mr. Foreman, and ladies and gentlemen of the jury,
19 at this time there is a matter we need to take up out
20 your presence. At this time I would ask you to please
21 retire to the jury room for just a few minutes. You
22 may refresh yourselves.

23 (WHEREUPON, the jurors leave the courtroom.)

24 Madame court reporter can you see if you can find
25 his testimony during pretrial regarding the cavity

1 search.

2 (WHEREUPON, the requested portion was played
3 back.)

4 MS. GILMER: I did Your Honor, I don't know if it
5 is going to be clear enough for impeachment.

6 THE COURT: Do you want to offer it up in reply.

7 MS. GILMER: Yes, Your Honor, if we could just
8 play it for the jury that section.

9 THE COURT: All right. We may proceed and bring
10 the jury back.

11 MS. GILMER: Yes, Your Honor.

12 THE COURT: Bring the jury back.

13 (WHEREUPON, the jury enters the courtroom.)

14 THE COURT: Mr. Foreman, ladies and gentleman of
15 the jury panel the State has requested a replay of
16 testimony of Mr. Fleming that was made prior to this
17 morning's hearing to be played back to you and so we
18 are going to that that a this time.

19 (WHEREUPON, the requested portion was played back)

20 MS. GILMER: I have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. DELANEY:

23 Q From what he heard Tyrone what's been your testimony in
24 an earlier hearing who was saying on that testimony up to your
25 knuckles? Did you say that or did the the solicitor say that?

1 A Solicitor said that.

2 Q You testified that it was all the way in your hole,
3 correct?

4 A As far as the fingers, yes.

5 Q Okay. How far in?

6 A The fingertip. The fingertips.

7 MR. DELANEY: Thank you Tyrone.

8 MS. GILMER: I do have follow up Your Honor.

9 RECROSS EXAMINATION

10 BY MS. GILMER:

11 Q Mr. Fleming, I did ask you all the way in and you
12 agreed with that, correct?

13 A Do you recall me asking you all the way up to the
14 knuckles and holding my hand up like that. (Indicating)

15 A No, I don't.

16 Q You don't recall that.

17 MS. GILMER: I have no further questions Your
18 Honor.

19 THE COURT: Thank you sir. You may stand down.

20 You can go have a seat.

21 All right. Anything else in reply?

22 MS. GILMER: No, Your Honor.

23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen of the jury panel this concludes all the
25 taking of testimony and evidence in the case. We have

1 yet remaining final arguments of counsel and my
2 instruction to you regarding the law. It's already
3 after four thirty. We are not going to try and start
4 it this late because it will run late to start
5 deliberating the case. So we will wait until in the
6 morning to start argument and charge. I will ask you
7 to probably start a little earlier in the morning.
8 Well, let's just start at 9:30. I will ask you to be
9 back at 9:30 and we will try to get started promptly
10 in the morning at 9:30 with arguments and charge.
11 Again, please do not discuss the case with anyone. If
12 anyone should try and discuss the case with you please
13 do not discuss it with them. Make note of that person
14 and let the Court know through the bailiff and the
15 clerk of court's office so we can deal appropriately
16 with that person.

17 Thank you. Enjoy your night and see you in the
18 morning.

19 (WHEREUPON, the jury leaves the courtroom).

20 THE COURT: I will allow you to make any motions
21 at this time or renew any motions to you would like to
22 make.

23 MR. DELANEY: I am sorry judge.

24 THE COURT: Do you want to make any motions?

25 MR. DELANEY: Your Honor, at this time we would

1 just renew our motions and objections that we made
2 earlier in this case. Thank you.

3 THE COURT: Well, for the same reasons I stated
4 earlier I deny your motions.

5 All right. We will get started in the morning
6 then at 9:30.

7 (WHEREUPON, court was in recess.)

8 (WHEREUPON, the trial continued on April 11, 2018)

9 THE COURT: Thank you. Please be seated.
10 Counsel ready to proceed?

11 MS. GILMER: We are Your Honor.

12 THE COURT: Please bring the jury in.

13 (WHEREUPON, the jury enters the courtroom.)

14 THE COURT: Good morning, Mr. Foreman, and ladies
15 and gentlemen of the jury panel. I hope you had a
16 pleasant night last night and we are ready now to
17 reassume with the trial and we are at that point in
18 the trial where counsel will make their final
19 arguments to you. I ask that you listen attentively
20 as counsel addresses you for final argue.

21 MS. GILMER: Yes, Your Honor, ladies and gentlemen
22 of the jury we appreciate your service this week. I
23 appreciate your patience and appreciate you being here
24 and your service to our community.

25 You heard that the defendant has three charges

1 that are before the court that you are going to be
2 deliberating on. That is possession of cocaine,
3 driving under suspension and the possession of
4 marijuana.

5 Now the State has the burden of proof in this
6 matter. Now our burden of proof is beyond a
7 reasonable doubt. Now a reasonable does not mean all
8 possible doubt. It is beyond a reasonable doubt and I
9 anticipate Judge Alford will instruct you on that
10 after I and Mr. Delaney have an opportunity to speak
11 with you.

12 Now again, that's not beyond all doubt. There are
13 very few things in this world that are beyond all
14 doubt. And what we know in this case and what we know
15 from the witnesses that we heard from yesterday and
16 the evidence that you saw and that evidence will be
17 going back with you into the jury room. So you will
18 see all that as you are deliberating and can look
19 through it as many times as you want.

20 What we know is that a traffic stop was conducted
21 by Officer Jonathan Montjoy on the vehicle the
22 defendant was driving on March 14th of 2017 over in
23 Jonesville. Now during the stop it was determined
24 that the defendant did not have a driver's license in
25 his possession. He gave the officer his name and date

1 of birth and the officer ran his information based
2 upon that. Well, actually we know now that his
3 driver's license was suspended. That was verified by
4 Officer Montjoy testifying to what he learned that day
5 when he ran the defendant's information and also Miss
6 Wearing who came in Wednesday and testified for the
7 Department of Motor Vehicles and told you, yes, this
8 defendant's license was suspended. And also he was
9 notified and had notice of that suspension and the
10 defendant admitted himself. That yes, he knew he
11 shouldn't have been driving that day. His license was
12 suspended.

13 Now we know that during the stop the defendant was
14 placed under arrest. He was placed under arrest for
15 driving under suspension and the marijuana that was
16 found. He was searched by Officer Montjoy prior to
17 Officer Montjoy transporting him to the jail. Again,
18 the defendant was arrested for driving under
19 suspension and the marijuana, and the defendant
20 admitted on the stand yesterday to having the
21 marijuana and driving under suspension.

22 You heard how officers when they make arrests of
23 individuals often times when they make contact with an
24 individual they do the pat down. Just quick Terry
25 frisk to make sure that there are no weapons, no

1 immediate danger to the officer. So that's the point
2 of that first pat down. Then you heard that when a
3 defendant is transported -- suspect is transported,
4 being taken to the county jail a further search is
5 done which is more extensive and Officer Montjoy told
6 you about that. And he told you about the reasons
7 that's done. It's not officer safety issue. It's to
8 preserve evidence if someone has contraband on them so
9 they can't go destroying evidence. It's also for
10 safety purposes of the actual defendant so if they
11 have something concealed within them they can ingest
12 something that maybe is going to post a danger to
13 them. So there's a lot of reasons why this search is
14 done and the officer told you it's more of an
15 extensive search because at that point I'm putting him
16 in my car beside me. I don't have this barrier
17 between us. I'm driving down the road to the county
18 jail. So yes, it has to be more of an extensive
19 search.

20 So that was done. We know that this is standard
21 proceed. The officers told you about how they went to
22 the academy. This is the training and education that
23 the officers get. This is a continuing process. It
24 doesn't just stop with the academy. They actually
25 have to keep going to classes and courses to maintain

1 their certification as a law enforcement officer. So
2 Officer Montjoy who started 15 years ago went to the
3 academy. His training didn't stop 15 years ago. It's
4 a continuing process to be able to maintain his role
5 and position as a police officer.

6 Now, we know that incoming inmates are searched
7 prior to coming into the jail. And it's for the
8 reasons we talked about before, officer safety issues,
9 the safety for the jail officers, making sure a person
10 doesn't have any illegal substances that would pose a
11 problem for someone else, themselves and then also for
12 the reason of, we can't let contraband, drugs, come in
13 to the county jail because those are going to be
14 passed between inmates. That's just common sense
15 reason why the search is done. And in this case we
16 know that two law enforcement officers -- two sworn
17 officers took the defendant into the room where the
18 searches are done. The defendant was allowed to
19 undress after the handcuffs were removed from him and
20 cocaine was found during the strip search.

