

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER JERMANE HICKS,

APPELLANT

APPELLATE CASE NO. 2014-000392

RECORD ON APPEAL

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1 State of South Carolina

Court of General Sessions

2 County of Darlington

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5 State of South Carolina)

Transcript of Record

6 vs.)

2012-GS-16-01304

7 Christopher Jermane Hicks,)

2012-GS-16-01305

8 Defendant.)

2012-GS-16-01307

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January 27, 2014

Darlington, South Carolina

12

13 B E F O R E:

14

The Honorable J. Michael Baxley, Judge

15

16

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Stacy S. Johnson, RPR
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3	S-1	Photograph	5	5
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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
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1 P R O C E E D I N G S

2 (State's Exhibit Numbers 1 through 12 were
3 marked for identification and admitted in evidence
4 by stipulation.)

5 (State's Exhibit Numbers 13 through 28 were
6 marked for identification.)

7 **THE BAILIFF:** All rise.

8 **THE COURT:** Good afternoon. We're in the case
9 of State versus Christopher Jermane Hicks. Our court
10 reporter, ladies and gentlemen, is Ms. Stacy Johnson,
11 in the event there is a need for this transcript, and
12 we are here for some preliminary proceedings in this
13 case. I know there are certain motions that are pending
14 and, counsel, how do you wish to proceed?

15 **MS. BURCH:** Your Honor, I believe we have decided
16 we'll do the checkpoint motion first and then the
17 suppression motion when they get into the trial if we
18 get that far.

19 **THE COURT:** All right. Very good. All right.
20 Well, then the checkpoint issue is your motion and,
21 Ms. Wise, we'll be glad to hear from you.

22 **MS. WISE:** It is, Your Honor. I move to contest
23 of constitutionality of the checkpoint. There's a
24 roadblock at issue. My client was arrested on January
25 the 6th, 2012, resulting from a roadblock that was at

1 the intersection of High Hill Road and Potato House Road
2 here in Darlington. I believe that the burden is on the
3 State to show that this roadblock was constitutional,
4 and if I'm wrong, please correct me on that.

5 **THE COURT:** Okay. Well, my understanding is that
6 generally there is a presumption of constitutionality,
7 at least in the beginning, such that the defense would
8 give me some basis or give the Court some basis that you
9 believe it is suspect and then we would turn to the
10 State to provide the evidence that it is constitutional.

11 **MS. WISE:** Absolutely. Following the three-prong
12 test that is set forth in the South Carolina case of
13 Brown versus South Carolina, and I have a copy of that
14 case if you'd like, three things must be considered; the
15 gravity of the public concern served by the checkpoint,
16 the degree to which the checkpoint advances the public
17 interest, and the severity of the checkpoint that the
18 interference with that has on individual liberty.

19 I don't believe that these three prongs have been
20 met. I do not believe that there is empirical data to
21 support this checkpoint and I believe that there was too
22 much discretion exhibited by law enforcement in
23 initiating this checkpoint.

24 **THE COURT:** Okay. Very good. Now do you have
25 witnesses, Ms. Burch, you wish to call or do you want

1 to be heard before we begin or do want to call your
2 witnesses?

3 **MS. BURCH:** We can call the witness, Your Honor.

4 **THE COURT:** All right. Go ahead.

5 **MS. BURCH:** At this point, Your Honor, the State
6 would call Ms. Jamie Lui from the Darlington County
7 Sheriff's Department.

8 **THE COURT:** All right. Officer Lui, please come
9 forward and take the oath of a witness.

10 CHUN LUI,
11 having been duly sworn, testified as follows:

12 **THE COURT:** If you could begin by stating your
13 name and spelling it for our court reporter.

14 **THE WITNESS:** Chun Lui, C-H-U-N. Last name's
15 Lui, L-U-I.

16 **THE COURT:** Thank you.

17 DIRECT EXAMINATION

18 BY MS. BURCH:

19 Q. Ms. Lui, I'm sorry, I do not know what your rank is
20 with the sheriff's department.

21 A. Corporal.

22 Q. Corporal. I wanted to make sure I addressed you
23 correctly. Corporal Lui, how long have you been with
24 Darlington County Sheriff's Department?

25 A. A little over two years.

1 Q. What were your duties in January of 2012?

2 A. I was assigned as the DUI officer for the
3 department.

4 Q. And what were your responsibilities with that
5 position with checkpoints?

6 A. I was the person that was in charge of all the
7 checkpoints at that time in the county.

8 Q. And what did that entail?

9 A. It entails me to decide the locations and the
10 personnel that will be working those checkpoints.

11 Q. Is that it?

12 A. (Nods head.)

13 Q. I want to show you what's been marked as State's
14 Exhibit Number 14. Will you tell us what that is.

15 A. That is the safety plan that I issue out to everyone
16 that works the checkpoint.

17 Q. Tell us about what the department's guidelines and
18 procedures are for checkpoints.

19 A. So far as the checkpoints, once we're there we have
20 checkpoint signs that are placed out as well as every
21 officer there on the scene will wear a yellow high-vis
22 traffic vest.

23 Q. Okay. Let me stop you, please. You're referring
24 to what's been marked as State's Exhibit Number 23 for
25 ID purposes. What is that?

1 A. That is the sheriff's office's checkpoint sign.

2 Q. Okay. And you mentioned the vest. That's State's
3 Exhibit, for ID purposes, 22?

4 A. Yes.

5 Q. Go ahead.

6 A. Every person that -- every person that works a
7 checkpoint wears the traffic vest as well as there being
8 vehicles that are placed in that area, marked patrol
9 vehicles. There are also unmarked vehicles as well.
10 The marked patrol vehicles are parked in the area to
11 stop any vehicles that may try to prevent that
12 checkpoint and -- I'm getting ahead of myself. And if
13 -- depending on lighting conditions, every person is
14 equipped with a flashlight should it be a little bit
15 darker so that every person can be seen.

16 Q. And how far away do y'all set up the signs from the
17 actual checkpoint?

18 A. Depending on the road conditions and the speed limit
19 for that area, we place those signs far enough so that
20 if a person is going that speed limit it would give them
21 sufficient amount of time to stop on the approach of the
22 officers.

23 Q. And that item I gave you to look at, Exhibit
24 Number 14, what date is on that?

25 A. This is dated June 27, 2012.

1 Q. Okay. And the checkpoint for this instance was on
2 January 6, 2012. Why don't we have a copy of the
3 guidelines from that day?

4 A. I use the exact same one for every checkpoint that
5 I have. The only thing that I actually change on there
6 -- as far as all the safety issues, it's all the same.
7 The only thing I change on here is the date, time and
8 the location.

9 Q. So that would have been the same guidelines you used
10 on January 6, 2012, correct?

11 A. Correct.

12 Q. Okay. And were those procedures followed on
13 January 6, 2012?

14 A. Yes.

15 Q. Are there any other guidelines and procedures the
16 department uses for checkpoints?

17 A. As far as --

18 Q. Well, let me show you what's been marked as State's
19 Exhibits 18 and 19. Do those documents look familiar to
20 you?

21 A. Yes.

22 Q. What are those?

23 A. These are policy and procedures that every person
24 has to follow as far being at checkpoints.

25 Q. And who came up with those guidelines?

1 A. This one was prepared by the Department of Public
2 Safety.

3 Q. What exhibit number is that one?

4 A. 19.

5 Q. Okay. And 18?

6 A. 18, this one is by Captain Street, who's in charge
7 of our policies.

8 Q. He's employed by the sheriff's department?

9 A. Yes.

10 Q. Whenever cars approach at a checkpoint, how do
11 y'all stop them? What's your method of stopping the
12 cars?

13 A. Again, depending on lighting condition, it could be
14 -- if it's, you know, towards a little bit dark, we'll
15 shine our flashlight at the approaching cars, give them
16 enough space to stop their vehicle, we'll shine it at
17 our vests or at the checkpoint signs or -- and, like I
18 said, with the checkpoint signs, we place it ahead of
19 time so that people -- vehicles that are approaching are
20 able to see those and those are --

21 Q. But is every car stopped or do you --

22 A. Every single car is stopped, yes.

23 Q. And what are the purposes of having a checkpoint?

24 A. To locate any drivers that may be driving without a
25 valid driver's license or to locate any person that may

1 be under the influence of alcohol and/or drugs.

2 Q. Okay. Now on January 6, 2012, what was the
3 location of that checkpoint?

4 A. It was High Hill and Potato House Road.

5 Q. And what were the reasons for choosing that
6 intersection for a checkpoint?

7 A. Those would be considered back roads instead of
8 something like Highway 151, that's a four-lane highway.
9 In my work experience, people that do not have a valid
10 driver's license or may be under the influence most
11 often take back roads instead of taking major highways
12 to avoid any contact with law enforcement that may be
13 travelling that area.

14 Q. And what is a -- what's that intersection like?
15 Will you describe that to the Court; you know, like
16 room on the roadway, what kind of roads are they, that
17 kind of detail.

18 A. As far as that intersection, it's two lanes and I
19 believe High Hill is where the stop signs are and Potato
20 House just cuts straight across that intersection.

21 Q. And how much room on the side of the roads do you
22 have?

23 A. If I remember correctly, it's open fields on a
24 couple of sides where we were able to park our vehicles
25 and gave us sufficient amount of room to pull vehicles

1 over should anyone be pulled over.

2 Q. Do you remember how many officers and who they were
3 that worked the checkpoint on January 6, 2012?

4 A. It was myself, a reserve lieutenant, David Mullins,
5 Sergeant Jackie Gause and Sargent Ben Weatherford, in
6 addition to two personnel from the detention center that
7 was operating the jail van.

8 Q. And, Corporate Lui, let me go back for a second.
9 You were saying the reason that High Hill and Potato
10 House Road, that intersection, was chosen was because
11 it's back roads. What roads are in that area that
12 motorists may be travelling to avoid?

13 A. To cut through that area, you can get to Rogers
14 Road, Potato House Road, Hoffmeyer Road, Syracuse
15 Community, Green Street Road. I think I mentioned
16 Hoffmeyer. And High Hill actually is -- almost runs
17 parallel to a couple of other main roads that people
18 would just take that road instead of the main roads.

19 Q. Okay. Do you recall doing a search for this motion
20 to get the citation numbers or citation amounts for the
21 area? The incidents that have occurred in that area, do
22 you remember printing a report for that --

23 A. The CAD report, yes.

24 Q. -- information? I'm sorry. Let me show you
25 State's Exhibit 20. Is that your report?

1 A. These are the actual citations in that area, yes.

2 Q. Right. Okay. And how many pages of incidents are
3 there?

4 A. Rough count, I don't remember right off because
5 these were actually separated by location.

6 Q. Okay. It's a pretty thick stack though, right?

7 A. (Nods head.)

8 Q. And I also see highway patrol's report in there,
9 too. So would you use that type of information to
10 decide where to set up the checkpoints?

11 A. Yes.

12 MS. BURCH: Your Honor, I guess at this time I
13 do need to move into evidence State's Exhibits 14, 19,
14 18 and 20.

15 THE COURT: Is there an objection?

16 MS. WISE: Can I see State's Exhibit 20?

17 MS. BURCH: (Handing.)

18 MS. WISE: Thank you.

19 THE COURT: No objections?

20 MS. WISE: No objections, Your Honor.

21 THE COURT: All right. So that was 14, 18, 19
22 and 20?

23 MS. BURCH: Yes, Your Honor.

24 THE COURT: Okay. So those four exhibits are in
25 evidence without objection.

1 **MS. BURCH:** Thank you, Your Honor.

2 (State's Exhibit Number 14, Sobriety Checkpoint
3 Safety Plan, State's Exhibit Number 18, DCSD Policies
4 and Procedures, State's Exhibit Number 19, Operating
5 a Public Safety Checkpoint, and State's Exhibit
6 Number 20, CAD Report, Citation Search Results, for
7 6/1/11 through 6/1/12, were admitted into evidence.)

8 BY MS. BURCH:

9 Q. Corporate Lui, according to -- I think you referred
10 to it as CAD report. Are there a lot of dangerous
11 crimes or, sorry, highway crimes that happen in those
12 areas?

13 A. Yes.

14 Q. Okay. What kind of crimes do you have occurring
15 around there? A lot of DUI's or crashes or anything
16 like that?

17 A. Well, Darlington County is actually rated one of
18 the highest ones in the State of South Carolina with DUI
19 fatalities. I want to say it's -- I don't know right
20 off, but it's within the top five in the last few years,
21 and my main job with the sheriff's office as the DUI
22 officer was to try my best to deter as many DUI-related
23 traffic accidents as much as possible and enforcing any
24 type of traffic laws as far as, you know, people coming
25 through checkpoints that would -- anyone that's under

1 the influence or, you know, parents driving the vehicle
2 with no child restraint in the vehicle, just ensuring
3 that vehicles are moving in the roadway, people have
4 valid driver's licenses and are not under the influence
5 and obeying all the traffic laws to avoid any type of
6 traffic collision or any type of collision with
7 facilities..

8 Q. And so this was one of your problem areas of the
9 county?

10 A. Yes.

11 Q. All right. And Corporal Lui, how many people were
12 arrested the night -- or cited the night of January 6,
13 2012, do you remember?

14 A. My recollection was two.

15 Q. Okay. Let me give you State's Exhibit Number 17
16 that you provided to our office. Do you recognize that?

17 A. Yes.

18 Q. What is that?

19 A. This is the report that I have for the citation that
20 was written for that location for that night.

21 Q. And how many arrests or citations were made that
22 night?

23 A. Four citations were written for two people.

24 Q. And why were there so few?

25 A. After the first vehicle was stopped, it took up a

1 lot of manpower and also the -- I don't recall exactly
2 what number -- how many number of vehicles came through,
3 but the second arrest that was made was by me was a
4 person that was driving under the influence.

5 Q. So who was the first?

6 A. The first one was being Christopher Jermane Hicks.

7 Q. Okay. And he took up all your manpower?

8 A. Yes.

9 Q. Do you remember why that was?

10 A. The vehicle pulled off into a house that was a
11 little -- that was down from the checkpoint and we
12 needed the manpower to be able to detain him and be with
13 the vehicle. We couldn't leave anything.

14 Q. Okay.

15 MS. BURCH: Your Honor, at this time I'd like to
16 move State's Exhibit Number 17 into the evidence.

17 THE COURT: Is there objection?

18 MS. WISE: No objection, Your Honor.

19 THE COURT: 17 is entered without objection.

20 (State's Exhibit Number 17, Citation Search
21 Results for 1/6/12, was admitted into evidence.)

22 MS. BURCH: One moment, Your Honor. No further
23 questions at this time, Your Honor.

24 THE COURT: Any cross-examination?

25 MS. WISE: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. WISE:

Q. All right. Bear with me Corporal, but I have a whole lot of different paperwork. The first one, we heard you testifying -- I don't know, I believe it was Exhibit 18 that Ms. Burch gave you, the Darlington County Sheriff's Office's Policies and Procedures?

A. Yes.

Q. What is that again?

A. This is the policy and procedures subject for traffic -- traffic checkpoints.

Q. Okay. And do you mind -- it's been gone over, but do you mind if we go over it a little more in detail? What's the date on this memo?

A. January 1, 2012.

Q. And what was the date of the roadblock where my client was stopped?

A. January 6, 2012.

Q. Okay. Rules and regulations, going down to Roman numeral four, it says roadside vehicle safety checks are used in an attempt to create a safer environment. Do you see that?

A. Yes.

Q. And can you explain to the Court the various rules and regulations that it explicitly outlines you need to

1 follow? And let me just verify. You are, in fact, the
2 supervisor of this roadblock, correct?

3 A. Yes.

4 Q. So is it your responsibility to follow these rules
5 and regulations?

6 A. Yes.

7 Q. Okay. Number one, what does that say?

8 A. Roadside vehicle safety checks will be the
9 responsibility of the patrol SEU captain or designee.

10 Q. Okay. The second one, you as the SEU captain or
11 designee, correct --

12 A. Correct.

13 Q. -- will be responsible for the following:

14 Receiving approval for the vehicle safety checkpoint
15 form the sheriff via the respective chain of command,
16 correct?

17 A. Correct.

18 Q. Where you submit an operational plan, correct?

19 A. Correct.

20 Q. All right. After you receive approval, you're
21 supposed to do what B says, submit an operational plan
22 to the sheriff, correct?

23 A. Correct.

24 Q. As well as their staff attorney, correct?

25 A. Correct.

1 Q. Do we see any operational plans here today for this
2 roadblock on January 6, 2012?

3 A. You do not. As I've stated earlier, this is dated
4 January 27th.

5 Q. Okay. Going onto the next page, I believe it's C,
6 if necessary, requesting assistance from other agencies,
7 correct?

8 A. I apologize. Give me a minute to look over it.

9 Q. Letter C. I'll let you read over it.

10 A. Okay.

11 Q. And what does that say?

12 A. If necessary, requesting the assistance of officers
13 and personnel from other agencies to conduct roadside
14 vehicle safety checks, assistance from multi agencies --

15 Q. And let me interrupt. I'm sorry. We've got to --
16 the court reporter has to take down everything, so just
17 read a little bit slower, please.

18 A. Okay. If necessary, requesting the assistance of
19 officers and personnel from other agencies to conduct
20 roadside vehicle safety checks. Assistance from multi
21 agencies to be requested under the authority of the
22 Darlington County Sheriff's Office Mutual Aid Agreement
23 via the sheriff.

24 Q. Okay. And letter D says coordinating with the
25 public information officer or public advertisement,

1 correct?

2 A. Correct.

3 Q. Okay. To announce the scheduled roadside vehicle
4 safety check and its results, correct?

5 A. Correct.

6 Q. All right. We'll skip E. We'll go on to F,
7 ensuring vehicle safety check procedures are being
8 performed correctly, correct?

9 A. Yes.

10 Q. A collection of individual deputies' activities,
11 correct?

12 A. Yes.

13 Q. Okay. Completion of an after action RMS report to
14 the sheriff, correct?

15 A. Yes.

16 Q. And what sort of report is that?

17 A. As -- as far as a report goes, it's just whatever
18 reports that we have as far as arrests. I give them a
19 total count of how many arrests there are.

20 Q. Okay. And letter K, conducting an operational
21 briefing both before and after the checkpoint, correct?

22 A. Yes.

23 Q. All right. And you talked to us a little bit about
24 the portable signs. About how many portable signs would
25 you say were out there that night?

1 A. Two, I believe.

2 Q. Okay. As well as the reflective vests. Did you
3 say every officer on the scene was wearing a reflective
4 vest?

5 A. If I remember correctly, yes.

6 Q. Okay. Going down to Number 4, and we're still
7 in the requirements for what you need to be doing,
8 Number 4 says a video recording needs to be made of
9 the designated roadside vehicle safety check before
10 the safety check is initiated, correct?

11 A. That's what this says, yes.

12 Q. And it says it needs to be placed into evidence and
13 marked with the reference of appropriate case number,
14 correct?

15 A. Yes.

16 Q. Okay. And it says an average time delay of each
17 motorist stopped during this roadblock needs to be
18 calculated, correct?

19 A. Yes.

20 Q. Okay. And it says to calculate that average time
21 delay, deputy will drive through the beginning of the
22 roadblock, the middle of the roadblock and the end of
23 the roadblock and the average of those three time delays
24 will be used to compute that time delay, correct?

25 A. Uh-huh.

1 Q. Correct?

2 A. Yes.

3 Q. Sorry. Okay. Going to Number 6, a vehicle count
4 of all vehicles passing through the roadside safety
5 check area, correct?

6 A. Yes.

7 Q. And we heard you earlier say you don't know how
8 many vehicles came through the safety checkpoint that
9 night?

10 A. Not right off, no.

11 Q. Okay. Number 7, due to roadside safety checks
12 being custodial in nature, Miranda warnings must be read
13 to drivers of vehicles stopped for field sobriety tests,
14 correct?

15 A. That's correct, yes.

16 Q. Okay. And then Number 8 talks about a breakdown
17 lane. What's a breakdown lane?

18 A. Well, as it's read on here, the breakdown lane is
19 required to be ten feet in length for every mile per
20 hour of the designated speed limit at the beginning of
21 the roadside vehicle safety check area. For example, if
22 the speed limit is 40 miles per hour, the breakdown lane
23 is required to be 400 feet.

24 Q. Okay. So what was the speed limit on High Hill
25 Road? Where was the breakdown lane on High Hill Road

1 this night?

2 A. This was a two-lane road, so there was no median for
3 it to be a breakdown lane.

4 Q. Okay. So there's no required breakdown lane that's
5 needed?

6 A. As far as this location, because it's a two-lane
7 road, there was no breakdown lane, but because of the
8 location that we chose, there was open area for vehicles
9 to be pulled over.

10 Q. Okay. Going on then to Number 9 on the next page,
11 do you see that?

12 A. Yes.

13 Q. It says a marked patrol vehicle will be placed at
14 the vehicle safety check with blue lights activated. On
15 January 6th, whose vehicle was placed at the safety
16 checkpoint with the lights activated?

17 A. There was not one with lights activated.

18 Q. Okay. The vehicle safety check shall have
19 appropriate illumination for safety. How much -- what
20 sort of lighting was out there that night?

21 A. It was -- it was still early enough to have enough
22 daylight.

23 Q. Okay.

24 A. And, again, because we have the road sign and the
25 traffic vests and each person with a flashlight.

1 Q. Okay. And we'll skip 11 and 12. They just talk
2 about general duties of the deputies as far as greeting
3 drivers and how to appropriately handles drivers as well
4 as volunteers on the scene. Let's go down to Roman
5 numeral five now, also on this same exhibit, talking
6 about the operation plan. You testified a few minutes
7 ago there was no operation plan completed for this
8 roadside check block, correct -- excuse me, the
9 checkpoint, correct?

10 A. I don't have here today.

11 Q. So we don't have one. And this operation plan sets
12 forth an array of different details that need to be
13 included; the first one, the purpose of the safety
14 checkpoint, correct?

15 A. Correct.

16 Q. Okay. The second one, the location of the safety
17 checkpoint, correct?

18 A. Correct.

19 Q. All right. With data supporting, correct?

20 A. That's what this says, yes.

21 Q. Yes. Okay. And the third, the time of the vehicle
22 safety checkpoint with data supporting, correct?

23 A. Yes.

24 Q. The date of the vehicle safety checkpoint, correct?

25 A. Yes.

- 1 Q. The number of deputies on scene, correct?
- 2 A. Yes.
- 3 Q. Their responsibilities and their location, correct?
- 4 A. Yes.
- 5 Q. The location of all reflective cones and warning
- 6 signs, correct?
- 7 A. Yes.
- 8 Q. What type of lighting will be used during the
- 9 vehicle safety check, correct?
- 10 A. Yes.
- 11 Q. All right. And then this very last page of this
- 12 Darlington County manual it's talking about an after
- 13 action RMS report. What is that?
- 14 A. As it states on here, number of vehicles that passed
- 15 through a vehicle safety check, average time delay to
- 16 the motorist, number of motorists detained, number and
- 17 types of arrests, identification of unusual incidents
- 18 such as safety problems or other concerns, other
- 19 information deemed necessary.
- 20 Q. Okay. And, again, we don't know how many vehicles
- 21 passed through this checkpoint on January 6, 2012?
- 22 A. I don't recall.
- 23 Q. We don't know the average time delay to the
- 24 motorist, correct?
- 25 A. Correct.

