

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Oct 30 2020**

Appeal from York County

**SC Court of Appeals**

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN W. THOMASSON SR.,

APPELLANT

APPELLATE CASE NO 2019-001517

RECORD ON APPEAL

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State of South Carolina., )  
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In the Court of General  
Sessions for York

Case No.: 2018-GS-46-04343

State of South Carolina., )  
 )  
Plaintiff., )  
 )  
-vs- )  
 )  
John Wesley Thomasson., )  
 )  
Defendant. )  
\_\_\_\_\_ )

Transcript of Record  
Trial

August 20, 2019  
York, South Carolina

B-E-F-O-R-E:

The Honorable Robert Hood, judge, and a jury.

B-E-F-O-R-E:

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To The Honorable Daniel D. Hall

ORIGINAL

1 (YORK COUNTY GENERAL SESSIONS COURT IN SESSION  
2 TUESDAY, AUGUST 20, 2019 IN THE MATTER OF *THE STATE OF*  
3 *SOUTH CAROLINA VERSUS JOHN WESLEY THOMASSON* AT 11:01 A.M.)

4 THE COURT: All right. We're on the record in 2018-  
5 GS-46-0-4-3-4-3 The State of South Carolina versus John  
6 Wesley Thomasson Senior. Mr. Thomasson has been indicted  
7 by the York County Grand Jury for one charge of possession  
8 of methamphetamine from an incident date that occurred  
9 allegedly on or about May the 23rd of 2018.

10 Ms. Austin Newman is present for the State.

11 Mrs. Hamilton, are you assisting her?

12 SOLICITOR HAMILTON: Yes, your Honor.

13 THE COURT: Or are you just sitting in here though - -

14 SOLICITOR HAMILTON: I am second chair with her.

15 THE COURT: All right. Mrs. Marina Hamilton is also  
16 present for the prosecution. And for the Defense is Mr.  
17 Jeff Zuschke. Did I say that right?

18 MR. ZUSCHKE: Yes, your Honor..

19 THE COURT: Were you in Kershaw County at one point?

20 MR. ZUSCHKE: I was, your Honor.

21 THE COURT: That was the positive memory I had. Okay.

22 Good. All right, so Mr. Zuschke is present for Mr.  
23 Thomasson and Mr. Thomasson is not present. So at this  
24 point in time it is about 11:00 a.m., a little bit after  
25 11:00 a.m. The court was scheduled to start this morning

1 at 9:30 for jury selection in the trial of Mr. Thomasson's  
2 case. Mr. Thomasson is not present; he has not been  
3 present this morning.

4 Could my deputy in the back of the courtroom go  
5 outside in the hallway and call for John Wesley Thomasson,  
6 Senior, please? Thank you. And they're going to call for  
7 him.

8 And Mr. Zuschke, what do you know about your client's  
9 location?

10 MR. ZUSCHKE: Your Honor, I had spoken to him as well  
11 as the bondsman, the bondsman informed me he is on his way.  
12 He just left me a voice mail about seven, eight minutes ago  
13 ---

14 THE COURT: Okay.

15 MR. ZUSCHKE: --- saying that he's on his way;  
16 however, I've yet to see him. He had said that his father  
17 was sick. He does take care of a father that has  
18 alzheimers. I had not spoken to the father to any of that  
19 but he informs me that he is on his way. That's the extent  
20 of what I have to offer.

21 THE COURT: Okay. So for the two things that the  
22 Court needs to process through to go forward with a trial  
23 in absentia is that Mr. Thomasson receive notice for this  
24 week and that he was also warned that his trial would go  
25 forward without him being present if he failed to attend.

1 That's the standard found in Rule 16 of the South Carolina  
2 Rules of Criminal Procedure. I have to make a finding of  
3 fact on the record that he had voluntarily waived his right  
4 to be present; that he received notice, his case being  
5 called for this week and that he was warned that his case  
6 would go forward if he failed to attend.

7 So can the Solicitor's office help me with how that  
8 occurred?

9 SOLICITOR NEWMAN: Yes, sir, your Honor. We docketed  
10 him for this week for trial. We also just some history,  
11 Mr. Thomasson failed to show on one appointment so we  
12 issued a bench warrant. Two weeks ago we went in front of  
13 the Honorable Judge McKinnon, he lifted that bench warrant  
14 and said that he should be placed on a ankle monitor, until  
15 he was placed on that he should be released from jail.

16 He ask me at the time when I intended on trying him;  
17 I informed the Defendant in court I would be trying him the  
18 next term. So he was both told by docket and in court that  
19 we would be trying him this term.

20 THE COURT: And how are they put on notice that the  
21 trial will go forward if they're not present?

22 SOLICITOR NEWMAN: Their bond paperwork that he  
23 signed tells him that.

24 THE COURT: Okay. All right. And tell me your name,  
25 sir?

1 A. Charles Boyd, B-o-y-d.

2 THE COURT: All right. Thank you for your assistance,  
3 Mr. Boyd. And was there any response from Mr. Thomasson in  
4 the hallway?

5 MR. BOYD: No response, your Honor.

6 THE COURT: Okay. Mr. Zuschke, do you want to be  
7 heard on this issue?

8 MR. ZUSCHKE: Yes, your Honor. We would object to the  
9 case being tried in his absence. He has a right to be  
10 there to face his accusers and to be a part of the process.