21 The defendant would have you to believe that this
22 cocaine was already lying on the floor when he was
23 taken in there. He had nothing to do with that
24 cocaine and that two law enforcement officers are
25 pinning that cocaine on him and it wasn't his. How do

1 we know that is simply not true. Officer Littleton
2 testified yesterday and you heard from him. He is a
3 jail officer at the jail. He hadn't prior involvement
4 that day with with Tyrone Fleming. He just said, hey,
5 this is just another inmate booked into the county
6 jail. I'm doing my job booking him in. The officer
7 who may the arrest commented to him, I think he has
8 more drugs on him. So he takes him in with Officer
9 Montjoy into this room where strip searches are done
10 and again we know that is important for all of those
11 reasons that we already talked about. So he takes him
12 in there and again, allows the defendant to undress
13 after he had been un-handcuffed and they do the strip
14 search and Officer Littleton tells you we are not
15 allowed to go into anyone's body cavity. We have this
16 procedure calmed squat and cough. Kind of speaks for
17 itself. Inmate squats down. They cough and hopefully
18 anything they have hidden in a body cavity will fall
19 out with the help of gravity. So you heard how this
20 is done and if there is any contraband that is still
21 on the defendant after this is done or there is
22 something in there that needs to be removed they will
23 take that person to a medical facility for a trained
24 medical professional to do that. They are not allowed
25 to do that. So they told you about that how this is

1 the policy.

2 Now, in this case you heard that the defendant was
3 taken into that room by Officer Littleton, Officer
4 Montjoy, the two of them together. The both of them.
5 Officer Littleton explained to the defendant the
6 process. What was going to happen. What he could
7 expect.

8 Now you heard from both officers that the
9 defendant was irate when taken into the room. He was
10 not cooperative. That the defendant kept trying to
11 distract the two officers. That the defendant did not
12 want to comply and that he kept trying to put his back
13 against the all. All right. Officer Littleton told
14 you he saw the baggy of cocaine fall from the area of
15 the defendant's buttocks, the defendant's rectum area.
16 He saw it fall. Officer Montjoy told you the same.
17 This wasn't something lying around the room. This is
18 something we saw come from the defendant. And I want
19 you to think about Officer Montjoy even went as far to
20 say when the bag fell there was feces on the bag.
21 Okay. You will have the evidence. Take a look at it.
22 You can make that determination but that's what he
23 observed that day. So that was extra proof to him
24 that, yeah, I saw that. I know this is corroborating
25 what I just saw with my own eyes that this baggy fell

1 from where I know it to have fallen from. And Officer
2 Montjoy went on to tell you the same, that there was
3 no contraband lying in this room, no drugs, no weapons
4 lying around when they went in there. Okay. And
5 Deputy Littleton told you the same thing, this is a
6 room where they were taken to be stripped search so of
7 course that room is going to be made -- they are going
8 to make sure there is nothing in that room that an
9 inmate can pick up and pass to another inmate in the
10 jail.

11 I talked to you at the beginning of this case about
12 using your common sense and how important that is.
13 The State gave you the evidence yesterday that you
14 need to convict the defendant. But what you need to
15 take along with you in that jury room is your common
16 sense because that's going to be the most important
17 thing. And I talked to you about keeping your eye on
18 the ball. Now you heard stuff yesterday, oh, the
19 State doesn't have this. The State doesn't have that.
20 The State has two sworn officers that saw this baggy
21 of cocaine fall from the defendant's rectum. That's a
22 lot ladies and gentlemen. So keep your eye on the
23 ball.

24 Now, what we have here is the case of two officers
25 who did this job. Two officers who made searches.

1 They were conducted by the books, by their training
2 that they had received by policy. That's what we
3 have. And we also have a case of a defendant who is
4 irate because his cocaine was found. He wants to say
5 these officers, oh, they didn't do it by the books.
6 You know, Officer Montjoy actually penetrated my
7 rectum and he grabbed my genital area and all this
8 stuff happened. What Officer Montjoy told you it's
9 not a pleasant experience to begin with when you are
10 having to search and pat down a defendant, but yet per
11 the defendant Officer Montjoy is going to add that
12 extra, extra little built of actually penetrating a
13 defendant's rectum. It is not reasonable ladies and
14 gentlemen and I ask you to use your common sense in
15 evaluating this case. You have an irate defendant. A
16 defendant who is mad because his cocaine was
17 discovered that day.

18 Now, I am going have one more opportunity to speak
19 with you today after Mr. Delaney speaks with you.
20 Again, we do appreciate your service in this case and
21 I urge you to use your common sense. You will
22 probably hear me say that again. You will probably
23 get sick of hearing me say that. And I am asking you
24 today just to your common sense. Take with what you
25 heard in this case, what you've seen in this case and

1 find the defendant guilty; guilty of possession of
2 cocaine, guilty of possession of marijuana and guilty
3 of driving under suspension.

4 Thank you.

5 THE COURT: Counsel.

6 MR. DELANEY: Good morning. It is not going to be
7 a closing argument where I am up here for an hour but
8 I do have some things I want to say. No doubt about
9 it. I appreciate your attentiveness throughout this
10 trial. As we both said I think I was a little closer
11 with my prediction, but this is a quick trial. But it
12 don't doesn't make it any less important. I think in,
13 you know, an hour or so may be less than that, you
14 will be in the jury deliberation room and talking
15 about this case and deciding. A few things I want to
16 say. This is the greatest system in the world. And
17 I'm a little probably bias, but it's not close. If
18 you go -- you hear about other legal systems
19 throughout the the world. It's not close. This is
20 the best criminal justice system. You will hear no
21 doubt on the news is it perfect, no. It's not perfect
22 when you hear some the stories of things, but it's
23 still what it's based on, what it's built on most of
24 the time it works. It works really good. And I
25 talked a little bit and you heard a little bit at the

1 beginning of what the burden is in the case and this
2 is a standard and the State they have to prove the
3 case against somebody beyond a reasonable doubt.
4 Someone when they are charged with criminal offense
5 they are presumed innocent. And a case has to be
6 built and has to be presented and ultimately 12 people
7 have to be unanimous about a verdict in the case. And
8 that presumption of innocence follows a defendant
9 throughout the trial.

10 Reasonable doubt, and you heard Miss Gilmer refer
11 to it and Judge Alford will instruct you on it more
12 and read the law to you a little bit and what you must
13 follow. Reasonable doubt has been defined as the kind
14 of doubt that would leave a reasonable person not
15 firmly convinced. A kind of doubt would leave a
16 reasonable person hesitant to act. If someone has
17 that type of doubt they must then give that benefit of
18 the doubt to the defendant in a criminal case.

19 On March the 14th, 2017, a little over a year
20 ago -- about 13 months ago -- you will have this back
21 in the jury deliberation room. This is the baggy of
22 what has been testified to as a gram of cocaine and
23 then there is another baggy that the cocaine was found
24 in. And there is you will see where it looks like it
25 was at some point tied up. And you heard the

1 officer's testimony that he felt -- that he felt a
2 knot in a baggy. That was his testimony. He felt a
3 knot in the baggy. Now, you will get a chance to look
4 at this and you'll get a chance to see now if this
5 baggy is tied up tight how small this knot would be.
6 Okay. You will get a chance to see that and look at
7 that and I will submit that this knot is no bigger --
8 it would be no bigger than that (indicating), when it
9 is tied up tight. You can look at it yourself and
10 make your own opinion but I would submit in my opinion
11 it would be about that big (Indicating). And you
12 heard testimony from the officer that through at least
13 two layers of clothing. We heard sweatpants and
14 basketball shorts. At least two. I would contend
15 three layers of clothing. That officer is able to
16 feel that and if an officer is able to feel that I
17 would argue to you, ladies and gentlemen, that is
18 extreme. That is extreme if you are able to feel
19 that.

20 The officer, you know, we heard what he testified
21 that he -- you know -- went up to the -- in his
22 testimony, the rectum hole, but he didn't go inside.
23 I think his words were went up to the butt hole. He
24 went up to it but he didn't insert. But if your
25 feeling something like that through two layers of

1 clothing, again, that's extreme. And I would contend
2 that's where questions come up and you know what we
3 have in this case we had testimony. We had testimony
4 of two officers from Jonesville Police Department and
5 we had testimony from Mr. Fleming. The only two
6 people that were out at the scene that testified in
7 the courtroom was Officer Montjoy and Mr. Fleming.
8 Wouldn't it be nice to have some video of that scene.
9 And I understand that you know things happen. But
10 what I would submit is what you heard is a lot of
11 excuses of why you don't have it. You know, it's 2018
12 now but we are not talking about that long ago, 2017.
13 In this day and age. Okay. You don't have body cam
14 video yet. We have it now but you didn't have it back
15 then. You didn't have that.