1 Q. We don't know the number of motorists detained --
2 or you said two, correct?

3 A. Correct.

4 Q. The number and type of arrests, what are those?

5 A. Those would be your -- State's Exhibit 17.

6 Q. So two arrests, and what were the two arrests for?

7 A. For simple possession of marijuana, no signal,
8 improper signal, driving under suspension, second, and
9 driving under the influence.

10 Q. Okay. And I believe it's Exhibit 19 that you have
11 in front of you, the May 16, 1996 Operating a Public
12 Safety Checkpoint, correct?

13 A. Yes.

14 Q. And that's issued by the South Carolina Department
15 of Public Safety, correct?

16 A. Yes.

17 Q. Okay. Do you mind just walking through briefly
18 with me on this one -- and you turned this over to the
19 defense, correct? Or you turned this -- this was what
20 you produced to us?

21 A. Yes.

22 Q. Okay. What does this, just briefly for the Court,
23 set out?

24 A. This was Operating a Public Safety Checkpoint.

25 Q. Okay. Going to the second page, operational

1 requirements of a checkpoint. Requires a supervisor,
2 correct?

3 A. Yes.

4 Q. Okay. And what is the goal -- the duty of the
5 supervisor according to this document? And I'm just
6 reading that first paragraph under Subsection A.

7 A. I'm just gonna read this right here. It says every
8 checkpoint be conducted with the presence of at least
9 one supervisor who will organize and oversee the
10 operation of the checkpoint. If the assigned supervisor
11 must leave the checkpoint for any period of time without
12 immediately being replaced by another supervisor, the
13 checkpoint must be terminated.

14 Q. Okay. And this basically just goes through in a
15 similar vein what we talked about in the previous
16 manual. Let's turn over to Page 6, if you don't mind,
17 where it says site selection. It stays statistical
18 analysis, correct?

19 A. Yes.

20 Q. How are statistics used when you determine where a
21 checkpoint should be located?

22 A. Like I stated earlier, it all depends on the
23 collision.

24 Q. Okay.

25 A. And, like I said, Darlington County as being one

1 of the highest in the state for traffic collision
2 fatalities.

3 Q. Okay. Can you tell me off the top of your head,
4 and if you need to look at the documents that you have,
5 take your time, that's fine, but about how many
6 DUI-related collisions are on the data that you provided
7 from June 1, 2011 to June 1, 2012?

8 A. I'll have to look over the information.

9 Q. All right. I've got it, too, so.

10 A. From my paperwork --

11 Q. Can I see the -- I apologize. Can I see the
12 exhibits she gave you? Because I have to cull through
13 mine.

14 A. (Handing.)

15 Q. Okay. Thank you.

16 A. This is the highway patrol data for January 1, 2010
17 to December 31, 2011.

18 Q. Okay. And I believe I have that in front of me.
19 Hold on one second and we can go through that one if you
20 want. Do you just want to go through the number of
21 incidences for each of the roads that are listed? I
22 believe that's on the second page.

23 A. All right. As I mentioned before, some of the --
24 that area, that location, was a cut-through road for a
25 lot of these other locations.

1 Q. Yes, ma'am.

2 A. What was all here is -- Hoffmeyer Road being one
3 location, being 41 collisions. All right. Highway 340,
4 62 collisions.

5 Q. And, I'm sorry, where do you see that at? Which
6 one are you -- are you on Page 2?

7 A. This is Page 2 and 3.

8 Q. Okay.

9 A. All right. As I mentioned, this is a cut-through
10 area, so Highway 340, 62 collisions; U.S. 401, 79
11 collisions.

12 Q. And if you don't mind me interrupting, and I don't
13 want to put you on the spot, I actually went through on
14 the roads and went through the percentage of incidences
15 which had the highest rate percentage, and if you
16 disagree with me, let me know, but it looked like where
17 the most warnings, citations, incidences occurred, the
18 top five percentage-wise, were on Highway 52, Highway
19 151, U.S. 15, Interstate 20 and S.C. 340.

20 A. And you said those being warnings?

21 Q. Those being total-wise where warnings were issued.

22 A. Okay. As I mentioned before, because that is a back
23 road cut-through area, all the roads you just mentioned
24 were main roads.

25 Q. Okay.

1 A. So in order to avoid police contact where these main
2 roads were giving traffic tickets and warnings, these
3 people cut through the back roads.

4 Q. Okay. And can you give me any statistical
5 correlation between that back road area that you're
6 talking about and these five high percentage ranking
7 roads?

8 A. Which five? The five that you just mentioned or the
9 one I --

10 Q. 52, 151, 15, I-20 and S.C. 340. Which of those
11 roads are in the vicinity of the High Hill Road and
12 Potato House Road intersection?

13 A. Potato House Road runs off of Highway 151 --

14 Q. Okay.

15 A. -- okay? And High Hill is -- High Hill runs right
16 in between 340 and 151.

17 Q. Okay. Going back to the Department of Public
18 Safety Manual, do you have that in front of you?

19 A. Uh-huh.

20 Q. I'm sorry to be flipping around. I believe that's
21 Exhibit 19. Looking at Number 6, talking about
22 statistical analysis, if there's any issues with
23 determining where a roadblock should be set up, namely
24 from having to do with not having enough statistics or
25 empirical data on the area, does it give a number that

1. you can call at DPS for further assistance on obtaining
2 statistics for that area?

3 A. Yes.

4 Q. Okay. And, again, we can just keep on going. I
5 skipped a couple of pages. Going to Page 8, again, it
6 discusses the warning devices that should be used,
7 correct?

8 A. Yes.

9 Q. Number 7 discusses the checkpoint lighting and the
10 mandatory requirements for checkpoint lighting, correct?

11 A. Yes.

12 Q. Number 9 talks about equipment issued to line
13 officers, correct?

14 A. Yes.

15 Q. All right. And skipping over, going through,
16 again, basic demeanor that deputies should exhibit to
17 motorists on Page 10. 11 is other general information
18 Department of Safety sees fit in including in a
19 roadblock, correct?

20 A. Yes..

21 Q. Number 10 on Page 12 of the Department of Public
22 Safety Manual, what does it say?

23 A. Do you want me to read it out --

24 Q. Yeah. What does it concern, I guess, reporting
25 enforcement activity?

1 A. Okay. It says it is essential that this activity
2 be documented and returned to the Department of Public
3 Safety. When the public safety checkpoint equipment
4 trailers are utilized, it is mandatory to --

5 Q. And that's all I need. Just that it's essential
6 that reporting be done and reported back to the
7 Department of Public Safety. And then the --

8 A. Well, where --

9 Q. I'm sorry. Go on.

10 A. Well, where you cut me off, it says when the
11 equipment trailers are utilized. We did not utilize
12 their trailer.

13 Q. Okay. But that has nothing to do with reporting,
14 correct?

15 A. Well, if I'm reading this correctly, it's saying
16 that that information will be inside the trailer to do
17 that reporting.

18 Q. Correct, but it still -- what I --

19 A. But be -- but because we didn't use their trailer,
20 we wouldn't have that -- we wouldn't have access to do
21 that reporting.

22 Q. Okay. That's fine. Going to the last page,
23 Number 12, public information, that first sentence,
24 does it say that a public safety checkpoint should be
25 aggressively publicized?

1 A. Yes.

2 Q. Okay. Now going to the operational plan that you
3 just discussed with the State, and I don't -- I
4 apologize. What exhibit is that?

5 A. 14.

6 Q. 14, okay. Exhibit 14. It's titled Sobriety
7 Checkpoint Safety Plan, correct?

8 A. Correct.

9 Q. And the date on that is June 27, 2012, correct?

10 A. Correct.

11 Q. And the location of that is at Smith Avenue at
12 Weaver Street, correct?

13 A. Correct.

14 Q. This had nothing to do with High Hill Road and
15 Potato House Road on January 6, 2012, correct?

16 A. Correct.

17 Q. And we discussed earlier the CREP report. If we
18 could go back to that other packet of documents that
19 the Solicitor mentioned, that big thick stack that she
20 said was all the paperwork, what's the title of that
21 document?

22 A. This one you're talking about?

23 Q. Yes, ma'am.

24 A. It's Citation Search Results.

25 Q. Okay. And I believe in the corner of it, and I can

1 pull my copy, it gives each citation search results done
2 for different roads, correct?

3 A. Yes.

4 Q. Okay. And what's the first road that you have?

5 A. This first one is for Hoffmeyer.

6 Q. Okay. Containing arrest dates between June 1, 2011
7 and June 1, 2012?

8 A. Yes.

9 Q. How many arrest totals are on there?

10 A. 27.

11 Q. Okay. And is this -- and I apologize. Is this
12 Street 1 that says it contains Hoffmeyer or Street 2?

13 A. This says Street 2.

14 Q. Okay. And I apologize. Our notes are in different
15 orders. Can you tell me how many DUI-related incidences
16 are from that one-year time frame?

17 A. For this area?

18 Q. Yes, ma'am

19 A. Okay. The first two sheets that I'm looking at now
20 says Street 2, Hoffmeyer. The next two pages are for
21 Street 1, Hoffmeyer, okay?

22 Q. Okay.

23 A. It's gonna be --

24 Q. Some overlap?

25 A. Well, yes and no. Our reporting system gives you

1 two locations. You can put Street 1, Street 2 --

2 Q. Okay.

3 A. -- so it would just be your closest intersection.

4 So if you're on Hoffmeyer, you just put your next
5 closest road.

6 Q. Okay. So can you tell me based off of that data
7 how many DUI-related arrests occurred from the paperwork
8 you have in your hand?

9 A. All right. Off the first two sheets for Hoffmeyer
10 listed as Street 2, there is two.

11 Q. And out of how many arrests?

12 A. Out of 27.

13 Q. And that is in a one-year span, June 1, 2011 to
14 June 1, 2012?

15 A. Correct. This is only statistics for Darlington
16 County Sheriff's Offices, not including highway patrol.

17 Q. Correct. And that's what y'all turned over to us?

18 A. Yes.

19 Q. Okay. Going on to the next set of documents, what
20 is the next search result for?

21 A. This is for Street 1, Hoffmeyer Road, for the same
22 dates.

23 Q. Okay. And how many arrests are on that one? I
24 believe there are 29 matches, but if you go through some
25 of them are overlap. I believe there's 24 arrests and

1 if you want to count --

2 A. What do you mean overlap?

3 Q. Multiple inci -- it counts each match per defendant
4 that's arrested -- or individual that's arrested, but
5 some individuals have multiple charges. That's not the
6 total number of arrests. That's the total number of
7 incidences.

8 A. Well, we count each citation as an arrest.

9 Q. Okay. Well, how many individuals then were
10 arrested on that date or during that time frame?

11 A. 25, if I'm looking at it correctly.

12 Q. Okay. And how many of those arrests were for DUI?

13 A. None.

14 Q. Okay. Can we go to the next one? I believe we're
15 at High Hill Road and it's listed as Street 2.

16 A. Okay. I have it listed as Street 1.

17 Q. Okay. Well, how many DUI-related incidences do you
18 see on that one?

19 A. Two.

20 Q. Out of about how many arrests?

21 A. Well, there's actually two DUI's. I apologize. You
22 asked for DUI-related incidences. I didn't even count
23 -- I didn't even look over for the alcohol-related
24 citations. On this one, there's actually two DUI's and
25 two open containers.

1 Q. Okay. Out of how many arrests?

2 A. Out of 25 citations.

3 Q. Okay. Going to the next one, Potato House Road, do
4 see that listed as a search?

5 A. Yes.

6 Q. And there's a search for Road 1, Potato House Road,
7 Road 2, Potato House Road, correct?

8 A. Yes.

9 Q. Any DUI's on either of those?

10 A. I don't see it on here, no.

11 Q. Okay.

12 MS. WISE: I believe that's all the questions I
13 have for this witness, Your Honor.

14 THE COURT: Redirect?

15 MS. BURCH: Briefly.

16 REDIRECT EXAMINATION

17 BY MS. BURCH:

18 Q. Corporal Lui, if you'll go back to that highway
19 patrol report of incidences, okay?

20 A. Uh-huh.

21 Q. Hoffmeyer Road, I believe, is S-19.

22 A. Okay.

23 Q. Would you say that that is a problem area for
24 crashes according to that report?

25 A. It's 41, yes.

1 Q. And how close is Hoffmeyer Road to Potato House
2 Road and High Hill Road or the intersection of those two
3 roads?

4 A. Hoffmeyer actually comes across High Hill Road.

5 Q. Okay. Highway 340, which is Timmons ville Highway?

6 A. It runs almost paralegal to High Hill.

7 Q. And according to that report, is that a problem
8 area?

9 A. 62 collisions, yes.

10 Q. And S-28? Or State Road 28 I guess it would be.

11 A. Do you know what's the road name? I don't --

12 Q. I'm sorry, I think I wrote it down. Is that Center
13 Road, S-13? I'm sorry.

14 A. Center Road.

15 Q. How close is that to Potato House and High Hill?

16 A. High Hill also runs off of Center.

17 Q. And is that a problem area in the county for
18 crashes and DUI's?

19 A. Yes.

20 MS. BURCH: Your Honor, no further questions at
21 this time.

22 THE COURT: Ma'am, you may step down. Any
23 objection to the release of Corporal Lui?

24 MS. WISE: No objection, Your Honor.

25 THE COURT: All right. Then, ma'am, you don't

1 have to leave, but you're free to if you wish to.

2 (Witness excused.)

3 (Discussion off the record.)

4 **THE COURT:** How many other witnesses do you have
5 on that -- or this issue?

6 **MS. BURCH:** Your Honor, I think that's it.

7 **THE COURT:** Okay. Do you want to move on to the
8 next issue before I rule on these piecemeal or do you
9 want me to rule as we go? I think my preference would
10 be to hear them all unless one is dispositive of the
11 others? What -- do you have a preference?

12 **MS. BURCH:** We can keep going, if you'd like
13 to.

14 **THE COURT:** Let's just keep going. Let's do
15 that, all right?

16 All right. Please call your next witness,
17 Ms. Burch.

18 **MS. BURCH:** Your Honor, that will conclude the
19 checkpoint motion.

20 **THE COURT:** Okay.

21 **MS. BURCH:** The next motion will be defense's
22 motion to suppress evidence obtained during a
23 warrantless search.

24 **THE COURT:** All right. So the -- those two
25 issues are not connected in your opinion?

1 **MS. WISE:** They are not, Your Honor.

2 **THE COURT:** Okay. Very good. Well, let's do
3 this then. Let's just stop a moment and consider what
4 we have on the checkpoint. Let me step back into the
5 room. We'll take a break for a few minutes and then
6 we'll reconvene and I'll be prepared to rule on the
7 checkpoint issue, okay?

8 **MS. BURCH:** I take it you don't want to hear
9 arguments? I can talk fast.

10 **THE COURT:** Well, no, that's fine. I'll be glad
11 to hear arguments if you have something you want to say
12 about it.

13 **MS. WISE:** Sure. I can be quick. Or I'll try.

14 **THE COURT:** Okay. Go ahead.

15 **MS. WISE:** All right. In regards to the
16 checkpoint, Your Honor, I believe that the evidence
17 that was presented and the testimony presented today
18 does not show that this checkpoint is constitutional.
19 In the South Carolina case of State versus Groome, a
20 three-part balancing test, as I said earlier, is used
21 in determining the constitutionality of a roadblock, the
22 gravity of the public interest served by the seizure,
23 the degree to which the seizure serves the public
24 interest, and the severity of the interference with
25 individual liberty.

1 There's also a Supreme Court of the United States
2 case, Michigan Department of State Police versus Sitz,
3 that sets forth an array of requirements that the
4 Supreme Court deems necessary for a roadblock to be
5 upheld as constitutional. The various guidelines
6 include -- excuse me. The various requirements include,
7 set forth by Sitz; that guidelines be established; that
8 location selection be supported by empirical data; that
9 supervisors are on scene and do as they are supposed to
10 do; that -- excuse me, please give me a minute.

11 **THE COURT:** Okay.

12 **MS. WISE:** That safety is of paramount concern;
13 that publicity, that the roadblock is publicized;
14 recordkeeping, that records are kept properly of the
15 time and duration and the length of the time the drivers
16 are detained, and this is done on a non-random basis.

17 Your Honor, I don't believe we have heard
18 enough testimony from our witness today to uphold this
19 roadblock both under the United States Constitution nor
20 the South Carolina Constitution.

21 **THE COURT:** Well, following that argument, what
22 precedent do you have that the failure to comply with
23 certain procedural guidelines is constitutionally --
24 constitutionally invalidates that checkpoint?

25 **MS. WISE:** Can you elaborate?

1 **THE COURT:** Yeah. Well, of course, the question
2 here is, is it constitutional, the three broad
3 guidelines. Some of the evidence that you brought out
4 in this hearing dealt with whether or not there was
5 compliance with certain specific protocol requirements
6 that have been set forth by the highway patrol or by the
7 Darlington County Sheriff's Department, and so do you
8 have a precedent, a Supreme Court case, that would say
9 to this Court that the failure to follow those
10 particular protocols or the guidelines invalidates the
11 checkpoint from a constitutional perspective?

12 **MS. WISE:** I have the South Carolina Supreme
13 Court case of Groome, which sets forth the three-prong
14 test, which I believe goes to the -- the testimony goes
15 to the very matter of what we heard today; the gravity
16 of the public concern served by the checkpoint. We
17 heard that this checkpoint was for DUI purposes, yet
18 then going to the second prong, the degree to which
19 the checkpoint advances the public interest or the
20 effectiveness prong, I don't see how effectiveness was
21 shown or proven today. We heard testimony that sort of
22 said well, it seems like this is an issue, but there
23 needs to be empirical data. I believe that there needs
24 to be a percentage that can be heard and I believe that
25 the regulations that weren't followed both by the

1 Department of Public Safety -- or the regulations that
2 were not followed in this checkpoint as set forth by
3 both the Department of Public Safety and the Darlington
4 County Sheriff's Office goes to the very matter of that.

5 **THE COURT:** Okay. All right, thank you. Well,
6 let me hear from the State on those points, please.

7 **MS. BURCH:** Thank you, Your Honor. As the
8 defense said, the three-prong test, I believe that the
9 State has filled that there's a degree of public
10 interest because as you heard Corporal Lui testify the
11 area in which the intersection where the checkpoint was
12 located has a high rate of crashes and DUI-related
13 offenses. There are some major roads that are close to
14 that intersection and people would be using the back
15 roads to avoid contact with law enforcement.

16 Your Honor, in State versus Smith, which is
17 actually an Oklahoma case, there were three factors for
18 the legality of the checkpoint in that. The type of
19 checkpoint involved and the other research that I did
20 on this issue said that it basically needed to be for
21 DUI's and license checks. That's what this checkpoint
22 was for. It's outlined in Corporal Lui's guideline
23 that she gave us a sample for since the operational
24 guide for January 6, 2012 is unavailable. Your Honor,
25 there wasn't a degree of intrusion in this checkpoint.

1 They were checking every car and checking to see if the
2 driver was impaired and if they did have a driver's
3 license. You heard that this checkpoint did not last
4 a long amount of time because of the Defendant in this
5 case's arrest or his arrest did take up all the
6 manpower. The safety guidelines used in the checkpoint,
7 you heard about the signs that were placed at a distance
8 where cars would be notified to slow down to get to the
9 intersection that they could check and each officer wore
10 one of these bright yellow vests which would reflect
11 light and Corporal Lui said that they would put their
12 flashlights to the vest to ensure the officer would be
13 seen.

14 Your Honor, so in Commonwealth versus McGahan
15 it says that safety must be assured. It was in this
16 checkpoint. Motorist inconvenience must be minimized.
17 Your Honor, they were checking the cars as they came
18 through and, Your Honor, she has a procedure in place
19 that was used. We don't have the procedure for that
20 specific date, but she did testify that she takes the
21 same plan that's in Exhibit 14 and changes the location,
22 the time and the date to reflect what the actual
23 checkpoint is for each one.

24 **THE COURT:** Very good. Thank you.

25 **MS. BURCH:** Thank you, Your Honor.

1 **THE COURT:** Do you want to reply?

2 **MS. WISE:** Just briefly, Your Honor, and I
3 apologize. I didn't, I don't think, accurately or
4 properly answered your question earlier. Sitz does
5 explicitly set forth that the failure to follow
6 guidelines is an unreasonable intrusion and it further
7 sets forth that recordkeeping is crucial in establishing
8 what degree the roadblock is effective. There's been no
9 way that we were able to determine today how effective
10 this roadblock is and I believe that the State has not
11 been able to prove all three prongs as needed.

12 As we heard, Darlington County Sheriff's Office
13 had a manual or had a memo on how to conduct a proper
14 roadblock. We heard evidence that there was no written
15 operational plan completed. We heard evidence that a
16 report that was to be filed and submitted after the
17 roadblock was never completed. On top of that, we have
18 the Department of Public Safety outlining similar
19 criteria that they didn't follow as well and if there's
20 any sort of issue with obtaining statistics or including
21 statistics in the operational report, DPS clearly gives
22 a hotline that law enforcement agencies can call for
23 assistance in obtaining any statistics that they might
24 be needing, so the resources were at law enforcement's
25 fingertips. Unfortunately, they did not utilize them

1 and I think that is important because it seems that
2 the court's chief concern in issues with roadblocks
3 is that a roadblock is, in fact, a seizure,
4 constitutional rights come into play and if you're
5 not able to determine how effective this roadblock is,
6 I don't think that it's constitutional.

7 **THE COURT:** All right. Let's take a moment and
8 we will step back and consider what we have on this
9 threshold issue and we'll be in recess approximately
10 ten minutes.

11 (Recess taken.)

12 **THE COURT:** All right. Let's go back on the
13 record here in the issue of the State versus Christopher
14 Hicks and the question -- the defense motion raising
15 the question of whether or not the checkpoint itself
16 was constitutional. I have had some familiarity with
17 these issues and I was recently considering this in a
18 stop in McColl, South Carolina and, of course, there are
19 three issues that the Court reviews when considering a
20 checkpoint. One is, as has been stated by counsel, the
21 gravity of the public concern for which the checkpoint
22 is established in the first place, the degree to which
23 the public interest is served; that is, that meets that
24 public concern, the degree to which that occurs, and the
25 third one is the severity of the impediment to the

1 general public.

