

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

Honorable Roger L. Couch, Presiding Judge

Case No. 2007-GS-42-2111

State of South Carolina,

Respondent,

v.

Jeffrey Bernard Falls,

Appellant.

**RECORD ON APPEAL
Volume II**

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SC Court of Appeals

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1 your vehicle normally?

2 A No, sir.

3 Q Okay. Trooper, I'm gonna continue to play on just for
4 a little bit more here.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q Now, at that point you explained to him that you're
8 gonna have to give him a warning, and no, no points, no
9 fine, am I correct?

10 A Yes, sir, that's correct.

11 Q And Mr. Falls continued to engage you in conversation,
12 am I correct?

13 A He went back to talking about the trucks.

14 Q So, he didn't ask you about the warning at this point,
15 did he?

16 A No, sir.

17 Q So, he was trying to explain his situation.

18 Would you describe that as nervous chatter by the
19 defendant?

20 A Yes, sir, again, rambling on about something that
21 wasn't asked.

22 Q All right. And, again, is that, based on your training
23 and experience, something that's suspicious to you?

24 A Yes, sir.

25 (WHEREUPON, another portion of the video was played for

1 the jury at this time.)

2 Q Now, I want, I want to go back and touch on something.

3 You had, you had already called Trooper English, am I
4 correct?

5 A Yes, sir.

6 Q And Trooper English, your partner, are a member of the
7 A.C.E. Team that patrols with you, am I correct?

8 A That's correct.

9 Q When you called him initially, did you call him
10 thinking he's got the dog, I need that, or were you calling
11 him for a different purpose initially?

12 MR. THOMPSON: Object to the leading, Your Honor.

13 SOLICITOR McCARTY: I can rephrase.

14 THE COURT: Please rephrase that question.

15 Q When you initially made a call to Trooper Wilson at
16 about four minutes into the stop, what purpose were you
17 calling trooper or Trooper English at that point?

18 A Myself and Trooper English were the only two troopers
19 from the A.C.E. Team working that night shift that night and
20 we were in the same general area. So, my first immediate
21 thought was just to call him cause we worked so close
22 together.

23 Q Is that based upon officer safety or another reason?

24 A Again, I initially called him on my second approach to
25 the vehicle when I seen Mr. Falls reaching under the seat.

1 So, just an officer safety reason.

2 Q But as you conversed with the defendant here on the
3 roadside, and at this point, and where it's, I paused the
4 video at 2111:40, we're approximately 11 minutes into this
5 stop, am I correct?

6 A Yes, sir.

7 Q I know we've paused and gone on for about 40 minutes,
8 but the stop right here is only lasted about 11 minutes, am
9 I correct?

10 A Yes, sir.

11 Q And includes the initial stop asking him to pull up
12 beyond the guardrail, getting back out and speaking with him
13 again, am I right?

14 A That's correct.

15 Q Is 11 minutes approximately an average amount of time
16 for you in a normal traffic stop?

17 A It's close to it.

18 Q What would you estimate your normal traffic stop to be?

19 A Anywhere from five to seven minutes depending on the
20 speed of the dispatcher and the amount of radio traffic.

21 Q And now let me ask again about dispatch.

22 You had called the defendant's license in earlier, am I
23 correct?

24 A Yes.

25 Q And you've been listening to this here today, the

D.G. Wilson - Direct examination
by Solicitor McCarty

1 State's Exhibit No. 1, am I correct?

2 A Yes.

3 Q Have you heard the defendant's license or any
4 information concerning his driver's license come back over
5 the radio to you at this point?

6 A They still have not responded to my request.

7 Q So, at this point, at 20 minutes or at 2111:40, you
8 still did not have any information from dispatch concerning
9 the driver's information about license?

10 A I did not.

11 Q But you had a story about going to Atlanta, leaving
12 from Charlotte at noon, am I correct?

13 A Yes, sir.

14 Q Staying for a couple hours at maybe Exit 240 with a
15 cousin, talking about girls and a party, and then heading
16 back towards Charlotte, am I correct?

17 A That's correct.

18 Q Was any of that adding up in your mind?

19 A It's not making any sense in my mind.

20 Q At this point you asked the defendant to search his
21 vehicle, am I correct?

22 A I did.

23 Q Is that a consensual question that you asked, may I
24 search your vehicle?

25 A Yes, sir.

1 Q How did the defendant respond to that question?

2 A He began to stutter saying I mean, I mean, I didn't do
3 anything.

4 Q And how did you respond to that?

5 A I told him that you didn't do anything or is there
6 anything that you want me, wanted to tell me about.

7 Q And what did the defendant say?

8 A Bear with me just a second.

9 (Pause.)

10 A He said he had not been anywhere. I told him that I
11 did not say he went anywhere, and I asked again to search
12 his car, and, again, he stated that he did not do anything,
13 and I advised him, I explained to him that it was a yes or
14 no question.

15 Q Trooper Wilson, was the defendant's not granting you
16 permission or not consenting to a search the reason why you
17 decided to search that vehicle?

18 A I was gonna search his vehicle based on the information
19 that I had gathered, initially seeing him place something
20 under the seat, and listening to his story.

21 Q And you felt that something more than just the traffic
22 stop was afoot, am I correct?

23 A I had a firm belief that there was some type of
24 criminal activity going on inside that vehicle.

25 Q And when, when you were telling him here on the video

1 when a K-9 unit is coming, you anticipate that being Trooper
2 English, am I correct?

3 A That's correct.

4 Q And you know Trooper English from working with you as a
5 K-9 handler, am I correct?

6 A Yes.

7 Q All right. Trooper, I'm gonna play on here just for a
8 second. I'm gonna kind of fast forward a little bit. This
9 sort of ends your engagement with the defendant while
10 Trooper English is here on the roadside.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q But I want to -- all right. This gentleman coming up
14 here on the screen, is that Trooper English?

15 A Yes, sir.

16 Q Okay. And I'm looking at the camera or the time there
17 and it's about 2113:32 on State's Exhibit No. 1. From the
18 time you explained the warning citation to the defendant to
19 where Trooper English arrived, that's about two minutes and
20 seven seconds, am I right?

21 A Yes, sir.

22 Q Approximately?

23 A Yes, sir.

24 Q So, Trooper English gets there fairly quickly?

25 A Yes, sir.

1 Q Play on a little bit again. Just fast forward a little
2 bit to get through. We'll talk with Trooper English here in
3 just a minute, but just to get to an action that you perform
4 a little bit later here.

5 Now, trooper, as I'm fast forwarding if I can just ask
6 you, as Trooper English is using his K-9 here and then
7 conducting a search of the vehicle, did he indicate to you
8 that his K-9 had alerted positively or given a positive
9 alert?

10 A Yes, sir.

11 Q At that point did, as you're standing there, did
12 Trooper English begin a search of the vehicle?

13 A He did.

14 Q Trooper Wilson, as Trooper English was searching that
15 vehicle, what's your primary responsibility with the
16 defendant?

17 A To keep my eye on the passenger or occupants of the
18 vehicle for safety.

19 Q You did not participate in the search of the vehicle
20 itself?

21 A No, sir, not initially.

22 Q And, again, I'm just gonna fast forward here to get to
23 another point.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

1 Q Now, at this point in the video I see Trooper English
2 turn around. It's about 2118:52.

3 To your understanding, is that the point at which
4 Trooper English found the cocaine in the vehicle?

5 A Yes, sir, it was.

6 Q And, again, you didn't participate in the hand search
7 of that vehicle, but where is it your understanding did
8 Trooper English locate that cocaine?

9 A In the driver's side door, the compartment at the
10 bottom of the door.

11 Q Once that was located there, you guys were taking the
12 defendant into custody at this point on the video, am I
13 correct?

14 A That is correct.

15 Q And you're detaining him based upon the belief that
16 that substance you found is powder cocaine or crack cocaine,
17 something like that?

18 A Yes, sir.

19 Q All right. Continue to fast forward here just for a
20 second. I'm actually gonna fast forward a little bit more,
21 but let me do ask you this, we're about at this point in the
22 video, 2119:26. We're a little bit more than 19 minutes
23 into this stop to the point where you initially stopped him
24 to the discovery of these drugs, am I correct?

25 A Yes, sir.

1 Q So, it's a little bit more than 19 minutes at this
2 point or right there around 19 minutes.

3 Let me back-up one quick second. There is Trooper
4 English carrying the substance.

5 Is that what the substance that's marked here in
6 State's Exhibit No. 2.

7 If I may approach, Your Honor?

8 THE COURT: You may.

9 Q Is that the same substance there, trooper?

10 A Yes, sir.

11 Q You placed that on the hood of your cruiser, am I
12 correct?

13 A That's correct.

14 Q As he placed it there, what type of packaging is it in?

15 A A plastic baggy.

16 Q Like a Ziploc style baggy?

17 A Yes.

18 Q Do you see that same Ziploc style baggy in State's
19 Exhibit No. 2?

20 A Yes, sir, Ziploc bag.

21 Q All right. I'm gonna fast forward just a little bit
22 more, and I'll stop it and ask you a couple more questions
23 here.

24 Right there, trooper, appeared to be a little other bag
25 there, am I correct, beyond the plastic bag with the cocaine

1 in it?

2 was there, looked like a little toiletry style bag on
3 the video?

4 A Yes, sir.

5 Q What was that?

6 A I do not recall what type bagging that was.

7 Q Was that the bag in which the cocaine was found in or
8 was the cocaine just in the packaging inside the door or do
9 you, or do you know?

10 A I do not recall.

11 Q Okay. We see you here pick up the cocaine and place it
12 into looks like a larger plastic bag, am I correct?

13 A That would be the evidence, the B.E.S.T. Kit.

14 Q The B.E.S.T. Bag inside State's Exhibit No. 2. If you
15 would look at State's Exhibit No. 2.

16 Do you see your, any type of identifying information to
17 make sure, make certain that that is that item that you
18 retrieved on the roadside there that night?

19 A Yes, it has my signature on it.

20 Q With the date?

21 A Yes, date and the serial number of the B.E.S.T. Kit.

22 Q Okay.

23 A Bag.

24 Q Trooper, you eventually sealed that item up and turned
25 it into the Spartanburg County Sheriff's Office, am I

D.G. Wilson - Direct examination
by Solicitor McCarty

1 correct?

2 A I did.

3 SOLICITOR MCCARTY: If I may approach, Your Honor, with
4 State's Exhibit No. 3.

5 THE COURT: You may approach.

6 Q Trooper, I'm gonna ask you to look here at Page Number
7 3.

8 Do you recognize what Page Number 3 is?

9 A Yes, sir.

10 Q Will you explain to the jury what that is when they,
11 when they have a chance to view that?

12 A Inside the B.E.S.T. Kit is a chain of custody. One
13 being the initial chain of custody, the Form B Rule 6, which
14 is this one here that I completed and signed.

15 Q Does it say to whom or to where you turned that item
16 over to?

17 A I made delivery of it above described substance to B.
18 Vaughn of the Spartanburg County Sheriff's Department.

19 Q And, and Lieutenant Vaughn, now Lieutenant Stuart, she
20 was the lady who testified here earlier, am I correct?

21 A Yes, sir.

22 Q And you hand delivered that to her on that date?

23 A Yes, sir.

24 SOLICITOR MCCARTY: All right. Your Honor, at this
25 time I would offer State's Exhibit No. 2 for admission into

1 evidence.

2 THE COURT: Objections?

3 MR. THOMPSON: None, Your Honor.

4 THE COURT: Okay. Without objection it will be
5 admitted.

6 (WHEREUPON, State's Exhibit No. 2 was received into
7 evidence at this time.)

8 SOLICITOR MCCARTY: Thank you. And, Your Honor, I
9 believe that's all the further questions I have.

10 well, let me ask you this, trooper, just -- and the
11 jury can see this at their convenience if they'd like.

12 As we continue to play this video on, it's just simply
13 the transport of Mr. Falls from booking purposes, purposes,
14 am I correct?

15 A That's correct.

16 SOLICITOR MCCARTY: All right. Then I have nothing
17 further, Your Honor, remaining for Trooper Wilson.

18 THE COURT: Mr. Thompson, your witness.

19 MR. THOMPSON: Please the Court, Your Honor.

20 THE COURT: You need the lights up or down?

21 MR. THOMPSON: I guess we'll keep them down.

22 THE COURT: All right. That will be fine. You may
23 proceed.

24 CROSS-EXAMINATION

25 BY MR. THOMPSON:

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 Q Trooper Wilson, you called Trooper -- I forgot his
2 name.
- 3 A English.
- 4 Q English. At 21:04, correct?
- 5 A Thereabout, yes, sir.
- 6 Q At that time all you knew was that you saw somebody
7 making some movements under the seat, right?
- 8 A I knew there was something not normal about this
9 traffic stop, yes, sir.
- 10 Q At 2104, right?
- 11 A Thereabout, yes, sir.
- 12 Q And you're calling the other trooper, Trooper English,
13 was because of the fact that he or you saw this movement
14 under the seat, right?
- 15 A Yes, sir.
- 16 Q Okay. And you knew very little about Mr. Falls at that
17 time, right?
- 18 A That's correct.
- 19 Q Now, later on you engage in a series of questions to my
20 client, correct?
- 21 A Yes, sir.
- 22 Q Okay. After you make that initial call.
23 And you called Trooper English knowing full well he is
24 a K-9 unit officer, right?
- 25 A We work together, yes, sir.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Okay.

2 A I had knowledge of that.

3 Q Okay. And you know that that dog is a drug dog,
4 correct?

5 A Yes, sir.

6 Q Okay. Now, let me go back to the beginning of this,
7 and I, Your Honor, I will be quicker today.

8 THE COURT: Beg your pardon?

9 That's okay. You're fine.

10 MR. THOMPSON: All right.

11 Q All right. Now, this is the beginning of the tape,
12 right?

13 A Yes, sir.

14 Q At that time you had positioned yourself behind
15 Mr. Falls' car, correct?

16 A That's correct.

17 Q All right. So, right there's the beginning?

18 A Yes.

19 Q So, while you're behind him, the only time he goes over
20 the fog line is when he signals and is getting off the road
21 in response to your blue lights, correct?

22 A That's at the point I activated my blue lights, yes,
23 sir.

24 Q So, you've testified earlier you can turn that camera
25 on at anytime, right?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A That's correct.

2 Q But you didn't turn it on until the blue lights came
3 on, right?

4 A They come on automatically.

5 Q Automatically.

6 Okay. So, you don't have any video footage of
7 Mr. Falls going across that fog line, do you?

8 A No, sir.

9 Q In fact, you testified that you were beside him when
10 you noticed he went over the fog line, right?

11 A That's correct.

12 Q Okay. So, it's your testimony that you could see his
13 tires go over a line in another lane when you're beside him?

14 A Yes, sir.

15 Q Okay.

16 A I was not directly beside him. I was traveling partly
17 behind him.

18 Q Okay. How far behind him?

19 A At least two, three, four car lengths before I caught
20 up to him.

21 Q Okay. Now, did he pass you at anytime?

22 A No, sir, I was going along with the flow of traffic.
23 Again, he was driving slow in the slow lane. So, I would of
24 been passing him at the time. I guess I'm driving faster
25 than he is.

1 Q Okay. So, you put in your statement now that you
2 encountered him at about the 60-mile marker, correct?

3 A Yes, sir.

4 Q Okay. And you pulled him over at the 62-mile marker,
5 correct?

6 A Thereabout, yes, sir.

7 (WHEREUPON, another portion of the video was played for
8 the jury at this time.)

9 Q Okay. Now, do you -- your testimony was that you
10 believed he was white lining is what you call it, right?

11 A Yes, sir.

12 Q Okay. So, you believe he could of got closer to that
13 guardrail?

14 A Absolutely. I walked in-between his vehicle and mine,
15 yes, sir.

16 Q Okay. Well, it's pretty tight when you walked through
17 there, and you're a good -- you guys are in good shape. So,
18 you're not overly big.

19 It's pretty tight in there, is it not?

20 A I had plenty of room.

21 (WHEREUPON, another portion of the video was played for
22 the jury at this time.)

23 Q Your leg's almost on the, on the guardrail, isn't it?
24 Right?

25 A That would of been a tight squeeze. I guess I would of

1 had to slide in there, but I was able to walk straight.

2 Q But from looking at that angle right there, your feet
3 are together, right?

4 A I think I could of stand another person beside me.

5 Q Okay. So, it's your belief that he's pulling over
6 there on purpose to make you go on the passenger side,
7 correct?

8 A I'm not sure what his thinking was, but --.

9 Q I asked what your belief was.

10 A At that point, not exactly.

11 Q Okay. Normally do you go to the passenger side of the
12 car or the driver's side?

13 A It all depends on the circumstance.

14 (WHEREUPON, another portion of the video was played for
15 the jury at this time.)

16 Q Okay. So, you received his driver's license and
17 registration right here, correct?

18 A I received -- if he handed it to me already I'm not
19 sure.

20 Q Trooper Wilson, now you're part of Rolling Thunder. I
21 pointed this out yesterday.

22 They're several different flashing lights up and down
23 I-85 in your camera range, right?

24 A Yes, sir, I see lights.

25 Q And I think I counted nine counting you that appeared

1 to me to be people pulled over by police officers.

2 Do you, do you recall if there were many cars pulled
3 over at that time?

4 A I disagree that all those lights that you see are law
5 enforcement lights.

6 Q Okay. So, you, you see those -- you don't think those
7 flashing lights are officers and I know you disagree with
8 that?

9 A Absolutely not.

10 Q What are those things -- what are all those flashing
11 lights up there do you think?

12 I mean this is Rolling Thunder I mean, and it's -- and
13 there's a lot more people pulled over in Rolling Thunder
14 than normal.

15 would you agree with me?

16 A There's a lot more officers out there.

17 Q Okay. So, this is a Tuesday night in February, is that
18 correct?

19 A Yes, sir.

20 Q Okay. And that's a flashing light there, right?

21 That's rewinding on me, but in your experience in
22 Rolling Thunder?

23 SOLICITOR MCCARTY: Can I interrupt for one second?

24 THE COURT: Yes, sir.

25 MR. THOMPSON: I'm trying to get it to play right here,

1 stay right beside it I guess.

2 (Pause.)

3 Q Okay. All right. Now, you pulled him over already.
4 You received his license and his registration and you had
5 him pull up behind the guardrail, correct?

6 A That's correct.

7 Q Okay. All right. You agree with me he got over as far
8 as he can this time, correct?

9 A No, sir, not as far as he could. There's plenty of
10 grass over there.

11 Q I mean as far as the pavement would go, right?

12 A Yes, sir.

13 Q You're gonna make a passenger side approach again,
14 right?

15 A That's correct.

16 Q This is his head right here, isn't it?

17 A That's a seat rest.

18 Q Seat rest.

19 Your Honor, if I could confer with co-counsel just a
20 second?

21 (Pause.)

22 SOLICITOR MCCARTY: Okay. Your Honor, we want to see
23 real quickly if we might with, maybe go substitute
24 Mr. Thompson's version of this. This might have a scratch
25 on the disk that's what's causing it to do this.

1 THE COURT: Okay.

2 SOLICITOR MCCARTY: If you'll bear with me just a
3 moment.

4 THE COURT: We'll take a moment.

5 (Pause.)

6 Q Okay. You're about to call in his license number, is
7 that correct?

8 A That's correct.

9 Q All right. And before that we heard some things over
10 the radio.

11 Did any of that mean anything to you?

12 Did it -- was it in reference to this stop of
13 Mr. Falls?

14 A The only thing I said on the radio was call dispatch
15 and ask for 1029, 1027, 1029, which is a driver's license
16 and records check.

17 Q Okay. So, you had done that and did they give you any
18 feedback?

19 A No, sir.

20 Q Okay. So, you hadn't received any feedback on that
21 request yet, right?

22 A No, sir.

23 Q Okay. What is 3-6-0-7-1-9?

24 A That is his driver's license.

25 Q His driver's license number?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A Yes, sir, it's North Carolina driver's license.
- 2 Q All right. And you put that on the warning here,
- 3 right, 3-6-0-7-1-9?
- 4 That's my copy.
- 5 A Yes, sir.
- 6 Q Okay. And what do you expect to find out when you send
- 7 that information in?
- 8 A Whether or not his license was suspended, and whether
- 9 or not he had any outstanding warrants, whether or not he's
- 10 wanted for anything.
- 11 Q Okay. And you're gonna stay in this car for almost two
- 12 minutes waiting on that feedback?
- 13 A Yes, sir.
- 14 Q Okay. Is that right there anything -- did that mean
- 15 anything to you pertaining to this stop?
- 16 A That was another officer asking for a driver's license
- 17 check out of Virginia.
- 18 Q Okay. So---
- 19 A That had nothing to do with this stop, no, sir.
- 20 Q Okay. Officer, I believe, I hope it doesn't jump, but
- 21 at this point you still heard nothing back from the license,
- 22 right?
- 23 A No, sir.
- 24 Q Okay. And you requested that he step back. I'm gonna
- 25 go over through here.

1 why did -- did his allegedly reaching under the seat
2 lead you to ask him to get out of the car?

3 A Yes, that was, that was part of it.

4 Q Okay.

5 A Along with the traffic noise.

6 Q Okay. And can you show me at what point you see him go
7 under the seat?

8 A Is that -- as I approached the vehicle there you'll see
9 me duck down to look in the vehicle. I'm observing him
10 doing something. Right there.

11 Q Right there looking at him.

12 Now, you made a similar move the first time you
13 approached the car.

14 Is that---

15 A Looking inside the car.

16 Q The first time?

17 A Yes, sir.

18 Q Okay. So -- but you, this time you say it's because
19 he's moving?

20 A Yes, sir.

21 Q Going under the seat?

22 A Yes, sir.

23 Q All right. Now, can you, can you show me in the car
24 where his, where his head's moving or can you see that?

25 A I don't think we can see that from this view.

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 Q It's your testimony earlier that it was something under
2 the seat, right?
- 3 A In that area.
- 4 Q How -- right here you're about to radio, right, and
5 sought backup?
- 6 A Again.
- 7 Q Huh?
- 8 A For the second time.
- 9 Q For the second time?
- 10 A Yes, sir.
- 11 Q Okay. So, your, your testimony is that you've already
12 sought backup?
- 13 A I, I've already called Lance Corporal English's call
14 number, and, again, I was trying to get on the radio there
15 to -- cause I didn't hear him respond.
- 16 Q Okay. So, so, you had already called him prior to
17 getting out of the car?
- 18 A No, sir, as soon as I approached the car I was looking
19 in the window, you'll see me get on the radio and call, call
20 his number on my initial approach. I think that's right
21 there.
- 22 Q All right. I'm having trouble understanding where you
23 called him. I'm sure it's---
- 24 A Right there before it paused.
- 25 Q Before you leaned down or after?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A After.
- 2 Q Here you're peering in.
- 3 A Right there.
- 4 Q Right there.
- 5 You're making the call there, right?
- 6 A Again.
- 7 Q So, it's your testimony, testimony that's your second
- 8 call to Trooper English, right?
- 9 A Second attempt, yes, sir.
- 10 Q Okay. You're reaching into his car right here, are you
- 11 not, right there?
- 12 A No, sir.
- 13 Q You're not?
- 14 A My hand may be, may be on the window sill, but I'm not
- 15 reaching in.
- 16 Q All right. You didn't return his license to him right
- 17 here?
- 18 A I did not.
- 19 Q You did not. Okay.
- 20 A No, sir, I would of needed his drivers's license to
- 21 complete the warning.
- 22 Q You got -- here in your hand is the, the documentation
- 23 you retrieved from him earlier, right?
- 24 A I'm not sure what all is in my hand, but I'm sure
- 25 that's some type of paperwork he gave me.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q All right. Now, all right -- you just -- is that when
2 you made a call there maybe?

3 A Saying 21, yes, sir, whatever his call number was, yes,
4 sir.

5 Q There you make another call, right?

6 A Yes, sir, Trooper English.

7 Q So, you're basically calling Trooper English cause you
8 seen movement in the car based upon maybe something going
9 under the seat, correct, and do you -- did you testify
10 earlier you had prior experience with this?

11 A Concern for my safety, yes, sir, I'm calling for
12 backup, yes, sir.

13 Q Okay. Okay. Now, he's discussing the pulling over.

14 Is that not normal for people to maybe argue with you a
15 little bit when you pull them over?

16 A Sometimes.

17 Q And you don't dispute you've already told him he would
18 be receiving a warning, right?

19 A That's what I told him, yes, sir.

20 Q Okay. Now, you still have not heard back from his
21 driver's license, correct?

22 A Have not.

23 Q Okay. And I'll show you a copy of the ticket, what we
24 marked as Defendant's Exhibit 1 yesterday.

25 Does that look like an accurate copy there?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A Yes, sir.

2 Q Okay. Now, you put his driver's license, you called it
3 in at 2-3-6-0-7-1-9, correct?

4 A Whatever his driver's license number is, yes, sir.

5 Q Okay. And that's Mr. Falls' driver's license, the
6 license of the person you pulled over, right?

7 SOLICITOR MCCARTY: Your Honor, I would object to him
8 showing the trooper the license at this point. I don't know
9 if it's the same license shown to him that night. I don't
10 think the trooper's testified he seized Mr. Falls' license
11 on that night. I don't know, I don't know if it's been
12 amended or changed.

13 THE COURT: Well, I'm gonna allow the officer to
14 testify if he thinks it's an authentic document or not. So,
15 I'll overrule the objection.

16 SOLICITOR MCCARTY: Okay.

17 THE COURT: He can, he can take a look at it and tell
18 us what it---

19 SOLICITOR MCCARTY: Thank you.

20 Q Is the, is the same address on that license that's on
21 that warning ticket?

22 A I can't make out the picture on there, but---

23 Q Same name?

24 A Jeffrey Falls, yes, sir.

25 Q Same address?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A There's no address on the warning.
- 2 Q No address on the warning?
- 3 A Let me look at my report.
- 4 Q Okay.
- 5 A And I can see where you're going with this, there was
- 6 a---
- 7 Q I ask you is that the same address.
- 8 A No, sir.
- 9 Q Huh?
- 10 A No, sir, there's no address on the warning.
- 11 Q Okay. And -- but is it from, from North Carolina?
- 12 A Yes, sir.
- 13 Q Okay. And do you see why you didn't hear back from
- 14 dispatch on that driver's license number?
- 15 Read the jury that, that driver's license number.
- 16 A 3-6-0-7-1-7-9.
- 17 Q All right. You left out a digit when you called it in,
- 18 didn't you, when you wrote it down?
- 19 A I would have to listen back to the---
- 20 SOLICITOR McCARTY: Your Honor?
- 21 THE COURT: Just---
- 22 SOLICITOR McCARTY: Just respectfully note requesting
- 23 my objection. The trooper called in the number he stated
- 24 and has testified on the night thereof. It's on the video.
- 25 That was the number he called again. I don't know if this

D.G. Wilson - Cross-examination
by Mr. Thompson

1 was the same license or not provided to the trooper that
2 evening.

3 THE COURT: I, I understand the objection, and the
4 trooper can, again, testify as to whether or not he believes
5 that an authentic document from what he saw that night.

6 SOLICITOR MCCARTY: Thank you.

7 THE COURT: So, I'm gonna overrule the objection.

8 SOLICITOR MCCARTY: Thank you, Your Honor.

9 Q So---

10 THE COURT: And he hasn't tried to introduce the
11 document itself at this point in time.

12 You may proceed.

13 Q What is that driver's license number?

14 A This number is 3-6-0-7-1-9. On my report here I have
15 that same driver's license number.

16 Q Okay. What's the, what's the number on this license?

17 A 3-6-0-7-1-9.

18 Q Does it not say 3-6-0-7-1-7-9?

19 A 7-1-7-9.

20 Is that not what I said?

21 Q You said 3-6-0-7-1-9 like you have on the warning here,
22 right?

23 A Okay.

24 Q What does that say I mean?

25 A 3-6-0-7-1-9, 7-1-7-9.

1 Q Right.

2 So, that's a six digit number you wrote on the warning,
3 right?

4 A Yes, sir.

5 Q How many digits is that number?

6 A Seven.

7 Q Seven digits.

8 So, basically your error in calling that number in is
9 what's led to all these delays on, on this stop, has it not?

10 A I'll say we go back to the video and see exactly what I
11 called in. I'm not sure.

12 Q Okay. Now, was that a six digit number you called in?

13 A That was an error on my part, yes, sir.

14 Q Okay. So, you would agree with me that this error
15 could of led to this undue delay on this traffic stop,
16 correct?

17 A I wouldn't say undue. It would have caused a delay in
18 getting his driver's license information back.

19 Q Sure.

20 You sure you didn't call that number in wrong on
21 purpose?

22 A Absolutely not.

23 (WHEREUPON, another portion of the video was played for
24 the jury at this time.)

25 Q That mean anything to you?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A That's another officer.

2 Q Another call.

3 Okay. At this point, what do you have right now?

4 All you have is his registration or that rental

5 agreement and his license, correct?

6 A Yes, sir.

7 Q Okay. And you've already called the K-9 unit?

8 A I called Lance Corporal English, yes, sir.

9 Q You have.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q That means nothing to you there, right?

13 A Another officer.

14 Q Okay. At that point you get out, correct?

15 A Yes.

16 Q And was there anything over the radio that prompted you
17 to get out of the car or was that just you?

18 A Well, I noticed that the, the radio traffic was, was
19 busy and it was taking unusually long to get the information
20 back. So, I decided to go on and proceed with my, finish
21 conducting my traffic stop until they gave me that
22 information back.

23 Q Okay. But -- and you testified earlier when Mr.

24 McCarty was talking to you that he, he was getting searched?

25 I mean you decided that already, correct?

1 A I didn't say he was getting searched. I said that I
2 had the belief there was some type of criminal activity
3 going on with inside that vehicle.

4 (WHEREUPON, another portion of the video was played for
5 the jury at this time.)

6 Q Okay. Did you just ask him if he worked today?

7 A I did.

8 Q Okay. Didn't you tell -- Mr. McCarty, when he asked
9 you, he had a different answer, didn't you?

10 Didn't you tell Mr. McCarty that right when you walked
11 up to the truck he said he just got off work or something?

12 Didn't you tell him that?

13 A No, sir, let me refer to my report here. After he told
14 me about the trucks I asked him did he work today. He
15 stated that he had a towing service, start talking about a
16 towing service or something.

17 Q And -- but---

18 A And I asked again if he worked and he stated yes.

19 Q Okay. Didn't you testify earlier though right when you
20 went in there he said I just got off work?

21 A Don't think so.

22 Q Okay. Okay. And my notes say that you said that he
23 told you he was just getting off work.

24 Do you not recall testifying to that?

25 A Asked if he had worked today, talked about the towing

1 service, asked again if he worked, stated yes, he -- yes, he
2 got off work.

3 Q Okay. So, you, you prompted the question about work
4 then, right?

5 A I asked, asked him if he worked today, yes.

6 Q Okay.

7 A After he told me about his towing service, yes.

8 Q And he'd got work clothes on, right?

9 A Appears to be.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q Trooper, you got the pad here to write the warning
13 ticket, correct?

14 A Yes, sir.

15 Q What's in his hand?

16 A That appears to be his wallet.

17 Q Okay. And it's 2104:34, correct?

18 A Yes, sir.

19 Q I'm gonna let this thing play through and let's see how
20 long it takes you to write the ticket.

21 You remember we went over the ticket yesterday, and you
22 agree there's nine words written on that warning, right?

23 A That's what you said you came up with, yes, sir.

24 Q Maybe ten, ten numbers.

25 And your, your normal traffic stop takes you about five

D.G. Wilson - Cross-examination
by Mr. Thompson

1 to seven minutes, right?

2 A Approximately.

3 Q All right. And we're gonna watch your hands and you
4 look. Let me know what you're doing here.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q Okay. Now, originally you told me you were pulling him
8 over because he was going slow, right?

9 A No, I didn't tell you I was pulling him over -- I said
10 he was driving kind of slowly. That is what I said.

11 Q Okay. He had stopped talking. He said sinus problems
12 and sat on your car, and then you asked him if he worked,
13 right?

14 A Yes, asked him if he was just getting off work.

15 Q Okay. So, at this point here -- you testified earlier
16 that he was rambling on, but he's -- you're the one firing
17 the questions away right here, right?

18 A We, we were having a conversation together, yes, sir.

19 Q Well, I mean you're questioning and he's answering, is
20 that right?

21 I mean that's what I'm trying to get to.

22 A We're talking.

23 Q All right. But that's -- he's not really rambling.
24 He's just answering your questions, right?

25 A I mean if you pull out some specific points, I mean

1 he's asking him questions. But at other points he's
2 creating questions or answers or making conversations that I
3 did not ask him.

4 (WHEREUPON, another portion of the video was played for
5 the jury at this time.)

6 Q All right. You're returning to the car now, right?

7 You still don't have the warning completed, right?

8 A No, sir.

9 Q Okay. You got to go in the car and get the longitude
10 and latitude you said, right?

11 A Yes, sir.

12 Q All right. So, other than that, you know the driver's
13 license number, you know his name, you know what you're
14 gonna charge him with, correct?

15 A Yes, sir.

16 Q Okay. Okay. Now, you went through a series of
17 questions about his trip from Charlotte to Atlanta back to
18 Charlotte, correct?