16 You heard the chief testify these in-car cameras
17 when police are questioning and having encounters with
18 individuals these cameras are important. They are in
19 the car for a reason. And we heard testimony that
20 Officer Montjoy didn't have one in his car for months.
21 Now we saw an affidavit that was signed by him the day
22 of this traffic stop that he filled out that there
23 was -- it was inoperable condition. Nothing else
24 presented regarding that. It was out for months and I
25 think that's an excuse. Just because you're a small

1 town police department and money is tight that's not a
2 good excuse. That is not a good excuse in this
3 courtroom ladies and gentleman.

4 Where is Officer George? He was there. He
5 presumably from what we heard saw the search. Why
6 wasn't he brought in to testify? We heard from the
7 chief who was there after the fact. But what about
8 Officer George. Why is he not brought in to the
9 courtroom? They have the burden. Mr. Fleming does
10 not. If he wouldn't have taken the stand and
11 testified you would have been told you can't use that
12 against him. He doesn't have to prove a thing. They
13 have the burden. He took the stand and he testified.
14 You have his side and you have Officer Montjoy's side
15 about what happened out there that day. But I would
16 contend it was extreme.

17 Tyron told you that he was not doing the greatest
18 thing that day. Should he have been driving, no, he
19 shouldn't have been driving the car. He is guilty of
20 that. He told you he had marijuana on him. He told
21 you that. He told you that he didn't have cocaine.
22 Okay. We heard from the jail officer, who by the way
23 said that if he is doing any type of intrusive search
24 where he's looking at someone's butt or feeling around
25 that person is going to the hospital to get that done.

1 That's was from a jail officer. But the jail officer
2 said also that if you -- you know when you working at
3 the jail and it sounds like he hasn't worked there
4 that long -- you name any type of illegal drug they
5 find it in there. There is drugs in there. You heard
6 that.

7 Now, what is a way to prove their case to you
8 beyond a reasonable doubt. Cause you heard there's
9 DNA. There is supposedly DNA on on this bag. Feces.
10 DNA. When I questioned the guy from SLED who did the
11 drug analysis he tried to deflect a little bit. I'm
12 not sure, you know, feces. I'm no scientist or
13 chemist. Feces that's a good thing to test for DNA.
14 We heard from the beginning they had that on that bag.
15 Now it goes back to what you heard throughout this
16 trial. Excuses. You heard questions asked of the
17 chemist who came from SLED, well, how back up are you?
18 Well, we're backed up and I don't disagree with that.
19 They are backed up. But this case is you know
20 happened over a year ago. You got time to do it. You
21 also heard a question about law enforcement agency can
22 only submit so much evidence to SLED. That kind of
23 surprised me a little bit. I don't know what that
24 means. You can only submit so much evidence for
25 testing but I will submit those are excuses and you

1 will told at the beginning of the trial by the State
2 to keep your eye on the the ball. You heard story
3 about playing soft ball and I am asking to you do that
4 too. Keep your eye on the ball here too. There is a
5 lot of excuses going on. And you know this system it
6 demands more than that. If you test it, you know, DNA
7 on the bag, I think your decision would be pretty
8 easy. But they didn't do it. If that causes doubt,
9 if take causes hesitation ladies and gentlemen, that
10 benefit you will be told that benefit must go to my
11 client. Find Mr. Fleming guilty of driving of
12 suspension, of possession of marijuana, but I would
13 submit there is too many questions. There is too many
14 excuses that were made. There is too much
15 corroboration that could have been brought to you that
16 wasn't, and because of that again this system demands
17 more and because of that I would ask you to find Mr.
18 Fleming not guilty of possession of cocaine.

19 Thank you.

20 MS. GILMER: I just want to touch on a few things
21 that Mr. Delaney said. Now, Mr. Delaney says the
22 State is presenting excuses to you. What the State is
23 presenting is unfortunately the reality to you. We
24 asked about keeping your eye on the ball. We would
25 submit Mr. Delaney is trying to throw a curve ball.

1 Trying to through a screw ball. Keep your eye on the
2 ball, the one that's coming straight down the middle
3 of that beautiful perfect pitch that you have been
4 waiting for all day long. Keep your eye on the ball.

5 Now, let's talk about a few things. First of all
6 I will start off with the SLED DNA testing. You heard
7 from Doug Robinson from SLED. He has no dog in this
8 fight. He told you his job. Drugs come in. He
9 doesn't know who these people are. They come in. I
10 test them. I asked him about SLED being backlogged.
11 Yes, they are getting the evidence. They have to take
12 evidence. All the the police agencies in South
13 Carolina want to send them their evidence. They have
14 to take all that evidence. The entire state of South
15 Carolina that one agency, SLED, in Columbia. So he
16 told you about that. Mr. Delaney said he tried to
17 deflect by saying oh, we're not backlogged all this
18 stuff. He is not trying to deflect. He is telling
19 you how it is and again he has no dog in this fight.
20 That just reality of the SLED.

21 Now, we live in an era of technology. This age of
22 technology right now where a lot is caught on video,
23 but there is a lot not caught on video too. Just
24 because something is not caught on video doesn't mean
25 it didn't happen. Perfect example is there's no video

1 of this marijuana being found on Tyrone Fleming.
2 There's no video of him driving under suspension. But
3 he told you yesterday, yeah, it happened. I had
4 marijuana on me and I was driving under suspension so
5 just because there is no video doesn't mean it didn't
6 happen just like someone said it happened. Officer
7 Montjoy talked about his in-car video how it was
8 inoperable. He knew it was at the time. He had
9 reported it to Chief Jennings which Chief Jennings
10 told you, yeah, that is true. He had told me about
11 that and was able to get it fixed a few months later.
12 But unfortunately the reality of that is they are a
13 small agency. Resources, money is limited and
14 therefore they have to wait. They can't just take a
15 patrol vehicle off the road when they have so few
16 vehicles to begin with. So those are just issues that
17 they face being a smaller agency and just being a you
18 law enforcement agency in general. It would be
19 wonderful if every officer in the world was equipped
20 with state of the art investigative equipment. But
21 you heard from Chief Jennings yesterday unfortunately
22 that's not a reality either. Yes, officers have body
23 cams now and in-car videos. Policy has been changed
24 and grants have been written and that money has been
25 able to be obtained but it is an extensive process and

1 he told you about that. The resources it takes, it
2 takes time, it takes money and these are things that
3 smaller agencies don't have. But just because there
4 is no video, again, doesn't mean it didn't happen.

5 Now the defense wants to talk about oh, there's no
6 video. There is no other officer at the scene for
7 this marijuana and driving under suspension. But
8 he has established, the defendant has established
9 himself that he is guilty of driving under suspension
10 and simple possession of marijuana. So we moved on
11 from that. Now we are at the possession of cocaine.
12 That's not going to be something that would have been
13 captured on the in-car video recording anyway. That
14 would not have been on any video because as the
15 officer told you there are privacy concerns. Now this
16 is a defendant. This is a suspect that, yeah, Officer
17 Montjoy and Littleton are decent human beings and
18 didn't cause further embarrassment for the defendant.
19 These inmates having to strip search by having --
20 having a video of that. So that's possession of
21 cocaine video is irrelevant at this point. So don't
22 let the defense throw those screw balls and change
23 that for you. It is not excuses. It is reality and
24 you have what you need to convict the defendant of
25 that possession of cocaine.

1 Now defense wants to talk about how thorough
2 Officer Montjoy was in his search. That he did all
3 this extra searching. He felt this knot. Yeah, he
4 probably was searching very thoroughly if he felt this
5 knot of cocaine. I don't think it's to the point of
6 the defendant where he actually inserted his fingers
7 inside of him. But either way, yeah, we can agree,
8 Officer Montjoy is a thorough officer. So this
9 thorough officer who is that thorough with the
10 defendant at the scene he would walk into that
11 bathroom with Officer Littleton and the defendant and
12 he wouldn't see that baggy of cocaine lying on the
13 ground. This baggy that the defendant claimed they
14 pinned on him and it was lying in there for two or
15 three minutes as they were undressing and handcuffing
16 him and all of sudden two or three minutes later it
17 appeared and that's when they saw it. It just does
18 not make sense.