2 And I will tell you that in this case the Court
3 finds that this checkpoint passes muster, and I find
4 that for the following reasons. Number one, there is
5 sufficient statistical data in this record to show that
6 this area is, number one, in a relatively high area of
7 traffic concerns, including accidents and other traffic
8 problems. This road serves as a cut-through between
9 certain major roads that are -- that have a high
10 incidence of traffic problems, we'll call it that, and
11 also traffic stops as shown by the ticket statistics.
12 So the Court finds that there's a high degree that
13 there's a valid public interest here and that there is
14 a high degree to which the public interest is served
15 here.

16 Now most of your questions, Ms. Wise, dealt with
17 whether or not the officers that night had followed
18 certain guidelines and had met, I guess, to the letter
19 of those protocols. I will tell you that some -- it's
20 this Court's understanding of South Carolina law that
21 the failure to follow certain of the rules are -- is
22 not fatal. That is, if you miss one or two, it's simply
23 not fatal, but what typically happened here is it's very
24 difficult for us to engage -- to gauge the severity of
25 the impediment to the general public here because of

1 the Defendant's actions respectfully.

2 I mean, he apparently, if I understood the
3 testimony, attempted to evade the checkpoint by pulling
4 into a driveway somewhere down the road that pulled all
5 the manpower off and almost shut the check stop -- or
6 the checkpoint down while the officers dealt with that.
7 Of course, there was only one other arrest and then
8 there was no ability to keep the checkpoint going based
9 upon that second arrest, but I think it would be
10 inappropriate for what really is Mr. Hicks' actions in
11 approaching the stop, the checkpoint, and then pulling
12 away from it to inure to his benefit that there's not
13 enough statistics because the stop didn't last -- the
14 checkpoint didn't last long enough to be able to tell
15 us what the rest of the statistics are.

16 The Court is persuaded by the case of State
17 versus Vickery, which is 732 S.E.2d, and it is perhaps
18 somewhere around Page 225, but it just simply says that
19 the State here is not required to present all sorts of
20 preexisting data about that specific intersection to
21 justify setting up the checkpoint. It's just that
22 there is empirical data that exists to shows that the
23 checkpoint serves some public interest, and I think
24 Officer Lui's testimony here clearly shows and the
25 evidence shows that there was a public interest and it

1 was appropriately met. The Court denies your motion to
2 find the checkpoint unconstitutional, so that issue is
3 resolved in the State's favor. Now tell us what is the
4 next issue that you wish to take up. Is it suppression?

5 **MS. BURCH:** Yes, Your Honor.

6 **THE COURT:** All right. You want to be heard on
7 that?

8 **MS. WISE:** I would, Your Honor, yes.

9 **THE COURT:** All right. Go ahead.

10 **MS. WISE:** Defendant files this motion to
11 suppress the evidence based off of a search incident to
12 a lawful arrest. A search of the premises was done.
13 What happened was Defendant saw the roadblock up ahead.
14 He pulled into a driveway on High Hill Road, pulls into
15 the drive. Subsequently, the trash can of that driveway
16 is searched and we believe that that search, which
17 yielded the drugs, is unconstitutional. In the arrest
18 warrant and case summary provided to defense counsel,
19 the reasoning behind that search was that it was
20 incident to a lawful arrest. The Defendant had already
21 been taken off of the scene, was in the process of
22 being transported to the van to transport back to the
23 detention center at the intersection. There was some
24 distance between this driveway and the intersection and
25 I believe that this is not a lawful search incident to

1 arrest.

2 **THE COURT:** Okay. Now the first question to whom
3 did the trash can belong?

4 **MS. WISE:** The trash can belonged to a third
5 party, and I understand there's likely an issue with
6 standing; however, our position is that the Defendant
7 did try to go to the third party's house. He did not
8 know the residents that lived there. He went to the
9 house, he walked to the side door, tried knocking on the
10 door. He will testify that he heard the dog barking
11 inside. Nobody ever came to the door. His intention
12 was that he wanted to ask for permission to be on the
13 premises until someone could come pick him up. He
14 claims that he was driving without a license. That was
15 his reasoning for not going through the roadblock. No
16 one ever came to the door. We believe that the search
17 and the seizure was clearly directed at him, not anyone
18 else, and, therefore, he has standing to contest the
19 lawfulness of this search. And if you'd like me to
20 discuss this --

21 **THE COURT:** Yes. What precedent do you cite for
22 that proposition?

23 **MS. WISE:** There's a Supreme Court case of Jones
24 versus the United States, and I understand that that
25 case has been overruled by Rakas, and I apologize for

1 however you pronounce it; however, I think there's
2 subtle differences in the Rakas case and the Jones case
3 that differentiate it between the case at issue here.
4 As Jones set forth, the victim -- excuse me, the
5 defendant must be a victim of an invasion of privacy or
6 be a person aggrieved by an unlawful search or seizure,
7 he must have been a victim of that search and seizure
8 and against whom that search and seizure was directed.
9 In the case at hand, I believe that considering the
10 circumstance that he did try to go and alert the
11 homeowners that he was on their property, no one was
12 home for him to ask permission to be on this property,
13 he wasn't on this property for any ill intent, was not
14 trespassing in the sense that he was trying to vandalize
15 the property, rob anyone. The search that resulted in
16 -- the trash can was in view up against the house. The
17 search that resulted was absolutely illegally directed
18 against him and for the State to bring evidence of an
19 alleged crime against him without allowing him to
20 contest the constitutionality of that evidence to me
21 just seems unjust.

22 **THE COURT:** Well, all right. What would you say,
23 and this may not be dispositive of the issue, but what
24 was his status on the property? Are you saying he was
25 -- well, let's put it this way. Was he a trespasser?

1 You say he went there for no illegal purpose, but if he
2 disposed of contraband allegedly in that -- on that
3 property, then he would be a -- he would be a trespasser
4 who went on the property for the purpose of committing a
5 criminal act; would he not? I'm not asserting that.
6 I'm just asking you. Would that be the case?

7 **MS. WISE:** Your Honor, the contraband is the main
8 issue at case here. He's denied knowledge of that
9 contraband since day one. His position is that he went
10 onto that property because he did not know what was
11 going on up ahead. He saw what he thought was a
12 roadblock. As we heard earlier, there was no lighting
13 out there. He was unsure. All he knew was that, yes,
14 he was driving without a license and he didn't want to
15 go into that area and expose himself or anyone else to
16 him not driving without a license. He pulls into this
17 drive, he proceeds to call his cousin at least seven
18 times, is unable to get his cousin on the phone,
19 realizes -- I don't even think he realized at the time
20 he was pulling into a house. He realizes then oh, I'm
21 sitting in someone's driveway. He gets out of the car
22 and goes to knock to ask can I have permission, I don't
23 know what's going on down there, I'm on your property.
24 No one homeowner-wise is home and at this point law
25 enforcement comes up.

1 **THE COURT:** All right. Well, I'll tell you let's
2 do this. Let me hear from the State and then I'll get
3 back to you on those issues.

4 **MS. BURCH:** Thanks, Your Honor. Under the
5 Supreme Court case Bond versus the U.S., that case says
6 that you have to ask does the individual by his conduct
7 exhibit an actual expectation of privacy and, two, the
8 individual's expectation of privacy, is that one society
9 is prepared to recognize as reasonable? In this case,
10 this Defendant is approaching the roadblock, sees the
11 roadblock, turns around and goes into the driveway of
12 the house. And, Your Honor, I do have some pictures,
13 and whenever we start the trial we've already stipulated
14 to these exhibits, you can see the house from the
15 roadway where the roadblock was occurring. The driveway
16 is kind of long, but, anyway, he goes into that driveway
17 and parks and he claims that he goes to this screened
18 porch and knocks on the door. The trash can is right
19 here at the garage and we'll have testimony that says
20 the trash can where it is currently is where it was back
21 in 2012. When the police pulled into the driveway
22 behind him, the Defendant is coming from the trash can
23 area. He is in a third party's yard where he has not
24 been invited, the people do not know him, and he puts --
25 or the State's gonna assert that he put drugs in their

1 trash can. He has no right to privacy in their trash
2 can and, Your Honor, if the State -- or if the Court
3 does find he has standing, the State would assert that
4 he abandoned this property. He has not -- I mean, he
5 has denied actual ownership of these drugs and, Your
6 Honor, he physically relinquished those drugs when he
7 put them in the trash can, and that would be U.S. versus
8 Gwinn, 191 F.3d 874.

9 But, Your Honor, the search incident to arrest, I
10 would like to also address that part. Ben Weatherford
11 pulls in first behind this Defendant. He's coming away
12 from the trash can whenever Sergeant Weatherford pulls
13 up. Jackie Gause pulls in behind Weatherford and also
14 sees this Defendant coming from the trash can.
15 Weatherford gets out and is looking around the area.
16 The Defendant is starting to become belligerent. From
17 what law enforcement has told me, they removed him from
18 the scene for officer safety and they both observed this
19 Defendant watching the trash can while they're searching
20 the area. So as Weatherford's pulling away with this
21 Defendant, that's when Gause goes into the trash can and
22 finds the drugs. In fact, the call probably came
23 through about thirty seconds after Weatherford pulled
24 out with Hicks that she had found the drugs.

25 **THE COURT:** Okay. And do you have as witnesses

1 the owner of that premises?

2 **MS. BURCH:** Yes, Your Honor. She's right
3 outside.

4 **THE COURT:** Okay. And just to gauge all this,
5 does she have a criminal record?

6 **MS. BURCH:** No, Your Honor, she does not.

7 **THE COURT:** Is there any belief that -- or was
8 there any suspicion those drugs belonged to her?

9 **MS. BURCH:** No, Your Honor. In fact, law
10 enforcement went back to her house -- to the family's
11 house within the next day or two and questioned the --
12 it's actually the wife and she said that no, those
13 weren't her drugs. They showed her a picture of the
14 Defendant, she's never seen him before, he'd never done
15 any work for them, none of the children in the house
16 has a drug problem, the husband does not have a drug
17 problem. They even said here, please check our
18 character, here's all the information you would need to
19 do that.

20 **THE COURT:** Very good. All right. And you want
21 to reply to what you heard?

22 **MS. WISE:** Yes, Your Honor. I'll just say that
23 as far as my client being belligerent leaving the scene,
24 I've received as to Rule 5 information and nothing of
25 that is mentioned in the Rule 5 that I have seen. All

1 that this defense has been led to believe was that he
2 was arrested, transported off scene for a driving under
3 suspension, and the report clearly says he's arrested
4 for driving under suspension, second, was transported
5 off scene, law enforcement then does a search incident
6 to lawful arrest, searches this trash can. And, again,
7 as far as the homeowner being questioned, I believe it
8 was four days later, and as far as testimony pertaining
9 to seeing my client in the vicinity of the trash can,
10 I haven't heard anything of Jacqueline Gause testifying
11 that she -- or reporting that she had seen him coming
12 from that trash can and as far as Ben Weatherford,
13 you've heard -- I have contracting remarks as far as
14 that, so I honestly can't answer to that.

15 **THE COURT:** Okay. Just one moment, please. Are
16 you intending to put up testimony on this or just simply
17 the arguments that we've made?

18 **MS. BURCH:** Your Honor, if the Court does need
19 testimony, I have the officers available; otherwise,
20 just the argument.

21 **THE COURT:** Very good. Does your witness -- or
22 your client want to be heard on this issue?

23 **MS. WISE:** He does, Your Honor.

24 **THE COURT:** He wants to take the stand?

25 **MS. WISE:** He does.

1 **THE COURT:** All right. Just one moment. Let me
2 see if that's necessary.

3 (Discussion off the record.)

4 **THE COURT:** Ms. Wise, this is my position on
5 your client testifying. Of course, absolutely I will
6 not prohibit him from testifying, but I will assume for
7 purposes of this issue that he would testify that,
8 number one, the drugs are not his and, number two, that
9 he didn't put them in the trash can, and so we'll just
10 give him that assumption, which will be part of his
11 presumption of innocence, and the Court will still be
12 prepared to rule on this matter. So I don't say that
13 he can't testify. The Court does not perceive it to be
14 necessary to a decision. If you want to discuss that
15 with your client, then I'll be more than happy for you
16 to. If he wants to take the stand, I would have to
17 caution him about the fact that obviously we're getting
18 ready to have the trial and what he says may be used
19 against him by the State at any later time in the
20 proceeding, but do you need to discuss it further with
21 him?

22 (Discussion off the record.)

23 **THE COURT:** Ms. Wise, stated differently, I'm
24 willing to give him the benefit of favorable testimony
25 without him taking the stand and having to be subject to

1 cross-examination.

2 **MS. WISE:** Okay.

3 (Discussion off the record.)

4 **THE COURT:** All right. Now does he wish to
5 testify?

6 **MS. WISE:** He doesn't, Your Honor.

7 **THE COURT:** All right. Thank you. All right.
8 Then because the Court's ruling is not really
9 necessarily controlled by the factual assertions that
10 the Defendant may make, I think this is fairly clear
11 on point of law. First of all, the Defendant has no
12 right of ownership in that property; that is, the
13 physical, real property, we're talking about the trash
14 can itself, he has no standing to assert a violation of
15 a constitutional right with regard to that trash can.
16 There is a line of cases that says what you put in the
17 trash is subject to search by the police anyway and
18 the Court accepts the fact that the -- obviously the
19 individuals who own that trash can are here in support
20 of the State to testify today and the Court simply finds
21 that, number one, lack of standing, number two, no right
22 of privacy to what's in that trash can, and the Court
23 would without further hearing deny the motion to
24 suppress the evidence based on an unlawful search and
25 seizure.

1 **MS. WISE:** Thank you, Your Honor.

2 **THE COURT:** What issues do we have remaining?

3 **MS. BURCH:** I think that's it from the State.

4 **MS. WISE:** I believe we've just consented to
5 sequestering the witnesses.

6 **MS. BURCH:** And we have some stipulations.

7 **THE COURT:** Okay. All right. Well, do we need
8 to -- do you want to put the stipulations -- first of
9 all, do you wish to proceed with the trial? Is there
10 some utility to standing down and talking among
11 yourselves based upon these rulings? Do you wish to
12 postpone the trial; although I think it's unlikely we'll
13 be here Wednesday. What is your preference?

14 **MS. WISE:** We're ready.

15 **MS. BURCH:** I'm ready to go, Your Honor.

16 **THE COURT:** Okay. Then we'll proceed into trial.
17 So tell us what are the stipulations, then we'll stand
18 down and take a break before we actually begin the
19 trial.

20 **MS. BURCH:** Thank you, Your Honor. And,
21 Ms. Wise, correct me if I'm wrong, we have stipulated
22 to Exhibits 1 through 10, which are pictures of the
23 residence where Mr. Hicks pulled into the driveway
24 and the house and the trash can. That's Exhibits 1
25 through 10 are in evidence and, Your Honor, we're also

1 stipulating to the fact that Gary Billiot from the
2 Darlington County Sheriff's Department did take the
3 drug evidence to SLED and picked it back up.

4 **THE COURT:** Okay. Very good. Anything else with
5 regard to stipulations from the defense now?

6 **MS. WISE:** Nothing from the defense, Your Honor.

7 **THE COURT:** All right. You've asked the
8 witnesses to be sequestered and the Court will grant
9 that request and we'll just stand down a moment while
10 you all prepare to put up your witnesses, while the
11 State prepares, and then we'll go forward, all right?

12 Let's take a moment though after you all are ready,
13 counsel, and let's just talk in the back for a moment
14 before we begin, and we'll be in recess now just a few
15 moments while the trial preparations are made.

16 (Recess taken.)

17 **THE COURT:** All right. Does either side wish to
18 make an opening statement?

19 **MS. BURCH:** Your Honor, I'll just give the facts
20 briefly to you, if that would help.

21 **THE COURT:** All right. Go ahead. We'll give
22 the defense the same opportunity if you wish to make an
23 opening statement.

24 OPENING STATEMENT

25 **MS. BURCH:** Thank you, Your Honor. We're here

1 today on indictments number 2012-GS-16-1304 for
2 possession with intent to distribute marijuana, 1305
3 for possession with intent to distribute cocaine, 1306
4 for possession with intent to distribute a Schedule 1
5 controlled substance, being Ecstasy, and 1307 for
6 possession with intent to distribute crack cocaine.

7 Your Honor, this incident occurred on January 1st
8 -- or not January 1st, January the 6th, 2012. Your
9 Honor, the State will put up evidence to show that on
10 that night there was a traffic safety checkpoint at the
11 intersection of High Hill and Potato House roads. The
12 Defendant in this case, Christopher Hicks, approached
13 that intersection, but before he could get to the
14 checkpoint he turned around and pulled into a driveway
15 just right up from the checkpoint. Law enforcement saw
16 him pull around, they'll testify to that, and went into
17 the driveway.

18 Long story short, Your Honor, the Defendant told
19 Officer Weatherford that he was driving under
20 suspension, he checked that he was, and he was placed
21 under arrest. Sergeant Jackie Gause also was on scene
22 and the area was searched. Weatherford saw the
23 Defendant walking away from the side of the house where
24 there's a trash can and as he was being removed from
25 the incident location, Sergeant Gause did go into the

1 trash can and found a pack of drugs that contained
2 marijuana, crack cocaine and Ecstasy, and, Your Honor,
3 that's our --

4 **THE COURT:** Thank you. And now from defense?

5 **MS. WISE:** Thank you, Your Honor. I believe,
6 just briefly, that the evidence today is not enough
7 proof to convict my client of the four charges of which
8 he faces. You will hear from my client who will testify
9 as to what happened to him that night, as to what he
10 did that night and there's no proof in our opinion to
11 sustain these charges, and we'll let the evidence show
12 that.

13 **THE COURT:** Very good. And then, please, call
14 your first witness.

15 **MS. BURCH:** Thank you, Your Honor. The State
16 will call Shannon Windham.

17 SHANNON WINDHAM,
18 having been duly sworn, testified as follows:

19 **THE COURT:** All right. How are you, ma'am?
20 Please go ahead.

21 **MS. BURCH:** Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. BURCH:

24 Q. Ms. Windham, please state your name for the record.

25 A. Shannon Windham.

- 1 Q. And how do you spell your last name?
- 2 A. W-I-N-D-H-A-M.
- 3 Q. And, Ms. Windham, where do you live?
- 4 A. [REDACTED], Darlington, South Carolina.
- 5 Q. And how long have you lived there?
- 6 A. Eleven years.
- 7 Q. Eleven years. Did y'all build that house?
- 8 A. We did.
- 9 Q. How many children do you have?
- 10 A. Two.
- 11 Q. And how old are they?
- 12 A. Thirteen and sixteen.
- 13 Q. Okay. Are you married?
- 14 A. I am.
- 15 Q. So how many people live in your house total?
- 16 A. Four.
- 17 Q. Are you familiar with an incident that occurred at
- 18 your residence on January 6, 2012?
- 19 A. I was informed of it after the fact.
- 20 Q. And do you know this man right here at defense
- 21 table, Christopher Jermane Hicks?
- 22 A. No, ma'am.
- 23 Q. Have you ever seen him before?
- 24 A. Not to my knowledge.
- 25 Q. He's never done any work for you?

1 A. I -- no.

2 Q. Was there any reason for Mr. Hicks to be on your
3 property the night of January 6, 2012?

4 A. No, ma'am.

5 Q. Do you recall where you and your family were that
6 night?

7 A. Yes, we were visiting friends on Law Street.

8 Q. Is that in --

9 A. In Hartsville.

10 Q. Ms. Windham, I'm gonna show you some of these
11 exhibits that are in evidence. If you'll just go
12 through them with me.

13 A. Okay.

14 MS. BURCH: The pictures --

15 MS. WISE: No objection.

16 BY MS. BURCH:

17 Q. Let's start with Exhibit 4. What is that a picture
18 of?

19 A. The side of my house.

20 Q. Okay. And there's a trash can in that picture.
21 Has that trash can always been there?

22 A. Yes.

23 Q. Was it kept there January 6, 2012?

24 A. Yes, ma'am.

25 Q. Let me show you Picture Number 8. Do you know what

1 that is?

2 A. That's our driveway.

3 Q. And Picture Number 12?

4 A. That's the front of our house.

5 Q. And Picture Number 11?

6 A. That's the side.

7 Q. Is that the same way it has been since you built
8 it?

9 A. Yes.

10 Q. All right. Let me show you Exhibit Number 6. What
11 is that a picture of?

12 A. The driveway on a different side of the house.

13 Q. There's a light pole in that picture?

14 A. Yes.

15 Q. How long has that light been there?

16 A. Since we built the house.

17 Q. And how well does it illuminate your yard?

18 A. It illuminates that whole side of the house.

19 Q. Let's talk about where your house is on High Hill
20 Road. Is that a city, town, country? What kind of area
21 is it?

22 A. It's a rural area close to dairy farms and fields.

23 Q. So do a lot of people live near you?

24 A. There's no one in our direct vicinity. There's a
25 field before there's any more houses.

1 Q. State's Exhibit 1, would that be a picture of the
2 field you're referring to?

3 A. Yes. And High Hill Creek's on the other side.

4 Q. Okay. So everything that's reflected in these
5 pictures taken a couple of weeks ago is basically the
6 same as it would have been in January 2012?

7 A. Yes. Yes, ma'am.

8 Q. I know this has been two years ago, but do you
9 remember what was in your trash can when you left your
10 house on January 6, 2012?

11 A. Household trash.

12 Q. Do you -- does that stand out in your memory for
13 any reason?

14 A. No. I mean, that's just all we put in there is
15 household trash.

16 Q. Are there any drug users living in your residence?

17 A. No.

18 Q. Do you have any guests that come to your home or
19 that would have been there on January the 6th that would
20 have thrown drugs into your trash can?

21 A. No.

22 Q. Is there any reason at all there should have been
23 a bag in your trash can containing cocaine, crack and
24 Ecstasy or marijuana?

25 A. No.

1 Q. And have there been any other suspicious activities
2 that have taken place around your home?

3 A. We have had law enforcement out there looking for
4 individuals and then at the creek there's been some
5 suspicious activities, people stopping for no apparent
6 reason, but nothing --

7 Q. Do you -- do you recall law enforcement coming to
8 speak with you after January the 6th?

9 A. Yes.

10 Q. Do you remember telling law enforcement anything
11 about those activities?

12 A. I did ask them if they would look into people
13 stopping at the creek because there didn't appear to be
14 any reason to. They weren't fishing, so I wouldn't know
15 why they would be there.

16 Q. One second, Your Honor.

17 **MS. BURCH:** Your Honor, no further questions.