11 We're aware that he's not here right now to consider  
12 waiving his right however he has indicated that he wants to  
13 be here and he's trying to get here, and that they're  
14 exigent circumstances, under circumstances he would want to  
15 ask for a Continuance Motion and for the reasons I've said  
16 his step-father and him trying to get down here we would  
17 request that at this time.

18 THE COURT: Okay. Your motion for a continuance is  
19 denied. Mr. Thomasson has been given plenty of opportunity  
20 to be present. I believe Mr. Zuschke has spoken to him  
21 today and he clearly knows that the court is going forward,  
22 that the trial is going forward. At this point the Court  
23 has waited on him for more than an hour and a half. He has  
24 voluntarily choosing not to appear and there are not  
25 extenuating circumstances. I find that he is - and I

1 received notice of his court date that he was on notice for  
2 trial for this week and that he has been warned that his  
3 failure - he fails to attend that the trial would go  
4 forward without him being present. And under Rule 16 and  
5 it's progeny in the case law he has voluntarily waived his  
6 right to be present. He has received notice of the hearing  
7 and he has been warned that the trial proceed without him  
8 being present. Okay.

9 Is there anything we need to take up other than that  
10 before a jury is selected from the State?

11 SOLICITOR NEWMAN: Nothing, your Honor.

12 THE COURT: And from the Defense?

13 MR. ZUSCHKE: We have some standard pretrial motions.

14 We can do them now or we can do them after we select a  
15 jury.

16 THE COURT: Let's do this. Let's go ahead and select  
17 a jury and then we'll send them to lunch and then we can  
18 knock out the pretrial and then when we come back from  
19 lunch we can just jump right into it.

20 Is that okay with the State?

21 SOLICITOR NEWMAN: That is okay.

22 THE COURT: Is that okay with the Defense?

23 MR. ZUSCHKE: Yes, your Honor. But there is one  
24 exception. One thing is about the voir dire that the State  
25 submitted.

1 THE COURT: All right ladies and gentlemen, if you are  
2 in the audience congratulations, you did not make it on  
3 this jury. What is their plan, Ms. Meek? Are they done or  
4 are there other jury trials?

5 MADAM CLERK: I would have them call up in the morning  
6 for instructions.

7 THE COURT: Oh, their allowed to leave and then they  
8 have a call back number?

9 MADAM CLERK: Call back that number and they can just  
10 call back at 1:00 o'clock.

11 THE COURT: Does everybody have the call back number?

12 Does anybody not have the call back number stand up?

13 Okay. So at this point in time I'm gonna excuse you.  
14 You need to call back at one o'clock then they'll give you  
15 further instructions for what's going on for the rest of  
16 the week but you will not be selected as a juror in this  
17 case.

18 Now I may not see any of you for the rest of the week.  
19 Don't be sad. But I do want to thank you very much for  
20 being here and being willing to serve. We can't do what we  
21 do at the courthouse without great citizens like you all  
22 coming up here taking time from your job, your families,  
23 your work, your friends. Where I live school is starting  
24 back this week so it's a crazy week for any parent so I  
25 want to say thank you very much. If I do not see you the

1 THE COURT: He stays.

2 SOLICITOR NEWMAN: Okay.

3 MR. ZUSCHKE: Thank you, your Honor.

4 THE COURT: All right. And we're missing one juror?  
5 Who?

6 MADAM CLERK: Muhammad?

7 THE COURT: Surprise.

8 THE BAILIFF: We're waiting on the jurors. They're  
9 not up yet.

10 THE COURT: Okay.

11 (BLACK MALE JOINS DEFENSE COUNSEL AT DEFENSE TABLE AT  
12 01:50 P.M.)

13 THE COURT: Are you Mr. Thomasson?

14 A. Yes, sir.

15 THE COURT: Okay. For the record Mr. Thomasson -  
16 Are you John Wesley Thomasson, Senior?

17 MR. THOMASSON: Yes, sir.

18 THE COURT: Is everybody else here?

19 Let's give him a few minutes and see if he shows up.

20 Mr. Thomasson is not allowed to leave the courtroom.

21 Come and get me when the juror get here. We're  
22 waiting on Mr. Muhammad.

23 (COURT AT EASE AT 01:51 P.M.)

24 (COURT BACK IN SESSION AT 02:12 P.M.)

25 THE COURT: All right. Thanks, take your seats.

1 All right, court this morning was recessed a little  
2 bit before noon with all jurors present. The jurors were  
3 instructed multiple times by the Court to be back at 1:45  
4 and they were further instructed by the Court that  
5 everybody would be here and we would be ready to go and if  
6 there were people that were usually late to things this was  
7 their opportunity to be on time.

8 It is now almost 2:15, all the jurors are back except  
9 for one which is Mr. Muhammad which is Juror No. 145. The  
10 Clerk's office has further informed me that this morning he  
11 was at least 30 minutes late to being here this morning so  
12 at this point in time I am going to seat the alternate in  
13 his position.

14 And if he shows up this afternoon I'll deal with him  
15 afterwards. If he doesn't show up this afternoon then I'm  
16 gonna have the deputies go out and take him into custody.