19 Ladies and gentlemen, I just submit to you to use
20 your common sense. The defendant said he is guilty of
21 possession of marijuana and driving under suspension
22 but oh no, I am not guilty of that cocaine. I am not
23 guilty of possessing that. Well yeah, he is telling
24 you I am guilty of driving under suspension,
25 possession of marijuana, arguably not so serious

1 offenses.. but not that possession of cocaine.
2 Arguably much more serious offense. What it boils
3 down to is we have a two-time convicted felon who took
4 the stand yesterday, breaking the law again.
5 Knowingly driving without having his license. Having
6 a suspended driver's license and in possession of
7 illegal drugs. Not just in possession of them. Not
8 having them in his pocket. Not hidden under the car
9 seat. But having them under his penis and testicles.
10 A really big effort in hiding. Trying to deceive
11 somebody else in hiding that evidence. And then later
12 the cocaine that he had in his rectum, his buttock's
13 area. He is now accusing a 15-year law enforcement
14 officer of grabbing his genitals, putting his finger
15 up into his rectum and then accusing two law
16 enforcement officers of not being thorough, not
17 following policies, not doing their job. Accusing
18 them of pinning cocaine on him. Cocaine that just
19 happened to be lying on the floor of the room that is
20 kept free and clear of contraband. And you have two
21 officers that is telling you that cocaine fell from
22 the defendant's rectum, the defendant's buttock's area
23 and they saw it. That's what it boils down to.

24 I urge you to use your common sense and I
25 appreciate your time. Find the defendant guilty,

1 driving under suspension, possession of marijuana and
2 possession of cocaine. Thank you.

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury panel, you heard final arguments of counsel.
5 It's now time for me to charge, that is to instruct
6 you with regard to the law that applies to the issues
7 in this case.

8 In this case the State charges Tyron D. Fleming
9 with three offenses; driving under suspension,
10 possession of marijuana and possession of cocaine. To
11 these charges the defendant has plead not guilty.
12 This places then upon the State the burden of proving
13 him guilty beyond a reasonable doubt. A person
14 charged with committing a criminal offense in South
15 Carolina is never required to prove himself innocent.
16 I charge you it is a important rule of law that a
17 defendant in a criminal trial must always be presumed
18 innocent until his guilt has been proved beyond a
19 reasonable doubt. This presumption of innocence
20 remains with the defendant at all times throughout the
21 trial and is only removed when and if the State has
22 proved guilt beyond a reasonable doubt.

23 It is your solemn duty, ladies and gentlemen, if
24 not clearly convinced of guilt beyond every reasonable
25 doubt to the contrary to find the defendant not

1 guilty.

2 So the State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. What is a
4 reasonable doubt. Some of you may have served as
5 jurors in civil cases where you were told it is only
6 necessary to prove the fact is more likely true than
7 not, such as by the greater weight or preponderance of
8 the evidence. However in criminal cases, the State's
9 proof must be more powerful than that. It must be
10 beyond a reasonable doubt.

11 Ladies and gentlemen, proof beyond a reasonable
12 doubt is proof that leaves you firmly convinced of the
13 defendant's guilt. There are very few things in this
14 world that we know with absolute certainty, and in
15 criminal cases the law does not require proof that
16 overcomes every possible doubt. A reasonable doubt
17 may also be described as the kind of doubt that would
18 cause a reasonable person to hesitate to act. If you
19 have such a doubt as to the guilt of the defendant,
20 then he would be entitled to a verdict of not guilty.
21 Reasonable doubt may arise from evidence which is in
22 the case, from the absence or lack of evidence in the
23 case. If based on your consideration of the evidence
24 you're firmly convinced that the defendant is guilty of
25 the crimes charged you must find him guilty. If on the

1 other hand you think there is a real possibility that
2 he is not guilty you must give him the benefit of the
3 doubt and find him not guilty. You alone must make
4 the determination of whether or not reasonable doubt
5 exists as to the guilt of the defendant.

6 Mr. Foreman, ladies and gentlemen of the jury
7 panel there are are two types of evidence which are
8 are generally presented during a trial, direct
9 evidence and circumstantial evidence. Direct evidence
10 directly proves the existence of fact and does not
11 require deduction. Circumstantial evidence is proof
12 of a chain of facts and circumstances indicating the
13 existence of a fact. Crimes may be proven by
14 circumstantial evidence. The law makes no distinction
15 between the weight or value to be given to either
16 direct or circumstantial evidence. However, to the
17 extent the State relies on circumstantial evidence,
18 all the circumstances must be consistent with each
19 other, and when taken together, point conclusively of
20 the guilt of the accused beyond a reasonable doubt.
21 If these circumstances merely portray the defendant's
22 behavior as suspicion, the proof has failed.

23 The State has the burden of proving the defendant
24 guilty beyond a reasonable doubt. This burden rests
25 with the State regardless of whether the State relies

1 on direct evidence, circumstantial evidence or some
2 combination of the two.

3 Mr. Foreman, ladies and gentlemen of the jury you
4 have heard the testimony of a witness, or witnesses
5 who has special knowledge, skill, experience,
6 training, education in a particular field who has
7 given opinions as to matters in which he is skilled.
8 In determining the weight to be given such opinion you
9 should determine the qualifications and credibility of
10 the expert witness and the reason given for his
11 opinion. You are not bound by such opinion. Give
12 them the weight, if any, you deem they are entitled.

13 Mr. Foreman, ladies and gentlemen of the jury,
14 under the constitution of South Carolina you are the
15 finders of fact in this case. I do not have the right
16 to pass upon the facts or even to express an opinion I
17 might have as to the facts. Nor may I suggest in any
18 way what I may think about the guilt or innocence of
19 the defendant. You should form no opinion in that
20 regard from anything I may have said or any ruling I
21 made during the course of the trial. As the sole
22 judges of the facts in this case you are also
23 necessarily the sole judges of the credibility or
24 believability of each of the witnesses that have
25 testified during the course of the trial. There are a

1 number of factors which you may considering in
2 arriving at assessment as to a particular witness's
3 credibility or believability. Some factors I am going
4 to list for you and should you think of other factors
5 that you believe also ought to be considered when you
6 go back into the jury room on the question of
7 credibility or believability then you should consider
8 those factors as well. But you may consider the
9 demeanor of the witness from the witness stand. What
10 was that witness's manner of appearance. Was the
11 witness straight forward in answering questions or
12 hesitant in responding to questions. Simply put, do
13 you believe the witness is telling the truth or not
14 telling the truth. Do you believe the witness knew of
15 what that witness testified or did not know of what
16 that witness testified. You may consider whether or
17 not the testimony of a witness is consistent or
18 inconsistent with that witnesses own testimony or with
19 other testimony or evidence presented during the
20 course of the trial. You may also consider how the
21 witness came to know the facts to which he or she
22 testified. You may consider the opportunity that a
23 witness had to observe or hear. That is to perceive
24 the existence of a fact by means of their senses.

25 You may also consider whether or not a witness is

1 bias or prejudice. That simply means do you find that
2 a particular witness had some reason to come in to
3 court and testify one way or another to help or hurt
4 one side or the other. You may also consider whether
5 or not the testimony of a witness is straightened or
6 weakened by other testimony or other evidence
7 presented during the course of the trial.

8 Now, you as the finders of the facts in this case
9 and you as the judge of the credibility or
10 believability of each of the witnesses that have
11 testified may believe as much or little of what a
12 witness testifies to as you deem appropriate. You may
13 believe all of what a witness says. You may believe
14 none of what a witness says or you may believe only
15 part of what a witness says. Whatever your good
16 judgement and common sense tells you is the most
17 believable testimony is the testimony that you should
18 accept and reject that testimony which you find not to
19 be credible or believable.

20 Mr. Foreman, ladies and gentleman of the jury
21 panel, the same constitution that makes you the
22 finders of the fact make me the sole and only
23 instructor on the law. You must accept as correct the
24 law that I charge and apply to the law the evidence
25 that as find it and reach your verdict. Put aside any

1 concept you may have had as to the law before coming
2 here today and accept the law as I instruct it to be.
3 You, for purposes of your duty as jurors here today
4 should not be concerned about what the law ought to be
5 but what I charge you the law is now in this state.

6 Mr. Foreman, ladies and gentlemen of the jury
7 panel I charge you with regard to criminal intent.
8 Criminal intent is a necessary element of each crime
9 that must be proved by the State beyond a reasonable
10 doubt. Criminal intent is always a matter that must
11 be determined by the jury from the circumstances
12 surrounding the situation. There is no way to prove
13 intent to a mathematical certainty. There is no way
14 medical science can dissect a person's brain and
15 determine what he had in mind, so the law says
16 criminal intent may be inferred from the circumstances
17 shown to have existed. This is how the jury makes the
18 determination whether or not the element requiring
19 intent is present. Criminal intent is a state of mind
20 which operated jointly with an act in the commission
21 of a crime. Criminal intent is mental state, a
22 conscious wrongdoing. So it is up to you, the jury,
23 to determine what the defendant intended to do based
24 on the circumstances shown to have existed.

25 I tell you that the State must prove criminal

1 intent beyond a reasonable doubt just as the State
2 must prove every element beyond a reasonable doubt.
3 It is not necessary to establish intent by direct and
4 positive evidence but intent may be established by
5 inference in the same way as any other fact by taking
6 into consideration the acts of the parties and all of
7 the facts and circumstances of the case. While the
8 State may prove motive it is unnecessary that the
9 State do so. However, the State must prove intent.

10 Now Mr. Foreman, ladies and gentlemen of the jury
11 panel, I charge you specifically with the law
12 considering the charges pending against the State --
13 excuse me, against the defendant in this case. First
14 of all I charge you with regard to driving under
15 suspension. In order to convict the defendant, Tyrone
16 Deangelo Fleming, of driving under suspension the
17 State must prove beyond a reasonable doubt that the
18 defendant was driving a motor vehicle on a public
19 roadway in Union County and his driver's license or
20 privilege to drive a motor vehicle had been suspended
21 in South Carolina, and that he had been notified by
22 the South Carolina Department of Motor Vehicles that
23 his driving privileges had been suspended. He is also
24 charged with possession of marijuana. I charge you
25 with regard to that, the State must prove beyond a

1 reasonable doubt that the defendant knowingly or
2 intentionally possessed marijuana.

3 Knowingly means with knowledge, consciously, not
4 accidentally. Intentionally means willfully intending
5 the result which actually occurs. Not accidentally or
6 involuntary. Intent may be shown by acts of conduct
7 of the defendant and other circumstances from which
8 you may naturally and reasonably infer intent. To
9 prove possession the State must prove beyond a
10 reasonable doubt that the defendant had both the power
11 and intent to control the disposition or use of the
12 marijuana. Possession may be actual or constructive.
13 Actual possession means that the marijuana was in the
14 actual physical custody of the defendant.

15 Constructive possession means the defendant had
16 dominion or control or the right to exercise dominion
17 or control over either the marijuana itself or the
18 property on which the marijuana was found. Mere
19 presence at the scene where the drugs were found is is
20 not enough to prove possession. Knowledge of the
21 presence of the drugs is essential. The defendant's
22 knowledge and possession may be inferred when the
23 substance is found on the person of the defendant or
24 on the property under the defendant's control.
25 However this inference is simply an evidentiary fact

1 to be taken into consideration by you along with other
2 evidence in the case and given the weight for you to
3 decide it should have.

4 Now, the defendant is also charged with possession
5 of cocaine. Really the elements are the same but I
6 will read back through them with you again. To prove
7 the defendant guilty of possession of cocaine the
8 State must prove beyond a reasonable doubt that the
9 defendant knowingly or intentionally possessed
10 cocaine. Knowingly means with knowledge, consciously
11 not accidentally. Intentionally means, willful,
12 intending the result which actually occurs. Not
13 accidentally or involuntary. Intent may be shown by
14 acts and conduct of the defendant and other
15 circumstances from which you may naturally and
16 reasonably infer intent. To prove possession the
17 State must prove beyond a reasonable doubt that the
18 defendant had both the power and intent to control the
19 disposition or use of the cocaine. Possession may be
20 either actual or constructive. Actual possession
21 means that the cocaine was in the actual physical
22 custody of the defendant. Constructive possession
23 means the defendant had dominion and control or the
24 right to exercise dominion or control over either the
25 cocaine itself or the property on which the cocaine

1 was found. Mere presence at the scene where the drugs
2 were found is not enough to prove possession.
3 Knowledge of the presence of the drug is essential.
4 The defendant's knowledge and possession may be
5 inferred when a substance is found on a person of the
6 defendant or on the property under the defendant's
7 control. However, this is an evidentiary fact to be
8 taken into consideration by you, along with the other
9 evidence in the case and given the weight you decide
10 it should have.

11 Mr. Foreman, ladies and gentleman of the jury
12 panel, as you know the defendant is charged with three
13 offenses in this case and they are driving under
14 suspension, possession of marijuana and possession of
15 cocaine. You are to consider each charge separately
16 and consider the evidence separately for each offense.
17 Therefore if the evidence warrants it you may convict
18 the defendant on all counts, on one and not the other
19 and so forth. Or you can find the defendant not
20 guilty on all counts. You will write a verdict of
21 guilty or not guilty on each charge alleged in the
22 indictments.

23 Mr. Foreman, ladies and gentleman of the jury
24 panel, nothing that I may have said or done during the
25 course of this trial has been in any way intended to

1 express or suggest a view of the case, an opinion as
2 to the facts, the weight of the evidence or the
3 credibility of the witnesses. If any of my actions or
4 words are seen to so indicate you will disregard such,
5 form your own opinion as to these matters.

6 You have been selected as fair and impartial
7 jurors sworn to impartially try and determine the
8 facts of this case and when you comply with your oath
9 to do so then no one will have a right to criticize
10 your verdict and you will have fully discharged your
11 duty as jurors.

12 You are to decide these cases according to the
13 testimony you heard from the lips of the sworn
14 witnesses along with other evidence introduced into
15 the case. I charge you that as jurors you must decide
16 the issues in this proceeding without bias, without
17 prejudice to any party. You can not allow yourself to
18 be governed by sympathy, by prejudice, by passion, by
19 public opinion, political opinion, or any other
20 arbitrary fact. Both the State and the defendant have
21 the right to expect that each of you will carefully
22 and impartially consider all of the evidence in the
23 case and that you will follow the law as I have
24 explained it to you.

25 Now, Mr. Foreman, ladies and gentleman of the jury

1 panel, whatever your verdicts in this case as to each
2 of the charges the verdict must be a unanimous one.
3 All 12 jurors must agree on the verdict which the
4 foreperson will be authorized to right on behalf of
5 the jury.

6 Mr. Foreman, I charge you that once you begin your
7 deliberations that you maintain some order in the
8 deliberations. That all who wish to participate be
9 heard in the deliberations and be allowed to do so.
10 If for any reason any member of the jury panel should
11 take a break from the deliberations all should take a
12 break. I mean by that all jurors should be present
13 and deliberating when deliberations are going on.
14 Again, whatever your verdict is it must be a unanimous
15 verdict.

16 Now, I am going to ask you at this time to --
17 well, let me go over the verdict forms right quickly.
18 Very simple but let me go over them. On the verdict
19 form there is one for each charge. That's the way we
20 do it. So you consider each one separately. Once the
21 jury makes a unanimous decision on each of these
22 charges you will simply go to the verdict form. There
23 is two possible verdicts on here. Each one says we
24 the jury find the defendant, Tyrone Deangelo Fleming,
25 guilty of the offense of possession of marijuana, 28

1 grams or less. Other possible verdict is we the jury
2 find the defendant, Tyrone Deangelo Fleming not guilty
3 of the offense of possession of marijuana, 28 grams.
4 What you would do then is once the jury has reached a
5 unanimous verdict you would simply go to the verdict
6 on the verdict form which corresponds to the unanimous
7 verdict and you put a check mark in the blank beside
8 that. Once you've done that, sign your name on the
9 the line above the word foreperson and date it. When
10 you've done that as to all three of these then you
11 simply knock on the door and let the bailiff know you
12 have reached a verdict and I will bring you back out
13 in the courtroom to receive those verdicts. Now the
14 order in which the possible verdicts appear on the
15 verdict form means absolutely nothing. I do it the
16 same way every time. But the order means nothing.
17 What you should do is deliberate. Once the jury again
18 has reached a unanimous verdict then you record that
19 and go to the verdict form and record that on the
20 verdict form.

21 Thank you. If you will retire to the jury room at
22 this time but do not begin your deliberations. I have
23 to give counsel an opportunity to ask for additional
24 instructions. If additional instructions are
25 necessary I will bring you back out in the courtroom

1 and read those instructions. If no additional
2 instructions are necessary I will send to you by means
3 of the bailiff the verdict form and any exhibits which
4 have been admitted into the record and instructions to
5 begin deliberating. Please do not begin deliberating
6 until you get that instruction. If you will retire to
7 the jury room all accept the alternates. I will ask
8 you at this time not to go into the jury room but just
9 wait outside the courtroom door per instructions.

10 Thank you. Please retire.

11 (WHEREUPON, the jury leaves the courtroom.)

12 THE COURT: Any exceptions or requests for
13 additional charges by the State?

14 MS. GILMER: Not from the State.

15 THE COURT: From the defense?

16 MR. DELANEY: No, Your Honor.

17 THE COURT: Counsel, would you check the exhibits
18 and make sure only those that are actually admitted
19 into evidence go back to the jury room.

20 MS. GILMER: Yes, Your Honor.

21 (WHEREUPON, the jury started deliberations at
22 10:35.)

23 (WHEREUPON, the jury reached a verdict at 10:51)

24 THE COURT: Madame clerk, I will ask to you
25 publish the verdict.

1 Please bring the jury in.

2 (WHEREUPON, the jury enters the courtroom.)

3 THE COURT: Mr. Foreman, have you and the jury
4 reached a unanimous verdict in these cases?

5 THE FOREPERSON: We have.

6 THE COURT: If you just hand them up to the
7 bailiff the verdict forms.

8 Would the clerk publish its verdict.

9 THE CLERK: We the jury find the defendant, Tyrone
10 Deangelo Fleming, guilty of the offense of possession
11 of cocaine. We the jury find the defendant Tyrone
12 Deangelo Fleming guilty of the offense of driving
13 under suspension. We the jury find the defendant
14 Tyrone Deangelo Fleming guilty of the offense of
15 possession of marijuana, 28 grams or less.

16 THE COURT: Mr. Foreman, ladies and gentlemen the
17 jury panel if this be your verdict please indicate all
18 by raising your right hand.

19 Thank you. Let the record show that all 12 jurors
20 raised their hand. Mr. Foreman, ladies and gentlemen
21 of the jury panel this will complete your service in
22 this case. I want to thank you for your assistance
23 this week and your willingness to make a sacrifice to
24 help make your justice system work. Believe me we do
25 not take that for granted. We know that this is a

1 sacrifice on your part. Now I will excuse you at this
2 time all accept the foreperson. I will get you stand
3 and sign the the indictments and ask to you to call in
4 after six o'clock. Solicitor is that correct
5 solicitor or do you want them to call in after sick.

6 MS. GILMER: That will be fine.

7 THE COURT: A decision will be made whether we
8 will start another trial in the morning or not and we
9 may or may not not. You will you get that message
10 when you call in. Call back in after six. Enjoy the
11 rest of the day. All right. Thank you.

12 Mr. Foreman, I will ask you to sign the
13 indictments.

14 (WHEREUPON, the jury is dismissed.)

15 All right, I will hear you with regards to any
16 motions you might wish to make at this time.

17 MR. DELANEY: Thank you, judge. We renew any
18 motions, objections we made earlier in the trial and
19 also make a standard motion for a new trial in the
20 case.

21 THE COURT: State wish to be heard on the motion?

22 MS. GILMER: No, Your Honor.

23 THE COURT: All right. I deny your motions for
24 the same reasons I gave earlier when you made those
25 motions and I don't know of any grounds for a new

1 trial. The Court sees no reason to disagree with the
2 jury verdict therefore I deny your motions at this
3 time for a new trial and also renewed motions.

4 Any other motions at this time, either side?

5 MS. GILMER: Your Honor, just as far as sentencing
6 goes we do have certified copies of the convictions of
7 defendant's prior.

8 THE COURT: Bring those up and put them into the
9 record.

10 MS. GILMER: I have copies Your Honor.

11 (WHEREUPON, documents were handed up to the court:

12 MS. GILMER: Your Honor, as to driving under
13 suspension the defendant plead guilty on March 9,
14 2016, to driving under suspension. That case number
15 2015-0002533 with the Union Municipal Court.

16 THE COURT: And that is second offense then?

17 MS. GILMER: Yes, Your Honor. And Your Honor
18 these all are certified copies. As to the drug
19 offenses in 2007 the defendant was convicted of
20 distribution of crack, first offense. In 2007 the
21 defendant was convicted -- plead to distribution of
22 crack proximity. In 2011 the defendant was convicted
23 of conspiracy to distribute crack. First offense.
24 And in 2012 the defendant was convicted of possession
25 with intent to distribute crack first offense.

1 THE COURT: So this offense is his third?

2 MS. GILMER: This will be third or subsequent Your
3 Honor.

4 THE COURT: Now the marijuana charge it wouldn't
5 be third or subsequent under the marijuana charge.

6 MS. GILMER: It would not Your Honor. He has a
7 prior but it is outside of the timeframe so it would
8 just be first offense.

9 THE COURT: All right. Please bring the defendant
10 around.

11 Does the State wish to be heard on sentencing?

12 MS. GILMER: Yes, Your Honor. Your Honor, we are
13 requesting a prison sentence in this matter. The
14 defendant does have a prior criminal history dating
15 back being to 2006, two counts of simple possession of
16 marijuana, trespass, public disorderly conduct,
17 possession of cocaine; 2007 distribution crack, first
18 offense, distribution crack proximity charge, 2011
19 trespass, conspiracy to distribute crack, first
20 offense and possession with intent to distribute
21 crack. He received a five year prison sentence on
22 those charges and in 2012 open container and 2015
23 driving under suspension.

24 THE COURT: Counsel.

25 MR. DELANEY: Thank you, judge. Mr. Fleming is 29

1 years old. He will be I think 30 next month. He has
2 four children. He is from Union. Went to high school
3 here. Went through the 12th grade. He has worked in
4 carpentry work throughout his life. He has got some
5 support in the courtroom. His girlfriend, mother and
6 mother of his children are in the courtroom for
7 support. I am asking -- we are going to be asking,
8 Your Honor, to send him to prison today. He knows he
9 has got himself in a situation with his record, you
10 know, and I talked to Tyrone about this.

11 We are asking for a prison sentence. We are
12 asking for the Court to consider something in the
13 range of three to five years because this is a
14 possession. Because this is a small amount. It is
15 not an excuse but he is not charged with selling it.
16 Tyrone, from what I know, he doesn't have a lot. He
17 makes some bad decisions. He has got to leave this
18 stuff alone. But we are asking for mercy. I am
19 asking the Court not to consider the high end but to
20 consider something a little lower.

21 THE COURT: Thank you. Anything you wish to say
22 to the Court Mr. Fleming?

23 THE DEFENDANT: I made a mistake. You know, I
24 shouldn't have.

25 THE COURT: You not only made a mistake you lied

1 under oath about what happened. You are entitled to a
2 trial. I don't penalize people for going to trial. I
3 think you have that right. But it's another thing to
4 get on the stand and lie under oath about what
5 happened. I mean, I think it was obvious by the jury
6 wasn't out but about ten minutes. That is one of the
7 fastest juries that have come back with a guilty
8 verdict. They didn't believe a word you said either.
9 You do have a bad record. No question about it with
10 these drugs you keep on and on.

11 I would say, you know, the officer -- part time
12 officer he did a really good job in this case. Made a
13 good witness and I think he followed procedure in this
14 case. Obviously the jury thought so as well otherwise
15 they wouldn't have come back so fast with a guilty
16 verdict.

17 How much time has he served in jail?

18 MS. GILMER: I tried to get a calculation. I
19 would just ask the Court to give him credit. There is
20 a couple of months of credit that he has at this
21 point. The exact number of days I don't know.

22 THE COURT: I will give him credit. If you knew
23 the exact number of days they don't question it, but I
24 will just I will give him credit.

25 MS. GILMER: And they will check into it.

1 THE COURT: If I don't know the number of days I
2 can't put it on here.

3 Counsel approach the bench for just a moment.

4 (WHEREUPON, there was an off the record discussion
5 held at the bench.)

6 MR. DELANEY: And Your Honor just for the record
7 we agree it is 57 days of credit.

8 THE COURT: I will write that in.

9 All right in the case number 2017 -- let me say
10 this, Mr. Fleming, if you had these charges and you
11 didn't have any record whatsoever I would probably
12 look at probation on this and give you another chance.
13 But you got this extensive record. You have been
14 dealing. You have been involved with with drugs and
15 illegal activity for more than a decade. I have to
16 take that into consideration. I always do when I
17 sentence.

18 In case number 2017-GS-44-1059, Tyrone Deangelo
19 Fleming, having plead guilty to possession of crack
20 cocaine, third or subsequent, the sentence of the
21 Court he be committed to State Department of
22 Corrections for a term of eight years. The sentence
23 will be concurrent. Given credit for 57 days of jail
24 time. In case number 2017-GS-44-1441, Tyrone Deangelo
25 Fleming, having plead guilt to driving under

1 suspension, second offense, sentence of the Court he
2 be committed to the State Department of Corrections in
3 the county detention center for a period of 60 days.
4 Given credit for 57 days in jail. Sentence is
5 concurrent. Case number 2017-GS-44-1442, Tyrone
6 Deangelo Fleming, having plead guilty to possession of
7 marijuana, less than 28 grams, sentence of the Court
8 be committed to the State Department of Corrections in
9 the County Detention Center for determinant term of 30
10 days. Again, sentence is concurrent. Given credit
11 for 57 days of jail time.