18 **THE COURT:** All right. So now we'll have
19 cross-examination by the defense. Are there questions
20 for the witness?

21 **MS. WISE:** Briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. WISE:

24 Q. And thank you, Ms. Windham. You said the night of
25 January 6, 2012, y'all left for dinner. About what time

1 -- or you left to go over to a friend's house. I just
2 made the assumption for dinner.

3 A. Yes, for dinner.

4 Q. About what time did y'all leave?

5 A. I know it was before 6:00.

6 Q. Okay. Do you remember reporting to law enforcement
7 that there was Styrofoam in your trash can that one of
8 your teenage sons had thrown out?

9 A. I don't remember the exact contents of the trash
10 can, but I know that my son's job -- as you can see from
11 the pictures, our dog just, you know, likes to throw the
12 trash around the yard and so his job was to pick up the
13 trash before we left.

14 Q. Okay. Any idea about what time he might have
15 picked up the trash?

16 A. That time of year he's supposed to do it before
17 dark, so it would have probably been, you know, he --
18 school work usually lasts until about four, sometimes
19 after four, so before six.

20 Q. Okay. And you stated that you and your husband
21 built y'all's house about eleven years ago?

22 A. Yes.

23 Q. When you built the house, would you say it was a
24 really safe area, you never saw suspicious activities
25 going on?

1 A. No, I can't think of anything.

2 Q. Okay. In the past -- especially surrounding the
3 time of January 2012, had you noticed an increase in
4 suspicious folks, suspicious activities, things along
5 the lines of that in y'all's area?

6 A. I don't recall. I'm sorry.

7 Q. Okay. No worries at all.

8 **MS. WISE:** No further questions for this witness.
9 Thank you, Ms. Windham.

10 **THE COURT:** Any redirect?

11 **MS. BURCH:** Nothing from the State, Your Honor.

12 **THE COURT:** All right. Ma'am, you are free to
13 leave, if you wish. Thank you for being here. Have a
14 good day.

15 (Witness excused.)

16 **THE COURT:** Please call your next witness.

17 **MS. BURCH:** Thank you, Your Honor. At this time,
18 and I'll butcher his name, I'm sure, by the State calls
19 Larry Zivkovich from SLED.

20 **THE COURT:** All right.

21 **LAWRENCE ZIVKOVICH,**
22 having been duly sworn, testified as follows:

23 **THE COURT:** Thank you. Ms. Burch?

24 **MS. BURCH:** Thank you, Your Honor. I'm just
25 gonna move these pictures so they're not in his way.

1 DIRECT EXAMINATION

2 BY MS. BURCH:

3 Q. Would you, please, state your name for the record,
4 and spell your last name.

5 A. Lawrence Zivkovich, Z-I-V-K-O-V-I-C-H.

6 Q. Say it one more time for me.

7 A. Lawrence Zivkovich.

8 Q. Mr. Zivkovich, what is your occupation?

9 A. I'm a forensic scientist at South Carolina Law
10 Enforcement Division.

11 Q. And how long have you been employed by SLED?

12 A. About seven and a half years.

13 Q. And how long have you been in the position that
14 you're in now, forensic -- I'll say forensic analyst?

15 A. About seven and a half years.

16 Q. And what are your duties?

17 A. I analyze submitted substances to see if there are
18 any controlled substances in evidence.

19 Q. What kind of training have you received to do your
20 job?

21 A. I received a bachelor's in chemistry from the
22 University of South Carolina and then I also got
23 forensic scientist training when I was hired at SLED
24 and I've also had a training course with the DEA.

25 Q. Have you had an occasion to chemically analyze

1 substances to determine whether the substance is or
2 contains a narcotic or a narcotic-type drug?

3 A. I have.

4 Q. How many times would you say you've done so?

5 A. Thousands.

6 Q. Have you had the occasion to chemically analyze
7 substances to determine whether the substance is or
8 contains cocaine?

9 A. I have.

10 Q. Crack?

11 A. Yes, ma'am.

12 Q. And Ecstasy?

13 A. Yes.

14 Q. And how many times have -- I guess you'll have to
15 estimate, have you done those tests?

16 A. Probably five to seven thousand times.

17 Q. And how many times do you analyze chemical
18 substances that would contain cocaine, crack cocaine or
19 Ecstasy in a given week would you say?

20 A. I average around twenty to thirty cases a week.

21 Q. So analyzing these chemical substances would be part
22 of your regular duties?

23 A. Yes.

24 Q. And have you had the occasion to qualify as an
25 expert in forensic analysis in South Carolina?

1 A. I have.

2 Q. How many times?

3 A. Twenty-two times.

4 Q. And did you actually testify those times?

5 A. Yes.

6 **MS. BURCH:** Your Honor, at this time the State
7 would move that Larry Zivkovich is declared an expert in
8 the field of forensic analysis.

9 **THE COURT:** All right. Is there objection?

10 **MS. WISE:** No objections, Your Honor.

11 **THE COURT:** Without objection, so ordered. You
12 may proceed.

13 BY MS. BURCH:

14 Q. I'm gonna show you what's been marked State's
15 Exhibit Number 24. Do you recognize that document?

16 A. Yes, ma'am. It's a SLED report issued by myself.

17 Q. Do you recall when you received the substances in
18 this case?

19 A. I received the substances from this case on
20 February 22nd of 2012.

21 Q. And do you have who they came from?

22 A. Patricia Crooks.

23 Q. And she would have received them from our law
24 enforcement?

25 A. Patricia Crooks is our evidence custodian, and she

1 doesn't log in evidence, that would have probably come
2 from somebody else, and then once the evidence is logged
3 into SLED, then they give it to Patricia Crooks who
4 gives it to the analysts.

5 Q. Whenever you received the substances for this test,
6 were they continuously under your control and care and
7 custody?

8 A. Yes, ma'am.

9 Q. And I'll show you what's been marked as State's
10 Exhibit 27. Do you recognize that?

11 A. Yes, ma'am. It's the -- it's the BEST kit that was
12 submitted in accordance with the report that was issued.

13 Q. And that was under your care, custody and control,
14 correct?

15 A. Yes, ma'am.

16 MS. BURCH: Okay. Your Honor, at this time
17 the State would move State's Exhibit 24 and 27 into
18 evidence.

19 THE COURT: All right. Is there objection to 24
20 or 27?

21 MS. WISE: No objections, Your Honor.

22 THE COURT: Without objection, in evidence.

23 (State's Exhibit Number 24, a SLED report, and
24 State's Exhibit Number 27, a BEST kit containing
25 Ecstasy, cocaine & crack, were admitted into

1 'evidence.)

2 BY MS. BURCH:

3 Q. All right. What is the weight of the cocaine in
4 this case that you found as part of your analysis?

5 A. I actually found two different items that contained
6 cocaine; Item 1.1 contained a total of 1.3 grams of
7 cocaine base, commonly known as crack. In Item 1.2,
8 there was a total of ten bags. I analyzed five of the
9 bags that had a combined weight of 1.1 grams of cocaine
10 crack -- or of cocaine.

11 Q. And what was the weight of the Ecstasy that you
12 found?

13 A. There was no Ecstasy in the case.

14 Q. Okay. But you had 9 -- I'm sorry, you had some
15 pills submitted to you?

16 A. Yes, ma'am.

17 Q. And what did you find those to be?

18 A. Let me check my data. The pills were actually
19 Properazine, which is a -- or at that time that I
20 analyzed them were non-controlled substances.

21 Q. All right. And what tests did you do on the
22 cocaine?

23 A. I did a color test and a gas chromatograph test and
24 a mass spectroscopy test.

25 Q. And on the crack cocaine, cocaine base?

1 A. The same on both of them.

2 Q. And then on the Ecstasy pills?

3 A. The same. Yes, ma'am, the same on those also.

4 Q. And all those tests were done by you?

5 A. Yes, ma'am.

6 Q. All right. And from those tests you were able to
7 form an expert -- an expert opinion?

8 A. Yes, ma'am.

9 Q. And what was that?

10 A. On Item 1.1, I determined that there was 1.3 grams
11 of cocaine base, and Item 1.2, I determined that there
12 was 1.1 grams of cocaine and there was also 1.2 grams
13 of a substance that were not analyzed, and Items 1.3.1
14 through Items 1.3.9 I issued a report saying no
15 controlled substances were detected as all those items
16 were Properazine tablets.

17 MS. BURCH: Thank you. Your Honor, no further
18 questions.

19 THE COURT: Are there questions from the defense?

20 MS. WISE: Nothing from the defense, Your Honor.

21 THE COURT: Any objection to releasing the
22 witness?

23 MS. BURCH: No, Your Honor.

24 MS. WISE: None.

25 (Witness excused.)

1 **THE COURT:** All right. And, counsel, I don't
2 have the indictments before me. May I see the
3 indictments? Do you have the indictments?

4 **MS. BURCH:** (Handing.)

5 **THE COURT:** Okay. Are you, based on that
6 testimony, moving to withdraw one of these indictments?

7 **MS. BURCH:** Your Honor, from what I've examined
8 from the fact sheet, he's indicted under the counterfeit
9 also.

10 **THE COURT:** Okay. Very good. Then we'll hear
11 at the end of the State's case that my question to you
12 is going to be whether the State was voluntarily
13 withdrawing and the answer is no.

14 So please call your next question -- or witness.

15 **MS. BURCH:** Jacqueline Gause.

16 JACQUELINE GAUSE,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. BURCH:

20 Q. If you'll please state your name and spell your
21 last name for the record.

22 A. Jacqueline Gause, G-A-U-S-E.

23 Q. And it's Sergeant Gause?

24 A. Correct.

25 Q. Sergeant Gause, will you please tell us where you

1 work.

2 A. I presently work at Darlington County Sheriff's
3 Office.

4 Q. How long have you been there?

5 A. Roughly four and a half years.

6 Q. And what are your duties at the sheriff's
7 department?

8 A. I currently work in the narcotics division. We
9 assist our special enforcements unit, which Corporal Lui
10 is a part of. We assist with checkpoints. We also
11 assist with controlled purchases of narcotics by
12 utilizing confidential informants. We set up on
13 surveillance on target areas we know that we have drug
14 dealings, whether it be from the heavy traffic, the
15 heavy complaints that come into our sheriff or a
16 case-by-case scenario, we stop a car leaving a residence
17 and get a drug case there and set up as a potential
18 dealer that resides at that residence.

19 Q. All right. Sergeant Gause, were you working for
20 the sheriff's department on January 6, 2012?

21 A. I was.

22 Q. And are you familiar with an incident that occurred
23 on that date on High Hill Road and Potato House Road?

24 A. Yes.

25 Q. Was that intersection in Darlington County?

1 A. It is in Darlington County.

2 Q. Tell us what you were doing that night.

3 A. On January 6, 2012, myself along with other officers
4 with the Darlington County Sheriff's Office, we had set
5 up a DUI safety checkpoint at the intersection. Prior
6 to going out, we made sure that everyone had their
7 checkpoint vests that we have and our checkpoint signs
8 as given earlier in evidence as well as flashlights.
9 We set up posts at High Hill and Potato House Road. We
10 had our jail van there. On the back of the jail van
11 there's a bright light for when they do -- when they
12 bring prisoners in because the jail -- the detention
13 officers actually search individuals at the back of the
14 jail van, take their property, bag and tag it, and put
15 them in the van. That particular night we attempted to
16 start at around 6:00. Prior to really even getting set
17 up good, we got there, put our vests on. We weren't
18 there probably not even 10, 15 minutes, give or take,
19 and we had our first vehicle come down on High Hill
20 Road.

21 At this point, I ran back to my vehicle, hopped
22 in my vehicle to try to attempt to catch up to the
23 vehicle that had pulled on the shoulder of the road and
24 was backing up. As I was running back to my vehicle,
25 as I looked down it looked like the vehicle had turned

1 right into the residence. It would be the driver's
2 left. At that time, I went past the driveway because at
3 first -- there's a dip in the road and you completely
4 cannot even see the driveway at that point. When you're
5 on the road from our intersection, you could visibly see
6 the driveway to that residence. By the time I go down
7 to the end of the road, Sergeant Weatherford advised me
8 on the radio that I had passed the residence the vehicle
9 had pulled into. I turned around at the bridge, which
10 is a couple hundred yards from the residence. As I
11 turned around, was about to pull in the driveway,
12 Sergeant Weatherford had already pulled in the driveway,
13 made contact with the driver --

14 Q. I'm gonna stop you there.

15 A. Okay.

16 Q. Sergeant Gause, what does the area at the
17 intersection look like?

18 A. There's fields on all four corners.

19 Q. Is there anything other than dips in the road that
20 would be blocking your view?

21 A. No.

22 Q. Let me show you what's come in as State's evidence.
23 We'll start with State's Exhibit 10. Would you identify
24 that picture, please?

25 A. Yes, that's the driveway -- that's the intersection

1 and the white house in the far -- on the field is the
2 residence in which the Defendant actually pulled into.

3 Q. And Exhibit 9, State's evidence 9?

4 A. Yes, those are the same pictures.

5 Q. Then State's evidence 11 and 12?

6 A. Okay. 11, that's the corner of the residence,
7 and, 12, that's the front of the residence in which the
8 Defendant pulled into.

9 Q. State's evidence 8?

10 A. That's the driveway of the residence in which the
11 Defendant pulled into.

12 Q. And 2?

13 A. And that's another angle of the driveway in which
14 the Defendant pulled into.

15 Q. And this would be State's Exhibit 1.

16 A. Okay. This is the gravel portion of the actual
17 driveway which looks back towards where we were actually
18 having our checkpoint that evening.

19 Q. So from the driveway you can see the intersection
20 where the checkpoint was?

21 A. Yes, you can actually see the stop sign:

22 Q. Okay. State's evidence 6?

23 A. This is the driveway portion where the Defendant
24 pulled in and parked his vehicle approximately right
25 there at the light pole, facing the light pole.

1 Q. Okay. And does this area look the same as it did
2 back January 6, 2012?

3 A. Very similar. I do not recall that cooler being
4 there, but, yes.

5 Q. State's evidence 4?

6 A. Okay. That's the side of the residence where the
7 Defendant pulled into the residence. The screened
8 porch is there on the side of the residence near the
9 basketball goal and the trash can, which were -- are
10 still in the same general vicinity they were that night
11 of the traffic stop.

12 Q. Okay. And State's evidence 5?

13 A. This would be the side view of the side porch of
14 the residence, the screened in porch. I think there's
15 a little difference between the two pictures because at
16 the time of photographing prior to making contact with
17 the homeowner that day, they had their vehicle parked
18 and we asked them to pull it into the garage so we'd
19 have a better view of how the driveway looked the night
20 of the incident.

21 Q. We've talked about the light in the driveway or in
22 the yard.

23 A. Yes.

24 Q. How well was the yard lit up that night?

25 A. It was lit very well. Based off of my recollection

1 of that evening, that was the only light emitting around
2 that residence with the exception of the headlights of
3 Sergeant Weatherford's vehicle and the headlights of my
4 vehicle.

5 Q. So how well were you able to see around --

6 A. Very -- very well, yes.

7 Q. Now I had stopped you a minute ago. Whenever you
8 were pulling into the driveway, where was Sergeant
9 Weatherford?

10 A. Sergeant Weatherford was out of his vehicle making
11 contact with the Defendant.

12 Q. And where were they standing? One of these might
13 be better.

14 A. Where's my picture -- yeah.

15 Q. You have to identify. It's State's in evidence
16 3 --

17 A. And 6.

18 Q. -- and 6.

19 A. On 3, I am standing the -- approximately the spot
20 where the Defendant was standing when I pulled in,
21 placing him halfway in between the residence and
22 Sergeant Weatherford's vehicle and the Defendant's
23 vehicle.

24 Q. So what did you do whenever you pulled into the
25 yard?

1 A. I pulled into the yard. At that point, like I
2 explained, Sergeant Weatherford was making contact with
3 the Defendant, talking to him in regards of why he
4 pulled into the residence. He made the statement that
5 he -- his license was suspended, which was no big deal
6 as we deal with people all the time that have suspended
7 driver's licenses. Sometimes they get a ticket and
8 sometimes they have to go to jail depending on the type
9 of offenses they have on their driver's license.
10 Sergeant Weatherford spoke to Mr. Hicks, the Defendant,
11 he placed him under arrest for driving under suspension.
12 I ran his driver's license through dispatch.

13 Actually I ran his identification card, which
14 he had on him at the time. I ran his identification
15 card. It came back through dispatch it was suspended.
16 He had three unpaid traffic tickets, two driving under
17 suspensions, and two controlled substance violations.
18 Now all of these suspensions were indefinite, meaning
19 that his suspensions had not ended yet and he was
20 currently under suspension for those offense. There
21 was only one driving under suspension that fell within
22 the 5-year period to be able to charge someone with a
23 second offense and so Mr. Hicks was charged with driving
24 under suspension second offense.

25 As we were learning the information, Sergeant

1 Weatherford was looking around the general vicinity
2 that he saw Mr. Hicks walking from. While Sergeant
3 Weatherford was doing that, I was standing there with
4 Mr. Hicks. Generally when we have -- we have a contact
5 officer and we have a cover officer. At this point, I
6 was simply the cover officer for Sergeant Weatherford.
7 The cover officer's job at that point is to watch the
8 Defendant. Through my training and experience, usually
9 the Defendant gives away if there's any guilt of any
10 shape or form that there may be something there other
11 than just the driving charge.

12 Q. What were you seeing Mr. Hicks do?

13 A. At that point, it drew great attention to me
14 because Mr. Hicks actually even made the statement
15 that we didn't get anything off him. At that point, we
16 hadn't found anything, he was correct, but Sergeant
17 Weatherford was looking around the general vicinity.
18 Due to Mr. Hicks' nature at the time, he has a loud and
19 boisterous voice, so at that time we decided that I
20 would stay with the vehicle and wait for a tow truck
21 and Sergeant Weatherford would take Mr. Hicks back to
22 the staging area so he could be detained through the
23 sheriff's office van.

24 Q. Okay. And you say based on his nature, he's got a
25 loud and boisterous voice, what was he doing?

1 A. Making statements that, you know, we didn't have
2 anything on him, all he was doing was driving, you know,
3 the general things that someone would say, you know.
4 Yeah, it was just a driving offense, you know, it was
5 just a driving offense.

6 Q. Uh-huh. Did y'all feel unsafe with him?

7 A. There were several instances I could tell by his
8 body language and I think it was just his -- from what
9 I've seen, he portrays -- when someone tries to get
10 their point across, their voice becomes louder and
11 louder, and based off my training and experience,
12 usually that is a diversion technique to draw officers
13 away from other issues at hand.

14 Q. So Sergeant Weatherford takes Mr. Hicks away?

15 A. Prior to Sergeant Weatherford taking Mr. Hicks
16 away, as Sergeant Weatherford was looking, I noticed
17 Mr. Hicks look over to the trash can and, of course, hot
18 potato. If somebody tosses something, they're gonna
19 generally look towards that direction just because it's
20 something we do when we're guilty of something. Or, for
21 example, based off my training and experience, we may
22 ask someone if they have any marijuana on them and they
23 immediately have to touch that pocket and generally -- I
24 mean, 99 percent of the time they have something in that
25 pocket they've touched. Prior to Sergeant Weatherford

1 leaving, I shined my flashlight at the trash can to
2 indicate to him that Mr. Hicks had unconsciously drew
3 attention to the trash can through his actions.

4 Q. Let me divert your attention back to the car that
5 Mr. Hicks was driving. Who was the owner of the car?

6 A. Enterprise.

7 Q. All right. So after you have done the flashlight
8 towards the trash can or Sergeant Weatherford and he
9 leaves, what did you do?

10 A. As Sergeant Weatherford was getting in his vehicle,
11 helping Mr. Hicks get in his vehicle, I looked around
12 and I shined my flashlight on the screened in porch just
13 to make sure there was nothing lying there. If the
14 Defendant did actually walk through the screened in
15 porch, what better place to pop the door open and toss
16 something in. After I checked the screened in porch, I
17 went down the line and checked the side of the residence
18 and then I opened the trash can, and that was probably
19 fifteen, thirty seconds, I guess.

20 Q. And what did you find in the trash can?

21 A. Inside the trash can there was -- sitting on top
22 there was a clear Ziploc bag that had -- at first it
23 appeared to me it was just marijuana. I couldn't see
24 anything else in it. Underneath the Ziploc bag was
25 Styrofoam it looked like from maybe a pillow or some

1 bedding-type or one of the mattress layers, the -- you
2 know, that kind of material those things are made out
3 of.

4 Q. Okay. I'm gonna show you what's been marked as
5 State's Exhibit Number 26. Would you look at what's in
6 this box and bag? Is it okay just to tear it? Let's
7 move the box.

8 A. Okay.

9 Q. Sergeant Gause, if you would look at those items
10 and tell us what's in there.

11 A. Okay. The large bag, I was informed to do this by
12 Evidence Officer Billiot, who I made contact with on
13 the phone that -- that night. I explained to him the
14 present situation we have involving the Defendant. He
15 explained to me to separate what I could. Once -- once
16 I realized there was crack cocaine -- crack cocaine as
17 well as cocaine, tablets that were packaged in the form
18 of Ecstasy, and marijuana, I was told to separate what I
19 could in order to move the items from one bag to another
20 so possible prints or some time of DNA could be pulled
21 off the packaging and before I did this, I also placed
22 latex gloves on to avoid actually being able to attempt
23 to mess up any type of evidence we might be able to have
24 on the bags. It would be this bag. Apparently -- I'm
25 not really sure if it contains crack or cocaine, but it

1 /
2 has a white substance on it, and this bag, the same. It
3 was either one of these bags had crack cocaine and/or
4 cocaine.

5 Q. Which one is the large bag that you found with the
6 rest in it; do you know?

7 A. Can I take this out? I can't say for certain this
8 is the -- the bag, but the bag that contained all the
9 items inside was this size.

10 Q. Okay. And then the rest of those bags were in that
11 larger bag?

12 A. Inside, yes, ma'am, a larger Ziploc. A quart size
13 bag.

14 Q. I'm gonna show you what's been entered into
15 evidence as State's evidence 27. Does that look
16 familiar?

17 A. It does.

18 Q. What's in that bag?

19 A. This is the BEST kit that I've submitted into
20 evidence to be sent to SLED for testing. It appears
21 that the tablets in which were found are in here as well
22 as the cocaine substance as well as the crack cocaine
23 substance.

24 Q. So that looks familiar or that looks to be the same
25 as --

A. Yes.

1 Q. That is the same?

2 A. Yes.

3 Q. And then I'm gonna show you what's been marked as
4 States Exhibit Number 28. What is that?

5 A. This is an evidence bag which contains the bag
6 that had the marijuana. There were multiple bags of
7 marijuana inside this pack, if you will. I want to say
8 there were approximately eight -- let me refer to my
9 notes. There were nine individual bags of marijuana.
10 John Specht completed the drug analysis on this and
11 these would be the packages from each individual baggy.
12 He took the marijuana out of each of the individual
13 baggies and placed them in a manila folder in order to
14 be tested.