17 All right, anything from the State before we start?

18 SOLICITOR NEWMAN: Nothing from the State, your Honor.

19 THE COURT: From the Defense?

20 MR. ZUSCHKE: The Defendant may have a counsel matter  
21 or some issue.

22 THE COURT: Sir?

23 MR. ZUSCHKE: The Defendant had a motion regarding  
24 representation.

25 THE COURT: Okay.

1 MR. ZUSCHKE: And we discussed the possibility of  
2 having me relieved as counsel so I'm gonna give him an  
3 opportunity to address the Court.

4 THE COURT: Okay.

5 (WHEREUPON, THE DEFENDANT,  
6 JOHN THOMASSON, BEING FIRST DULY SWORN, TESTIFIED AS  
7 FOLLOWS:)

8 THE COURT: Okay.

9 MR. THOMASSON: I got a phone call from my lawyer  
10 yesterday saying that we're having court today and it's a  
11 trial. Well I ain't had time to get - my parents sick this  
12 morning and that's why I was running late and I ain't never  
13 seen my dad like that. He's got asbestos cancer and he's  
14 got prostate cancer. My mom she's in fifth stage of  
15 alzheimers and I been sitting there and I had not left my  
16 house since I got out of jail until the other day with this  
17 ankle monitor on. And I been staying right there with him.  
18 And that's why I was late this morning and I apologize for  
19 that.

20 And I called I don't know how many times, I called my  
21 bondsman and everything to let them know. And I called the  
22 Solicitor's office; I even called it too and everything.  
23 And this wasn't even heard me like this if you go to trial.  
24 I mean with something that wasn't there to begin with it  
25 shouldn't even be a trial. I mean when they pulled me over

1 I gave them permission to search. When they ask me to  
2 search the truck I said it's not my truck. I can't give  
3 you permission because it's my dads but you're welcome to  
4 search me.

5 And I had a Kleenex sticking out of my pocket half way  
6 out of it. I gave the man permission and I even offered to  
7 take the drug test. I said I want audio and video. He  
8 said well he opened the bag - the Kleenex and there was a  
9 baggie in it but it was drawed up. I said well can I see  
10 it and he said, you under arrest for meth. I said I ain't  
11 never smelled it, you ain't unrolled the bag. I said I  
12 want audio and video, audio and video. And then he slammed  
13 me up in the truck. I mean in the SUV. My lawyer was  
14 supposed to get the paperwork done back when I had a bench  
15 warrant on me for failure to appear. That was the 21st and  
16 I was in front of McKinnon. McKinnon told me to go down  
17 there today and get this paperwork straightened out. He  
18 said bond is continued and I'm lifting the bench warrant  
19 off of you. I want him to go down there and get a ankle  
20 monitor on him and send Mr. Thomasson on his way.

21 And it took all the way to July - I mean August the  
22 10th was my release date so I called Ned Polk and then Ned  
23 Polk come down there and tried to -- it took seven more  
24 days after this before I got released for this nonsense and  
25 everything.

1           Like I said, the paperwork should a been done a long  
2 time ago. That's seven more days I stayed in jail when I  
3 shouldn't be in jail for. I done paid two hundred and  
4 fifty dollars a week for this ankle monitor. Two hundred  
5 and fifty dollars down and seventy-five dollars a week.  
6 Plus my bond I had to pay two for nothing to get out to be  
7 with my mom and dad. I help him. Some days he goes to cut  
8 grass and some days I go cut grass. It gives me a little  
9 break, you know, its rough you got to live with  
10 alzheimers. You ask him something - they ask you  
11 something three minutes later they ask you again and again  
12 and again and again. I sold my place and moved in with my  
13 dad over three years ago. It's just getting worse and  
14 worse. I need to be able to be there with my parents. I  
15 have a lawyer. This paperwork I ask them about drug  
16 testing. I got one test done and that's it. I know they  
17 requested for another test and they told me it can't be  
18 done now. I mean I just found out we was going to trial  
19 yesterday and it didn't give me much time to do nothing,  
20 your Honor, and I don't think it's fair at all.

21           THE COURT: Well, sir, your case has been pending for  
22 over a year.

23           MR. THOMASSON: That's right, it has but it ain't my  
24 fault. This is the first time I ask for a continuance,  
25 first time I ask.

1 THE COURT: Okay. Your motion for a continuance is  
2 denied. Today is your court date and we're going forward  
3 with your trial here today. I'm sorry that you have  
4 elderly parents that are ill but that does not stop the  
5 court system from going forward.

6 MR. THOMASSON: I understand that, sir, and I  
7 apologize for that but that's not on my part. I should a  
8 been notified a long time ago.

9 THE COURT: Well you were notified a few weeks ago at  
10 your bench warrant hearing when you were gonna be called  
11 for trial.

12 MR. THOMASSON: Well I don't think he said a trial. I  
13 thought he said he wanted it taken care of, I want it off  
14 the docket. It's this man right here.

15 THE COURT: And so that's why we're here because you  
16 are not entering -- you've chosen to exercise your  
17 Constitutional right to a jury trial which is a right that  
18 you possess and that's what we're here for. You also have  
19 the right to exercise a guilty plea, to come before the  
20 Court and plead guilty, but to this point in time if there  
21 is no guilty plea then the trial is going forward.

22 MR. THOMASSON: Well I think I think I've been  
23 misrepresented.

24 THE COURT: Okay. All right. Thank you very much.  
25 Have a seat. All right. Bring 'em in.

1 (JURY ENTERS COURTROOM AT 02:21 P.M.)

2 THE COURT: All right, welcome back ladies and  
3 gentleman. Just for your information we were all here and  
4 ready to go, I was actually sitting out here at 1:45 and as  
5 you can tell one of your fellow jurors has decided not to  
6 join us back this afternoon on their own so I will deal  
7 with him in my own time and outside of your presence. But  
8 to keep things moving in an efficient manner Mr. Dulin, you  
9 will be - not be an alternate juror any more, you will be a  
10 seated juror in the trial.

11 MR. DULIN: Okay.

12 THE COURT: Okay. All right. The first thing we need  
13 to do, ladies and gentlemen, is take an oath. So this oath  
14 that you're about to take is different than the other oaths  
15 that you take. Normally you take an oath to tell the  
16 truth. This oath is different. This oath is your promise  
17 to me, to the lawyers, to the parties in this case, to each  
18 other and to yourself that you will try this case fairly  
19 and impartially without any bias or prejudice towards  
20 either side. Will sit there fairly and impartially almost  
21 like a judge wearing your own black robe. You're not on  
22 anybody's side. You're just here to figure out what  
23 happened in the case and apply the law that I give to you.  
24 Okay.

25 If you will please stand and Madam Clerk will swear

OFFICER MATTHEW EARLS: DIRECT BY SOLICITOR NEWMAN

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1 Enforcement Unit?

2 A. I'm an investigator so I investigate various types of  
3 cases. We conduct surveillance and plain clothes  
4 operations and just different kinds of narcotic's  
5 investigations.

6 Q. Were you working as a member of that Drug Enforcement  
7 Unit on May 23rd of last year?

8 A. Yes, ma'am.

9 Q. On that day did you make a traffic stop?

10 A. I did.

11 Q. Where was that?

12 A. It was -- the traffic stop was on Filbert Highway in  
13 York, South Carolina.

14 Q. Is that within York County?

15 A. Yes.

16 Q. Was the Defendant the driver or the passenger that  
17 day?

18 A. He was the driver of the vehicle.

19 Q. When you made contact with him did he make any  
20 statements to you?

21 A. Yes, ma'am. Before I even told him the reason I  
22 stopped him he apologized for speeding and said he didn't  
23 realize he was traveling that fast.

24 Q. After you made contact with the Defendant what  
25 happened that day?

ORIGINAL

OFFICER MATTHEW EARLS: DIRECT BY SOLICITOR NEWMAN  
CROSS BY MR. ZUSCHKE

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1 A. I introduced myself, explained the reason why I  
2 stopped him. I got his driver's license and vehicle  
3 information then I went back to my police car to conduct my  
4 enforcement action.

5 Q. What was the result of that traffic stop in reference  
6 to this defendant?

7 A. Ultimately we recovered methamphetamine that was in  
8 the defendant's possession.

9 Q. Was he arrested that day?

10 A. Yes, ma'am, he was arrested that day.

11 SOLICITOR NEWMAN: I have no further questions. If  
12 you can answer any the defense may have.

13 THE COURT: All right, cross-examination.

14 CROSS-EXAMINATION

15 OFFICER MATTHEW EARLS BY MR. ZUSCHKE:

16 Q. So, between the sheriff's office and here you've been  
17 a law enforcement officer for over eleven and a half years?

18 A. Yes, sir.

19 Q. And you go through a lot of training to be a law  
20 enforcement officer?

21 A. Yes, sir.

22 Q. Classes?

23 A. Yes, sir.

24 Q. They teach you to evaluate scenes?

25 A. Yes, sir.

ORIGINAL

OFFICER MATTHEW EARLS: CROSS BY MR. ZUSCHKE

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1 Q. Collect evidence?

2 A. Yes, sir.

3 Q. Investigate crimes?

4 A. Yes, sir.

5 Q. Take notes, collect evidence, do testing?

6 A. Yes, sir.

7 Q. And its important to be thorough in that?

8 A. Yes, sir.

9 Q. Because a lot of times later that's all they have to  
10 rely on in court. So, you say you got consent to search  
11 Mr. Thomasson?

12 A. He gave Investigator Laurencio consent. I was  
13 conducting the enforcement action at that time.

14 Q. And a bag was found in his pocket?

15 A. Yes, sir.

16 Q. Along with tissue paper?

17 A. I believe so, yes, sir.

18 Q. Do you ever weigh the contents of the bag or the bag  
19 itself?

20 A. I did not myself. I did not collect the evidence  
21 that day.

22 Q. Did you or anyone else on scene field test the drugs?

23 A. No, sir.

24 Q. And what about from inside the vehicle?

25 A. As far as what was located inside the vehicle?

ORIGINAL

1 are required to do with each and every witness that appears  
2 before you. All right.

3 BY SOLICITOR NEWMAN:

4 Q. Can you describe how you and your K-9 partner  
5 became involved that day?

6 A. There was a traffic stop done by Investigator Earls  
7 and Investigator Laurencio. They requested a K-9 so I was  
8 in route to them and when I arrived on scene I was informed  
9 that the K-9 was going to be needed to run a free-air sniff  
10 around the vehicle.

11 Q. I know you talked about it a little bit earlier when  
12 you kept talking your dog's training, but how do you direct  
13 Ivan to conduct a sniff?

14 A. Like I said I would place him either at the front or  
15 the rear of the vehicle depending on the environment. I'll  
16 sit him down facing the vehicle and then I'll give him  
17 command to find it. At that point he'll go off on his own  
18 and start going around the vehicle.

19 Q. Do you direct Ivan to any specific locations?

20 A. I can either cast him out which is basically you guide  
21 him in a direction. And then I will also once he completes  
22 a lap around the vehicle I'll go in the opposite direction  
23 and do what they call a point or a detail which is just  
24 presenting the area for him to sniff if he bypassed an  
25 area.

1 Q. What are you looking for while Ivan is doing a sniff?

2 A. Any type of change in behavior that's abnormal from  
3 his normal day-to-day routine. It could be a head snap,  
4 As he goes by the door seam he may quickly jerk his head  
5 back toward the door seam which indicates to me that he's  
6 picking up an odor; he's trying to locate it. Or if he  
7 does come to an odor and he gives me his final response  
8 which is by sitting and staring at that location then to me  
9 he gives his response by an indication that he alerted to  
10 the presence of odor in the vehicle.

11 Q. If he does alert in a particular location, does that  
12 mean drugs are gonna be found in that particular location?

13 A. Not always and the reason for that is because vehicles  
14 are designed for air to constantly flow through them so the  
15 air current could be pushing that odor out the seam from  
16 the vehicle. So if that happens and the odor is being  
17 pushed around he'll detect that odor and he will alert to  
18 that odor.

19 Q. Can a dog alert to drugs that have been taken out of  
20 the vehicle?

21 A. Yes. The reason for that is because that narcotics  
22 was there at one point so depending on how long the odor  
23 was sitting there it's gonna pull and the scents gonna be  
24 in that vehicle still so the dog is still gonna be able to  
25 pick up that scent because the air is pushing that odor

1 around the vehicle.

2 Q. If a narcotic has been burnt in a vehicle will a dog  
3 be able to sniff that?

4 A. Yes.

5 Q. I know you touched on it a little bit earlier but  
6 can you describe the behavioral changes that Ivan goes  
7 through ---

8 A. Yes.

9 Q. --- during a sniff and what those mean to you?

10 A. As I indicated earlier he may give me a head snap  
11 which is like if he goes by a door seam as he's sniffing  
12 and goes back to it that's a good indication that there's  
13 something there. He may show interest in a particular area  
14 which indicates to me that he's interested in an odor and  
15 he's just trying to locate it. He also will give me his  
16 response by sitting and staring and that's his final  
17 response saying I have something here, there's an odor, and  
18 then I will reward him at that point.

19 Q. You talked about the final response. Did Ivan give  
20 you a final response that day?

21 A. Yes, he did.

22 Q. Once you observed those behavioral changes, that  
23 final response, what did you do?

24 A. I will give him - one he gives his final response by  
25 sitting and staring at the location that he indicated on I

1 -- a permanent.

2 Q. Were you working as a member of the Drug Enforcement  
3 Unit on May 23rd, 2018?

4 A. Yes, ma'am.

5 Q. Were you part of a traffic stop that day?

6 A. Yes.

7 Q. Did you speak to the Defendant that day?

8 A. Yes.

9 Q. Do you see the Defendant in the courtroom today?

10 A. Yes, ma'am.

11 Q. When you spoke to the Defendant did he give you  
12 consent to search the vehicle?

13 A. No, ma'am.

14 Q. Did he give you consent to search his person?

15 A. Yes.

16 Q. Did you find anything when you searched his person?

17 A. Yes, I found a rolled up tissue inside his right  
18 front pants pocket and inside that tissue was a plastic  
19 baggie with methamphetamine in it.

20 Q. I'm gonna show you what's been previously marked as  
21 State's Exhibit 8.

22 THE COURT: Eight?

23 SOLICITOR NEWMAN: Yes, sir.

24 THE COURT: Okay.

25 BY SOLICITOR NEWMAN:

1 A. Yes, ma'am.

2 Q. Do you recognize that bag?

3 A. Yes, ma'am.

4 Q. What is that bag?

5 A. This is the baggie that was inside the defendant's  
6 right front pant pocket.

7 Q. And how do you know that's the evidence that you  
8 collected that day?

9 A. Because I'm the one who collected the evidence. This  
10 is my handwriting on the bag. We always mark our bags  
11 within the evidence bag DEU. It's my handwriting as well  
12 as the handwriting on the front where I logged in the  
13 evidence.

14 Q. When you collect evidence do you seal the bag off?

15 A. Yes, ma'am. Seal it and then also sign the bag and  
16 date it.

17 Q. And then what do you do with the evidence after you've  
18 collected it?

19 A. Its submitted to the York County evidence either in  
20 person if they're there or through their secure locked box  
21 after hours.

22 Q. Can you explain the lock box to the jury?

23 A. Yes, ma'am. Since York County Sheriff's Office and  
24 the Multi-Jurisdictional Drug Enforcement Unit they work on  
25 a twenty-four hour three hundred and sixty-five day basis.

1 The sheriff's office administrative such as the evidence  
2 technicians they don't work all the time, law enforcement  
3 has to have a place to secure evidence. They can't just  
4 leave it in their car and their desk over night or into the  
5 next business day when the evidence department is open so  
6 what we have is we have a secure lock box.

7 It's like a big mail box like you see out on the  
8 roadway where it's not the color of the mailbox that you  
9 would submit your mail in for the U.S. Postal Service to  
10 deliver. It's the one that the U.S. Postal Service uses to  
11 store mail. It's the same thing as there where it's just a  
12 different color. It's basically a mailbox.

13 Q. So can anybody come into that area and access the box  
14 that you drop those - that evidence into?

15 A. No, ma'am. Once you put it in there and you close  
16 that flap on it just like mail you cannot get anything out.  
17 It's impossible until the evidence tech comes in and opens  
18 it up.

19 Q. Is that bag right there a fair and accurate  
20 representation of the bag that you submitted with  
21 evidence from this case on the day of May 23rd, 2018?

22 A. Yes, ma'am.

23 SOLICITOR NEWMAN: Your Honor, at this time the State  
24 would seek to enter in State's Exhibit 8.

25 MR. ZUSCHKE: Without objection.

1 THE COURT: All right. State's Exhibit No. 8 is  
2 admitted without objection.

3 (WHEREUPON, STATE'S EXHIBIT NO. 8, IDENTIFIED AND  
4 MARKED, RECEIVED INTO EVIDENCE.)

5 BY SOLICITOR NEWMAN:

6 Q. Where did you find this again?

7 A. In the defendant's right front pant's pocket along  
8 with the rolled up tissue.

9 Q. Okay. I am gonna show you what has been previously  
10 marked as State's Exhibit 9. Can you tell us what that is?

11 A. Yes, ma'am. This is evidence that I submitted as  
12 well from the traffic stop. This was found in the  
13 defendant's wallet after the K-9 Ivan alerted to the  
14 vehicle which gave us the ability to search the vehicle.  
15 It's a folded up piece of tin foil that I found in his  
16 wallet, in the defendant's wallet.

17 Q. Do you submit that into evidence the same way you  
18 would have submitted the other bag?

19 A. Yes, ma'am. It's in my hand writing.

20 Q. So you would have sealed that bag?

21 A. Yes.

22 Q. And then submitted it to them?

23 A. Yes.

24 Q. So is that bag right there a fair and accurate  
25 representation of the evidence that you submitted on the

1 A. It's either 1 or 2. I believe they are redundant  
2 pictures almost. It is the picture of the driver's seat  
3 with the defendant's wallet sitting on it.

4 Q. So where is the defendant's wallet in this picture?

5 A. It's the black wallet right next to or right below  
6 the Camel cigarette pack next to the -- and it's an RC  
7 Cola.

8 Q. And this is in the driver seat you said?

9 A. Yes.

10 Q. And you said this was a redundant photo?

11 A. It looks - appears to be almost a redundant photo,  
12 yes.

13 Q. Can you tell us which exhibit this is?

14 A. I think I took 'em out of order. Sorry.

15 Q. It should be on the back.

16 A. It is Exhibit 4.

17 Q. What are we looking at in this photo?

18 A. What that is is after I opened up the wallet I  
19 noticed the tin foil in there. It's something to me that  
20 would indicate that the person may be carrying a narcotic  
21 in their -- on their person or in their property so I  
22 decided to take a picture at that time before I disturb it  
23 any further.

24 Q. Is that the tin foil that you submitted into evidence?

25 A. Yes it is.

1 Q. Is this just a close up shot ---

2 A. Yes.

3 Q. --- of the foil? What are we looking at here?

4 A. That is the same tin foil that I found in the  
5 defendant' wallet. I had opened it up and discovered that  
6 there was some burn marks on it or residual burns on the  
7 tin foil..

8 Q. In your training and experience as a drug enforcement  
9 officer what does that say to you?

10 A. That indicates to me that someone is putting narcotics  
11 on top of the tin foil and lighting the bottom with a  
12 cigarette lighter or a heat source and inhaling the fumes  
13 that come off the narcotic that's being heated up.

14 Q. And where did you find this tin foil again?

15 A. I found that tin foil folded up in the defendant's  
16 wallet.

17 Q. Is this just another shot of the tin foil?

18 A. Yes, ma'am.

19 Q. And this is another angle of the same tin foil?

20 A. Yes, ma'am.

21 SOLICITOR NEWMAN: Beg the Court's indulgence.

22 Q. I know I ask you to identify - excuse me - have you  
23 talked to -- that day -- the individual that you made  
24 contact with, and you identified the defendant, what is he  
25 wearing today?

1 Q. They have access to body cameras?

2 A. Uniform patrol does, yes.

3 Q. But you don't wear them because you're Drug  
4 Enforcement Unit?

5 A. That's correct. I have to give mine in when I left  
6 the uniform patrol.

7 Q. Then the Drug Enforcement Unit has access to like  
8 secret body cameras that they can put on informants and  
9 things like that?

10 A. Yes.

11 Q. But you didn't make use of any of those that day,  
12 right?

13 A. No, sir, they stay in the vault until we use them  
14 for CI buys and such.

15 Q. Mr. Thomasson gave you consent to search his person  
16 that day?

17 A. Yes.

18 Q. And how aware that he could refuse consent to  
19 search?

20 A. Yes. I'm assuming he was aware of that. I can't  
21 speak for him but I had ask him if I can search his person  
22 and he replied yes you can.

23 Q. And you're assuming he's aware in part because he  
24 later refused to let you search the car, earlier he refused  
25 to let you search --

1 Forensic Chemist seminar sponsored by the Drug Enforcement  
2 Administration. And obviously my prior experience from my  
3 co-workers.

4 Q. How long have you been trained or certified as a  
5 chemist?

6 A. I don't have a certification necessarily but I've been  
7 doing this for about twelve years.

8 Q. Have you ever been qualified as an expert in the  
9 field of chemical drug analysis and identification in a  
10 court of law?

11 A. Yes, I have.

12 Q. How many times?

13 A. Approximately fifty times.

14 Q. As a part of your duties do you analyze substances  
15 such as narcotics or illegal drugs?

16 A. Yes, ma'am.

17 SOLICITOR NEWMAN: Your Honor, at this time I would  
18 offer the witness as an expert in chemical analysis and  
19 identification of controlled substances.

20 MR. ZUSCHKE: Without objection.

21 THE COURT: All right. ladies and gentlemen, normally  
22 as I told you before a witness is not allowed to give their  
23 opinion. Normally a person has to testify as to what they  
24 see, heard, did, things of that nature. There is an  
25 exception under our rules when someone is qualified because

DEE JOHNSON: DIRECT BY SOLICITOR NEWMAN:

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1 of education or experience that person is permitted to give  
2 their opinion in certain areas if I qualify them in that  
3 way. This witness will be qualified as an expert in the  
4 area of chemical drug analysis and identification. She  
5 will be allowed to give opinion testimony in that area.  
6 That doesn't mean that you must accept her opinion but it  
7 is evidence for you to use in any way that you see fit and  
8 give it the weight and credibility that you believe is  
9 appropriate as you are required to do with each and every  
10 witness who comes before you.

11 BY SOLICITOR NEWMAN:

12 Q. I'm gonna hand you what has been marked and admitted  
13 as State's Exhibit 8. Do you recognize this?

14 A. Yes, ma'am, I do.

15 Q. And what is that?

16 A. State's Exhibit 8 is an item of evidence that I  
17 analyzed in this particular case.

18 Q. When did you receive that bit of evidence?

19 A. This piece of evidence was received on October the 1st  
20 of 2018.

21 Q. Where did you get it from?

22 A. I received it from Jimmy Stiles.

23 Q. And who is he?

24 A. He works for the evidence department at the York  
25 County Sheriff's Office.

ORIGINAL

1 Q. Explain what it looked like when you received it.

2 A. Can I refer to my notes?

3 Q. Yes.

4 A. This came to me as a zip lock bag containing a zip  
5 lock bag containing residue.

6 Q. When you received it was it sealed?

7 A. It was.

8 Q. Had it been tampered with in any way when you received  
9 it?

10 A. No, ma'am.

11 Q. What if it had been tampered with, what would you have  
12 done with it?

13 A. Obviously made note of it and put that in my notes  
14 as well that it had been tampered with.

15 Q. After you received it what did you do with it?

16 A. Once the evidence is opened I performed a color test  
17 and an instrumental test on the substance inside.

18 Q. And how do you test it, that particular exhibit?

19 A. This particular item was swabbed with sterile swabs  
20 for both the color test and the instrumental test.

21 Q. After testing that piece what did you do with it?

22 A. After testing we reseal this outer packaging and  
23 include a new chain of custody on the back and sign and  
24 seal at the bottom.

25 Q. So that has been sealed after you tested it and put

DEE JOHNSON: DIRECT BY SOLICITOR NEWMAN:

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1 it back?

2 A. Correct.

3 Q. Is that seal been tampered with in any way?

4 A. No, ma'am.

5 Q. When you had the substance was it continuously under  
6 your custody or control?

7 A. Yes, ma'am.

8 Q. And you said the bag is in the same condition as when  
9 you took it back to evidence?

10 A. Yes, ma'am.

11 Q. Do you see any evidence of tampering?

12 A. No, ma'am.

13 Q. And how do you know that?

14 A. Well there's a seal across the bottom with my  
15 initials and date. And there's not been any tears or cuts  
16 and the outer edges appear to be intact as well.

17 Q. After testing it did you make a determination about  
18 what the substance was that was in that baggie?

19 A. Yes, ma'am, I did.

20 Q. Did you prepare a report of your analysis?

21 A. I did.

22 Q. I am gonna show you what's been previously marked as  
23 State's Exhibit 10. Do you recognize this document?

24 A. Yes, ma'am, I do.

25 Q. Did you prepare that document?

ORIGINAL

1 A. Yes, ma'am, I did.

2 Q. How do you know that?

3 A. It contains the identifying numbers for this case.

4 And also my electronic signature on the back.

5 Q. So is that a fair and accurate representation of the  
6 document that you prepared in regards to the items in this  
7 case?

8 A. Yes, ma'am, that's correct.

9 SOLICITOR NEWMAN: Your Honor, at this time the State  
10 would seek to enter in State's Exhibit 10.

11 MR. ZUSCHKE: Without objection.

12 THE COURT: All right. State's 10 admitted without  
13 objection:

14 (WHEREUPON, STATE'S EXHIBIT NO. 10, IDENTIFIED AND  
15 MARKED, RECEIVED INTO EVIDENCE.)

16 BY SOLICITOR NEWMAN:

17 Q. What did you -- if you reference your report what did  
18 you determine that substance to be?

19 A. State's Exhibit 8 is determined to contain residue  
20 of methamphetamine.

21 Q. And I'm gonna show you what's been previously marked  
22 and entered as State's Exhibit 9. Do you recognize that  
23 piece of evidence?

24 A. Yes, ma'am, I do.

25 Q. Is that the piece of evidence that you tested?

1 A. Yes, ma'am.

2 Q. Does your report indicate what that piece of evidence  
3 came back as?

4 A. State's Exhibit 9 was determined to contain no  
5 controlled substance.

6 Q. And State's Exhibit 8 you said -- what did that come  
7 back as?

8 A. State's Exhibit 8 contained residue of  
9 methamphetamine.

10 Q. When you say residue of methamphetamine, is that still  
11 methamphetamine?

12 A. Yes, ma'am, it is.

13 Q. And methamphetamine is an illegal controlled  
14 substance?

15 A. Yes, ma'am.

16 Q. Do you see any of the methamphetamine still in that  
17 bag?

18 A. State's Exhibit 8 still contains a slight film or  
19 residue on the interior of the bag.

20 Q. And what is that residue again?

21 A. Residue of methamphetamine.

22 Q. Thank you.

23 SOLICITOR NEWMAN: I have no further questions.

24 Please answer any the defense may have.

25

CROSS-EXAMINATION

ORIGINAL

VERDICT:

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1 (COURT AT EASE AT 04:50 P.M..)

2 (COURT BACK IN SESSION AT 05:06 P.M.)

3 THE COURT: Take your seats. All right, we got a  
4 verdict. Let's bring 'em in.

5 (JURY REENTERS COURTROOM AT 05:08 P.M.)

6 THE COURT: All right, welcome back, ladies and  
7 gentlemen.

8 Mr. Foreman, it's my understanding we have a verdict;  
9 is that correct?

10 MR. FOREMAN: Yes, we do.

11 THE COURT: Would you hand it to the bailiff please.

12 (VERDICT RECEIVED UP BY THE COURT.)

13 THE COURT: All right. I find that it's in its proper  
14 form and the Clerk may publish.

15 MADAM CLERK: Indictment No. 2018-GS-46-4343 The State  
16 of South Carolina versus John Wesley Thomasson, Senior, we  
17 the jury by unanimous consent find the defendant John  
18 Wesley Thomasson guilty of possession of methamphetamine.

19 Signed by Foreperson dated August 20th, 2019.

20 If this be your verdict please say so by raising your  
21 right hand?

22 MADAM CLERK: Let the record reflect all jurors  
23 affirmed this verdict.

24 (ALL JURORS RESPONDED IN THE AFFIRMATIVE.)

25 THE COURT: All right. Is there anything further with

ORIGINAL

SENTENCING:

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1 family as soon as possible. I don't know how much longer -  
2 I mean I may have family members die while I'm in prison  
3 and everything like that. And it kills me, it kills me and  
4 I'm getting too old for this. You'll never -- if you give  
5 a chance with this you'll never see me in here again.

6 THE COURT: All right. On the probation case  
7 terminate the case, divert any arrearage's that are owed  
8 into a civil judgement.

9 On possession of methamphetamine 3rd of subsequent  
10 offense the sentence of the Court is that you be committed  
11 to the State Department of Corrections for five years.

12 Have a nice day.

13 SOLICITOR NEWMAN: Thank you, your Honor.

14 (WHEREUPON, COURT'S EXHIBIT NO. 1 AND 2, IDENTIFIED  
15 AND MARKED, RECEIVED INTO EVIDENCE.)

16 (END OF RECORD OF TRANSCRIPT.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

ORIGINAL

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury. **36**

DOCKET NO. 2018-GS-46-04343

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

JULY 19, TERM 2018

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

VS.

JOHN WESLEY THOMASSON, SR

Defendant

Witness:

INDICTMENT FOR

POSSESSION OF METHAMPHETAMINE

SC Code: § 44-53-375(A)  
CDR Code: 3016

C.C.C. PLS. AND G.S.

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2018A4610200853

ACTION OF GRAND JURY

TRUE BILL

*Yml Barnett*

Foreperson of Grand Jury

Date: *7-19-18*

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: *8/20/19*



STATE OF SOUTH CAROLINA  
COUNTY OF YORK

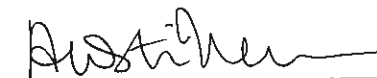
INDICTMENT

At a Court of General Sessions, convened on July 19, 2018, the Grand Jurors of York County present upon their oath:

**POSSESSION OF METHAMPHETAMINE**

The defendant, John Wesley Thomasson Sr, did on or about May 23, 2018, in York County, South Carolina, knowingly or intentionally possess methamphetamine as defined in Section 44-53-110, all in violation of Section 44-53-375(A), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



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AUSTIN D. NEWMAN  
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

**RECEIVED**  
**Oct 30 2020**  
**SC Court of Appeals**



Victor R Seeger  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 30<sup>th</sup> day of October, 2020.