12 MS. GILMER: Thank you, Your Honor.

13 (END OF TRANSCRIPT)

14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 9-11th day of April, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 31, 2018

S/ Aileen Butler

STATE'S
EXHIBIT1 4-10-18
AR**JONESVILLE POLICE DEPARTMENT****Affidavit For Failure To Produce Videotape**

I. I hereby affirm that I cannot produce a videotape:

1. ☐ From the vehicle I was operating because:

A. ☐ At the time of the defendant's arrest, the vehicle I was operating had not yet been equipped with a videotaping device and therefore pursuant to section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding vehicles is not applicable.

B. ☒ At the time of the defendant's arrest or probable cause determination, the video equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition.

C. ☐ It was physically impossible to produce a videotape from the vehicle I was operating of the defendant at the time of arrest or probable cause determination because:

☐ The defendant needed emergency medical treatment, or

☐ Exigent circumstances existed which are outlined below:

D. ☐ Other valid reasons existed for failing to produce the the videotape based on the totality of the circumstances. These reasons are outlined below:

II. ☐ From the breath testing site because:

A. ☐ At the time of the defendant's arrest, the breath testing site had not been equipped with a videotaping device and therefore pursuant to section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding breath testing sites is not applicable.

OVER →

B. ☐ At the time of the defendant's arrest or probable cause determination, the video equipment at the breath testing site was in an inoperable condition and reasonable efforts have been made to maintain the equipment in an operable condition and there was no other operable breath testing facility in the county. Operable breath test facility means a site with both an operable breath testing machine and operable videotaping equipment.

C. ☐ It was physically impossible to produce a videotape from the breath testing site of the defendant because:

☐ The defendant needed emergency medical treatment, or

☐ Exigent circumstances existed which are outlined below:

D. ☐ Other valid reasons exist for failing to produce the videotape bases on the totality of the circumstances. These reasons are outlined below:

III. ☐ I am unable to produce a videotape that shows the defendant's actions during the twenty minute pre-test waiting period. It was physically impossible to videotape the defendant's actions during the twenty minute pre-test waiting period because.


 Signature of Officer

3-14-2017
 Date

State of South Carolina
 County of Union

Sworn to and subscribed before me this _____ day of _____, 20____

 Notary Public for the state of South Carolina

My commission expires _____

South Carolina
Department of Motor Vehicles

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

D. L. Shelton
Procedures & Compliance, Director

04/17/2012

FLEMING, TYRONE DEANGELO
400 S MOUNTAIN ST
UNION, SC 29379-2313

CUSTOMER NO: 31194889
FILE NO: 13975607
DL NO:

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO PAY TRAFFIC TICKET SECTION OF LAW: 56-25-20

VIOL DATE	TICKET#	VIOLATION
11/17/2011	F385994	Seatbelt Violation

COURT:
UNION MAG
210 WEST MAIN ST
UNION, SC 29379
864-429-1648

BEGINNING DATE: 12:01 AM 05/07/2012

ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until you have done the following:

COMPLIANCE:

Pay the fine for the ticket to the court. When the fine is paid, the court will give you a compliance notice which shows the description of the violation, the date of the violation, the date the ticket was paid, and the ticket number. YOU MUST BRING THIS COMPLIANCE TO YOUR LOCAL DMV OFFICE OR MAIL IT TO DRIVER RECORDS, POST OFFICE BOX 1498, BLYTHEWOOD, SC 29016-0028. NOTE: IT IS YOUR RESPONSIBILITY TO GIVE THE DEPARTMENT PROOF THAT THIS TICKET HAS BEEN PAID OR THE SUSPENSION MAY REMAIN IN EFFECT.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee if your compliance notice shows payment on or after the suspension date. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythwood, SC 29016-0028 or paid by credit card online at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Your license must be returned to any DMV Office or mailed to Driver Records if this suspension is not cleared before the suspension date listed above.

THIS NOTICE CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Driver Records Manager



Henry McMaster
Governor

Kevin A. Skuseo
Executive Director

State of South Carolina
Department of Motor Vehicles

CERTIFICATE OF CERTIFIED MAILING

This notice of suspension is a true and correct copy of the original notice of Suspension which was computer generated on 03/18/2016. Processed in the normal course of business and placed in the United States mail, return receipt requested, with **CERTIFIED** postage prepaid addressed to the driver at the address contained in the DMV records and electronically stored on file with the South Carolina Department of Motor Vehicles

02/05/2018

Date

Steph M...

Driver Service

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

D. L. Phelps

Procedures & Compliance Director

South Carolina
Department of Motor Vehicles

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

D. L. Shaffer
Procedures & Compliance Director

03/18/2016

FLEMING, TYRONE DEANGELO
400 S MOUNTAIN ST
UNION, SC 29379-2313

CUSTOMER NO: 31194889
FILE NO: 20530537
DL NO:

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below.

SECTION OF LAW: 56-1-460

VIOL DATE	CONV DATE	TICKET#	VIOL DESCR
09/29/2015	03/09/2016	67476PK	Driving Under Suspension

BEGINNING DATE: 12:01 AM 06/09/2016 ENDING DATE: MIDNIGHT 09/09/2016

SPECIAL DRIVING PRIVILEGES:

If your violation date is on or after 1/1/11, the following may apply. You may be eligible for a route restricted license if you are a licensed driver, a US Citizen, have a job, attend ADSAP, attend a court-ordered drug program or are enrolled in a college or university. This license allows you to drive non-commercial motor vehicles on a specific route at a certain time during this suspension period. Complete the enclosed application and return it to the DMV Customer Service Office at 1630 Shop Road, Columbia, SC or mail it to Driver Records, PO Box 1498, Blythewood, SC 29016-0028. There is a \$100.00 fee for this license. Incomplete applications will be returned. If you do not receive special driving privileges, the suspension will become effective on the date indicated above and you must surrender your driver's license to your local DMV Office. If you are holding a valid license from another state, you may make application for a route restricted license without surrendering your out-of-state license to the SCDMV. If approved, this credential must be kept in your possession with the out-of-state license during the suspension period.

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance (SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Tests:

You must successfully complete the vision test.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Driver Records Manager

DISCARD THIS PORTION
TEAR OFF AND



1. Article Addressed to:

FLEMING, TYRONE DEANGELO
400 S MOUNTAIN ST
UNION, SC 29379-2313

31194889

REF247

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

RECEIVED

MAR 21 2016

3. Service Type

☒ Certified Mail

DRIVER RECORDS

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

9290 9901 6940 0100 7310 93

PS Form 3811, February 2004

Domestic Return Receipt

102985-02-14-1540

← FOLD BACK THEN TEAR OUT

CERTIFIED MAIL

CLES

USPS TRACKING #

COLUMBIA SC 2

79016-0028



9290 9901 6940 0100 7310 93



RETURN RECEIPT REQUESTED

SHOWING TO WHOM, DATE AND ADDRESS WHERE DELIVERED

FLEMING, TYRONE DEANGELO
400 S MOUNTAIN ST
UNION, SC 29379-2313

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

D. L. Shelton
Procedures & Compliance, Director

NIXIE

296 7E 1

0003/25/16

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

SC: 29016149898

*2034-21790-21-30

293792313 498





Henry McMaster
Governor

Kevin A. Strucke
Executive Director

State of South Carolina
Department of Motor Vehicles

CERTIFICATE OF CERTIFIED MAILING

This notice of suspension is a true and correct copy of the original notice of Suspension which was computer generated on 02/05/2018. Processed in the normal course of business and placed in the United States mail, return receipt requested, with **CERTIFIED** postage prepaid addressed to the driver at the address contained in the DMV records and electronically stored on file with the South Carolina Department of Motor Vehicles

02/05/2018

Date

Steph M...

Driver Service

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

A. L. Phelps

Procedures & Compliance Director

South Carolina
Department of Motor Vehicles

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

D. L. Shuppa
Procedures & Compliance Director

02/22/2016

FLEMING, TYRONE DEANGELO
400 S MOUNTAIN ST
UNION, SC 29379-2313

CUSTOMER NO: 31194889
FILE NO: 20409358
DL NO:

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below.

SECTION OF LAW: 56-1-460

VIOL DATE	CONV DATE	TICKET#	VIOL DESCR
12/27/2015	01/28/2016	95781GO	Driving Under Suspension

BEGINNING DATE: 12:01 AM 03/08/2016 ENDING DATE: MIDNIGHT 06/08/2016

SPECIAL DRIVING PRIVILEGES:

If your violation date is on or after 1/1/11, the following may apply. You may be eligible for a route restricted license if you are a licensed driver, a US Citizen, have a job, attend ADSAP, attend a court-ordered drug program or are enrolled in a college or university. This license allows you to drive non-commercial motor vehicles on a specific route at a certain time during this suspension period. Complete the enclosed application and return it to the DMV Customer Service Office at 1630 Shop Road, Columbia, SC or mail it to Driver Records, PO Box 1498, Blythewood, SC 29016-0028. There is a \$100.00 fee for this license. Incomplete applications will be returned. If you do not receive special driving privileges, the suspension will become effective on the date indicated above and you must surrender your driver's license to your local DMV Office. If you are holding a valid license from another state, you may make application for a route restricted license without surrendering your out-of-state license to the SCDMV. If approved, this credential must be kept in your possession with the out-of-state license during the suspension period.

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance (SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Tests:

You must successfully complete the vision test.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

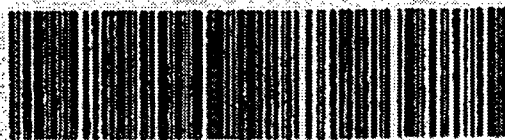
Driver Records Manager

CERTIFIED MAIL

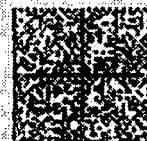
CLES

USPS TRACKING #

9016-0028



9290 9901 6940 0100 7097 40



U.S. POSTAGE PITNEY BOWES

ZIP 29016 \$006.73⁵
02 1W
0001394666 FFR 73 2016**RETURN RECEIPT REQUESTED**

SHOWING TO WHOM, DATE AND ADDRESS WHERE DELIVERED

FLEMING, TYRONE DEANGELO
400 S MOUNTAIN ST
UNION, SC 29379-2313

UTP

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.D. L. Phelps
Procedures & Compliance Director

NIXTE

296 3E 1

R663/08/16

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 29016149898

*2480-08517-08-15

2901601498



02/05/2018

Date

Steph Ylie
Driver ServicesCertified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.D. L. Phelps
Procedures & Compliance Director

Post Office Box 1498, Blythewood, South Carolina 29016

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on August 17, 2017, the Grand Jurors of Union County present upon their oath:

DRIVING UNDER SUSPENSION

That Tyrone Deangelo Fleming did, in Union County on or about March 14, 2017, drive a motor vehicle on a public highway of this State when his license to drive was canceled, suspended or revoked, such not being the first offense within a period of five years including and immediately preceding the foregoing date, in violation of Section 56-1-460, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Montjoy/Jonesville Police Department

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

AUGUST 21 TERM, 2017

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

ARREST WARRANT NUMBER

Direct Indictment (42630GT)

THE STATE

vs.

TYRONE DEANGELO FLEMING

Tyrone Fleming

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 8-17-17

VERDICT

Guilty
[Signature] 4-11-18

Foreperson of Petit Jury
Date:

Indictment for

DRIVING UNDER SUSPENSION

SC Code: 56-01-460

CDR Code: 0174

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

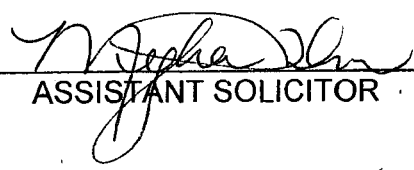
INDICTMENT

At a Court of General Sessions, convened on August 17, 2017, the Grand Jurors of Union County present upon their oath:

POSSESSION OF MARIJUANA

That Tyrone Deangelo Fleming did, in Union County on or about March 14, 2017, possess a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et.seq., *Code of Laws of South Carolina* (1976, as amended), such possession not having been authorized by law, in violation of Section 44-53-370, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Montjoy/Jonesville Police Department

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

AUGUST 21 TERM, 2017

THE STATE

vs.

TYRONE DEANGELO FLEMING

Indictment for

POSSESSION OF MARIJUANA

SC Code: 44-53-370(d)(4)

CDR Code: 0659

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

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

42631GT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8-17-17

VERDICT

Guilty
4-11-18

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

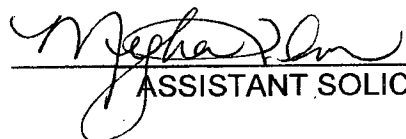
INDICTMENT

At a Court of General Sessions, convened on August 17, 2017, the Grand Jurors of Union County present upon their oath:

POSSESSION OF COCAINE

That Tyrone Deangelo Fleming did, in Union County on or about March 14, 2017, possess a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et.seq., *Code of Laws of South Carolina* (1976, as amended), such possession not having been authorized by law, in violation of Section 44-53-370, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Montjoy/Jonesville Police Department

ARREST WARRANT NUMBER

Direct Indictment (2017A4420100011)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 8-17-17

VERDICT

Guilty

Jay Ruff 4-11-18

Foreperson of Petit Jury
Date:

The State of South Carolina
County of Union

COURT OF GENERAL SESSIONS

AUGUST 21 TERM, 2017

THE STATE

vs.

TYRONE DEANGELO FLEMING

Indictment for

POSSESSION OF COCAINE

SC Code: 44-53-370
CDR Code: 3013

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

Witness:

C.C.I.C. PLS. AND G.S.

COUNTY OF UNION

STATE VS.

TYRONE DEANGELO FLEMING

AKA: Tyrone Fleming

Race: Black Sex: M Age: 29

DOB: SS#

Address:

City, State, Zip:

DL# SID# SC01686663

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Driving under Suspension - 2nd Offense (up to 60 days - /or \$1000) ☒ CONVICTED OF or ☐ PLEADSIn violation of § 56-1-460 of the S.C. Code of Laws, bearing CDR Code # 0174☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd-Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Meghan M. Gilmer 81157
Meghan M. Gilmer, Assistant Solicitor SC Bar #

Defendant

Eric De
Attorney for Defendant7255
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☒ County Detention Center, for a determinate term of 60 days/months/years or ☐ under the Youthful Offender Act not to exceed 0 years and/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years and or payment of \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for 0 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 57 Days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ 0 plus 20% fee: \$ 0

Payment Terms:

☐ Ordered PTUP0 days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ 0 Beginning\$ 0 Paid to Public Defender Fund

Other:

Recipient:

*Fine: \$ 0§14-1-206 (Assessments 107.5%) \$ 0§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 0§56-5-2995 (DUI Assessment) \$12 \$ 0§56-1-286 (DUI Breath Test) \$25 \$ 0Proviso 61.6 (Public Def/Prob) \$500 \$ 0§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 0§50-21-114 (BUI Breath Test Fee) \$50 \$ 0§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 03% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Melanie LandonCourt Reporter: A. Rene Butler

SCCA/217 (07/2016)

Presiding Judge: JudgeJudge Bar ID: 322Sentence Date: 7/11/18Judge Code: 2113

278
COUNTY OF UNION
STATE VS.

TYRONE DEANGELO FLEMING

AKA: Tyrone Fleming

Race: Black

Sex: M

Age: 29

DOB

SS#

Address:

City, State, Zip:

DL#

SID# SC0168663

INDICTMENT/CASE#: 2017-GS-44-1442

A/W: 42631GT

Date of Offense: 03/14/2017

S.C. Code §: 44-53-370

CDR Code #: 0659

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Possession of Marijuana, less than 28 grams (up to 30 days or \$100-200)

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0659

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Meghan M. Gilmer
Meghan M. Gilmer, Assistant Solicitor 81157
SC Bar #

Defendant

Eric D. [Signature]
Attorney for Defendant

SC Bar # 22550

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☒ County Detention Center,
for a determinate term of 300 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 57 Days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 825TOTAL \$ 28325Clerk of Court/Deputy Clerk: *Melanie Lawson*Court Reporter: *A. Irene Butler*

SCCA/217 (07/2016)

Presiding Judge: *[Signature]*Judge Bar ID: 322Sentence Date: 4/14/18Judge Code: 2113

COUNTY OF UNION

STATE VS.

TYRONE DEANGELO FLEMING

AKA: Tyrone Fleming

Race: Black

Sex: M

Age: 29

DOB

SS#:

Address:

City, State, Zip

DL#

SID# SC01686663

INDICTMENT/CASE#: 2017-GS-44-1059

A/W: 2017A4420100011

Date of Offense: 03/14/2017

S.C. Code §: 44-53-370

CDR Code #: 0186

SENTENCE SHEET

*CL... res ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Possession of Cocaine - 3rd or Subsequent Offense (Up to 10 years ~/or up to \$12,500)

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 3013

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Meghan M. Gilmer, Assistant Solicitor SC Bar # 81157

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 57 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Ordered PTUP

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$25.00

§14-1-213 (Drug Court Surcharge) \$150 \$150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$5.25

TOTAL \$288.25

Clerk of Court/Deputy Clerk: Melanie L. LawlerCourt Reporter: A. Kemp Butler

SCCA/217 (07/2016)

Presiding Judge: YesJudge Bar ID: 222Sentence Date: 4/11/18Judge Code: 2113

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2018.

RECEIVED

DEC 05 2018

SC Court of Appeals