15 MS. BURCH: Your Honor, at this time the State
16 would like to move State's Exhibit 26 and 28 into
17 evidence.

18 THE COURT: Is there objection?

19 MS. WISE: No objections, Your Honor.

20 THE COURT: 26 and 28 in evidence without
21 objection.

22 (State's Exhibit 26, a BEST kit, and 28,
23 evidence bag containing marijuana, were admitted
24 into evidence.)

25 BY MS. BURCH:

1 Q. Sergeant Gause, what -- in your experience, why
2 would drugs be packaged in this way individually and
3 then in a bigger bag?

4 A. As I referred to earlier, as a pack. Not that
5 every drug dealer I come across is the same, but
6 generally common practice is when someone is selling
7 drugs to another individual that individual may order
8 a pack. A pack usually can consist of, but not limited
9 to, marijuana, crack cocaine, cocaine, Ecstasy, pills,
10 pain medication, depressants. I mean, it just depends
11 on whatever you order up.

12 Q. And we heard that -- or heard previously that the
13 pills that are in -- that were in these baggies did not
14 come back positive for Ecstasy. In your experience, is
15 this the way that Ecstasy tablets normally look?

16 A. It is. It is. Generally -- having some prior
17 training as far as the club field is concerned and
18 rave drugs and such, generally they like to put Ecstasy
19 pills in the form of Transformer heads, Bart Simpson,
20 Superman. There's a plethora of --

21 Q. Do you recall what cartoon character shapes we have
22 here?

23 A. I want to say they were Bart Simpson, Transformers.
24 Not 100 percent sure. I don't -- I don't recall.

25 Q. All right. Let's go back to the residence that

1 Mr. Hicks pulled in that night. Was there anybody home?

2 A. Not to my knowledge. We were -- because of the
3 events that occurred after Mr. Hicks being placed under
4 arrest, we were probably in the yard maybe an hour or
5 so.

6 Q. Okay. Did you go back to talk to the homeowners?

7 A. I did.

8 Q. And what did you learn from that interview?

9 A. Due to knowing that, you know, let me see if by
10 chance the homeowners do know, you know, the Defendant
11 had pulled into the residence, myself and Lieutenant
12 Craig Bradock went back and spoke with one of the
13 homeowners. The husband was not home at that time, but
14 on the 10th of January, 2012, myself and Lieutenant
15 Craig Bradock went to the residence at 1817 and spoke
16 with Ms. Windham.

17 Q. And to your knowledge, did the drugs you found in
18 the trash can that night belong to the Windhams?

19 A. Upon asking her, she seemed insulted. So, no.

20 Q. And Sergeant Gause, how far away is the
21 intersection of High Hill and Potato House Road from
22 the house?

23 A. From the time you pull out of the driveway to the
24 intersection is approximately two-tenths of a mile.

25 **MS. BURCH:** One moment, Your Honor.

1 Q. Sergeant Gause, are you aware of substances that are
2 used to make counterfeit Ecstasy?

3 A. They -- it could be all kinds of things.
4 Unfortunately, I can't give you a substance that is --
5 I mean, in the field they use cuts, for example, cuts to
6 mimic the effects of.

7 Q. What do you mean by cuts?

8 A. Okay. For example, there could be another type of
9 drug that mimics these same effects that Ecstasy would
10 have; hence, as the SLED gentleman just spoke of there
11 was no active ingredient in there relating it back to
12 MDMA, which is the active ingredient for Ecstasy. We've
13 seen though the past for crack and cocaine they use
14 baking powder. They use all kinds of things. I mean,
15 I could get into that, but it depends on the parameters
16 of what they want to actually cut it with to cut back
17 on the profit or cut -- you know, so they can make more
18 money on what they had. They could take a gram of
19 cocaine and cut it with baking soda, baking powder,
20 whatever you want to use, and it might not be as strong
21 in potency.

22 Q. But without doing a chemical analysis on these
23 drugs, what would you have said these tablets were?

24 A. Based off of how it looks, based off the
25 characteristics of it mimicking Ecstasy that I've seen

1 in the past, as well as being packaged with the other
2 drugs that were obviously packaged for sale.

3 **MS. BURCH:** One moment, Your Honor. No further
4 questions.

5 **THE COURT:** Cross-examination?

6 **MS. WISE:** Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MS. WISE:

9 Q. Hey, Deputy Gause. How are you doing?

10 A. Good.

11 Q. Good. Let's first talk about the night in
12 question, January 6, 2012. You testified that you were
13 working the roadblock at High Hill Road and Potato House
14 Road. You said you saw Defendant's car pull over on the
15 shoulder, correct?

16 A. Correct.

17 Q. Which shoulder did you say he pulled over on?

18 A. Looking down the road, I said -- like I explained,
19 there was a dip. I saw the headlights coming. It
20 appeared that the driver -- again, I say the dip. The
21 driver pulled down on my left side, his right side, of
22 the shoulder.

23 Q. Okay.

24 A. Coming towards our direction.

25 Q. Okay. And did you see him put a turn signal on?

1 A. No.

2 Q. Okay. You testified that Officer Weatherford
3 pulled into the house before you -- pulled into the
4 driveway of the house before you?

5 A. Correct.

6 Q. So your car was behind Officer Weatherford's,
7 correct?

8 A. Not directly behind, no.

9 Q. Okay. Where was your car at?

10 A. As I explained just a moment ago in my testimony,
11 I went past the residence. Due to the dip, I wasn't
12 able to see that the driver physically turned into that
13 driveway because of the dip there at the residence.
14 By the time Sergeant Weatherford advised me on the
15 radio that I missed the driveway and I needed to turn
16 around, I turned around. As I was turning around, I
17 saw Sergeant Weatherford pull into the driveway.

18 Q. Okay. At what point did you actually see the
19 Defendant, Christopher Hicks?

20 A. Upon pulling into the driveway.

21 Q. And where did you see him at?

22 A. Standing at the side of the residence by the
23 screened porch, as I explained earlier.

24 Q. Okay. And what happened after that? Just walk me
25 through the details step by step. Who approached him

1 first?

2 A. Sergeant Weatherford.

3 Q. Okay. At what point did you approach him?

4 A. The few seconds in between Sergeant Weatherford
5 pulling up and making contact. I mean, give or take
6 seconds.

7 Q. Okay. And you said the trash can was about ten or
8 so feet to the right of that screened in porch?

9 A. No, I did not say that.

10 Q. Okay. Would you estimate -- we have those
11 pictures. About how far would you estimate that trash
12 can to be?

13 A. From the screened in porch?

14 Q. Yes, ma'am.

15 A. As I recall based off the pictures where the trash
16 can is still today by the basketball goal, give or take
17 a few feet from the screened in porch, as in -- we'll go
18 based off of Exhibit 6.

19 Q. Okay.

20 A. The vehicle -- Mr. Hicks's vehicle was pulled here.
21 There's the steps to the screened in porch.

22 Q. Yes, ma'am.

23 A. The trash can is still in the same spot as I spoke
24 with the property owner in regards to. Mr. Hicks was
25 standing halfway in between his vehicle and the

1 residence.

2 Q. Okay. And now looking at this picture, it looks
3 like there's at least a garage and then it looks like
4 the foundation of the house separating it.

5 A. Correct.

6 Q. That garage would be at least, what, seven or eight
7 feet wide?

8 A. Correct.

9 Q. And then that foundation is probably another three
10 or four feet?

11 A. Yeah, you could say.

12 Q. Okay. So probably at least about ten feet
13 distance-wise. Now these pictures, not what it looked
14 like at night, correct? It was dark out?

15 A. Correct.

16 Q. And you testified that you were the one that
17 recovered the bag of drugs from the garbage can,
18 correct?

19 A. Yes.

20 Q. You opened the trash can lid, correct?

21 A. Correct.

22 Q. Okay. Looked in the trash can, correct? I'm just
23 going through this step by step.

24 A. That's fine. That's fine.

25 Q. Correct?

1 A. Correct.

2 Q. Did you have on any gloves at that point?

3 A. At that point, I did not.

4 Q. Okay. What did you see immediately in the trash
5 can?

6 A. As explained earlier, I saw the bag of drugs as well
7 as the Styrofoam that was underneath the bag of drugs.

8 Q. Yes, ma'am. And you knew immediately those were
9 drugs?

10 A. I saw marijuana, yes.

11 Q. Okay. You didn't take any pictures of the drugs?

12 A. I did not at that time, no.

13 Q. Okay. And you took the bag out of the trash can
14 with no gloves and walked it back to where your car was
15 at?

16 A. Correct. As I explained in my report, I obtained
17 the corner of the baggy of those drugs without having
18 to worry without smudging anything, went back to the
19 vehicle, secured the drugs in my vehicle and put latex
20 gloves on.

21 Q. And why were you holding the bag by the corner?

22 A. Like I just explained, I didn't want to smudge any
23 fingerprints or DNA. If there was gonna be my DNA, it
24 would be minimal DNA.

25 Q. Yes, ma'am. And was any DNA or fingerprints found

1 on that bag?

2 A. Not to my knowledge, no.

3 Q. Okay. How far in after pulling into the residence
4 on High Hill Road did you actually open that trash can
5 and recover the drugs?

6 A. Can you say that again?

7 Q. About how much time passed from the time you pulled
8 into the residence on High Hill Road and the time you
9 opened that trash can and recovered the drugs?

10 A. Give or take a few minutes based off of the primary
11 investigation being conducted by Sergeant Weatherford.
12 As explained earlier in my previous testimony, once he
13 was the contact, I was the cover, I wasn't gonna leave
14 the Defendant in order to go to the trash can and look
15 in at that time.

16 Q. Okay. At what point -- we heard you testify
17 earlier that you saw Mr. Hicks just sort of displaying
18 what law enforcement, I guess, would term criminal
19 indicators, looking suspicious, acting suspicious.
20 About how far in -- about how much time passed from the
21 time you arrived on the scene until him displaying those
22 characteristics?

23 A. Immediately.

24 Q. Immediately?

25 A. Uh-huh.

1 Q. Okay. And you testified that you went and spoke to
2 the homeowner. When did you speak to the homeowner?

3 A. January 10, 2012.

4 Q. Okay. You have a copy of the incident report that
5 you filled out following this incident, correct?

6 A. Correct.

7 Q. Okay. And I want to walk through a couple of
8 things on there. On that first page of the incident
9 report, I think we have the same copy except mine has
10 notes on it, at the bottom you testified that -- at the
11 bottom of what you wrote on that first page, you discuss
12 how you were conducting the DUI checkpoint, you saw
13 Mr. Hicks pull over on the shoulder of the road. Due to
14 him not signalling properly, you initiated a traffic
15 stop, correct?

16 A. I saw a vehicle in which -- that was on the road,
17 yes. At the time I didn't --

18 Q. Not Mr. Hicks. I apologize. You learned it was
19 Mr. Hicks after the fact. The reasoning for following
20 that vehicle was improper use of a turn signal, correct?

21 A. Improper backing as well, yes.

22 Q. Okay.

23 A. Which he wasn't obviously cited for.

24 Q. Okay. Just improper use of turn signal?

25 A. Yes.

1 Q. Okay. And then you testified at the bottom of that
2 first page as deputies pulled up to the Defendant's car,
3 it was noted the Defendant was no longer in the car and
4 he walked to the area of the side door to the residence,
5 correct?

6 A. Correct.

7 Q. And you explicitly wrote as if he was going to that
8 residence to see someone, correct?

9 A. Correct.

10 Q. Okay. You reported in this incident report written
11 by you that Sergeant Weatherford then reported that he
12 was seen walking away from a trash can near the side
13 door of the residence, correct?

14 A. If that's what Sergeant Weatherford's report says,
15 yes.

16 Q. But you wrote that Sergeant Weatherford saw him,
17 correct?

18 A. Sergeant Weatherford was there before I arrived,
19 correct.

20 Q. Yes, ma'am.

21 A. So what Sergeant Weatherford saw, I have no idea.
22 That would be something you'd have to ask him.

23 Q. Okay. But you did write in your report that
24 Sergeant Weatherford saw the Defendant walking away from
25 the trash can?

1 A. Yes, based off his statements made to me that night,
2 correct.

3 Q. Okay. And you also wrote in your incident report,
4 I believe we're on the second page now of that first
5 initial report, that it was discovered that Mr. Hicks
6 pulled into that residence because he saw the deputies
7 at the roadblock, correct, and he knew that his license
8 was suspended?

9 A. Correct.

10 Q. Okay. And we heard you testify how Sergeant
11 Weatherford was looking around the area and as he was
12 looking around the area the Defendant made the statement
13 you didn't find anything on him, correct?

14 A. Yes.

15 Q. Okay. And we heard about how this was a rental car
16 that belonged to his cousin, correct?

17 A. Correct.

18 Q. Okay. And you testified that you were on the scene
19 for approximately thirty minutes with blue lights on,
20 correct?

21 A. It could have been longer. Based off of my time on
22 the reporting, it shows that we were -- my incident
23 began at 18:20 and -- correction, it began at 18:15 and
24 ended at 19:13 -- 19:30.

25 Q. Okay.

1 A. Which would make I was tied up with that particular
2 incident for an hour.

3 Q. And did you testify that prior to Mr. Hicks --
4 excuse me, not testify. Did you report in your incident
5 report that prior to Mr. Hicks being transported by
6 Officer Weatherford, you saw Mr. Hicks make eye contact
7 with the trash can?

8 A. Yes, I did.

9 Q. Okay. So you shined your flashlight on the center
10 of that trash can, correct?

11 A. Correct, to let Sergeant Weatherford know what I saw
12 while he was searching.

13 Q. Okay. Sergeant Weatherford then transported
14 Mr. Hicks off scene to the jail van, correct?

15 A. Yes.

16 Q. Okay. And you reported in your incident report
17 that you were waiting on T & S Towing to arrive on the
18 scene, correct?

19 A. Correct, we had called T & S, yes.

20 Q. Yes, ma'am. And while you were waiting, you looked
21 around the area where Officer Weatherford said he saw
22 Hicks walking from, correct?

23 A. Correct.

24 Q. And upon looking in the trash can you found the
25 clear bag of drugs, correct?

1 A. Correct.

2 Q. Did you immediately radio Officer Weatherford?

3 A. Correct.

4 Q. Were you present when the Defendant's money was
5 confiscated?

6 A. Yes.

7 Q. How much was confiscated?

8 A. \$398.00.

9 Q. And in your incident report, you testified -- can
10 you explain how you do the weighing of the drugs on
11 scene or did you weigh these actual drugs on scene?

12 A. Generally it's not common practice. I usually wait
13 until I get back to the office to do this; however, we
14 do have scales in our vehicles to obtain weights as far
15 as to figure out whether or not we're gonna charge an
16 individual with possession with intent to distribute.

17 Q. Okay. And what were the weights that you
18 determined?

19 A. I determined using packaging as well, not emptying
20 the packages out, due to the fear of losing any type of
21 substance that came out of the baggies that we had at
22 that time, the nine individual baggies of marijuana,
23 which were packaged for sale, the total -- they totalled
24 an approximate weight of 8.8 grams. The 8.8 grams, of
25 course, being an approximate weight due to I didn't take

1 it out of the baggies that they were packaged in, so the
2 marijuana was actually measured with the packing. There
3 were ten individual baggies of powder cocaine. They
4 also were packaged for sale and they totalled an
5 approximate weight of three grams, which, again, like
6 Number 28, this included the packaging. And there was a
7 clear plastic bag that contained crack cocaine and
8 inside that bag was another separate clear plastic bag
9 that contained more crack. Both of those bags totalling
10 an approximate weight to 3.4 grams. And, again, this
11 included packaging as well. And then the clear plastic
12 bag that contained nine Ecstasy pills.

13 Q. Okay. The night of January 6, 2012, Mr. Hicks
14 never claimed responsibility for the drugs, correct?

15 A. Correct. Before we even found the items, he made
16 sure to point out that we did not find anything on him.

17 Q. Were you searching the general area while he said
18 that?

19 A. The general vicinity Sergeant Weatherford was
20 searching while I was standing there and once Sergeant
21 Weatherford stopped, I immediately began searching the
22 general vicinity as well.

23 Q. On Mr. Hicks's person were any sort of scales
24 found?

25 A. No, there were not.

1 Q. Any sort of drug paraphernalia?

2 A. Everything was already packaged up for sale, so it
3 was already weighed out.

4 Q. But no paraphernalia other than what you've said?

5 A. No, it was just two cell phones and some money.
6 That was it.

7 Q. Okay. And nothing in the vehicle as well?

8 A. No, I -- there might have been a few CD's.

9 Q. Were fingerprints ever taken of the trash can?

10 A. No.

11 Q. Okay. Ad now fast-forwarding four days to when
12 you went to the Windhams after this happened, we heard
13 Ms. Windham testify she had two teenaged sons. Did you
14 ever talk to either of her sons?

15 A. No.

16 Q. We heard Ms. Windham testify about some suspicious
17 activity. Can you pull your supplemental incident
18 report that you wrote following the --

19 A. Yes.

20 Q. She explicitly said -- and this is the fourth
21 paragraph from the bottom. You reported that
22 Ms. Windham stated she had noticed several suspicious
23 things taking place near her house, correct?

24 A. Correct.

25 Q. And also near the bridge close to her house?

1 A. Correct.

2 Q. And she also, you reported, stated that she
3 believed she had seen an actual deal take place on the
4 shoulder of the road?

5 A. Correct.

6 Q. And we heard her testify she'd never seen Mr. Hicks
7 before?

8 A. That is correct.

9 Q. Okay. Did you ever inquire with Mr. Windham --
10 with Ms. Windham, excuse me, what time they went to
11 dinner?

12 A. I asked her as -- when I first got there, my -- I
13 didn't want to alluded to too much. I first initially
14 asked her what she -- what she was doing yesterday
15 afternoon.

16 Q. Okay.

17 A. And she explained to me that she had went -- she
18 left the residence around 18:00, which would be 6 p.m.,
19 and went to dinner with her husband and two teenaged
20 children.

21 Q. Okay. Did you have any more contact with any of
22 the Windhams after that incident?

23 A. No, ma'am, not after this incident. A couple of
24 weeks ago I did go to her residence and serve her with a
25 subpoena.

1 Q. Okay. Did you make any statements to her about
2 this pending trial?

3 A. I explained to her we were going to trial, yes, and
4 that was what her subpoena was for.

5 Q. Okay. And any statements or belief that she had to
6 say the Defendant claimed responsibility for the drugs?

7 A. No, ma'am.

8 MS. WISE: One moment, please, Your Honor.

9 THE COURT: Very good.

10 MS. WISE: I think that's it. Thank you, Your
11 Honor.

12 THE COURT: All right. Is there redirect?

13 MS. BURCH: Just one thing, Your Honor.

14 THE COURT: Thank you.

15 REDIRECT EXAMINATION

16 BY MS. BURCH:

17 Q. I'm gonna do something dangerous. I'm gonna ask
18 a question that I don't know if you know the answer to.
19 In your experience working narcotics, is it more or
20 less likely if you find drugs on somebody and it's for
21 personal use do they normally have paraphernalia on
22 them?

23 A. If it's for personal use?

24 Q. Yes.

25 A. Generally, but now -- I mean, it's a case by case

1 situation. Some people may just have their dope on them
2 and have their tools to use that dope at their residence
3 or somewhere else where they're headed to, for example,
4 a friend's house.

5 Q. Okay. And usually with distribution, where people
6 are intending to distribute drugs, do you normally find
7 paraphernalia?

8 A. Sometimes we do. Again, like I said, it's case by
9 case. You could find scales. Generally when packs, as
10 explained, are -- I mean, everything's already been
11 weighed out, there's nothing needed to be weighed. It
12 was set up before that person left their house and it's
13 destination A to B, and that's it for the packs.

14 **MS. BURCH:** No further questions, Your Honor.

15 **THE COURT:** All right. Very good. Any objection
16 to releasing the witness?

17 **MS. WISE:** No objection, Your Honor.

18 **THE COURT:** All right. Well, you're not required
19 to leave, but you're free to leave if you wish.

20 **THE WITNESS:** I'll just hang around.

21 **THE COURT:** All right. Thank you, Sergeant
22 Gause.

23 **THE WITNESS:** Thank you, Judge.

24 (Witness excused.)

25 **MS. BURCH:** Your Honor, we're down to two more

1 witnesses.

2 **THE COURT:** All right.. Please call your next
3 witness.

4 **MS. BURCH:** The State would call Sergeant Ben
5 Weatherford.

6 **THE COURT:** Please come forward and take the oath
7 of a witness.

8 BENJAMIN WEATHERFORD,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BURCH:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Please state your name for the record.

15 A. Benjamin Weatherford.

16 Q. And what is your occupation?

17 A. I'm a sergeant with the Darlington Sheriff's Office.
18 I've been there for five years. I've worked narcotics
19 for four and a half.

20 Q. So you were working there January 6, 2012?

21 A. Yes.

22 Q. What were you doing that night?

23 A. We were conducting traffic safety checkpoints. At
24 this checkpoint, we had left from another. I had pulled
25 up -- I had just pulled up good a distance and I had

1 just stepped out of my vehicle whenever I observed a
2 vehicle stop in the middle of the roadway.

3 Q. What did the vehicle do after it stopped?

4 A. It stopped in the middle of the roadway a few
5 hundred yards away from the checkpoint. They were
6 already set up before I got there. It then went in
7 reverse and started going back down the road.

8 Q. You said you were just getting out of your car, so
9 were you able to get back in your car?

10 A. I jumped back in my car. I went down the roadway
11 after it. It was swerving on the road. I saw it stop
12 down a hill. It went up the driveway, pulled beside a
13 house. That's when I saw Mr. Hicks get out and start
14 heading towards the house. When I went down the hill, I
15 lost sight of it because of the way the driveway is.

16 Q. Did you know it was Mr. Hicks at the time?

17 A. No, I did not.

18 Q. All right. So you pull in the driveway behind
19 Mr. Hicks?

20 A. Yes.

21 Q. I'm gonna show you some pictures that are in
22 State's evidence. If you'll take a look at State's
23 Exhibit 6. Do you recognize that or State's evidence 6?

24 A. I do. That would be the driveway.

25 Q. Okay. The Judge is our jury, so if you could direct

1 that to him.

2 A. Okay.

3 Q. We've been hogging the pictures over here. If
4 you'll show him where Mr. Hicks was pulled into -- where
5 he parked when he pulled into the driveway.