19 A I asked him about his days travel, yes, sir.

20 Q Okay. And he testified or he, he told you he worked
21 till twelve o'clock in Charlotte, correct?

22 A He left around 12:00, yes, sir.

23 Q All right. And then he went to Atlanta, correct?

24 How long would that take him based upon your experience
25 as a trooper?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A I'm assuming four, four and a half hours, something
2 like that. I'm not sure.
- 3 Q Okay. Then he said he hung out with this cousin for a
4 couple of hours, correct?
- 5 A Correct.
- 6 Q And then he's coming back, he's in Spartanburg.
7 So, he would be from Spartanburg to -- I mean from
8 Atlanta to Spartanburg would take him how many hours?
- 9 A I never drove from there. I'm not sure.
- 10 Q All right. But if it takes him four hours from
11 Charlotte, it would probably take three hours from Atlanta
12 to Spartanburg, right?
- 13 A Fifty something miles I guess depending on traffic,
14 yes, sir.
- 15 Q So, this timeline's pretty accurate, correct?
- 16 A Yes, sir.
- 17 (WHEREUPON, another portion of the video was played for
18 the jury at this time.)
- 19 Q All right. Do you recall in your report where you said
20 his lips turned white at some point?
- 21 A White, cotton mouth, yes, sir.
- 22 Q Okay. Your testimony is that gentleman over there, his
23 lips turned white?
- 24 A Yes, sir.
- 25 Q And why doesn't it show up on this video?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A I guess you got blue lights flashing, shining in his
2 face. It's not high def. But you can see him constantly
3 licking them. So, they definitely are dry.
- 4 Q You say he's licking his lips?
- 5 A Yes, sir.
- 6 Q Okay. February 20th, right?
- 7 A Yes, sir.
- 8 Q Middle of winter?
- 9 A I don't remember the temperature.
- 10 Q Possibly with that he could have chapped lips, couldn't
11 he?
- 12 A It's possible, yes, sir.
- 13 (WHEREUPON, another portion of the video was played for
14 the jury at this time.)
- 15 Q All right. And what was that call?
- 16 A I didn't get to hear it all.
- 17 Q Oh, sorry.
- 18 A Any unit near 62 north, myself.
- 19 Q Okay. So, you're calling---
- 20 A I'm calling.
- 21 Q ---somebody else to come around?
- 22 A Yes, sir.
- 23 Q Okay.
- 24 A It's taking a long time for Lance Corporal English to
25 respond.

1 Q All right. So, but, in fact, it is Mr. English that
2 shows up, right---

3 A Yes, sir.

4 Q ---later on.

5 Okay. He's putting his wallet back in his pocket,
6 correct?

7 A Yes.

8 Q Okay. And it's your testimony you did not return his
9 driver's license to him?

10 A Yes, sir.

11 Q Well, is it normal that people have their wallet in
12 their hand and put in their pocket without their license
13 through your experience as the trooper?

14 A Yes, sir, sometimes they hand us these, we call them
15 get out of jail free cards, attorney cards. I don't know
16 what he's looking for in his wallet. I don't know what he's
17 got in his wallet with him at this time.

18 (WHEREUPON, another portion of the video was played for
19 the jury at this time.)

20 Q Okay. Okay. Looks like fog's coming out of his mouth,
21 it's cold, he's wanting his hat, correct?

22 A He's wanting to get his hat, yes, sir.

23 Q And, and he didn't ask to go to the car and get it?
24 He asked you to get it, right?

25 A No, sir, he asked could he get his hat. I advised him

1 that I could get it for him.

2 Q So, you got to finish filling that warning out, right?

3 A That's correct.

4 Q You're five minutes into this, writing this warning,
5 you still haven't written it, is that what you're telling
6 us?

7 A No, sir, I do not.

8 Q What are you looking for right there?

9 You look up the road.

10 A I'm sorry?

11 Q What were you looking for when you looked up the road?

12 You testified you got to keep your eye on Mr. Falls,
13 but you're looking up the road.

14 What are you looking for?

15 A Maybe a vehicle ran off the road behind us. I'm not
16 sure.

17 (WHEREUPON, another portion of the video was played for
18 the jury at this time.)

19 Q All right. So, you're giving the warning back to
20 Mr. Falls, correct?

21 A In the process, yes, sir.

22 Q Okay. And then you pull it back when he says you can't
23 search the car, right?

24 A Well, he never says if I could or if I couldn't.

25 Q But -- okay. But that, that receiving that ticket,

1 this stop's over as far as the violation goes with the, the
2 fog line, correct?

3 A If you're asking me if I wrote him a warning for
4 failing to maintain his lane, yes, I did.

5 Q And, and the purpose of that stop is done at this
6 point, correct?

7 A I'm, I'm not getting what you're saying, what you're
8 asking.

9 Q The reason you want to search that car is it's got
10 nothing to do with a fog line violation, right?

11 A The reason I want to search that car is because I
12 believe there's some type of criminal activity going on.

13 Q Okay. But the fog line issue is done now?

14 A No, that would have nothing to do with the fog line if
15 that's what you're asking me.

16 Q Okay. That's what I'm asking you. Thank you.

17 (WHEREUPON, another portion of the video was played for
18 the jury at this time.)

19 Q All right. He said if I say no can I leave, right?

20 A Correct.

21 Q And you basically said he can't leave until the dog
22 does a walk around, correct?

23 A I told him I had a K-9 officer in route. I was gonna
24 employ his dog around the car, yes.

25 Q Okay. So, he's not free to leave then?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A No, sir.

2 (WHEREUPON, another portion of the video was played for
3 the jury at this time.)

4 Q Okay. Now, Officer, Trooper Wilson, you indicate that
5 you had a dog on the way, right?

6 A Yes, sir.

7 Q All right. I thought you testified earlier you called
8 any unit?

9 Was -- any unit that it had a dog?

10 A I testified initially that I called Lance Corporal
11 English.

12 Q Right.

13 Had you given up on him, hadn't you?

14 A He is a K-9 officer, yes, sir.

15 Q Okay. And, so, it would be known if he's a K-9 officer
16 in Rolling Thunder he's probably getting calls up and down
17 the road, right?

18 A There were numerous K-9 officers there. I don't know.

19 Q All right. So -- but when you made the call for any
20 unit, that could of been a person with or without a dog,
21 correct?

22 A That's possible.

23 Q Okay. Well, you, you're, you're holding my client was
24 contingent upon that dog going around the car, wasn't it?

25 A No, sir.

1 Q Didn't you just say that on the tape?

2 A I told him that I had one in route.

3 Q Okay. And that --?

4 A That being Lance Corporal English.

5 Q Okay. well -- but when you summoned any unit, you
6 could of had somebody show up that didn't have a dog, right?

7 A That's possible and I would of felt much safer not
8 knowing what he had in his vehicle.

9 Q Okay. And let's say -- but if the, if a unit shows up
10 with a dog, you -- were you gonna search that car anyway?

11 A We would of called for another K-9.

12 Q Okay. So that whatever you got to do, you're gonna
13 prolong that stop until a K-9 shows up, correct?

14 A No, sir.

15 Q Well---

16 A I had not made a decision to search this car or to call
17 a K-9 until he refused the search.

18 Q So, you didn't decide that you needed to search his car
19 until he said you couldn't search his car, is that your
20 testimony?

21 A I didn't decide whether or not I needed a K-9 until he
22 couldn't make up his mind whether or not he wanted to allow
23 me to search his car.

24 Q Okay.

25 A Does that answer your question?

- 1 Q well, it really doesn't.
- 2 You summoned any unit, right?
- 3 A At one point, yes, sir.
- 4 Q At -- that's the last call you made, right?
- 5 A Yes, sir.
- 6 Q And -- but you weren't gonna let him leave until a K-9
- 7 showed up is what you're saying, is that correct?
- 8 A He wasn't gonna leave until I searched his car. That's
- 9 what I'm saying.
- 10 Q Okay. So, wouldn't you need a warrant to search his
- 11 car?
- 12 A Without his consent, a warrant or probable cause.
- 13 Q Okay. And without that dog, you don't have probable
- 14 cause, right?
- 15 A The dog allowed me to do a free air sniff, yes, sir.
- 16 Q So, that rises to the level of probable cause, right?
- 17 A Yes, sir.
- 18 Q Okay. So, you're basically telling the jury and the
- 19 Court today that he could not leave until a dog showed up,
- 20 correct?
- 21 A What I'm telling the jury is that there was criminal
- 22 activity in that vehicle and I was gonna find out what it
- 23 was.
- 24 Q Okay. Regardless of whether you, regardless if you had
- 25 to hold him on the side of the road for another 30 minutes,

1 right?

2 A I wasn't gonna do anything illegal, immoral, or
3 unethical.

4 Q But you do admit my assumption that you're, you're
5 holding him waiting on that dog, right?

6 A Not on the dog. I'm waiting on Lance Corporal English.

7 Q All right. Okay. And Lance Corporal English had the
8 dog?

9 A Just happens to be a K-9.

10 Q Oh, okay. So, you -- but you told him you had a K-9 on
11 the way?

12 A That was Lance Corporal English.

13 Q Okay. So, I'm not understanding this. You're---

14 WITNESS: Your Honor, I believe the question's been
15 asked and answered I feel.

16 THE COURT: Well, your lawyer can make an objection.
17 He hasn't, he hasn't done that at this time.

18 Q Did you tell Mr. Falls a dog was on the way?

19 A I told him I had a K-9 in route, yes, sir.

20 Q You just said he could not leave, is that correct?

21 A I said that he was not gonna leave until I found out
22 what type of criminal activity was in that vehicle.

23 Q Okay. And you said you made that first call to Lance
24 Corporal English right when you, when you went to that car
25 the second time, correct?

1 A That's correct.

2 Q Based upon the seat action, correct?

3 A Yes, sir.

4 (WHEREUPON, another portion of the video was played for
5 the jury at this time.)

6 Q Okay. All right. It's a free air sniff, correct?

7 Is that a free -- is that what he's conducting, a free
8 air sniff?

9 A Right, he deployed the dog in the vehicle, yes, sir.

10 Q Okay. Couple things I want to go over right here with
11 you.

12 Your job is to watch him, right?

13 A Yes, sir.

14 Q Where do you go right here?

15 A My job is also to look out for my officer. Lance
16 Corporal English is running the dog around the vehicle.
17 We're close to the roadway. So, I have to go also to watch
18 the traffic coming to make sure that nothing happens. We
19 don't want a K-9 struck by oncoming vehicle.

20 Q That's what you---

21 A That's what I'm doing.

22 Q Going, going where you're positioning yourself now?

23 A Right towards the roadway facing Mr. Falls where I can
24 look down the roadway and keep an eye on him at the same
25 time to make sure no vehicle's oncoming.

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by Mr. Thompson

1 Q You can't do that right here when the camera can see
2 you?

3 Wouldn't that be a better spot to look at him and also
4 correct---

5 A That would of been the perfect scenario---

6 SOLICITOR MCCARTY: Your Honor, I object. He's asking
7 an argumentative question.

8 THE COURT: Sustained.

9 Q But you don't go in the, into the car here, right?

10 A No, sir, I'm standing at the roadway.

11 Q Okay. And you remember this statement you gave, the
12 detailed statement of investigation?

13 A Yes, sir.

14 Q Okay. You said, Line 3, Trooper English deployed Zena
15 on the scene and obtained a positive alert by scratching on
16 the driver's door of the vehicle.

17 Is that what that says in your report?

18 A Yes, sir.

19 Q Okay. Please tell me when this dog scratches on the
20 driver's side door?

21 SOLICITOR MCCARTY: Your Honor, I'm gonna object at
22 this point to this question to Trooper Wilson. Trooper
23 English can tell when the alert occurred.

24 MR. THOMPSON: Your Honor, it's in his report.

25 THE COURT: I understand that. Maybe we ought to first

1 ask him what the basis for that statement is in his report
2 or the foundation for it is. So, I'll allow you to do that
3 and then we'll -- if you want to continue your objection
4 after that question, I'll entertain it.

5 Q Okay. Did you put in your report that the dog alerted,
6 the dog, the vehicle and obtained a positive alert by
7 scratching at the diver's side door of the vehicle?

8 A That's what I wrote in my report, yes, sir.

9 Q Okay. What does that mean?

10 A Evidently I'm assuming that I got this information from
11 Trooper English as to where the dog alerted.

12 Q Okay. So, you didn't see the dog alert?

13 A I would of been paying attention to Mr. Falls and the
14 traffic. I can't say that I did see exactly where he
15 alerted other than looking at the video here.

16 Q Okay.

17 THE COURT: After that, I'll sustain the objection.

18 MR. THOMPSON: Okay.

19 THE COURT: This witness has no independent knowledge
20 of that.

21 MR. THOMPSON: Okay.

22 THE COURT: It would be hearsay.

23 Q On this video, does the dog scratch the driver's side
24 door?

25 A I'd have to see.

1 (WHEREUPON, another portion of the video was played for
2 the jury at this time.)

3 Q And in your report where does it indicate, indicate the
4 drugs were found?

5 A In the driver's, driver's door of the vehicle.

6 Q Okay. And you testified earlier there was a little
7 cargo area or something in the driver's door, right?

8 A Yes, sir.

9 Q Okay. And that's where it was found, from in your
10 report, your report says it was found?

11 A Again, I would have to rely on information, information
12 that Lance Corporal English gave me.

13 (WHEREUPON, another portion of the video was played for
14 the jury at this time.)

15 Q Okay. What did he just do?

16 A Looks like he removed the rear cushion from the rear
17 seat, rear seat cushion.

18 Q Removed the back seat.

19 (WHEREUPON, another portion of the video was played for
20 the jury at this time.)

21 All right. All right. Trooper Wilson, in earlier
22 testimony you called Mr. English in very early on in this
23 stop, right?

24 A Yes, sir.

25 Q Basically all you knew you had a black male driver, and

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by Mr. Thompson

1 you looked, and he looked like he was putting something
2 under the seat, and you, for officer safety, you summoned
3 the K-9 unit or officer, I can't remember his name again,
4 English?

5 A Lance Corporal English, yes, sir.

6 Q Okay. At that point you made up your mind to bring
7 that dog in, correct?

8 A At that point, no, sir.

9 Q That's who you summoned though, right?

10 A Yes, sir.

11 Q And at that time you could of made, you could of made
12 the call you made later, couldn't you, any unit would come
13 and show up, right?

14 A Yes, sir, at that time I worked with Lance Corporal
15 English on a day-to-day basis. We both were assigned to the
16 low state A.C.E. Team at that time. We worked as one unit.

17 Q You're partners, right?

18 A Yes, sir, team members.

19 Q Team members.

20 Okay. And watch each other's back, right?

21 A Yes, sir.

22 Q Okay. Now, the remainder of this tape -- let me see if
23 I can speed through this here.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

1 Now, Trooper English searches the car further, right?

2 Is that what he's doing there?

3 A Yes, sir. He's getting ready to take a picture of what
4 he's found.

5 Q And, again, you're repositioning yourself to keep watch
6 on traffic---

7 A Watch traffic, yes, sir.

8 Q ---right?

9 You flash your light out or something for that?

10 A If, if they're not moving over, yes, sir.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q All right. 2108, you're arresting my client, correct?
14 I mean 2119:08?

15 A Nineteen, yes, sir.

16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)

18 Q Okay. Okay. A minute and 19 seconds later Officer
19 English's back on the camera, right?

20 A Yes, sir.

21 Q Okay. So, he's gone quite, for over a minute.

22 You agree with that, right?

23 A What was 119:08. Now it's 21, I mean 2119:08. Now,
24 it's 2120:17, yes, sir.

25 Q Little over a minute.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 (WHEREUPON, another portion of the video was played for
2 the jury at this time.)

3 Q Okay. And he's gonna search the car thoroughly, and
4 you'd agree with my assessment that nothing else is found,
5 right?

6 A No, sir.

7 Q Okay. And---

8 SOLICITOR MCCARTY: Your Honor, I'm gonna just object
9 to ask any continued line---

10 THE COURT: Just a second. He's gonna have to shut
11 that off.

12 Stop it for a minute, Mr. Thompson.

13 MR. THOMPSON: I didn't hear, Your Honor.

14 SOLICITOR MCCARTY: Your Honor, I'm just gonna object
15 and ask if there's any further continuing line of question
16 Mr. Thompson might have. He's asked the trooper if anything
17 else is found. State's Exhibit---

18 THE COURT: Are there some other questions concerning
19 the end of the tape?

20 MR. THOMPSON: Yes, Your Honor.

21 THE COURT: Beg your pardon?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: Okay. I'm gonna let him go forward.

24 SOLICITOR MCCARTY: Yes, sir.

25 (WHEREUPON, another portion of the video was played for

1 the jury at this time.)

2 Q All right. This is what the State introduced as
3 Exhibit 1, correct?

4 A Yes, sir.

5 Q Okay. And that's the Ziploc baggy, right?

6 A That's correct.

7 Q Okay. Why is -- the, the other bag, why was is it not
8 turned in as evidence?

9 A The blue nylon bag?

10 Q Yes, sir.

11 A I don't know if it was turned in as evidence, but they
12 can't analyze a nylon bag. It could have been turned in for
13 safekeeping. I'm not sure.

14 Q Okay. Well, they could find residue on it, can they
15 not?

16 A It's possible.

17 Q So, you don't know what happened to the blue bag, is
18 that correct?

19 A No, sir, I do not.

20 (WHEREUPON, another portion of the video was played for
21 the jury at this time.)

22 Q Okay. Did you pull over anybody else that night,
23 officer?

24 SOLICITOR MCCARTY: Objection, Your Honor. Relevance.

25 THE COURT: Sustained.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Let me go over your statement briefly and then I'll be
2 done.

3 Okay. I don't know how to turn this off.

4 THE COURT: Bring the lights up please.

5 Q Trooper Wilson, how long had you, had you been a
6 highway patrolman when you made this arrest?

7 A I came on the patrol May of 2002. So --.

8 Q How many drug busts would you say you've been involved
9 with prior to that?

10 A Drug arrests?

11 Q Yes.

12 A I'm not sure.

13 Q Hundreds?

14 A I'm not sure.

15 Q You don't know.

16 Okay. And at this time you were team members with
17 Agent English, I mean Officer English, correct?

18 A Yes, sir, I was assigned to the low state as is he.

19 Q And he's, he's always had a K-9 with him or most of the
20 time he was a K-9 officer, correct?

21 A Yes, sir.

22 Q All right. And they -- I guess those guys are over the
23 dogs then. Most people -- I wouldn't want to be a dog,
24 carry the dog around.

25 Now, you were talking about you believed that Mr. Falls

1 was giving you a story that didn't add up and that type of
2 thing is unusual I think is your wording in some of the
3 things he was saying, is that correct?

4 A Not what I see with the every day normal motoring
5 public, right.

6 Q Okay. The search of the, the car, have you, have you
7 witnessed that before?

8 A What you mean?

9 Q By Officer English.

10 A Have I witnessed him search a car before?

11 Q Yes.

12 A Yes, I've been his back-up officer, yes, sir.

13 Q All right. And is that unusual that he pulls the seat
14 out and does all that?

15 A Yes, sir, it all depends on the stop. Where -- like I
16 said, we're trained in false compartments, people hiding
17 stuff in natural voids, electronic traps. You name it we've
18 just about found it.

19 Q Okay. And so that you wouldn't consider that an
20 unusual search?

21 A Not unusual at all.

22 MR. THOMPSON: Okay. I may be done, Your Honor. I
23 apologize.

24 THE COURT: Yes, sir.

25 (Pause.)

1 MR. THOMPSON: No further questions, Your Honor.

2 THE COURT: Can you approach?

3 SOLICITOR MCCARTY: Yes, sir.

4 (Whereupon, a bench conference was held at this time
5 out of the hearing of the jury.

6 THE COURT: Redirect.

7 SOLICITOR MCCARTY: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY SOLICITOR MCCARTY:

10 Q Sergeant Wilson, I'll gonna be brief and real quick.

11 This all occurred back in Spartanburg County back in
12 February of 2007, am I right?

13 A Yes, sir.

14 Q You've been a trooper at that point for at least five
15 years, but you had prior law enforcement experience,
16 correct?

17 A Yes, sir.

18 Q Mr. Thompson asked you about this delay, supposed delay
19 in writing this warning ticket out as you're talking with
20 the defendant. He's asking about putting your pen to paper.
21 Why were you not head down writing?

22 A I was making sure that I was giving Mr. Falls my
23 attention. I didn't want to be disrespectful to him with
24 him answering my questions. I didn't want to ignore him. I
25 wanted to make sure I understood what he was saying.

1 Q My next question involves briefly what we talked about
2 with Trooper English.

3 Your initial call was just for officer safety, am I
4 correct?

5 A That's correct.

6 Q Called your partner or your team member who happens to
7 be a K-9 handler, but that was the first person you called,
8 am I correct?

9 A Yes, sir.

10 Q At that very moment had you made a decision whether or
11 not you felt there was criminal activity---

12 MR. THOMPSON: I think that's been asked and answered
13 on direct, I mean in cross.

14 THE COURT: Well, it's been asked on cross. He's on
15 redirect. He can go into things that were gone in on cross.

16 Go ahead.

17 Q At the moment when you initially called Trooper English
18 after seeing the defendant reach down into the car, had you
19 made a decision at that point whether you would need to use
20 or deploy his K-9 for a search of that vehicle?

21 A No, sir, I did not make a decision on the K-9.

22 Q Thank you.

23 Nothing further, Your Honor.

24 THE COURT: Recross.

25 RE CROSS EXAMINATION

1 BY MR. THOMPSON:

2 Q You testified earlier you specifically summoned Officer
3 English, correct?

4 A That's correct.

5 Q And you stated earlier that you knew he had a K-9 with
6 him, correct?

7 A Working with him for a few years, I'm aware he is a K-9
8 officer, yes, sir.

9 Q Right.

10 And you -- you were aware that as long as you're
11 writing that ticket he could do a free air sniff, correct?

12 SOLICITOR MCCARTY: Your Honor, I'm gonna object. That
13 wasn't within the scope of cross-examination.

14 THE COURT: I'll let him ask him.

15 A In if I -- if my intent was to prolong the stop and
16 hold him there I would of never asked for a K-9 to come and,
17 and ask for consent to search the car. I would of prolonged
18 the stop even longer, and while I was still there, as he
19 said, delaying the stop, allowed Lance Corporal English to
20 run his dog around the car if that was my intent.

21 Have I answered your question?

22 Q I really didn't understand it.

23 Can you repeat it?

24 A If it was my intent to prolong the stop I would of
25 never summoned Lance Corporal English to come. I'm sorry.

1 I would of never asked for consent to search the car. I
2 would of just, as you stated, prolonged the stop and allowed
3 Lance Corporal English to come and run his dog around the
4 car. That was not my intent to prolong the stop.

5 Q And I think my question was you're aware that if you're
6 writing that warning he, he has, he can go and do a free air
7 sniff?

8 A The law states that as long as an officer is conducting
9 business, yes, the free air sniff can be done if that's your
10 question.

11 Q Okay. And you knew that, right?

12 A Yes, sir.

13 Q You knew that when you summoned Officer English?

14 A That was not a thought in my mind.

15 Q But you knew that, right?

16 A I had knowledge of it, but I was not thinking about it.

17 Q Thank you.

18 No further---

19 THE COURT: Anything further?

20 SOLICITOR MCCARTY: No, Your Honor.

21 THE COURT: All right, sir. You may step down.

22 WITNESS: Thank you, judge.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, we'll break for lunch at this time. I'm gonna give
25 you the same instructions I gave you when you left the

1 courthouse last night, and that is not to try to gather any
2 information outside the courthouse. Don't listen to, watch,
3 or read any media reports. Don't discuss the case with
4 anyone. Don't allow anyone to discuss the case with you.

5 We're gonna resume the trial at three o'clock this
6 afternoon. So, be back in the jury room at that time, and
7 you may retire at this time.

8 Have a good lunch.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. The trial of this case has
12 begun at this time. Therefore, the terms of the bond have
13 been satisfied. The defendant will be in custody during our
14 lunch break.

15 Court's in recess until two o'clock. Thank you very
16 much.

17 SOLICITOR MCCARTY: Thank you, Your Honor.

18 (WHEREUPON, Court was in recess for the lunch hour.)

19 THE COURT: All right. Mr. McCarty, is the State ready
20 to proceed?

21 SOLICITOR MCCARTY: State is, Your Honor.

22 THE COURT: Is the defense ready to proceed?

23 MR. THOMPSON: Yes, Your Honor.

24 THE COURT: All right. Bring the jury in.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. The record will reflect the
3 jury has returned to the courtroom.

4 I trust everyone had a good lunch.

5 Did anyone have any difficulty in following my
6 instructions during the lunch hour?

7 If you did, please stand.

8 (No response.)

9 THE COURT: It appears that everybody has been able to
10 follow the Court's instructions.

11 The State's in the process of presenting its evidence.
12 You may call your next witness.

13 SOLICITOR McCARTY: Thank you, Your Honor.

14 Please the Court, I'll call Trooper Steve English.

15 THE COURT: Come forward to my left and be sworn.

16 A. ENGLISH, having been first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat please, and once you're seated,
19 sir, I'd ask that you state your name.

20 WITNESS: Steven English.

21 THE COURT: Mr. McCarty, your witness.

22 SOLICITOR McCARTY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY SOLICITOR McCARTY:

25 Q Trooper English, where are you employed?

A. English - Direct examination
by Solicitor McCarty

1 A For the South Carolina Highway Patrol.

2 Q Are you a member of any specialized units within the
3 Highway Patrol?

4 A Yes, sir, I'm currently assigned to the A.C.E. Team,
5 Aggressive Criminal Enforcement Unit.

6 Q And within the A.C.E. Team, do you have a specific
7 function?

8 A I'm a K-9 handler for the A.C.E. Team.

9 Q How long have you been a K-9 handler?

10 A I got my first dog in 1999. I worked for Colleton
11 County Sheriff's Office.

12 Q Okay. So, you have some prior law enforcement
13 experience other than just being with the Highway Patrol, is
14 that correct?

15 A Yes, sir, I started in 1997.

16 Q So, since 1997 you've been gainfully employed as a law
17 enforcement officer in this state?

18 A Yes, sir, that's correct.

19 Q All right. You stated you got your first dog when you
20 worked for Colleton County in 1999, correct?

21 A Yes, sir.

22 Q When did you join or became a K-9 handler for the
23 Highway Patrol?

24 A In 2003.

25 Q 2003.

A. English - Direct examination
by Solicitor McCarty

1 what -- at the time, what was the dog that you had?

2 what was the dog's name?

3 A My first dog I, I tragically lost, but his name was
4 Eris. I had him just a few months. He had some health
5 complications and passed. My second K-9 was K-9 Zena --

6 Q Okay.

7 A -- the dog in question today.

8 Q And Zena was the dog used on February 20th, 2007, am I
9 correct?

10 A That's correct.

11 Q And that was the same dog that was used to search the
12 defendant's vehicle on the night of that February 20th?

13 A Yes, sir.

14 Q Okay. And, of course, that K-9 search also occurred in
15 Spartanburg County, am I correct?

16 A Yes, sir.

17 Q All right. Trooper, what was Zena used -- are you
18 currently still working with Zena?

19 A Zena's been retired since late 2009. She's now a house
20 pet of mine. So --

21 Q Okay. So, she lives in your home?

22 A That's right.

23 Q What was Zena trained to do?

24 A Zena was trained in narcotics. She was trained to the
25 odor of cocaine, crack, marijuana, methamphetamines, and

A. English - Direct examination
by Solicitor McCarty

1 heroin. She was certified each year in those five drugs.
2 We certify through a national company called Hornbeck.
3 Every month we would do K-9 training with the dogs to keep
4 them up as well as their normal job functions in the
5 day-to-day traffic stops.

6 Q So, this certification, does it require a certain
7 amount of additional training every year with your dog?

8 A That's right. We have to go into a controlled location
9 where they put out contraband, five different drugs and
10 different scenarios. Some are in buildings, some are in
11 cars, and then we have to bring the dog in. They have to
12 make sure that I can recognize that the dog smells of the
13 odor of the drugs, and that the judge or the handler can
14 determine the dog knows the smell as well as recognizes it.

15 Q And you're taught to recognize these indications that
16 your dog would give, is that correct?

17 A That's correct.

18 Q How would, how -- explain to the jury what type of
19 indication a dog would give a handler to let them know that
20 they smell something they're trained to smell.

21 A Normally with the drug dogs there's two different types
22 of indications. A passive alert, which means once the dog
23 smells the odor of drugs or narcotics he will sit down, and
24 that's his sign that they smelled that odor.

25 In this case our dog, at the time, were aggressive

A. English - Direct examination
by Solicitor McCarty

1 alert, which means they will bite, scratch, bark, anything
2 of that nature. It's, it's more the -- they, they really
3 get excited, scratching things. There's different reasons
4 for using both dogs. If you worried about damaging property
5 or damaging certain things, you might want that passive dog
6 such as a bomb sniffing dog. You obviously wouldn't want
7 him scratching stuff. So, you have -- but now we have more
8 and more of our dogs are becoming passive dogs, yes.

9 Q All right. Trooper, when you had, when you had Zena
10 and you were training and working with her, how often would
11 you train with her beyond her, your normal day-to-day use
12 with her out on the roadways?

13 A We would try to train, within reason, at least twice a
14 month every other week, and normally that would be an eight
15 hour training day where our master handler would come in,
16 hide drugs on cars at a lot. We'd bring the dogs not
17 knowing where they were, and our master handler would watch
18 us and the dogs and make sure everything was on track. And
19 if there was any work needed in any particular area we'd do
20 that.

21 Q And in addition to all this training, Zena also worked
22 with you on the roadside day-to-day, am I correct?

23 A Yes, sir.

24 Q Did you deploy her frequently during the course of your
25 duties as being a Highway Patrolman?

A. English - Direct examination
by Solicitor McCarty

1 A Yes, sir.

2 Q So, the night of February 20th, 2007, that wasn't her
3 first deployment to look for -- and I'm saying her, Zena is
4 a female, am I correct?

5 A Correct.

6 Q Okay. That was not her first deployment, was it?

7 A No, sir, I had her myself since 2003 and she had had a
8 previous handler before that. So, she had been around for
9 quite a while. I'm not sure of her exact age, but --.

10 Q Let me ask you about practical experience.

11 what, if you recall, probably about the largest amount
12 and type of drugs she found and what's probably the smallest
13 amount and type of drugs that she had indicated on, and I
14 say indicated, not found.

15 A I know she found 350 pounds of marijuana. I know she
16 found seven kilos of heroin, and she's found over a million
17 dollars in currency in one stop. So --.

18 Q And is she trained to sniff for currency, for money?

19 A No, she's trained to sniff for the odor of drugs coming
20 from the currency. Most of the time the same compartments
21 and packing used to move the drugs is where they move the
22 money, and that's where the dog will alert from.

23 Q Now, with Zena, I said -- I wanted to say indicate as
24 opposed to find.

25 Is there a difference between being able to indicate

A. English - Direct examination
by Solicitor McCarty

1. about the presence of an odor and being able to necessarily
2 zero in on an odor that you---

3 A That's correct. The dog indicates to the odor of the
4 drug. Not the drug itself. For example, if you had a car,
5 you had drugs in, you took the drugs out, drove the car down
6 the road, the dog will still indicate because the odor's
7 still in the car, but it's -- the drugs may not necessarily
8 be there. You have to go on the scent base coming from the
9 car.

10 As far as where the dog might indicate on the car, it
11 would be similar to bringing a bag of popcorn. If I held
12 the bag up here, the scent's still gonna be in the back of
13 the room. The dog may come in and indicate in the back
14 because the wind may be taking the smell or whatever from
15 that direction. The dog never tells us exactly where it's
16 at. Just that he smells, he or she smells an odor, and then
17 they will indicate accordingly.

18 Q Okay. Have you testified about your use of Zena before
19 in other Trial Courts?

20 A Yes, sir.

21 Q And has she been found reliable in those other courts?

22 A Yes, sir.

23 Q Trooper English, it's a good point you just brought up
24 about the smell or the odor using the example of popcorn.

25 So, what you're saying is that the dog -- can the dog

A. English - Direct examination
by Solicitor McCarty

1 sometimes specifically find where the drugs are zero and in
2 on them?

3 A Sometimes. It just depends on the permeation of the
4 odor. In other words, how strong that odor's coming out of
5 one certain spot. If everything's pretty well sealed off,
6 for example, the trunk and the only place that air is
7 seeping out is right around the trunk seem, the dog may hit
8 there and start scratching. It might even pop the trunk and
9 there it is.

10 However, with the air blowing by on the cars and stuff,
11 sometimes the dog will alert up at the front, the hood, and
12 the dope or the contraband is actually in the front. That
13 air is just pushing through that car and the dog can't
14 specify where it's coming from. I just know I smell it.
15 They'll get as close as they can and then they'll indicate.

16 Q So, the traffic like you see on the video here, and I'm
17 not gonna play it back, but the traffic---

18 A Yes, sir.

19 Q ---on that interstate can affect how---

20 A Absolutely.

21 Q ---that dog indicates if it does indicate?

22 A Yes, sir.

23 Q Have you ever had Zena indicate falsely to the presence
24 of something?

25 A Not that I'm aware of because, like I say, she's

A. English - Direct examination
by Solicitor McCarty

1 indicating to the odor of the drugs. whether we not --
2 whether we found the drugs or not or found residue or that
3 kind of thing, but she indicated to it. She never gives me
4 any problem in training.

5 Q And you've had instances where she may indicate, like
6 you said, on the trunk of a vehicle, but maybe something's
7 found in a different area of the vehicle, am I correct?

8 A Correct.

9 Q And that's why, as we saw on the video, you're required
10 to go in and do a search of the vehicle, am I correct?

11 A That's correct.

12 Q So, specifically to this case, you did bring Zena
13 around the vehicle, am I correct?

14 A That's correct.

15 Q Tell the jury how you present the dog to the vehicle,
16 what you're doing, what you're showing the dog or not
17 showing the dog, or anything like that.

18 A Normally I'll bring the dog up to the front of the car
19 to try to start the same place every time. I'll start at
20 the front of the car and this is just how we were trained,
21 and we'll normally make two counter clock wise rotations
22 around the car. You present areas of the car to the dog,
23 and what I mean by present is I'll hold my hand down to
24 certain areas of the car and just -- I keep moving, but I
25 present certain areas like door seams, around the hood, or

A. English - Direct examination
by Solicitor McCarty

1 anywhere that air can, can escape from that car.

2 Okay. And that's the areas you want that dog's nose to
3 be, and that way he's got the best chance, he or she, of
4 smelling the odor coming from the car, and in this case,
5 when I went around the car, when we got to the passenger
6 side door as I recall, Zena scratches, bites, you know, up
7 on the passenger door area. So, that was his, her
8 indication. I'm sorry. I have a male dog now. That's why
9 I keep saying he.

10 Q No problem.

11 So, the fact that she alerted on the passenger side
12 door, that tells you that she did indicate that she, that
13 she smelled the odor of some type of narcotic?

14 A Correct.

15 Q Does she give a different indication for what type of
16 different drugs it was?

17 A No, sir.

18 Q So, marijuana would be the same as cocaine, the same as
19 heroin, the same as methamphetamine?

20 A Yes, sir.

21 Q And by her locating on the driver's or the passenger's
22 side door, did that necessarily mean to you, based on your
23 experience as a handler, that the drugs would be found right
24 there in, in the passenger side door?

25 A No, sir, we've found drugs in numerous places from

A. English - Direct examination
by Solicitor McCarty

1 engine fire walls to transmissions on cars, everything.

2 It's wherever that air seeps out, the dog alerts, and then

3 we have to take the whole car as a whole.

4 Q Now, trooper, I -- we watched the video. I'm not gonna

5 play it back, but we kind of flipped through with Trooper

6 Wilson when he was on here and saw you go through with your

7 dog around the vehicle. Your search began approximately

8 2114:40 on the video. So, the beginning of the search and

9 discovery of the cocaine, once the dog alerted is about four
10 minutes.

11 Now, in that four minutes on the video, you're doing a

12 hand search of the vehicle. Could you explain to the jury

13 what you're doing at that point, what you're required to

14 look for after your dog alerted?

15 A Right. Once the dog alerts, of course, I'm gonna put

16 the dog back in my truck. The dog is given a reward, which

17 is his, his, I don't remember at this time, whether it was a

18 rubber pong or a ball or something, but they get their toy,

19 they get rewarded. I put him back in the truck and then

20 I'll go back up with a flashlight and then actually look in

21 the area where he showed the most interest. That's where

22 I'll start.

23 If I don't find anything there, then I'll do a

24 systematic search around the car. The reason we do a

25 systematic search is if you -- the dog alerts to the

A. English - Direct examination
by Solicitor McCarty

1 passenger door and I go to the trunk first cause it's the
2 biggest area to conceal something. I may get side tracked
3 on something else and forget to go back and look a certain
4 place.

5 So, I always start the same place, no matter what it
6 is, and we rotate around the car. In this case, I started
7 on the passenger door, and as I recall, went around to the
8 driver's side I think to pop the trunk or something, and
9 that's when I discovered the contraband.

10 Q Are you trained to find things like what, what's
11 commonly known as a trap in the car?

12 A Absolutely.

13 Q And what is a trap?

14 The jury may not know that term.

15 A A trap or a compartment is something that's been
16 mechanically constructed to a vehicle. Not like a natural
17 void like an area where you can just pull carpet back and
18 hide something. This is something that's actually been
19 welded or constructed to a car, and normally it's operated
20 with a hydraulic piston.

21 For example, an air bag on a car. If the trap's behind
22 that, the piston will actually open after you do a few
23 sequence of events in the car like maybe put your foot on
24 the brake and turn the air conditioning on and then you turn
25 a left turn signal on and all of a sudden that whole left

A. English - Direct examination
by Solicitor McCarty

1 glove box will come out of a piston. Those are mechanical
2 traps versus a, just a concealment of something where you
3 can just pull the carpet back or, you know, taking the back
4 off your seat and just stuff some stuff back in there. So,
5 we're trained to find both of them.

6 Q So, when you begin your search, you're trained to look
7 for both types of things?

8 A Absolutely.

9 Q Every day concealment and maybe somebody put something
10 under the seat or stuffed it down in the back of the seat or
11 in the pocket behind the back of the seat as well as look
12 for weld marks, bondo, that type of stuff?

13 A Yes, sir.

14 Q At the point where you began your search, we did see on
15 the video the passenger side doors were opened, both the
16 front and the back, do you recall searching both of those
17 area?

18 A Yes, sir.

19 Q Mr. Thompson pointed out that it looked like a bench
20 seat on the back of this Lincoln was removed by you and set
21 to the side of the car.

22 A Yes, sir.

23 Q Do you recall doing?

24 A Yes, sir.

25 Q why would you do that?

A. English - Direct examination
by Solicitor McCarty

1 A Every---

2 Q To me, to me that might seem excessive, but, again,
3 what are you or what are you trained to see that we can't or
4 wouldn't see?

5 A In today's times with terrorists and drug activity and
6 these people moving things, they will go to extreme measures
7 to hide their stuff. This is a business to them, it's a
8 profit, and they will use any means necessary to hide
9 whatever they can on the vehicle. We've gotten dope out of
10 drive shafts on a car that's actually driving on a road or
11 out of tires. There is no limits.

12 If there's an area on the car that we can't see with
13 our physical eyes and account for a check, we're gonna
14 remove the seats, be careful as we can. If we don't find
15 anything, we're careful to put everything back the way it
16 was or better. But we're gonna check everything on that car
17 from front to back.

18 Q And let me just ask you about the removal on that seat.

19 Is that something that you know how to do safely
20 without damaging the vehicle further?

21 A Absolutely.

22 Q So, you wouldn't be out there and just ripping seats
23 out of a car nonchalantly damaging vehicles, would you?

24 A No, sir, we're professionals and I've been since --
25 interdiction work since 1999. I've never had a complaint

A. English - Direct examination
by Solicitor McCarty

1 for damaging someone's car.

2 Q If you had to do something that would require maybe
3 cutting into a vehicle or removing something that's
4 physically bolted down in a vehicle, what's your typical
5 procedure for doing that type of thing?

6 A At that time we probably would take that vehicle off
7 the roadside. We're gonna get several opinions, myself, my
8 sergeant, a few other people before we do something like
9 that. Our training and experience is shown us what's normal
10 and what's not on a car, and if the driver of that car, if
11 he owns it, he says, you know, he doesn't know anything
12 about it, we'll figure out some way, if it takes us hours to
13 get into it, but if a dog's alerted, we'll find what we can,
14 a compartment, we'll take our time, we usually find the
15 wires, and then we'll open it, bypass it, and open it up.

16 Q So, is it something that you can remove the vehicle
17 from the side of the road if you feel there's something more
18 to it?

19 A Absolutely.

20 Q Now, we saw in the video it looks like you're looking
21 around obviously with a flashlight, it's at night, and once
22 you got the back seat removed, it looks like you're looking
23 around the seam going into the trunk area on that back seat,
24 am I correct?

25 A It's been a while, but yes, sir, that's normal for me.

A. English - Direct examination
by Solicitor McCarty

1 Q We can play it if you'd like, but---

2 A That's normal for what I do. I'm trying to account for
3 everything on that car.

4 Q You then walk around to the driver's side of the door
5 and open the driver's side door.

6 A Yes, sir.

7 Q Do you recall doing that?

8 A Yes, sir.

9 Q Tell the jury at that point what your observations were
10 and what happened next.

11 A As I go around and open the driver's side door, there
12 was a, for lack of a better word, like a map, pocket, or
13 something right there, and I noticed a blue nylon bag in
14 there, and I think, as Trooper Wilson testified to earlier,
15 we hadn't seen anything in the car at this point. Not even
16 a drink cup. So, the bag sort of caught me off guard.

17 As I moved the bag, I could see the, I think a white
18 powder inside of it. At that time I went back and told
19 Sergeant Wilson to detain or arrest the subject. I can't
20 remember the specific wording I used at that time, and then
21 I went back to my vehicle and got my camera and my gloves to
22 photograph the, what I believed at that time to be evidence.

23 Q I think we saw you putting on your rubber gloves and go
24 back up there and that's when you did a hand search, is that
25 right?

A. English - Direct examination
by Solicitor McCarty

1 A Yes, sir.

2 Q Cause at this point you don't know exactly what this
3 substance is?

4 A Certainly. That's part of our training as well as
5 evidence preservation.

6 Q And I do want to show you this marked as State's
7 Exhibit No. 2.

8 A Yes, sir.

9 Q What is inside of that is a little Ziploc bag.

10 Is that the same bag that you found as you recall?

11 A Yes, sir, best I can tell.

12 Q Okay. Did you do, yourself, any type of field test on
13 the drug?

14 Do you recall doing, performing anything like that?

15 A I don't remember it. I may have. Sergeant Wilson and
16 I are both, were partners at the time, and we worked close
17 together. So, we're all helping each other out. I take
18 pictures, he takes pictures. One of us would test the
19 stuff. So, I don't specifically remember, in this case, who
20 tested it.

21 Q All right. Let me ask, ask you this cause you did say
22 about partners. I think it's a question worth asking.

23 When you're called by Trooper Wilson or another trooper

24 --

25 A Yes, sir.

A. English - Direct examination
by Solicitor McCarty

1 Q -- and they're calling for you to come to assist, do
2 you have any indication, usually when they immediately call
3 you, whether or not you're coming there because for officer
4 safety or whether you're coming there because you're gonna
5 search a vehicle or anything like that?

6 A No, sir, I am -- I have a K-9, but when we work
7 together, like I said, Sergeant Wilson and I are partners,
8 and when he calls me, like I said, I don't know whether he
9 needs me for backup or he needs my dog or anything like
10 that. All I know is it's my mission to get over there to
11 him. We work very close together, and as he testified to
12 earlier, we try to stay in close proximity to each other.
13 It's a very dangerous thing we do. So, we try not to get
14 too far. I think this particular night I was actually ahead
15 of him. So, I had to go down, turn around, come back, and
16 then -- that's why it took me a little bit of while to get
17 to him.

18 Q When you arrived on the scene February 20th, 2007, and
19 walked up to Trooper Wilson, you were exiting your patrol
20 vehicle, at that point did you know that you are going to
21 need to deploy my dog?

22 A No, sir.

23 Q Did you have to speak with Trooper Wilson at that
24 point?

25 A Yes, sir.

A. English - Direct examination
by Solicitor McCarty

1 Q And at that point did, were you advised that he'd like
2 you to bring your K-9 to the vehicle?

3 A Yes, sir, I can't remember the exact wording he used,
4 but he indicated he wanted me to run the dog, run Zena on
5 the car. So---

6 Q So, when you arrived, you just know that a fellow
7 officer had called for assistance?

8 A That's correct.

9 Q You didn't know whether it would be standing there
10 helping with multiple suspects or standing there or possibly
11 using your dog, am I correct?

12 A Yes, sir.

13 Q And ultimately you did run your dog and found a quarter
14 of a kilo of powder cocaine, am I correct?

15 A Yes, sir.

16 Q Thank you. Nothing further.

17 MR. THOMPSON: Please the Court, Your Honor?

18 THE COURT: Yes, sir, your witness.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q Trooper English, you been with law enforcement since
22 1999, is that correct?

23 A I started in 1997 for Colleton County Sheriff's Office
24 and spent five years there.

25 Q Okay. And you been working with dogs since 1999, is

A. English - Cross-examination
by Mr. Thompson

- 1 that your testimony?
- 2 A Off and on, yes, sir.
- 3 Q Okay. And you are or were, at the time of this
- 4 incident, partners with Officer Wilson, correct?
- 5 A Yes, sir, we were both assigned to the low state unit
- 6 working I-95.
- 7 Q Okay. And you were in Spartanburg for the Rolling
- 8 Thunder, correct?
- 9 A Yes, sir.
- 10 Q Okay. And were you instructed by anybody to make sure
- 11 you had your dog with you or was---
- 12 A That's part of my issued equipment. I would of been in
- 13 trouble if I didn't have my dog, yes, sir.
- 14 Q You had a dog at all, at all times?
- 15 A All the time. He comes home with me and sleeps at my
- 16 house.
- 17 Q Okay. And you say Zena's your pet now, right?
- 18 A Yes, sir, she's been retired since '09.
- 19 Q Okay. Now, unfortunately I'm gonna look at the video a
- 20 little bit and go over some things with you.
- 21 Okay. I'll turn this thing on. I'm gonna go all the
- 22 way to the point where you bring Zena.
- 23 (WHEREUPON, a portion of the video was played for the
- 24 jury at this time.)
- 25 Q There you are with Zena, correct?

A. English - Cross-examination
by Mr. Thompson

1 A Correct, sir.

2 Q All right. Is that you there?

3 A Yes, sir, it was.

4 Q Okay. Now, did you correspond any with Trooper Wilson
5 about his report?

6 A I, I don't remember, sir. I'm sure we talked about the
7 stop.

8 Q Now, I don't recall if you were in here, but I asked
9 him about the dog scratching and he indicated the dog
10 scratched on the driver's side door, and, in fact, it was
11 the passenger side, correct?

12 A The dog indicated on the passenger side, yes, sir. You
13 see it on the video.

14 Q I apologize.

15 A The dog did indicate on the passenger side. You can
16 clearly see it on the video.

17 Q Right.

18 Okay. Do you know if you're there yet?

19 A I'm pretty sure I am, sir. I just see -- that was me
20 on the video a few minutes ago. I was up checking the car
21 for hazards for my dog.

22 Q Okay. Checking for what?

23 A Hazards for my dog. In other words, if the dog does go
24 inside, gets in the window or something, make sure he
25 doesn't ingest anything so it won't kill or hurt him.

A. English - Cross-examination
by Mr. Thompson

1 Q People do that?

2 A Absolutely, sir.

3 (WHEREUPON, another portion of the video was played for
4 the jury at this time.)

5 Q We're not there yet because he said I got an officer
6 coming. You're still, still not there, right?

7 A Not sure if I'm on the scene yet or not, sir.

8 Q I think he indicated to Mr. Falls that you were on the
9 way.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q He said as soon as you get there he'll get you your
13 hat, isn't that what he said?

14 A No, sir.

15 Q Sounds like he told Mr. Falls as soon as you got there
16 he'd get his hat I think?

17 A Oh, I thought you were referring that I would get the
18 hat. He may of told Mr. Falls that, but I'm not on scene
19 yet, no.

20 Q Okay. That's my question. Thanks.

21 (WHEREUPON, another portion of the video was played for
22 the jury at this time.)

23 Q Okay. Now, your testimony that somewhere in your
24 passing him he indicated that he needed the dog or when did
25 he tell you he needed the dog?

A. English - Cross-examination
by Mr. Thompson

1 A Yes, sir, at this point I -- he's made me aware of it
2 either by hand gesture or something. I don't remember.
3 It's several years ago. But at this point he told me needed
4 the dog. So --.

5 Q All right. You said probably a hand gesture because
6 it's not on there I don't believe?

7 A Yes, sir, we have a common hand gesture whenever he, he
8 or myself have the dog. If we're on the stop where we do
9 like this, that means I need to run the dog around the car
10 for me.

11 Q Okay.

12 A So that could be very well what he did that night. I
13 don't remember.

14 Q Does he not say right there--

15 A I think I asked Mr. Falls how he was doing, sir. He
16 said all right.

17 Q You said that right there's more or less a little
18 protective sweep for the K-9, correct?

19 A Yes, sir, I'm just looking at those two windows on the
20 side to make sure nothing that will hurt him. Also make
21 sure there's nothing sharp sticking off the car when I run
22 him around. I just don't want to hurt my dog.

23 Q What's that in your hand?

24 A There's nothing in my hand but my flashlight, sir.

25 Q Flashlight and you're tapping the car with a

A. English - Cross-examination
by Mr. Thompson

1 flashlight?

2 A No, I run my hand along the edge of the car in certain
3 areas. Like I explained earlier, that trunk lid air would
4 be escaping out of the car.

5 Q Uh-huh. (Affirmative).

6 Then you got one hand on the dog, right?

7 A It appears that way.

8 Q Huh?

9 A It appears that way, yes, sir.

10 Q And your other hand -- you got a flashlight in the
11 other hand?

12 A I believe so. It looks that way in the video.

13 Q Okay. Now, I'm trying to understand what you're saying
14 about running your hand---

15 A would you like for me to demonstrate on the wall over
16 here?

17 Q what hand -- I mean were you doing it with a flashlight
18 hand or each hand?

19 A Yes, sir.

20 Q Flashlight?

21 A My dog's gonna follow me with his nose with the
22 opposite hand of what I have it on.

23 Q Okay.

24 (WHEREUPON, another portion of he video was played for
25 the jury at this time.)

A. English - Cross-examination
by Mr. Thompson

1 Q So, right here you're seeing him alerting here?

2 A No, sir, she doesn't alert till right then when she
3 gets to the passenger door when you see her jump up on the
4 door handle.

5 Q That's the behavior you say indicates an alert?

6 A That's correct, sir.

7 (WHEREUPON, another portion of the video was played for
8 the jury at this time.)

9 Q Okay. So now Trooper Wilson moves?

10 A Yes, sir, he was actually standing on the white fog
11 line to protect me and my dog. He has his flashlight out
12 moving cars over. That's customarily what we do. It's
13 nighttime and dangerous. When I run that dog, my mind is on
14 that dog. Not cars running me over. So, he's looking out
15 for me.

16 Q Okay. And what is an open air sniff?

17 Can you define that for me?

18 A I can't define that, sir. But my definition of a free
19 air sniff is anything that you don't have rights or privacy
20 over. In other words, the air outside of that car.

21 Q Okay. All right. So, your testimony is that the dog
22 had alerted, correct?

23 A Correct, sir.

24 Q Why do you need to put the dog in the truck, in the
25 car?

A. English - Cross-examination
by Mr. Thompson

1 A Once the dog alerts on the passenger side, then I have
2 the right, in the case law, to open that door and let the
3 dog inside to see if he can pinpoint that or even closer.

4 Q Okay. And that's what you're doing here?

5 A That's correct, sir. That's what I do every time.

6 (WHEREUPON, another portion of the video was played for
7 the jury at this time.)

8 Q Is that the dog's tail we see?

9 A It appears to be, yes, sir.

10 Q There's the dog's head, right?

11 Are you doing your hands inside the car?

12 A No, sir, once he gets inside the car, I basically shut
13 the door to keep him from getting hurt and I rather him just
14 to do his own thing or her own thing. She goes around the
15 car until she indicates. Once she indicates, I quickly try
16 to reward her to keep her from damaging the car because, as
17 I said earlier, her indication is always some type of
18 scratching or biting. I don't want to damage anybody's car.

19 (WHEREUPON, another portion of the video was played for
20 the jury at this time.)

21 Q All right. Now, has she pinpointed somewhere inside
22 the car for you?

23 A As I recall, the driver's seat area, but I don't
24 remember specifically where.

25 (WHEREUPON, another portion of the video was played for

A. English - Cross-examination
by Mr. Thompson

1 the jury at this time.)

2 Q You got a jacket on there?

3 A Yes, sir.

4 Q Okay. Now, Trooper Wilson won't, he won't have any
5 responsibility searching the car, right?

6 A He can. I normally help him search his cars for him.

7 (WHEREUPON, another portion of the video was played for
8 the jury at this time.)

9 Q All right. You checked the front seat.

10 There's nothing -- you -- nothing found yet, correct?

11 A Correct.

12 (WHEREUPON, another portion of the video was played for
13 the jury at this time.)

14 Q And completely down in the seat here?

15 A I can't tell, sir.

16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)

18 Q Now, you're completely gone from view, right?

19 What would you be doing there?

20 A I could be checking underneath the driver's seat. I'm
21 checking the floorboard area, whatever. I'm looking for
22 contraband, sir. He was parked.

23 Q Beg your pardon?

24 A The vehicle was parked close to the white line. So,

25 the more I can search the passenger side the better. So, if

A. English - Cross-examination
by Mr. Thompson

1 it's something closer to the driver's side. I'm not gonna
2 be able to open that driver's side door either or open the
3 front door or the back door and safely search that area
4 without moving.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q All right. Nothing so far after about three and a half
8 minutes, right?

9 Sorry.

10 A Yes, sir, that's correct.

11 Q And you testified it's customary that you, not out of
12 the ordinary that you removed the back seat like that,
13 correct?

14 A Yes, sir, that particular four door sedan and the
15 Mercury Marquis is known for having a compartment built
16 underneath the back seat between the fuel tank and the back
17 seat. So, that's why I was trying to make sure it was not
18 in this car.

19 (WHEREUPON, another portion of the video was played for
20 the jury at this time.)

21 Q All right. You're about to arrest him, correct?

22 A It appears that way, yes, sir.

23 (WHEREUPON, another portion of the video was played for
24 the jury at this time.)

25 Q All right. So, right here you've determined that you

A. English - Cross-examination
by Mr. Thompson

1 have found the drugs, right?

2 A Yes, sir, through my training and experience.

3 Q Okay. And your training and experience.

4 All right. So, you were at that door probably three
5 seconds at that driver's side door?

6 A Not very long, sir. As you can see, I'm trying to
7 worry about somebody running me over.

8 Q All right. So, you open at 36 and 56 you made the
9 determination that you were gonna arrest Mr. Falls?

10 A Yes, sir, as I recall, the trunk latch on the Lincoln
11 Town Car is on the driver's door and that's where I was
12 opening whenever I discovered the package.

13 Q Okay. And exactly where did you find the package?

14 A As I recall, there was some type of map compartment or
15 something right there by the door or in the door that the
16 package was in.

17 Q Like a, just a, a normal pouch or something on the side
18 of a door?

19 A Something that was factory from the, from the
20 dealership, yes, for the car.

21 Q Okay. So, it wasn't -- so, you didn't -- it wasn't
22 inside the door, something you had to peel back something
23 and---

24 A No, sir.

25 Q ---it's stuffed in there---

A. English - Cross-examination
by Mr. Thompson

- 1 A No, sir.
- 2 Q ---correct?
- 3 So, it was just out there?
- 4 A Yes, sir.
- 5 Q And in that ten seconds you were able to open that
- 6 door, open that blue pouch, open that plastic Ziploc bag,
- 7 close them back, and then close the door and come and---
- 8 A No, sir.
- 9 Q Exactly what did you do?
- 10 A When I opened the door to mash the button to release
- 11 the trunk I saw the blue nylon bag there, and I simply just
- 12 moved it back enough to where I could see the plastic bag
- 13 that---
- 14 Q Okay.
- 15 A ---inside containing the powder and I stopped at that
- 16 time and went back and basically give Trooper Wilson a head
- 17 nod, which, between the two of us, meant that I found
- 18 something. At that time we arrested and detained Mr. Falls
- 19 and got my camera and my gloves.
- 20 Q Okay. And, so, you opened the door, you're pulling
- 21 that knob to, I guess, release the hood?
- 22 A No, sir, I said the trunk. There's a button on the---
- 23 Q The trunk.
- 24 A ---driver's side door, yes, sir.
- 25 Q Okay. Now, you looked -- you did that --

A. English - Cross-examination
by Mr. Thompson

1 A Uh-huh. (Affirmative).

2 Q -- and went in that pouch.

3 A The pouch was opened.

4 Q Okay. Then went inside the blue bag?

5 A I simply just had to move the blue bag over where I
6 could see the powder inside of it.

7 Q Okay. You didn't field test the powder or anything at
8 that time?

9 A No, sir.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q You say you give a signal?

13 A Yes, sir, I just nodded, just nodded my head at Trooper
14 Wilson.

15 Q You just told him you're going to get your camera and
16 gloves, right?

17 A Yes, sir.

18 Q Okay.

19 A would you like me to show you the signal we use instead
20 of just saying arrest someone?

21 Q No, sir.

22 A Okay.

23 (WHEREUPON, another portion of the video was played for
24 the jury at this time.)

25 Q All right. what are you doing right here?

A. English - Cross-examination
by Mr. Thompson

1 A I've opened the driver's door, and I'm actually taking
2 pictures of the blue package in the driver's door.

3 Q Okay. And where, where did you go for that minute and
4 14 seconds?

5 A We have two safety, secure vaults in the back of our
6 trunks that have a combination on them. I would have to go
7 to my trunk, open the combination, get my camera out of the
8 package, get my gloves, and then walk back up to the car.

9 Q You got the gloves on you?

10 You had the gloves on now or do you put them on later?

11 A Sir, I can't tell from that video shot.

12 Q Are you taking photographs right there?

13 A Yes, sir, I'm not even having to lean over. Just
14 simply open the door and take pictures of the package in the
15 door.

16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)

18 Q All right. Where you guys going now?

19 A It looks like I asked Trooper Wilson for gloves. Maybe
20 I didn't have mine on me. Maybe I couldn't find mine in
21 that bag or whatever. It's a long time ago. You can see my
22 camera, I'm sitting it on the trunk, and I think, if you
23 back it up, I just asked Trooper Wilson for a set of gloves.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

A. English - Cross-examination
by Mr. Thompson

1 Q Is this the blue bag we been talking about?

2 A It appears, sir.

3 Q Okay. And you -- this clear bag fits into that bag, is
4 that right?

5 A Yes, sir.

6 Q It's inside?

7 A Yes, sir.

8 Q It's pretty close to the same size, aren't they?

9 A I do not recall, sir. It's hard to tell from that
10 video at nighttime.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q You had to unzip the bag to close it, right?

14 A I can't really tell, sir.

15 Q Right there you unzipped it?

16 A Yes, sir, it does appear that I do.

17 Q Okay. So, you had to unzip it when you went to the
18 driver's side door?

19 A Don't recall, sir.

20 (WHEREUPON, another portion of the video was played for
21 the jury at this time.)

22 Q Now, then the remainder's just, just continuing your
23 search of the car, correct?

24 A Yes, sir, I complete the search of the vehicle.

25 Q Okay. And you are very experienced in tracking down

A. English - Cross-examination
by Mr. Thompson

1 drugs on the highways, correct?

2 A I'd like to think so, yes, sir.

3 Q And probably because you have a K-9 unit you come in
4 contact with a lot more drugs than the average officer,
5 wouldn't you -- would that be a fair assessment?

6 A Yes, sir.

7 Q Okay. Will -- Trooper Wilson contacted you almost
8 immediately upon pulling him over.

9 Do you recall -- you said it took you a while to get
10 there, correct?

11 A That's correct, sir.

12 Q Okay. And when you're contacted by him, he's
13 contacting you, one, because you're partners, right?

14 A We were working together this particular night in close
15 proximity to each other, yes, sir. So, I would of been the
16 first one that he would of called. The same thing, if I'd
17 of gotten in trouble, he's the first call number I'm gonna
18 remember when I call for help.

19 Q Okay. And because -- and also he's well aware that you
20 have a dog with you, correct?

21 A I had a dog since I came on the team, yes, sir.

22 Q Okay. And your testimony, I think you told Mr. McCarty
23 that you were just called in a regular capacity, is that
24 correct?

25 A He called for assistance and I went to him, yes, sir.

A. English - Cross-examination
by Mr. Thompson

1 Q Okay. And the, the truth is he called for that dog
2 more so than you, right?

3 A I wouldn't say speculate, sir.

4 SOLICITOR MCCARTY: Your Honor, I object. The
5 trooper's testified that he called for assistance.

6 THE COURT: Well, I---

7 SOLICITOR MCCARTY: It's an argumentative question as
8 far as why he---

9 THE COURT: The question for why, the motivation of
10 someone else, why they did it, and I don't think he's
11 competent to testify as to that unless they expressed the
12 motive.

13 Q All right. Trooper, you and Officer Wilson have made
14 many arrests, correct?

15 A Correct, sir.

16 Q Okay. And when you go in here with, with, with him,
17 when he calls you, all right, did he indicate what the
18 urgency was when he called you?

19 A Are you through?

20 Q Yes.

21 A I'm sorry. He doesn't need to, sir. Once he called me
22 I'm coming. No matter who it is, whether it's him, another
23 supervisor, another officer for Rolling Thunder. We work
24 that way. When somebody calls I'm not gonna be asking him
25 what he needs.

A. English - Cross-examination
by Mr. Thompson

1 Q Okay. So, you never radioed back to him?

2 A I don't remember. There was so much radio traffic
3 going this particular night that I don't even know if I
4 acknowledged him. I think that's why he had called for a
5 second time. Honestly I can't -- that's speculation on my
6 part. But no, I don't remember.

7 Q Okay. And it's your testimony you didn't know you were
8 gonna search till you got there?

9 A That's correct, sir.

10 Q Even though you walked straight to that car and made
11 sure it was okay for your dog?

12 A At some point during the stop, like I said, either he
13 give me a hand gesture or something to let me know that he
14 wanted to run the dog around the car.

15 Q But he never acknowledged -- it's not on the audio, we
16 don't hear on the audio there?

17 we don't hear him tell you that?

18 A Not that I can hear, no, sir.

19 Q All right. And you went to that car and took a
20 photograph of that door in that compartment where the drugs
21 were supposedly found, right?

22 A It was a natural void in the driver's door, and, yes,
23 sir, I did photograph it.

24 Q All right. We don't have those photographs here today,
25 do we?

A. English - Cross-examination
by Mr. Thompson

1 A I'm not sure, sir.

2 Q Well, who would you have given those to?

3 A Normally I would make a copy of my pictures for Trooper
4 Wilson and he'll do whatever he needs to according with them
5 as far as file them for evidence.

6 Q All right. You know, you would agree with me that
7 would be a beneficial piece of evidence if we see that,
8 those drugs in that compartment in that car?

9 A I agree with that, sir, but at that time the South
10 Carolina Highway Patrol did not supply me a camera. That
11 was my personal camera I was using. So, I can't tell you
12 what I did with those pictures.

13 Q All right. You said normally you would give them to
14 Trooper Wilson, right?

15 A Yes, sir, the ones I took with my personal camera, yes,
16 sir.

17 Q Okay. So, did you give him the pictures?

18 A I can not recall, sir. It's been a few years ago.

19 Q All right. And you don't recall why that blue bag's
20 not in here today, do you?

21 A No, sir.

22 Q All right. It's your testimony is that you looked down
23 in that compartment, saw this, this cocaine, or you saw the
24 bag.

25 was this bag zipped or was it unzipped?

A. English - Cross-examination
by Mr. Thompson

1 A As I told you earlier, sir, I don't remember whether it
2 was zipped or unzipped.

3 Q Okay. But you saw a blue container and you opened it,
4 right?

5 A It was a bag. It appears from the video it had a zip
6 on it, yes, sir.

7 Q All right. And you brought that bag and put it on
8 there and a took photograph, right?

9 A Yes, sir.

10 Q All right. We don't have the photograph of the bag
11 though, is that right?

12 A No, sir.

13 Q Don't have the bag?

14 A No, sir.

15 Q We don't have the bag, do we?

16 A Not that I'm aware of, sir.

17 Q Okay. And I mean this is Rolling Thunder.
18 You're looking for drugs, right?

19 A We're trying to reduce traffic fatalities and increase
20 the safety of the motoring public on I-85 in Spartanburg
21 County.

22 Q And the search for drugs does that, doesn't it?

23 A If we come across something along the way so be it.
24 But our job is to be professional and enforce South Carolina
25 laws.

A. English - Cross-examination
by Mr. Thompson

1 Q Okay. So, your dog's not trained to find guns,
2 correct?

3 A That's correct.

4 Q Not trained to hit on currency, correct?

5 A It will hit on currency if it's been around the odor of
6 drugs, yes, sir.

7 Q If it has residue on it, right?

8 A That's correct.

9 Q Okay. So, you're on the highway, you're summoned to
10 come with your dog, who is strictly a drug dog, to this
11 stop, correct?

12 A And I have no other way to respond to this stop without
13 my dog because he's assigned to me and my vehicle everyday.

14 Q And you said you have a truck?

15 A A Tahoe, yes, sir. 2007, Chevrolet Tahoe.

16 Q Okay. So, basically your vehicle is equipped for a
17 dog, correct?

18 A Yes, sir, he has a cage in the rear seat.

19 Q Okay. And you testified also that when your dogs are
20 trained, that the, the officers that are doing the training
21 will hide drugs and the dogs will have to find them?

22 A Yes, sir, we have what's known as a master handler that
23 works the Highway Patrol, and during our training sessions
24 he will control the training site, the drugs that we are
25 using for the searching of the dogs, training the dogs. He

A. English - Cross-examination
by Mr. Thompson

1 will go into a controlled area with the dog, with the drugs,
2 hide it, and let it sit for a certain length of time.

3 Normally at least an hour so the smell can get back outside
4 the car, and then we'll bring each individual dog around to
5 the car, run blank cars that have nothing as well as cars
6 that have the contraband inside of it, and making sure that
7 the dog as well as us are kept up to speed.

8 Q Okay. And where do, where do you guys get those drugs
9 you use?

10 A As far as I know we get -- we have a DEA license to get
11 drugs for training purposes.

12 Q From the Federal Government?

13 A Yes, sir.

14 Q Now, when you searched this car, did you find anything
15 at all under that seat, the front seat?

16 A I don't recall finding anything underneath the seat. I
17 don't, no, sir.

18 Q Okay. And then there's nothing under the back seat,
19 correct?

20 A Nothing underneath the back seat.

21 Q And you'll agree with me that we could see the dog's
22 head and the tail while she was running around in there,
23 right?

24 A Yes, sir.

25 Q Okay. And when a dog jumps on something or bites,

A. English - Cross-examination
by Mr. Thompson

1 that's how you get, indicated it's alerting, right?

2 A That's correct.

3 Q And that's pretty much a common behavior for a dog,
4 right?

5 A No, sir, we train the dogs on cars with contraband and
6 without, and if we see them jumping on cars where there's no
7 contraband or nothing, the master handler's hidden, they're
8 quickly corrected to get off that.

9 Q Okay. And you're going around the car with your
10 flashlight in your hand, right?

11 A My flashlight is in my hand, yes, sir.

12 Q And the dog's taught to follow that, right?

13 A The dog's taught to follow my hand, yes, sir.

14 Q And is there any gesture you do that would make him
15 alert?

16 Is there any way you can test his alert response?

17 A No, sir, all I can do is present the area that I know
18 the air most likely to escape from the car and hope that
19 some of that air gets in his nose cause he's got passing
20 traffic and everything else.

21 Q Okay. But as you go through, the dog has some contact
22 with the car, does he not?

23 He's up against it?

24 A He's running along beside the car, yes, sir.

25 Q But yet he does touch the car with his nose and you

A. English - Cross-examination.
by Mr. Thompson

1 touch it with your hand and all that, right?

2 A It varies from vehicle to vehicle, but he can, yes,
3 sir, of course.

4 Q You testified to a trap.

5 There's no trap in this car, right?

6 A No, sir, there's, there's a natural void in the
7 driver's door where that contraband was found. It was down
8 a seat level on the driver's side.

9 Q And then you went all the way in the, the passenger
10 side door even though you didn't look in that compartment
11 when you were doing that?

12 A I think, as you recall, when I go in the passenger side
13 door I'm in the back seat. The contraband was found in the
14 front.

15 Q Oh, you didn't go in both doors?

16 A That would of been pretty hard with somebody my size to
17 crawl through the front of those two seats to look in the
18 driver's door.

19 Q Okay. But you did, you did go in the passenger's side
20 door?

21 A Yes, sir, I checked the immediate passenger area once
22 by the glove box and places like that that are easily
23 accessible.

24 Q All right. Now, did -- you indicated at anytime to
25 Officer Wilson that the dog hit on the driver's side door as

A. English - Cross-examination
by Mr. Thompson

1 it says in his report?

2 A Not that I recall. Officer Wilson is a previous K-9
3 handler. I believe he had been before this particular
4 traffic stop. So, knowing my dog, we worked together, he
5 observed the dog alert on the passenger side himself.

6 Q Okay. So, was that just an error on his part that he
7 put driver's side door in the report you think?

8 A I don't want to speculate, sir. I didn't, don't
9 remember telling him that. We both saw it on the passenger
10 side.

11 Q Are you still partners with Officer Wilson?

12 A He's currently my supervisor.

13 Q Okay. Y'all still work together fairly often then,
14 right?

15 A Yes, sir.

16 Q Okay. And I have no further questions.

17 THE COURT: Redirect.

18 SOLICITOR MCCARTY: If I may, Your Honor?

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY SOLICITOR MCCARTY:

22 Q Officer, I would like to know why you use hand signals
23 instead of telling your partner or somebody who's out on the
24 roadside to go ahead and hook him up.

25 A I -- normally, where there's drugs there's guns. It's

A. English - Redirect examination
by Solicitor McCarty

1 something we've seen over the test of time. I don't want to
2 say hey, arrest him, I found a package, what have you, cause
3 the first thing he's gonna do is bolt or, by bolting, I mean
4 take off running and you can go across the interstate. You
5 had them jump cars and lines of traffic, run in the woods,
6 what have you, or if he had a weapon or something on him
7 that we didn't know, he knows that the jig's up so to speak,
8 he's fixing to go to prison. Now, these are pretty serious
9 offenses. He may get that weapon out.

10 So, we're gonna do some type of signal. Whether we
11 just -- I nod my head like that, which is unusual, he knows
12 and then some of the teams will scratch their badges and
13 that means we're fixing to put hands on this guy. It's just
14 a safety thing for us because it's dangerous---

15 Q Safety---

16 A ---situation.

17 Q Officer safety is a primary concern, am I right?

18 A Yes, sir.

19 Q So, when you're initially called by Trooper Wilson very
20 early on in this video for assistance, you're thinking, at
21 that point, officer safety is a primary concern?

22 A Absolutely.

23 Q Get there and assist a fellow trooper.

24 Now, to be fair to Mr. Falls, cause you did mention
25 guns, you didn't find a gun in this situation, am I correct?

A. English - Redirect examination
by Solicitor McCarty

1 A No, sir, we did not. But we don't ever know when a gun
2 is gonna be there. We're not gonna take a chance.

3 Q Thank you.

4 Nothing further, Your Honor. Thank you.

5 THE COURT: Recross.

6 MR. THOMPSON: No, no questions.

7 THE COURT: All right, sir. You may step down.

8 SOLICITOR MCCARTY: Your Honor, I would ask, if he'd
9 like to leave, Trooper English be excused.

10 THE COURT: Any objection to the troopers being
11 excused?

12 MR. THOMPSON: None, Your Honor.

13 THE COURT: They're excused if they'd like to be.
14 Thank you very much.

15 SOLICITOR MCCARTY: Thank you, Your Honor.

16 Your Honor, I believe I have previously marked and
17 admitted all three State's Exhibits for evidence. At this
18 time the State would rest its case in chief.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, at this time there's some matters that I need to take
21 up with the attorneys, and I'll do that outside of your
22 hearing. We're going to ask you, again, to step into the
23 jury room. Don't begin any discussions. As soon as I've
24 completed this, we'll bring you back into the courtroom.

25 Thank you very much.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Any motions?

4 SOLICITOR MCCARTY: None from the State, Your Honor.

5 MR. THOMPSON: You---r Honor, I would renew the motions
6 from yesterday. I think Trooper Wilson's testimony has been
7 back and forth, but today he basically made a statement that
8 he called the, the K-9 unit based upon the movement under
9 the seat solely. He made that -- he didn't put it in those
10 words, but he said that's why he called that K-9 unit, Your
11 Honor.

12 Go back to that Wisconsin case yesterday when he said
13 they didn't measure up. Two reasonable suspicions. Go back
14 to Tindall, Your Honor. But when he called that K-9, when
15 he informed my client he would be receiving a, a warning
16 ticket, he knew I think just a few things. He knew -- and
17 today he didn't go into the rental on his testimony.

18 So, basically today's testimony was that he saw
19 something, him move and that's why he called backup, and
20 then later on he goes into the questioning. And if you
21 recall, I think it was 2104, around that time, he says I'm
22 gonna write you a warning.

23 Tindall basically says once he tells him that, then he
24 needs to stop the questioning. But he went on and on.

25 My argument is, one, that he prolonged that stop in

1 order to gain information past the time that he had told him
2 he would be issuing a warning, and, secondly, that he called
3 that backup immediately, almost immediately, when he, when
4 he encountered that automobile in the, the, at the first, I
5 mean the second time he went to the car, and that he based
6 his decision to call the K-9 solely on the fact that he
7 went, that he indicated that Mr. Falls went under the seat.

8 I think the dog in the car shows clearly you can see
9 what's going on in that car. Mr. Wilson testified that he
10 can't tell what's going on. He---

11 THE COURT: well; now---

12 MR. THOMPSON: We didn't see in the video---

13 THE COURT: ---I looked in the video myself for that,
14 and I think you asked him about something that was sticking
15 up and he said that was the headrest, and then I looked to
16 see -- I think you ran it back and forth a couple of times.
17 In the video, I could not -- of course, I'm a good ways from
18 it in the courtroom, but I could not discern his head. I
19 could see the headrest. But I couldn't see his head in the
20 video.

21 MR. THOMPSON: Going further, Your Honor---

22 THE COURT: I was looking for it.

23 MR. THOMPSON: Okay. Going further, I don't think it
24 shows -- it don't show up on the tape. You don't see his
25 head disappear and his shoulders disappear, and I think that

1 would basically show that Trooper Wilson's mistaken on what
2 he thought he saw going up to that car.

3 Also, Your Honor, he -- Trooper English and Wilson
4 verify that dog is nothing but a drug dog and Officer
5 Wilson---

6 THE COURT: well, now, Officer English indicated that
7 the dog is assigned to him and is always with him everywhere
8 he goes.

9 MR. THOMPSON: Right.

10 THE COURT: His vehicle is built for the dog. I mean
11 that dog is always with him. So, I'm not sure that the fact
12 that he was called, if he called, if he called his partner
13 or his assistant for help, he's gonna get a dog --

14 MR. THOMPSON: well---

15 THE COURT: -- from what I heard.

16 MR. THOMPSON: I call the Court's attention to the fact
17 he called Mr. English twice. He could of called for
18 anybody.

19 THE COURT: Oh, I understand.

20 MR. THOMPSON: So, he specified his decision -- his
21 choice was Officer English.

22 THE COURT: well, I don't know if he called for anybody
23 necessarily means he's calling just for English.

24 MR. THOMPSON: No, I'm saying the first two times were
25 specifically Trooper English---

1 THE COURT: Okay.

2 MR. THOMPSON: ---contact with him and he was with---

3 THE COURT: Again, that's who is was working with is
4 what I heard, but that's the testimony.

5 MR. THOMPSON: Right, and I think his third -- I think
6 his third call for any unit in the area shows that he can
7 call anybody he wants to, and it doesn't have to be Trooper
8 English. He made that choice to call Trooper English, and
9 he's, he's talking about officer safety. It's seems to me
10 that your first choice would be any unit around if you feel
11 like somebody has a gun. Then you're not gonna wait on just
12 your, your buddy. You're gonna call any unit available.

13 He's talking -- he's indicating he has past experience
14 with a shooter, and that he, officer safety, guided his
15 decision to call backup. But if you look at the video,
16 he's -- and he testified he's specified Officer English, and
17 I think that shows that he's calling for that K-9.

18 I think the whole incident here is a Rolling Thunder
19 incident and every arrest, every pull over is basically a
20 drug search, and, and they -- but they, they danced around
21 that. They're not gonna admit that. And -- but it's clear
22 to me that he called English with that dog in mind.

23 I'll also go into the fact that he has to have
24 reasonable articulable suspicion of a serious crime to hold
25 him past the time he did, past the time he informed him he

1 was gonna have that warning written.

2 Your Honor, he's been, he's been in a shooting. Okay.
3 I would argue that he can't be reasonable. He can't be
4 objective when he goes into these situations if he's got
5 that on his mind. I would say a reasonable officer would---

6 THE COURT: So, you're saying once an officer's been
7 involved in a shooting that he no longer can be reasonable
8 at a stop?

9 MR. THOMPSON: I'm saying it affects his ability to be
10 reasonable.

11 THE COURT: Well, that would be an interesting position
12 for someone to take.

13 MR. THOMPSON: Well, I think he brought it up. I
14 didn't elicit it from him. Mr. McCarty didn't---

15 THE COURT: Well, he just said he was cautious for that
16 reason.

17 MR. THOMPSON: Right. And, Your Honor, I'll just argue
18 that he didn't have a reasonable articulable suspicion even
19 outside of that. If you look at Tindall, Tindall says
20 there's four things that are going on. If I recall, I think
21 the guy was coming, maybe going to Atlanta or something
22 about a drug city, source city, and then that he may of been
23 in a rental car.

24 THE COURT: And a felony stretch.

25 MR. THOMPSON: And did the felony stretch, and was

1 seen---

2 THE COURT: which is, which is interesting, but I'm not
3 sure there's any science behind that.

4 Go ahead.

5 MR. THOMPSON: And did a -- I think it was some type of
6 a -- he appeared nervous and -- beg the Court's indulgence.
7 I think I was looking at -- I don't know if it's Provet or
8 Provet or what it is. Anyway, I don't -- I think this case
9 here is more in line with Tindall than it is the Provet.
10 You had a, you had a runner in Provet. You had a ticket
11 that was not completed yet in Provet.

12 Here you've got an officer clearly stalling on the
13 video. He's playing around with his pen. He does finish
14 it. He puts it in my client's hand, and at that time he had
15 already made three calls, I understand that. But he held my
16 client too past the point where he put that in my client's
17 hand. He put it in his hand, and today's testimony I think
18 he testified, one, that he called after he saw the supposed
19 going under the seat, and based upon that only, and that's
20 not enough, but then---

21 THE COURT: well, that was the first, that was the
22 first call.

23 MR. THOMPSON: That was my first, right, and then
24 his -- then I'll go back to this wisconsin case that clearly
25 states that's not enough, and even under Tindall I think

1 when he makes the second call, he still doesn't have as much
2 as the Court had in Tindall to go by. He'll have a
3 situation where he's writing the ticket. He's already told
4 my guy you'll get the warning, and he has nothing else to go
5 by. Today he, like I said, today he didn't offer any
6 testimony about a rental car, but that had anything to do
7 with his decision.

8 So, I think that's taken out, and then you have less
9 here to go on than the Tindall Court had to go on, and, for
10 that reason, I would argue that he was without reasonable
11 articulable suspicion and the drugs need to be suppressed.
12 I think a lot of his testimony basically goes on hunches.
13 He says his story wasn't adding up. That's way past the
14 time he's informed Mr. Falls that he'll be receiving a
15 warning ticket.

16 THE COURT: But now doesn't Provet use language saying
17 that we can't overlook the experience and the knowledge of a
18 police officer involved?

19 Isn't that one of the factors that they, they---

20 SOLICITOR MCCARTY: It is, Your Honor, I think and
21 specifically I handed to you and Mr. Thompson up to the
22 Court yesterday the Fourth District Court of Appeals from
23 1993. It was United States or, I'm sorry, yes, U.S. versus
24 Calvin Edwin Linder, and that one just focuses --
25 specifically found that the Court, Courts are not remiss in

1 crediting the practical experience of officers to observe,
2 on a daily basis, what transpires, what transpires on the
3 street, and they're talking specifically about officers who
4 knew the area they're patrolling, knew its propensity for a
5 high drug trafficking, and while defendant's presence in
6 that case may not be, in and of itself, reasonable
7 suspicion, given the officers particular knowledge about
8 that situation, and in here, Your Honor, I know I'm not to
9 the point where I might be able to argue, but I believe we
10 have that.

11 Trooper Wilson has nine plus years in law enforcement,
12 prior military, with a member of the A.C.E. Team, extensive
13 traffic interdiction, highway interdiction, specific
14 training on these types of, for lack of a better word,
15 indicators that he's trained to observe during the course of
16 the normal traffic stop, Your Honor, and I'll sit down. I
17 don't want to interrupt him.

18 THE COURT: What it says is a reasonable suspicion is
19 not readily or even usefully reduced to a neat set of legal
20 rules, but rather entails common sense. Non technical,
21 technical conceptions that deal with factual and practical
22 considerations of everyday life on which reasonable and
23 prudent persons, not legal technicians, act. And then it
24 went on to say, therefore, Courts must consider the totality
25 of the circumstances, and give due weight to the common

1 sense judgments reached by officers in light of their
2 experiences and training.

3 That's what Provet says.

4 MR. THOMPSON: Right, and I, I'm looking at Pichardo,
5 Pichardo.

6 THE COURT: which is what kind -- where's that case
7 from?

8 MR. THOMPSON: That's State -- that's South Carolina
9 367 SC 84. The term reasonable suspicion requires a
10 particular, a particularized and objective basis that would
11 lead one to suspect another of criminal activity. Burdens
12 of the State---

13 THE COURT: what year is that case?

14 MR. THOMPSON: ---to articulate those facts. 2005.

15 THE COURT: Provet was this year.

16 MR. THOMPSON: I understand, Your Honor.

17 THE COURT: well, I'll go by the most recent ones. I
18 think most people do.

19 MR. THOMPSON: well, I -- well, I know. I argue and I
20 don't, I don't---

21 THE COURT: well, you're just saying that you can't go
22 on officer's hunches. But now I'm just -- I'm just saying
23 that hunches -- this is -- what you're going by is what is a
24 reasonable suspicion, and I can't, in any way particular --
25 I can't sit down and give you a two plus two four, equals

1 four answer as to what a reasonable suspicion is and they
2 don't try to. They say you've got to look at the totality
3 of the circumstances that existed at the time the officers
4 you know -- and one of the things you consider is officer's
5 experience, his judgment. I'm just reading what they say to
6 consider.

7 MR. THOMPSON: Right.

8 well, does Tindall not say that a point he tells the
9 defendant he's gonna receive a warning ticket that, that he
10 needs to stop his questioning at this point?

11 THE COURT: well, see here's what we got and you're
12 compartmentalizing this stop, and I understand why you're
13 doing that.

14 MR. THOMPSON: I understand.

15 THE COURT: And let me, let me tell you what I, the
16 way, the way I view it one more time. We've got a stop.
17 We've got an officer who approaches the car. His testimony
18 is that he sees something suspicion going on that could
19 endanger him. He makes a call for backup, and what, who he
20 calls is his partner that he's worked with for years who's
21 here on this particular situation with him to come and give
22 him assistance who he believes to be reasonably close to
23 him. They say they only work a couple of miles apart at any
24 given time. That's what his testimony is.

25 And from that point now -- the stop continues. I

1 didn't expect him, as soon as he made that call, to write,
2 write the ticket and, and turn it in because he had to go
3 back to call in the information. He had to go back and get
4 a GPS coordinate. They were discussions that went on
5 between your client and, and the officer, and he said,
6 during those conversations, he heard things that didn't add
7 up, that didn't make sense to him.

8 So, I think you're trying to compartmentalize it like
9 as soon as that call went out that's it. He can't talk
10 anymore. He can't develop any more suspicion.

11 Now, the call went out, I realize, because he says
12 officer safety. That's his testimony. That's what's in the
13 record.

14 Now, that doesn't keep him from later on, while he's in
15 the process of legally issuing a warning ticket, from
16 continuing to consider and develop, and develop the
17 situation. I don't see anything in these cases that
18 compartmentalizes it to the point.

19 Now, I looked at Tindall, and I still look at Tindall
20 from the prospective that there you had a warning done, the
21 ticket was in a position or was delivered, and then he
22 continued to question him and develop the suspicion after
23 that.

24 Here, the way I saw it, that suspicion actually came
25 about before that ticket was passed over and I talked --

1 that was the ruling I gave yesterday. I don't know that's
2 changed from what I've heard today.

3 Am I making your argument for you?

4 I don't mean to, Mr. McCarty.

5 SOLICITOR MCCARTY: That, Your Honor, I appreciate
6 you -- it might save me a little bit of an argument. I do
7 respectfully request that you don't reverse yesterday's
8 holding, and I know Mr. Thompson has it exactly right to
9 this point, but I would respectfully request that you don't
10 grant a directed verdict and allow the State's case---

11 THE COURT: Oh, I understand that, but I don't mean --
12 and I don't mean -- I'm not trying to talk you down, but I'm
13 trying to explain the ruling that I gave yesterday.

14 MR. THOMPSON: I understand.

15 THE COURT: And I don't read the cases quite as
16 compartmentalized as far as bam, bam, bam, here's how things
17 happen. Now, I agree that Tindall took the position that
18 once that ticket was issued, that warning ticket was issued,
19 the reason for the stop had ended, but the officer continued
20 to investigate thereafter. Here we've got a call for help,
21 then a investigation going forward, and the officer says he
22 already made a decision to search that car before he got
23 finished with that warning ticket because he developed other
24 suspicions in the conversation.

25 I see that as a little different from Tindall. But I,

1 you know, I could be wrong. You know, this is influx
2 obviously. We got, we got two cases. We got Tindall out
3 there, we got Provet, and if you read them on their face,
4 when I first read them, I thought they just went in opposite
5 directions. So then you try to read it to make some sense
6 out of it.

7 MR. THOMPSON: I didn't argue for that, yes, sir.

8 THE COURT: I know you didn't because I think they go
9 in opposite -- when you first -- the first time I read them
10 in the case I did earlier this year, I thought they were at
11 odds, and I couldn't imagine the Court of Appeals turning
12 around and trying to overturn the Supreme Court decision
13 basically that year. That was strange, first time I read
14 it. So then I tried to look for some rationalization as to
15 how that worked. This is the best I can do.

16 MR. THOMPSON: And my, my other argument, Your Honor,
17 would be that if, if -- in light of especially what you're
18 saying, that's your opinion of the holding, I'm argue, I'm
19 gonna argue that second detention, and whereby he would --
20 he pulls that ticket away, my client's not free to go. I
21 think yesterday he said yeah, he could of walked up the
22 road. He, he obviously detained and held my client and then
23 solely for an invalid reason.

24 THE COURT: I think the testimony was yesterday that,
25 that the car wasn't going anywhere. That's what I heard him

1 say.

2 MR. THOMPSON: Right.

3 THE COURT: And I don't know. That's what he said.

4 MR. THOMPSON: And, and I think, you know, I think Mr.
5 McCarty would agree that refusing the search doesn't create
6 more suspicion, a reasonable suspicion, and I would argue
7 that he detained anew there, and he held him against his
8 will on that, and that he still---

9 THE COURT: Well, now even today his testimony was
10 though was that the, the search was never refused. He never
11 gave an answer is what the testimony was; one way or the
12 other.

13 MR. THOMPSON: I, I---

14 THE COURT: He asked a question back. He said can I
15 search your car. I think your client said can I go if you
16 do, and they never got to the point where your client said
17 no, I'm not gonna do it. He never, he never consented, but
18 he never said no.

19 MR. THOMPSON: He---

20 THE COURT: Am I, I misstating what happened on the
21 tape?

22 MR. THOMPSON: My client said if I say no can I go.

23 THE COURT: That's what he said. That's what he said.

24 MR. THOMPSON: And he let it be known that no, you
25 can't go until his dog does a walk around.

1 THE COURT: Okay.

2 MR. THOMPSON: And I consider that a secondary
3 detainment that -- and once, like I said, he was given his
4 ticket back, and apparently later my client, makes my client
5 think he's free to go, and that, that, in my opinion,
6 creates a secondary detainment that he had any reason to
7 other than him denying the search, he had no reason to hold
8 him after that.

9 THE COURT: Unless he had developed a reasonable
10 suspicions at that point in time.

11 MR. THOMPSON: Well, and I guess his way of going about
12 it was a little bit confusing not only to my client, but,
13 but to me too. I mean if he's gonna hold him, why not say
14 we're gonna search the car.

15 THE COURT: Well, I agree it's an unusual detainment,
16 and, like I say, this may be the case that falls in the
17 middle of the two. I don't know.

18 MR. THOMPSON: All right. Your Honor, I'll make one
19 more motion. I believe that Office Wilson's error in
20 reporting my client's driver's license number, if he called
21 in an improper number, that led to a delay in this case.
22 Had he done -- if he had done that correctly, he would of
23 gotten feedback immediately, and I think it would of
24 expedited the entire stop.

25 THE COURT: Well, now, that, that could be speculation

1 on your part. Now, I realize that's possible. But the --
2 I'd heard no evidence from the dispatcher saying that. I
3 heard no evidence from anyone who indicated that's, in fact,
4 what did happen. I do know that, that I agree. The
5 evidence that I've heard indicates that the number was
6 called in wrong. Whether that was the reason for the delay
7 or not, I haven't heard evidence to that effect.

8 MR. THOMPSON: All right. And I don't think you'll
9 ever hear back from the license. I think that was---

10 THE COURT: Again, there were a lot, apparently a lot
11 of stops going on that night. I don't know if that's the
12 reason for the delay. Certainly you could of presented
13 evidence on that point, but I didn't hear it. So, it would
14 require me to speculate as to what caused that delay. I
15 realize that's a possible cause, and, you know, what could
16 of happened, once the -- what could of also happened, once
17 the dispatcher got to it and ran it and realized it wasn't a
18 proper number for a North Carolina license, could of called
19 right back and said that won't work, that's not a proper
20 number for a North Carolina license.

21 I don't know how that works. See, I don't have any
22 evidence. So, I'll be speculating as to whether that was
23 the cause of the delay. I realize it's a possible cause of
24 the delay. I, I can -- I'll recognize that.

25 MR. THOMPSON: And, again, Your Honor, I think that's

1 all I would argue. That would be my last argument.

2 THE COURT: All right. Mr. McCarty, I'll hear from
3 you. I want you to put it on the record, whatever you want
4 to say about it.

5 SOLICITOR MCCARTY: Your Honor, I do appreciate your,
6 your line of reasoning. Again, I stated that would, that
7 would be my argument towards not reversing any previous
8 ruling you made towards the motion for suppression and
9 asking you maintain that same holding from yesterday and
10 apply it to today's testimony.

11 Your Honor, in fact, I would like to address the issue
12 involving the second detention. Again, I think Mr. Thompson
13 here is compartmentalizing the information used. I believe
14 aptly described, Trooper Wilson has, throughout his
15 testimony, described what he believes can be reasonable
16 suspicions, articulable to specific instances of
17 conversations or visual, physical appearance of the
18 defendant that he is recognized that, through his training
19 and experience, have taught him that something else is afoot
20 here. That just isn't a guy who's fatigued and is failing
21 to maintain his lane.

22 Now, I will agree with Mr. Thompson that the denial of
23 a person to consensually, consensually allow an officer to
24 search his vehicle is not grounds to hold that person and
25 detain them. We don't have that here. We don't have any

1 point here where the officer walks up to his car, license
2 and registration, hey, can I search your car, no, you're
3 gonna sit right here until I get a K-9 because throughout
4 all of this, and I want to refer back to my notes, I think I
5 have the time, from the initial point of this stop, where
6 the warning ticket is explained, which you saw kind of a
7 simultaneous asking of you care if I search your car, it's
8 ten minutes and 53 seconds as I read the tape. So, a little
9 bit shy of 11 minutes.

10 During the course of the 11 minutes, he conversed with
11 the defendant, talked to the defendant, saw the defendant
12 place something possibly under the seat or in the door area
13 as we learned where this cocaine was discovered. It's a
14 physical indicator cues, cues about where he comes from, his
15 trip, his length of his trip, who he was with, who he may
16 not of been with, who we may all know, what they were doing
17 there, what they were talking about, all those types of
18 things Trooper Wilson's trained to recognize as possible
19 deceptive type indicators.

20 So, he had all that going on up to 11 minutes into that
21 stop where he asked the defendant do you care if I search
22 your car. If the defendant has consensually agreed to it,
23 he would of -- we would of probably have the search, and I
24 would argue, it's not in testimony, but I would argue
25 probably still waited for another officer to get there for

1 officer safety so that we don't have a trooper in a car with
2 a defendant standing freely on the side of the road to be
3 able to hit him over the back of the head. We still
4 probably had to wait for another officer to arrive, but
5 we're not to that point.

6 But we do have all that going on. When he denies that
7 consent to request, that's fine. He does have the ability
8 to hold him on that reasonable suspicion until a free air
9 sniff can be conducted. If a free air sniff produces
10 nothing, the defendant would be on his way I'm certain of
11 it.

12 THE COURT: All right. I'll, I'll -- my ruling will
13 remain the same. Motion denied.

14 SOLICITOR MCCARTY: Thank you, Your Honor.

15 THE COURT: Let me ask the State if there's any
16 convictions that you might plan to use should the defendant
17 testify.

18 SOLICITOR MCCARTY: There is, Your Honor, and I've
19 previously shared, through discovery, Mr. Falls' criminal
20 record, and just to make sure I have the most accurate one,
21 I asked my assistant to run it at today's date, August the
22 11th at 1456, so 2:56 this came back from SLED. It does
23 show, Your Honor, a conviction in the State of North
24 Carolina, when I applied his information to the system,
25 Mecklenburg County Superior Court charged with trafficking

1 in cocaine. It is listed as a felony. The disposition date
2 was October 24th, 2003. It is indicated as a trial by a
3 judge, and the verdict as guilty.

4 Your Honor, it further goes down through, when he
5 cycled through the system, it does say confinement of eight
6 to ten months. I don't know if that was an actual
7 confinement for cocaine sentence or what, but it does list
8 that. The only other issues I would have, Your Honor, is
9 Mr. Falls, for conviction purposes for that, does, that
10 does, is the only conviction. There are, just for Court's
11 purpose, other arrests on his record, and I would indicate
12 to the Court that, again, using the information that we have
13 concerning Mr. Falls, there is an arrest.

14 At 2000, out of Tyler, Texas, which is out near Dallas,
15 Texas, charged with money laundering greater than a hundred,
16 greater or equal to a hundred thousand dollars.

17 THE COURT: All right.

18 SOLICITOR McCARTY: But I don't show a disposition of
19 that charge.

20 THE COURT: No disposition. All right.

21 If you would please swear the defendant.

22 (WHEREUPON, the defendant was placed under oath at this
23 time.)

24 THE COURT: Sir, you can be seated. You can be seated,
25 sir. Thank you.

1 Now, Mr. Falls, at this time I'm going to explain to
2 you certain of your legal rights. I will tell you, if you
3 don't understand what I tell you at this time or you want
4 additional information, when I finish, I will give you an
5 opportunity to ask for that. We have now reached the
6 stage -- you understand what we're doing?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right. We've now reached the stage of
9 the trial---

10 MR. THOMPSON: Your Honor?

11 THE COURT: Yes.

12 MR. THOMPSON: I'm sorry for interrupting.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: Can I talk to him just a minute and
15 maybe, maybe give him a foundation for what you're about to
16 ask him.

17 THE COURT: Sure. That's fine. I'll wait right here.

18 MR. THOMPSON: I'm a little concerned he might not
19 understand fully what's going on.

20 THE COURT: I understand.

21 (Pause.)

22 THE COURT: Are you, are you ready to proceed,
23 Mr. Falls?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. We've reached the stage of this

1 trial where you have the right to present your defense in
2 this case. At this time you have the right to claim the
3 protections that are given to you under the Fifth Amendment
4 to the United States Constitution. That particular
5 amendment reads, in part, that no person shall be compelled,
6 in any criminal case, to be a witness against himself.

7 Now, what that means is that you can not be required or
8 made to testify in this case. You have the right to testify
9 on your behalf. However, you also have the right not to
10 testify. No one can make you testify in this case. The
11 right to remain silent is a personal right, and in -- no one
12 can waive that right or give up that right except you.

13 Now, I will tell you that, if you decide to testify,
14 your testimony will be governed by the same rules that
15 govern any other witness who might testify. What that means
16 is that you would be examined by your lawyer. You would
17 also be cross-examined by the State's attorney, and I will
18 tell you that should you have any convictions on your record
19 involving dishonesty or false statements or for crimes which
20 were punishable for more than one year, and the Court
21 determines that the probative value of admitting this
22 evidence on the question of credibility outweighs its
23 prejudicial effect to you, the solicitor would be able, in
24 that case, to introduce that record to attack your
25 credibility.

1 Now, if you decide to testify, the decision on your
2 part must be made freely and voluntarily and intelligently.
3 That means that you have to understand and have knowledge of
4 the protections given to you by the Fifth Amendment, and
5 also have knowledge of the consequences that could result
6 should you decide to testify.

7 I will also advise you that if you should decide not to
8 testify that it's my obligation and I will instruct the jury
9 that they can not give the fact that you did not testify any
10 consideration whatsoever in reaching a verdict in this case,
11 and that there's absolutely, to be absolutely no prejudice
12 to you because you did not testify.

13 Now, the decision to testify is left entirely up to
14 you. You have the right to discuss that decision with your
15 lawyer, family, with family, friends, or anyone else you
16 want to discuss it with, but the final decision is yours.

17 Now, do you understand, Mr. Falls, what I told you?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions that you want me
20 to give any further explanation to you about?

21 DEFENDANT: I have a question as far as arrest and
22 charges are different. So, since I might had an arrest
23 don't mean I was ever charged.

24 So, can that be held against you too?

25 THE COURT: No, sir.

1 MR. THOMPSON: Oh.

2 THE COURT: Go ahead.

3 SOLICITOR MCCARTY: Your Honor, the only argument I'd
4 like to request is just the leave that he, if he should---

5 THE COURT: Oh, if you were to get up, for example,
6 during your testimony and say I've never been in any trouble
7 and nobody's ever accused me of anything, oh, yeah, then it,
8 then it comes in to directly refute that statement. So, if
9 you were on the stand to say something about the fact you've
10 never been charged with a crime, I've never been in trouble
11 before, then oh, yes, then it would come in directly to
12 refute that statement. But as long as you don't make what
13 appear to be false claims, then it would not come in. Only
14 convictions.

15 DEFENDANT: Oh.

16 THE COURT: Any other questions?

17 DEFENDANT: Not at this time.

18 MR. THOMPSON: Your Honor, could we go ahead and make
19 a, argue that motion over whether that prior conviction
20 would come in under, I think it's 404?

21 Maybe that would -- you know, that would have some
22 bearing on his decision.

23 THE COURT: Well, I'll be glad to hear from you.

24 Do you have any objection to us discussing that at this
25 time?

1 SOLICITOR MCCARTY: I'm sorry, Your Honor?

2 THE COURT: Do you have any objection to us discussing
3 that at this time?

4 SOLICITOR MCCARTY: No, sir, Your Honor.

5 THE COURT: All right. Yes, sir.

6 MR. THOMPSON: Your Honor, I would argue it's an '03
7 conviction and not related here to the '07 case. I don't
8 think there's enough of a nexus between that conviction and
9 this charge. He's supposedly coming from Atlanta on this.
10 This is a Charlotte case. I'm not -- it seems awful odd
11 that it's a trafficking case and he got an eight to ten
12 month sentence. I'm not a hundred percent sure what went on
13 with that case.

14 THE COURT: Well, it's a North Carolina charge and
15 conviction. I'm not sure I understand what levels they
16 start calling it trafficking at or, you know, it did appear,
17 from what Mr. McCarty's told me, that it did carry more than
18 one year.

19 MR. THOMPSON: It does, Your Honor. I would just argue
20 that there's not enough of a nexus between an '03 conviction
21 and an '07 arrest such that it should be brought in and used
22 against him.

23 THE COURT: All right. Mr. McCarty, I'll hear from you
24 on the other side of that.

25 SOLICITOR MCCARTY: Well, Your Honor, based on what the

1 nature of the charge is, as listed in his NCIC report, it
2 says trafficking in cocaine, Your Honor, I think that 404(b)
3 I think although we're not offering that necessarily to
4 prove the conformity of any action here, but I think it
5 would go towards the absence of mistake, accident. It might
6 even go towards intent, Your Honor, if there was evidence
7 through his testimony to the contrary. I think that calling
8 it by its name would be an appropriate thing as opposed to
9 just simply asking, inquiring about a felony conviction to
10 the defendant.

11 THE COURT: well, here's, here's my problem with ruling
12 on it right now. I'd probably need to hear his direct
13 testimony as to -- I don't know if he would be testifying
14 that this was a mistake or he had no knowledge or I -- since
15 I don't know what his testimony's gonna be, it's difficult
16 for me to, to really say whether or not this is evidence of
17 some type of lack of mistake or lack of, anyway, mistake on
18 his part. I will say that I would admit the conviction
19 without calling the name of what it was. In other words,
20 you asked him if he has a felony conviction previously. I
21 would allow you to ask that question. Whether I would allow
22 you to identify the convictions as trafficking cases would
23 largely depend upon the nature of his own testimony on
24 direct.

25 So, we -- I would rather take that issue up when he's

1 completed his direct testimony.

2 SOLICITOR MCCARTY: And, Your Honor, it's not marked,
3 but I apologize, it does have my highlight on it, but I'm
4 happy to pass this up to show the Court what I'm referencing
5 here if you'd like to see this.

6 THE COURT: I'll just let you put that into the record.
7 I trust that you've correctly stated it. That will be a
8 Court's Exhibit not to go to the jury.

9 MR. THOMPSON: We have the same thing, same thing on it
10 provided to us through discovery.

11 THE COURT: All right.

12 (WHEREUPON, the NCIC was marked as Court's Exhibit No.
13 1 for identification purposes only at this time.)

14 THE COURT: Now, sir, do you wish to discuss this
15 decision with your lawyer further in light of my comments
16 and rulings?

17 DEFENDANT: Yes, sir.

18 THE COURT: All right. I'm gonna take about a five
19 minute break. We'll be back.

20 Court's in recess during that time.

21 If you wish to go to the restroom or something, he's in
22 custody. So, you'll need to get the police to help you. I
23 don't know what you want to do during the break. So, five
24 minutes.

25 MR. THOMPSON: Okay.

1 THE COURT: Five minutes.

2 SOLICITOR McCARTY: Thank you, Your Honor.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: All right. Mr. Falls, have you had an
5 opportunity to discuss your decision with your lawyer?

6 DEFENDANT: Yes, sir.

7 THE COURT: Anything else you need to discuss with him?

8 DEFENDANT: I want to ask one more question.

9 THE COURT: Yes, sir.

10 (Pause.)

11 THE COURT: All right. Mr. Falls, Mr. Falls, have you
12 now had an opportunity to discuss this with your lawyer?

13 DEFENDANT: Yes, sir.

14 THE COURT: Anything else you need to talk with him
15 about now?

16 DEFENDANT: No, sir.

17 THE COURT: Do you intend to testify in this case?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right, sir. Are we ready to go
20 forward?

21 MR. THOMPSON: Your Honor, we have one issue. I was
22 telling him I want to add one witness to the witness list.
23 Mr. Falls daughter came with me today, and basically just to
24 verify there's a cousin in Atlanta, and---

25 SOLICITOR McCARTY: I would object to that, Your Honor.

1 Mr. Falls has the ability to testify about a relative in
2 Atlanta. Especially the one he tells the trooper he's there
3 to visit. Number one, I think it would be cumulative, and,
4 number two, is she wasn't prepared as part of the witnesses
5 to the jury panel. I would hate if somebody possibly
6 recognized her and know it's her. I mean I know we have an
7 alternate to strike, but that wasn't presented at the
8 initial phase of the trial.

9 I certainly know -- like I said, I believe it's
10 cumulative testimony and Mr. Falls has the ability to
11 testify and his travel plans especially with a relative.

12 THE COURT: well, it does present a little bit of a
13 problem because, you know, we qualify the jury by going over
14 witnesses with them.

15 Where is she from?

16 MR. THOMPSON: She's from Charlotte, Your Honor. No
17 ties here to Spartanburg County.

18 THE COURT: Okay. You want me to inquire of the jury
19 as to my normal inquiries?

20 SOLICITOR MCCARTY: I would ask just out of an
21 abundance of caution, yes, sir.

22 THE COURT: Beg your pardon?

23 SOLICITOR MCCARTY: I would ask, yes, sir, just out of
24 an abundance of caution.

25 THE COURT: What is her name?

1 MR. THOMPSON: Erica Falls.

2 THE COURT: I've heard two different names.

3 MR. THOMPSON: Kelissa Falls.

4 THE COURT: Spell that for me please.

5 WITNESS: It's K-E-L-I-S-S-A. Last name Falls.

6 THE COURT: Now, the only subject of her testimony will
7 be concerning --?

8 MR. THOMPSON: The cousin.

9 THE COURT: The existence of a cousin?

10 MR. THOMPSON: There is the existence of a cousin and
11 possibly that it's not out of the ordinary for him to make a
12 day trip to Atlanta.

13 THE COURT: Well, now---

14 MR. THOMPSON: I think that, that---

15 THE COURT: Now we've gone a little further.

16 MR. THOMPSON: Well, that may -- I mean that may take
17 place in his argument, in his argument that, that he made an
18 issue of that. It may bolster his case. I mean that's kind
19 of what I was thinking when she told me that, whether or not
20 I asked her about that. I need to confirm it.

21 THE COURT: I'll ask the attorneys to approach.

22 (WHEREUPON, a bench conference was held at this time.)

23 THE COURT: All right. Anything -- and her name is
24 Kelissa, is that right?

25 WITNESS: Yes.

1 THE COURT: Kelissa Falls.

2 All right. State ready?

3 SOLICITOR MCCARTY: We are, Your Honor.

4 THE COURT: Defense ready?

5 MR. THOMPSON: Yes, Your Honor.

6 THE COURT: Bring the jury in.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. The record will reflect that
10 the jury panel has returned to the courtroom.

11 Ladies and gentlemen, during the break a witness has
12 been identified as a potential witness in this case, and
13 this is a witness that was not listed when we originally
14 picked the jury, and I have to be sure that before I allow
15 this witness to testify, again, that this would not affect
16 your impartiality in this matter as I do when we normally
17 start the case.

18 The witness has been identified to me as a person named
19 Kelissa Falls from Charlotte, North Carolina.

20 Ma'am, if you'll stand so that they can place a face
21 with a name?

22 (Witness complies.)

23 THE COURT: You can be seated.

24 Now, as to Ms. Falls, had any member of the jury panel
25 ever been related by blood or are you related by marriage or

1 have you ever had a close personal or a social relationship
2 with that individual, if that's true, I'd ask that you now
3 stand.

4 (No response.)

5 THE COURT: Now, if that person were called as a
6 witness in this case, would this, would that, in any way,
7 affect your ability to be fair and impartial in this trial?

8 If it would affect that ability, please stand.

9 (No response.)

10 THE COURT: Does the State wish for me to call, ask any
11 additional questions of the jury?

12 SOLICITOR MCCARTY: No, Your Honor. Thank you.

13 THE COURT: Any from the defense?

14 MR. THOMPSON: None, Your Honor.

15 THE COURT: All right. Then I'll allow Ms. Falls to
16 appear as a witness in this case on the issues that she's
17 been identified on.

18 At this time, ladies and gentlemen, the defense will
19 call its witnesses.

20 You may do so, Mr. Thompson.

21 MR. THOMPSON: Please the Court, Your Honor, call Jeff
22 Falls.

23 THE COURT: Come forward, sir, to my left and be sworn.

24 JEFF FALLS, having been first duly
25 sworn, testified as follows:

Jeff Falls - Direct examination
by Mr. Thompson

1 THE COURT: Have a seat please. Sir, state your name.

2 WITNESS: My name is Jeffrey B. Falls.

3 THE COURT: All right. Mr. Thompson, your witness.

4 MR. THOMPSON: Please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Jeff, how old are you?

9 A I'm doing fine.

10 Q I said how old are you.

11 A Forty-eight.

12 Q Okay. where do you live?

13 A Charlotte, North Carolina.

14 Q Okay. And what do you do in Charlotte?

15 A I own a tow service.

16 Q A towing service?

17 A Yes, sir.

18 Q What's the name of it?

19 A Road Runner Towing.

20 Q Road Runner Towing?

21 A Yes.

22 Q Okay. And how long have you been in that business?

23 A Thirteen years.

24 Q Okay. Do you have to -- do you have to have any
25 special training for that?

Jeff Falls - Direct examination
by Mr. Thompson

- 1 A No.
- 2 Q Special driver's license or anything?
- 3 A Regular driver's license. You own your own tow truck
4 and license to operate in the State of Mecklenburg County.
- 5 Q And you have some items here.
6 What is this green item you have here?
- 7 A I got my license at the time of my arrest that proves
8 that I did have a towing service from 2006 to 2007. It
9 expired in 2007.
- 10 Q That's a business license?
- 11 A Yeah, that's a business license and this is my IRS tax
12 forms, ID.
- 13 Q And you got a tax number?
- 14 A Right.
- 15 Q Tax identification number---
- 16 A Yes.
- 17 Q ---for your business?
- 18 A Yes.
- 19 Q That's Road Runner Towing Service, correct?
- 20 A Right, the name's at the top.
- 21 Q All right. Now, you -- this towing service, does it,
22 does it restricted to Charlotte since you have a Charlotte
23 business license?
- 24 A No, all over the State. What, what they really count
25 on is your insurance, how much insurance you have. I have a

Jeff Falls - Direct examination
by Mr. Thompson

1 million dollar coverage. So, I can go over any part of the
2 United States.

3 Q Okay. Now, your towing service, what do you tow?

4 Is it wrecks?

5 A Mostly repo.

6 Q Repossessions?

7 A Yes.

8 Q Okay. And how far would that, would you go?

9 what's the farthest you've been in the last few years
10 to pick up a car?

11 A I been to Miami. I been to Tampa, West Virginia,
12 Virginia, Maryland, Atlanta. That's probably about the
13 farthest. Maybe Tennessee.

14 Q Okay. And do you -- is there a specific company you're
15 contracted with to go and---

16 A No.

17 Q ---make pick-ups?

18 A Pretty much it's somewhat up in that area and somebody,
19 as far as car lots, somebody move to Charlotte and skip out
20 on their payment. They can call Charlotte repo companies
21 and find which one of them was able to find the car, and,
22 for a decent price, bring the car back.

23 Q Okay. So, really you're towing from Charlotte back to
24 where the car comes from?

25 A Right, most of the time.

Jeff Falls - Direct examination
by Mr. Thompson

- 1 Q Okay.
- 2 A But some time I go get the cars from other places too.
- 3 Q Okay. And you been doing that for 13 years, right?
- 4 A Yes, sir.
- 5 Q Okay. And do you -- have you seen the video and you've
- 6 seen Trooper Wilson here and we're here today concerning
- 7 that arrest from February 20, 2007.
- 8 You aware of what's going on with that?
- 9 A Yes, sir.
- 10 Q Okay. Now, you were in a rental car, correct?
- 11 A Yes, sir.
- 12 Q Okay. And what is this you have with you here?
- 13 A An Avis rental agreement.
- 14 Q Okay. And you -- when did you tell Trooper Wilson you
- 15 rented that car?
- 16 A For Valentine's Day.
- 17 Q Okay. And how long -- and what did you tell him as far
- 18 as that car?
- 19 When did you tell him -- did he inquire about when you
- 20 had to take it back or anything?
- 21 A I told him the next day. It was due back on the 21st.
- 22 Q Okay. And---
- 23 A At 12:30.
- 24 Q Okay.
- 25 A And what is that document you have here?

Jeff Falls - Direct examination
by Mr. Thompson

1 A That's my rental agreement.

2 Q Okay. Is that the, the, this---

3 A My---

4 Q ---rental agreement you received from Avis?

5 A Yeah, after I paid the bill.

6 Q Okay. And what does it indicate right here that you
7 have highlighted?

8 A I got the days it was due in. I got the highlighted,
9 how much gas I have at the time of the stop, and I had a
10 quarter of a tank of gas.

11 Q Okay. And that's what was turned in with?

12 A Yes.

13 Q Okay. Now, are you required to turn it in with a---

14 A Full tank of gas.

15 Q Full tank.

16 Okay. All right. Your Honor, I'd offer this as
17 Defendant's Exhibit 2.

18 THE COURT: Any objection?

19 SOLICITOR MCCARTY: No, Your Honor.

20 THE COURT: Without objection it will be marked as
21 Defendant's No. 2.

22 SOLICITOR MCCARTY: Actually, Your Honor, I know I said
23 no objection.

24 Could I ask to have that or that statement be
25 reconsidered for just a minute?

Jeff Falls - Direct examination
by Mr. Thompson

1 THE COURT: Yes, sir, I'll allow you to reconsider it
2 at this time.

3 SOLICITOR MCCARTY: As I said that, it -- something
4 popped into my mind. But, Your Honor, I would, I would
5 object to the nature of the rental agreement being entered
6 as material because it is a hearsay document and argument on
7 that ground, Your Honor. I know Mr. Falls testified as to
8 its contents, and I believe he has the right to testify as
9 to what he did occur during that rental. The document
10 itself is a hearsay document that's purported by somebody or
11 something from Avis who's not here to testify.

12 THE COURT: Isn't he a party to that contract?

13 SOLICITOR MCCARTY: He, he is a party to the contract,
14 Your Honor, but he's not a party to the document production.
15 I mean he's not a maker or producer of the document.

16 THE COURT: Well, is it -- I don't know, is it a copy
17 of the original?

18 I haven't seen it.

19 MR. THOMPSON: Your Honor, it's the original, and it's
20 the, as you see, this perforated on the end where it runs
21 off the, where it's typed up, and I would argue that he paid
22 it and it's in his name, and---

23 THE COURT: Well, it's a business record as well.
24 Overruled.

25 SOLICITOR MCCARTY: Thank you, Your Honor.

Jeff Falls - Direct examination
by Mr. Thompson

1 (WHEREUPON, the rental agreement was marked as
2 Defendant's Exhibit No. 2 and received into evidence at this
3 time.)

4 Q All right. And, Jeff, did you -- you say you rented
5 that automobile, correct?

6 A Yes, sir.

7 Q Okay. Now, did you, in fact, go to Atlanta on the
8 20th?

9 A Yes, sir.

10 Q Okay. You indicated that you worked that day too, is
11 that correct?

12 A Yes, sir.

13 Q Do you recall what you did at work that day?

14 A By me being the owner of my company, I might did
15 deposit for what receipts I got. That was on a Tuesday.
16 Most of the times I repo at night. So, that next morning I
17 get paid for them. So, I would go and deposit the checks or
18 whatever into my business account.

19 Q Okay. And do you recall what time you left Charlotte?

20 A I left out, like I told the trooper, between 11:00 and
21 12:00.

22 Q All right.

23 A Closest to 12:00, possibly, something like that.

24 Q How long does it take you to get from Atlanta to
25 Charlotte?

Jeff Falls - Direct examination
by Mr. Thompson

1 A I roughly got there about 4:00, 4:15.

2 Q Okay. And you've indicated that you saw your cousin,
3 is that correct?

4 A Yes.

5 Q What business did you have in Atlanta with your cousin?

6 A I have no business in Atlanta with my cousin. We just
7 cousins.

8 Q Okay. Why did you go down that day?

9 A I went down there because they invited me down there
10 to, like I told the trooper, to discuss -- he was having a
11 party. He was inviting like 50 models there. He had two
12 friends that he want me to meet and just get my opinion on
13 what I think he showed me, the site, of where the party
14 would be, and then he's asking me about my daughter moving
15 to Atlanta.

16 Q Okay. Now, when you say party, now, we have a little
17 birthday party for a two year old or we have a big blow out.
18 What -- how would you describe this party?

19 A It's like a blow out. My cousin like in, like the
20 producing part as far as entertainment for movies and as far
21 as in records and stuff. Like he is -- his parties was
22 catered by Puff Ditty. I don't know if anybody know him.
23 Some of them might. But he cater in Atlanta for people like
24 Tyler Perry. He got my daughter a play, a part in The
25 Colored Girl Black Girl or something movie because he know

Jeff Falls - Direct examination
by Mr. Thompson

1 famous people.

2 Q Okay. So, this is a pretty big deal, correct?

3 A Yes.

4 Q And you said he wanted you to meet two people?

5 A Yes.

6 Q And were -- who -- those were the girls -- were those
7 the girls you referenced in the video I mean?

8 A Yes, one was named Rosa. She owned her own shop, own
9 design labels, and the other one was an investor for a real
10 estate stuff.

11 Q Okay.

12 A They both his friends and they make pretty good money.
13 For, for me, I never meet any women that make a hundred
14 thousand dollars. So, for him, that's common.

15 Q Okay. Now -- and you -- did you, in fact, go to
16 Atlanta three times in a year?

17 A Yes, I've been there three times.

18 Q Okay. And you said you didn't go to your cousin's
19 house, correct?

20 A Right.

21 Q Okay. Why would you not go to his house and visit?

22 A Because my cousin like be on the telemarket. He
23 meeting people all over. The first time I went to Atlanta I
24 met him at his business off Peachtree. The second time he
25 told me to go off 485. Once I get to 485 to call him, and

1 then he'll meet me there and he followed me to his house,
2 and the third time he just met me closer. He say, well,
3 it's gonna be traffic before you. I'm gonna let you come to
4 an exit. I'm gonna -- you can leave your car and you get in
5 the car with me and the two ladies. I'm gonna show you
6 where the party is gonna be at, and I want to go -- he has
7 a, like a book with full of girl picture and stuff like
8 that, and he was really trying to talk me into coming down
9 there for the party and like my daughter move down there as
10 like his assistant at the same time. I had told my daughter
11 earlier at the point that I wasn't gonna let her move down
12 there, but --.

13 Q Okay. Now, you -- what time did you leave to come back
14 to Charlotte, got back to Charlotte?

15 A I left -- traffic in Atlanta is real hectic. So, I
16 left there roughly about 6:00, 6:30. That's why I was
17 coming from the outskirts of the city so I can just get on
18 out of the city traffic.

19 Q Okay. And you don't dispute that's you in the video
20 coming down I-85 in Spartanburg County, do you?

21 A No.

22 Q At about nine o'clock, correct?

23 A Right.

24 Q Okay. And Trooper Wilson testified that you were going
25 over the fog line.

Jeff Falls - Direct examination
by Mr. Thompson

1 Do you remember how times you went over the fog line?

2 A No. Like I was -- no, I can't even remember. I can't
3 even remember if I ever went over the fog line.

4 Q Okay. Now, do you recall seeing Trooper Wilson on the
5 highway?

6 A Yes, I seen Trooper Wilson ahead of me on the side of
7 the highway probably at marker 6, 60---

8 Q Okay. Was---

9 A ---like he stated.

10 Q Was he pulled off to the side or was he moving?
11 What was he doing?

12 A Pulled off to the side.

13 Q Okay. Was his lights on, blue lights?

14 A No.

15 Q Okay. And you went past him?

16 A Yes.

17 Q What lane were you in?

18 A I was in the right lane.

19 Q Okay. Why were you in the right lane?

20 A Cause I was looking for an exit cause I had, just had a
21 quarter of gas. I was gonna -- I was planning on filling
22 up, get me something to eat, and kind of find something for
23 my allergies, sinus at the time.

24 Q Okay. And where did you next see Trooper Wilson?

25 A Huh?

Jeff Falls - Direct examination
by Mr. Thompson

1 Q Where did you next see Trooper Wilson?

2 A Where did he start following me at?

3 Q Where did you, where did you see him next?

4 I mean you passed him, right?

5 A After I passed him, like a few seconds later he was
6 coming up behind me.

7 Q Okay. Is that when he pulled you over?

8 A No.

9 Q Okay. What did he do then?

10 A He got behind me, he followed me, and then he followed
11 me for a little bit, and then he got over to the third lane.
12 He didn't come exactly beside me. He came over to the far
13 end, and me and him was going parallel about a half a mile
14 or so, and then he pulled me over.

15 Q Okay. So then he worked in behind you and pulled you
16 over?

17 A Right.

18 Q Okay. And you heard his testimony that you parked
19 close to that white fog line.

20 Did you intentionally park close to that line to keep
21 him from coming to your door?

22 A No, I never heard of that before. I'm, I'm a civilian.
23 I never have heard of parking close to a line to stop
24 someone. I parked where I didn't want to scratch the car.
25 I knew I had to turn the car in tomorrow, the next day

Jeff Falls - Direct examination
by Mr. Thompson

1 after, and any damage I see, looking at the rental
2 agreement -- I don't sign up for insurance. So, any damage
3 done to a car I have to pay for it.

4 Q Okay. And, so, you, you deny you pulled up there in an
5 attempt to keep him from coming to your door, right?

6 A Yeah, I deny that.

7 Q What you testified to is correct?

8 A Right.

9 Q Okay. And then you got -- he -- do you remember his
10 testimony that your car was unusually clean?

11 A Yeah, I remember he said that.

12 Q Was the car clean?

13 A Yes, it's clean. See I get a discount with Avis
14 because I know the people there. You can look at the price
15 on there. She gave me like a price like for 250 cause I
16 have a deal that I get her car detail everytime I rent them.
17 I detail -- I have someone to detail it for me before I
18 bring it back. So, I always had it cleaned.

19 Q All right. Had that car been detailed?

20 A Yes.

21 Q When?

22 A That day.

23 Q What is detail?

24 A That morning.

25 Q What does detail mean?

Jeff Falls - Direct examination
by Mr. Thompson

1 A Detailing means cleaning up all the mess inside,
2 vacuuming the seats. If it need to be shampooed, shampoo
3 it, wash the outside. If -- sometimes it's depending who I
4 take it to. They put wax on the outside of the car. You
5 know, make it really like it's new and then I take it back
6 cause they give me a, give me -- the normal price of that
7 car is like 460 a week. I think she gave it to me for like
8 250 because I always get their cars detailed.

9 Q Okay. Do you drive the car for your work?

10 A Yes, cause by me in repo, I can't pull up to no one
11 house in a repo truck cause first thing they gonna do is say
12 get off my property. So, most of the time I have to go and
13 spot the car, and wait till later at night and come back and
14 with the truck and sneak in there, pick it up, and get out
15 without any confrontation. So, a lot of times we drive all
16 over the city, me, my other driver, and whoever. If he
17 driving the tow truck, I'm driving the car. If I'm in the
18 tow truck, he get a car. That's how I operate.

19 Q All right. You got pulled over. He told you to pull
20 up.

21 Do you remember that?

22 A Yes.

23 Q Okay. Did you put something under the seat to that
24 car?

25 A No. Me, I wouldn't never reach in front -- by me

Jeff Falls - Direct examination
by Mr. Thompson

1 reading on experience as far as being a black man, to be
2 honest, with a police with a gun, it's not gonna -- I'm not
3 gonna reach under no seat and risk getting shot.

4 Q Okay.

5 A Because then they got authority to shoot me.

6 Q Okay. So, he got you out of the car, correct?

7 A Right.

8 Q Do you recall the first thing he said to you

9 A He say he want to talk to me I think.

10 Q Okay. Did he tell you why he's pulling you over?

11 A He told me that I was driving too slow.

12 Q And did you -- what did you tell him?

13 why would you, why would you be driving -- did you
14 explain to him why you were driving slow?

15 A I was driving slow for one reason cause I seen him in
16 up front of me to be honest because with my experience with,
17 as far as getting tickets and stuff -- I haven't have no
18 ticket in like 18 years. So, whenever I see a police,
19 regardless of where I'm at, I'm gonna slow down
20 automatically. That's just my nature of -- that's, that's
21 how I drive.

22 Q Okay. And were your hands -- he testified that your
23 hands were shaking when, when you gave him your driver's
24 license.

25 were you shaking?

Jeff Falls - Direct examination
by Mr. Thompson

1 A No.

2 Q Okay. And were you nervous or even were you, even a
3 bit nervous from this pullover?

4 A I was curious to why he was pulling me over because I,
5 like I said, I drove down through there around about one
6 o'clock, and I had visually seen everybody on the side of
7 the highway been searched and everything on my way down to
8 Atlanta. So, I'm wondering why is he pulling me over.

9 Q Okay. Exactly what, what do you mean you saw people
10 being searched?

11 A I mean everybody out the car. I seen K-9. I seen
12 people taking from whatever in their cars as far as luggage,
13 whatever, I seen police in every car --

14 Q Where---

15 A -- going down the road.

16 Q Where did you see that?

17 A Between like 80 landmark to probably 60.

18 Q You talking about---

19 A I'm not saying it's a car on every exit because I seen
20 police at just about every exit.

21 Q Let me back up.

22 what do you mean by landmark, a mile marker?

23 A Yes.

24 Q Okay. So, what -- was that in Spartanburg County?

25 A I reckon. I didn't know where Spartanburg County

Jeff Falls - Direct examination
by Mr. Thompson

1 begins to be honest.

2 Q Okay. And about how many pulls-overs do you think you
3 saw when you were going to Atlanta?

4 A I think I seen about seven.

5 Q Okay. And that was between those two markers you just
6 said?

7 A Yes.

8 Q Sixty and eighty?

9 A That's like four and a half years ago. I can't
10 remember exactly.

11 Q Okay. And, so, you -- are you -- is it your testimony
12 you're well aware of that police presence when you came back
13 through?

14 A Yes.

15 Q Okay. Now, he gets you out and tells you you're
16 getting a warning, correct?

17 A Yeah.

18 Q Okay. At that point did you tell him anything or he
19 said -- he's indicated you're real nervous.

20 What were you trying to get across to him?

21 A I was trying to figure out why he stopped me in the
22 first place. Then he say well, I'm just giving you a
23 warning, you crossed the fog line. I'm thinking how did you
24 go from pulling me over for driving too slow to touching the
25 fog line.

Jeff Falls - Direct examination
by Mr. Thompson

- 1 Q Okay. And did you express to him any, anything
2 bothering you on the road?
- 3 A He asked me was I okay, steady on my foot and stuff
4 like that, you know. But I have been driving like three
5 hours and stuff. My legs get stiff. Most people just sit
6 around in they seats, you get stiff. So, my knees were
7 getting stiff as I was getting out the car. So, my -- I was
8 just stiff.
- 9 Q Now, he -- eventually this thing goes on for about ten
10 or eleven minutes, correct --
- 11 A Yes.
- 12 Q -- the stop.
- 13 Okay. And at one point he tells you to be safe,
14 doesn't he?
- 15 A Yeah.
- 16 Q Okay. What was your interpretation of his telling you
17 that and putting that warning in your hand?
- 18 A That it was okay for me to leave.
- 19 Q Okay. Now, had he given you your driver's license
20 back---
- 21 A Yes, cause I, I put it in my wallet.
- 22 Q Okay.
- 23 A And I put my wallet in my back pocket.
- 24 Q Okay. And when did he give those license back?
- 25 A He gave my license back when he came back to my car.

Jeff Falls - Direct examination
by Mr. Thompson

- 1 Q After you had pulled up from---
- 2 A Yes.
- 3 Q ---being on the guardrail?
- 4 A Yes.
- 5 Q When -- where were you when he handed you those
- 6 license?
- 7 A I was in the driver's seat the second stop.
- 8 Q You -- okay. So, is this when he handed you the
- 9 license?
- 10 A Yes.
- 11 Q What did he do with the rental agreement at that time?
- 12 A Kept it in his hand.
- 13 Q Okay. And what did you do with the license?
- 14 A I had it in my hand with my wallet while we was out
- 15 talking, and then once he went into the car I stuck it in my
- 16 wallet and then I eventually put my wallet in my back
- 17 pocket.
- 18 Q Okay. Okay. So, when he told you or when he asked you
- 19 to search your car, you -- do you recall what you said to
- 20 him in, in response to that?
- 21 A Yes, when I, when I was explaining to him like in my
- 22 mind is you stopped me from driving too slow, then you say
- 23 you give me a warning ticket, and then you going to
- 24 searching my car, and that's what I'm thinking, and I'm
- 25 saying for what reason, you know. I ain't -- I haven't done

Jeff Falls - Direct examination
by Mr. Thompson

- 1 anything to even warrant a search.
- 2 Q Okay.
- 3 A Not even warrant the stop to me.
- 4 Q Is that what, is that what you communicated to him?
- 5 A Yes.
- 6 Q Okay.
- 7 A That's what I was trying to anyway.
- 8 Q And you never gave him consent to search, did you?
- 9 A No.
- 10 Q And then you had -- and you were detained by him?
- 11 He wouldn't let you go anywhere, right, you felt?
- 12 A Right.
- 13 Q Okay. Now, the K-9 unit arrives?
- 14 A Yep.
- 15 Q And you still had not -- you needed your hat, right?
- 16 A Yes, it's cold.
- 17 Q Okay. So, that K-9 goes and hits on the car and finds
- 18 drugs.
- 19 You, you saw all that, right?
- 20 A Yes.
- 21 Q Okay. Now, did you have drugs in that car?
- 22 A No.
- 23 Q Okay. Were you aware of any drugs in that car?
- 24 A No.
- 25 Q That blue bag they pulled out and put on the hood of

Jeff Falls - Direct examination
by Mr. Thompson

1 that officer's car, had you ever seen that blue bag?

2 A No.

3 Q Okay. And where do you anticipate those drugs came
4 from?

5 A I, I don't really know. Either the officer is -- it
6 was already there or the officer put it in there.

7 Q Okay. You'd been driving the car for a week, correct?

8 A Right.

9 Q All right. And you -- and then -- the solicitor's
10 making the allegation you went to Atlanta and you probably
11 picked these drugs up.

12 Is that what you did?

13 A No.

14 Q Okay. So, what would you believe -- what's your
15 belief?

16 How do you think the -- what's your belief about where
17 the drugs, where, how they come from and where they got
18 there?

19 A My belief is they wasn't in that car until the officer
20 got there. I believe, like I said, they was stopping people
21 on every exit. So, I believe that if it was -- they had the
22 opportunity and they have me until they planted the drugs.

23 Q And -- now, Trooper Wilson has indicated that he needed
24 to watch you while Trooper English searched that car.

25 Do you recall that?

Jeff Falls - Direct examination
by Mr. Thompson

1 A Yes.

2 Q Okay. Now, did he keep his eye on you the entire time?

3 A No.

4 Q Okay. Do you recall anytime when he may of turned his
5 back to you or anything along those lines?

6 A He first turned his back when he told me to move my car
7 from the guardrail, move it up. See, if -- like if I had
8 known them drugs was in the car knowingly, knowing that I
9 had already visually seen them search everything, I would of
10 at least attempted to throw a bag out the window.

11 Q Okay. And any other times that you think he maybe
12 wasn't watching you completely?

13 A When he went back in the car to do whatever he was
14 doing -- I don't know what he was doing inside the car. He
15 was like talking on the radio or whatever he was doing.

16 Q Okay. And what about Trooper English, could you see
17 him the entire time this, this arrest was taking place?

18 A No, I seen on the side when -- when he first pulled up,
19 he pulled in behind us, behind the other officer car, and
20 then they came up and then they was talking on the side
21 while I was in front of the car, and then he went to look at
22 the car I was driving, and then he came back, and got the
23 dog, and then, as far as my knowledge is, he walked the dog
24 all the way around the car and then he stopped completely at
25 the driver's, at the passenger's door, and he was, he was

Jeff Falls - Direct examination
by Mr. Thompson

1 like pulling his hand like, and as he was moving his hand up
2 here, the dog was just at this hand -- he was then facing
3 the dog like he stopped completely, and he was like aiming
4 with his hand all the way up through the window and the dog
5 followed his hand the whole way.

6 Q You mean, you mean that is -- that is when the dog
7 jumped on that passenger side door?

8 A Yes, following his hand.

9 Q Okay. And that's what you saw from the roadside,
10 right?

11 A Yes.

12 Q Okay. And what did he do after that?

13 A He put the dog inside the car. The dog jump around the
14 car, jump to the back seat, and jump back to the front, and
15 jumped, came out the car.

16 Q Okay. And did -- what did he do next?

17 A He walked his dog back towards us and he told the other
18 officer that he got a positive result and then he put the
19 dog up.

20 Q Okay. And then when he put the dog up, where did --
21 where was he parked?

22 A He was behind the trooper car.

23 Q Okay. And how long did it take you to get back to your
24 car?

25 A I don't -- probably about two to three minutes.

Jeff Falls - Direct examination
by Mr. Thompson

- 1 Q Okay. Now, did you see him open his truck or any, or
2 what he had?
- 3 A No, I couldn't see it.
- 4 Q You couldn't see it?
- 5 A Hu huh. (Negative).
- 6 Q Okay. And then -- was this -- is this video accurate,
7 he's pulling out the back seat and all that stuff?
- 8 A Yes.
- 9 Q And did he -- was it accurate when Trooper English goes
10 and takes photographs of that car, the door, and all that?
11 Did you see him taking pictures?
- 12 A No, I didn't see them take pictures.
- 13 Q Okay. You didn't -- so, did you see a camera?
- 14 A I can't recall.
- 15 Q Okay. And it's your testimony that those -- I don't
16 know why you describe it, this bag of, of drugs right here,
17 have you ever seen those before?
- 18 A No.
- 19 Q Okay. Had you ever seen that blue bag that the trooper
20 put on that video on that hood?
21 Had you ever seen that before?
- 22 A No, I ain't see it till that night he put it on top of
23 the car.
- 24 Q Okay. And that car, when did you, when did you say you
25 rented it?

Jeff Falls - Direct examination
by Mr. Thompson

1 A valentine's Day, the 14th.

2 Q Okay. Were you aware that, of the hand signals and
3 the, the motions and all of the things the officers were
4 testifying, they testified to?

5 Were you aware that was going on?

6 A No.

7 Q Okay. And at what point during that arrest did, were
8 you aware that Officer Wilson had called someone else?

9 A The second time he came to the door, look like he was
10 on his right there. So, I was assuming that he was calling
11 someone else.

12 Q Okay. Now, he's testified that you were very nervous.
13 Were you -- would you agree with that assessment?

14 SOLICITOR MCCARTY: Your Honor, I'll object to asked
15 and answered. He asked him earlier about his nervousness.

16 THE COURT: I can't hear you. I'm sorry.

17 SOLICITOR MCCARTY: I'm sorry. I apologize. I'm gonna
18 object that this is been asked and answered to the
19 defendant. He did inquire of the defendant about the
20 trooper's observation about him being nervous and whether he
21 felt he was nervous earlier. I think it's---

22 THE COURT: I'm gonna allow him to ask it. Let's try
23 not to go over things cumulatively. But I'll allow you to
24 ask him at this time.

25 Q Would you agree with his assessment that you were

Jeff Falls - Direct examination
by Mr. Thompson

1 overly nervous?

2 A No.

3 Q Would you agree with his assessment that you were
4 rambling on and on and talking?

5 A No.

6 Q Okay. What would cause you to speak to the trooper?

7 A If he asked a question.

8 Q Did you have any money on you when you were arrested?

9 A Yeah, I had \$1323.00.

10 Q Okay. And why were you carrying that much cash?

11 A For one thing, I was getting my truck back the next
12 day, which is \$900 cause the guy put a motor in my truck,
13 and plus I had to pay for the rental car.

14 Q Okay. Do you know where your -- do you know your
15 cousin's address in Atlanta?

16 A No.

17 Q And if you were, what -- how, how would you -- if you
18 go to Atlanta to see him, what was your usual way of meeting
19 up with him?

20 A As soon as I get close to the city limit, I would call
21 him. I locate, find out where he at. If he, if he near his
22 home, near his office, or where, and then, then that will
23 dictate which way I go.

24 Q Okay. I have no further questions. Mr. McCarty will
25 ask you questions and answer his.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 THE COURT: Mr. McCarty, your witness.

2 SOLICITOR MCCARTY: Thank you. If I may have one
3 moment please. Just want to review this for a quick second.

4 THE COURT: Yes, sir.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY SOLICITOR MCCARTY:

8 Q Mr. Falls, you own a tow truck service, am I correct, a
9 wrecker service?

10 A Yes, sir.

11 Q Repo business?

12 A Yes, sir.

13 Q Are you a former professional athlete?

14 A No.

15 Q Are you a music star?

16 A No.

17 Q Famous author?

18 A No.

19 Q Been in movies?

20 A No.

21 Q Rap videos?

22 A Nope.

23 Q Country music videos?

24 A Nope.

25 Q Any celebrity status that we don't know about?

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A None.

2 Q Okay. You lived in Charlotte your whole life?

3 A Yes.

4 Q Or around the Charlotte area your whole life at least?

5 A Yes.

6 Q Did you go to school up in Charlotte?

7 A Yes.

8 Q Do you have immediate brothers or sisters?

9 A Yes.

10 Q Are either one of those two individuals famous
11 athletes?

12 The name Falls doesn't hit me or strike me, but are
13 either one of them a pro football player, pro sports
14 players, movie star, actress, anything like that?

15 A No.

16 Q Okay. Did you do something prior to owning your
17 wrecker service business for the last, how long did you say
18 it was, nine years, am I correct?

19 A Thirteen years.

20 Q Thirteen years.

21 A I started in '97.

22 Q Okay. So, 13 going on 14 you were practically owning
23 that business.

24 What did you do prior to owning that wrecker service
25 business?

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 A I work at a printing shop.
- 2 Q At a printing shop.
- 3 A Uh-huh. (Affirmative).
- 4 Q With the person who you worked for in the printing
5 shop, were they a celebrity or somebody connected, something
6 like that?
- 7 A No.
- 8 Q Okay. So, this is what I'm trying to get my hand
9 around or my mind around rather.
- 10 Your cousin seems to be a fairly well connected person,
11 am I correct, down in Atlanta?
- 12 A Yes.
- 13 Q You describe him as somebody who is having a party
14 which he's gonna invite 50 models too.
- 15 A Yes.
- 16 Q You describe it as a big blow out party.
- 17 A For him it is.
- 18 Q Okay. Well, I mean -- if I went to a party with 50
19 models, that would be a big blow-out party for me too.
20 Maybe it's not for. It would be for me.
- 21 A I don't go.
- 22 Q Well---
- 23 A I didn't have a chance at that time anyways.
- 24 Q Well, you were there, you said, just to talk about it?
- 25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 Q Okay. So, it hadn't happened at that point, right?
- 2 A Right.
- 3 Q He wanted to talk to you about this party?
- 4 A Yes.
- 5 Q You said ask you some advice about it, am I right?
- 6 A Say that again.
- 7 Q I believe you told Mr. Thompson that he was asking you
- 8 some questions about it, asking your advice on some things.
- 9 A As far as -- he was talking about as far as some
- 10 pictures of the girls and stuff as far as inviting. He just
- 11 wanted to know my opinion.
- 12 Q Wanted to know your opinion.
- 13 Now, you said he's a producer for movies, records, that
- 14 type of thing?
- 15 A I say he's into that, yes.
- 16 Q Into that kind of stuff.
- 17 Why would a guy like that, with all those connections
- 18 to 50 models, to Puff Daddy -- that is who you said, am I
- 19 right --
- 20 A Yeah.
- 21 Q -- all these other big named people, want the opinion
- 22 of a tow truck driver who's from Charlotte, North Carolina
- 23 with no celebrity status whatsoever?
- 24 A Cause we family.
- 25 Q Cause you're family.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Mr. Falls, the economy's been bad the last couples of
2 years, hasn't it?

3 A Say that again.

4 Q Economic, economic client we're in the last few years
5 been pretty rough for everybody.

6 Has your business been okay?

7 A Yes.

8 Q Have you ever looked for other sources of income for
9 your business?

10 A As far as what?

11 Q Extra sources of income other than your business?

12 A Yes.

13 Q One of those extra sources of income running cocaine up
14 and down Atlanta, between Charlotte and Atlanta?

15 A No.

16 Q You're in a rental car that night, am I right?

17 A Yes.

18 Q And you had that rental for six days prior to this.

19 A Yes.

20 Q And actually the day of this event it was the sixth day
21 you had this car.

22 A Yes.

23 Q That car was immaculately cleaned as you described it
24 yourself. You've taken it to be detailed that morning or
25 had it detailed that morning as you were running your

Jeff Falls - Cross-examination
by Solicitor McCarty

1 deposits to the bank.

2 A Yes.

3 Q Okay. And while you're running your deposits to the
4 bank, that's from being up all night repoing cars, am I
5 right?

6 A Repoing cars don't take all night because it's someone
7 out spotting. You can sit, can sit at home and wait by the
8 phone. I, I could sleep. I could -- my phone's in vibrate.
9 I don't have to be out to repo it. It don't take but an
10 hour really to hook a car up and tow the car back. It don't
11 take but an hour. I'm not out all night.

12 Q Okay. That's good.

13 How many cars did you do the night before?

14 A Probably one.

15 Q Just one?

16 A Uh-huh. (Affirmative).

17 Q So, you only had to have one deposit dropped off that
18 morning.

19 Do you remember what time it was you repoed that car?

20 A Not exactly. That's four and a half years ago.

21 Q Okay. But the -- so, the day of the arrest, early that
22 morning, the night you were arrested for trafficking
23 cocaine, you don't remember what time it was you got up in
24 the middle of the night to, to repo a car?

25 A Say that one more time.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q I'm just asking you, the day you get arrested and
2 charged with trafficking cocaine --

3 A Okay.

4 Q -- 15, 16 hours earlier approximately, you don't recall
5 getting up, what time it was in the middle of the night,
6 early in the morning, or when to go repo a car?

7 A No, not exactly.

8 Q But you know it was only one?

9 A One.

10 Q Where did you go to get it?

11 A I don't remember.

12 Q What kind of car was it?

13 A I don't remember. I got a sheet for it right here as
14 far as payments for repossession for the whole year of 2007.
15 It don't describe the car. It just, it just describes the
16 payment, how much I make for them. It don't describe, it
17 don't describe any of that information.

18 Q What does it show for February 20th --

19 A It just---

20 Q -- 2007?

21 A As far as February 20th, it don't show nothing. This
22 just for one company. For February 23rd I got a car and
23 they paid me \$225.

24 Q But I thought you told us that you have taken---

25 A I repossess, I repossess cars for a bunch of car

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 companies.
- 2 Q Okay.
- 3 A I'm just showing one of these receipts.
- 4 Q Where's the other receipt for what you repossessed the
- 5 car?
- 6 A I don't know.
- 7 Q You don't have that---
- 8 A You talking about---
- 9 Q ---with you?
- 10 A Huh?
- 11 Q You don't have that with you here today?
- 12 A No.
- 13 Q Okay. well, let's talk about that, what's here.
- 14 You'll agree with me that at least some point starting
- 15 at midnight, which starts the 20th --
- 16 A Uh-huh. (Affirmative).
- 17 Q -- at 1:00 or 2:00, 3:00, 4:00, 5:00, 6:00, something
- 18 through there --
- 19 A Yeah.
- 20 Q -- probably start of the business hours, banker's
- 21 hours, about nine o'clock in the morning --
- 22 A Right.
- 23 Q -- you got up, you possessed, repossessed at least one
- 24 vehicle, am I correct?
- 25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 Q All right. Do you recall whether you went back home
2 and fell asleep?
- 3 A I probably did.
- 4 Q Okay. You got back up to handle your transactions for
5 your business that day, am I right?
- 6 A Just make a deposit, yes.
- 7 Q And then you got on the road to Atlanta?
- 8 A I had car detail. So --
- 9 Q Oh, you stayed with the car---
- 10 A No.
- 11 Q ---while it's getting detailed?
- 12 A No, I had dropped the car off, and then I -- my friend,
13 Jeff, detail it. He works right down the street from where
14 my shop at.
- 15 Q Okay. You dropped the car off down at Jeff's?
- 16 A Yes.
- 17 Q And then you went to the bank?
- 18 A Yes.
- 19 Q How did you get to the bank?
- 20 A His car.
- 21 Q So, Jeff let you borrow his car?
- 22 A Yes.
- 23 Q All right. You get the car, you head back to Atlanta,
24 it's immaculately cleaned, am I right?
- 25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q Why would you detail a car and turn it in 24 hours
2 before you have to and make a four and a half hour trip or a
3 four hour trip from Charlotte to Atlanta?

4 Why would you spend the time, the effort, the money to
5 detail the car, to wax it up, to clean it, to put it out on
6 the interstate highway to travel four hours to Atlanta, a
7 big city -- you agree with me Atlanta's a big city, right?

8 A Charlotte a big city.

9 Q Well, Charlotte's a big city too, but Atlanta's a
10 little bit bigger, right?

11 A Yes.

12 Q Okay. They're both big cities.

13 So, now you got this car four hours on the highway.
14 The grime, the dirt, whatever else is gonna happen on that
15 roadway getting all over that -- it was a Lincoln, right?

16 A Yes, but---

17 Q A white Lincoln?

18 A Excuse me. Like your officer said, it was, at that
19 time it being nine o'clock, it was still clean. So, in the
20 morning I was -- the only thing I had to do was fill the car
21 up, drop it off.

22 Q I know, but I guess my question is doesn't it defy
23 sense, common sense to get a car detailed, take a long trip
24 in it -- I mean that -- it's approximately eight to nine
25 hours worth of being on the roadway, am I correct, between

Jeff Falls - Cross-examination
by Solicitor McCarty

1 the time it would take you to drive to Charlotte to Atlanta
2 and back?

3 Roughly eight to nine hours of being on the road?

4 A But it still be clean in an average car turning back
5 in. Regardless of how the road might do it, it wasn't
6 raining. It wasn't no bad weather. So, if, if I detail a
7 car that day, and if I drive around the city still doing
8 wear and tear on the car. I'm planning on turning it in the
9 next day. It's still gonna be clean than most regular cars
10 get turned in.

11 Q Let me ask you a question. This is your attorney's
12 exhibit, your exhibit, Defendant's Exhibit No. 2, right up
13 there where you got highlighted, the day it's suppose to be
14 turned in, am I right?

15 A Yes.

16 Q What date is that?

17 A The 21st of February.

18 Q And it says -- the 21st of February, due in at what
19 time?

20 A 12:30.

21 Q 12:30.

22 So, you had the whole morning of the 21st to get that
23 car redetailed, am I right?

24 A Yes.

25 Q You know probably---

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A Yeah, if I chose to, but I already had it done.

2 Q I understand.

3 But you still had that next morning to get that done
4 before that car would be back, am I right?

5 A No, because I don't know what my schedule gonna be.

6 Q Okay. Were you planning to work the night you got
7 arrested?

8 A The night I got arrested I was---

9 Q Were you planning to make it back to Charlotte and wait
10 for another call for a possible repossession?

11 A No, I had my driver's. So, I have two people helping
12 me out.

13 Q So, you wouldn't of needed to work the night you got
14 back?

15 A No.

16 Q But you do admit to working earlier in that morning?

17 A Yes.

18 Q Okay. You stated the trooper pulled up beside you in
19 the car, am I right?

20 A Yes.

21 Q Did you look over to meet him, to, to see who it was
22 who pulled up beside you?

23 How would you know it's a trooper?

24 A I looked at him like I could see her. It's like --
25 it's -- like this guy back there, I'm right here, I'm

Jeff Falls - Cross-examination
by Solicitor McCarty

1 driving down the lane. He could see me. I could see him.

2 Q So, you did look over to see him?

3 A Yes.

4 Q Okay. Knew he was traveling beside you?

5 A Right.

6 Q And you knew it was the same car that was traveling
7 beside you you described for a period of time, distance, am
8 I right?

9 A True.

10 Q Did you ever look back over at him again to see what's
11 he doing next to me?

12 A I looked at all the traffic.

13 Q Okay. So, you're looking around, would you believe
14 it's possible that, during that time when you looked over at
15 the officer, you drifted a little bit to the right, crossed
16 that fog line, and may come back?

17 Is it possible that that happened?

18 A It's possible he could of turned, looked over and done
19 the same thing.

20 Q Oh, I absolutely agree.

21 You agree it's possible that he could of drifted to the
22 other side. What I'm asking you is---

23 A ---it is possible.

24 Q Is it possible---

25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q ---that this could of happened with you?

2 A Yes, it is.

3 Q Thank you.

4 Now, Mr. Falls, you told Mr. Thompson that when you got
5 there to Atlanta to meet your cousin you met him at a
6 location, you got in his car, and you went to a potential, I
7 guess, party hall or a place where the party's gonna occur,
8 am I right?

9 A Club, yeah.

10 Q The club.

11 Where was the club at?

12 A In downtown Atlanta.

13 Q All right. What's the name of it?

14 A I don't know.

15 Q You don't recall the name of it?

16 A No, it's four and a half years ago. My first time
17 there.

18 Q But not four and a half years ago the night you talked
19 to the trooper on this tape. We're talking four hours
20 earlier cause---

21 A Yeah.

22 Q Do you recall---

23 A But I did mention it to him.

24 Q Do you recall though the trooper asking you did you go
25 to the, your cousin's house, and you stated no, am I

Jeff Falls - Cross-examination
by Solicitor McCarty

1 correct---

2 A I said no.

3 Q ---in saying that?

4 Do you recall that the trooper asked you well, what did
5 you do, just stand on the roadway and talk?

6 Do you recall what your reply was on the video?

7 A I said we talked.

8 Q You said yeah, we did.

9 So, according to the trooper, you told him you stayed
10 on the side of the road for a couple hours and talked to
11 your cousin. You didn't provide any information that I
12 didn't go to his house, but I went to the club we were
13 looking at for the party?

14 A I didn't volunteer information.

15 Q You volunteered quite a bit of---

16 A I didn't---

17 Q ---information if we watch the video?

18 A Not really.

19 Q You don't think so?

20 A No.

21 Q Okay. I want to ask you about that reaching up under
22 the seat or reaching down.

23 A Okay.

24 Q You said you didn't do it.

25 A No, I didn't.

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 Q And why did you say you didn't do it?
- 2 A Why would I do it with a police beside me?
- 3 Q Well, you said it's my experience as a black man, and
- 4 then you said something about getting shot by the cops for
- 5 doing it, am I right?
- 6 But that was your words, in my experience.
- 7 A Yeah.
- 8 Q Right?
- 9 A I mean my experience as far as watching on TV.
- 10 Q Oh, so, you have no personal experience?
- 11 A No, I ain't never been shot myself---
- 12 Q Okay.
- 13 A ---or beat up or nothing like that.
- 14 Q In fact, you said your last ticket was 18---
- 15 A Huh?
- 16 Q You said your last ticket was 18 years ago.
- 17 A I said probably 19 years ago. I'm not positive.
- 18 Q So, possibly 18 years ago?
- 19 A Yeah, I can't remember.
- 20 Q But based on your experience, you don't reach up under
- 21 that car because the cops will shoot you as a black man, am
- 22 I right?
- 23 A It's a possibility of being shot.
- 24 Q You see Trooper Wilson here, right?
- 25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q You understand he's another black male, am I right?

2 A It would make no difference as far as race is not. I'm
3 saying as far as police period. It could of been you. You
4 would of pulled me over, with a gun beside me, I'm not
5 reaching under no seat.

6 Q So, you have the belief that all police are out to
7 shoot motorists like you?

8 A No, I'm not saying that I believe that, but if, if
9 given an opportunity, they would have probable cause to
10 shoot.

11 Q I think you went so far as to allege that Sergeant
12 Wilson or Trooper English planted the drugs in this car, is
13 that correct?

14 A As far as my knowledge, the way I look at it is the dog
15 didn't jump on the same thing. One said the dog responded
16 to the passenger side. One saying it responded to the
17 driver's side.

18 Q But that's just a difference in opinion. That might be
19 an error on somebody's part.

20 Let me ask you this, this is State's 2 and 3.

21 A Okay.

22 Q I know you've seen this one up close, but this is a
23 copy of the report we've shared in discovery.

24 Have you seen that before, am I correct?

25 A No, I ain't never seen that.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q Okay. well, take a second and look at it. It was
2 shared in discovery to your attorney.

3 Lieutenant Stuart testified very first thing this
4 morning, she testified that's the findings on this report on
5 what this cocaine is, am I right?

6 A Oh, okay. Yes, sir.

7 Q You see it right there?

8 It's 254 point something grams, am I right?

9 A Yes.

10 Q Okay. So, that's a quarter of a kilo of powder
11 cocaine.

12 A Yes.

13 Q Is that right?

14 And you're saying the police officer planted a quarter
15 of a kilo of cocaine in your car?

16 A I'm saying they had opportunity.

17 Q Why?

18 You're a tow truck driver from Charlotte, North
19 Carolina.

20 How would they benefit by putting a quarter of a kilo
21 of powder cocaine in your car?

22 A Just like they benefit stopping everybody on the side
23 of the road during this, this sting they was having, drug
24 sting they was having.

25 Q All right. I believe they testified that they were

Jeff Falls - Cross-examination
by Solicitor McCarty

1 there to reduce traffic fatalities, slow motorists down,
2 people more alert. In fact, you noticed all those troopers
3 going down. You admitted to that.

4 Am I correct?

5 A I know everyone being searched going down too. I seen
6 that.

7 Q Well, there was a lot of cops out, right?

8 A Yes.

9 Q And let me ask you this, how did you know -- you said
10 when I came through on my way back and I looked up and I saw
11 Trooper Wilson---

12 A See---

13 Q ---out there in front of me, how did you know it was
14 him?

15 A I didn't say I know him personally. I say I seen a
16 police car on the side of the road. He -- my lawyer
17 mentioned his name personally. I never even knew -- I never
18 met the man before.

19 Q How you know it was the same car that pulled out behind
20 you?

21 A Because I seen the car. Once was I going forward I
22 seen him coming on to the traffic.

23 Q So, he pulled out as you passed?

24 A As a -- I was myself. I mean it was, like I said,
25 other cars on the road too.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q Right.

2 A So, it was cars passing me. My general idea, when he
3 pulled out, is that he was gonna get someone for speeding.

4 Q Cause people were passing him---

5 A Right.

6 Q ---right?

7 Fair enough.

8 But as you're traveling down the road, are you looking
9 up in your rear view mirror to see if he's coming up the
10 road?

11 A I'm looking in all my mirrors.

12 Q Okay. Looking in your rear view mirror, looking in
13 your driver's side mirror here, checking to see does he have
14 his blue lights on, is he getting behind me, making sure
15 that is not happening, am I right?

16 A I don't know what I was as far as I -- when he pulled
17 out, my general idea is that he might be passing going to
18 pick up someone for speeding. For me looking, thinking he's
19 coming after me, no, I did not think he was gonna get behind
20 me. But no, I didn't think he was gonna stop me.

21 Q Did you ever look in the rear view mirror just to see
22 if he was behind you?

23 A Yes.

24 Q So, you're distracted at that point, not keeping your
25 eyes on the roadway. So, it's possible, when you're looking

Jeff Falls - Cross-examination
by Solicitor McCarty

1 in the mirror, is it possible you drifted off that fog line
2 a little bit?

3 A It's possible.

4 Q It's possible.

5 Yes or is, is it possible?

6 A Yes.

7 Q Maybe you looked here, maybe you drifted a little bit?

8 A I didn't feel the car drift.

9 Q It's possible you could have?

10 A Yes.

11 Q Possible.

12 Now, what I, what I found interesting was the fact that
13 you said you knew if you had, what turns out to be near a
14 quarter of a kilo of powder cocaine you'd throw it out the
15 window.

16 A I say if I knew I would of at least tried to throw it
17 out the window.

18 Q At least tried to throw it out the window. We're
19 dealing with February. You've asked for your hat because
20 you said you're cold. I think your attorney pointed out at
21 one point you might of been able to see your breath as you
22 talked to the officers. It's a chilly night.

23 A Yes.

24 Q Am I correct that you probably drove that evening with
25 your windows up being in your vehicle?

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A Yes.

2 Q So, really the only other place to put it is down by
3 the door,-- am I right?

4 Not summertime, don't have those windows down, really
5 easy to just pitch it out?

6 A No.

7 Q It's pretty cold outside.

8 A I'm not saying -- I'm saying for one reason. If I'm
9 loading drugs in my car, I want to put it in the trunk or
10 somewhere else. I would at least try to hide it.

11 Q Go back to your cousin, your cousin who lives down in
12 Atlanta, the guy you went to see, now is he the guy who you
13 got the cocaine from?

14 A Say that one more time.

15 Q Is he the guy that you got the cocaine from?

16 A I didn't get the cocaine from no one.

17 Q You didn't get cocaine from no one, but you don't deny
18 that it was found in your car?

19 A I didn't deny that this, the other officer had it in
20 his hands.

21 Q Oh, he didn't ask that question. I'm asking you do you
22 not deny that you said the cocaine was found in your car
23 near the driver's seat, possibly in the door area of the
24 car?

25 A I can't prove it one way or the other was it found. It

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 might of been planted.
- 2 Q Might of been planted.
- 3 Your cousin plant it on you?
- 4 A Say again.
- 5 Q Did your cousin plant it on you?
- 6 A No.
- 7 Q How about Jeff, the detailer, did he plant it on you?
- 8 A No.
- 9 Q How about Trooper Wilson, did he plant it on you?
- 10 A No.
- 11 Q So, it has to have been Trooper English, right?
- 12 A He, he had the opportunity.
- 13 Q He had the opportunity.
- 14 A He found it.
- 15 Q Your cousin down in Atlanta, he's family, that's why he
- 16 wanted your opinion about these models he was gonna invite
- 17 to this party, am I right?
- 18 A Right.
- 19 Q Do you consider yourself a close family?
- 20 A We all right.
- 21 Q You all right.
- 22 You share Christmas cards?
- 23 A No, I don't share Christmas cards. I don't mail any.
- 24 Q You don't, you don't mail any Christmas cards?
- 25 A I don't share -- I don't mail no Christmas cards.

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 Q You ever mailed him a birthday card?
- 2 A No.
- 3 Q So, you've never had to write his physical address
- 4 down?
- 5 A No.
- 6 Q But you been to his house, right?
- 7 A Once.
- 8 Q Did he say what -- do you know what suburb of Atlanta
- 9 or where at in Atlanta he lived?
- 10 A No.
- 11 Q So, you don't know if he lived in Midtown?
- 12 A No.
- 13 Q Lived up in Buckhead?
- 14 A I never even heard of Buckhead really.
- 15 Q Never heard of Buckhead.
- 16 How about Marietta, Georgia?
- 17 A I'm -- I probably done heard of it.
- 18 Q Probably heard of it.
- 19 A I think I passed Marietta to come back to Charlotte.
- 20 Q You think you got to pass Marietta to come to
- 21 Charlotte?
- 22 A I think. I ain't too sure.
- 23 Q How about Gwinnett?
- 24 None of this ringing a bell to you?
- 25 A Huh?

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q You been down there three times though at least to
2 visit him in that year you've lived down there, right?

3 A Yeah.

4 Q You been to his house one time?

5 A Once.

6 SOLICITOR MCCARTY: Okay. Your Honor, if you'll give
7 me just a moment please.

8 THE COURT: Certainly.

9 (Pause.)

10 Q One of the topics you discussed with your cousin was
11 your daughter moving to Atlanta, am I right?

12 A Yes.

13 Q And your daughter, am I correct, is that Ms. Falls
14 sitting in the gallery?

15 A Yes.

16 Q Okay. What was she gonna do if she moved to Atlanta?

17 A She get her job transferred down there. She work at
18 Wachovia and they transfer her down there, and then she's
19 gonna be his assistant.

20 Q Where, where did you anticipate her moving to?

21 A Say again?

22 Q Where did you anticipate that she would move to?

23 A It's not my choice. I'm not familiar with Atlanta.
24 So, she would have to find that out. I mean --

25 Q When you're talking about it, were you asking your

Jeff Falls - Cross-examination
by Solicitor McCarty

1 cousin where the good areas of town were if she moved, good
2 for young folks, good for families, good for---

3 A The thing is he said he'd make sure and look out for
4 her.

5 Q He was gonna look out for her?

6 A Yes.

7 Q How did you know if he could look out for her if you
8 don't even know what town he lived in?

9 A Cause I trust his judgment.

10 Q All right. You said Atlanta's a big town, right?

11 A Yes.

12 Q So, she might be really unfortunate if he lives on one
13 side of Atlanta and she moves in on the other side and
14 you---

15 A That's true.

16 Q Can't do a whole lot of looking in on her, is that
17 right?

18 A I said look out for you. You don't have to lock her
19 up.

20 Q But you don't, you don't know where he lives?

21 A No.

22 Q Any landmarks stick out in your mind?

23 The Varsity, Turner ball field, Georgia Dome?

24 A No, he---

25 Q Atlanta Airport.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A Where he was over at, you had to go like 485 west and
2 then like hit another highway. I don't know if it's ten or
3 what. I don't, I don't know what's on the other side of
4 Atlanta.

5 Q Okay.

6 Okay. Your Honor, I think that's all the questions I
7 have for Mr. Falls.

8 THE COURT: Mr. Thompson, redirect.

9 MR. THOMPSON: Please the Court, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Jeff, you're in the repo business, right?

13 A Yes.

14 Q So, in a bad economy, does your business do better or
15 worse?

16 A Better.

17 Q Okay. Why is that?

18 A Because most people lose their cars before they lose
19 their homes.

20 Q Okay. And what kind of car do you drive now?

21 A F---

22 SOLICITOR MCCARTY: I object to the relevance of what
23 type of vehicle he drives at this very moment.

24 THE COURT: Sustained.

25 Q Do you keep your car clean that you drive now?

Jeff Falls - Redirect examination
by Mr. Thompson

1 SOLICITOR MCCARTY: Again, Your Honor, objection.
2 We've talked about the cleanliness of a rental car he turned
3 in for a discount, whether or not he keeps his personally
4 owned vehicle in the same fashion.

5 THE COURT: Overruled.

6 Q Do you keep your car clean now?

7 A Yeah.

8 Q You travel to Atlanta and all these places in the,
9 course of your business, right?

10 A Yes.

11 Q Okay. And when you go to a town and take a car, do you
12 make a habit of learning every neighborhood in that area,
13 every street?

14 A Say that one more time.

15 Q Do you make a habit of willing, learning every
16 neighborhood and every street in a city when you go there?

17 A No.

18 MR. THOMPSON: All right. I have no further questions,
19 Your Honor.

20 THE COURT: Recross.

21 SOLICITOR MCCARTY: No, Your Honor.

22 THE COURT: You may step down.

23 The defense may call its next witness.

24 MR. THOMPSON: We call, we call Kelissa Falls.

25 THE COURT: Come forward, ma'am, to my left and be

Kelissa Falls - Direct examination
by Mr. Thompson

1 sworn.

2 KELISSA FALLS, having been first duly
3 sworn, testified as follows:

4 THE COURT: State your name please, ma'am.

5 WITNESS: My first name is Kelissa Falls.

6 THE COURT: Mr. Thompson.

7 MR. THOMPSON: Please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Ms. Falls, what's your relationship to Jeff Falls?

12 A He's my father. I'm his daughter.

13 Q Okay. And where do you currently live?

14 A Right now I reside in Charlotte, North Carolina.

15 Q Okay. And how old are you?

16 A I'm 27.

17 Q And what do you do for a living?

18 A Right now I work for Vanguard as a trainer.

19 Q Okay. How long have you done that?

20 A I been doing that for the last year.

21 Q Okay. You've heard testimony today that your father
22 has a cousin in Atlanta.

23 Is that accurate?

24 A Yep.

25 Q Okay. And is he -- what type of business is your

1 cousin involved in?

2 A He owes film production. He does the finances for
3 films and basically he does the budget analysis for film
4 productions.

5 Q Okay. And you've heard talk about a party that, that
6 your cousin had.

7 Did your cousin, in fact, have a party planned one time
8 like that?

9 A Yes, it was a celebrity party. He was inviting
10 celebrities and having some of the top models and what have
11 you. Basically it was a bunch of his film production that
12 he was being launched, that was being launched at that time.
13 So, basically that's something he was working on.

14 Q Was that in 2007?

15 A Yep.

16 Q Okay. Now, would it be rare for your dad to take a day
17 trip to Atlanta?

18 A Nope.

19 Q And, and you -- would you yourself consider this a
20 pretty big deal to go meet your cousin?

21 A Yes.

22 Q Okay. And you recall, in 2007, if there was a party
23 planned?

24 A Yes.

25 Q Okay. Did you attend it?

Kelissa Falls - Direct examination
by Mr. Thompson

1 A Unfortunately not.

2 Q And did -- and did you -- did the cousin, in fact,
3 discuss with you moving to Atlanta to work?

4 A Yes, I eventually moved to Atlanta to work.

5 Q You did?

6 A Uh-huh. (Affirmative).

7 Q How long did you live there?

8 A Three years.

9 Q And you came back to Charlotte now?

10 A Yes, but I moved to Atlanta.

11 Q Okay. Mr. McCarty will ask you some questions.

12 Okay?

13 A Okay.

14 THE COURT: Mr. McCarty, your witness.

15 SOLICITOR MCCARTY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY SOLICITOR MCCARTY:

18 Q Ms. Falls, I'll try to brief with you.

19 What's your cousin's name?

20 A What's my cousin's name?

21 Q Yes, ma'am.

22 A Arthur.

23 Q Arthur.

24 What's the last name please?

25 A Wylie.

Kelissa Falls - Cross-examination
by Solicitor McCarty

- 1 Q wylie?
- 2 A Yep.
- 3 Q How would you spell that please?
- 4 A W-Y-L-I-E.
- 5 Q And that's the cousin who your father went to visit, am
- 6 I correct?
- 7 A Yes.
- 8 Q How is Mr. wylie related to your family?
- 9 Is he on your father's side of the family or on your
- 10 mother's side?
- 11 A My father's side.
- 12 Q Is he, to your knowledge, your father's first cousin or
- 13 the second---
- 14 A Yes, he is.
- 15 Q So, you would be a second cousin?
- 16 A Yes, he is.
- 17 Q How old is Mr. wylie?
- 18 A Mr. wylie is approximately about 33.
- 19 Q About 33.
- 20 And we may not have asked this, but you're in your
- 21 twenties I'm assuming?
- 22 A I'm 27.
- 23 Q Twenty-seven.
- 24 Where does Mr. wylie live at in Atlanta?
- 25 Do you know?

Kelissa Falls - Cross-examination
by Solicitor McCarty

1 A He lives on the outskirts. He lives in Alpharetta,
2 Georgia.

3 Q Okay. Did you ever have the opportunity to visit his
4 home while you were in Atlanta?

5 A Yep.

6 Q You said he lives in Alpharetta.
7 What's the name of his business?
8 Do you know?

9 A It's Global Renaissance Entertainment Group.

10 SOLICITOR MCCARTY: All right. If I may, Your Honor,
11 just a brief second.

12 THE COURT: Yes, sir.

13 (Pause.)

14 SOLICITOR MCCARTY: Your Honor, I don't think I have
15 anything further for Ms. Falls. Thank you.

16 THE COURT: Redirect?

17 MR. THOMPSON: Briefly, Your Honor.

18 (Pause.)

19 MR. THOMPSON: I have no further questions, Your Honor.

20 THE COURT: You may step down.

21 WITNESS: Thank you.

22 THE COURT: The defense may call its next witness. You
23 may call your next witness.

24 MR. THOMPSON: No, no more witnesses. We rest, Your
25 Honor.

1 THE COURT: Does the State wish to call any witnesses
2 in reply or rebuttable?

3 SOLICITOR MCCARTY: No, Your Honor. Thank you.

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, that concludes the presentation of evidence in this
6 case. I also note that we're a little past five o'clock,
7 and as I told you on Monday, we sometimes go a little past
8 5:00, but we stop before 5:30. So, we're gonna, at this
9 time, break for the evening.

10 I'll give you the same instructions I've given you each
11 time that you've left the court house. That is not to
12 attempt to gather any information outside of the court
13 house. Don't listen to, watch, or read any media reports.
14 Don't discuss the case with anyone. Don't allow anyone to
15 discuss it with you, and please report should anyone --
16 report to the Court if anyone should attempt to do that.

17 Now, we have remaining in the trial, we have closing
18 arguments and I'll charge you concerning the law, and then
19 after that we'll submit the case to you for your
20 deliberations.

21 we'll start at nine o'clock or as close thereto as we
22 can. Be back in the jury room at that point in time and we
23 should be able to start shortly thereafter. I think the
24 rain storm is stopped and you can get out to the car
25 hopefully and have a good evening.

1 Thank you very much.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Anything further from the State
5 before we close?

6 SOLICITOR MCCARTY: No, Your Honor.

7 THE COURT: Anything further from the defense?

8 MR. THOMPSON: Your Honor, I'll just want to mention
9 Mr. Falls has abided by his bond for the last four and a
10 half years. I just ask that he be allowed to go home.

11 THE COURT: Well, the only problem is that, Mr.
12 Thompson, is that once the trial starts, his bond is no
13 longer in effect. The obligation of the bond is to return
14 him here for the start of the trial. Once the trial begins
15 he no longer is under bond.

16 MR. THOMPSON: I understand that, Your Honor. I was
17 just trying to figure a way so that he could maybe not have
18 to be in custody this evening.

19 THE COURT: I understand that, but I want to maintain
20 him in custody until the close of the trial. So, defendant
21 remains in custody at this point in time.

22 Court will be in recess until nine o'clock in the
23 morning.

24 SOLICITOR MCCARTY: Thank you, Your Honor.
25

(WHEREUPON, Court was in recess for the evening.)

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1 Friday, August 12th, 2011

2
3 THE COURT: All right. Is the State ready to proceed?

4 SOLICITOR MCCARTY: State is ready, Your Honor.

5 THE COURT: Defense ready to go forward?

6 MR. THOMPSON: Yes, Your Honor.

7 THE COURT: All right. Now, the defense presented
8 evidence in the case. So, you'll be going first with your
9 closing argument.

10 MR. THOMPSON: I am. Yes, sir.

11 THE COURT: All right. And then we'll follow that by
12 the State.

13 SOLICITOR MCCARTY: Yes, sir.

14 THE COURT: Let's bring the jury in, Mr. Bailiff.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. Good morning, ladies and
18 gentlemen.

19 Did any of the jurors have any difficulty in following
20 my instructions overnight, if you did, please stand.

21 (No response.)

22 THE COURT: It appears that all jurors are ready to go
23 forward this morning.

24 When we closed yesterday the evidence had been
25 completely presented to you and at this time the attorneys

1 will be making their final or closing statements.

2 Mr. Thompson, you may proceed for the defense.

3 MR. THOMPSON: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. THOMPSON: Ladies and gentlemen of the jury, I know
8 this has been three days we've stretched out here and I
9 appreciate your patience and we've been through that tape,
10 and it's, it's been a lot of tedious details that we've gone
11 into. I want to encourage you, as a jury, to go back there
12 and take that tape and, and watch it.

13 Don't -- you know, we stopped it, start, stop, start,
14 you know. Mr. McCarty, he's a great lawyer. He wants you
15 to look at the things he wants you to look at. I want you
16 to look at the things I want you to look at. Just watch it
17 all the way through, and you'll see that Mr. Falls was not
18 that nervous. He gets nervous there a little bit later on
19 cause he finally figures I'm getting set up here.

20 Okay. That's what he, that's what he starts figuring
21 out, and then that's why he tells you his cousin's alias
22 name and not his real name cause he doesn't want his cousin
23 to be getting brought into what he's gotten himself into.

24 But I want to go over the first thing Mr. McCarty told
25 you, that this is professional. These guys are

1 professionals, and they are. I won't dispute that. And I
2 think both officers displayed a great deal of
3 professionalism when they testified up here.

4 When I think about professionals though I think about
5 two other things. One, I think about competition. Watch
6 that tape and you can agree with me or agree with Mr.
7 McCarty. You look -- and you stop -- you can stop it or you
8 just look when he pulls up that second time he approaches
9 that car, and there's six or eight other cars pulled over.
10 You can either believe my assessment that this is Rolling
11 Thunder where we pull over every black and Mexican that
12 rides down the road and search their car or you can believe
13 Mr. McCarty's assessment that it's the big City of Duncan
14 out there, flashing lights.

15 I think about professions, think about egos. I'm a
16 lawyer. I got a big ego I guess. I don't know. When I
17 think professionals, that's what I think about too.

18 Think about Rolling Thunder. Small town sheriff. He's
19 got I-85 and 26 crossing through his county, and he
20 saturates it with police officers. Pulled over the people I
21 told you he's pulling over to boost his ego.

22 These officers, they seize cars. They seize weapons.
23 They seize tons of drugs. We have drugs even left over that
24 we can get them, the Highway Patrol can get them from the
25 government when they want to train dogs.

1 whose got access to the most drugs in the country?

2 Probably the law enforcement.

3 Think about the stop. I want to start with Mr. Wilson.

4 I'll go through his testimony. I'll go through

5 Mr. English's testimony. I'll go through Mr. Falls

6 testimony and then I'll finish up, and I'll try to be as

7 brief as possible.

8 Trooper Wilson tells you he's got a camera in his car.

9 He can activate that camera at anytime. He says my client's

10 going over a fog line. Pretty trivial. Pretty trivial

11 thing to stop somebody over. So -- and he tells you he's

12 beside my client, but he can see him go over the fog line.

13 All right. And he doesn't get behind my client and put

14 that on film for us. He decides to get behind my client and

15 pull him over. I mean my client's clearly not over the fog

16 line. Pulls him over and then -- watch the video all the

17 way through. He begins -- and Mr. Ryan McCarty's a great

18 attorney. He thoroughly cross-examined my client yesterday.

19 Mr. Wilson was pretty thorough with his questions. .

20 Boom, where do you work?

21 Boom, where you coming from?

22 why did you rent the car?

23 When did you get it?

24 When's it due back?

25 why is your car so clean?

1 okay. He keeps hitting, pounding him with questions
2 throughout this thing. Look at that.

3 Look at the driver's license number, a seven digit
4 number. He then calls in six. It leads to a longer delay
5 in this case. Look at what he does. When he first goes up
6 there he says I saw him put something under the seat.

7 Mr. Falls testified I got an armed policeman beside me.
8 You think I'm gonna be going under my seat.

9 Think about that dog running around in that car after
10 Mr. English closes the door. We can see the dog running
11 around.

12 why don't we see Mr. Falls head go down if he's putting
13 something under the seat?

14 Think about beneath the seat.

15 what was found underneath the seat?

16 Both officers testified nothing.

17 why?

18 Because he didn't go under the seat.

19 That's just something that was made up in order to get
20 a search of that car.

21 Look at the white line allegation. I forget what he
22 called it, white lining. Mr. Falls pulled up probably
23 closer to this than that guardrail. He's not pulling up to
24 cause the trooper any trouble. He's just pulling off the
25 road like he's, because he got pulled over.

1 Throwing up a smoke screen, guys. Trying to make you
2 believe this is a bad guy. One, that I got the reason to
3 stop him. Two, when I do stop him, and I find out he's
4 coming from Atlanta, in a rental car, and he's a black male,
5 I got, I got, I got to search his car. He told you at one
6 point that car wasn't going anywhere. He decided that right
7 when he got that license from Mr. Falls if not sooner when
8 he pulled up beside him and saw him.

9 Watch Officer Wilson write that ticket. That ticket or
10 warning containing ten words. Ten words and two of them
11 were D.G. Wilson. And he's gonna make, lead you to believe
12 it takes him almost ten minutes to write that warning
13 ticket. Watch his hand. It doesn't touch the pen for so
14 long, and a lot of it's because he keeps firing his
15 cross-examination questions at Mr. Falls.

16 He's stalling. He's waiting on his partner, his buddy
17 since 1999, that he knows has a drug dog in his car or
18 truck, whatever he's driving, and he's stalling waiting to
19 get him there.

20 Look at his testimony. Think about his candor up here,
21 the way he answered questions, and he, he can say one thing,
22 then go back to another. Well, I held his license. Well,
23 he could go, but his car wasn't going anywhere. Little bit
24 jumbled there. State wants you to overlook that.

25 Okay. Look at the fact he puts in his report well, the

1 dog hit on the driver's side door. The video, obviously the
2 dog didn't touch the driver's side door. He touched the
3 passenger's side door. The State wants you to say oh,
4 that's just a mistake.

5 But they want you to dissect every little thing
6 Mr. Falls does, every little thing he says, and they want
7 you to jump on oh, this man, this guy's guilty, he's
8 nervous. Oh, we can overlook the officer.

9 Go to Trooper Wilson. Trooper Wilson, he shows up and
10 you don't hear him say go get your dog, I need the dog.
11 Supposedly they got signals. I don't know what it was. But
12 he's -- there's no communication that we're aware of.

13 Okay. He goes in here, puts his dog in there. I think
14 his dog's named Zena. She goes around the car, and then she
15 goes in the front seat, in the back seat, then he decides
16 okay, gives another signal. Got some dope. So, he takes
17 the dog back. He's gone for two, maybe three minutes.

18 What does he tell you about where he goes?

19 He goes to his Suburban that has two lock boxes to
20 retrieve his camera and some gloves and put his dog up. Two
21 lock boxes. Three minutes. He returns with a big coat on.
22 He goes down in that car. You don't see him for several
23 seconds. He goes through the front seat, goes through the
24 back seat, looks everywhere, pulls the back seat out, puts
25 it on the front of the fender of the car. No drugs.

1 what did he tell you about that dog?

2 I love that dog, his -- now his pet. He's got a vested
3 interest in these dogs. He's trained them. He's been
4 working with them since 1999.

5 He pulls his ace drug dog up here and that thing makes
6 a hit and then he doesn't find any drugs, he's not looking
7 very good, is he?

8 Not looking good.

9 So, he keeps searching. Then he's gonna go to the car
10 door and, boom, there's the drugs. He's been through that
11 car three minutes. All of sudden it's right there in a
12 little pouch in the front door. So, he hooked my guy up,
13 which means he put him in handcuffs, gets his camera, and
14 goes back and takes pictures of the door, of the drugs, of
15 my client, and then goes and makes a more thorough search,
16 the hood, the trunk, all that.

17 All right. And he does this, come back, and he goes
18 back to the car. He brings out this bag here, a Ziploc bag,
19 a plastic bag with these drugs in it. He brings out a blue
20 bag. He brings out a blue bag and states this is what the
21 drugs was in. The blue bag, about the same size as this bag
22 here. He takes it -- he's got photographs of that too.

23 Trooper Wilson, asked him where that bag is?

24 Oh, well, can't process a vinyl bag.

25 Guys, well, we've got -- we running -- the Federal

1 Government is running tests on D.B. Cooper's DNA from 40
2 years ago.

3 We can't process a bag?

4 Is that what he wants us to believe?

5 We can charge people with rape 30 years later, but we
6 can't process a blue bag?

7 Guess what, guys?

8 That blue bag's awful small.

9 What's every defense attorney's dream?

10 They want to go in Court and say if it don't fit you
11 must acquit, right?

12 The old O.J. Simpson trial.

13 All right. Why is that bag not here, guys?

14 Why is that bag not in court?

15 Why are those photographs not in court?

16 They're right there on the roadside. He takes those
17 pictures. We've got the drugs here. We've got the
18 analysis, all different pieces of evidence. We don't have
19 that bag. But we don't have those photos.

20 Why not?

21 That's a question you got to ask yourself.

22 Mr. Falls told you he went to Atlanta to see a cousin.
23 He can back that up. The time line's perfect. He tells you
24 his -- he's got a tax ID number from the IRS. He's a
25 legitimate businessman. He's riding through. Like I say,

1 the time line's perfect. He gets pulled over, and then his
2 whole world starts to fall apart.

3 why?

4 Because of this thing called Rolling Thunder.

5 well, we pull people over. We saturate the highways.
6 Officer Wilson says well, to stop the DUI's and, and to cut
7 down on traffic fatalities. Bull. It's to pull people
8 over, search their cars for drugs, and seize whatever we
9 can. That's why they pull people over in Rolling Thunder.
10 That's why they have a breakfast. That's why they have a
11 final banquet to put all of what they got for the week and
12 take pictures of it and will give the cops awards for what
13 they seize during the week.

14 It goes back to competition. It goes back to ego.
15 That's what Rolling Thunder's about. It's not about DUI's.
16 If it's about DUI's, he's talking and somebody shaking and
17 stumbling around.

18 why -- he didn't give any -- you don't see any field
19 sobriety tests administered to my client. It's about drugs.
20 It's about a sting. It's about a set up.

21 Now, the judge is gonna instruct you on something
22 called reasonable doubt. Reasonable doubt means that you
23 have some doubt as to the guilt of the person accused of a
24 crime, and he'll explain that a lot better than I can. But
25 there's a lot of reasonable doubt in this case. And if you

1 got reasonable doubt in your mind, you got to come back with
2 a not guilty. And if you go in here and you vote not
3 guilty, tell your other fellow jurors why if they don't,
4 they don't agree with you. Cause evidence isn't adding up
5 guys.

6 We're pulling this guy over for nothing. We're
7 stalling, obviously stalling in this pull over. Got
8 Mr. Falls, what's to tape -- he's always on the tape. You
9 see him the entire time. The only people that disappear
10 from view and come back into view are the officers. Ask
11 yourself about that.

12 Now, I'll leave you with this, guys.

13 Where's that blue bag?

14 Where are, are those photographs?

15 Thank you.

16 THE COURT: Mr. McCarty, for the State.

17 SOLICITOR McCARTY: May it please the Court, Your
18 Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR McCARTY: Much like Mr. Thompson, I
21 appreciate your patience. I know we started this Wednesday
22 afternoon, and here we are on Friday morning.

23 I told you, in my opening remarks, I only had three
24 witnesses for the State. That's what I kept my promise to
25 you about. I didn't realize it would be as lengthy as it

1 would be, but that's what justice demands sometimes. Like
2 the judge told you in his opening comments, it's deliberate.
3 Sometime it takes a while to get there. But here we are at
4 that moment where we're about to ask for justice. We're
5 about to ask you, members of the jury, to go back and
6 deliberate on this offense and bring justice for the State
7 of South Carolina because Jeffrey Bernard Falls, ladies and
8 gentlemen, is guilty of trafficking more than 200 grams, a
9 quarter of a kilo, of powder cocaine.

10 I told you at the beginning of the trial that we're
11 gonna deal with some professionals here. Sergeant Wilson is
12 a professional law enforcement officer. He's been a highway
13 patrolman, Trooper of the Year, National Trooper of the
14 Year. This is his job. And just like anybody's job, you
15 learn things within your job that are specific to your job.
16 That's what Trooper Wilson has.

17 We've asked you folks to bring in something you also
18 have. That's common sense. Use common sense as you've
19 heard the testimony, as you apply it to the facts.

20 Now, Mr. Thompson's tried to spin the tables on us and
21 put our troopers on trial. He's tried to say that this is a
22 plant, that our troopers put a quarter of a kilo of powder
23 cocaine on Mr. Falls. Poor old tow truck driver from
24 Charlotte, North Carolina who happens to have a, what we
25 found out was a pretty well connected cousin that he went to

1 visit down in north or down in Georgia.

2 I do want to talk about the traffic stop. We're not
3 playing the video. I promise you that.

4 Trooper Wilson, I told you is a professional. He's
5 been trained on this. He's trained to look to things
6 subconsciously a normal motorist may not be aware of. That
7 you or I may not be aware of. But he's trained to look for
8 those things. He's also trained to follow up on those type
9 of things or be able to write those things off.

10 He admitted to you nervousness is a normal part of
11 being pulled over by the police. I'm a prosecutor, have
12 been for years. I can promise you that even I would be
13 nervous if I got pulled over. But what Trooper Falls told
14 you is that when he saw Mr. Falls -- I'm sorry. When
15 Trooper Wilson saw from Mr. Falls was an exaggerated amount
16 of nervousnesses. Something more than what he indicates
17 typically he sees in a normal motorist.

18 You know, when Trooper Falls -- we talked -- when we
19 talked to Mr. Falls yesterday, I asked him, you're driving
20 along the interstate. You're looking over to see the
21 trooper next to you.

22 Is it possible that you drifted out of your lane?

23 He said yeah, it's possible.

24 What Trooper Wilson testified to, he said I was beside
25 Mr. Falls at one point, and I see him leave his lane, that's

1 probably where it happened. Mr. Falls is looking over
2 saying gee, what's the Highway Patrol doing right up next to
3 me. He's not paying attention, over a drift, maybe looking
4 back again, looking up in my rearview mirror, maybe out of
5 it. It's nine o'clock at night.

6 Trooper Wilson, being a professional, is trained to
7 look for certain things. Fatigue on the roadway. Possible
8 DUI.

9 Now, he said, Mr. Thompson kind of made light of this,
10 but we're up here to reduce road fatalities. Well, that is
11 a part of a trooper's mission. That's a central part of
12 their mission. They're not out here for fishing
13 expeditions. They're not out here to hunt for black male
14 drivers, Hispanic drivers as Mr. Thompson alleges. They're
15 out here to, if somebody is being unsafe on those roadways,
16 they're protecting all of us who are driving on South
17 Carolina roadways.

18 If Mr. Falls is about to fall asleep behind the wheel,
19 we need to get him off the road. If Mr. Falls is impaired,
20 we need to get him off of the road. That's their mission.
21 That's their job.

22 Did it happen to occur during Rolling Thunder?

23 You bet.

24 But that's what he's looking for.

25 Mr. Thompson talked about these lights on 85. Look.

1 It's the State's position what you see is the exit up on
2 that video. Duncan Highway, 290, right there off Interstate
3 85. Again, that's a common sensical question. I'm gonna
4 ask you to view it and look at.

5 Assuming it is multiple lights from other cruisers,
6 from other police vehicles, ask yourselves this, can we
7 control how or when, how often, anyone commits a traffic
8 infraction?

9 Maybe they're all speeding violations. Maybe they were
10 all DUI violations. Maybe it was four or five gas stations,
11 the Cracker Barrel, and whatever else is out there at 290.

12 Trooper Wilson pulled Mr. Falls over for crossing that
13 white line at nine o'clock at night wondering about
14 Mr. Falls' ability to drive. He said he walked up to the
15 car. Upon initial approach, he sees the defendant wearing
16 work clothes. He also notices that that car is pretty much
17 unusually clean. Not a cup in it. No luggage. No baggage.
18 No food wrappers. Nothing like that. It's a very clean
19 car. Doesn't look lived in.

20 It's a North Carolina tag. We're traveling north on
21 Interstate 85 back towards North Carolina. And in that
22 brief set of conversations right there with him, this
23 defendant reveals to him that he's coming from Atlanta.

24 Again, these are things that you and I, common sense
25 wise, may be nothing to us, they're innocuous, and they may

1 be by themselves. But Trooper Wilson is trained to pick up
2 on those things, to look at those type of things, to
3 evaluate what he's got at that situation.

4 He comes back to the car. He asked, first, Mr. Falls
5 to pull up beyond that guardrail because it's a traffic
6 safety issue for Trooper Wilson. It's a personal safety
7 issue. He wants to go home at the end of the day. He
8 doesn't want to put himself in a position where if, let's
9 say, somebody else is driving under the influence comes by
10 and hits Mr. Falls' car, that he now is trapped between the
11 car and the guardrail. Asked him to pull up beyond the
12 guardrail.

13 It's about a minute that transpired between the initial
14 time he pulls over to where he gets to that next set of
15 stops. Trooper Wilson gets out of his patrol car after
16 calling the driver's license number in. Maybe there's an
17 error in the driver's license. We admit that. We found
18 that out yesterday. We called in a six digit number opposed
19 to a seven digit number. Errors happen. We're all human.

20 When he approached the vehicle, you can watch that
21 video, Trooper Wilson's body language changes when he's on
22 that video. There's a pause. There's the look into that
23 vehicle. Maybe you can, maybe you can't see Mr. Falls
24 having any type of body movement. Maybe he doesn't move
25 down. Maybe he doesn't reach up under his seat as well as

1 he reaches down into that doorway, and you to---

2 MR. THOMPSON: Your Honor, again, I don't think that's
3 in the record. I don't believe it is.

4 THE COURT: The fact, the fact that a movement took
5 place is on the record, and he can argue any inferences that
6 might be drawn from that fact.

7 MR. THOMPSON: All right.

8 THE COURT: I'll allow him to make that argument.
9 That's a possible inference that could be drawn from that
10 fact that's in the record.

11 MR. THOMPSON: Thank you, Your Honor.

12 THE COURT: You may proceed.

13 SOLICITOR MCCARTY: Thank you, Your Honor.

14 Maybe he reached down to put a quarter of a kilo of
15 powder cocaine right there on that driver's side door.
16 Trooper Wilson doesn't know what he's putting there.
17 Trooper Wilson testified that he himself has been in a
18 situation where a fellow officer was shot, and it was
19 Trooper Wilson who had to respond to that situation and see
20 a downed officer shot by somebody just simply as he was
21 approaching the vehicle. And he has to look out for
22 himself. He has to look out for his fellow officers.

23 Now, he does call for assistance. He calls Trooper
24 English, his partner, a member of the Highway Patrol who's
25 up in Spartanburg County patrolling with him. That's the

1 first call he calls out.

2 I know English is here. I know he's working tonight.
3 we work together. I'm gonna give him a call.

4 Mr. Thompson would have you believe that was because
5 Trooper English was a K-9 handler. But Trooper Wilson, at
6 this point, has already decided we're searching this car.

7 He's testified he doesn't know what he put under that.
8 He doesn't know if it's a quarter of a kilo of powder
9 cocaine. It could be a handgun. It could be a sawed-off
10 shotgun. It could of been anything. He's got to look out
11 for himself.

12 He calls Trooper English. It happened to be Trooper
13 English is a K-9 handler.

14 I ask, I ask, would this question be the same if
15 Trooper English had been the bomb disposal guy for the
16 Highway Patrol?

17 He's calling a fellow officer who happens to be his dog
18 handler when he gets here. Once we ask Mr. Falls to get out
19 of that car, bring him on back, tell him we're just giving
20 him a warning, he starts to tell you about the trucks, how
21 they're bothering him on the highway.

22 Again, subconsciously, it may not matter to us. It may
23 not even be anything we're even aware of it. Okay. He's
24 making conversation with him.

25 Trooper Wilson's a professional. They're trained in

1 all this. He knows that, wait a second, this guy's just
2 chattering now. He's asking him -- he's answering things
3 and responding to things I'm not even asking him.
4 why is he doing this?
5 Let's ask a few more questions about if you worked
6 today. He's got work clothes on. He says yeah, I worked
7 today. well, wait a second. when I first pulled you over
8 you told me that you had been coming from Atlanta.
9 which is it?
10 what, I've been down to Atlanta.
11 How long were you in Atlanta?
12 A few hours.
13 who were you with?
14 My cousin.
15 what were you there for?
16 To talk about a party, hang out with some girls and
17 stuff like that.
18 what's your cousin's name?
19 Black.
20 It's on the video.
21 Black, is that a nick name, last name?
22 It's a last name.
23 well, what's his first name?
24 Antwan.
25 It's on the video. Antwan Black, that's what he tells

1 the trooper.

2 Now, Mr. Thompson came in this morning and tells you
3 that's an alias. He didn't want to give his cousin's name.

4 You heard the testimony of his daughter. You have the
5 ability to judge who's telling the truth in full, in part
6 whatever you deem it to be, whatever credit you give it.
7 But when she came up here, she said we have a cousin in
8 Atlanta. It's on my father's side of the family. His name
9 is Arthur wylie I believe you wrote down.

10 It's not the name that Mr. Falls gave to Trooper Wilson
11 after a pause, after thinking about it, after giving the
12 last name first.

13 Where does your cousin live?

14 I don't know.

15 You ever been to his house?

16 Yeah, once.

17 How many times you been to Atlanta?

18 A couple times in the last year he lived down there.

19 Mr. Falls comes up here and says I've been to his
20 house. I met him at different places. When I get to
21 Atlanta I call him, and he meets me some place.

22 He's got to know where he's going. The other thing is
23 Mr. Falls tells you he's a tow truck driver. He's a repo
24 man. Knowing how to get places is got to be part of his
25 business. Common sense question. He's not a guy, he's told

1 you, that sits behind a desk nine hours a day and never gets
2 out. He drives around. He's repossessing vehicles. A
3 sense of direction, I would argue to you, is what Mr. Falls
4 has.

5 So, how do we not know where we're going in Atlanta?
6 We've been there three different times. We know my
7 cousin. He's a good friend. In fact, he's such a good
8 friend of a good person that my well to do well connected
9 cousin has asked me to come down there for advice about
10 which models to invite to this party that we're having.

11 Ms. Falls also testified that it wasn't uncommon for
12 her dad to take day trips down to Atlanta.

13 Now, what inference can we draw from that?

14 I don't know.

15 But on this day trip, we know that he was coming back
16 north bound through Spartanburg County and he had a quarter
17 of a kilo of powder cocaine on him and in his car.

18 The whole stop in this situation, 19 minutes 17
19 seconds, and that's from the time he pulled him over, his
20 conversation that we're having with him, telling him about
21 the warning ticket, searching his car to the point where he
22 finds the cocaine in the car. Nineteen minutes and 17
23 seconds. In fact, it's just shy of 11 minutes when we tell
24 him we're gonna search his car.

25 And, so, is this a prolonged detention, ten minutes

1 worth of time on the roadside when Trooper Falls (sic), a
2 professional, says wait a second, something's not right
3 here, something's not adding up there. Mr. Falls is
4 deceptive with me. At that point he had what we call a
5 reasonable suspicion. He believed that something else is
6 going on here. It's not normal. It's not adding up to him.

7 He asked Mr. Falls can I search your vehicle.

8 Mr. Falls hems and haws around about it. Never really says
9 yes or no. It's on the video. He says well, I mean, I mean
10 I didn't do anything. Trooper Falls (sic) says I didn't say
11 you did anything. I'm just asking if I can search your
12 vehicle.

13 Well, I, I says Mr. Falls, it's a yes or no question,
14 can I search your vehicle. Mr. Falls says if I say no, can
15 I leave. Trooper Wilson says wait a second. We got
16 something going on on here, Mr. Falls. I got a K-9 coming.
17 We're going to, at this point, if that K-9 does not alert on
18 your car, you'll be free to go. But see that K-9 will help
19 Trooper Wilson confirm his suspicions. If that K-9 doesn't
20 alert, we're not gonna be sitting here today. But if that
21 K-9 alerts on that car, that K-9 tells Trooper Wilson your
22 suspicious are right. Something else is going on here, and
23 then we see on the video, Trooper English searching that
24 car.

25 If this was a plant by the Highway Patrol, first of

1 all, it's a big plants. It's 250 grams, a quarter of a kilo
2 of powder cocaine to blame on Mr. Falls, a tow truck driver,
3 repo man from Charlotte, North Carolina.

4 why didn't we just find it in the passenger's side door
5 when we first opened it up?

6 why did Trooper English search through the passenger
7 side door, go to the back door of the passenger side?

8 He's told -- he's trained to look for things, things
9 that you and I, again, may not recognize. He's trained to
10 look for hidden compartments, traps, for common hiding
11 places. Trooper Wilson -- you know, Trooper English, as you
12 may recall, had a pretty thorough knowledge of that type of
13 a vehicle. He's trained on these types of things. He knows
14 certain things about vehicles that you or I may not know. I
15 mean maybe you're a car buff. I'm not. But you, just off
16 the top of my head, if I, if I remember correctly, believe
17 the trunk release button was wherever it was on that
18 vehicle. I thought geez. I didn't know that. But he knew
19 it.

20 He's a professional. He knew how to take that back
21 seat out because he said there's a natural void there. He
22 knows, based on his experience, based on his training,
23 that's some place else to look.

24 Again, if it's a plant, why not find it there?

25 why not find it in the front seat on the passenger

1 side?

2 why not find it in the back seat?

3 Especially after we've taken the back seat out. walk
4 around to the front side of the car cause we're gonna have
5 to pop that trunk cause that's some place else we're gonna
6 look. wait a second. Here's a blue nylon bag.

7 what is that?

8 We got powder cocaine.

9 Go ahead and hook Mr. Falls up. Give a head signal.
10 Nothing wrong with that. It's officer safety. We're not
11 gonna stand out there and say hey, we found a bunch of
12 cocaine, go ahead and arrest him.

13 You know why?

14 Cause they're worried Mr. Falls is gonna endanger
15 himself, endanger other motorists, take off, and endanger
16 himself. Little head signal and we're good.

17 They go ahead and take Mr. Falls into custody, and you
18 see Trooper English continues to search that vehicle.

19 Again, if it's a plant, if you're planting 250 plus
20 grams of powder cocaine on Mr. Falls, why, why are we
21 looking up front under the engine compartment?

22 why are we continuing to search the passenger
23 compartment of the vehicle?

24 Watch the video. Trooper English climbed into the
25 trunk of the vehicle. He's looking for things that you and

1 I aren't trained to look for, but he knows to look for.

2 If it's a plant, why go through all of that?

3 That's an elaborate scheme.

4 Common sense. Common sense.

5 The judge is gonna tell you about the elements of this
6 offense for trafficking. I told you kind of in my opening
7 statement that trafficking doesn't require that you've
8 driven a car. Trafficking is based on the weight alone, and
9 the judge will instruct you the offense before you is called
10 trafficking in cocaine more than 200 grams, but less than
11 400 grams.

12 You've had direct testimony. Two State's exhibits.
13 The drugs and the chemistry report. 254.12 grams powder
14 cocaine.

15 Your question is, as the judge tells you the elements
16 of this offense, he'll tell you that one of the elements of
17 this offense is that the defendant either be actually or
18 constructively possess that drug. Again, doesn't require
19 that it be driven up and down the road. Trafficking is a
20 weight based crime, and the weight in this case is more than
21 200 grams. We have 254 grams.

22 The question you'll have to decide, again, applying
23 common sense, is this a plant by the Highway Patrol cause
24 apparently the trooper's now on trial.

25 Is this a plant by the Highway Patrol?

1 Is this a plant to put a kilo or a quarter of a kilo of
2 powder cocaine in Mr. Falls car or is Mr. Falls running
3 drugs up and down Interstate 85, and because of his error,
4 and his own ramblings, deceptive statements, and whatever
5 else that happened, that caused Trooper Wilson to say wait a
6 second. That was possession of powder cocaine.

7 I submit to you Mr. Falls was nervous that night.
8 Mr. Falls knew he had a quarter of a kilo of cocaine in his
9 car. Mr. Falls was trying to think on his feet, but it
10 wasn't adding up.

11 And if he'd been to visit his cousin, I ask you today,
12 why does Arthur Wylie or Antwan Black not even darkened the
13 doorway of this courtroom?

14 Ladies and gentlemen, as you go back to deliberate, I
15 ask you consider all the evidence. If you need to, watch
16 the video again. But I think the video's clear. Trooper
17 Wilson's testimony is concise and specific as to what his
18 observations were, as to what his feelings were regarding
19 Mr. Falls, and I believe that if you look at that using your
20 common sense, not even that specialized skill that Trooper
21 Wilson has, which is common sense, that you'll find that
22 Mr. Falls is guilty of the offense of trafficking in
23 cocaine, and I respectfully request that you return a
24 verdict of guilty.

25 Thank you.

1 THE COURT: Ladies and gentlemen of the jury, we have
2 reached the stage of the trial where you have now heard the
3 closing arguments by counsel, and I told you that when we
4 reached this stage of the trial that it would be my
5 responsibility to charge you concerning the law to be
6 applied in this case. At the beginning of this trial I went
7 over with you the indictment. That is the formal charge
8 that brings the case before this Court, and at this time I'm
9 going to read that indictment to you again because this does
10 set forth the charge and it sets forth the matters the State
11 is required to prove in the case.

12 This is in Case Number 07-GS-42-2111. The indictment
13 is for the offense of trafficking in cocaine. The
14 indictment states that Jeffrey Bernard Falls did, in
15 Spartanburg County, on or about February the 20th of 2007,
16 knowingly sell, manufacture, cultivate, deliver, purchase,
17 or bring into this state, or did provide financial
18 assistance, or did otherwise aid, abet, attempt, or conspire
19 to sell, manufacture, cultivate, deliver, purchase, or bring
20 into this state, or did knowingly, actually or
21 constructively, possess, or did knowingly attempt to become
22 in actual or constructive possession of more than 200 grams
23 of cocaine, a Schedule II controlled substance, in violation
24 of Code Section 44-53-370 of the Code of Laws of South
25 Carolina, 1976 as amended, against the peace and dignity of

1 the State and contrary to the statute in such case made and
2 provided.

3 Now, ladies and gentlemen, that is the indictment that
4 brings the case before this Court. Again, an indictment
5 does not constitute evidence and can not be used directly by
6 you in determining the guilt or the innocence of a
7 defendant. But it does state the charge and it does state
8 the matters that the State is required to prove in this
9 case.

10 Now, the defendant has pled not guilty to the
11 indictment, and, as I told you at the beginning of the case,
12 that plea, under the law and the Constitution of this state,
13 places the burden on the State to prove the defendant
14 guilty. A person charged with committing a crime in South
15 Carolina is never required to prove himself innocent. I
16 charge you it's an important rule of law that a defendant,
17 in a criminal case, no matter what the seriousness of the
18 crime that's been charged might be is always presumed to be
19 innocent of that offense until and unless guilt has been
20 proven by evidence satisfying you, the jury, of that guilt
21 beyond a reasonable doubt.

22 The presumption of innocence does not end when you
23 begin your deliberations. It accompanies the defendant
24 throughout the trial and into your deliberations until such
25 time as you might reach a verdict of guilt based on evidence

1 that satisfies you of that guilt beyond a reasonable doubt.

2 Many people describe the presumption of innocence that
3 a defendant has in this courtroom somewhat like the robe
4 that I wear into the courtroom. That presumption of
5 innocence remains about the defendant's shoulders throughout
6 the trial, it accompanies the defendant into your
7 deliberations, and it remains about his shoulders in your
8 deliberations until such time as it might be stripped from
9 him by evidence that satisfies you of his guilt beyond a
10 reasonable doubt.

11 Now, the presumption of innocence is not just a legal
12 theory and it's not just a legal phrase. It's a substantial
13 right that every defendant is entitled to in this Court
14 unless you, the jury, are satisfied from the evidence of the
15 defendant's guilt beyond a reasonable doubt.

16 Now, you've probably heard me already say or indicate
17 that proof must be beyond a reasonable doubt about three or
18 four times in my charge, and you're probably aware that
19 that's an important concept in our criminal justice system,
20 that is proof beyond a reasonable doubt, and you may be
21 asking yourself well, just what do they mean by a reasonable
22 doubt, what is that.

23 Now, a reasonable doubt is that kind of doubt that
24 would cause a reasonable person to hesitate to act. The
25 State has the burden of proving the defendant's guilt, guilt

1 beyond a reasonable doubt.

2 Now, I will tell you, some of you may of been involved
3 in civil cases. Let me explain to you the difference
4 between civil cases and criminal cases insofar as the level
5 of proof is concerned. In civil cases, that's where
6 somebody's seeking monetary damages. That could be because
7 of a personal injury or a breach of a contract or a failure
8 to pay a debt, things of that nature, where people are
9 seeking money from someone else for some reason. Those are
10 civil cases, and in those cases, the standard of proof in
11 those cases is proof by the greater weight or the
12 preponderance of the evidence.

13 what that means is the scales of justice, and you-all
14 have seen the scales of justice, if they tilt ever so
15 slightly one way or the other, then that's the level of
16 proof that's required in a civil case.

17 Now, this is not a civil case. This is a criminal case
18 and the level of proof is more powerful than that. It is
19 proof beyond a reasonable doubt.

20 Now, proof beyond a reasonable doubt is that kind of
21 proof that would leave you firmly convinced of the
22 defendant's guilt. Now, there's very few things in this
23 world that can be proven, that we go, that we do or we go
24 about in our day-to-day lives that can be proven beyond any
25 doubt, and the State's not required to prove its case beyond

1 any doubt whatsoever.

2 Again, the standard of proof is proof beyond a
3 reasonable doubt. Again, I will tell you that if, after
4 you've considered all of the evidence in this case, if you
5 are firmly convinced of the defendant's guilt beyond a
6 reasonable doubt, you must find the defendant guilty.
7 However, on the other hand, if you think there's a real
8 possibility that the defendant is not guilty in this case,
9 then you must give the defendant the benefit of that doubt
10 and find the defendant not guilty.

11 Now, I'll remind you and I'll go over briefly with you
12 again the different duties that you and I have in this
13 trial. It's been my responsibility to preside over the
14 trial of this case, and I've had to deal with several
15 objections and questions concerning the evidence and the
16 presentation of evidence. And I will tell you again that
17 you should not take from anything that I have done in the
18 discharge of my duties to indicate to you one way or the
19 other that I have any opinion as to how you determine the
20 facts in this case.

21 I told you earlier the law doesn't allow me an opinion
22 on that subject. I have no opinion as to how you determine
23 the facts in this case, and don't take from anything that I
24 do or say now or throughout the end of this trial to
25 indicate to you that I have an opinion on that subject.

1 You are to consider only the competent evidence that is
2 come into this case, and if I ruled anything out or any
3 question as inappropriate or overruled any objection or, or
4 sustained any objection, anything that I ruled out of the
5 evidence, of the record you should not consider at all in
6 reaching your verdict in this case.

7 I told you also it's my additional duty, besides
8 presiding over the trial, the trial of the case, to charge
9 you concerning the law to be applied in this case, and I
10 have told you that, under your oath, you must accept the law
11 as I give it to you and apply it to the facts as you find
12 them to be. Again, if you have any idea or notion as to
13 what the law is or what it ought to be, leave those notions
14 outside of the jury room and accept the law as I give it to
15 you, and, again, apply it to the facts as you determine them
16 to be.

17 Now, you are the sole judges of the facts in this case,
18 and as such, it is your duty to analyze the evidence that
19 you've heard, evaluate the evidence that you've heard, and
20 make a determination of what evidence convinces you of its
21 truth. Again, you're the sole judges of the facts. So,
22 therefore, you're the sole judges of credibility and
23 believability of the testimony and the witnesses that you've
24 heard during this trial, and I've told you use your own good
25 common sense in making that determination. You do it every

1 day. Today is no different than any other day.

2 You can consider whether or not a witness has a stake
3 in the outcome of the case, whether or not a witness might
4 possess some bias or prejudice for or against one side or
5 the other, whether or not the witness had the ability to
6 know the facts about which the witness testified, and you've
7 observed the witnesses as they testify, the way they spoke,
8 how they delivered their testimony. Again, use any of those
9 factors you choose to use using your own good common sense.
10 Make a determination as to what evidence convinces you of
11 its believability and is deserving of a finding by you of
12 credibility, and then you determine the effect, the value,
13 and the weight that you want to give to any testimony that
14 you've heard during this trial.

15 Now, I'll tell you that in making your decision you
16 have the right to consider two types of evidence. We
17 haven't discussed these two types of evidence, and let me
18 explain to you what I mean by two types of evidence. The
19 first type of evidence you can consider is what we call
20 direct testimony, direct evidence. That's evidence given by
21 a witness who claims to have actual knowledge of the facts
22 about which that person testifies such as an eye witness.
23 Someone who was present or experienced the facts about which
24 that person testified. They saw something, they heard
25 something, they tasted, smelled, felt. Those are things

1 where people are talking about their own experiences
2 directly. That's what we mean by direct evidence.

3 There's another type of evidence that you have the
4 right to consider in reaching your verdict, and that is what
5 we call circumstantial evidence. Now, circumstantial
6 evidence is proof of a chain of facts or circumstances which
7 immediately establish some other fact. It's collateral
8 facts from which a main fact can be inferred.

9 Now, those are big fancy words and I try to reduce this
10 to a simple example as to what I mean by proving a fact by
11 other facts and circumstances that you know to exist. Let's
12 say last night before you retired to go to bed you looked
13 outside of your window and the stars were shining. It was a
14 pretty night outside, and you went to bed, slept well all
15 night. You woke up the next morning, you looked out the
16 very same window. While -- and the sun was shining. But
17 there's water dripping from all the trees, there's puddles
18 in the driveway, the road in front of the house is soaking
19 wet.

20 Now, you slept well all night. So, you don't directly
21 know that it rained. You didn't hear it rain. You didn't
22 see it rain. But from the facts that you know to be true,
23 you could reasonably infer or deduce that it, in fact,
24 rained during the night, and that's what we mean by proof of
25 collateral facts from which a main fact could be reasonably

1 inferred. That is proof of a fact by circumstantial
2 evidence.

3 Now, the law doesn't make any distinction as to what
4 weight or value you, the jury, can give to either direct or
5 circumstantial evidence. You give it the weight that you
6 think it deserves nor is there a greater degree of certainty
7 required of circumstantial evidence than that of direct.
8 You, the jury, have the right to weigh all of the evidence,
9 both direct and circumstantial, and I'll tell you that if,
10 after weighing all of evidence, you're not convinced of the
11 defendant's guilt beyond a reasonable doubt, you must find
12 the defendant not guilty. However, if you are firmly
13 convinced of the defendant's guilt beyond a reasonable
14 doubt, you must find the defendant guilty.

15 Now, in determining credibility and believability of
16 the witnesses, I've already touched on that. But I will
17 tell you again you have the right to believe all of what a
18 witness has told you, part of what a witness has told you,
19 or none of what a witness has told you. And you have the
20 right to believe one witness against all the others and all
21 the others against one.

22 Now, during the trial, we had a witness testify who was
23 qualified as an expert in some field or science, and at that
24 time I paused and I explained to you that generally
25 witnesses are not allowed to give their opinions when they

1 testify. Lay witnesses are not allowed to do, do that. But
2 an exception to that rule exists for people who are
3 qualified or classified as experts.

4 Now, I will tell you that you accept that testimony
5 from an expert witness just like you do any other witness in
6 the trial. You have the right to give the, the, that
7 evidence the weight that you think it believes, deserves,
8 and a witness' testimony is no more believable just because
9 someone is classified as an expert. If you find that the
10 opinion of an expert is not based on substantial reasoning
11 or good facts or, or that reasons given by the expert are
12 outweighed by other evidence in the case, you have the right
13 to disregard an expert's testimony even though it may not be
14 contradicted by other testimony.

15 In other words, you judge an expert's testimony just
16 like you do any other witness' testimony. You give it the
17 weight that you think that any expert's testimony deserves
18 in a case.

19 Now, in order to establish criminal liability, criminal
20 intent, in some form or fashion, is required, and I'll be
21 going over with you the actual offense in just a minute, and
22 talk to you about what has to be shown in the actual
23 offense. But usually there is some type of intent required.
24 That is a state of mind that must be proven by the State in
25 order to establish criminal responsibility.

1 Now, criminal intent is always a matter that has to be
2 proven by circumstantial evidence, by inference. The reason
3 for that is that there's no way, scientifically, that at a
4 time an event occurs that we can look in somebody's head and
5 scientifically determine what they're intending to do or
6 what they knew or didn't know at any given period, point in
7 time. So, criminal intent is a matter that always has to be
8 proven by the facts and the circumstances that were shown to
9 have existed at the time that the alleged incident occurred.
10 So, it is proved, proven by, by inference and not by direct
11 testimony.

12 Now, what criminal intent is, it's a conscious
13 wrongdoing. It's a state of mind. And it's up to you to
14 determine what the, what the level of intent was of any
15 defendant was based on the circumstances that were shown at
16 the time that the incident occurred.

17 Now, the charge in this case is for the charge of
18 trafficking, and the defendant is charged, charged is
19 trafficking in cocaine. For that charge, under the Code
20 Section that I just referred, I referred to earlier,
21 44-53-370, the State must prove, beyond a reasonable doubt,
22 that the defendant knowingly sold, manufactured, cultivated,
23 delivered, purchased, brought into the State, or that he
24 provided financial assistance or otherwise aided, abetted,
25 or attempted, or conspired to either sell, sell,

1 manufacture, cultivate, deliver, purchase, or to bring into
2 the State, or was knowingly in actual or constructive
3 possession, or attempted to become in actual or constructive
4 possession of cocaine.

5 Now, in order for the offense to rise to the level of
6 trafficking in cocaine, the State must also prove, beyond a
7 reasonable doubt, that the amount of cocaine or any mixture
8 containing cocaine was at least 200 grams, but less than
9 400 grams in this case.

10 Now, one of the factors that was talked about in that,
11 that charge I just gave you on trafficking is the question
12 of possession and it talks about either actual or
13 constructive possession, and let me tell you what the law
14 means by either actual or constructive possession. The
15 State must prove, beyond a reasonable doubt, that the
16 defendant knowingly or intentionally possessed cocaine.

17 Now, knowingly means with knowledge, consciously, not
18 by accident. Intentionally means willfully, intending the
19 result which occurs. Again, not accidentally or
20 involuntarily.

21 Now, intent can be shown, as I told you earlier talking
22 about criminal intent, by other facts and circumstances from
23 which you may reasonably infer intent. Again, by that, by
24 the, the evidence that we talked about earlier.

25 Now, to prove possession, the State must prove, beyond

1 a reasonable doubt, that the defendant both had the power
2 and the intent to control the disposition or use of the
3 cocaine. Therefore, possession can either be actual
4 possession or constructive possession.

5 Now, actual possession means that it was in the
6 physical custody of the defendant. In other words, I'm in
7 actual possession of this pen that I have in my hand because
8 it's in my actual physical possession. I'm holding it.
9 That's what is meant by actual possession.

10 Constructive possession means that the defendant had
11 dominion and control or the right to exercise dominion or
12 control over either the cocaine itself or the property on
13 which the cocaine was found. Mere presence at a scene where
14 drugs are found is not enough to prove possession, however.
15 Actual knowledge of the presence of the cocaine is strong
16 evidence of the defendant's intent to control its
17 disposition or use.

18 The defendant's knowledge and possession can, again,
19 can be inferred when a substance is found on property which
20 is under the defendant's control. However, this inference
21 is simply an evidentiary fact to be taken into consideration
22 by you along with all the other evidence in this case. You
23 give it the weight that you think that it should have.

24 Now, Mrs. Dunn, you're going to be the foreperson of
25 the jury. That means that you will be the person who will

1 be responsible to conduct the discussions of the jury,
2 preside over deliberations might be another way to look at
3 it. You also will be the person who will be communicating
4 with this Court if communication becomes necessary. That
5 means if, during the jury deliberations, they have a
6 question that they'd like to ask of me, it will be your job
7 just to write it down on a piece of paper, knock on the
8 door, hand it to the bailiff, and then submit it to me for
9 my consideration.

10 Now, I tell the jury that not every question that you
11 ask can I answer. I've already told you we have different
12 responsibilities. I can't enter in your decisions or
13 discussions concerning the facts in this case. I can answer
14 questions concerning my charge on the law. I can answer
15 questions concerning some questions about the evidence.

16 But I'm not asking you, Madam Forelay, to, in any way,
17 edit any question the jury may ask. You simply write it
18 down. I'll decide the appropriate answer. Also, there will
19 be a verdict form that I will give you. It will be
20 relatively simple. But once the jury has reached a
21 unanimous verdict, you'll record that verdict on the form,
22 sign the form, and submit it again by informing the bailiff
23 that a verdict has been reached.

24 Now, as I've told you, your verdict must be unanimous.
25 Each and every one of you must agree upon the verdict before

1 it becomes a verdict of the jury. That means all 12 of you
2 must agree on the verdict before it is recorded and
3 submitted to the Court.

4 I've gone over a lot of things with you. I have to get
5 with the attorneys and get the evidence together because the
6 evidence goes back to the jury room with you, and I want to
7 be sure what is properly gone into the record is submitted
8 to you. So, I've got some housekeeping matters to take up
9 before you actually begin your deliberations. I'm going to
10 ask you one more time to retire to the jury room.

11 Madam Forelay, don't allow any discussions to begin
12 until you come back to the courtroom and I give you your
13 final instructions.

14 You may retire to the jury room.

15 Thank you very much.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any objections to the charge from the
19 State?

20 SOLICITOR MCCARTY: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. THOMPSON: None, Your Honor.

23 THE COURT: All right. I'll ask you to step forward.
24 Gather the evidence and be sure that only properly admitted
25 evidence is submitted to the jury.

1 (Pause.)

2 THE COURT: And, Mr. Thompson, if you want to step up
3 I'll let you take a look at the verdict form. I'll ask him
4 to do that when he finishes. See if you have any objection
5 to the form I'll submit to the jury.

6 Mr. Bailiff, why don't you take that back there and
7 plug it up and be sure it's operating.

8 Is the tape in it?

9 SOLICITOR MCCARTY: Yes, sir.

10 THE COURT: Just go ahead and plug it up. If they have
11 any questions, let them ask us about it.

12 You want to look at the verdict form?

13 SOLICITOR MCCARTY: Certainly, sir.

14 THE COURT: All right. Let's bring the jury in.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. The record will reflect that
18 the jury has returned to the courtroom.

19 Mr. Bailiff, if you'll wait right up here please. Just
20 a second.

21 BAILIFF: Yes, sir.

22 THE COURT: I'm gonna pass over the verdict form that's
23 done, that's going to be in use for this case. Let me go
24 over that with you.

25 At the top you'll see that the, the name of the

1 Court -- I'll give you a second to get your glasses.

2 FORELADY: Thank you.

3 THE COURT: Uh-huh. (Affirmative).

4 You'll see at the top of the page it has the State,
5 county, and the Court that we're in, and then the caption of
6 the case against Mr. Falls. There is one question presented
7 and it states that we, the jury, unanimously find, as to the
8 indictment in this case, trafficking in cocaine, the
9 defendant, and the choices are not guilty or guilty. You'll
10 just put a check next in the line next to the appropriate
11 verdict once it's been reached, and once a unanimous verdict
12 has been reached, you'll then sign the form, knock on the
13 door, and, and tell the bailiff a verdict has been reached.

14 Do you understand the form, ma'am?

15 FORELADY: I do.

16 THE COURT: All right. I'm also going to pass to you
17 the indictment in the case. The indictment is the charge.
18 You can have that to take a look at that as well during the
19 deliberations.

20 Now, we've brought in the video viewing machine. The,
21 the CD is not in it. The little silver thing that says Coby
22 is the player for that. So, you'd insert it in that, turn
23 on the TV, and then push play or pause or whatever you
24 decide to do as far as operating it if you wish to view the,
25 the CD during your deliberations.

1 The other evidence will be coming back. I'll caution
2 you, don't open the, the cocaine or the substance that's in
3 the bag because obviously if that were to spill out or
4 whatever that would create a real problem for us. So, try
5 to view it through the bag. Don't try to open that. So, if
6 you need to view it, you're welcome to take a look at it
7 inside the bag.

8 All right. At this time I'm going to ask the jury to
9 retire.

10 Ma'am, you're the alternate. You remain seated. You
11 may retire and begin your deliberations at this time.

12 Thank you very much.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury and the alternate juror was dismissed
15 at this time.)

16 THE COURT: Any objections to my final instructions
17 from the State?

18 SOLICITOR MCCARTY: None, Your Honor. Thank you.

19 THE COURT: Any from the defense?

20 MR. THOMPSON: No, Your Honor.

21 THE COURT: All right. We'll be in recess in this case
22 until such time as a verdict is reached.

23 (WHEREUPON, the jury began deliberations at 10:17 and
24 returned with a question at 10:42.)

25 THE COURT: All right. We have questions from the jury

1 in the case. I need Mr. Thompson.

2 Mr. Thompson, we're gonna need your client back in the
3 courtroom.

4 THE COURT: All right.

5 (WHEREUPON, the defendant comes into the courtroom at
6 this time.)

7 THE COURT: All right. Is the State ready to go over
8 the questions of the jury?

9 SOLICITOR MCCARTY: They are -- we are, Your Honor.

10 THE COURT: Defense ready?

11 MR. THOMPSON: Yes, Your Honor.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Sir, the forelady has to sit in that seat
16 right there. Thank you.

17 JUROR: Sorry.

18 THE COURT: That's all right.

19 All right. The record will reflect the jury has
20 returned to the courtroom.

21 I've received three questions from the jury. The first
22 is request details concerning the driver's side pocket
23 compartment including color of door. Need possible -- need
24 photo, if possible.

25 The second question, is there a center console.

1 Third question, are we correct that there is no
2 photographic evidence.

3 The first two questions I've explained to you. I can't
4 enter into your discussions concerning the facts in this
5 case. The evidence that's in the record is the evidence
6 that's in the record. If that information is not currently
7 in the record we can not supply it at this time. So,
8 there -- I can't answer those questions and those answers
9 can't be questioned, those questions can't be answered
10 unless those answers can be taken from the evidence that's
11 been presented.

12 It says are we correct there is no photographic
13 evidence. I can tell you I'm not aware of any photos that
14 went into the record, but the evidence, again, has been
15 submitted to you. You have the right to review it. But at
16 this stage of the proceedings we do not supplement the
17 record and do not add to the record. Whatever is in the
18 record is there, and you must decide the case based upon the
19 record that's in the case.

20 I'll ask you to retire to the jury room and continue
21 your deliberations.

22 Thank you very much.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Any objection from the State to my

1 responses?

2 SOLICITOR MCCARTY: No, Your Honor.

3 THE COURT: Any from the defense?

4 MR. THOMPSON: None, Your Honor.

5 THE COURT: All right. The questions will be made a
6 Court's Exhibit and part of the record.

7 (WHEREUPON, the note from the jury was marked as
8 Court's Exhibit No. 2 for identification purposes only at
9 this time.)

10 THE COURT: We'll remain in recess in this case until a
11 verdict is reach.

12 Thank you very much.

13 MR. THOMPSON: Thank you.

14 (WHEREUPON, the jury began deliberations again at 10:43
15 and returned with a verdict at 12:05.)

16 THE COURT: All right. I have been informed basically
17 that a verdict has been reached in this case.

18 Is the State ready to receive that verdict?

19 SOLICITOR MCCARTY: We are, Your Honor.

20 THE COURT: Defense ready?

21 MR. THOMPSON: Yes, Your Honor.

22 THE COURT: Bring the jury in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. The jury has returned to the

1 courtroom.

2 Madam Forelady, I'm informed a verdict has been
3 reached, is that correct?

4 FORELADY: It has, Your Honor.

5 THE COURT: If you'll pass the form to the bailiff for
6 me.

7 (Forelady complies.)

8 THE COURT: Thank you.

9 Madam Clerk, you may publish the verdict.

10 CLERK: In the State of South Carolina, the County of
11 Spartanburg, in General Sessions Court, Jeffrey Bernard
12 Falls, as to Indictment Number 2007-GS042-2111 for
13 trafficking cocaine, the verdict guilty. Signed by the
14 foreperson August the 11th, 2011.

15 Ladies and gentlemen of the jury, is this your verdict
16 and still your verdict, if so, please raise your right-hand.

17 (WHEREUPON, all jurors raise their hands.)

18 THE COURT: Thank you.

19 Anything further from the State before I release the
20 jury?

21 SOLICITOR MCCARTY: No, Your Honor. Thank you.

22 THE COURT: Anything further from the defense before we
23 release the jury?

24 MR. THOMPSON: None, Your Honor.

25 THE COURT: All right.

1 (WHEREUPON, the jury was dismissed at this time.)

2 THE COURT: All right, sir. You may approach the bar
3 right in front of where the microphone is.

4 All right. Mr. McCarty, I didn't bring my computer up.
5 I think the range of sentencing on this is?

6 SOLICITOR MCCARTY: According to the Legislature, Your
7 Honor, for the offense for 200 to 400 grams, it is a
8 straight 25 years. No part of which may be suspended or
9 probation granted. It does not offer a range, Your Honor.
10 It is a mandatory minimum term of imprisonment of 25 years.

11 THE COURT: And a fine I believe.

12 SOLICITOR MCCARTY: And a fine of \$100,000.

13 THE COURT: All right. Mr. Falls, you have been found
14 guilty by a jury of your peers.

15 Is there anything you'd like to say before I pass
16 sentence in this case?

17 DEFENDANT: No, Your Honor.

18 THE COURT: Anything, Mr. Thompson?

19 MR. THOMPSON: Your Honor, I'd just like to tell the
20 Court I appreciate your patience this week, and, and just
21 appreciation for Mr. McCarty and the troopers and yourself.

22 THE COURT: All right. Does your client claim any
23 credit for any time that he might of already served?

24 MR. THOMPSON: I think it was seven or eight days he,
25 he spent in the county jail.

1 THE COURT: All right. I'll give credit for eight
2 days.

3 SOLICITOR MCCARTY: And then, Your Honor, incarceration
4 for last night as well. So, I think nine days in total I
5 believe.

6 THE COURT: All right. For my information, can you
7 give me his prior record?

8 SOLICITOR MCCARTY: Your Honor, for purposes of this,
9 as was stated earlier, the record that I show conviction for
10 is out of Charlotte Mecklenburg County. It was a 1992
11 conviction, Your Honor, and it does say trafficking in
12 cocaine. Your Honor, I can read the general statute which
13 it alleges from North Carolina. It says 90-95(H)(3).

14 THE COURT: All right.

15 All right. Mr. Falls, the sentence in this case is as
16 required by law, that sentence is 25 years. I'll give you
17 credit for the nine days you've served.

18 Good luck to you, sir.

19 SOLICITOR MCCARTY: Thank you, Your Honor.

20 THE COURT: And the fine is \$100,000.

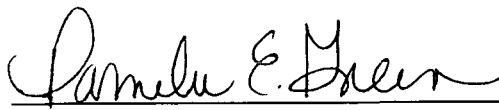
21
22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
23
24
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th, 11th, and 12th day of August, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 27th, 2012

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

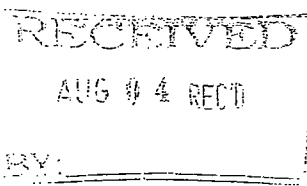
STATE OF SOUTH CAROLINA)
PLAINTIFF)
V.)
JEFFREY FALLS)
DEFENDANT)

MOTION TO SUPPRESS
EVIDENCE

Indictment # 2007-^{GS}ES-42-2111
Warrant # K-223670

YOU WILL PLEASE TAKE NOTICE that during the August 8, 2011 term of General Sessions Court, at 9:00 a.m. or as soon thereafter as this matter can be heard, the Defendant, by and through his undersigned attorney, will move before the presiding Judge of the Seventh Judicial Circuit for an Order suppressing any and all evidence seized in the above matter for the following:

1. The arresting officer was not authorized to act as an officer in Spartanburg County.
2. The traffic stop employed by the officer was improper.
3. The Defendant was unlawfully detained.
4. The Defendant's automobile was illegally searched.
5. The subsequent seizure of the Defendant lacked reasonable suspicion.



Christopher P. Thompson
Chris Thompson
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Attorney for the Defendant
1082 Boiling Springs Road
Spartanburg, SC 29303
864-573-7229

CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG -4 PM 4:47
M. HOPE BLACKLEY

State's Exhibit #1

Appellant's Note Regarding State's Exhibit #1 (Traffic Stop Video)

The Record on Appeal includes State's Exhibit #1 which is a DVD recording of the traffic stop of the Appellant recorded on the arresting officer's "dash cam" camera of his patrol car. The original or a copy of this DVD has been transmitted to the Court of Appeals by directive of the South Carolina Attorney General to become a part of the Record on Appeal in this case.

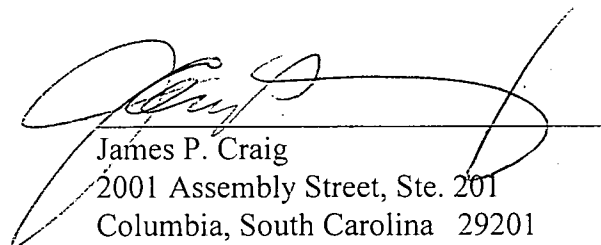
Defendant's Exhibit #1 (Warning Ticket)

FORM 432 (REV 5/01)									
SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY PUBLIC CONTACT / WARNING									
FIRST NAME <i>Jeffery</i>			MIDDLE NAME			LAST NAME <i>Falls</i>			
STATE LICENSED <i>NC</i>			DRIVERS LICENSE NO. <i>362719</i>						
RACE <i>D</i>	SEX <i>M</i>	DATE OF BIRTH <i>12-4-62</i>		LATITUDE <i>34° 54' 03.37"</i>		LONGITUDE <i>82° 07' 02.27"</i>			
HIGHWAY TYPE AND NO. <i>1-B5</i>		COUNTY <i>Spartanburg</i>		CODE <i>42</i>	DATE <i>2-20-07</i>		TIME <i>2:10 P</i>		
VEHICLE LICENSE NO. <i>VRM 7146</i>		STATE <i>NC</i>	VEHICLE MAKE <i>Lincoln</i>		YEAR <i>07</i>	CHECK ☐ IF CMV			
ISSUED BY <i>D G Wilson</i>			RANK <i>Sgt</i>		BADGE NO. <i>1413</i>				
NATURE OF CONTACT									
☐ SPEEDING ☐ FAILURE TO DIM LIGHTS ☐ IMPROPER BACKING ☐ IMPROPER LIGHTS ☐ IMPROPER TURN ☐ DISREGARDING STOP SIGN ☒ OTHER (SPECIFY): <i>Improper Lane Usage</i>									
☐ DISREGARDING TRAFFIC SIGNAL ☐ NO RIGHT OF WAY ☐ DEFECTIVE EQUIPMENT ☐ IMPROPER PASSING ☐ DRIVERS LICENSE VIOLATION ☐ VEHICLE LICENSE VIOLATION									
									
This warning is being issued to you for a violation of the South Carolina Code of Laws. If you are unsure about the nature of the violation, feel free to ask the officer any questions in order to clarify the situation. If necessary, procure and study a copy of the South Carolina Drivers Handbook.									
U- 034427									

Certificate of Appellant's Counsel

The undersigned, James P. Craig, counsel of record for the Appellant does hereby certify that the foregoing is a true, accurate and complete Record on Appeal in the case of State of South Carolina v. Jeffery Bernard Falls and contains all material proposed to be included by any of the parties and not any other material.

March 8, 2013



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