6 A. About right here. He was still in the gravel.

7 Q. Okay. And where was he whenever you pulled in?

8 A. As I -- the driveway is long and down a hill. As I
9 stated, I lost sight of him going down the hill. When I
10 come up, he was walking back away from this area.

11 Q. How far away was he from this area whenever you
12 pulled in?

13 A. If the car's right here, I'd say he was about
14 halfway.

15 Q. Could you tell if he was coming from the door, from
16 the porch or the trash can area?

17 A. He was coming from that area. Like I said, when I
18 went down, he was getting out of the car. I didn't see
19 where he went, but when I come back up, he was coming
20 from the middle area off this concrete patio.

21 Q. Okay. And there's a light pole in that picture.

22 A. Very well lit up.

23 Q. You could see pretty well then?

24 A. Yeah.

25 Q. Okay. What did you do after you pulled in and saw

1 the Defendant out of his car?

2 A. I approached him and asked him his name and stuff.
3 He told me he was scared when he saw us and he didn't
4 have a license.

5 Q. What did you do after that?

6 A. I placed him in handcuffs. About that time I -- by
7 the time I was placing the handcuffs, Officer Gause
8 pulled up behind me. I ran his license, they was
9 suspended. I saw where he was walking from. When
10 Gause got there she stood there with him, so I walked
11 back over to the area. I started looking around, just
12 glanced, and I kept watching him looking around.
13 Something I've learned in my experience that nine times
14 out of ten they're gonna look at where they've -- if
15 they've been somewhere and something's been thrown down,
16 they're gonna look at where they were.

17 Q. Where was he looking?

18 A. He kept looking at the trash can.

19 Q. So what did you do after you searched the area?
20 Did you find anything?

21 A. I looked around. He had given us a little bit of
22 attitude, so with her there we needed to get his car
23 back. I ended up going to get him. Me and her had
24 communicated a little bit about where to look. I took
25 possession of him, I put him in my car while she was

1 looking and I went ahead and started driving him back.
2 By the time I got to the end of the little driveway, I
3 turned on the road -- I may have just turned on the road
4 when she come on the radio and said she had found a
5 package.

6 Q. How far away was the house from the intersection?

7 A. It's hard to say. If --

8 Q. Can you average it?

9 A. Maybe -- maybe two and a half, three football fields
10 average.

11 Q. Okay. Now you said he was giving you attitude.

12 What was he doing? Mr. Hicks, that is.

13 A. He just didn't want to talk too much, he didn't want
14 to cooperate much, and he just had an attitude with us,
15 and we went down on back and when I got him in the car
16 when she come on the radio and said she found it in the
17 trash can, oh, you didn't find nothing on me, you didn't
18 find nothing on me. I carried him to the jail van and
19 that's when he really started getting aggressive towards
20 the officers and stuff at the jail van.

21 Q. So the car that Mr. Hicks was in, whose car was it,
22 do you remember?

23 A. It was a rental. I do remember that.

24 Q. And do you remember if Mr. Hicks told you if he'd
25 made plans for that car?

1 A. I want to say he called a cousin or a family member
2 to come get it.

3 Q. Do you remember who that was?

4 A. I remember I locked him up because when he got
5 there, there was crack in his car.

6 Q. Was he by himself when he got there?

7 A. Yes, ma'am.

8 Q. Did he get to the driveway -- in the driveway?

9 A. He pulled in. He pulled into it.

10 Q. Okay. Do you see the man that you locked up the
11 night of January 6, 2012 for driving under suspension in
12 this courtroom?

13 A. Yes, ma'am. Mr. Hicks.

14 MS. BURCH: Okay. Your Honor, he pointed out
15 Christopher Jermane Hicks. And one moment, Your Honor.
16 No further questions, Your Honor.

17 THE COURT: Any cross-examination?

18 MS. WISE: Yes, Your Honor. Thank you.

19 CROSS-EXAMINATION

20 BY MS. WISE:

21 Q. Officer Weatherford, you testified that you were
22 the first officer to pull into the driveway, correct?

23 A. Uh-huh.

24 Q. And we just heard you testify you didn't see where
25 exactly you saw the Defendant walking from, correct?

1 A. Correct.

2 Q. Did you ever see the Defendant beside the trash
3 can?

4 A. No ma'am.

5 Q. About how long would you estimate that you searched
6 around the general area?

7 A. I may have looked around maybe a minute, maybe a
8 little less. I didn't look very long.

9 Q. Okay. And we heard you testify that you saw
10 Mr. Hicks make eyes at the trash can, correct?

11 A. (Nods head.)

12 Q. Did he ever look at his car?

13 A. He looked around, but every time I was standing near
14 it, he would stare at the trash can.

15 Q. Okay. Did he ever stare at the door?

16 A. I never saw him stare at the door.

17 Q. Okay. Never the fields that were in the area?

18 A. I saw him look around several times, but he made a
19 point when I was near that trash can that he would stare
20 at the trash can.

21 Q. Okay. You searched Mr. Hicks's immediate person,
22 correct?

23 A. Uh-huh.

24 Q. Found no scales on him?

25 A. I don't recall finding anything on him that night.

1 I remember his ID. He had a South Carolina ID.

2 Q. Nothing drug-related?

3 A. No.

4 Q. And he immediately told you I didn't want to go
5 through that roadblock because I don't have a license?

6 A. Uh-huh.

7 Q. And he was honest with you about that?

8 A. Uh-huh.

9 Q. Okay. Do you have a copy of your incident report?
10 I believe -- Ms. Burch, do you have it? Did it get
11 entered into evidence?

12 **MS. BURCH:** His incident report, no.

13 BY MS. WISE:

14 Q. Officer Weatherford, I'm gonna show you a copy of
15 the indent report supplement that you filled out, okay?

16 A. Okay.

17 Q. Do you remember filling this out?

18 A. Yes, ma'am.

19 Q. And I'll give you a minute to read over that, if
20 you don't mind. You can just read it to yourself just
21 to refresh yourself.

22 A. Okay.

23 Q. In that incident report, do you write I observed the
24 driver exit the vehicle and walk towards a trash can and
25 door area?

1 A. Yes.

2 MS. WISE: Okay. I think that's it, Officer
3 Weatherford. No further questions for this witness.

4 THE COURT: Okay. Is there redirect?

5 MS. BURCH: Your Honor, just briefly.

6 REDIRECT EXAMINATION

7 MS. BURCH:

8 Q. Sergeant Weatherford, again, this picture, would
9 you just show the Judge what area Mr. Hicks was walking
10 away from whenever you came up.

11 A. Okay. The vehicle's right here. He was walking
12 across here. He was on the edge of the cement pad
13 coming back this way.

14 MR. BURCH: Nothing further, Your Honor.

15 THE COURT: All right. Any objection to
16 releasing the witness?

17 MS. BURCH: No objection.

18 MS. WISE: No objection, Your Honor.

19 THE COURT: You're not required to leave, but
20 you're free to leave if you wish.

21 THE WITNESS: Thank you, Judge.

22 THE COURT: Thank you.

23 (Witness excused.)

24 THE COURT: This is the State's last witness?

25 MS. BURCH: Yes, Your Honor.

1 **THE COURT:** All right.

2 **MS. BURCH:** And at this time the State would
3 call John Specht from the Darlington County Sheriff's
4 Department.

5 **THE COURT:** All right. We'll hear from Officer
6 Specht and then we'll take a brief break. Please come
7 forward and take the oath of a witness.

8 JOHN SPECHT,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BURCH:

12 Q. Please state your name and spell your last for the
13 record.

14 A. John Specht. My last name's spelled S-P-E-C-H-T.

15 Q. What is your occupation?

16 A. I'm a sergeant in narcotics at the -- I work for
17 the Hartsville Police Department, but I'm assigned to
18 the sheriff's office's Drug Enforcement Unit.

19 Q. And how long have you been employed by Hartsville
20 Police Department?

21 A. About nineteen years.

22 Q. And with the drug team?

23 A. Four.

24 Q. Have you -- would you say that narcotics would be
25 your specialized field?

1 A. Yes, ma'am.

2 Q. Have you attended any specialized schools or done
3 any specialized training regarding drugs?

4 A. I have attended numerous schools and trainings, but
5 specific to this case, if you're asking about the
6 marijuana analysis, I'd say it was eight or nine years
7 ago I went and you have to re-cert every two years, but
8 I took the marijuana analyst course that's offered by
9 SLED and successfully completed that.

10 Q. And you've kept up your certifications since then?

11 A. I've kept it up and I brought my card.

12 Q. Okay. Good job. How many times have you tested
13 marijuana or substances to see if they're marijuana?

14 A. I've probably tested approximately two hundred
15 samples.

16 Q. And how many of those samples came back negative?

17 A. I've had a couple come back negative, but the --
18 during the analysis class, the analyst class, you have
19 to be a hundred percent. Some of them are negative,
20 some of them are positive, but you can't miss any.

21 Q. Okay. And have you testified as an expert witness
22 concerning marijuana analysis?

23 A. I think I have once or twice.

24 Q. In South Carolina?

25 A. Yes.

1 **MS. BURCH:** Your Honor, at this time the State
2 would move to make Sergeant Specht -- that's right,
3 sergeant, an expert in marijuana analysis.

4 **THE COURT:** Okay. Are there questions on the
5 issue of expertise?

6 **MS. WISE:** No objections, Your Honor.

7 **THE COURT:** Then without objection, so ordered.

8 BY MS. BURCH:

9 Q. All right. I'm gonna show you what's been entered
10 into evidence as State's Exhibit 28. Do you recognize
11 that?

12 A. I do.

13 Q. What is that?

14 A. It is a clear plastic zipper bag and it contains a
15 number of manila envelopes and some clear -- some other
16 clear plastic baggies and it's labeled with the case
17 number and the Defendant's name and the charge and the
18 case agent's name.

19 Q. And did you have occasion to test that marijuana?

20 A. I did. Prior to it being in -- I didn't put it in
21 this envelope. When the marijuana was given to me, it
22 was in these clear bags, individual bags, and you have
23 to cut each bag open and weigh each one separately and
24 test each one separately. So I cut them open, did --
25 handled them each separately and then I packaged them in

1 these individual manila envelopes and labeled them with
2 the weight on the front of the envelop.

3 Q. I'm gonna give you what's marked as State's Exhibit
4 Number 25. Do you recognize that?

5 A. I do.

6 Q. What is that?

7 A. This is a marijuana analysis report and I created
8 this report based upon my examination of this marijuana.

9 Q. Okay. And what were the results of your analysis?

10 A. There were nine bags. They varied in weight from
11 a half a gram to 2.3 grams. I found each one -- all
12 nine samples tested positive both chemically and
13 microscopically to be a positive test for THC, which
14 is the active ingredient in marijuana.

15 Q. Would you just briefly go into those tests just for
16 the Judge?

17 A. You conduct your microscopic test first because the
18 chemical test kind of destroys your sample, but I'm
19 looking for three types of hairs. There are cystolithic
20 hairs, which are typically on the top part of the leaf,
21 there are unicellular hairs, which are on the bottom
22 part of the leaf, and they're a little different, and
23 then multicellular hairs, which look different from the
24 other two, and they're also included, and all three
25 of those have to be present. After the microscopic

1 examination, I move over to a little spot where we treat
2 this with chemicals. We put Duquenois solution on it
3 and then we put hydrochloric acid on it and you look
4 for a color change and if you get the color change,
5 you're positive so far. And then to exclude any other
6 substance other than THC, you add some chloroform and it
7 creates a little eyeball in the bottom.

8 Q. But all nine samples tested positive in your test?

9 A. All nine samples were positive on both tests.

10 Q. What's the significance of having seeds or not
11 having seeds?

12 A. I don't know, to be honest with you. It asks and
13 so it's part of the examination. It's simply an
14 observation. I don't think it's -- it's not significant
15 to the THC levels.

16 MS. BURCH: Your Honor, at this time I would move
17 that State's Exhibit 25 be entered into evidence.

18 THE COURT: Is there objection?

19 MS. WISE: No objections, Your Honor.

20 THE COURT: 25 in evidence without objection.

21 (State's Exhibit Number 25, marijuana analysis
22 report, was admitted into evidence.)

23 MS. BURCH: One moment, Your Honor. No further
24 questions, Your Honor.

25 THE COURT: Is there cross-examination?

1 **MS. WISE:** No cross, Your Honor.

2 **THE COURT:** All right. Any objection to the
3 release of this witness?

4 **MS. WISE:** No objection, Your Honor.

5 **MS. BURCH:** No objections.

6 **THE COURT:** Thank you. You're free to leave.
7 You're not required to leave, but you may leave if you
8 so choose.

9 **THE WITNESS:** Thank you.

10 (Witness excused.)

11 **THE COURT:** All right. Are there further
12 witnesses for the State?

13 **MS. BURCH:** No more witnesses from the State,
14 Your Honor, and at this time the State would rest.

15 **THE COURT:** All right. Then let's take
16 approximately a five minute break and we'll come back
17 and I'll have an opportunity to take any motions and
18 have a chance to talk with the Defendant at that time
19 about his right to testify and then see where we'll
20 proceed from there, okay? We'll be in recess
21 approximately five minutes.

22 (Recess taken.)

23 **MS. BURCH:** Judge, I need to make one
24 clarification for the record.

25 **THE COURT:** All right. Let's go back on the

1 record then. Go ahead, Ms. Burch.

2 **MS. BURCH:** Thank you, Your Honor. I mistakenly
3 whenever I looked at the stack of pictures saw 1 through
4 10. 11 and 12 were stuck in the middle of the stack,
5 so I thought that it went through 1 through 10, but it
6 does go through 1 through 12. Is that the defense's
7 understanding, we're stipulating to all the pictures?

8 **MS. WISE:** Yes.

9 **MS. BURCH:** Exhibits 1 through 12 are stipulated
10 as being in evidence.

11 **THE COURT:** All right without objection, then so
12 ordered.

13 **MS. WISE:** No objection, Your Honor.

14 **THE COURT:** All right. Now, first of all, let's
15 -- before we take your motions let me have a discussion
16 with your client. And, Mr. Hicks, I don't believe we
17 placed you under oath earlier, did we? So I'm gonna ask
18 you -- Madam Clerk, will you please place Mr. Hicks
19 under oath.

20 CHRISTOPHER JERMANE HICKS,
21 having been duly sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q. All right, sir. I'm gonna let you stand up for a
25 moment and, Mr. Hicks, let's go back and review how we

1 found ourselves here today. I'm aware that on at least
2 two occasions, and possibly more, you had asked for a
3 speedy trial. The matter had been scheduled. It had
4 been a backup to other cases on the docket, but the
5 matter of your trial was never called for trial because
6 the other matters that were in front of it took up the
7 entire term and, thus, your case had not been heard for
8 quite some time.

9 A. Right.

10 Q. This came to my attention at the end of last year
11 whenever Ms. Wise, on your behalf, came forward with
12 another speedy trial motion and at that time we were
13 unable to schedule a specific time for a jury trial for
14 you because other cases had been set, but I offered to
15 try this case at this term this week in nonjury fashion.
16 In other words, you waive a jury trial and we try this
17 before the Court.

18 Now is that your recollection of things,
19 Mr. Hicks? Is that what happened? Is that what you
20 remember happened and why we're having this trial here
21 today?

22 A. Right. And at one -- at one point I was told that
23 I was waiting on DNA evidence from the prosecution, so
24 as far as what you're saying to me now, yes, sir.

25 Q. All right. So, in other words, you waived your

1 right to a jury trial in order to go ahead and have your
2 hearing so that we could do it today; is that correct?

3 A. Right.

4 Q. All right. Now the decision to waive a jury trial,
5 and we discussed it on the record at that time, but I
6 want to go over it with you again. Was that your
7 decision or someone else's?

8 A. I spoke with my attorney.

9 Q. Yes, sir. But ultimately did you make the decision
10 to waive the jury trial?

11 A. Right.

12 Q. All right, sir. And you made that decision after
13 you talked with your attorney who informed you of your
14 right to a jury trial; is that correct?

15 A. Right.

16 Q. Okay. Now we are at the end of the State's case.
17 You heard that the State rests, which means that if you
18 have testimony that you wish to put up at this time,
19 then it's now time for your side of the case to put up
20 its evidence, and do you understand that, sir?

21 A. Yes, sir.

22 Q. All right. Now as part of that proceeding, you have
23 the right to testify and you have the right to remain
24 silent. Have you discussed those two rights with your
25 lawyer?

1 A. Yes, sir.

2 Q. All right. And I want to make sure that you're
3 comfortable that you've understood the things she's
4 explained to you about your right to testify and your
5 right to remain silent and have you understood what
6 she's told you about that?

7 A. Yes, sir.

8 Q. All right. And let me discuss it with you as well.
9 You have the right to testify now as a part of your
10 case, meaning you can take the stand, you can give any
11 version of events you wish to give, you may answer any
12 questions that your lawyer asks, but if you do that,
13 if you take the stand, you'll also be subject to
14 cross-examination from the other side of the case.

15 A. Right.

16 Q. And any record that you may have that might be
17 admissible will come into evidence on the issue of
18 whether or not you might be a credible and believable
19 witness. Do you understand that?

20 A. Right.

21 Q. All right, sir. Now is that the same thing your
22 lawyer told you about your right to testify?

23 A. What, as far as me being a credible witness?

24 Q. Well, what I just explained to you about your
25 ability to take the stand and testify, is that the same

1 thing your lawyer told you about your right to testify?
2 In other words, what I described to you, is that the
3 same thing that she told you?

4 A. That you further informed me so I could -- she
5 informed me that if I testify, it would be -- it's just
6 my choice to testify.

7 Q. Okay. All right.

8 A. I choose to testify.

9 Q. You do?

10 A. Right.

11 Q. But I also want to make sure you understand you
12 have the right to remain silent and the Court will not
13 hold that against you if you don't testify because you
14 have an absolute right to remain silent, and do you
15 understand that?

16 A. I understand.

17 Q. Okay. Is that the same thing that your lawyer told
18 you about your right to remain silent?

19 A. Yes, sir.

20 Q. Now have you understood the things I've explained
21 to you about your right to remain silent and your right
22 to testify?

23 A. Yes, sir.

24 Q. And understanding those things then, have you made
25 a decision of whether you're gonna testify or not?

1 A. Yes, sir.

2 Q. And what is that decision?

3 A. I made my decision that I want to testify.

4 Q. Okay. And this is the decision that you made as
5 opposed to someone else making it for you?

6 A. Yes, sir.

7 Q. So this is your decision?

8 A. Yes, it's my decision.

9 **THE COURT:** All right. Very good. Then I'll let
10 you be seated.

11 (Witnesses excused.)

12 **THE COURT:** And are there motions now at the end
13 of the State's case?

14 **MS. WISE:** There is, Your Honor. I do move for
15 a directed verdict on the possession with intent to
16 distribute Ecstasy. I do not believe that evidence was
17 presented today to sustain this charge. We heard the
18 SLED agent testify that no controlled substance was
19 detected in the Ecstasy pills and although we heard
20 testimony from Deputy Gause concerning it being a
21 counterfeit substance, I do not believe that by the
22 definition of a counterfeit substance the testimony
23 that we've heard even comes close to meeting this
24 definition. South Carolina Code Section 44-53-110
25 defines a counterfeit substance is a controlled

1 substance which, or a container or labeling of which,
2 without authorization, bears the trademark, trade name
3 or other identifying mark, imprint, number or device or
4 any likeness thereof, and I can let you continue to read
5 the rest of the statute if you want. It basically goes
6 on to say falsely purports, or represented to be, the
7 product of, or to have been distributed by, such other
8 manufacturer, distributor or a subsidiary. I don't
9 believe we've heard evidence that the pills that did not
10 test positive for Ecstasy were, in fact, a counterfeit
11 substance. At least I don't think the State has proved
12 that.

13 **THE COURT:** Very good. What say you in response,
14 please?

15 **MS. BURCH:** Your Honor, Sergeant Gause testified
16 that in her experience Ecstasy is marked by cartoon
17 characters and packaged in a way that it is in this
18 case. Here we had, I believe, Transformers, Homer
19 Simpson -- I'm sorry, Your Honor. Let me refer back to
20 SLED's lab. We have a blue Snoopy-shaped tablet, a blue
21 Homer, a blue Bart, a green Snoopy, a green Homer, a
22 green Smurf, a green Transformer, a white Homer, and a
23 white Bart. You heard Sergeant Gause testified that
24 these are the types of shapes that Ecstasy comes in.
25 The way that it was packaged and the fact that it was

1 with other narcotics would lead you to believe that the
2 Defendant in this case did intend for it to be Ecstasy
3 and it did bear the markings that most other Ecstasy
4 pills have.

5 **THE COURT:** Thank you. Just one moment, please.

6 **MS. BURCH:** Your Honor?

7 **THE COURT:** Yes, ma'am.

8 **MS. BURCH:** According to Murdock versus State,
9 which is 311 S.C. 16, it says that while there may be
10 exceptions, such as when these substances are legally
11 used for legitimate medical purposes, ordinarily there
12 is no offense involving counterfeit LSD or cocaine, as
13 these drugs are typically produced illegally and,
14 therefore, usually do not have a trademark or label of a
15 manufacturer. The State would argue that Ecstasy would
16 also fall into being produced illegally.

17 **THE COURT:** All right. I'm gonna grant
18 Defendant's motion for the following reasons. First
19 of all, there's no evidence here that the Defendant
20 has purported or somehow claimed that this was the
21 controlled substance, Ecstasy. The indictment in this
22 case -- while I realize the indictment is a notice
23 document, that the indictment states that he did have
24 possession of Ecstasy, MDMA. It doesn't say anything
25 about purported counterfeit, thus, I'm gonna dismiss

1 that charge in favor of the Defendant. That's
2 indictment 2012-16-1306 the Court has a judicial
3 dismissal.

4 Now anything further? Again, that's based on the
5 allegations in the indictment. Now are there further
6 motions from defense?

7 **MS. WISE:** No further motions.

8 **THE COURT:** Very good. Now do you wish to put up
9 a case?

10 **MS. WISE:** I do, Your Honor.

11 **THE COURT:** All right. And how many witnesses do
12 you have?

13 **MS. WISE:** Just the Defendant.

14 **THE COURT:** Please call your witness.

15 **MS. WISE:** The defense calls the Defendant,
16 Mr. Christopher Hicks.

17 CHRISTOPHER JERMANE HICKS,
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. WISE:

21 Q. Mr. Hicks, how are you doing?

22 A. All right.

23 Q. Good. Can you state your full name for the record,
24 please?

25 A. My name's Christopher Jermane Hicks.

1 Q. And how old are you?

2 A. I'm 37 years of age.

3 Q. And where do you live?

4 A. I live in the County of Darlington.

5 Q. Okay. Are you married?

6 A. No, ma'am.

7 Q. Do you have any children?

8 A. A step-daughter.

9 Q. Okay. Where are you from originally?

10 A. Darlington.

11 Q. Lived here all your life?

12 A. All my life.

13 Q. All right. Going to January 6, 2012, do you
14 remember this date?

15 A. Yes, ma'am.

16 Q. This is the date why we're here today, correct?

17 A. Yes, ma'am.

18 Q. Can you tell me what happened earlier in that day?

19 Where were you coming from when you were driving down
20 High Hill Road?

21 A. I was coming from home, which I stayed at -- I lived
22 on Green Street.

23 Q. Okay.

24 A. I was leaving home, headed to Dollar General. I
25 made a right on High Hill Road. I was travelling down

1 High Hill Road headed towards Potato House Road and
2 when I came across the bridge, the little small bridge
3 on High Hill Road, I -- I didn't see no lights, no --
4 no blue lights, no signs, no people, no nothing. So I
5 seen like the glimpse of two flashlights, so I started
6 hitting my brakes and started slowing down and I slowed,
7 came to a stop and I backed up 20 to 30 feet or so and I
8 put on my left signal and made the left into the
9 residence which was in question earlier and I drove --
10 drove up and went up to the side area of the house and
11 turned my interior light on in my car, grabbed my cell
12 phone and started calling my cousin.

13 Q. And who's your cousin?

14 A. My cousin was Calvin Hicks.

15 Q. Okay. And let me just back up and ask you a few
16 questions. Can you tell the Court where were you on the
17 way to before you became across this roadblock?

18 A. I was on my way to Dollar General.

19 Q. Which Dollar General? The one over on Hoffmeyer or
20 off of --

21 A. It's on 340.

22 Q. Okay. And so you testified that you pulled into
23 this driveway. Why did you not want to go through that
24 roadblock?

25 A. Actually I didn't know whether it was a roadblock or

1 whether it just -- I just seen the lights.

2 Q. Did you suspect it could have been a roadblock?

3 A. I suspected it could have been a roadblock.

4 Q. And you didn't want to go through that?

5 A. And I didn't want to go through it.

6 Q. Tell the Court why.

7 A. I didn't want to go through it, for one, I didn't
8 have a driver's license. And then on top of that, it
9 was my cousin's rental car.

10 Q. Okay.

11 A. So I got on the phone right then after I did that,
12 you know, turn in and everything, and started trying to
13 contact him. I called him like seven times, I didn't
14 get no answer, so when I hung the phone up, I finally
15 realized that I was on someone's property, so I got out
16 of the vehicle, had my interior light on, headlights
17 still on, door wide open, went to the side of the house
18 to the door, knocked on the door like four times. I
19 could hear the dog in there barking. No one came to the
20 door, so I started walking back.

21 Q. And let me interrupt you a second. You walked to
22 the side door. Was that actually a porch?

23 A. Yeah, it's like a porch door area.

24 Q. You thought that was the actual house though when
25 you approached it, correct?

1 A. Right.

2 Q. Okay. And one other question I want to ask you.
3 You said you were driving your cousin's car. It was a
4 rental car?

5 A. It was a rental car.

6 Q. Why were you driving your cousin's rental car?

7 A. Because he left the keys at the house. He was
8 getting his -- he had left with one of my cousins and he
9 told us -- well, he told my girlfriend that if we needed
10 to use his car, we could use it. So instead of -- she
11 don't want to go, so I took the initiative to go.

12 Q. And why did he have a rental car?

13 A. Because his truck was broken.

14 Q. Okay. So going back to -- you testified that you
15 pulled into the driveway, realized you were on the
16 property, go to the door. Do you remember the trash can
17 that we heard testimony earlier in the day about?

18 A. Actually I really didn't pay much attention to the
19 garbage can besides when Officer Weatherford came and he
20 was searching and, like you said, I watched him period.
21 I watched him period. It wasn't that I just watched the
22 garbage can. I watched everything that they did period.

23 Q. And why were you watching everything that they did
24 period?

25 A. Because when he came up, he had on plainclothes. He

1 pulled up directly behind me when I was walking back to
2 the car. He pulled up in a white Dodge Charger with
3 tinted windows, plainclothes, and when he came up on the
4 property he asked me, he said do you know whose property
5 you on? So I didn't say nothing. He said do you know
6 the people who live here? And I said no. Then he said
7 well, why did you pull up in here? I said because I
8 didn't know what was going on ahead of me a little
9 further up the street, so I didn't want to go down
10 there. I was scared to go down there, so I turned in
11 here and he asked me do you have a driver's license, a
12 South Carolina driver's license, and I said no. At that
13 point, he asked me to put my hands on the vehicle. I
14 put the hands on the truck, he put the cuffs on me, and
15 while he was putting the cuffs on me he asked me did I
16 have anything in my pocket, I told him no, sir, and he
17 said do you mind if I search the vehicle? I said no, go
18 ahead, ain't nothing in there, you go ahead and search.
19 He searched the vehicle, start searching the surrounding
20 area, then about -- he -- me and him was there for
21 approximately ten minutes while he was doing his little
22 search, searching the vehicle, searching me, and
23 searching all around the area. Then Ms. Gause, she came
24 up, and he had done asked me -- he said man, why's your
25 license suspended? I said I had some unpaid traffic

1 tickets.

2 Q. I'm sorry, did you say Ms. Gause said that?

3 A. No.

4 Q. Officer Weatherford?

5 A. He -- he asked me while he had me in cuffs and he
6 started searching -- he was searching inside the truck
7 at the time and he said -- he started -- he looked up at
8 me and was like man, why is your license suspended, and
9 I started telling him. At that point, he was already
10 searching the vehicle and searching by my feet and
11 stuff, so we was already there for about ten minutes.
12 She -- the latter five minutes she pulled up and that's
13 when she asked for my -- after he asked me about --

14 Q. You've got to use names. He can't say -- the court
15 reporter has to hear everything you say.

16 A. Weatherford, Sergeant Weatherford, pulled up --
17 well, he was talking and everything. For about ten
18 minutes we were there discussing the matter, the issue.

19 Q. Okay.

20 A. The latter five minutes Ms. Gause came up with a
21 green -- with this green jumpsuit on and she asked for
22 my ID. I told them that it was in my wallet, so she
23 went in my wallet and got my ID, went back to the car
24 and ran my ID, I guess, and came back and was asking --
25 she said man, why did you pull in here, she said what

1 was you thinking? I said what do you -- what do you
2 mean and she said look at the house and I said what --
3 what you trying to tell me, a black man can't live in a
4 house like this, so me and her started having words back
5 and forth, so he started searching the surrounding area.
6 While he's searching, I'm talking to her because it -- I
7 felt like she was trying to distract me. I was talking
8 to her. At the same time while he's searching I'm
9 watching him and I'm watching her. I'm watching
10 everything that these officers are doing, so then while
11 me and her was --

12 Q. Can I interrupt you one second? Why were you
13 watching everything the officers were doing? Have you
14 had a past history with law enforcement?

15 A. Yes, I have.

16 Q. Okay. Within the past years, have you been
17 convicted of anything?

18 A. Not that I can recall.

19 Q. In 2005 what were you convicted of?

20 A. I was convicted of --

21 Q. Misprison of a felony?

22 A. -- misprison of a felony where I --

23 Q. I'm sorry. Excuse me.

24 A. Well, actually I was charged with a murder that I
25 was not guilty of and I was -- I felt like I was

1 wronged in the situation, identified and these things,
2 for misprison of a felony.

3 Q. Okay. And then in 2008 a marijuana charge, correct?

4 A. Right.

5 Q. Okay. So going back, you have some basis for maybe
6 why you were watching law enforcement so intently
7 because you had been exposed to this before, correct?

8 A. Right.

9 Q. Okay. And, I'm sorry, continue on.

10 A. And it's not like I was new to what was going on,
11 so I just -- you know, I played my part. I sat back and
12 let him do his job and everything was fine --

13 Q. Okay.

14 A. -- until we got -- when he was taking me to be
15 booked at the little -- at the little thing they had at
16 the intersection. That's when he got a call.

17 Q. The van?

18 A. Yeah, the van.

19 Q. Okay.

20 A. He got a call and I -- and he -- and after he hung
21 the phone up, he made a -- he looked over at me and said
22 oh, we got your dope. I said I never had no dope and he
23 said well, you're being charged with it. And, yes, I
24 did get upset and we started having words and I starting
25 him hey, man, you can't do this, you can't be charging

1 me with stuff that you didn't get off me and just think
2 I'm gonna own up to it. Me and him had words about that
3 and when I got to the van, yes, I did have a problem
4 with law enforcement at that point.

5 Q. Okay. So when we heard testimony about you raising
6 your voice, being belligerent, et cetera, can you
7 explain to the Court a little bit more about why law
8 enforcement might have said that you were belligerent,
9 loud, required a lot of manpower?

10 A. There was a lot of man -- I was never belligerent.
11 When he pulled up on the scene, I had no problem with
12 him.

13 Q. Okay.

14 A. He came up -- after I -- after I understood what
15 was going on, he spoke to me like somebody and I dealt
16 with him like somebody. No ill-will, no bad blood, no
17 nothing.

18 Q. Okay.

19 A. The problem came in when she started talking. She
20 came up and started throwing shots at me off the top.

21 Q. Okay. Going back to -- you're transported to the
22 van in Officer Weatherford's car, correct?

23 A. Right.

24 Q. About how long did you sit in that van?

25 A. Could you repeat that?

1 Q. How long were you in that van before they took you
2 to the detention center?

3 A. Probably an hour and a half.

4 Q. Okay. And did law enforcement take anything off of
5 you?

6 A. They took my -- well, he got my cell phones out. I
7 think one was in my pocket and one was in the truck.

8 Q. Why did you have two cell phones?

9 A. One of the phones didn't even work. I play -- I
10 play a game on one.

11 Q. Okay. And how much money did you say he took?

12 A. I had \$698.37.

13 Q. Okay. You were taken to the detention center.
14 What happened next?

15 A. And when I got to the detention center, I started
16 questioning them up front about my money and they was
17 saying -- because I had an issue with that when we was
18 -- when we was at that van that they had out there to
19 transport and I was telling them I was -- it was like
20 they took me money and started laughing at me; like, oh,
21 it's confiscated. Even the transport guy. He was like
22 I can get that flat screen I want now, so we had a big
23 issue about that, and I was like man, y'all can't take
24 my money like that, y'all got to bring my money up to
25 the jail and let me see them count my money out in front

1 of me and they was saying well, we don't do that like
2 now, that's not our policy.

3 Q. And that's six hundred and how much did you say?

4 A. \$698.37. What they did was left the 37 cents.

5 Q. Okay. And what was that money for?

6 A. That was my rent money.

7 Q. Where had you gotten that money from?

8 A. I worked all week for that money.

9 Q. Doing what?

10 A. Cutting yards, doing side jobs with my uncle, and
11 renovating houses.

12 Q. Okay. Anything else happen at the detention center
13 resulting from this charge?

14 A. When they came to serve me the warrants, Ms. Gause,
15 she came in and she was explaining what I was being
16 charged with and I'm explaining to them that I don't
17 understand how you could do this and she was saying
18 well, it's the law and this is what's going on and she
19 made the statement that, well, if you help me out, maybe
20 I can help you out, and that's when I explained to her
21 that's not a route that I'm willing to go.

22 Q. Okay. And going back to you saying you didn't
23 understand what was going on, were those drugs yours?

24 A. No, ma'am, those drugs was not mine.

25 Q. Did you ever walk to that trash can on the night of

1 January 6, 2012?

2 A. No, ma'am.

3 Q. Did you open that trash can?

4 A. No, ma'am.

5 Q. Anything else you want this Court to know?

6 A. No, ma'am. There's nothing else I can say.

7 **MS. WISE:** Okay. No further questions for
8 Mr. Hicks, Your Honor.

9 **THE COURT:** Thank you. Cross-examination?

10 **MS. BURCH:** Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. BURCH:

13 Q. Mr. Hicks, how are you?

14 A. How you doing?

15 Q. Good. So you just previously stated that you were
16 trying to call your cousin, Calvin Hicks, who was the
17 owner of the rental car?

18 A. Right.

19 Q. And you said you called him about seven times?

20 A. No answer.

21 Q. Do you know how he knew to come to the Windham's
22 residence to get your car -- or his car?

23 A. Actually I don't think he came there to get to the
24 car. He was just -- happened to be travelling down that
25 highway.

1 Q. So he's out in the country and he just pulls in the
2 Windham's driveway and says there's my car?

3 A. Well, every -- no, what happened was there's a club
4 out there that everybody goes to. He probably was
5 headed to the club or one of his friend's house who goes
6 to the club, so I think that's probably what happened.
7 I never made contact with him.

8 Q. Okay. So you think maybe he just saw the car on
9 the way there to the club?

10 A. Saw what car?

11 Q. Saw the rental car that you were driving that
12 belonged to him.

13 A. I don't think he --

14 **MS. WISE:** Objection, Your Honor. This is
15 speculation. The witness has no --

16 **THE COURT:** I'm gonna overrule that because she
17 asked the question as to how he would have arrived on
18 the scene. I think that's a valid follow-up.

19 **THE WITNESS:** How my cousin arrived on the scene?

20 **THE COURT:** I'll let your finish your question.
21 Go ahead and restate it.

22 **THE WITNESS:** I think my cousin was just
23 travelling the highway, I don't know why, but he was
24 in the -- actually he ended up getting locked up that
25 night and pleading to charges that he said he never had

1 nothing on him.

2 BY MS. BURCH:

3 Q. Okay. So you pull into a driveway of some people
4 that you do not know, correct?

5 A. Right.

6 Q. And there is a side door on the house, correct?

7 A. Right.

8 Q. There's also a front door on the house, correct?

9 A. Right.

10 Q. The side door goes onto a screened in door,
11 correct?

12 A. Right.

13 Q. Why wouldn't you go to the front door of a house
14 of people that you do not know as opposed to the side
15 screened porch door?

16 A. Because, ma'am, at the time I wasn't even thinking
17 like that. I just drove up and when I drove up, I
18 stopped the vehicle. The first door that I saw, I just
19 got out -- after I realized I was on someone's property,
20 got out and went to the door to knock on the door to
21 inform the owners of the home that I was outside and
22 maybe let them know what was going on down the street, I
23 really didn't know, and ask was it all right if I call
24 someone to come get the car.

25 Q. So would you say that the residence where you

1 pulled in, is that a long driveway or a short driveway?

2 A. The driveway's pretty long.

3 Q. And is their house a large house or a small house?

4 A. It's a big house.

5 Q. How did you miss that house and realize that you
6 weren't in the right place, that you didn't know these
7 people?

8 A. What you mean how did I miss the house?

9 Q. I mean, you say that you just pulled in and
10 realized oh, I'm where I'm not supposed to be.

11 A. No, I didn't say that. I said -- if you listen to
12 me carefully what I said, when I was travelling down
13 High Hill Road after I came cross the small bridge, I
14 seen the two, like, reflectors of the flashlights and
15 that's when I started hitting my brakes and I came to a
16 complete stop, put on my -- backed up, put on my signal
17 and turned in there, and when I drove up I wasn't
18 actually paying attention to the house.

19 Q. Because you were trying to avoid the police by
20 pulling in that driveway?

21 A. What do you mean trying to avoid the police? I
22 didn't know the police was ahead.

23 Q. When you turned around from the checkpoint and
24 pulled in that driveway to avoid the police.

25 A. I didn't know a checkpoint was down there.

1 Q. And you were pulling in that driveway so you could
2 make a phone call to Calvin Hicks to come get those
3 drugs; is that right?

4 A. No, I was -- I was pulling in the driveway because
5 I didn't know what was ahead of me.

6 Q. Okay. All right. But you had just come from that
7 direction?

8 A. No.

9 Q. No? But you turned around from coming in that
10 direction and then pulled in the driveway?

11 A. Explain yourself.

12 Q. So you're headed towards the checkpoint, right?

13 A. Right.

14 Q. And you see the checkpoint?

15 A. I didn't see a checkpoint. I see two flashlights.

16 Q. You saw the flashlight. So you see the flashlight.
17 It's dead ahead of you, the flashlight?

18 A. Right.

19 Q. You stopped?

20 A. No, I started slowing down and came to a complete
21 stop.

22 Q. Okay. You -- you slow down and you turn the car
23 around going back in this direction, correct?

24 A. No, the car was never turned around.

25 Q. Okay. Explain that to me.

1 A. I backed up. I came to a complete stop --

2 Q. Okay. So you back up --

3 A. -- and backed up.

4 Q. Okay. So you're backing up. So flashlights are
5 dead ahead of you, you're coming to a stop and backing
6 up from the direction you just came in and then pull in
7 that driveway?

8 A. You've got me lost.

9 Q. You got me lost, too. What I'm trying to say is
10 you said you didn't know what was ahead of you. Well,
11 you knew flashlights were ahead of you. If you're in
12 this direction going towards what we're saying is the
13 checkpoint, if you turned the car around, which you're
14 saying you just backed up, you just came from that
15 direction so you know what would be that way.

16 A. I never came from that --

17 Q. Does that make sense?

18 A. No, it don't.

19 Q. Okay. Well, we'll move on. Now would it shock you
20 to know that Ben Weatherford's county-issued car is a
21 black Tahoe?

22 A. Well, the car that he drove that night was a white
23 Dodge Charger with tinted windows. I rode in the car,
24 ma'am.

25 Q. All right. Would it shock you to know that Jackie

1 Gause's county-issued car is a white Charger with tinted
2 windows?

3 A. It wouldn't shock me because I know they switch
4 cars. She made a comment to him about her vehicle that
5 night.

6 Q. Okay. So you were transported in Jackie Gause's
7 car --

8 A. Right, which Ben Weatherford was driving.

9 Q. -- driven by Ben Weatherford?

10 A. Right.

11 Q. So whenever -- you confused me a little bit when
12 you were testifying, so I want you to clear this up.
13 You say that Ben Weatherford pulled in in a white
14 Charger and then five minutes later Jackie Gause pulls
15 in, or maybe it was ten minutes later, and Ben's
16 searching the area while Jackie's checking your ID at
17 one point and then at one point Jackie's not even there,
18 but Ben's searching the area. Would you, please,
19 clarify that.

20 A. All right. Let me clarify that. While he's
21 searching the area and talking to me, we're there for
22 approximately ten minutes.

23 Q. Before Sergeant Gause gets there?

24 A. Before -- before Sergeant Gause comes up.

25 Q. Okay.

1 A. When Sergeant Gause comes up, she -- I'm talking
2 with Weatherford. At that point he's asking me why
3 was my license suspended and I was explaining to him
4 and at that point she asked for identification. She
5 asked for my identification and I informed him that my
6 identification was in my wallet and at that point she
7 went into my wallet and got my identification and went
8 and ran it and that's when she came back.

9 Q. So what you'd like the Court to believe is that
10 just like with your murder charge, this is law
11 enforcement making you be a victim?

12 A. What you mean? That ain't what I'm saying.

13 Q. Okay. What are you saying?

14 A. I'm not saying that. What I'm saying is I didn't
15 have a license. That's the reason why I turned in there
16 and I was just gonna notify the people that I was on
17 their property, and that's it.

18 Q. Okay. Do you recall making any phone calls from
19 the jail?

20 A. Yes, I do.

21 Q. Okay. And you're aware that those phone calls are
22 recorded?

23 A. It tells you that.

24 Q. So do you recall making a plan to say that --

25 **MS. WISE:** Objection, Your Honor. I believe

1 this should have been entered into evidence if she
2 wants to verify as to the contents of a telephone call.

3 **THE COURT:** Well, he testified that he had never
4 spoken with his cousin, and I ask, is this evidence of
5 the conversation with his cousin?

6 **MS. BURCH:** He wasn't talking to his cousin. His
7 cousin was in jail at the time. This phone call -- Your
8 Honor, this phone call would be one with his girlfriend
9 and it would go to show a plan.

10 **THE COURT:** And the plan would involve what? I'm
11 trying to determine whether this is responsive.

12 **MS. BURCH:** To his testimony.

13 **THE COURT:** This has not been disclosed to the
14 defense?

15 **MS. BURCH:** She has the CD of all the jail phone
16 calls on top of Ms. Gause went through all of the jail
17 phone calls and made notes.

18 **THE COURT:** What do you say to that, Ms. Wise?

19 **MS. WISE:** I think that needs to be entered into
20 evidence if that's an issue the prosecution wishes to
21 bring to the Court's attention --

22 **THE COURT:** Well, I would --

23 **MS. WISE:** -- and I have concerns. I apologize.

24 **THE COURT:** Excuse me. If it's just saying that
25 you're requiring her to put it into evidence, I would

1 deny that motion because she has the ability to try her
2 case as she wishes and so I would deny it on that
3 motion. If you have some Brady or, you know, Rule 5 or
4 some other reason that you wish to exclude it, I'll hear
5 from you on that, but just simply that she's asking him
6 a question without putting that item in evidence, the
7 Court will deny your motion.

8 **MS. WISE:** And I apologize. I believe that
9 there might be questions as to the authentication of
10 those telephone calls. I have no knowledge of the
11 phone calls actually being made other than a disk that
12 was turned over to me. The notes that the Solicitor's
13 office turned over to me pertaining to those calls
14 taken by Deputy Gause differ from what I have heard on
15 the calls in some sense and I'm not able to match up.
16 It looks like the disk -- I don't know the proper lingo,
17 but it looks like the disk was encrypted in a way that
18 the way she -- it was listened to by the State is
19 different from the way I'm able to listen to it.

20 **THE COURT:** Well, this may get into calling
21 additional witnesses or some sort of response to what
22 you're hearing, but because it's been disclosed I'm not
23 gonna prohibit the State from bringing it into evidence
24 and questioning this witness about it if it's responsive
25 to testimony, which she says that it is, and, thus, I'm

1 gonna permit it and overrule your objection at this
2 time.

3 BY MS. BURCH:

4 Q. Do you recall making phone calls from the jail?

5 A. Of course I do.

6 Q. And you know that they were recorded?

7 A. Yeah, I know that.

8 Q. Do you recall making a phone call to your
9 girlfriend on January 6, 2012, and this would be
10 military time, so 20:55 to 21:10 would be the time, so
11 somewhere between nine and midnight?

12 A. Okay.

13 Q. Do you recall y'all discussing the fact that you
14 were gonna say that money was money you did yard work
15 for?

16 A. That's money it was for.

17 Q. And how she was gonna come testify --

18 **MS. WISE:** Objection, Your Honor. This is
19 hearsay. She needs to be in here to testify to this.

20 **THE COURT:** Just a moment. Well, again, this
21 is not what she -- well, counsel, the question -- that
22 may be a valid objection. Are you saying that this
23 was her part of the conversation or his part of the
24 conversation?

25 **MS. BURCH:** His part of the conversation was the

1 yard work.

2 **THE COURT:** And that her part of the conversation
3 was something else about what she would say? If that's
4 the case, I'll sustain the objection. That would be
5 hearsay. If it's something he said, it's not hearsay.
6 If it's something she said, that is a third party says,
7 that is hearsay.

8 **MS. BURCH:** Thank you, Your Honor.

9 **THE COURT:** Very good.

10 **MS. BURCH:** One moment, please.

11 BY MS. BURCH:

12 Q. In that same phone call, Mr. Hicks, do you recall
13 telling your girlfriend, and this is taken from Sergeant
14 Gause's notes, so I'm not gonna directly quote you, but
15 that you did see the roadblock on High Hill and you
16 decided what you were gonna do, blasé blasé is the word
17 that you use a good bit, and that you said chick found
18 something in the trash can, and I'm assuming that you
19 were talking about Sergeant Gause. Do you recall that
20 conversation?

21 A. Could you repeat that top part? You said that I
22 mentioned on the phone call --

23 Q. You had -- there was a roadblock. You admitted to
24 seeing the roadblock on High Hill and you decided what
25 you were gonna do blasé-blasé?

1 A. Basically what I was saying, after everything took
2 place, I had seen -- after I was arrested, it made sense
3 what was going on, and that's what I was explaining,
4 blasé blasé.

5 Q. Okay. What doe blasé -- what's blasé blasé mean?

6 A. Just what it sounds like, blasé blasé.

7 Q. Okay. You then discuss several times about there's
8 no business -- they had no business searching the
9 property. Do you remember that?

10 A. Me saying that they had no business searching the
11 property?

12 Q. Uh-huh.

13 A. I may have said that.

14 Q. And do you recall planning what all you would come
15 and testify to in these phone calls?

16 A. I said that I was gonna testify to a phone call?

17 Q. No, you were making a plan in these phone calls of
18 how you were gonna testify about entrapment.

19 A. Entrapment? No, on the phone I was asking my cousin
20 about entrapment. I'm not a lawyer. I was asking him
21 and it's obvious he had the wrong interpretation of what
22 entrapment was, too.

23 MS. BURCH: Okay. Your Honor, no further
24 questions at this time.

25 THE COURT: Very good. Is there redirect?

1 **MS. WISE:** Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. WISE:

4 Q. Mr. Hicks, you made numerous phone calls upon your
5 arrest at the detention center, correct?

6 A. Correct.

7 Q. The content of those calls consisted of, in bulk,
8 what your bond would be and how it would be paid for,
9 correct?

10 A. Right.

11 Q. The content of those calls also discussed what
12 happened the night of January 6, 2012, correct?

13 A. Correct.

14 Q. Every single one of those phone calls repeated
15 exactly what law enforcement had told you, correct --

16 A. Correct.

17 Q. -- as far as what you were charged with and what
18 had happened?

19 A. Right.

20 Q. And you never once in any phone call said I did
21 this?

22 A. Right.

23 Q. And you never once in any phone call had some
24 scheme or plan to evade the justice system or the
25 courts?

1 A. No, ma'am.

2 MS. WISE: No further questions, Your Honor.

3 THE COURT: All right, sir. I'm gonna let you
4 return to your seat then, please.

5 (Witness excused.)

6 THE COURT: Is there further testimony from the
7 defense?

8 MS. WISE: Nothing further, Your Honor.

9 THE COURT: All right. Very good. Then let's
10 just remain at ease for one moment. Let me step back
11 to consider this and I will come back to give you the
12 Court's decision.

13 (Recess taken.)

14 THE COURT: All right. Mr. Hicks, we're gonna
15 take you into custody at this time, sir. Please respond
16 to Officer Galloway if you would.

17 We'll just -- we'll let you -- we'll let
18 Mr. Hicks remain with us because we need to make a
19 decision now as to exactly what we're gonna do, but
20 the Court has made the determination, Mr. Hicks, that
21 you are guilty of these charges. I will say that in
22 your testimony that I found -- I find that you were
23 manifesting not credible, but it is not incumbent upon
24 you, the Defendant, to explain anything, but what I find
25 is that the State has put up a circumstantial evidence

1 case against you and that circumstantial evidence case
2 has met the burden beyond a reasonable doubt by both
3 direct and circumstantial evidence. The circumstantial
4 evidence though excludes anyone else having access to
5 that trash can and putting those drugs in there and the
6 Court finds that based upon the evidence before us
7 you're guilty of the charges of possession with intent
8 to distribute cocaine, marijuana and crack cocaine.

9 Now do want to have the sentencing at this time
10 or do you want to defer sentencing to a later time and
11 just hold Mr. Hicks in the detention center until such
12 time?

13 **MS. BURCH:** Your Honor --

14 **THE COURT:** Are you ready to proceed?

15 **MS. BURCH:** If you'll allow me to run downstairs
16 and print the sentencing sheets really quick, I'll do
17 that.

18 **THE COURT:** Well, based upon the hour, I believe
19 the best thing at this point is to simply to return
20 Mr. Hicks to the detention center to hold for sentencing
21 and we will take this up at a later time.

22 **MS. BURCH:** Yes, Your Honor. Mr. Hicks, we're
23 gonna return you to the detention center. Good luck to
24 you, sir.

25 Ladies and gentlemen, I don't know when we'll

1 be able to reconvene to have an opportunity to actually
2 sentence Mr. Hicks, but if you would prepare the
3 sentencing sheets, then we'll arrange a time to do
4 that. Now what document do I need to give the detention
5 center? Russell, what will I need to give the detention
6 center just simply to hold him?

7 **THE DEPUTY:** Just an order, a short order or
8 something. Excuse me just a minute.

9 **THE COURT:** Go right ahead. Go right ahead.
10 We'll go off the record just a minute.

11 (Off the record discussion.)

12 **THE COURT:** All right, folks. We'll adjourn this
13 court.

14 END OF PROCEEDINGS
15
16
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25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth 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 had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
27th day of January, 2014.

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I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

May 11, 2014


STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD

12-GS-16-1304

12-GS-16-1305

CHRISTOPHER J. HICKS,)

DEFENDANT.)

February 24, 2014
Florence, South Carolina

B E F O R E :

THE HONORABLE MICHAEL J. BAXLEY, JUDGE

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

KENDALL B. GRAVES, ESQ.
Assistant Solicitor

CHRISTIE WISE, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS

COURT'S:

No.	Description	I.D./EVD.
1	Warrants/indictments	13/13

1 MS. BURCH: Your Honor, we're here on
2 indictments 2012-16-1304, 1305 and 1307. Your Honor
3 recalls, it's been three weeks ago now we tried this
4 case against Christopher Jermaine Hicks. He was
5 convicted of possession with intent to distribute
6 crack cocaine, and marijuana third offense. Your
7 Honor, here are the sentencing sheets.

8 THE COURT: Very good, thank you. Now
9 just so our record will be clear as to what happened
10 here and the reason that Mr. Hicks is not here,
11 Mr. Hicks was taken into custody by order of this
12 Court after he was convicted in a bench trial for
13 the three charges which were just called out by
14 Ms. Burch which are both possession with intent, are
15 all possession with intent to distribute charges,
16 drug charges. Unfortunately, after the Court
17 rendered its decision Mr. Hicks became combative and
18 actually was fighting with the officers who then
19 transported him out of the courthouse and into the
20 van and to the detention center. The Court found
21 based upon that act or those acts, actually a series
22 of acts because it was very disruptive in the entire
23 courthouse, particularly up here on the Fifth Floor
24 where court operations are, was shouting and
25 scuffling and screaming, that Mr. Hicks represented

1 a safety risk to this courthouse to have him
2 transported back for sentencing. And the Court made
3 the determination not to transport him for this
4 sentence over the objection of defense counsel, over
5 the request of defense counsel that he come here.

6 We're also aware that Mr. Hicks has made
7 several calls from the jail to family members to be
8 present today. I see that there are family members
9 here. We welcome you to the courtroom. But simply
10 for the risk to the community as well as the risk to
11 Mr. Hicks, the Court did not believe it was
12 appropriate that he be here.

13 What I'd like to do now is take arguments
14 from each side as to -- and if you have someone you
15 wish to have speak, Ms. Wise, I'll be glad to hear
16 from you, as to what you believe the appropriate
17 sentence ranges are. We've already had a finding of
18 guilt, thus the discussion of the facts and
19 operative facts are not necessary for the Court as I
20 recall them. And let's hear first from the State as
21 to what is your position on sentencing, Ms. Burch.

22 MS. BURCH: Your Honor, as you are aware
23 two of the indictments carry 10 to 20 years and the
24 marijuana indictment carries five to 20. Your
25 Honor, the last offer we gave this defendant was

1 five years. We were going to plead some of the
2 charges down so that he would be capable of facing
3 that type of time. Your Honor, we'll leave it in
4 the Court's discretion.

5 THE COURT: And tell me about Mr. Hicks'
6 priors and how it is that he has what really are
7 multiple drug charges 'cause these are all advanced
8 ---

9 MS. BURCH: Your Honor, his record starts
10 in 1995. He has a marijuana first charge,
11 possession of marijuana first, and he actually was
12 convicted in '96 of that. He has a cocaine charge
13 also in 1996. It looks like he got probation on
14 those two charges. He has another marijuana charge
15 that he was convicted of in December of 1995 where
16 he received a fine. He has a resisting arrest in
17 1995. In 1997 he has another cocaine charge. In
18 1998 he was revoked off his probation from that
19 cocaine charge and also got a possession of
20 marijuana in 1998 with a 30 day sentence. Then we
21 get 2000 he has trespassing. 2002 he -- I'm sorry,
22 Your Honor, those are all non-convictions. But in
23 2005 he was convicted of misprision of a felony and
24 did five years. 2008, he has a marijuana charge
25 that he's convicted of.

1 Your Honor, that brings us to these
2 charges that happened in 2012.

3 THE COURT: All right, very good. And
4 again, you say the State takes no position on
5 sentencing?

6 MS. BURCH: Your Honor, we'll leave it to
7 the Court's discretion. His minimum is a ten year
8 sentence.

9 THE COURT: Very good. And now, Ms. Wise,
10 what do you have to say for your client?

11 MS. WISE: Thank you, Your Honor. A
12 couple of things first. If I could renew my
13 previous motions that I made in our bench trial last
14 month. I did not do that at that time and I'd like
15 to renew all of those motions today. Additionally,
16 I'd also like to say that my client has requested
17 that he be present for his sentencing. He believes
18 that it is a violation of his Sixth Amendment right
19 and he would request that he is here, and he
20 believes that there are things that he can say that
21 no one else in this courtroom can say on his behalf
22 in regard to his punishment by himself. I would
23 like to make the Court aware of that.

24 THE COURT: And let's go back and let me
25 respond if I may. First of all, with regard to your

1 motions that you made at the close of the State's
2 evidence and at the end of the trial, the Court
3 respectfully denies those. The Court finds there
4 was ample evidence for a conviction to result. In
5 fact, some of the evidence somewhat overwhelming
6 against Mr. Hicks while I realize it was in part
7 circumstantial, that Mr. Hicks wasn't actually seen
8 with the drugs in hand, his explanation that he
9 pulled into this back yard of a house that he did
10 not know the occupants and really had no business
11 there, pulled up near the trash can and then in that
12 trash can were discovered a fairly substantial
13 amount of drugs and the owners of the house came
14 forward and said they'd been in, looked in the trash
15 can earlier today, earlier in that day, and those
16 drugs were not there. That lead this Court to
17 inescapable conclusion that Mr. Hicks attempting to
18 flee from a, what was a traffic checkpoint, had
19 discarded those drugs in that trash can. And so I
20 find that the evidence was sufficient to support
21 conviction and respectfully I'm gonna deny your
22 motion.

23 And again, with respect to Mr. Hicks being
24 here, while it's typical that the defendant is here,
25 he had to be physically fought and man-handled out

1 of the courthouse and it's just simply not safe to
2 bring him back and give him an opportunity to have
3 the same event occur again so I appreciate your
4 comments and your request but respectfully deny
5 those as well.

6 MS. WISE: Thank you, Your Honor. And I
7 would like to make -- excuse me, his girlfriend
8 Ms. Crystal Lucas is present with us today if you'd
9 like to speak with her.

10 THE COURT: Very good. Ms. Lucas, I
11 believe you were here at the trial; were you not?

12 MS. WISE: No, sir, she was not.

13 THE COURT: You were not? Excuse me.

14 MS. WISE: It was his cousin that was
15 here.

16 THE COURT: Would you please accept the
17 oath of a witness then.

18 THE CLERK OF COURT: If you'll raise your
19 right hand.

20 WHEREUPON,

21 **CRYSTAL LUCAS,**

22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 THE COURT: And tell me, ma'am, what would
25 you like to say?

1 MS. LUCAS: I would like to say that he's
2 not a bad person, and he's just going through a
3 troubled time. And I don't think, you know, he mean
4 no disrespect to the Court or anything. I think it
5 was just that it was just something that somebody
6 must be have said something to him in order for him
7 to, you know, act out like that.

8 THE COURT: Okay. All right, ma'am.
9 Thank you. Thank you for your presence here today.
10 Anything further from the State?

11 MS. BURCH: Your Honor, I think that
12 you've heard the evidence and you are aware that we
13 listened to his cell phone calls. I think this
14 individual is probably not -- I'm trying to find my
15 words. He's, I think he's a danger to society, Your
16 Honor.

17 THE COURT: All right. Ms. Wise, I'm
18 gonna get you to sign the sentencing sheets if you
19 would please and I'll let you reply to that if you
20 wish.

21 MS. WISE: And I wanted to ask, how should
22 I, should I sign the sentencing sheet on behalf of
23 him as well or just ---

24 THE COURT: It's not necessary that his
25 signature appear thereon. The record will reflect

1 clearly that the Court did not permit him to attend,
2 but if you would sign as counsel we would ask that
3 you signify your presence.

4 MS. WISE: Absolutely. And I also did
5 want to add that he asked that I indicate to the
6 Court that he is not sure if these are third or more
7 subsequent offenses. I did review the NCIC report
8 with him prior to incarcerations well him out at the
9 detention center, and he does not believe that these
10 are third offenses.

11 THE COURT: All right. You wish to reply
12 to that?

13 MS. BURCH: Your Honor, I read the
14 defendant's record into the record today and I
15 believe they are third or subsequent.

16 THE COURT: And on what basis do you have
17 to dispute the NCIC sheet that was published for the
18 Court?

19 MS. WISE: Absolutely, Your Honor. From
20 my understanding and I might be wrong, I don't
21 believe that's indicative proof of a conviction. I
22 believe you actually have to have actual warrants.
23 I might be wrong and I apologize if I am.

24 THE COURT: So you're asking for a
25 certification of the convictions?

1 MS. WISE: For my client's request I am,
2 Your Honor.

3 THE COURT: What say you to that,
4 Ms. Burch?

5 MS. BURCH: Your Honor, if you can give us
6 just a few minutes we'll get those for him. Well,
7 I'm sorry, Your Honor, it is after five. It will be
8 in the morning before I can get those certified.

9 THE COURT: All right. Then what I will
10 do, because we have family members here who are
11 gathered and it's not fair to them to require them
12 to come back yet again, what I will do is I will
13 advise you what the sentence will be if the State
14 produces -- and I believe the State will produce --
15 a certification of these prior convictions. And
16 would you pass me back the sheets please?

17 MS. WISE: I apologize, Your Honor.

18 THE COURT: Just one moment.

19 MS. BURCH: Your Honor, it may be tomorrow
20 afternoon. It looks like I'm gonna have to travel
21 to Georgetown County to get the certification for
22 this.

23 THE COURT: What we can do is we can just
24 simply -- if you want to have them sent by mail I'll
25 be here all this week. I'm just gonna go ahead and

1 advise that if you do provide that proof and I'll
2 give you to till the end of this week to do so, then
3 what the sentence would be. Just one moment please.

4 MS. WISE: Your Honor, if I might add, he
5 has been incarcerated 29 days and served one day
6 prior to his trial as well that I ask you to
7 consider.

8 THE COURT: We'll give him credit for 30
9 days service on these sentences. All right, ladies
10 and gentlemen, just so you'll understand, these
11 charges have -- the legislature set the requirements
12 for the charges. They have minimums and they have
13 maximums. For the, for third offenses, the charges
14 that he has against him, one of the sentences is no
15 less than 5, no more than 20 years; and the other
16 two is no less than 10, no more than 30 years.
17 Mr. Hicks is not a candidate for probation because
18 of the fact he's been previously violated from
19 probation and thus the Court does not find it
20 appropriate to give some type of split sentence.
21 And if you submit a proof that these indeed are the
22 correct charges, then it would be the Court's
23 intention to sentence Mr. Hicks on five, for five
24 years for the one charge it carries a minimum of
25 five. All concurrent to the other two, which carry

1 a minimum of 10; thus, I will sentence him to 10
2 years in prison. And that will be his concurrent
3 sentence for all charges. That is the minimum for
4 which he can be sentenced according to state law.
5 And I will await that before the end of the week and
6 issue the sentencing sheet at that time. And again,
7 we'll credit Mr. Hicks for the time that he is, has
8 been in jail awaiting this proceeding today.

9 MS. WISE: Thank you, Your Honor.

10 THE COURT: I'm sorry, I take no pride in
11 that sentence but that is the sentence of the Court.

12 (Court's Exhibit Number 1, warrants and
13 indictments, were marked and made a part
14 of the record.)

15 (Proceedings adjourned on the 24th continuing on
16 February 25, 2014.)

17 THE COURT: I've asked to put this
18 supplemental information on the record because of
19 the way the record closed in this case yesterday.
20 This is the State versus Christopher Hicks. And at
21 the end of the proceeding I told the family that I
22 took no pride in the, in passing the sentence, and
23 then the record ended. And it occurred to me later
24 on in the evening that I should develop the record
25 so that anyone reading that would not be,

1 misconstrue it to mean that somehow I felt the
2 sentence was inappropriate or unfair. What happened
3 actually in the courtroom was that as I was talking
4 to the family, somewhat like Mr. Hicks did when he
5 was convicted and became unruly, the family just got
6 up and left yesterday after sentence was imposed
7 after I began my comments to them. So rather than
8 continue to speak to a courtroom where no one was
9 listening I just simply stopped, and my last words
10 were that I took no pride in the sentence. But what
11 I meant by that was that Mr. Hicks is an able bodied
12 and capable person who drove himself in the
13 situation where he found himself in and he was the
14 architect of his own demise.

15 First of all, he was not a candidate for
16 probation because he'd previously been on probation
17 for drug charges and other issues and had violated
18 probation. Also he was — had charges that were,
19 had minimum sentences which were substantial but
20 that was because of his decision, again, as an able
21 bodied and capable person to engage in the drug
22 trade and to violate the laws of South Carolina so I
23 take no pride in it because it was a situation that
24 was clearly avoidable, and particularly by, by
25 Mr. Hicks. But particularly with the fact that he

1 was offered a reduced sentence that would have
2 carried five, a maximum five years, that he rejected
3 that. And unfortunately, he finds himself in the
4 position simply because of the way he's responded to
5 his charges and the recalcitrance that he's shown
6 throughout the proceeding. That's why I take no
7 pride in the sentence as given to him.

8
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11 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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C E R T I F I C A T E O F R E P O R T E R

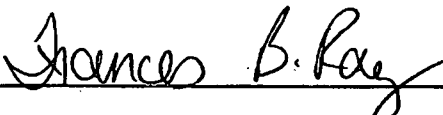
STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE :)

I, FRANCES BAKIS-RAY, Registered

Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 21st day of May, 2014.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

INDICTMENT FOR
Drugs / PWID Marijuana
§44-53-0370(b)(2)

At a Court of General Sessions, convened on August 30, 2012, the Grand Jurors of Darlington County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

CDR: 0188 44-53-0370(b)(2)

That Christopher Jermane Hicks did in Darlington County, on or about January 6, 2012, possess with intent to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/CMC
DARLINGTON COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

J Gause

Darlington County Sheriff

Law Enforcement Case #: 201201-0171

 WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
M820210

ARRESTED ON: 2012-01-07

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date

AUG 30 2012

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-16-1304

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2012

THE STATE

vs.

Christopher Jermane Hicks

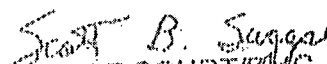
INDICTMENT FOR

Drugs / PWID Marijuana

§44-53-0370(b)(2)

CDR Code: 0188

TRUE CERTIFIED COPY,


CLERK OF COURT/CMC
DARLINGTON COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Drugs / PWID Cocaine

§44-53-0370(b)(1)

At a Court of General Sessions, convened on August 30, 2012, the Grand Jurors of Darlington County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

CDR: 0185 44-53-0370(b)(1)

That Christopher Jermaine Hicks did in Darlington County, on or about January 6, 2012, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver 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, and being in violation of Section 44-53-370(b)(1), S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY, 1

Scott B. Suggs
CLERK OF COURT/CMC
DARLINGTON COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

J Gause

Darlington County Sheriff

Law Enforcement Case #: 201201-0171



335

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
M820211

ARRESTED ON: 2012-01-07

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-16-1305

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2012

THE STATE

vs.

Christopher Jermane Hicks

INDICTMENT FOR

Drugs / PWID Cocaine

§44-53-0370(b)(1)

CDR Code: 0185

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR
Drugs / PWID Crack Cocaine

§44-53-0375(B)(3)

At a Court of General Sessions, convened on August 30, 2012, the Grand Jurors of Darlington County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

COCAINE BASE

CDR: 3039 44-53-0375(B)(3)

That Christopher Jermane Hicks did in Darlington County on or about January 6, 2012, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Crack Cocaine, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY,

Scott B. Sasser
CLERK OF COURT/REC
DARLINGTON COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

J Gause

Darlington County Sheriff

Law Enforcement Case #: 201201-0171

 335

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
M820209

ARRESTED ON: 2012-01-07

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date

JAN 30 2012

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-16-1307

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2012

THE STATE

vs.

Christopher Jermane Hicks

INDICTMENT FOR

Drugs / PWID Crack Cocaine

§44-53-0375(B)(3)

CDR Code: 3039

TRUE CERTIFIED COPY.

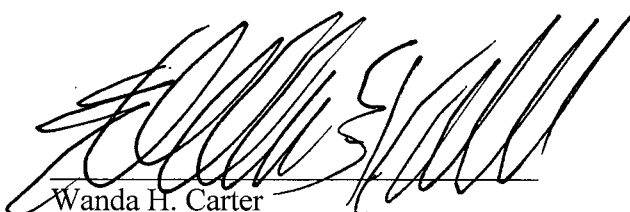
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

William B. Rogers, Jr., Solicitor

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."

This 25th day of September, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT