

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Appeal from Greenville County Court of Common Pleas
The Honorable Daniel D. Hall, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-000480

Karriem Provet,.....Petitioner,

v.

State of South Carolina,.....Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Karriem Provet, #323386,

Applicant,

v.

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2014-CP-23-4666

ORDER OF DISMISSAL

FILED-CLERK OF COURT
PAUL B. MCGEE
CLERK

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This matter comes before the Court by way of an application for Post-Conviction Relief filed on August 22, 2014. Respondent made its Return on or about January 28, 2015. An evidentiary hearing into the matter was convened on June 26, 2017 at the Greenville County Courthouse in Greenville, South Carolina at which time the Applicant was present in court and represented by William G. Yarborough III, Esquire. The Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, William B. Long, Jr, Esquire also testified. Additionally Peter Gordon Skidmore and Shontea Smith testified as witnesses for Petitioner. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records for the Department of Corrections, and all appellate records related to Petitioner convictions. .

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was

indicted by the November 2002 term of the Greenville County Grand Jury for resisting arrest (2002-GS-23-4288) and by the May 2005 term for trafficking cocaine (2005-GS-23-3478). William B. Long, Esquire represented the Applicant.

On August 7, 2007, Applicant proceeded to trial before the Honorable Carmen T. Mullen and a jury. The jury convicted Applicant of resisting arrest and trafficking cocaine. Judge Mullen sentenced Applicant to concurrent terms of one year for resisting arrest and twenty-five years for trafficking cocaine.

A notice of appeal was filed at the South Carolina Court of Appeals. Tricia A. Blanchette, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on January 31, 2011. State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011). After the Applicant filed a petition for writ of certiorari at the South Carolina Supreme Court, the Court granted the petition and the parties submitted briefs. The Supreme Court affirmed the Court of Appeals on August 14, 2013. State v. Provet, 405 S. C. 101, 747 S.E.2d 453 (2013). The Remittitur was sent on August 30, 2013.

FACTUAL HISTORY

On May 24, 2005, the Greenville County Grand Jury indicted Applicant on one count of trafficking cocaine, more than 100 grams, and one count of resisting arrest. The matter was called for a jury trial on August 7, 2007, before the Honorable Carmen T. Mullen, Circuit Court Judge.

Prior to trial, Applicant moved to suppress all evidence, including a videotape of the traffic stop at issue and drugs seized from the car. He asserted his detention was unconstitutional because it was not based on reasonable suspicion of criminal activity. He further asserted he did not consent to the search of his car, and even if he did, it was involuntary because the detention

was illegal and the circumstances were coercive. (Trial Transcript [TT], pp. 24-25, 84-89, 95-96; Record on Appeal [R.], pp. 24-25, 84-89, 95-96).

In camera, Corporal J.D. Owens (“Cpl. Owens”) of the South Carolina Highway Patrol testified he supervises the upstate region of the Aggressive Criminal Enforcement Unit that targets, *inter alia*, drug trafficking, and he has worked with the Unit since 1998. On May 1, 2002, he was patrolling Interstate 85 in Greenville County when he noticed a 1997 Ford Expedition following another vehicle too closely and operating with a defective tag light. He stopped the Expedition and approached it on the passenger side. Applicant was driving the vehicle and there were no passengers. (TT, pp. 27-30; R., pp. 27-30).

Cpl. Owens asked Applicant for his driver’s license and the vehicle registration. When Applicant handed the documents to Cpl. Owens, his hands were shaking and his breathing was accelerated beyond the nervousness displayed by “the majority of the people pulled over for a simple traffic violation.” In addition, the vehicle was registered to a third party who was not present, which Cpl. Owens testified is very common in drug trafficking situations. (TT, pp. 30-31; R., pp. 30-31).

Cpl. Owens asked Applicant to get out and step to the rear of the vehicle, which is routine in traffic stop situations, and Applicant consented to be patted down for weapons. After the pat down, Cpl. Owens and Applicant walked over to the passenger side of the patrol car, and Cpl. Owens began talking with Applicant while he was writing out a warning ticket for the traffic violations. (TT, pp. 31-32; R., pp. 31-32).

Applicant told Cpl. Owens he had visited his girlfriend and had just left a Greenville Holiday Inn, but was unable to say where the motel was located. Cpl. Owens first observed the Expedition on the interstate before the exit for the only Holiday Inn in the area, so he knew

Applicant had not just left that motel. Based on Applicant's demeanor and responses, Cpl. Owens believed he was being deceptive. (TT, pp. 32-33; R., pp. 32-33).

Applicant also told Cpl. Owens the vehicle belonged to a different girlfriend from the one he had been visiting, he was unemployed, and he had been in Greenville for two days but had no luggage in the vehicle. All of these factors, combined with his knowledge and experience and Applicant's use of delaying tactics in responding to questions, further aroused Cpl. Owens' suspicions, and he called for a drug canine unit to respond to the scene. He also requested a check on Applicant's driver's license and the vehicle registration since the vehicle was registered to a third party. (TT, pp. 33-37; R., pp. 33-37).

While waiting for the canine unit to arrive and completion of the license and registration checks, Cpl. Owens went back to the Expedition to compare the VIN numbers on the vehicle and the registration in case the vehicle was stolen. When he approached the vehicle at that time, he observed numerous fast food bags and air fresheners inside the vehicle, as well as a cell phone and receipts in the center console. (TT, pp. 37-38; R., pp. 37-38).

Cpl. Owens testified the fast food bags and cell phone were significant to him because drug traffickers try to move fast since there is the potential for violence, they have time deadlines to move the product, and they have to stay in constant contact with others involved in the transactions. He further testified the numerous air fresheners were significant because they are used to disguise odors from law enforcement and drug detection canines. In addition, Cpl. Owens saw a bag on the rear seat even though Applicant told him he had no luggage. Based on all these factors, Cpl. Owens suspected criminal activity. (TT, pp. 38-40, 53-57; R., pp. 38-40, 53-57).

After checking the VIN number and receiving information from the license and

registration checks, Cpl. Owens wrote out a warning ticket for the traffic violations and explained it to Applicant. As this was happening, Corporal Eddie Aman ("Cpl. Aman") arrived on the scene with the drug canine. He left the canine in his vehicle, walked up to where Cpl. Owens and Applicant were standing next to Cpl. Owens' patrol car, and stood there while Cpl. Owens explained the ticket to Applicant. (TT, p. 41; R., p. 41).

When Cpl. Owens finished explaining the ticket to Applicant, he handed him his license and the vehicle registration back. This occurred approximately ten minutes after Cpl. Owens initiated the traffic stop. (TT, pp. 41, 84; R., pp. 41, 84).

Cpl. Owens then asked Applicant if he could search the Expedition. Applicant consented, and Cpl. Owen told Cpl. Aman to run the canine around the vehicle. Prior to getting the canine out of his patrol car, Cpl. Aman went to check for anything in or around the Expedition that might be harmful to or contaminated by the canine. There was some fast food in the front passenger floor board, and when Cpl Aman reached in and picked it up, Applicant fled across six lanes of traffic on I-85, the center concrete barrier, the guard rail down the embankment and along the fence line. Cpl. Owens and Cpl. Aman pursued and caught him, and returned him to the scene. (TT, pp. 41-44, 57-65; R., pp. 41-44, 57-65).

After they returned to the scene, Cpl. Aman ran the canine around the Expedition. Inside the fast food container Cpl. Aman saw earlier, the officers found a plastic bag of white powder that field tested positive for cocaine. (TT, pp. 44-45; R., pp. 44-45).

Cpl. Aman testified Cpl. Owens was talking to Applicant when he arrived on the scene. After he walked up to them, Cpl. Owens received the information on the license and registration checks, and finished explaining the ticket to Applicant. Cpl. Owens then asked Applicant for consent to search the vehicle, and he consented. Cpl. Aman then went to inspect the roadway for

glass or other hazards, and remove any food.¹ There was a partially open fast food chicken box in the passenger floorboard, and a Zip-loc type plastic bag was sticking out the top. As Cpl. Aman folded the top back to see what was inside, Applicant ran across the interstate. (TT, pp. 66-74; R., pp. 66-74).

After they apprehended Applicant, Cpl. Aman ran his canine around the vehicle and the canine positively alerted. The bag Cpl. Aman previously observed was removed, and the substance inside field tested positive for cocaine. (TT, p. 69, 77-78; R., pp. 69, 77-78).

After hearing the testimony and reviewing the videotape from Cpl. Owens' patrol car, the circuit court found the initial traffic stop was legitimate, Cpl. Owens articulated factors supporting a reasonable basis to detain Applicant and request consent to search, Applicant consented to the search, and his consent was voluntary under the circumstances. Based on those findings, the court denied Applicant's motion to suppress the evidence. (TT, pp. 101-112; R., pp. 101-112).

Cpl. Owens and Cpl. Aman testified at trial consistent with their pre-trial testimony.² (TT, pp. 132-185; R., pp. 132-185). A forensic chemist testified the substance found in Applicant's vehicle was 220 grams of cocaine. (TT, p. 219; R., p. 219).

The jury convicted Applicant of trafficking cocaine and resisting arrest, and the circuit court sentenced him to the mandatory twenty-five years incarceration on the trafficking conviction, and one year incarceration, concurrent, on the resisting arrest conviction. (TT, pp.

¹According to the videotape and Cpl. Owens' trial testimony, Cpl. Aman specifically asked Applicant whether there was food in the vehicle. When Applicant told him there was food in there, Cpl. Aman told him he was going to get the food out and put it on top of the vehicle so the canine would not get into it. (TT, pp. 146-147, State's Exhibit 1; R., pp. 146-147).

²Cpl. Owens also testified he detected an "overwhelming" odor of air fresheners when he initially approached the Expedition, which meant the presence of more than one air freshener, a tactic commonly used to mask odors from law enforcement. (TT, pp. 137-138; R., pp. 137-138).

309-310, 316-318; R., pp. 309-310, 316-318). This appeal followed.

ALLEGATIONS

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to challenge and object to initial traffic stop.
 - b. Failed to challenge and object to reasonable suspicion.
 - c. Failed to challenge and object to officer testimony about air freshener.
 - d. Failed to challenge and object that the officer lacked probable cause for the second detention.
 - e. Failed to challenge and object to a "copie of copie" of the vehicle transport video being put into evidence.
 - f. Failed to view vehicle transport video with the Applicant.
 - g. Failed to subpoena radio transmission tapes and call logs.
 - h. Failed to challenge and object to the resisting arrest charge.
 - i. Failed to challenge the K-9 certification.
 - j. Failed to properly prepare for trial.
 - k. Failed to challenge and investigate why the case was dismissed with leave to restore.
 - l. Failed to challenge the chain of custody.
 - m. Failed to challenge and object to the length of time the evidence was in the officer's control.
 - n. Failed to subpoena the evidence custodian.
2. Procedural due process.
3. Prosecutorial misconduct.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Trial Counsel

Trial counsel was called on direct examination by Applicant. Trial counsel testified the majority of his practice was trial work split evenly between criminal and domestic. He testified he represented Applicant and during that time the majority of his practice was criminal defense work. He testified Applicant's charges dealt with a traffic stop and the events subsequent to that

stop. He testified the issue of suppression was a major issue in the case. Trial counsel testified he was sure he filed discovery motions and had the discovery for the case. He testified he reviewed the videotape of the traffic stop prior to the suppression motion as it was a key bit of evidence with respect to the suppression hearing. He testified the first time he viewed the video tape together with Applicant was at the courthouse before the suppression hearing. He testified he met with Applicant a number of times before the suppression hearing and the trial. He testified Applicant felt as though his constitutional rights were violated adding that he thought it was a pretty good suppression case. He testified he thought he developed a good record for the appellate level as to whether or not Applicant's rights were violated because of the lengthy period of time Applicant was on the side of the road. Trial counsel testified he was challenging the length of the stop and anything that flowed after. He testified he did not recall after being questioned about whether the video recording of the traffic stop had ten minute lag. He testified that if the radio logs from the South Carolina Highway Patrol would have shown there was a lag of one hour and ten minutes between the stop and the drug dog getting there that would have changed his argument during suppression. He testified he did not get the radio logs and did not think to get them. He testified there were a number of appellate cases pending as to what constituted an unreasonable amount of time for a traffic stop in terms of a Fourth amendment violation during the time Applicant's case was going on. He further testified he thought the issue of someone being in custody does not necessary mean that person is under arrest but rather when a person is not free to leave. He testified in this case Applicant was not under arrest. He further testified that if the radio logs show that Applicant's detention on the side of the road was an hour and six minutes versus ten minutes it would have strengthen Applicant's case. He testified he did not think to review any call logs in this case.

On cross-examination, Trial counsel testified he was not the first lawyer in the case but believed he received all of the discovery in this case. He testified he met with Applicant a number of times and there were a lot of discussions about plea offers, but Applicant rejected any thought of pleading guilty. He testified during conversations with Applicant the length of the traffic stop came up and whether the stop lasted too long from the time of the stop until the time that he was placed under arrest. He testified he had an opportunity to have a suppression hearing and cross-examine the arresting officer and the K-9 officer. He testified he would have asked the officers questions about time as it related to the incident.

Peter Skidmore

Peter Skidmore testified that he was a private investigator in South Carolina and North Carolina. Mr. Skidmore testified he was hired by Applicant's wife. He testified he reviewed the video tape of the traffic stop in this case. He testified he went to interview Applicant and went through everything with him as far as the traffic stop and his concerns. He testified from there he started to investigate the tape and the radio call logs. Mr. Skidmore testified he found the call logs did not match up with the videotape and that there was an hour and ten minute discrepancy between them. He testified he thought either the call log was wrong or the tape was wrong. He testified he then wanted to get a person that could verify if the tape had potentially been tampered with. He testified he found out the original tape had been destroyed and his expert in California could not determine if the copy he reviewed had been tampered with. He testified if he would have been in trial mode, he would have done more investigation into the officers and their disciplinary history.

On cross-examination, Mr. Skidmore testified he never worked for the Department of Public Safety and that he had never been a highway patrolman. He further testified he did not

talk to anybody from highway patrol about the radio logs at all. He testified he did not even talk to the person who wrote out the actual radio log.

On re-direct, Mr. Skidmore testified he reviewed the notes from the radio logs several times and there was a discrepancy of an hour and ten minutes between the radio logs and the tape.

Applicant

Applicant testified he was familiar with the records from the Department of Public Safety and that he actually got them through a FIOA request while he was in prison. He testified he reviewed the radio logs and found his driver's license and license tag numbers. He testified his driver's license was called in at 2212 (10:12pm) based on the radio logs. He then testified he was stopped by the police at 2102 (9:02pm). Applicant testified by the time his driver's license had been called in he had been on the side of the road for an hour and ten minutes waiting for a K-9 to come. He testified he had not changed the radio logs once he received them and they had his driver's license on them plus the car he was driving. He testified he viewed the video of the traffic stop on the day of trial for the first time and he knew he was out on the highway longer than the video showed waiting for a K-9 to come. Applicant testified he wrote the Department of Transportation a FIOA request before he went to trial and they did not respond to him about the radio logs prior to trial. Applicant testified once he got the radio logs he looked at them and discovered he was on the side of the highway for an hour and ten minutes. He testified a motion to see the video tape of the traffic stop while Trial counsel was representing him because he had never been shown it prior to trial. Applicant testified the reason Trial counsel gave him for not showing him the tape before trial was because Trial counsel did not have a place to show it to him because Applicant was in Greenville County Detention Center at the time. Applicant

testified after he reviewed the tape during the first day of trial, he told Trial counsel the tape was wrong and he was out on the side of the road waiting for a K-9 for about an hour. He testified Trial counsel did not do anything to help him and he felt as though his Fourth Amendment rights had been violated. Applicant he testified once he got his license, registration and a warning ticket, the officer made him wait. He testified on the day he was arrested there were a lot of officers on the roads and he was pulled over by one of them. He testified he cooperated with the police office and gave them his registration and license and the officer started questioning him. He testified the officer pulled him over at 2102 (9:02pm.) and the video shows he was pulled at 9:02 pm. Applicant testified the officer asked him where he was going, who he came to see, and how long he had been in Greenville. Applicant testified the officer asked him if he could search his car and Applicant said no. Applicant testified he wanted to challenge the stop but Trial counsel did not. He testified he told his appellate counsel the traffic stop lasted longer than ten minutes. He testified the issue was not preserved for the record. Applicant testified a drug dog was called in by the officer six minutes into the stop but the drug dog did not come until 2218 (10:18 pm), about an hour and a few minutes. He testified the video looks as though the K-9 showed up within a ten-minute time frame.

Applicant testified the video was edited and he hired Mr. Peter Skidmore to get the original copy but he was unable to get it. He testified Caroline Horlbeck, Esquire, was his original PCR attorney and she tried to get the original video and they wrote her saying the original had been destroyed. He testified he told Trial counsel he had been on the side of the road for one hour before the K-9 came. Applicant testified he was able to get the radio logs and they were sent to his appellate counsel but they were only three pages long. Applicant then testified that is when he did a FIOA request and got the complete radio log. He testified he wrote the

Highway Patrol requesting the radio logs prior to trial but they never responded.

Applicant testified he felt as though his warrant was improper because it states he got caught with 28 grams and less than 100 but he was tried for 100 to 200 grams. He testified he asked Trial counsel about it but he was not able to get to the bottom of it however he was charged with one weight of drugs but tried for another. He testified when he was arrested and they weighed the drug, they were 28 grams but more than 100, but when it went to SLED they said the drugs weighed 200 to 400 grams. He testified the first indictment was dismissed, the second indictment was dismissed with leave to restore and the third indictment was 100 to 200 grams. He testified if Trial counsel would have shown him the video he would have taken the three-year plea deal that was offered.

On cross-examination, Applicant testified Trial counsel was his second attorney as he had previously hired Dick Warder. He testified he met with Trial counsel numerous times and he discussed the traffic stop with him during these meetings. Applicant testified he discussed the length of time of the stop with Trial counsel but Trial counsel did not believe him. He testified he wanted to testify at trial but Trial counsel told him it was the State's burden. He testified drugs were found in his car during the stop and he tried to run away during the stop because he was scared. He testified he told Trial counsel exactly what happened during the traffic stop and Trial counsel chose not to move forward with the information and simply ignored what Applicant told him.

Shontea Smith

Shontea Smith testified that she had been in a relationship with Applicant since 2005. She testified she had a number of dealings with Applicant's attorney. She testified she was adamant Applicant should not hire Trial counsel as Applicant had told her Trial counsel dozed off in the

initial meeting between them. She testified she received a copy of the video tape of the traffic stop from trial counsel. She testified she took notes after watching the video. Ms. Smith testified she told Trial counsel Applicant was adamant the time of the traffic stop was not nearly as long as Applicant was actually on the side of the road. She testified Applicant never got a chance to see the video prior to trial. She testified she compared the radio logs and the video tape and she found there was an hour difference between what was taking place on the video as compared to the radio logs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. As a matter of general impression, this Court finds the testimony of Applicant's counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failed to challenge and object to initial traffic stop and reasonable suspicion.

Applicant alleges Trial counsel failed to challenge and object to the initial traffic stop. Trial counsel testified the issue of suppression was a major issue in the case. Trial counsel

testified he was sure he filed discovery motions and had the discovery for the case. He testified he reviewed the videotape of the traffic stop prior to the suppression motion as it was a key bit of evidence with respect to the suppression hearing. He testified he met with Applicant a number of times before the suppression hearing and the trial. He testified he thought he developed a good record for the appellate level as to whether or not Applicant's rights were violated because of the lengthy period of time Applicant was on the side of the road. Trial counsel testified he was challenging the length of the stop and anything that flowed after the traffic stop. This Court finds Applicant has failed to meet his burden of proving Trial Counsel was ineffective. Not only does this Court find trial counsel's testimony credible concerning this issue, the trial transcript reflects Trial counsel moved to suppress all evidence, including a videotape of the traffic stop at issue and drugs seized from the car. TT pp. 24-25, 84-89, 95-96. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel further challenged and objected to the initial traffic stop. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to challenge and object to officer testimony about an air freshener.

Applicant alleges Trial counsel failed to challenge and object to the arresting officer's testimony about an air freshener. As previously mentioned, Trial counsel testified that during Applicant's suppression hearing prior to trial he was challenging the length of the traffic stop and

anything that flowed from it. This Court finds after a review of the record that Trial counsel effectively cross-examined the arresting officer during Applicant's suppression hearing and at trial regarding matters which included the air fresheners. TT pp. 48-65, 151-165. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel further challenged and objected to the officer's testimony about an air freshener. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to challenge and object that the officer lacked probable cause for the second detention.

Applicant alleges Trial counsel failed to challenge and object that the officer lacked probable cause for the second detention. Prior to trial, Applicant had a suppression hearing in which Trial counsel argued to the trial judge that the traffic stop was unreasonably extended. TT pp.84-89. Moreover, Trial counsel testified he was challenging the length of the traffic stop and anything that flowed after. This Court finds the record shows Trial counsel challenged the length of the stop and whether the officer had probable cause for the continued detention. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his

representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel further challenged and objected that the officer lacked probable cause for the second detention. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to challenge and object to a “copy of a copy” of the vehicle transport video being put into evidence.

Applicant alleges Trial counsel failed to challenge and object to a “copy of a copy” of the vehicle transport video being put in to evidence. Prior to the State offering the video of the traffic stop in to the record during the suppression hearing, Trial counsel asked the arresting officer if the video being introduced was a complete video of the arrest to which the officer responded in the affirmative. TT.pg. 46-47. Afterward, counsel cross-examined the arresting officer extensively about the traffic stop and what was depicted on the video. TT pp. 48-65, 151-165. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel further challenged and objected to a copy of a copy” of the vehicle transport video being put in to evidence. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to view vehicle transport video with the Applicant.

Applicant alleges Trial counsel failed to view the vehicle transport video with Applicant. Applicant testified he viewed the video of the traffic stop on the day of trial for the first time. Applicant testified Trial counsel told him he did not show Applicant the tape before trial because Trial counsel did not have a place to show the video to Applicant because he was in Greenville County Detention Center at the time. Trial counsel testified he reviewed the videotape of the traffic stop prior to the suppression hearing as it was a key piece of evidence with respect to the suppression hearing. Trial counsel testified the first time he viewed the video tape together with Applicant was at the courthouse before the suppression hearing. He testified he met with Applicant a number of times before the suppression hearing and the trial. This Court finds Trial counsel was not ineffective for failing to view the vehicle transport video with Applicant. While Applicant did testify he only viewed the video tape for the first time right before trial, Trial counsel viewed the video prior to the suppression hearing. Given this, Trial counsel was prepared to argue on behalf of Applicant at the suppression hearing with the information he saw on the video tape. Moreover, on cross-examination, Applicant testified he met with Trial counsel numerous times and he discussed the traffic stop with him during these meetings along with the length of time of the stop. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel viewed the vehicle transport video with Applicant. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably

effective assistance. The allegations are denied and dismissed.

Failed to subpoena radio transmission tapes and call logs.

Applicant alleges Trial counsel failed to subpoena radio transmission tapes and call logs from the night of Applicant's traffic stop. Trial counsel testified he did not get the radio logs and did not think to get them. Applicant testified he got the radio logs from the Department of Public Safety and that he actually got them through a FIOA request while he was in prison. Applicant went on to testify that he reviewed the logs and they showed he was actually on the side of the road for longer than the video of the traffic stop showed. After a review of the record this Court finds Applicant has failed to show Trial counsel was ineffective or that he was prejudiced by Trial counsel performance. While Applicant and his private investigator opined about the radio call logs and what they contained, Applicant failed to call anyone from the Department of Public Safety to testify concerning the call logs concerning their content or makeup. While there is no question the records were authentic as Applicant had a records custodian from the Department of Public Safety authenticate them, this Court cannot rely on Applicant or his private investigator's interpretation of these records as neither wrote the radio call logs or work for the Department of Public Safety. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel subpoenaed the radio transmission tapes and call logs from the night of Applicant's

traffic stop. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to challenge and object to the resisting arrest charge.

Applicant alleged in his application Trial counsel failed to challenge and object to the resisting arrest charge. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of this allegation. Accordingly, this Court denies and dismisses this allegation.

Failed to challenge the K-9 certification.

Applicant alleged in his application Trial counsel failed to challenge the K-9 certification. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of this allegation. Accordingly, this Court denies and dismisses this allegation.

Failed to properly prepare for trial.

Applicant alleges Trial counsel failed to properly prepare for trial. Trial counsel testified he was sure he filed discovery motions and had the discovery for the case. He testified he reviewed the videotape of the traffic stop prior to the suppression motion as it was a key bit of evidence with respect to the suppression hearing. He testified he met with Applicant a number of times before the suppression hearing and the trial. Applicant also testified he met with Trial counsel numerous times and he discussed the traffic stop with him during these meetings. While Trial counsel did not subpoena the radio logs concerning Applicant's arrest from the Department of Public Safety, he met with Applicant numerous times to discuss the case. Additionally, he also attempted to suppress the evidence from the arrest, including a videotape of the traffic stop at issue and drugs seized from the car. Therefore, this Court finds Applicant has failed to prove the

first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel prepared differently. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to challenge and investigate why the case was dismissed with leave to restore.

Applicant alleged in his application Trial counsel failed to investigate why the case was dismissed with leave to restore. Applicant very briefly testified his first indictment was dismissed and his second indictment was also dismissed with leave to restore. However, this testimony failed to show any irregularities with respect to Applicant's case. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel challenged and investigated why his case was dismissed with leave to restore. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

Failed to challenge the chain of custody.

Applicant alleged in his application Trial counsel failed to challenge the chain of custody. Applicant did not present any evidence on this allegation at the PCR hearing. To the extent

Applicant is arguing there were issues with the chain of custody of the drugs found on him or the video recording of the traffic stop, Applicant has failed to meet his burden of proof regarding this allegation. Accordingly, this Court denies and dismisses this allegation.

Failed to challenge and object to the length of time the evidence was in the officer's control.

Applicant alleged in his application Trial counsel failed to challenge and object to the length of time the evidence was in the officer's control. To the extent Applicant is arguing there were issues with the chain of custody of the drugs found on him or the video recording of the traffic stop, Applicant has failed to meet his burden of proof regarding this allegation. Accordingly, this Court denies and dismisses this allegation.

Failed to subpoena the evidence custodian.

Applicant alleges Trial counsel failed to subpoena the evidence custodian. To the extent Applicant is arguing there were issues with the chain of custody of the drugs found on him or the video recording of the traffic stop, Applicant has failed to meet his burden of proof regarding this allegation. Accordingly, this Court finds Applicant failed to prove there was any evidence of this allegation. Accordingly, this Court denies and dismisses this allegation.

Procedural Due Process

Applicant alleged in his application a procedural due process violation. Applicant did not present any evidence on this allegation at the PCR hearing or specify what constitutional violations were infringed upon. Accordingly, this Court finds Applicant failed to prove there was any evidence of prosecutorial misconduct. Accordingly, this Court denies and dismisses this allegation.

Prosecutorial Misconduct

Applicant alleged in his application prosecutorial misconduct. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of prosecutorial misconduct. Accordingly, this Court denies and dismisses this allegation.

Furthermore, to the extent Applicant is claiming prosecutorial misconduct has been discovered post-trial and could not have been discovered in the exercise of due diligence prior to trial, in evaluating post-trial Brady³ claims, the applicant must show (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385.

³ Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

Applicant has failed to show the State withheld any evidence that would have produced a different outcome at his trial. Accordingly, this Court denies and dismisses this allegation.

CONCLUSION

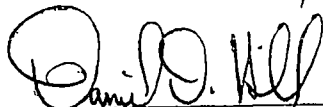
Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Reffer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 13th day of February, 2018.



DANIEL D. HALL
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant.

Karriem Provet, 323386

State of South Carolina

2014-CP-23-

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-CRIMINAL COURT
GREENVILLE, S.C.
PAUL B. HICKINS
JUL 31 4 51

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Prison for Justice
2. Name and location of Court which imposed sentence Greenville County Court of Common Pleas
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2009-01-10 3:30 PM

(b) 2009-01-10 3:30 PM

(c) _____

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5. The date upon which sentence was imposed and the terms of the sentence:

(a) 1/31-7 25 years

(b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS
- ii. THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. ORDER DENYING DIRECT APPEAL "AFFIRMED"
- ii. ORDER DENYING PETITION FOR WRIT OF CERTIORARI "AFFIRMED"
- iii. _____
- (c) the date of each such result:
- i. HEARD MAY 3, 2010
- ii. HEARD JUNE 19, 2013
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. FILED 211 JANUARY 31, 2011
- ii. FILED ON August 14, 2013
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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CLERK OF COURT

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- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. DIRECT Appeal
 - ii. Writ
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. S.C. JUDGE
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. GRANTED
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. THE EVIDENCE SINCE THE COURT HAS NOT PREVIOUSLY BEEN PRESENTED TO ANY COURT
ii. WHETHER THE COURT HAS NOT PREVIOUSLY BEEN PRESENTED TO ANY COURT
iii. WHETHER THE COURT HAS NOT PREVIOUSLY BEEN PRESENTED TO ANY COURT

(b) the proceedings in which each ground was raised:

- i. COURT OF APPEALS
ii. SUPREME COURT
iii. STATE COURT

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

7. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. RICHARD WARDER P.O. Box 26444 Columbia, SC 29216
- ii. WILLIAM B LONG P.O. Box 22445 Columbia, SC 29215
- iii. TRACY I. FLOTTIE P.O. Box 12725 Columbia, SC 29215

(b) the proceedings at which each such attorney represented you:

- i. TRAIL
- ii. TRAIL
- iii. TRAIL

19. State clearly the relief you seek in filing this application:

NEW TRAIL / VACATE

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

Kern County)

, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kern County

SWORN to and subscribed before me this 24
day of July, 2014.

Tamara Council (L.S.)
Notary Public

My Commission Expires September 25, 2023

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kenneth Probst
Applicant

SWORN or affirmed to and subscribed before me: this
24 day of July, 2014

Tamara Conwell
Notary Public

My Commission Expires: September 25, 2023

THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT
YOU ARE BEING HELD IN CUSTODY UNLAWFULLY:

- (A) INEFFECTIVE ASSISTANCE OF COUNSEL
- (B) PROCEDURAL DUE PROCESS
- (C) PROSECUTORIAL MISCONDUCT

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11. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10):

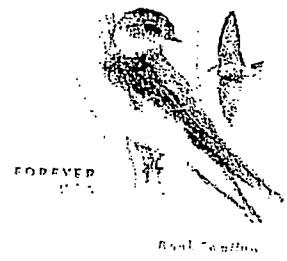
(a) INEFFECTIVE ASSISTANCE OF COUNSEL:

- 1) TRAIL COUNSEL FAILED TO CHALLENGE ALSO OBJECT TO INITIAL TRAFFIC STOP
- 2) TRAIL COUNSEL FAILED TO CHALLENGE ALSO OBJECT TO REASONABLE SUSPICION OF CRIMINAL ACTIVITY ALSO THE INDICATORS THE OFFICER TESTIFIED TOO.
- 3) TRAIL COUNSEL FAILED TO CHALLENGE ALSO OBJECT TO OFFICER TESTIMONY ABOUT AIR FRESHNERS WHICH WAS NEVER BROUGHT INTO EVIDENCE
- 4) TRAIL COUNSEL FAILED TO CHALLENGE ALSO OBJECT THAT THE OFFICER LACK PROBABLE CAUSE FOR ADDITIONAL SECOND DETENTION.
- 5) TRAIL COUNSEL FAILED TO CHALLENGE ALSO OBJECT TO A COPIE OF COPIES OF THE VEHICLE TRANSPORT VIDEO BEING BROUGHT INTO EVIDENCE.
- 6) TRAIL COUNSEL FAILED TO VIEW VEHICLE TRANSPORT VIDEO OF THE INITIAL TRAFFIC STOP WITH PETITIONER
- 7) TRAIL COUNSEL FAILED TO SUBPOENA RAMP TRANSMISSION TAPES OF VERBAL DIALOGUE ALSO CALL LOGS BETWEEN S.C. H.P AND DISPATCHER OF THE INITIAL TRAFFIC STOP
- 8) TRAIL COUNSEL FAILED TO CHALLENGE ALSO OBJECT TO THE RESISTING APPROPRIATE
- 9) TRAIL COUNSEL FAILED TO CHALLENGE THE RAMP TRANSMISSION TAPES
- 10) TRAIL COUNSEL FAILED TO PROPERLY PREPARE FOR TRAIL
- 11) TRAIL COUNSEL FAILED TO CHALLENGE ALSO INVESTIGATE THE REASON WHY PETITIONER WAS DISMISSED WITH LEAVE TO RESTORE
- 12) TRAIL COUNSEL FAILED TO CHALLENGE THE CHAINED COPY FROM THE INITIAL TRAFFIC STOP TO THE ANALYSIS.
- 13) TRAIL COUNSEL FAILED TO CHALLENGE THE CALL TO THE COUNSEL TO BE THE ATTORNEY WAS IN THE SEIZING DELIVER CONTROL
- 14) TRAIL COUNSEL FAILED TO SUBPOENA EVIDENCE CUSTODIAN

1. ...
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...
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F.C.I. MAILROOM

2014-CP-23-04666



✓ Greenville County
Clark of Court
325 EAST 7th Street
Greenville, SC 29601

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Karriem Provet,)
S.C.D.C. No. 323386,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-4666

RETURN

In response to the post-conviction relief application filed August 22, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2002 term of General Sessions for resisting arrest (2002-GS-23-4288) and at the May 2005 term for trafficking cocaine (2005-GS-23-3478). William B. Long, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On August 8, 2007, the Honorable Carmen T. Mullen sentenced the Applicant to concurrent terms of 1 year for resisting arrest and 25 years for trafficking cocaine.

A notice of appeal was filed at the South Carolina Court of Appeals. Tricia A. Blanchette, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on January 31, 2011. State v. Provet, 391 S.C. 494, 706 S.E.2d 513

(Ct. App. 2011). After the Applicant filed a petition for writ of certiorari at the South Carolina Supreme Court, the Court granted the petition and the parties submitted briefs. The Supreme Court affirmed the Court of Appeals on August 14, 2013. State v. Provet, 405 S. C. 101, 747 S.E.2d 453 (2013). The Remittitur was sent on August 30, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to challenge and object to initial traffic stop.
 - b. Failed to challenge and object to reasonable suspicion.
 - c. Failed to challenge and object to officer testimony about air freshener.
 - d. Failed to challenge and object that the officer lacked probable cause for the second detention.
 - e. Failed to challenge and object to a "copie of copie" of the vehicle transport video being put into evidence.
 - f. Failed to view vehicle transport video with the Applicant.
 - g. Failed to subpoena radio transmission tapes and call logs.
 - h. Failed to challenge and object to the resisting arrest charge.
 - i. Failed to challenge the K-9 certification.
 - j. Failed to properly prepare for trial.
 - k. Failed to challenge and investigate why the case was dismissed with leave to restore.
 - l. Failed to challenge the chain of custody.
 - m. Failed to challenge and object to the length of time the evidence was in the officer's control.
 - n. Failed to subpoena the evidence custodian.
2. Procedural due process.
3. Prosecutorial misconduct.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

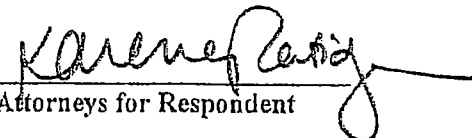
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

January 8, 2015

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2014-CP-23-4666
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
	)	
KARRIEM PROVET,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 26, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE

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

WILLIAM G. YARBOROUGH, III, ESQ.
Attorney for the Applicant

DeSHAWN MITCHELL, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

Applicant's Exhibits

1	SC Department of Public Safety Letter to Mr. Provet Dated 12/1/06	71	
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P R O C E E D I N G S

1
2
3 THE COURT: We're on the record in the matter of
4 State of South Carolina vs. Karriem Provet. This would be
5 a PCR case. It's 2014-CP-23-4666. Representing the
6 applicant, Mr. Karriem Provet, is Mr. William G.
7 Yarborough. Representing the State of South Carolina is
8 Mr. DeShawn Mitchell.

9 Mr. Yarborough, are you ready to proceed?

10 MR. YARBOROUGH: I am, Your Honor.

11 THE COURT: Mr. Mitchell, are you ready to proceed?

12 MR. MITCHELL: Yes, Your Honor.

13 THE COURT: All right. Anything you want to put on
14 the record before we get started?

15 MR. MITCHELL: Just very briefly, Your Honor, a
16 procedural history. Again, like Your Honor said, it's
17 2014-CP-23-4666. The applicant is incarcerated with the
18 South Carolina Department of Corrections pursuant to the
19 Greenville County clerk of court's orders of commitment.
20 The Greenville County grand jury indicted the applicant at
21 the November 2002 term of general sessions for resisting
22 arrest, at the May 2005 term for trafficking cocaine. He
23 was represented by Mr. William B. Long.

24 After the State called the case to trial, the
25 applicant was found guilty. On August 8, 2007, the

1 Honorable Carmen T. Mullen sentenced the applicant to
2 concurrent terms of one year for resisting arrest and 25
3 years for trafficking cocaine.

4 A notice of appeal was filed at the South Carolina
5 Court of Appeals. Tricia Blanchette perfected the appeal.
6 The Court of Appeals affirmed the applicant's convictions
7 and sentences on January 31, 2011.

8 After the applicant filed a petition for writ of
9 certiorari at the South Carolina Supreme Court, the Court
10 granted the petition and briefs -- the parties submitted
11 briefs. The Supreme Court affirmed the Court of Appeals'
12 decision on August 14, 2013, and the remittitur was sent
13 on August 30, 2013.

14 I'll turn it over to Mr. Yarborough at this time.

15 THE COURT: All right. Thank you.

16 Mr. Yarborough?

17 MR. YARBOROUGH: Thank you, Your Honor. If the Court
18 please, just on some procedural issues, there is a video
19 tape of the traffic stop that is now present in the
20 courtroom. I'd like to make that part of the record. We
21 also had earlier Maria Simmons who's the dispatch record
22 keeper. She came in. She provided the records from the
23 South Carolina Department of Public Safety. I'd like to
24 have them marked as ---

25 THE COURT: All right. Let me take a look at them

1 first.

2 (Pause in proceedings.)

3 THE COURT: All right. Yes. Go ahead,
4 Mr. Yarborough. We'll have those marked.

5 MR. YARBOROUGH: I'd like to have those marked for
6 the record.

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification.)

9 MR. YARBOROUGH: And I believe the authenticity of
10 the records is not in dispute. That's correct. We're
11 using those as part of our dialogue here.

12 THE COURT: Let's see if we need to deal with that.

13 Mr. Yarborough -- Mr. Mitchell, has -- we now have
14 what's been marked Court's Exhibit 1 which are dispatch
15 records from the South Carolina Highway Patrol. He, in
16 essence, has indicated that they are -- that there is no
17 requirement of authentication or identification because of
18 the nature of what they are, what they purport to be. Do
19 you have a position not on the issue of admissibility, but
20 simply as far as the first step in admissibility of
21 whether they are authentic?

22 MR. MITCHELL: I do not, Judge.

23 THE COURT: All right.

24 Go ahead, Mr. Yarborough.

25 MR. YARBOROUGH: Your Honor, I would -- at this time,

1 I would call Karriem Provet to the stand.

2 THE CLERK: Mr. Provet, please place your left hand
3 on the Bible and raise your right hand.

4 WHEREUPON,

5 KARRIEM PROVET

6 After having been duly sworn, the following proceedings
7 were had:

8 THE CLERK: Thank you. You may be seated.

9 MR. YARBOROUGH: Your Honor, before you swear him, I
10 think Mr. Long has got a previous commitment somewhere,
11 and so we can take Mr. Long before we take Mr. Provet.

12 THE COURT: Yeah. You make the call what order you
13 want to call them.

14 Mr. Provet, I'm going to ask that you step down.

15 MR. YARBOROUGH: Yeah. Sorry, Your Honor.

16 I call Mr. Long.

17 THE CLERK: Mr. Long, please place your left hand on
18 the Bible and raise your right hand.

19 WHEREUPON,

20 WILLIAM B. LONG, JR.

21 After having been duly sworn, testified as follows:

22 THE CLERK: Thank you. You may be seated. And
23 please state your full name for the record.

24 THE WITNESS: My name is William B. Long, Junior.
25 I'm a lawyer here in Greenville, South Carolina.

DIRECT EXAMINATION

BY MR. YARBOROUGH:

Q Mr. Long, is the majority of your practice criminal law?

A It's trial work, and I'd say criminal and domestic about 50-50.

Q And did you represent Mr. Provet?

A I did. Back then I was heavier into criminal than I am now.

Q Okay. So at that time, you were active in doing criminal defense work as the majority of your practice?

A It was, I would say, the majority, yes.

Q And can you tell me kind of how you got involved in the case?

A Mr. Provet apparently had other lawyers before me, and I was contacted, I believe, by a friend of his. I'm vague on how I got involved.

Q All right. Well, I mean, at some point, did he employ you to represent him?

A I was hired. I was retained, yes.

Q And do you remember any of the specifics about the case?

A I think so, yes.

Q Did it deal with a traffic stop, do you recall?

A It was a traffic stop and events subsequent to the

1 traffic stop.

2 Q Okay. And was there a suppression issue in the case?

3 A Yes. And that was -- as so often is the case, it was
4 the major issue in the case.

5 Q Okay. And did there come a time that you went and
6 reviewed the discovery at the Solicitor's Office?

7 A I'm sure I filed discovery motions and had a
8 significant portion, but I would have reviewed all of it
9 including the videotape.

10 Q All right. And do you recall reviewing the videotape
11 in this case?

12 A As distinct from the courtroom, I can't say at this
13 moment I do. But I know that I would have reviewed it
14 prior to the suppression motion because it was a key bit
15 of evidence in the suppression.

16 Q Sure. And so would it be fair to say that the first
17 time you reviewed the tape with Mr. Provet was over at the
18 courthouse on the day of the suppression hearing?

19 A It was at the suppression hearing, yes.

20 Q Right. And before that, he was incarcerated?

21 A Down in Greenville jail.

22 Q Detention center.

23 A Yeah.

24 Q And at that point, you didn't have an opportunity to
25 take the tape down and show it to him at the detention

1 center?

2 A I don't recall, but it's doubtful that I did show it
3 to him down there.

4 Q So do you recall meeting with him a number of times
5 before trial?

6 A I did with him a number of times before the
7 suppression hearing and before trial.

8 Q All right. And was he concerned by the way he was
9 treated by the police that night?

10 A He felt that his constitutional rights were violated.

11 Q Do you recall him telling you that he had been beaten
12 up on the side of the road?

13 A Oh, yeah. I mean, he's a little fellow, and he was
14 pretty badly beaten up.

15 Q When you first saw him, he was -- I guess black and
16 blue is the right term?

17 A No. There were other lawyers before me, and probably
18 photographs is what I saw and then whatever the video
19 shows.

20 Q Okay. Anyway, did you feel like it was a pretty good
21 suppression case?

22 A I'm certain it felt like it was a suppression case.
23 It should be perceived, and I think that it -- I think
24 that -- with his help, he's a very bright individual, very
25 smart, I think we developed a good record.

1 Q Right.

2 A And I think that it caused serious concern at the
3 appellate level as to whether or not his rights were
4 violated by a delay, a lengthy time -- the lengthy time
5 period of him being on the side of the highway.

6 Q Sure. And do you remember -- there were actually two
7 stops that the judge found. One was where they took his
8 driver's license and information, then there was a
9 detention where they talked to him afterwards. Do you
10 recall that in the case?

11 A Not specifically, but that had happened.

12 And it's an interesting legal point there, and I
13 don't think I raised it in this case of when -- whether
14 the de facto stop and it results for whatever reason and
15 knowledge on the police officer's part that they're not
16 going to turn him loose, why that -- whether that becomes
17 de facto custody and therefore any question. However, in
18 this case, I don't believe he said anything, spoke to his
19 detriment. I can't recall. The tape would be the
20 evidence of that.

21 Q Right. If the trial transcript says that the highway
22 patrolman said on your questioning that he wasn't free to
23 go, would you -- does that refresh your recollection?

24 A Well, I'm satisfied that he wasn't free to go.

25 Q Right.

1 A I mean, I think the case is whether the
2 reasonableness of his detention, but I think he was --
3 it's more than that. I think he was de facto under
4 arrest.

5 Q Sure. In fact, you never challenged the stop itself.
6 You just -- y'all were talking about the length of the --
7 you weren't challenging the stop. You were challenging
8 the length of the stop.

9 A And anything that flowed after.

10 Q And anything that flowed out after that, which is
11 basically Fourth Amendment violations.

12 A After the stop and at this time, whenever the time
13 might occur that he came into custody.

14 Q Do you recall, would it be safe to say that the video
15 has about a ten-minute lag where this questioning is going
16 on between Mr. Provet and the highway patrolman? Do you
17 recall that?

18 A I don't recall the lag.

19 Q Okay. Now, it's been some time since that happened.

20 A Yes.

21 Q If you would have been provided the radio log from
22 the South Carolina Highway Patrol which would have said
23 that the lag was more like an hour and ten minutes before
24 the dog got there, would that -- do you think that would
25 change the -- your argument for suppression?

1 A If it lengthened the time of -- from the time -- the
2 traffic stop and what occurred afterwards, it would -- it
3 would, certainly. And I'd be the first to admit I didn't
4 do that and didn't think to do it.

5 Q Right. And that's my next question is you didn't
6 think to ask for the radio log.

7 A This -- the law was -- as far as stops and what
8 happens afterwards, it's been pretty formed in stage at
9 that time and ---

10 Q Let me ask you this. At that point, they were
11 dealing with the Tindall case and the Rodriguez case and a
12 number of traffic stop cases when this case was going on;
13 is that correct?

14 A Right. That's correct.

15 Q And so the length of a traffic stop under a Fourth
16 Amendment violation, it was questionable at the time in
17 the law; is that your recollection?

18 A I think it still is. I mean, I think that the issue
19 of custody -- when custody comes into play, for instance,
20 somebody being stopped and having an expired driver's
21 license, very often, particularly out-of-state people,
22 they will be taken into custody.

23 Q Sure.

24 A But a lot of the ruling -- a lot of the trial rulings
25 seem to think being in custody requires this terms of law

1 like as in signs of you are arrested. I don't think
2 that's the case. I think when -- that it's a subjective
3 thing when the defendant knows that he's not free of leave
4 and won't be free to leave, and that's the reason the
5 detention, you know, reasonable administrative detention
6 has to be short in time. And I don't think it can be
7 extended by failing to say, "You are under arrest."

8 Q Sure. And based on your recollection of the case, if
9 it would have been extended, your opinion would be the
10 drugs would have been suppressed?

11 A If it became unreasonable, if it became what I call a
12 de facto -- being in de facto custody.

13 Q Sure.

14 A The -- I think that if it reached that stage, it
15 would -- and if that were the law ---

16 Q Right.

17 A --- that it would -- the length of time wouldn't be
18 important. But none of that happened. He wasn't under
19 arrest, as I recall.

20 Q Right.

21 A And that's where, under the law now, as I've read it
22 and as most often is applied, it seems there has to be a
23 formality to the arrest, not merely the passage of time.

24 Q Right.

25 A And then it becomes sort of an administrative

1 procedure. And that has to be a short duration and a
2 reasonable time to find out if he has insurance, to find
3 out if he has and so forth. But this case clearly morphed
4 past that into an investigation ---

5 Q Right.

6 A --- for other criminal activity than a traffic
7 offense.

8 Q Sure. Have you ever read the opinions in this case?

9 A Yeah. But it's been a while.

10 Q Right. And in your recollection, if the opinions say
11 that ten minutes was not too much but it was close, would
12 that refresh your recollection?

13 A I think that your Supreme Court has struggled with
14 15 minutes.

15 Q Right.

16 A And used the term 15 minutes.

17 Q And you've reviewed those cases like Tindall and
18 Rodriguez in this state.

19 A I just don't remember names. I'm not one of these
20 people to remember names of cases.

21 Q But I guess my point is, Mr. Long, if the radio logs
22 show that that detention on the side of the road was an
23 hour and six minutes versus ten minutes, do you think it
24 would have changed the outcome of the case?

25 A Well, it would certainly strengthen the case a great

1 deal. I mean, I would -- I thought that -- I thought that
2 the detention was very lengthy.

3 Q Right.

4 A And it was clearly prolonged by investigation other
5 than the traffic offense.

6 Q Correct. And to your knowledge, you never reviewed
7 the radio log as to when that stop was called in.

8 A Didn't think to do it.

9 Q Sure. And you're not familiar with when the drug dog
10 was actually called that night because you didn't have the
11 radio log.

12 A No. I'd be interested to know how much time passed
13 until the dog was sought out.

14 Q If I told you it was more than 35 minutes, would that
15 surprise you?

16 A Well, it's a lot more than 15 minutes at the ---

17 Q It's a lot more than ten, too, right?

18 A Right.

19 And if you're going to -- it seems like if the
20 suspicion is drugs, I don't think that the police would
21 sit there roadside and ponder whether to call the dogs.
22 They shouldn't. I mean ---

23 Q Sure. And, I mean, just calling the dog's one thing,
24 but having him sit there and wait on the dog would be
25 another Fourth Amendment violation; isn't that correct?

1 A Well, I mean, that's the issue in this case is the
2 length of time that ---

3 Q Right. And if you were written a warning ticket and
4 then were told you were going to have to sit on the side
5 of the road for another --

6 A Then ---

7 Q --- clearly ---

8 A Clearly, yeah.

9 Q --- it's too long.

10 A Yeah. Because that's -- a warning ticket means that
11 he was not placed under arrest.

12 Q Arrest. Correct.

13 And if -- so anything that you could have found that
14 would have lengthened or showed -- substantiated what he
15 was telling you would have helped?

16 A I don't understand the question.

17 Q Yeah. Me neither. I guess I've asked and answered a
18 couple times, but if you'd have looked at the radio logs
19 and realized it was longer, it would have helped you?

20 A Well, I think from the minute he received a warning
21 ticket that it became an investigative procedure for other
22 criminal activity, and I think at that point in time, I
23 mean, let's -- I don't know how long it took before they
24 issued the warning ticket, but if that -- if that's what
25 happened, then if he received a warning ticket, that means

1 that there was no reason that I know of for him to have
2 been detained further than that.

3 Q Right.

4 A And he's -- he has been in jail a long time, and I
5 don't know what motivates him. He was offered deals along
6 the way, but it's clear that he feels that he is fighting
7 to assert the fact that his rights were violated.

8 Q Correct.

9 A And if all he got was a warning ticket, it seems like
10 -- and forgive me, Judge, but it seems like to me that
11 they were on the face that they were violated.

12 Q Right. And I don't know if you remember this or not,
13 but when he saw that videotape, he told you that it lasted
14 longer than that, right?

15 A Oh, yeah. I mean, it lasted -- there was a lot there
16 going on. And it lasted longer than that.

17 Q Right. And to your recollection, you didn't have an
18 opportunity to review that videotape with him prior to
19 being in court.

20 A I don't recall doing it or not doing it, but it's
21 doubtful that I would have reviewed it with him prior to
22 court.

23 MR. YARBOROUGH: Okay. Just one second, Your Honor.

24 May I approach the witness, Your Honor?

25 THE COURT: Yes, you may.

1 BY MR. YARBOROUGH:

2 Q This is part of the transcript, page 111 from the
3 original hearing. Does that refresh your recollection at
4 all on page 111?

5 A Well, I can't say it refreshes my recollection, but
6 if this is the transcript and it said -- and it's my
7 testimony, apparently, that he hadn't viewed the video
8 until yesterday, that would have been ---

9 Q The day before, and this is on the day that the judge
10 is ruling, the second day of the trial.

11 A And I'd say that I have had it for a long time. So I
12 had reviewed it.

13 Q You had reviewed it, and he had not reviewed it, and
14 the judge actually asked y'all to come back. And I know
15 you can't remember that, but it's in the record. The
16 judge asked y'all to come back the next day to go over
17 what his ruling was going to be on the search issue; is
18 that right?

19 A Yeah. And he had been in custody the entire time.
20 He was brought back. But I'd certainly say that
21 transcript is true. It's been a long time.

22 Q You don't recall him asking to review that before?
23 And he didn't review it, but you don't recall him -- if he
24 filed a pro se motion to review it, do you recall if that
25 might have happened?

1 A I don't recall it, but ---

2 Q The record would speak for itself?

3 A No. I just -- if he -- if he asked to see it and I
4 was aware, then I should have taken steps to let him see
5 it in advance. I just don't recall any of that.

6 Q Right.

7 A How old is this guy's ---

8 THE COURT: Mr. Yarborough will ask questions,
9 Mr. Long. Just don't deviate from our ---

10 THE WITNESS: Yes, sir. I beg your pardon.

11 THE COURT: --- rules of Court.

12 BY MR. YARBOROUGH:

13 Q The trial was in 2007, Mr. Long, and the initial stop
14 was some time a couple years before that. It's been quite
15 some time.

16 A Yes, sir.

17 MR. YARBOROUGH: I don't have any further questions
18 for this witness. Thank you, Your Honor.

19 Thank you, Mr. Long, for coming.

20 THE COURT: All right. Thank you.

21 Mr. Mitchell?

22 MR. MITCHELL: Thank you, Your Honor. Very briefly.

23 CROSS EXAMINATION

24 BY MR. MITCHELL:

25 Q Good Morning, Mr. Long.

1 A Good morning.

2 Q I appreciate you hanging out with us for a little
3 bit.

4 A Well, this isn't my first time.

5 Q I think Mr. Yarborough went over several things with
6 you. I just want to go over a couple more things with you
7 if you don't mind.

8 A Yes, sir.

9 Q You said that you recall representing Mr. Provet. Is
10 it safe to say that you would have done the normal sending
11 discovery requests and sending information to the
12 Solicitor's Office to get the information about the actual
13 case and the file itself?

14 A That I sought?

15 Q Yes, sir. That you requested all the discovery in
16 the case and you got a copy of all of that.

17 A I either requested it or it was furnished to me by
18 prior lawyers. I wasn't the first lawyer in the case.
19 Chances are I would have filed a discovery motion anyway
20 even if I received the stuff from the other, but I feel
21 like I got -- I don't think that the State furnishing
22 discovery material is any issue in this thing. I thought
23 that they dealt fairly, if that's the question.

24 Q What type of discovery -- pardon me. What type of
25 investigation did you do in this case? Did you have to

subpoena any witnesses or anything like that?

A I don't remember anything of that nature. I do know that I didn't seek out and didn't think to seek out the log -- I'll call it the log that Mr. Yarborough questioned me on.

Q Let me ask you this. Is it a normal practice of yours to meet with your client a number of times?

A I met with him -- with Mr. Provet a number of times.

Q And was the idea that the case was always going to go to trial or was there discussions about a guilty plea?

A There were a lot of discussions about guilty pleas and plea offers, negotiated plea offers. And Mr. Provet rejected any thought of pleading guilty at any time.

Q Why was that?

A Well, as I already testified, he felt his rights had been violated. And, I mean, if he would have accepted the guilty pleas, he would have been out a long time ago, out of custody a long time ago. But I guess -- I guess he's a fighter and is fighting for what he considers to be a cause.

Now, I asked those questions of him, and I don't have a clear answer for you. He never told me he was guilty. It was all about his feeling that his rights were violated and that he should fight for his rights. And that's admirable. But good Lord, mercy, it's 11 years according

1 to what I was just told of a strong feeling on that point.

2 Q Let me ask you this. You said that you had met with
3 him a number of times. Did the discussion ever come up
4 about the length of the traffic stop or how long it took?

5 A Yes.

6 Q Okay. What was the nature of the conversation?

7 A Well, bear in mind that there were other lawyers
8 before me. And Mr. Provet is a very intelligent man, and
9 I recall him as being a computer-savvy person. And there
10 were knowledgeable discussions on his part. He was not
11 somebody that was being led through the process by me as
12 an attorney.

13 He was -- gave great assistance as far as the point
14 why we're here and whether this thing lasted too long from
15 the time of the traffic stop until the time that he was
16 formally placed under arrest for something other than the
17 traffic stop. And to this day, I have wondered how
18 somebody could sacrifice so much time in his life to prove
19 a point such as this. And all I can say is he's a fighter
20 and he had extremely strong feelings on the subject.
21 That's the best I can say because I can't enter his mind
22 and soul. But if you look at it, of the prior knowledge
23 of the situation, it has to be based upon strong feelings
24 on his part as opposed to mere common sense.

25 Q Let me ask you this. I know we talked about the

1 suppression hearing ---

2 A Yes, sir.

3 Q --- before the actual trial itself. You felt that
4 there was sufficient evidence to move forward with
5 suppressing the information on the drugs that came in,
6 correct? You felt that you had a reasonable basis to
7 suppress those things?

8 A I didn't have any control over the case being called
9 for trial. The judge did not suppress. The trial judge
10 did not suppress, and therefore, we went into trial.

11 Q Fair enough. But you had the opportunity to have a
12 suppression hearing, correct?

13 A Yes. Oh, yeah.

14 Q And you got to cross-examine the arresting officers
15 and the K-9 officer, correct?

16 A I'm sure I did.

17 Q Okay. And is it safe to say that you would have
18 asked him questions about time as related to the incident?

19 A I would think so. But I certainly should have if, in
20 my own mind, establish that it was a lengthy time period
21 in the record. Part of the evidence of that would be the
22 video itself.

23 MR. MITCHELL: Okay. A moment of the Court's
24 indulgence, Your Honor.

25 ///

1 BY MR. MITCHELL:

2 Q Is it a common practice for you to subpoena radio
3 call logs in cases? Is that something you did normally or
4 did regularly?

5 A I never had at that point in time. Since
6 Mr. Yarborough's doing so in this case, I will certainly
7 do it in the future. It's something that could have been
8 helpful, probably would have been.

9 Q At that time, was there anything that gave rise to
10 you believing that you needed to?

11 A I didn't think about it.

12 MR. MITCHELL: That's all the questions I have,
13 Judge.

14 THE WITNESS: I mean, I admit that -- I think that I
15 did a heck of a job other than that, but I did not -- heck
16 of a good job on the suppression and on the trial, but I
17 didn't do that. And that could be important.

18 MR. MITCHELL: Thank you.

19 THE COURT: Anything further, Mr. Yarborough?

20 MR. YARBOROUGH: No, sir.

21 THE COURT: Mr. Long, you can step down.

22 THE WITNESS: Yes, sir. Nice to have met you, sir.

23 THE COURT: Nice to have met you.

24 All right. Mr. Yarborough, call your next witness.

25 MR. YARBOROUGH: I call Mr. Skidmore.

1 THE CLERK: Please place your left hand on the Bible
2 and raise your right hand.

3 WHEREUPON,

4 PETER GORDON SKIDMORE

5 After having been duly sworn, testified as follows:

6 THE CLERK: Thank you. You may be seated. And
7 please state your full name for the record.

8 THE WITNESS: Peter Gordon Skidmore.

9 DIRECT EXAMINATION

10 BY MR. YARBOROUGH:

11 Q And, Mr. Skidmore, how are you employed?

12 A I'm a licensed private investigator in South and
13 North Carolina.

14 Q And you work out of Rock Hill or ---

15 A Fort Mill.

16 Q Fort Mill.

17 And how long have you done that?

18 A A little less than 25 years.

19 Q Okay. And at some time during your long career, did
20 you get involved with Karriem Provet?

21 A I did.

22 Q Were you hired by his wife? How did that happen?

23 Or ---

24 A I was.

25 Q Okay. And do you recall about when that was?

1 A I'm bad with time sometimes. It's been over a year,
2 I'd suspect.

3 Q Okay. And at some point, did you have an opportunity
4 to review the videotape in this case?

5 A I did.

6 If I can step back before that.

7 Q Sure.

8 A I went and interviewed Mr. Provet, and he went
9 through everything as far as the stop and his concerns and
10 everything. From there, we started investigating the tape
11 and the radio call logs. So I have reviewed both of
12 those.

13 Q Okay. And just tell us what your investigation has
14 found.

15 A What I found was the call logs did not match up with
16 the videotape. There's about an hour and ten minute
17 discrepancy in that. Either the call log's wrong or the
18 tape's wrong. You know, something's wrong there.

19 Q Sure.

20 A And then the other step that we took from there was
21 we wanted to get a person that could verify possibly
22 potentially if the tape had been tampered with. And we
23 found out that the original tape had been destroyed, and
24 our expert in California said that the copy, he could not
25 determine if it had been tampered with or not. He would

1 need the original.

2 Q Okay. And based on your investigation of the
3 videotape and the radio log, you found a discrepancy
4 of ---

5 A The time.

6 Q -- of the length of the stop. And you found that to
7 be about an hour and how long?

8 A An hour and ten minutes. Somewhere right about
9 there.

10 Q Okay. And that's based on your review of the tape,
11 which is in the courtroom, that videotape there or a copy
12 that you looked at.

13 A A copy. And I'm assuming that it was that. I have
14 not actually looked at the VHS tape.

15 Q Okay. And -- but you've reviewed these?

16 A I have.

17 Q And these are the radio logs that you got as part of
18 your investigation?

19 A That's right.

20 Q Okay. And we heard Mr. Long testify that he didn't
21 think to get the radio logs. How did you think to get the
22 radio logs?

23 A Well, during the interview process with Mr. Provet,
24 there -- just something wasn't right. Either, you know,
25 he's not being truthful, which is typically easy to find

1 out through like radio logs and videotape. So that's kind
2 of where I start, you know. I want a foundation to show
3 that my client is telling the truth and give the Court
4 something to go with. So that's when I got the radio logs
5 and reviewed the tape, and there was definitely a
6 discrepancy in those two items.

7 Q Right. And I'm going to show you these notes just if
8 these will help review your recollection without you
9 having to go through the long radio logs.

10 A Right.

11 Q Are those the notes that we went over today?

12 A Yes, they are.

13 Q And you find that the difference in the radio log as
14 to when the driver's license is called in and when the
15 rest of -- is about how long?

16 A It's about an hour and ten minutes. Maybe an hour
17 and nine minutes and four seconds.

18 Q Okay. But it's significantly longer than ten
19 minutes.

20 A Significantly.

21 Q Okay. And do you have any explanation for how that
22 might have happened?

23 A No.

24 That's another thing. If we were in the trial mode,
25 I would have done more investigation into the officers and

1 those type of things. And had the Court -- or if the
2 attorney that I was working with could have possibly got
3 the disciplinary write-ups and things of that nature and
4 let the Court review it and see if it would be
5 significant, it's my understanding that both officers
6 involved in these stops have been released from their
7 departments.

8 Q Okay. And based on that knowledge, does that -- and
9 your experience of over 25 years of looking at this, what
10 does that tell you that happened in this case?

11 MR. MITCHELL: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. MITCHELL: Thank you.

14 BY MR. YARBOROUGH:

15 Q Based on your investigation, do you have an
16 explanation why it's about an hour difference?

17 A There is no explanation because the original tape's
18 not there. You can't verify whether the tape was tampered
19 with. But the radio log is different from the tape.
20 There's -- there's two things. You can't have it both
21 ways. It's either one or the other.

22 MR. YARBOROUGH: Right. And -- okay. Thank you. I
23 don't have any further questions.

24 THE COURT: All right. Mr. Mitchell?

25 MR. MITCHELL: Just briefly, Judge.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Mr. Skidmore, have you ever worked for the Department of Public Safety?

A I have not.

Q Have you ever been a highway patrolman?

A I have not.

Q So is it fair to say that you're unfamiliar with their record-keeping?

A I don't think that would be a fair assumption. I've dealt with several cases over the years where the Highway Patrol was involved. And these records have been authenticated, so that's what I had to go by.

Q Did you talk to anybody from Highway Patrol about the records at all?

A No, I did not.

Q So your opinion is based on your review of the records themselves?

A Yes. That have been authenticated here today.

Q So I guess the next question would be, so you didn't talk to the person who actually wrote the notes out or wrote the log out itself?

A No. But me and Mr. Yarborough talked about subpoenaing her, and that's why she was here today.

Q That was the evidence custodian, correct?

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Q So that wasn't the person who actually --- .

A No, it was not.

Q --- hand wrote the notes?

A No.

Q And you haven't talked to that person at all?

A I have not.

MR. MITCHELL: Thank you. That's all the questions I have, Judge.

REDIRECT EXAMINATION

BY MR. YARBOROUGH:

Q You reviewed the notes in the log?

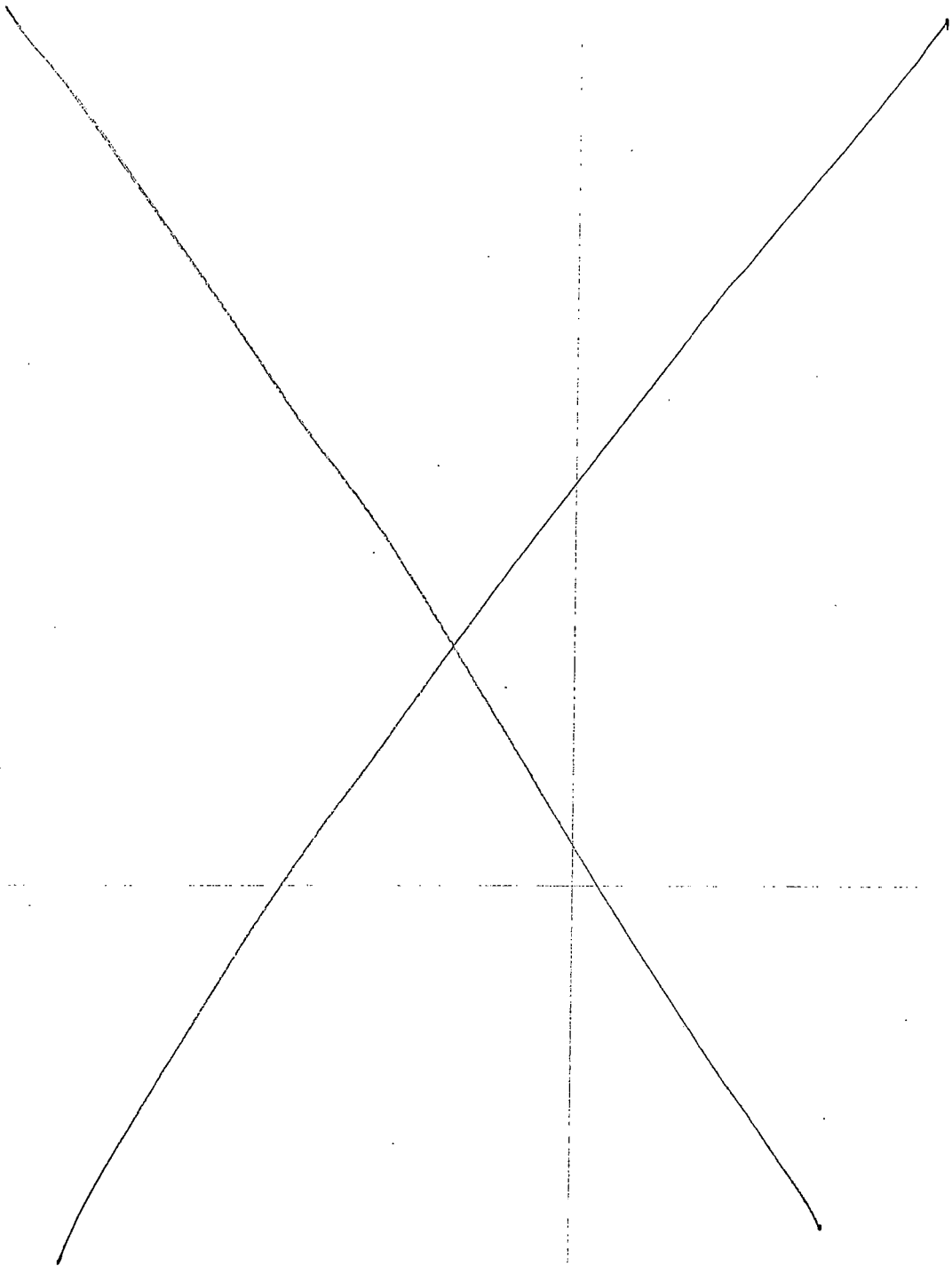
A Yes.

Q And, I mean, it's ---

A Several times. Many times.

Q Yeah. Many times. I mean, and --

THE COURT: Let the -- we need to be sure the record is clear. The Court's Exhibit 1 are what are purported to be Highway Patrol dispatch logs. They have been authenticated. They have not been introduced and we have -- the Court has not determined whether they are admissible or the contents of those are admissible into evidence. But simply, they have been marked as an exhibit and they have been -- the need for authentication or having the record keeper from Columbia being here has been



1 agreed upon by the State that they are authentic in that
2 resort. But as far as they have not been introduced as
3 evidence.

4 MR. YARBOROUGH: Your Honor, and then I'll ask him.

5 BY MR. YARBOROUGH:

6 Q Specifically, are these the records that are a copy
7 of the records that you reviewed over the last several
8 years?

9 A (Reviews document) Yes, they are.

10 Q Okay. And it's 21 -- I think it's Page No. ---

11 A 35. I mean, well, it starts at page ---

12 Q 4 of 25.

13 A It goes through page 38.

14 Q 38.

15 And if you look at those records, they are specific
16 times that they're asking about Mr. Provet's driver's
17 license; is that correct?

18 A That's correct.

19 Q And ---

20 A As well as his vehicle information.

21 Q His vehicle information.

22 And there's information about them calling the dog.
23 There's all that information is in there.

24 A Yes, sir.

25 Q And do these records fairly and accurately represent

1 what you looked at and what you got as part of your
2 investigation?

3 A Yes.

4 Q And is that -- based on that, do you feel like they
5 are accurate?

6 A Yes.

7 MR. YARBOROUGH: Your Honor, I move them into
8 evidence.

9 THE COURT: Mr. Mitchell?

10 MR. MITCHELL: Your Honor, I'm going to, I guess,
11 renew my objection about the admissibility of the actual
12 records themselves. I don't have any objection as to the
13 authenticity of the records, but the admissibility of
14 them, Your Honor, it can't be a formal request. There's
15 nobody here to be able to talk in detail about the actual
16 records themselves.

17 THE COURT: Yeah. I'm not going to allow them in.
18 They are records. However, what they mean and when the
19 Court has looked at them, it is numerous, numerous pages
20 of various handwritten notes, lots and lots of codes, a
21 list of times, and there's been no showing that
22 Mr. Skidmore has any level of expertise to be able to,
23 with any expert accuracy, give an opinion as to about what
24 those notes are, what those records say other than he's
25 indicated that he has looked at Highway Patrol logs in a

1 couple of trials. So I'm not going to allow them in.

2 MR. MITCHELL: Thank you, Judge.

3 MR. YARBOROUGH: Can I have one minute, Your Honor?

4 THE COURT: I'm not going to allow them in through
5 this witness. I have no idea what Mr. Yarborough -- I
6 mean, I'm not limiting to him. But as far as what's been
7 shown to the Court up to this point, they're not
8 admissible through this witness so far.

9 BY MR. YARBOROUGH:

10 Q But you've looked at those records. Have you been
11 able to line up what the codes are with what those records
12 say?

13 A Yes. I've looked at the Highway Patrol codes and
14 have looked at the codes on the log, and I verified what
15 Mr. Provet said about him getting a warning ticket and
16 those type things, yes.

17 Q Right. And that's specifically outlined in the
18 records themselves, right?

19 A That's correct.

20 Q And it has Mr. Provet's driver's license and his
21 license tag?

22 A Yes, sir.

23 Q Okay. And those are listed in there.

24 A Yes, sir.

25 Q And they coincide with what happened during the

1 trial?

2 A During the stop.

3 Q During the stop.

4 And based on your investigation of this case, it
5 appears that that stop lasted longer than was originally
6 testified to; is that correct?

7 A That's what it appears based on the logs, yes.

8 Q Okay. And you think that length, based on those
9 logs, is how long?

10 A There's an hour and ten minutes roughly of
11 discrepancy there.

12 MR. YARBOROUGH: Thank you. I don't have any further
13 questions.

14 THE COURT: All right. Thank you.

15 MR. MITCHELL: I have no further questions, Judge.

16 THE COURT: All right. Thank you, Mr. Skidmore. You
17 may step down.

18 THE WITNESS: Thank you, Judge.

19 MR. YARBOROUGH: Your Honor, I did have one thing I'd
20 like to mark.

21 THE COURT: All right.

22 MR. YARBOROUGH: And I'd like to ask Mr. Skidmore
23 just if this is what he was just referring to. He
24 referred to codes by the Highway Patrol and I had that
25 with me.

1 THE COURT: I believe when I looked at what's Court's
2 Exhibit 1, it had the page of codes on the front of it.
3 Let's look and see.

4 MR. YARBOROUGH: I think to make it clear, Your
5 Honor, I've got ---

6 THE COURT: Whatever he's referred to as Highway
7 Patrol codes, you can have that marked as a Court's
8 exhibit.

9 (WHEREUPON, Court's Exhibit No. 2 was marked for
10 identification.)

11 MR. YARBOROUGH: I call Mr. Provet.

12 THE COURT: All right. Let's take a short break
13 before Mr. Provet takes the stand.

14 (WHEREUPON, a recess is taken at 11:39 a.m.)

15 THE COURT: All right. Mr. Yarborough, call your
16 next witness.

17 MR. YARBOROUGH: I call Mr. Provet.

18 THE COURT: We're going to reswear him as well.

19 THE CLERK: Please place your left hand on the Bible,
20 raise your right hand.

21 WHEREUPON,

22 KARRIEM PROVET

23 After having been duly sworn, testified as follows:

24 THE CLERK: Thank you. You may be seated. Please
25 state your full name for the record.

1 THE WITNESS: Karriem Provet.

2 THE COURT: All right. Mr. Yarborough?

3 DIRECT EXAMINATION

4 BY MR. YARBOROUGH:

5 Q Mr. Provet, will you state your name for the record?

6 A Karriem Provet.

7 Q Are you the defendant -- or the plaintiff in this
8 case?

9 A Yes, sir.

10 Q Okay. Let's talk about these Public Safety Highway
11 Department records first just to get that out of the way.
12 Are you familiar with these records?

13 A Yes, sir.

14 Q Okay. How did you get these records?

15 A Freedom of Information Act, FOIA.

16 Q Okay. So you filed a FOIA request when you were in
17 prison and got a copy of these sent to you?

18 A Yes, sir.

19 Q Okay. And did these records fairly and accurately
20 represent what you recall from the night that you were
21 arrested?

22 A No, sir. Say that again?

23 Q Have you reviewed them?

24 A Oh, yes. I -- I reviewed them.

25 Q And they're not hard to figure out, are they?

1 A No, sir.

2 Q Okay. And it's your driver's license and your
3 license tag in there?

4 A Yes, sir.

5 Q Okay. Were you able to find that when you got the
6 records? You have a copy of them there.

7 A Yes, sir.

8 Q Okay. So refer to the page that you have there.
9 What page is that?

10 A 35.

11 Q Okay. And on page 35, do these records have your
12 driver's license on them?

13 A Yes, sir.

14 Q Okay. And what time does it say that your driver's
15 license was called in?

16 A 2212.

17 Q 2212?

18 A Yes, sir.

19 Q Okay. And is that correct?

20 A That's correct.

21 Q It was -- you remember you were stopped at 2212?

22 A No. I was stopped at 9:02, 2102.

23 Q 2102, which was 9:02.

24 So by the time your driver's license was called in,
25 how long had you been on the road?

1 A An hour and ten minutes.

2 Q You'd been on the road for an hour and ten minutes?

3 A Waiting for the K-9 to be present.

4 Q Okay. And when you got these, did you know that

5 these substantiated what you said?

6 A Yes.

7 Q Okay. And are these the records you got pursuant to

8 your FOIA request?

9 A Yes, sir.

10 Q Okay. And you haven't changed them. You've looked

11 at them since you've been in court. They're exactly what

12 they were then.

13 A Yes, sir.

14 Q Okay. And did you make these records?

15 A No, sir.

16 Q Okay. But they have your driver's license on them,

17 they have the car you were driving on there, they talk

18 about your case, they have times on there.

19 A Yes, sir.

20 Q Okay. And have you -- did they talk about them in

21 your original trial?

22 A Yes, sir.

23 Q Okay. And in your original trial at page 161 -- I

24 mean, I'm sorry, 160 and 161, did they specifically look

25 at these records and talk about them?

1 A No, sir. They didn't have the radio log at that
2 time.

3 Q What are they referring to when they're talking about
4 a code 10-29, 10-28 in your trial?

5 A They were talking about when they came in contact
6 with me and what the codes mean and stuff like that.

7 Q Okay. So -- but -- and those codes are the same
8 codes that are used in these records?

9 A Yes, sir.

10 Q Okay. And so is that what caused you to go find
11 these records?

12 A Yes, sir. What caused me to find the records, I know
13 that I was out, and I did view the video of the day of
14 trial.

15 Q Right.

16 A I was out there longer than -- waiting on a K-9 to be
17 present.

18 Q Okay. And so you knew you were out there a long
19 time. And had you had a chance to see that video at that
20 point?

21 A No, sir. I seen it the day of the suppression
22 hearing.

23 Q Okay. That's the first time you saw that video.

24 A First time.

25 Q But did Mr. Long tell you how long the video lasted

1 before that?

2 A I can't recall.

3 Q You can't recall. Well, let me ask you this. Did
4 you write the Department of Transportation a FOIA request
5 before you went to trial?

6 A Yes, sir.

7 Q Okay. And they didn't respond to you about these
8 radio logs, right?

9 A No, sir.

10 Q And -- but once you got them, you looked at them, and
11 you found your name through them. And it looks like you
12 were on the side of the road for how long?

13 A An hour and ten minutes.

14 Q Okay. And that's what these records show?

15 A Yes, sir.

16 Q And you hadn't doctored these records, you hadn't
17 done anything to these records. These are the same

18 records that the girl brought to the Court today.

19 A Yes, sir.

20 Q Okay. And those are the same records you got from
21 the Freedom of Information Act?

22 A Yes, sir.

23 MR. YARBOROUGH: Okay. Your Honor, I'd move those
24 records into evidence.

25 THE COURT: Let me take a look at them.

1 MR. YARBOROUGH: May I approach?

2 THE COURT: Yes.

3 MR. YARBOROUGH: Your Honor, if you want to look at
4 page 35 ---

5 THE COURT: All right.

6 MR. YARBOROUGH: --- you'll see his name, which is in
7 2216. You'll see his driver's license number and car
8 number, which is in 2212.

9 THE COURT: (Reviews documents) All right.
10 Mr. Mitchell, Mr. Yarborough has moved these to be
11 introduced into evidence. What's the position of the
12 State?

13 MR. MITCHELL: Your Honor, I'm just going to renew my
14 previous objection on the same grounds.

15 THE COURT: He indicates at 2102 was when he was
16 stopped; is that right, Mr. Yarborough?

17 MR. YARBOROUGH: On the videotape, which is in the
18 courtroom, it says 2102. In the records here, his -- it's
19 not called in till 2212. That's why I think it's
20 important to look at the time difference between the time
21 he was stopped, which is on video, and the time that it
22 was called in. I mean, that's where we're getting this
23 hour and ten minutes, that everybody's looked at that. It
24 was substantially longer than what was originally
25 presented at trial.

1 MR. MITCHELL: Your Honor, I would reference page 49
2 of the trial transcript and also page 134 in which the
3 officer testified that I saw him approximately 2210, which
4 would be ten minutes after 10 p.m., on page 134 and then
5 also on page 49.

6 THE COURT: Well, I'm going to allow them into
7 evidence. As far as how they're to be interpreted, that's
8 another issue. But I'll allow State's Exhibit 1 into
9 evidence for the -- I mean Plaintiff's Exhibit 1 -- this
10 is Court's Exhibit 1. I'll allow it to be introduced into
11 evidence for purposes of this hearing.

12 (WHEREUPON, Court's Exhibit No. 1 was entered into
13 evidence.)

14 MR. YARBOROUGH: Thank you, Your Honor.

15 BY MR. YARBOROUGH:

16 Q Now, are you familiar with the videotape in this
17 case?

18 A Yes, sir.

19 Q Okay. Now, when was the first time you saw that
20 videotape?

21 A The day of trial, suppression hearing. At a
22 suppression hearing after they swore the jury in.

23 Q Right. Had you asked to see that beforehand?

24 A Yes, sir. I even filed motions.

25 Q Okay. Now let's start there. When you say you filed

1 motions, you're talking about ---

2 A Exhibit 2.

3 Q Yeah. You gave it to me. It's referred to as
4 Exhibit Number -- your Exhibit 2. Is this your motion you
5 filed?

6 A Yes, sir.

7 Q Okay. Now, did you sign it?

8 A Yes, sir.

9 Q Did you file it with the Court?

10 A Yes, sir.

11 Q Okay. And you filed that while Mr. Long was
12 representing you?

13 A Yes, sir.

14 Q Okay. And that's a copy of what you filed?

15 A No. This is the original.

16 Q This is the original of what you filed?

17 A Right.

18 Q How did you get it into the file if this is the
19 original?

20 A I got it notarized.

21 Q Right.

22 A I sent a certified copy to the clerk of court and to
23 the Solicitor's Office.

24 Q Okay. And what were you asking for with that motion?

25 A I was asking to view the videotape.

1 Q Okay. And what's the date of that, the date that you
2 had it notarized? It would probably be on the last page.

3 A The date is October 5th.

4 Q October 5th of what year?

5 A '06.

6 Q '06. So you're sure that's not the date that it was
7 notarized?

8 A October 5, '06.

9 Q Okay. So you sent that to the clerk's office
10 afterwards in order to try to get the discovery in this
11 case?

12 A Yes, sir.

13 Q Okay. So that's not the one that you're talking
14 about where you filed looking to review the videotape ---

15 A Right.

16 Q --- beforehand?

17 A Right. I had ---

18 Q You just had the wrong document. But you had
19 originally asked Mr. Long to be able to look at the
20 document; is that correct?

21 A Correct. That's right here.

22 Q You have? Okay. And what is that? Can you ---

23 A It's a -- says Addendum Motion for Discovery.

24 Q Okay. So you asked him to allow you to look at this
25 before trial?

1 A Yes, sir.

2 Q Okay. And did you have a chance to look at that tape
3 before trial?

4 A No, sir.

5 Q Okay. And why couldn't you see it before trial?

6 A He said he didn't have a place to show it to me at.

7 Q Okay. And at that point, you were in the Greenville
8 County Detention Center?

9 A Yes, sir.

10 Q Okay. And so did he ever bring the tape down there
11 and show it to you?

12 A No, sir.

13 Q So the first time you saw it was when you were in
14 court at the suppression hearing?

15 A Yes, sir.

16 Q And at that point, did you tell Mr. Long that it was
17 wrong?

18 A Yes, sir.

19 Q Okay. What did you say to him?

20 A I said I was out there waiting longer than that for a
21 K-9. I told him that.

22 Q Okay. So right then you told him that you were out
23 there for how long? You knew you'd been out there how
24 long?

25 A About an hour.

1 Q You knew you'd been there an hour. You weren't sure
2 it was an hour and ten minutes, but you knew you'd been
3 there a while.

4 A Yes, sir.

5 Q Okay. And at that point, was there anything Mr. Long
6 could do to try to help you?

7 A No, sir.

8 Q Okay. And did you still feel at that point that your
9 rights had been violated?

10 A Yes, sir.

11 Q Okay. And ---

12 A My Fourth Amendment right has been violated, sir.
13 Yes, sir.

14 Q Okay. And that was because you were on the side of
15 the road.

16 A After I got my license and registration, my
17 documents, the warning ticket, he -- the officer made me
18 wait.

19 Q Okay. So let's talk about that. You got pulled.

20 A Right.

21 Q And when you got pulled, were you surprised?

22 A That particular day they were doing -- there was a
23 whole bunch of officers on the road. They were doing
24 a ---

25 Q An intervention?

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1 A An intervention, yeah.

2 Q Yeah. And so you saw other cars getting pulled.

3 A Yes.

4 Q Okay. And so did you -- did you cooperate with the
5 police officer?

6 A Yes, sir.

7 Q Okay. And did you give them your driver's license?

8 A Yes, sir.

9 Q And did you give him a registration for the car?

10 A Yes, sir.

11 Q Okay. And you know about when that was?

12 A It was about -- you mean timewise?

13 Q Yeah. About what time was it?

14 A He pulled me over, he started asking me questions.
15 He was questioning me.

16 Q I know this is complicated. I know you've taken
17 notes.

18 A Right.

19 Q Can I show you your notes?

20 A Yeah.

21 MR. YARBOROUGH: Is that okay, Judge?

22 THE COURT: Yeah.

23 BY MR. YARBOROUGH:

24 Q That will help speed this along.

25 A Okay.

1 Q Do you remember making your notes on that?

2 A Right.

3 Q And so what time do you remember the police officer

4 pulling you over?

5 A At 9:02, 2102, sir.

6 Q Okay. And it's been a long time. Do you remember

7 it's exactly 9:02 or is that a good review of your notes?

8 A Right. 9:02. I had a family member write out or

9 transcribe ---

10 Q Everything that ---

11 A Of the video, right.

12 Q Right. And on that video, you're pulled at 9:02?

13 A Yes, sir.

14 Q Okay. And you're on the side of the road, he's

15 talking to you. I guess in the trial transcripts, it

16 talks about he's asking you a bunch of questions. Do you

17 remember that?

18 A Yes, sir.

19 Q Do you remember what kind of questions he was asking

20 you?

21 A He asked me where I was going, who I come to see, how

22 long I've been down here, you know. Normal questions like

23 that.

24 Q Right. Did -- at any point, did he ask if he could

25 search your car?

1 A Yes, sir.

2 Q Okay. And did you give him permission to search your
3 car?

4 A No, sir.

5 Q Okay. You did not give him permission to search your
6 car?

7 A No, sir.

8 Q And did you tell Mr. Long that you didn't give him
9 permission to search your car?

10 A Yes. I told Mr. Long. Yes, sir.

11 Q I want to back up one real quick. When you got
12 pulled, did you feel like you had been doing anything that
13 was illegal to have gotten yourself pulled?

14 A No, sir.

15 Q Okay. Did -- I think they said something about you
16 following too close?

17 A Right.

18 Q Or having a burned out ---

19 A Back -- back tag light.

20 Q Back tag light.

21 Was any -- did you feel like any of that was true?

22 A No, sir. It wasn't true.

23 Q Okay. But did you want to challenge that stop?

24 A Yes, sir.

25 Q Okay. But Mr. Long didn't challenge that stop,

1 right?

2 A Correct. He didn't challenge the stop.

3 Q So in the Supreme Court opinion -- and you've read it
4 a bunch of times, I'm sure.

5 A Yes, sir.

6 Q It says that the stop was never challenged; is that
7 correct?

8 A Correct, sir.

9 Q Okay. And then it talks about a detention that goes
10 on for ten minutes?

11 A Correct.

12 Q Okay. And did you tell your appellate counsel -- and
13 what was her name?

14 A Tricia Blanchette.

15 Q Yeah. And you told her that it lasted longer than
16 that.

17 A Yes, sir.

18 Q In fact, you gave these records to her before; is
19 that right?

20 A Yes, sir.

21 Q Okay. So she had those records, but at that point,
22 though, the case was already up on appeal?

23 A Yes, sir. It wasn't preserved for the record so I
24 wasn't able to bring it up on direct appeal.

25 Q So this is the first time you've been able to present

1 these records?

2 A Yes, sir.

3 Q And I know you've gone through them and I know that
4 you've written out kind of a timeline, but what time does
5 the video show that you were pulled?

6 A 9:02, 21:02.

7 Q At what ---

8 A 2102.

9 Q 2102.

10 A Right.

11 Q And what time is that? That's ---

12 A 9:02.

13 Q Okay. And how long does it show that you're on the
14 side of the road?

15 A An hour and ten minutes before they call the stop in.

16 Q Okay. He calls the stop in when?

17 A Well, on the video, he initially called the stop in
18 when he was pulling me -- activating his blue lights.

19 Q Yeah.

20 A And then he called the stop in a second time.

21 Q Okay. And he calls the stop in a second time when
22 you've been out there for how long?

23 A An hour and ten minutes.

24 Q Right. And that's in those records.

25 A Yes, sir.

1 Q And does he call in a dog?

2 A Yes, sir.

3 Q Okay. And how long had you been in the car when he

4 called in the dog?

5 A The dog was called six minutes into the traffic stop.

6 Q Six minutes into the traffic stop. But the dog

7 didn't get there until when?

8 A It was 2218, so it was an hour and some change.

9 Q An hour. And you see that on the video.

10 A On the video, it looks like he was there within a

11 ten-minute time frame.

12 Q But the reason it's different is because of what?

13 A They edited the videotape. Something --

14 something ---

15 Q You think they edited it or you think it just doesn't

16 line up right?

17 A It doesn't line up. Something ---

18 Q Right. And you tried to get the original videotape,

19 right?

20 A I tried.

21 Q And you hired Investigator Skidmore to get it?

22 A Yes.

23 Q And he couldn't get it?

24 A No.

25 Q He already testified to that.

1 A Caroline Horlbeck was my PCR appointed attorney.

2 Q Right.

3 A And she tried to get it for me, and they had wrote
4 her saying that the original video has been destroyed.

5 Q All right. And you have that letter?

6 A Right. I have that letter.

7 Q Right. How did you get the access to the radio log
8 one more time?

9 A Through the Freedom of Information Act. I have --
10 the paper's right there, sir.

11 Q Okay. And you've gone through -- why don't you --
12 let's -- so that the Court will understand, can you line
13 up all the times that you've taken notes on between the
14 video and the time logs and kind of outline for the Court
15 where -- what's in there?

16 A Yes.

17 Q Okay. You want to look at your -- the notes?

18 A Yes.

19 When I was pulled over on the video, it was at 9:02.

20 Q Okay.

21 A The radio log said I was pulled over at 2212.

22 Q And what is 2212?

23 A 10:12.

24 Q Okay. So let's -- so that's an hour and ten minutes
25 different.

1 A Yes, sir.

2 Q Okay. Now let's continue on with what you see in the
3 notes you've taken. When is -- what about the dog? I was
4 trying to get those times in.

5 A Well, after I was being questioned, I'd say, for
6 about 2108, that's when the officer calls my tag in again.

7 Q And that's on page 35 of the --

8 A Right. He calls my tag in again and he calls my
9 driver's license number.

10 THE COURT: Wait a minute. I'm confused. He -- the
11 video says he was stopped at 9:02, the radio log says he
12 was stopped at 10:12, right?

13 MR. YARBOROUGH: Yes, sir.

14 THE WITNESS: Correct.

15 THE COURT: All right. And then the next question
16 was what?

17 BY MR. YARBOROUGH:

18 Q What time does the radio log show that your driver's
19 license is actually called in? That's different than the
20 stop.

21 A At 2108.

22 Q You don't have it right there in your notes?

23 A Right. 2108. That's when he calls it in -- my tag
24 in for a second time.

25 THE COURT: All right. Wait a minute. 21 -- I'm

1 getting confused between military time -- and tell me
2 again on the radio log what you say it says when you were
3 stopped.

4 THE WITNESS: 10:12.

5 THE COURT: You gave me the military time. It
6 doesn't say 10:12 on the radio log. What's it say on the
7 radio log?

8 THE WITNESS: 2212.

9 THE COURT: And then you were stopped at 2212
10 according to the radio log.

11 THE WITNESS: Right.

12 THE COURT: And then they called in your ticket at
13 2108. Is that what you're testifying to?

14 THE WITNESS: No, sir.

15 THE COURT: Well, then you need to straighten that
16 out. I'm all confused.

17 THE WITNESS: Yes, sir. I got pulled over at 9:02 on
18 the video. The radio log, when the officer called
19 dispatch for the initial stop, it was at 10:12.

20 THE COURT: Military time. How did you come up with
21 10:12?

22 THE WITNESS: Oh. Military time is 2212, sir.

23 THE COURT: All right. Go ahead.

24 THE WITNESS: Okay. Now six minutes into the video,
25 you will see Officer Owens calling in my tag number, also

1 my driver's license number. That same identical event on
2 the radio log is on page 35 when he calls in my tags and
3 my driver's license -- well, calls in my tags and my
4 driver's license number. He's given a 27.

5 THE COURT: I'm sorry. Given what?

6 THE WITNESS: A 27. That means ---

7 THE COURT: Yeah. Give me the time. Y'all started
8 out this line of questioning. He was going to tell me
9 what the radio log said something happened, and then he
10 was going to tell me what the video said.

11 THE WITNESS: The radio log said I was pulled over at
12 2212, the video said I was pulled over at 2102.

13 THE COURT: 9:02.

14 THE WITNESS: 9:02.

15 THE COURT: Right. All right. Well, does the video
16 talk in terms of military time or normal time?

17 THE WITNESS: Military time.

18 THE COURT: Let's keep it exactly what the log says
19 and exactly what the video says.

20 So the video says 2102.

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. What happened next?

23 THE WITNESS: I was being questioned once he -- I was
24 being questioned for about like six minutes into the stop.
25 And I give him my license and registration. And he went

1 back to the car, and he calls in for a second time my tag
2 number. Then he calls my driver's license number.

3 THE COURT: All right.

4 BY MR. YARBOROUGH:

5 Q What time is that on the ---

6 A On the video?

7 Q Right.

8 A That's at 2108.

9 Q Right. Now, does he do that again at twenty ---

10 THE COURT: Well, let me ask you, I'm still the -- he
11 was going to show me what the log says. What time does
12 the log say they called in your tag and your driver's
13 license number?

14 THE WITNESS: 2212.

15 THE COURT: No. That's what time they stopped you.
16 It's what you testified to.

17 THE WITNESS: That's what time he called in the tags
18 and the driver's license number according to the radio
19 log.

20 THE COURT: All right. What time does the radio log
21 say that you were stopped?

22 THE WITNESS: 2212, sir.

23 THE COURT: Okay. So all of that in one -- that's
24 where I'm a little bit confused because you have the video
25 says he was stopped at 2102, and then the video says six

1 minutes later the tag was called in. The radio log
2 indicates by the log that all of that took place at 2212.

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. Great. I'm straight. Thank you.

5 MR. YARBOROUGH: Thank you.

6 BY MR. YARBOROUGH:

7 Q And how long were you out there?

8 A I was out there over an hour, about an hour, I felt.

9 Q All right. And when you look at the records and the
10 radio log, how long does it show you being out there?

11 A About an hour.

12 Q And did you tell Mr. Long that?

13 A Yes, sir.

14 Q Okay. And you heard Mr. Long testify that he didn't
15 have the radio logs at the time of the trial.

16 A Correct, sir.

17 Q Okay. But did you know something was up when you saw
18 that video?

19 A Yes, sir.

20 Q And did you tell Mitchell Long that at that point?

21 A Yes, sir.

22 Q Okay. And that's been your -- you've been sure of
23 that since that day.

24 A Yes, sir.

25 Q And were you able to give those records eventually to

1 your appellate counsel?

2 A Yes, sir. Well, how she got them was I had wrote Lee
3 Watkins, South Carolina Highway Patrol. It's right there.

4 Q And you got them to her?

5 A She said that she will get back with me. They said
6 that they were trying to locate them and get back with me,
7 but they never got back with me. I got convicted after
8 that. So when I hired her, Tricia Blanchette, my
9 appellate attorney, she contacted Highway Patrol and they
10 gave her the radio log, but it was only three pages that
11 they gave her.

12 Q Right. And so you went through the Freedom of
13 Information Act and got the complete log.

14 A Yes, sir.

15 Q Okay. And you actually had started asking her that
16 before that, right?

17 A Before trial. Yes, sir.

18 Q And why were you asking for it before trial?

19 A I was asking for it before trial because I knew
20 something wasn't right because I knew I was -- from the
21 transcribed -- from the transcribed video that I had,
22 nothing matched up. And I knew since I was there and my
23 recollection, I waited an hour after I got my documents
24 back.

25 Q Okay. And did you get a letter back from the Highway

1 Patrol about them looking for your records before trial?

2 A No, sir.

3 Q No, you did not?

4 A No, sir.

5 Q And -- but you had written them, and they just didn't
6 respond?

7 A Right. They just didn't respond.

8 Q Okay. Do you recognize this letter?

9 A Yes, sir.

10 Q And what is that letter?

11 A This is a letter that I wrote, my request to Highway
12 Public Safety, South Carolina Highway Public Safety.

13 Q Okay. And you had written them to do what?

14 A Get the radio logs, all the information, all the
15 records from them.

16 Q Right. And were you able to get them?

17 A Yes, sir. They sent it to me. It's right there.

18 Q That's how they sent them to you?

19 A Yes, sir.

20 Q And that letter was dated 9/10/2015?

21 A Yes, sir.

22 Q So you couldn't get the -- you weren't able to get
23 them for a substantial period of time?

24 A After I lost my viciderary [phonetic] ---

25 Q Your ---

1 A --- after they affirmed my decision in the Supreme
2 Court ---

3 Q Right.

4 A --- and I have to file a PCR, I wrote them.

5 Q You wrote them because you wanted to try to get to
6 the bottom of this.

7 A Yes, sir.

8 Q Because you'd always felt like that you were on the
9 side of the road a substantial period of time.

10 A Yes, sir.

11 Q And you knew your trial transcript was wrong?

12 A Yes, sir. They said the officer, the K-9 officer was
13 there in ten minutes. The K-9 officer couldn't have been
14 there in ten minutes.

15 Q Why couldn't it from looking at those radio logs?

16 A Looking at the radio logs, he came at 2218.

17 Q Right. And how long had you been stopped at that
18 point?

19 A An hour and some change.

20 Q Okay.

21 THE COURT: Wait a minute. Wait a minute. He
22 testified that the stop on the radio log with license and
23 tags was 2212.

24 THE WITNESS: Yes.

25 THE COURT: And then he just testified that the K-9

1 arrived on the scene at 2218.

2 THE WITNESS: Yes.

3 MR. YARBOROUGH: But, Your Honor, if you'll look at
4 the tape ---

5 THE COURT: No, no. I'm just -- the questioning was
6 about the radio log. I just want to be sure I'm clear
7 what his testimony is. When he interprets the radio log,
8 the radio log, the stop and the license and the tags was
9 2212.

10 THE WITNESS: Yes, sir.

11 THE COURT: The K-9 was called, according to the
12 radio log, at 2218, six minutes later.

13 THE WITNESS: Yes, sir.

14 THE COURT: According to the radio. I just want
15 to ---

16 MR. YARBOROUGH: According to the radio logs.

17 THE COURT: Okay. All right. Go ahead.

18 BY MR. YARBOROUGH:

19 Q But at that point, how long had you been on the side
20 of the road?

21 A An hour and some change. An hour and about six to
22 eight minutes.

23 Q Right. Because you had been -- the highway patrolmen
24 were talking to you, right?

25 A Yes, sir.

1 Q And that's backed up from the car video that was
2 admitted in your first trial.

3 A Yes, sir.

4 Q So the car video has you coming in at 21:02:21; is
5 that right?

6 A Yes, sir.

7 Q Okay. And so the car video and the radio logs have a
8 discrepancy of over an hour and ten minutes; is that
9 right?

10 A Yes, sir.

11 Q Okay. Can you explain that?

12 A They didn't call the initial stop in.

13 THE COURT: He doesn't have any basis by which he can
14 explain that. I mean, I object. I'm not supposed to
15 object, but that's an improper question.

16 BY MR. YARBOROUGH:

17 Q You know, how long had you been out on that ---

18 A Over an hour, sir.

19 Q Okay. And did you tell Mr. Long that?

20 A Yes, sir.

21 Q Okay. And do you feel, based on your knowledge of
22 the case, that these radio logs substantiate what you
23 said?

24 A Yes, sir.

25 Q Okay. And they substantiate what you said because

1 you have to look at the videotape with the radio log
2 together, right?

3 A Yes, sir.

4 Q Okay. And I know it's confusing, but can you look at
5 your notes and kind of lay it out for the Court one more
6 time clearly when you're pulled and what the tape says and
7 what the radio log says?

8 THE COURT: We've already been down that road. Let's
9 move on.

10 MR. YARBOROUGH: Okay.

11 BY MR. YARBOROUGH:

12 Q You had -- is this a copy of your warrant?

13 A Yes, sir.

14 Q Okay. Can you tell the Court why you feel like that
15 warrant is important?

16 A It has my driver's license number on it.

17 Q Okay. And is that driver's license number the same
18 driver's license that coincides with the radio logs?

19 A Yes, sir.

20 Q Okay. Is that why you felt like that was important
21 to show the Court?

22 A Right, right. Also, it states here that I had got
23 caught with 28 grams and less than 100.

24 Q Right.

25 A Right.

1 Q And how much were you tried for?

2 A 100 to 200.

3 Q Right. Did you ever get an idea of why that was
4 important? I mean, do you know why that's important
5 today?

6 A Yes, sir.

7 Q Why?

8 A Yes, sir. The discrepancy in it. The drugs grew.

9 Q Right. And did you try to ask Mr. Long about that?

10 A Yes, sir.

11 Q Okay. And were you able to get to the bottom of it?

12 A No, sir.

13 Q Okay. And do you know the answer to that today?

14 A No, sir.

15 Q But you were charged with one weight and you were
16 tried on another one?

17 A Yes, sir. It was three different weight amounts
18 extended from one incident.

19 Q What are you talking about three different weight
20 amounts?

21 A When I got arrested, when they weighed it, it was 28,
22 no more than 100 grams. When it went to SLED, SLED said
23 it was 200 to 400 grams.

24 Q Okay.

25 A And the first indictment was dismissed, the second

1 indictment was dismissed with leave to restore, and the
2 third indictment was 100 to 200.

3 Q All right. And have you ever seen the SLED analysis?

4 A Yes, sir.

5 MR. MITCHELL: Judge I hate to interject.

6 THE COURT: Yeah. Where are we going with this?

7 MR. MITCHELL: I see no allegations.

8 THE COURT: Those are all evidentiary issues. He was
9 tried on the indictment. You're not tried on the warrant.
10 You're tried on the indictment. What's this got to do
11 with the PCR? What's the relevance?

12 MR. YARBOROUGH: He had asked his attorney for an
13 explanation.

14 BY MR. YARBOROUGH:

15 Q Did you ever get one?

16 A No, sir. I never got any explanation.

17 Q Okay. And so when you were trying to determine what
18 to do about pleading guilty or not pleading guilty, there
19 was a lot of questions that you couldn't get answered; is
20 that right?

21 A Right. I didn't get any answers.

22 Q Okay. Now, explain that. When you say you didn't
23 get any answers, what do you mean?

24 A I wasn't told anything. I had to, you know, write
25 the clerk of court and get all my documents myself before

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1 trial to prepare for trial.

2 Q Okay. And you didn't feel like Mr. Long helped you.

3 A No, sir. He didn't help me at all.

4 Q Okay. If you would have had a little bit more faith
5 in Mr. Long, would you have done something different?

6 A Yes, sir. I would have -- I would have -- if
7 Mr. Long would have showed me the video, we could have
8 went another route as far as -- you know, but I would have
9 took the plea. I had a three-year plea. I would have
10 took that.

11 Q And that was just because you wanted to see the
12 discovery that was against you?

13 A Yes. I wanted to see all the evidence that was
14 against me.

15 Q Okay. And now are you having to pay a price because
16 of that?

17 A Yes, sir. I've been locked up 11 years.

18 Q I know you have a lot of other things that you want
19 to tell the judge. Is there anything you can think of
20 that I haven't asked you?

21 A I got some exhibits. I would like all my exhibits to
22 be put into evidence.

23 Q Okay. And these are the exhibits you've given me?

24 A Yes, sir. I would like -- yes. Yes, sir.

25 Q Okay. You want to just run through those exhibits

1 just rather quickly and tell the Court why you think
2 they're relevant?

3 MR. MITCHELL: Your Honor ---

4 THE COURT: Yeah. This is a PCR hearing to determine
5 about the question of whether his trial lawyer was
6 ineffective or not. Before we go through a whole stack of
7 documents -- and, Mr. YARBOROUGH, what do you believe as
8 far as the relevance of what it is you're showing your
9 client?

10 THE WITNESS: It shows how my ---

11 THE COURT: Well, no. Hold on a minute. The
12 lawyers, he's asking to put them in.

13 Why do you want them in, Mr. YARBOROUGH?

14 MR. YARBOROUGH: Your Honor, I think that his
15 reasoning, and I think he's testified to it, was -- would
16 be to show the Court that he has maintained this position
17 throughout from the very beginning.

18 THE COURT: All right. If any of those documents are
19 dated prior to his trial, I'll let them in. If they're
20 after trial, they're not relevant.

21 MR. YARBOROUGH: One second.

22 (Pause in proceedings.)

23 THE COURT: Well, look at them with the dates on
24 them. Are they all dated?

25 THE WITNESS: Right. All -- all my evidence is prior

1 to trial.

2 THE COURT: Now, listen. It's not my question. All
3 those documents you've got there, are they dated prior to
4 trial? Are they dated, one?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Are the dates on those prior
7 to the trial that was held ---

8 MR. MITCHELL: August 7th through 8th, Your Honor,
9 2007.

10 THE COURT: What's the dates again of the trial?

11 MR. MITCHELL: August 7th through 8th, 2007.

12 THE COURT: For purposes of this hearing, I'll allow
13 whatever is dated prior to the trial date as part of the
14 record.

15 MR. YARBOROUGH: I have . . .

16 THE COURT: How many are we down to?

17 MR. YARBOROUGH: We're down to two exhibits, Your
18 Honor.

19 THE COURT: All right. Show those -- let's have them
20 marked. Show those to Mr. Provet and . . .

21 (WHEREUPON, Applicant's Exhibit Nos. 1, 2 and 3 were
22 marked for identification.)

23 MR. YARBOROUGH: A lot of these exhibits you have,
24 Judge. One of them is the indictment. The other one is
25 the arrest warrant.

1 THE COURT: Yeah. Anything that's already part of
2 the record, part of the file, they don't need to be
3 introduced. I mean, I'll have all that before me.

4 All right. Here's the thing. You've got any more --
5 how many more questions do you have for Mr. Provet?

6 MR. YARBOROUGH: I'm down to the last couple.

7 THE COURT: All right. Let's do this. Put your
8 documents over there on that table. I'm going to give
9 Mr. Mitchell an opportunity to cross-examine him, we break
10 for lunch. Y'all can figure out which ones fit -- need to
11 come in or not.

12 Do you have any further questions, Mr. Yarborough?

13 MR. YARBOROUGH: Briefly, Your Honor.

14 BY MR. YARBOROUGH:

15 Q Do you feel like Mr. Long, for whatever reason, had
16 your best interest?

17 A No, sir.

18 Q Okay. And that's because he didn't get this
19 information for you prior to trial?

20 A Yes, sir.

21 Q Okay. And do you think he would have had a different
22 outcome at trial?

23 A If I would have had the radio log, yes, sir.

24 Q Okay. And would it perhaps have made you do
25 something different?

1 A Yes, sir. I would have won my trial. I would have
2 won the suppression hearing.

3 Q You would have won the suppression hearing.

4 A Right. And I wouldn't be here today.

5 MR. YARBOROUGH: And if -- no further questions.

6 THE COURT: All right. Thank you. Y'all can work
7 through those documents during the break.

8 Mr. Mitchell?

9 MR. MITCHELL: Very briefly.

10 CROSS EXAMINATION

11 BY MR. MITCHELL:

12 Q Good afternoon, Mr. Provet. How are you?

13 A All right.

14 THE COURT: We're not in any hurry. Y'all take as
15 much time as you need.

16 BY MR. MITCHELL:

17 Q How many previous attorneys did you have before you
18 employed Mr. Long?

19 A I had Richard Warder. And I had tried to bring
20 Richard Allen in, but him and Mr. Long weren't eye to eye,
21 didn't see eye to eye, so I wind up with Mr. Long.

22 Q So Mr. Long was your second attorney?

23 A Yes, sir.

24 Q How many times did you meet with Mr. Long?

25 A Numerous times, sir.

///

1 Q Numerous times.

2 So did you ever discuss -- well, let me back up. You
3 discussed the traffic stop with Mr. Long during those
4 numerous times?

5 A Yes, sir.

6 Q Did you ever talk about length of time?

7 A Yes, sir.

8 Q What did you say to him?

9 A Mr. Long was just pretty much he didn't really -- you
10 know, he didn't believe me.

11 Q So you told him that you were out there for over an
12 hour?

13 A Yes, sir.

14 Q Let me ask you this. You said that the first time
15 you saw the video was at the suppression hearing.

16 A Yes, sir.

17 Q Did you say anything to Mr. Long at the time when you
18 saw the video?

19 A Yes, sir. After the hearing, I told Mr. Long that I
20 waited over an hour for a K-9 to be present. It was
21 impossible for the K-9 to be there. The testimony that
22 the officer gave that he was there on the scene at this
23 particular time, I said, "No. That's not true." I told
24 him.

25 Q Did you ever discuss with Mr. Long that you possibly

1 would testify at trial?

2 A Say that again, sir?

3 Q Did you ever discuss with Mr. Long the possibility
4 about testifying at trial?

5 A No, sir.

6 Q So he never -- you guys never had that conversation
7 about you testifying?

8 A No, sir.

9 Q Did you not want to testify?

10 A I wanted to, but he said it was the State's burden,
11 so let the video be the evidence.

12 Q So when was the first time that you requested these
13 actual records, these radio logs?

14 A When I was in Greenville County.

15 Q And this was when?

16 A Back in '06.

17 Q Back in '06.

18 And you never heard anything back?

19 A Never heard anything back, sir. When I had Tricia
20 Blanchette, that's when I heard something back from
21 Highway Patrol after I was convicted.

22 Q Let's talk about the traffic stop for a little bit.
23 Drugs were found in the car, correct?

24 A Yes, sir.

25 Q Is it correct in saying that you tried to escape or

1 tried to run?

2 A Yes, sir. I was -- after being waiting out there all
3 that time, I got scared. I didn't know what they were
4 doing. I'd never been pulled over like that. They were
5 acting crazy. It was like Doctor Jekyll and Mr. Hyde.
6 They were good in the beginning and then they just -- they
7 turned.

8 Q They turned. So ---

9 A Right.

10 Q So you got pulled over, the police stopped you,
11 you're out there for an hour.

12 A Right.

13 Q And then the drug dog came?

14 A Yes, sir.

15 Q And when you got to court for the suppression hearing
16 -- well, I guess I should back up. You told Mr. Long all
17 of this?

18 A Yes, sir.

19 Q And Mr. Long chose not to move forward with this
20 information, decided not to present any information or
21 make any arguments about it?

22 A Right. Yes, sir.

23 Q Okay. And when you had the opportunity to
24 potentially testify after hearing that Mr. Long didn't say
25 anything about it, you didn't want to.

1 A No, sir. I didn't testify.

2 Q It's your testimony -- strike that. I asked that
3 already.

4 A I had got the radio log after trial. I told Mr. Long
5 everything that I'm telling the courts today.

6 Q Are you saying that Mr. Long just simply ignored what
7 you told him?

8 A Yes, sir. I had to file pro se motions on my behalf.
9 I had to write the law enforcement agency on my behalf.

10 Q Why did you get rid of your first attorney again?

11 A Me and him didn't see eye to eye. I had caught a
12 failure to appear because I live in Charlotte, and he said
13 that he sent the letter and I never got it. So when I got
14 pulled over, I got arrested and extradited back down to
15 South Carolina. Richard Warder, he -- he wasn't trying to
16 help me. He just wasn't trying to help me.

17 MR. MITCHELL: Thank you.

18 Judge, that's all the questions I have.

19 THE COURT: Thank you.

20 Anything further, Mr. Yarborough?

21 MR. YARBOROUGH: Just briefly.

22 REDIRECT EXAMINATION

23 BY MR. YARBOROUGH:

24 Q He asked you about the drug dog. Do you know from
25 the radio log when the drug dog got there?

1 A 2218.

2 Q That's when the drug dog got there. And at that
3 point, you'd been on the road for how long?

4 A An hour and 16 minute.

5 Q Okay. Did Mr. Long advise you that you were going to
6 win the suppression hearing?

7 A No. He didn't advise me.

8 Q Did he tell you that he had a plea offer on the table
9 for you?

10 A Yes, sir.

11 Q And did you feel like, based on the fact that you'd
12 been on the side of the road for more than an hour, that
13 you should take a plea?

14 A No, sir. I wanted to see the videotape. I wanted to
15 see the evidence that the State had against me.

16 Q So you might have considered a plea, but they
17 wouldn't show you the evidence?

18 A Yes, sir.

19 Q They wouldn't show you the video.

20 A Right. Because I -- I was beat up. They beat me,
21 everything. It was -- it got crazy out there. It got
22 real hectic out there for me.

23 Q Right. And do you feel like that, A, you would have
24 liked to have seen the video is one thing that you're
25 complaining about Mr. Long in your PCR?

1 A Right.

2 Q Two, is he didn't get the radio log.

3 A Correct.

4 Q And you believe either one of those would have
5 changed the outcome of this case.

6 A Yes, sir.

7 MR. YARBOROUGH: Okay. Thank you. I don't have
8 any . . .

9 THE COURT: All right. Thank you, Mr. Yarborough.
10 Thank you, Mr. Provet. You may step down.
11 Any other witnesses, Mr. Yarborough?

12 MR. YARBOROUGH: Your Honor, I may have one more
13 short witness. Could I talk to her and then tell you --
14 are you going to ---

15 THE COURT: Y'all approach.

16 (WHEREUPON, a bench conference was held off the record.)

17 (WHEREUPON, a recess is taken at 12:51 p.m.)

18 THE COURT: Mr. Yarborough, are you ready to proceed?

19 MR. YARBOROUGH: I am.

20 THE COURT: All right. We're back on the record in
21 the matter of Karriem Provet vs. State of South Carolina.

22 Mr. Yarborough, call your next witness.

23 MR. YARBOROUGH: Shontea Smith.

24 THE CLERK: Please place your left hand on the Bible
25 and raise your right hand.

1 WHEREUPON,

2 SHONTEA SMITH

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you. You may be seated. And
5 please state your full name for the record.

6 MR. YARBOROUGH: Your Honor, she's really low spoken,
7 and I'm going to ---

8 THE COURT: Okay. All right.

9 THE WITNESS: My name is Shontea Smith.

10 MR. YARBOROUGH: Never mind.

11 THE COURT: Mr. Yarborough doesn't tell the truth,
12 does he?

13 THE WITNESS: Well, I try to use my inside voice.

14 THE COURT: Well, if you're in theology school, you
15 can use your preaching voice.

16 THE WITNESS: Okay. That's fine.

17 THE COURT: All right. Tell us your name.

18 THE WITNESS: Shontea Smith.

19 DIRECT EXAMINATION

20 BY MR. YARBOROUGH:

21 Q Shontea, how are you tied into this case? Are you
22 related to Karriem?

23 A We have a relationship.

24 Q And how long have you had that relationship?

25 A We've had a relationship since 2005.

1 Q Okay. And were you with him when he was going
2 through this?

3 A Yes, sir.

4 Q Was this a traumatic time in your life?

5 A Yes, sir.

6 Q Okay. And since then, what have you done with your
7 life? You've moved -- you're doing what now? I know when
8 I was up with my daughter graduating, you were graduating?

9 A Yes, sir. While this was going on, I've earned my
10 bachelor's of arts in religious studies, a master's of
11 arts in religious studies, and also a master's of
12 theological studies.

13 Q Where?

14 A From Duke University.

15 Q Okay. And did you have a number of dealings with
16 Mr. Long?

17 A Yes, sir.

18 Q Okay. Now, let's kind of start from the beginning
19 and kind of tell the Court what you did. Not what anybody
20 told you, but just what you did.

21 A Okay. So Karriem acquired Attorney Long prior to
22 being transported to Greenville County.

23 Q Right. Did you help him do that?

24 A I did not.

25 Q Okay.

1 A I was adamant that he should not hire Attorney
2 Long ---

3 Q Okay.

4 A --- because, according to Karriem, Attorney Long had
5 dozed off in their initial encounter, so I thought that
6 was problematic for an attorney.

7 Q And so did you try to help Karriem in his dealings
8 with Mr. Long?

9 A I did. So Karriem asked for ---

10 Q Between y'all, did y'all look for this videotape that
11 you've heard talked about in this courtroom?

12 A Yes, sir.

13 Q Okay. Did you try to help get that videotape?

14 A Initially, I received a copy of the videotape from
15 Attorney Long.

16 Q Okay. You got a copy of that tape right there from
17 Attorney Long?

18 A Correct.

19 Q And did you look at it?

20 A Yes, sir.

21 Q Okay. And when you looked at it, did you take notes?

22 A Yes, sir. I -- Karriem referenced the transcription.
23 I transcribed what I saw and heard -- well, I couldn't
24 transcribe what I saw, but I -- I relayed what I saw on
25 the video, and I transcribed everything that I was able to

1 hear in the video.

2 Q Okay. And did you tell Mr. Long that that's not what
3 Karriem says happened?

4 A Yes, sir. I told Mr. Long that Karriem is adamant
5 that this video -- the time of the stop is not nearly as
6 long as Karriem states that he's been on the side of the
7 road.

8 Q Okay. And did Karriem ever get a chance to see that
9 video?

10 A No, sir. Well, prior to the trial?

11 Q Prior to the trial.

12 A No, sir.

13 Q You're sure about that?

14 A Yes. I'm positive.

15 Q 100 percent?

16 A Yes.

17 Q Okay. Did you come to the trial?

18 A I did.

19 Q You did.

20 And did you find these radio logs?

21 A No, sir.

22 Q You didn't.

23 Did you know about the existence of those radio logs
24 prior to trial?

25 A No, sir.

1 Q Okay. And have you had a chance to compare the radio
2 logs with the tape?

3 A Yes, sir.

4 Q And have you written it out?

5 A I -- yes, sir.

6 Q You've gone through it line by line?

7 A Yes. Based on my transcription.

8 Q Based on your transcription, which is listening to
9 what's on the tape and what's on the radio logs.

10 And can you tell the difference in the amount of
11 time?

12 A Yes. There's at least an hour difference in between
13 what is taking place on the video as compared to what the
14 radio log says.

15 Q Okay. And did you -- I guess prior to -- prior to
16 trial, you didn't know that, right?

17 A No, sir.

18 Q Okay. But you tried to convey to Mr. Long that
19 Karriem said that he was on the side of the road longer
20 than that. So you were telling him that, and were you
21 able to get a good answer why he wasn't doing anything
22 about it?

23 A Well, Attorney Long felt that it was too risky to go
24 to trial, and any conversation that we had was not about
25 acquiring radio logs or anything. It was always about you

1 should take this good deal that I've gotten for you.

2 Q Right. And have you studied this case pretty
3 closely?

4 A Without being a legal expert, I would say I have.

5 Q Right. From looking at the records, it's an extended
6 period of time; is that correct?

7 A Yes, sir.

8 Q All right. And are you familiar with the -- have you
9 listened to or have you read the transcripts from the
10 Court of Appeals?

11 MR. MITCHELL: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. YARBOROUGH: One second, Your Honor.

14 BY MR. YARBOROUGH:

15 Q Based on your role in this, how did you feel about
16 Mr. Long's representation?

17 MR. MITCHELL: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. MITCHELL: Thank you.

20 BY MR. YARBOROUGH:

21 Q Were you having to relay information from Karriem to
22 Mr. Long?

23 A Yes, sir. Because there would be periods of time
24 where Karriem -- Karriem would write to Attorney Long, and
25 in between his writing letters to Attorney Long, I would

1 go by and visit Attorney Long's office and make calls when
2 there seemed to be a breakdown in communication.

3 Q Okay. And you tried to handle those breakdowns of
4 communication?

5 A I -- yes, I did.

6 Q And based on your personal knowledge, there was a
7 breakdown of communication?

8 A Yes, sir.

9 Q No question about it.

10 A No question about it. There were many breakdowns of
11 communication.

12 MR. YARBOROUGH: Okay. Thank you. I don't have any
13 further questions.

14 THE COURT: All right. Thank you.

15 MR. MITCHELL: I'll be brief, Your Honor. Not too
16 many.

17 CROSS EXAMINATION

18 BY MR. MITCHELL:

19 Q Just a couple questions for you. You were in here
20 for the testimony of Mr. Provet, correct?

21 A Correct.

22 Q Did you hear him testify that he met with Mr. Long on
23 several occasions?

24 A Yes, sir.

25 Q Were you privy to any of those conversations?

1 A Privy, meaning ---

2 Q Were you in the room?

3 A --- heard from -- no, sir..

4 Q So you weren't in the room at any time, any of those
5 meetings?

6 A No, sir. He was in custody, so

7 MR. MITCHELL: Okay. Thank you.

8 That's all the questions I have, Judge.

9 THE COURT: All right. Thank you, Ms. Smith. You
10 can step down.

11 Anything further?

12 MR. YARBOROUGH: Not from this witness, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. YARBOROUGH: Your Honor, my client has expressed
15 a request that the Court look at the videotape at some
16 point to try and see what he's talking about.

17 THE COURT: Okay. I'll do that. I'll do that this
18 -- I'm going to be here all week. It is part of the
19 record in that it was evidence in the case, and certainly
20 it has been referred here. And I will -- in making my
21 ruling, I will review the transcript and documents that
22 have been provided here today. And so I will also -- I
23 will also -- and I think we do have the tape here in the
24 courtroom; is that correct?

25 MR. YARBOROUGH: That's correct, Your Honor.

1 THE COURT: And I've been informed that -- through
2 the bailiff that he has the ability that he can bring the
3 ancient technology of how to play a VHS up here. So
4 before I issue my ruling, I will review that tape.

5 MR. YARBOROUGH: My client's request is that -- he
6 prepared a Court's exhibit which compares the video and
7 the radio log. It's been referred to a number of times.
8 It's been testified to. I'd ask that the Court mark it as
9 an exhibit and use it for whatever reference it might feel
10 it could help or not. I think it does summarize -- it
11 summarizes the times, if that could be of some benefit.
12 It was prepared by him, but everything in here has been
13 testified to.

14 THE COURT: Mr. Mitchell, do you have a position on
15 the Court reviewing ---

16 MR. MITCHELL: Your Honor, I'm not going to object to
17 it. I'll leave it up to you if you want to review it.

18 THE COURT: All right. I'll look at it. Make it a
19 part of the record.

20 (WHEREUPON, Court's Exhibit No. 3 was marked for
21 identification.)

22 MR. YARBOROUGH: Your Honor, my client would like to
23 address the Court.

24 THE COURT: Well, here's the thing. We don't have
25 bifurcated for representation. You're his lawyer, and

1 maybe you can explain to him what that means. You can't
2 be your own lawyer and then have a hired lawyer as well or
3 an appointed lawyer. I'm not -- what the issue is. But
4 for purposes of a postconviction relief hearing, it would
5 be improper for me to hear from him. I'll certainly be
6 glad to hear from you speaking on his behalf,
7 Mr. Yarborough.

8 MR. YARBOROUGH: Thank you, Your Honor. If the Court
9 please, I think what my client would like to say, and I'm
10 going to -- I'm going to try to do it in a way that I
11 think he'll agree with, is he feels very strongly,
12 obviously, that during this whole round of representation
13 that he had with Mr. Long that he didn't get the whole
14 story. He didn't get -- he didn't get a complete package
15 of what the evidence was against him and how it would fit
16 into the legal process.

17 He's not a lawyer, but he has studied the law and
18 he's a smart guy. He feels like unquestionably that his
19 Fourth, Fifth, Sixth and Fourteenth Amendment violations
20 [sic] were violated. And forget about those other ones
21 for a second. We'll let that be part of the record. But
22 specifically, his Fourth Amendment was violated by the
23 length and the duration of the stop that day.

24 He was -- if you look at the record, if you look at
25 the testimony at trial, there's references to the police

1 officer saying, "I wasn't going to let him leave. I
2 wasn't" ---

3 THE COURT: Now, we don't need to rehash what those
4 -- those issues were raised on appeal and have been dealt
5 with by the Court of Appeals and our Supreme Court. I'm
6 not to consider that. Obviously, I can consider anything
7 that he brings up as far as the postconviction relief, but
8 we don't need -- and I understand the argument that -- the
9 argument in the PCR would be that had he had available
10 this additional evidence that his lawyer didn't ask for,
11 then he would then believe he would have -- his
12 constitutional rights were violated and be suppressed.
13 But we don't need to hear what's argued before two Courts
14 of Appeals.

15 MR. YARBOROUGH: Right. I've explained that to him,
16 Your Honor, and I think what he's really trying to say is
17 that, look, if I would have had those radio logs, if I
18 could have shown that that stop was longer than what was
19 presented in the courtroom, I would have won. One, I
20 think that's true.

21 Two, I'm not so sure that if he would have had a
22 chance to watch what was being shown against him -- he's
23 not -- he's not a dumb man. He would have looked at it
24 and said, you know, maybe I'll never go to trial and, you
25 know, long gone. We'd have never seen him. He would have

1 gotten this deal he had.

2 But nobody showed him that video over there that day.
3 And the reason that's so important that he didn't see the
4 video is because he didn't know that he needed to go find
5 this other evidence that was out there. That shouldn't
6 have been his job to begin with, Judge. It should not
7 have been his responsibility to go out there and look for
8 those radio logs. All this responsibility should have
9 been, and all his wife's responsibility should have been
10 Mr. Long. Something's wrong. Something's wrong, and
11 somebody could have found it.

12 I mean, it ain't -- it's not rocket scientist. I
13 mean, Skidmore found this stuff. I mean, he found it.
14 Tricia Blanchette found it. Karriem found it through the
15 Freedom of Information. I mean, somebody could have found
16 those radio logs because if you're out there that long,
17 something has to have come up.

18 Okay. You go back and you look and you read this
19 stuff and you read these dog cases and you read that
20 stuff. You go, when was the dog called? There's always a
21 case, you know. It's in the Supreme Court opinion. When
22 was the dog called? And so you go look in that case, and
23 you look and see when the dog was called, and you go, wow,
24 that doesn't make any sense. The dog's called four
25 minutes, six minutes into the stop.

1 Karriem could say, look, I've been out there, we've
2 been talking, these officers were hassling me, things were
3 going back and forth. That's all in the record. But if
4 you put -- if you would have put the radio log information
5 on top of this case at the Supreme Court, the Court of
6 Appeals or, for that matter, before the Circuit Court, he
7 wins.

8 He -- the stop's too long. And it didn't happen. It's
9 not his responsibility that it had to happen that way.

10 You know, Mr. Long is a fine lawyer, but Mr. Long, in
11 this case, failed to investigate the traffic violation.
12 For whatever reason he said, you know, there were other
13 lawyers involved, there were other things involved, but
14 people were putting him on notice that there was an issue
15 here. He was put on notice that there was an issue, and
16 he had a duty or an obligation to either get out of the
17 case or say what else is out there.

18 And, you know, he could have -- you read enough of
19 these traffic stop cases, they start talking about radio
20 logs. I mean, it's -- that information's out there. The
21 information about these police officers, they could have
22 investigated the police officers. They could have looked
23 into it. Skidmore looked into it. He said, yeah, they're
24 both gone. They're both gone for problems.

25 Your Honor, he's entitled to some relief. I mean,

1 you know, you're sitting here having to Monday morning
2 quarterback everybody. And I got it. And it's hard when
3 a case is this old and looking at it, but this is a case
4 that there is real evidence out there that something went
5 wrong and something was amiss.

6 And that -- and you look at all the cases. I mean, I
7 think even if under the -- you just look at that
8 videotape, under the law today -- under the law today, he
9 probably wins. I mean, you look at the Rodriguez case,
10 you look at the Tindall case, those cases, I mean, you
11 can't keep on that traffic stop just going. You can't.
12 That barter, that -- that just trying to get enough
13 information to get the guy to slip up.

14 But, see, that's not even the case here because what
15 happened here is the -- and I know you don't want to look
16 at it, but the officer said, "I want to let him go."
17 That's clear from the radio logs that there was a problem.
18 he was out there looking for, he was going to figure it
19 out. And you look at and you said they called the K-9 in,
20 and, you know, he'd already been out on the road for 45,
21 50 minutes by the time the K-9 is called in. I mean,
22 Judge, I just think it's an overwhelming case for
23 postconviction relief.

24 THE COURT: Thank you, Mr. Yarborough.

25 Mr. Mitchell, anything you want to say?

1 MR. MITCHELL: Just very briefly, Your Honor. Just
2 going -- I won't rehash this trial, won't rehash the case.
3 I will just remind the Court of the standard in South
4 Carolina under PCR is what the burden is for the plaintiff
5 in this actual case, putting forth the case. And they
6 have to show that the defense counsel was, first,
7 deficient, which essentially means that their
8 representation failed under the reasonable norms of an
9 attorney in South Carolina, and, second, that that
10 performance prejudiced the defendant in this particular
11 case.

12 I would submit to the Court that Mr. Long's
13 performance in this case did not fall below the
14 performance or the reasonableness under the law here in
15 South Carolina. And once you've met that -- or if you
16 have not met that first prong, then I would submit that
17 you don't proceed to the second prong of whether there's
18 prejudice at all because you would have to say that
19 Mr. Long's performance fell below what's reasonable under
20 the norms. And if you say that, then you proceed to the
21 prejudice problem. But if you don't meet that first
22 prong, you can't proceed to the second.

23 So I would just say, Your Honor, that Mr. Long's
24 performance, his representation of the defendant did not
25 fall below those standards.

1 THE COURT: All right. Thank you, Mr. Mitchell.
2 Mr. Yarborough?

3 MR. YARBOROUGH: Just briefly, Your Honor. In what
4 he said, Mr. Long built the record based on a ten-minute
5 stop. You look at that. That's what he based that record
6 on was a ten-minute stop. We know that stop was longer
7 than that.

8 There are records that were available. He didn't get
9 them. You know, he didn't show up with the records. It's
10 his job as the defendant's lawyer in this case to listen
11 to this defendant, go out there and look for the records.
12 And if he didn't find them, where does the buck stop? It
13 has to stop there. I've made mistakes before. You know,
14 I didn't get them. I didn't find them. It's what
15 Mr. Long said: I didn't get them, I didn't find them.
16 Would the outcome have been different? Yes. So I think
17 we've met all the prongs for postconviction relief.

18 THE COURT: Well, let me ask you -- both of you, what
19 I've looked at so far in the Court of Appeals and the
20 Supreme Court case, factually there was no -- and I may be
21 getting this wrong, so educate me. It appears that there
22 was not that the stop only lasted ten minutes. It appears
23 that what the Supreme Court said in review of the facts
24 and when you look at the record is that it was at the
25 ten-minute mark into the stop in which he was presented

1 his driver's license, his registration and everything
2 back, and at that point, the officer indicated that he
3 asked for consent to search. Of course, he says -- I
4 mean, he would say that he did not consent. The Supreme
5 Court ultimately ruled that there was consent, and at some
6 point -- and I didn't find that to be clear -- after that
7 the K-9 did a search, but that was after the consent. Am
8 I missing something as far as it's being characterized as
9 a ten-minute stop? Obviously, when you look at the
10 appeals cases and the record, the entire stop certainly
11 lasted more than ten minutes.

12 MR. YARBOROUGH: What they're talking about is
13 there's two prongs of the Fourth Amendment violation.

14 THE COURT: I understand the reasonableness, and I
15 understand the prongs, and I understand the traffic cases
16 where you exceed the basis for the initial stop and,
17 therefore, without reasonable suspicion or probable cause,
18 you can't go forward. I'm just wanting to be sure as far
19 as the -- what's been -- you're characterizing as the stop
20 was ten minutes. From the way I read it -- and tell me,
21 again, if I'm wrong -- just factually that what -- in the
22 two appeals cases, that it was ten minutes into the stop
23 in which the ticket and registration were returned. Now,
24 it may be the log differs from that, but at least what
25 they had at trial, and is that correct? Are you alleging

1 that the whole stop took ten minutes?

2 MR. YARBOROUGH: Your Honor, no. I'm not. I'm
3 saying that stop, that the initial banter going back and
4 forth was considerably longer than ten minutes, and so the
5 Fourth Amendment violation was exceeded at that point.
6 And they should have returned his -- but once they
7 returned the driver's license and the registration, then
8 you've got a new Fourth Amendment right.

9 THE COURT: And what do you base that it was longer
10 than ten minutes, that initial -- other than -- I'm just
11 -- and I understand that you have the issue of the log,
12 but the Supreme Court and the Court of Appeals
13 characterized it as a ten-minute stop. They had all those
14 facts in front of them. They had the banter. They had
15 him running across the interstate. They had him -- you
16 know, that was all part of the facts of the trial. I'm
17 just wanting to be sure that is not -- you're not alleging
18 that the entire -- well, maybe it's a terminology about
19 the stop. You're not alleging that they believe that they
20 testified that the entire process was ten minutes and he
21 was under arrest and taken away in a car, are you?

22 MR. YARBOROUGH: No, sir. Nobody said that.

23 THE COURT: Okay. That's simply what I'm wanting to
24 make sure that I'm clear on.

25 MR. YARBOROUGH: Right. And I think what the Supreme

1 Court said was this. They said that, look, it sounds like
2 there was about a ten-minute banter back and forth with
3 this officer and before his license and stuff was
4 returned. I mean, it's clear from the radio log that
5 that's not true. That took a lot longer than that. The
6 guy's on the side ---

7 THE COURT: Well, we don't even know about the radio
8 log based on -- at the trial. It doesn't -- I mean,
9 that's something I've got to deal with today. But I just
10 want to be sure for purposes of the trial and what he was
11 convicted on, it was more than just a ten-minute encounter
12 in its totality.

13 MR. YARBOROUGH: It was more than a ten-minute
14 encounter, but it shouldn't have been, Judge. That's --
15 that's ---

16 THE COURT: And I understand that argument, too. But
17 the Supreme Court ruled on that. I'm not going to revisit
18 -- that's not something I'm going to ---

19 MR. YARBOROUGH: I'm not asking you to revisit it,
20 Judge. I'm just telling you the Supreme Court got it
21 wrong because the evidence that was available was not
22 presented at trial.

23 THE COURT: Well, that's another issue, I mean, where
24 they got ---

25 MR. YARBOROUGH: But that's an issue for

1 postconviction relief.

2 THE COURT: And I understand that completely. Right.
3 But I'm not going to reverse the Supreme Court on my
4 opinion on ---

5 MR. YARBOROUGH: You're welcome to.

6 THE COURT: All right. I just had that -- that was
7 just really a practical question I had about the time. I
8 understand that. I want to be sure I understood your
9 argument.

10 MR. YARBOROUGH: Judge, I think, and I'm beating a
11 dead horse, but if he's out on that road for 50 minutes
12 before that dog gets there, this case comes back. I mean,
13 it -- how about this. It doesn't come back. It never
14 goes to the Supreme Court.

15 THE COURT: All right. I understand your argument
16 and I understand the time frame allegations.

17 All right. Anything else?

18 MR. MITCHELL: Nothing Your Honor.

19 MR. YARBOROUGH: Your Honor, just I'd like to be able
20 to cover a couple things that my client wanted me to
21 cover. He said -- and I'll just tell you this that he
22 tried to find these records for a while, and I think
23 that's clear in the record. I just want to make sure you
24 know what his position ---

25 THE COURT: You don't have to tell me over and over

again what the -- that was clear. I understand that.

MR. YARBOROUGH: Okay. Good. I just want to make sure that I'm -- you know, this is his day, and I just -- I'd like to make sure that he feels like you're getting his version.

THE COURT: This is his day, but we follow the rules of court and we're not going to --

MR. YARBOROUGH: Thank you, Your Honor.

THE COURT: You make your arguments and then the Court will deliberate.

All right. That concludes this hearing.

(WHEREUPON, proceedings concluded at 1:27 p.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth 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 Common Pleas for Greenville County, South Carolina, on the 26th day of June, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 15, 2017

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter



South Carolina Department of Public Safety

MR. KARRIEM PROVET
GREENVILLE COUNTY DETENTION CENT
BLUE #16
20 MEGEE STREET
GREENVILLE, SC 29601-2210

12/01/2006

Request Number : 0612006

RE: RECORDS PERTAINING TO THE ARREST OF KARRIEM PROVET.

DEAR MR. PROVET

YOUR REQUEST FOR THE ABOVE REFERENCED INFORMATION HAS BEEN RECEIVED BY THE FREEDOM OF INFORMATION OFFICE. THE SC DEPARTMENT OF PUBLIC SAFETY STAFF ARE CURRENTLY RESEARCHING AND COMPILING THIS INFORMATION.

IF WE ARE UNABLE TO LOCATE YOUR REQUESTED INFORMATION, BASED ON THE INFORMATION SUBMITTED, YOU WILL BE NOTIFIED BY MAIL.

FURTHER INQUIRIES REGARDING YOUR REQUEST SHOULD INCLUDE YOUR ABOVE MENTIONED FREEDOM OF INFORMATION REQUEST NUMBER. WE CAN BE REACHED BY PHONE AT (803) 896-7759.

THANK YOU,

LEIGH WATKINS
FOI COORDINATOR
OFFICE OF GENERAL COUNSEL
SC DEPARTMENT OF PUBLIC SAFETY

I tried to contact Leigh Watkins about three times since I receive this letter "no" response back.

ARREST WARRANT

H-181458

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofTHE STATE
against

KARRIEM PROVET

Address: 6408 WATERFORD LAKES DR.
CHARLOTTE NC 28206

Phone: SSN:

Sex: M Race: B Height: 5'07" Weight: 130

DL State: NC DL #: 22226836

DOB: 10 03 1974 Agency ORI#: SCSPD0000

Prosecuting Agency: SCHP

Prosecuting Officer:

Offense: TRAFFICKING COCAINE

Offense Code:

Code/Ordinance Sec. 44-53-370

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of
GREENVILLEThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant KARRIEM PROVET
on 5-1-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Hensley

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLE

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518Personally appeared before me the affiant KARRIEM PROVET ^{EJA} E.J. AMAN ^{EJA}
being duly sworn deposes and says that defendant KARRIEM PROVET
did within this county and state on 05 01 2002 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of GREENVILLE)
in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING COCAINE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts: THE DEFENDANT (KARRIEM
PROVET) DID POSSESS KNOWINGLY MORE THAN 28 GRAMS OF
COCAINE, A SCHEDULE II CONTROLLED SUBSTANCE UNDER
S.C. LAW, WITHOUT A LEGAL REASON TO POSSESS THE
SUBSTANCE. THIS OFFENSE DID OCCUR IN GREENVILLE
COUNTY, SOUTH CAROLINA.Sworn to and subscribed before me
on 5-1-02Signature of Issuing Judge (L.S.)
William White Harris

Signature of Affiant

Affiant's Address 100 EXECUTIVE CENTER DR. A-1

COLUMBIA SC 29210

Affiant's Telephone 803 896 5528

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05 01 2002 defendant KARRIEM PROVET
did violate the criminal laws of the State of South Carolina (or ordinance of☒ County/ ☐ Municipality of GREENVILLE as set forth below:
DESCRIPTION OF OFFENSE: TRAFFICKING COCAINENow, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.Signature of Issuing Judge (L.S.)
William White Harris

Signature of Issuing Judge

Judge Code: 946

Judge's Address

3400 Grandview Dr. Simpsonville, SC

Judge's Telephone

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

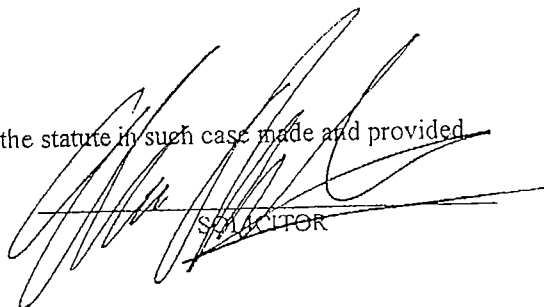
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on MAY 24, 2005 the Grand
Jurors of Greenville County present upon their oath:

That KARRIEM PROVET did in Greenville County, on or about the 1st day of May, 2002, knowingly
sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial
assistance or otherwise aid, abet or conspire to sell, manufacture, deliver or bring into the State or was
knowingly in actual or constructive possession of more than 100 grams of Cocaine. This is in violation of
§44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


PROSECUTOR

WITNESSES

EDWARD J. AMAN

D. L. ... / E

SCHP

05/01/02

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 10/3/1974 B/M SSN: 128-68-4387

ACTION OF GRAND JURY

TRUE BILL

H. Daniel ...
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

guilty

Natalie G. Riles 8/8/07
Foreperson of Petit Jury Date:

DOCKET NO. 2005-GS-23003478

JDN

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MAY TERM 2005

THE STATE

vs.

KARRIEM PROVET

GUILTY

Indictment for

✓ 0280

TRAFFICKING COCAINE

VIOLATION § 44-53-370

168

143

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

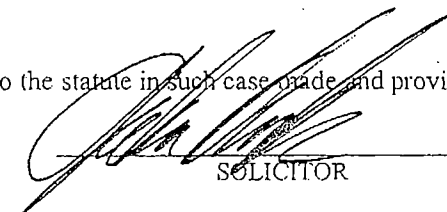
INDICTMENT FOR
RESISTING ARREST

At a Court of General Sessions, convened on NOVEMBER 26, 2002 the

Grand Jurors of Greenville County present upon their oath:

That KARRIEM PROVET did in Greenville County, on or about the 1st day of May, 2002, knowingly, willfully and unlawfully oppose or resist an arrest being made by Edward J. Aman with South Carolina Highway Patrol, whom he knew or reasonably should have known was a law enforcement officer. This is in violation of §16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

TCC-013
07/2000

South Carolina Department of Public Safety



Highway Patrol Communications

Radio Log

Page: 20

Station: KTA702/800MHZ

Operator: Bell, Sam

Date: 5-1-02

Time	To	From	Message
2033		R20	(28) 387 HCM
2033		C12	(8)
2033	C67		Billy Fuddola (5) (12) 9/12
2034		C132	10-44 @ 338 Mc Mahan Rd
2036		C177	(23)
2037		R9	10-8
2037		R25	10-8 from R9. By R9
2038		C112	(38) Red Neon 635 KNU 275B385
2038		R25	(38) B/W Chev. Beretta N1585 B/K 25
			127 MSR
2039		R9	(38) Red Pont 786 LKJ 85N13@46
			W/M Driver.
2039		C112	10-4 Toyota Echo
2039	C132		Setting on back @ 344 Mc Mahan
			Veck is still there, Blue Car.
2042		R25	(8)
2042		R9	(8)
2043		C132	(23) @ (50)
2043		R9	Maint pick Debris 85NTS + 85ST5
2043	C112		(4)
2045		C112	NO Response
2046		C112	(8) C12
2046	C112		(55) 5B385@344/K @ 20 Tape Cam Mini
			Van Merc.
2047		C177	(28) FL T94YUP
2048		C126	Strong Line
2048		C177	(27) WA-STE YOUNGBE787N/E

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South Carolina Department of Public Safety



Highway Patrol Communications

Radio Log

Page: 31

Station: KIA702/800MHZ

Operator: Ball, Larry

Date: 5-10-02

Time:

To:

From:

Message:

Time	To	From	Message
2050	R19		10-22
2051		C112	(38) White Honda Pic/4dr Bradshaw PAU TAG- 385 385.5 @ 27
2051		C177	(5) WA. 271 BBI311 Young Bradley E. 8-5-72
2052		C112	10-4
2054	C177		(2) Clearing Young-
2055		R29	(38) NC MSW 9949 Tan Van 85WB N/O 44mm C. Occ.
2056		C132	1017 AND CO 3 HOLIDAY ST W Pelsen.
2058		C112	101-1030
2100		R19	BLU ms PXC 407 NB. NB AUGUSTA
2101		X110	1030 TX 4BZZZ3 BLK GMC N of 48 AT THE 51 st NOW
2101		R7	1034
2102		R25	1030 NB 1185 Lt DODGE STRATUS AL 11015812
2103		C132	106 #3 HOLIDAY ST W Pelsen
2103		X110	1027 TX ALLEQUIN, ARTURO 5-13-64
2105	X110		1027 NO RECORD TX TX 15205855
2107		C132	1027 Calwood/DuPont Pelsen
2107		R25	101-1030
2107		R19	101-1030
2108		R20	1030 CA 340 DYG TDS N of 185
2110		X110	106 1039 New
2111		R20	101-1030

South Carolina Department of Public Safety



Highway Patrol Communications
Radio Log

Page: 32

Station: K1A702/800MHZ

Operator: Billy [Signature]

Date: 5-1-02

Time	To	From	Message
2112		C112	1128 262 SR GEN FORD EXP 595 JKB
2113		C164	10630 WHITE RD & WELCOME
			AVE 104 WITH SU
2114		R20	1038 NB N of 1185 P25192C
2114		1132	(6) 28 DENDY RD
2116		C112	104
2116		C67	(23) Time
2116	C67		2014 hrs.
2117		C67	10-24 (8)
2118		R20	(8)
2119		C164	(8)
2121	C61	C67	POSS 1055 10280 FAIRVIEW Ch.
			White Chev Lumina 709 DLM / [unclear] 1028
2121		X110	108 1038
2121		R.9	108 1038
2121		R20	108 AK 719 F2D GEN 105 N8
			N of W4R
2122		C177	1024 FL T94VP Young
			ELLISON 261 KFB RICE
2123		C112	108 1038
2126		R20	(8)
2128		C67	Description Again
2128	C67		White Chev Lumina 709 DLM
2128		C67	10-44
2129		C132	(34) OF CAH
2129	C132		1914 hrs.
2130		L7	(34)

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[Signature]

South Carolina Department of Public Safety



Highway Patrol Communications
Radio Log

Page: 33

Station: KIA702/800MHZ

Operator: Bak, Jimmy

Date: 5-1-02

Time	To	From	Message
2130		R19	(38) Gold Buick 738 XLT BR. NTB85 @ Augusta Got them off wall.
2136		X110	(27) 705-2893
2136	X110		(27) Thompson D Pl.
2137		C112	(38) Dak Chevy approx 564 NCB ① Occ 26 1/2 385 SB. ② W/ R29
2139		R25	(4)
2139		C112	(50) on 86 B/T 20-25 I/E Bunk Rd Bapt Church Vech vs Dora
2140	C132		Sec # for Howell
2142		X110	172.
2142	X110		
2142		R19	(8)
2142		R20	(6) W/ R29
2147		C112	(8)
2148		R29	(8)
2148		R20	(8)
2148	C126		(50) SC291 P/L Waffle House
2151		C132	(8) W Peter (17) to Hwy 87 (50)
2154		C126	(13)
2155		R9	(38) TX N24 PML GOLD Pont 85 NB @ 45.
2156		R19	(38) Blw Honda Accord no-28 85 NB N/O W/H.
2158		C112	(38) 275 B385 DAK Merz 124 KDK ① Vech vs Dora Fairview Rd N/R City
2159	C111		Simpville Buick 862-505 Mr. Greene

South Carolina Department of Public Safety

Highway Patrol Communications
Radio Log



Page: 34

Station: KIA702/800MHZ

Operator: Bull, Sammy

Date: 5-1-02

To: From: Message:

70		K7	(34)
70		C112	(27) 3410913
1	C112		(27) Cash DM C/A Noun-DOB 5-28-64
21	R29		(4)
21		R29	(4) (8)
31	R19		(4)
21		R19	(4)
52		R25	(38) 85N @ 4525 Silver Accura 818 GRT
2		R19	(4)
3		C67	(38) Hwy 11 @ 14 B/K Ninn. 209MBP Exterior
23		C112	(4)
24		C132	(23)
24		R25	(8)
25	C67		(4)
25		C67	(4)
27		R25	(38) White Cad/ 898KXE 85N J/P Mauldin Rd Ext.
07		C67	(27) 8833087
27	C67		(27) Cotton Clam D C/A
28	A4		(10/24) NB 54 Gray Mustang + B/K Veh T2D.
09		R20	(38) 269 MTT White Chev Impala 85NB N/D W/H R W/HN Dec tinted windows
09		C112	Turn Laurens Ave

Edna R. Hill

South Carolina Department of Public Safety



Highway Patrol Communications

Radio Log

Page: 35

Station: KTA702/800MHz

Operator: Ball, Jimmy

Date: 5-1-02

Time	To	From	Message
2209		C/32	(22) 011233640
2209		C/67	(8)
2209	C/32		(27) Hankcom Clan D C/A
2211	R25		10-4
2211		R25	10-4 Coville w/me.
2211	R20		10-4
2211		R20	10-4
2212		R9	(28) NC. NVZ 8064 (27) 22260
2214		R19	(38) B/K Ninc 242 KBN
			5385 @ Staunton Bridge
2215		R25	(8) (17) R9
2216	R9		(27) Provet Clan C Active NC
2216	R9		(28) 10-10-79 97 Ford Williams
2216		R20	(38) NC MPZ 1787 Red Suzuki
			Proded. 85 NTB B/F
2218	All		10-33 Coville is 10-33
2218	R25	R25	(1) One on Foot
2218		R9	10-67X (1) B/K Male Sig 15
2219	All		Coville Sig 15.
2220		R20	10-8 (12) to R9
2220		R19	10-8 C/A
2220		C/12	Thump @ 77MM
2220		R20	Out w/ R9 & Vech
2224	C67		(50) #2 Oak Drive, Trlr. Park
			Bar Geo Metro hit Vech + Shield
2226	All		RD 855TS SAIA Truck
			E325745 @ 50MM

PC-212
07/000

South Carolina Department of Public Safety



Highway Patrol Communications
Radio Log

Page: 36

Station: KTA702/800MHZ

Operator: Bally Sam

Date: 5-1-02

Time: Date: From: Message:

2230		K7	(34)
2230		C177	(38) 310 J/P Silver Honda 291 F/H
			Grille Tech
2231	R29		10-4
2231		R20	All units R20, R9, R25 10-4
2232	C177		10-4
2232		C177	10-4
2237	C164		OK 10:9 E. Decatur St. put tag on Nine Purple Letting on Blacks So County Can Tow Vehicle in a Jam of traffic
2238		C177	(8) Clear
2242		C126	(24)
2246		R9	1051 R/T
2248	R9		DNOL BRADY DAVIS (17)
2248		R20	(8) W/R9
2249		C67	Is it in Trailer Park
2249	C67		#2 Oak Dr
2251		C67	10-44 so far no damage
2254		K7	(42) Bally

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Ramon R. R. R.

South Carolina Department of Public Safety



Highway Patrol Communications Radio Log

Page: 37

Station: KIA702/800MHZ

Operator: Canat

Date: 5-1-02

Time	To	From	Message
2254		K7	10 41 COW DUT
55		R9	10 18
55		P77	1038 291-CHAVE 374 ESQ GRAY TRUCK
57		C164	798 MARK
59		P77	10 8
59		R25	10-67 X1 10-17 LEC B/M
2300		M7	10 34
		C164	TAQ VEH OWNED ALURE
06		R19	1038 SILV MAZDA NUM 7637 MC
			N/B AUGUSTA
08		R25	10-6 LEC WITH 1067
10		C126	T-AC LH & 85
13		R19	10 8
13		C177	1058 291 W/PIRIM 167 MHF GRAY CHV SUV
13		R19	10 46 BUICK /BLU 376 LTA 46 NE
15		R9	10-6 w/ R25 LEC D.C.
15		P177	10 4
17		R19	1038 SILV CHV 865 XBX H/B 146
18		C126	1038 44 X/B MC EXP 4862 SILV LHC
19		C164	10-6 OFC
24		R19	A A KESLEY 91868
24		C177	10 8
26		P77	10-6 OFC
26		R19	10 4
26		C126	10 4
27	P132		1050 W/PI'S WEEKLY FIRM RD
			SUBJ HAS MOVED VEH & 1012 AT HILLCREST

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South Carolina Department of Public Safety



Highway Patrol Communications Radio Log

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Station: KIA702/800MHZ

Operator: C. D. W. A. T.

Date: 5/1/02

Time:

To:

From:

Message:

2350		HY	1034
31		P126	108
31		R19	104
33		R19	108
34		PH	C43 SUPV TONIGHT
36		C15	I85 S/B 14 - 39 - CLENN
36		P126	TP9 1046 SWAT TO CALL 1051
			A OV OWNIN W/ CH LATER 88 N/O AUGUSTIN
39		X110	1042
41		C67	10.6 W/ CO 47 N/B I85
45		R20	1058 85 N/B 42 TRUST HM
			ALA BLK - GREEN LEXUS
46		P126	T- SPOT LN & 85
47		P41	1042
48		P67	108
48		R20	1027 AL 531 9501 - PL
59		C132	1038 W/ EX 385 1 MILE R/CHRU
			5493 SD QA
0000		R20	R19 10.6 W/ 1139 1029 ON CHRU
01		H7	1042 CANNON

C. D. W. A. T.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
GENERAL SESSIONS

State of South Carolina,

WARRANT NOS. H 181458 and
H 181459 (and any and all other charges)

-VS-

Karriem Provet,

MOTION TO SUPPRESS
(FULL HEARING REQUESTED)

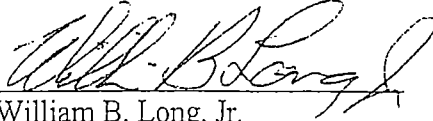
Defendant.

The undersigned does hereby Move on behalf of Defendant Karriem Provet for a Suppression of all evidence obtained as a result of and following the stop of the vehicle operated by that Defendant leading to these charges inasmuch as this stop led to an unconstitutional and otherwise illegal detention of the person and property of this Defendant, thereby resulting in an unreasonable and illegal warrantless search of his person, motor vehicle and other property.

Defendant would move this Court to fully view the videotape and listen to any audio tape of this vehicle stop and what transpired thereafter leading to the illegal search of Defendant, Defendant's vehicle, and Defendant's other property. This detention was unreasonably long, warrantless, and without probable cause. Therefore any questioning of Defendant or search of his person, vehicle, or other property was non-consensual, warrantless and clearly unreasonable. For these reasons, any evidence obtained as a result thereof is clearly illegal and in violation of this State's and the United States' constitutions and therefore must be Suppressed. Defendant alleges that it is necessary for the Court to view and listen to these materials carefully before deciding upon this Motion.

Thereafter, Defendant moves for a reasonable time period to review the Judge's ruling and determine how next to proceed, if necessary.

AND IT IS SO MOVED.



William B. Long, Jr.

Attorney for Defendant

P.O. Box 10248

Greenville, South Carolina 29603

(864) 242-6633/ Fax (864) 242-8888

E-mail: blongjr@bellsouth.net

Federal ID: 2723

S.C. Bar No.: . 003405

July 8, 2007

Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina

Plaintiff,

-VS-

Karriem Provet

Defendant.

) COURT OF GENERAL SESSIONS

) Case No(s) : 05-GS-23-3478;
05-GS-23-4238

) TRANSCRIPT OF RECORD

August 7 - 8, 2007
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

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

Representing: State
JOHN D. NEWKIRK, Esquire

Representing: Defendant
WILLIAM LONG, Esquire

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2312
Greenville, S.C. 29602

Records are
taken and
produced via

CAT 7

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COURT'S EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 THE COURT: All right. Before we go ahead
3 and begin, if either one of you have anything to
4 offer me as far as case law, briefs or anything
5 that we will eventually hear, I'll be happy to
6 take it now or over the next however long we're
7 going to be. It's my understanding we met back
8 in chambers, this is the State of South Carolina
9 versus Karriem Provet. And we have decided that
10 my understanding is there are some pretrial
11 motions. We're going to pull the jury and send
12 the rest of the panel home and send this jury
13 home for the night and bring them back at 9 a.m.
14 Is that correct, Solicitor?

15 MR. NEWKIRK: That is correct, Your Honor.

16 THE COURT: Is that correct, sir?

17 MR. LONG: Yes, subject to my motions
18 being heard.

19 THE COURT: Of course, that's what we're
20 going to do this afternoon.

21 MR. LONG: Yes, ma'am.

22 THE COURT: All right. So the jury isn't
23 waiting on everybody. Absolutely. All right.
24 With that said, let's go ahead and bring the
25 panel up.

1 Caroline, is that --

2 MR. NEWKIRK: Your Honor, I believe it is
3 five and five strikes.

4 THE COURT: Is it? Is it five and five?

5 MR. NEWKIRK: Yes.

6 THE COURT: All right.

7 MR. LONG: Your Honor, the thought
8 crossed my mind that on the motion that if we
9 chose a jury panel and swear it --

10 THE COURT: We are not going to swear it
11 tonight. We're going to swear them in the
12 morning.

13 MR. LONG: Okay.

14 THE COURT: We're not going to swear them
15 in until the morning. All right. How many
16 alternates are we going to go with, Gentlemen?

17 MR. NEWKIRK: I'm okay with one, Your Honor.

18 THE COURT: Sir?

19 MR. LONG: One.

20 THE COURT: One is fine. All right.
21 Okay. We will not swear them in until the
22 morning.

23 Sir, are you an officer?

24 SPEAKER: Yes, ma'am.

25 THE COURT: Do you mind just sitting over

11010

here for me just for a moment while the jury panel comes in just so that I know who I am talking to?

SPEAKER: Yes, ma'am.

THE COURT: I appreciate it. Thank you, sir.

SPEAKER: Yes, ma'am.

(WHEREUPON, the jury enter at approximately 3:01 p.m.)

THE COURT: Thank you all. Welcome back, Ladies and Gentlemen of the jury. It's good to see you all again. At this time, if you would, give me your attention. We are about to begin the trial of the case entitled the State of South Carolina versus Mr. Karriem Provet who is charged in the bill of indictment by the Grand Jury of Greenville County with the offenses of Trafficking Cocaine and Resisting Arrest. Now, the State is represented this matter by Mr. John Newkirk.

Mr. Newkirk, if you would, turn around and face the panel please. Thank you, sir.

And the Defendant in this manner or matter is represented by Mr. Billy Long.

Mr. Long, if you would please stand up.

1 Thank you, sir. Additionally, Mr. Long, if you
2 would, have your client stand up.

3 MR. LONG: I might note that his
4 pronunciation is Provet.

5 THE COURT: Oh, Provet. Thank you, sir.
6 I appreciate that.

7 Thank you, Mr. Provet. All right. If you
8 would, face the panel, sir, for me. All right.
9 Thank you.

10 Ladies and Gentlemen of the jury panel, I
11 have the following questions to ask you. Are any
12 members of the jury panel related by blood or
13 connected by marriage with the Defendant in this
14 case, Mr. Karriem Provet? If so, please stand.
15 (No response).

16 Is any member of the jury panel a close
17 personal friend or share a close special
18 relationship or a special relationship with Mr.
19 Karriem Provet? If so, please stand. (No
20 response).

21 Are any members of the jury panel related by
22 blood or connected by marriage with either of the
23 attorneys involved in this case? That is, Mr.
24 Newkirk or Mr. Long. If so, please stand. (No
25 response).

1108

1 Again, I'm not sure if I asked this. Is any
2 member of the jury panel not only related by
3 blood or marriage but also share a special
4 relationship or close personal friend of either
5 one of the attorneys involved in this matter?
6 Again, that's Mr. Newkirk or Mr. Long. If so,
7 please stand. (No response).

8 Ladies and Gentlemen, potential witnesses in
9 this case are Trooper J.D. Owens of the South
10 Carolina Highway Patrol, Investigator Eddie Aman.
11 Am I pronouncing it correctly?

12 MR. NEWKIRK: Aman.

13 THE COURT: Aman. Thank you, sir. Of the
14 Anderson City Police Department. And if any of
15 these people are in the courtroom, I would ask
16 that you stand at this time for the jury.
17 Trooper John Price with the South Carolina
18 Highway Patrol and Mr. Quincy Ford of SLED.

19 Thank you, Mr. Ford.

20 Again, my question is as to these potential
21 witnesses, is any member of the jury panel
22 related by blood or marriage or share a close
23 personal or social relationship with any of these
24 potential witnesses? If so, please stand. (No
25 response).

1169

1 Ladies and Gentlemen, in this case, the
2 Defendant is charged with an offense involving
3 illegal drugs. Are any of you so prejudiced
4 against illegal drugs that you can't return a
5 fair verdict based only upon the facts and
6 evidence and the law as I instruct you? If so,
7 please stand. (No response).

8 Is any member of the jury panel or an
9 immediate family member of theirs a member either
10 formerly or currently with law enforcement? If
11 so, please stand.

12 **THE JUROR:** Would you say that again?

13 **THE COURT:** Yes, ma'am. Are any members
14 of the jury panel or their immediate family
15 former or current members or participate in law
16 enforcement in any way, shape or form? If so,
17 please stand. I see three of y'all standing. If
18 anyone else needs to stand, feel free to jump up.

19 Mr. Tolbert. Is that correct?

20 **THE JUROR:** Yes.

21 **THE COURT:** All right. Sir, again, would
22 you give us your name and jury number and your
23 connection.

24 **THE JUROR:** My name is Terry Tolbert.

25 Juror Number 98. Retired police officer from New

1 York.

2 **THE COURT:** All right. Mr. Tolbert,
3 Thank you, sir. I appreciate it. You may be
4 seated.

5 Yes, ma'am.

6 **THE JUROR:** My name is Katherine Sibley.
7 I'm Juror Number 87. My brother is a police
8 officer in Simpsonville, city police.

9 **THE COURT:** Thank you, ma'am. I
10 appreciate it.

11 Yes, sir.

12 **THE JUROR:** Yes, ma'am. Todd Huffstutler,
13 number 51. My brother is a police officer in
14 Tennessee.

15 **THE COURT:** Thank you, sir. Anyone
16 further? All right. Is any member of the jury
17 panel a member of or contributor to such groups
18 as MADD, Mothers Against Drunk Driving, SADD
19 which is Students Against Drunk Driving or groups
20 like CAV which is Citizens against Violence. Is
21 any member again of the jury panel a member of or
22 a contributor to those types of organizations?
23 If so, please stand. (No response).

24 Ladies and Gentlemen of the jury, again, I
25 know you know very little about this case.

1 However my question is has anyone on the panel
2 seen, heard or read anything about this case or
3 have any knowledge about this case whatsoever?
4 If so, please stand. (No response).

5 Has any member of the jury panel formed or
6 expressed an opinion as to the guilt or innocence
7 of the Defendant in this case? If so, please
8 stand. (No response).

9 Any member of the jury panel conscious of any
10 interest, any bias or any prejudice for or
11 against the Defendant, Mr. Provet, in this case?
12 If so, please stand. (No response).

13 Ladies and Gentlemen of the jury, is there
14 any reason whatsoever that you can not give both
15 the State and the Defendant, Mr. Provet, a fair
16 and impartial trial in this matter? If so,
17 please stand. (No response).

18 Is there any further inquiry that you would
19 like of this jury panel from the State?

20 MR. NEWKIRK: No, Your Honor.

21 THE COURT: From the defense?

22 MR. LONG: No, ma'am.

23 THE COURT: All right. Thank you. We're
24 going to go ahead and prepare to begin,
25 Gentlemen?

1 MR. NEWKIRK: Yes, Your Honor.

2 THE COURT: All right. Mr. Long, are you

3 prepared to begin?

4 MR. LONG: Yes, ma'am.

5 THE COURT: All right, Caroline.

6 THE CLERK: Ladies and Gentlemen, as I

7 call your names, please come forward and face

8 counsel.

9 THE COURT: Bring all your belonging with

10 you too when you come.

11 THE CLERK: Number 115, Natalie Riles.

12 THE COURT: Just turn around and face the

13 lawyers.

14 THE CLERK: What says the State?

15 MR. NEWKIRK: Please present the jury.

16 THE CLERK: What says the Defendant?

17 MR. LONG: Seat the juror please.

18 THE CLERK: Take your place in the jury

19 box place.

20 Number 110, Daniel Youngblood.

21 What says the State?

22 MR. NEWKIRK: Please present the jury.

23 THE CLERK: What says the Defendant?

24 MR. LONG: Seat the juror please.

25 THE CLERK: Be seated in the jury box

1 please, sir.

2 Number 111, Leigh Ann Zikus.

3 MR. LONG: What's the number?

4 THE CLERK: 111. What says the State?

5 MR. NEWKIRK: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. LONG: Seat the juror please.

8 THE CLERK: Take your place in the jury

9 box please.

10 Number 74, Timothy Philbee.

11 What says the State?

12 MR. NEWKIRK: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MR. LONG: Excuse the juror.

15 THE CLERK: You may be excused in this

16 case. Have a seat.

17 Number 87, Katherine Sibley.

18 What says the State?

19 MR. NEWKIRK: Please present the juror.

20 THE CLERK: What says the Defendant?

21 MR. LONG: Excuse the juror.

22 THE CLERK: You may be excused in this

23 case.

24 Number 44, Angelique Harris.

25 What says the State?

1 MR. NEWKIRK: Please present the juror.
2 THE CLERK: What says the Defendant?
3 MR. LONG: Seat the juror.
4 THE CLERK: Take your place in the jury
5 box, please, ma'am.
6 Number 10, Waverly Brown.
7 What says the State?
8 MR. NEWKIRK: Please present the juror.
9 THE CLERK: What says the Defendant?
10 MR. LONG: Please excuse the juror.
11 THE CLERK: You may be excused in this
12 case.
13 Number 63, Christopher Mazur.
14 What says the State?
15 MR. NEWKIRK: Please present the juror.
16 THE CLERK: What says the Defendant?
17 MR. LONG: Please seat the gentleman.
18 THE CLERK: Be seated in the jury box
19 please.
20 Number 85, Joseph Schmidt, III.
21 What says the State?
22 MR. NEWKIRK: Please present the juror.
23 THE CLERK: What says the Defendant?
24 MR. LONG: Please seat the gentleman.
25 THE CLERK: Be seated in the jury box

1 please.

2 Number 62, Linda Mattern.

3 What says the State?

4 MR. NEWKIRK: Please present the juror.

5 THE CLERK: What says the Defendant?

6 MR. LONG: Please seat the lady.

7 THE CLERK: Take your place in the jury
8 box please, ma'am.

9 Number 34, Pamela Fulton.

10 MR. NEWKIRK: Please present the juror.

11 THE CLERK: What says the Defendant?

12 MR. LONG: Please seat the lady.

13 THE CLERK: Be seated in the jury box
14 please.

15 Number 36, Freida Ghent.

16 What says the State?

17 MR. NEWKIRK: Please excuse the juror.

18 THE CLERK: You may be excused in this
19 case.

20 Number 94, Luther Tatum.

21 MR. LONG: What number?

22 THE CLERK: 94. What says the State?

23 MR. NEWKIRK: Please present the juror.

24 THE CLERK: What says the Defendant?

25 MR. LONG: Please seat the juror.

1 THE CLERK: Be seated in the jury box
2 please, sir.
3 Number 46, Jeffrey Hawkins.
4 What says the State?
5 MR. NEWKIRK: Please present the juror.
6 THE CLERK: What says the Defendant?
7 MR. LONG: Please excuse the juror.
8 THE CLERK: You may be excused in this
9 case.
10 Number 40, Patricia Hall.
11 What says the State?
12 MR. NEWKIRK: Please present the juror.
13 THE CLERK: What says the Defendant?
14 MR. LONG: Please seat the lady, please,
15 ma'am.
16 THE CLERK: Take your place in the jury
17 box.
18 Number 41, Merlyn Hamilton.
19 What says the State?
20 MR. NEWKIRK: Please present the juror.
21 THE CLERK: What says the Defendant?
22 MR. LONG: Please excuse the juror.
23 THE CLERK: You may be excused from this
24 case.
25 Number 53, Tammy Jenkins.

1 What says the State?

2 MR. NEWKIRK: Please present the juror.

3 THE CLERK: What says the Defendant for

4 cause?

5 MR. LONG: Ma'am?

6 THE CLERK: What says the Defendant for

7 cause?

8 MR. LONG: Yes, ma'am.

9 THE CLERK: What says the Defendant?

10 MR. LONG: For cause.

11 THE CLERK: Seat the juror?

12 THE COURT: Go ahead -- you want to go

13 ahead and seat the juror?

14 THE CLERK: Do you want to seat the juror?

15 THE COURT: Mr. Long, do you need to

16 approach, sir?

17 MR. LONG: Please seat the juror. I'm

18 sorry.

19 THE COURT: That's okay.

20 THE CLERK: Be seated in the jury box

21 please.

22 Number 73, Emily Patrick.

23 What says the State?

24 MR. NEWKIRK: Please present the juror.

25 THE CLERK: What says the Defendant for

1 cause?

2 MR. LONG: We've used three?

3 THE COURT: You've used five, sir.

4 MR. LONG: Seat the lady.

5 THE CLERK: Be seated in the jury box.

6 THE COURT: Alternates.

7 THE CLERK: Number 18, Miles Carper.

8 What says the State?

9 MR. NEWKIRK: Please present the juror.

10 THE CLERK: What says the Defendant?

11 MR. LONG: Seat the gentleman.

12 THE CLERK: Take your place in the jury

13 box.

14 THE COURT: All right. Are there any

15 matters of law regarding the jury selection

16 process we need to take up before we excuse the

17 panel from the State?

18 MR. NEWKIRK: None from the State.

19 THE COURT: From the defense?

20 MR. LONG: No, ma'am.

21 THE COURT: All right. Ladies and

22 Gentlemen of the jury panel, for the remainder of

23 you that have not been chosen in the jury of this

24 case, -- Caroline, they get to call in after six

25 o'clock?

1 **THE CLERK:** I'll check.

2 **THE COURT:** All right. Ladies and
3 Gentlemen, we're going to check to see when it is
4 that you need to call back to see whether or not
5 you need to appear tomorrow. Is that fine? The
6 rest of you that are out there that did not get
7 selected on this jury, I would ask that
8 respectfully you just call back after six o'clock
9 tonight and follow whatever prompt it tells you
10 on the phone.

11 It says for you to come back at a specific
12 time, please do it. If not, it will instruct you
13 when to call again if we don't need you any time
14 tomorrow. With that said, I wish y'all a
15 wonderful evening. You are excused. Make sure
16 you call after six o'clock. Thank you.

17 (WHEREUPON, the jury panel exit at approximately
18 3:20 p.m.)

19 **THE COURT:** Ladies and Gentlemen, as you
20 now know, you are members of this jury. Let me
21 tell you what we are going to do scheduling-wise.
22 There are some matters of law that I need to take
23 up with the attorneys. They are going to take
24 some time.

25 What I propose to do and what I intend on

1 doing is going ahead and sending y'all home for
2 the balance of the afternoon and bringing you
3 back tomorrow morning. That way, I can get
4 everything taken care of with the lawyers. In
5 the morning, we can begin fresh with opening
6 statements. You may go right into the witnesses
7 at that point.

8 With that said, I'm going to go ahead and
9 excuse you for the remainder of the afternoon to
10 return at 9 a.m. tomorrow. I want y'all to
11 specifically tell me if you have any scheduling
12 problems come Wednesday or possibly Thursday. I
13 do not know exactly how long this case is going
14 to take. I don't anticipate it taking past
15 Friday. I don't want anybody concerned about
16 that. If you do have scheduling appointments or
17 problems, let me know.

18 I will tell you also, I know y'all know very
19 little about this case. However, it's not
20 appropriate for you to discuss this case with
21 anyone. Not only each other but with any family
22 members. When you go home tonight, you can tell
23 them that you been chosen on the jury in a case.
24 You can say it's a criminal case. But beyond
25 that, you are not to discuss it with them or

1 anyone else in any manner.

2 Additionally, you are going to hear me every
3 time you leave me or go back to the jury room
4 that not only are you not to discuss it with
5 family and friends but you are not even supposed
6 to discuss it with each other until this case is
7 submitted to you for deliberation. The reason
8 for that is you are not even to begin discussing
9 it until you've heard all the testimony from the
10 witnesses, seen any evidence that may be
11 introduced, heard the arguments from the
12 attorneys, as well as my charge on the law. It
13 wouldn't be appropriate for you to discuss it or
14 being your deliberations.

15 With that said, Mr. Morris, your very able
16 bailiff is going to take very good care of you.
17 What he's going to do is take you back first this
18 afternoon and show you where you are to report
19 tomorrow morning at nine o'clock. Okay?

20 The last thing I want to ask and I just do
21 this very respectfully, I can not start until
22 every last one of you are here. If, for some
23 reason, someone doesn't show up, I have to send
24 someone to find you. You would just respectfully
25 ask please try to be prompt. We are going to do

1 the same.

2 I will tell you that oftentimes juries end up
3 waiting on the lawyers or the judge. And I want
4 you to know that if you are waiting on us, we are
5 actually working and getting things resolved to
6 be able to put the best evidence forward for you.
7 So please understand if you wait a few minutes,
8 we are working and we are here. I want you all
9 to know that.

10 With that said, I'm going to go ahead and
11 excuse y'all for the day. Thank you for being
12 here. Mr. Morris will show you where to report
13 to in the morning. Tell him if you have any
14 special requests. I take very good care of my
15 jurors. If there is any specific types drinks,
16 cokes, candy, whatever you need during your
break, let Mr. Morris know and we'll make sure
18 that we have it for you tomorrow. With that
19 said, good evening, y'all. I'll see you tomorrow
20 morning at nine o'clock.

21 (WHEREUPON, the jury exit at approximately
22 3:24 p.m.)

23 THE COURT: Thank you, you all. Please
24 keep your seat. All right. Mr. Long, I
25 understand you have some motions.

1 MR. LONG: I am waiting on my client.

2 THE COURT: Pardon?

3 MR. LONG: I am waiting on my client.

4 THE COURT: Absolutely. Bring him on in.

5 All right. Whenever you are ready, Mr. Long.

6 MR. LONG: A motion to suppress all of the
7 evidence.

8 THE COURT: Okay. What would that
9 constitute?

10 MR. LONG: Pardon.

11 THE COURT: What would that constitute? I
12 am assuming he did a video. You said all the
13 evidence. I want a listing of what all the
14 evidence would be.

15 MR. LONG: The evidence would be the
16 testimony, we'd ask that questions by the defense
17 be limited, questions by the State, the video and
18 possibly testimony.

19 THE COURT: Okay. The specific evidence
20 you are talking about would be your client's
21 testimony and also the videotape, is that
22 correct?

23 MR. LONG: That is correct.

24 THE COURT: Is there anything else as a
25 result? Is there anything else as a result of

1 the detention like the drugs? Were they found in
2 the car?

3 MR. LONG: I am sorry. They were
4 allegedly found in his vehicle when his vehicle
5 was searched.

6 THE COURT: Would you be looking to
7 suppress that too? Would you be looking to
8 suppress that too, Mr. Long?

9 MR. LONG: Yes, ma'am. All evidence.

10 THE COURT: That's what I am asking. What
11 is specifically that evidence?

12 MR. LONG: Yes, ma'am. The evidence would
13 be the drugs that were found. I am unaware of
14 any paraphernalia or anything other than drugs
15 that would relate to drug activity.

16 THE COURT: Again, I don't have the benefit
17 of knowing what y'all's evidence is. That is why
18 I'm asking specifically what it is.

19 MR. LONG: Yes, ma'am. I beg your pardon.
20 Thank you, ma'am.

21 THE COURT: Okay. Absolutely.

22 Mr. Newkirk, whenever you are ready.

23 MR. NEWKIRK: The State calls Corporal J.D.
24 Owens.

25 THE COURT: Mr. Newkirk, do you also have

1 some case law that you are going to pass up to
2 me, sir?

3 MR. NEWKIRK: Yes, Your Honor.

4 THE COURT: If you will at this time.

5 Certainly, Mr. Long, if there is anything
6 that you would like to pass up as well, sir.

7 MR. NEWKIRK: These are the cases that I have
8 pulled.

9 THE COURT: Thank you. Okay.

10 JOHN OWENS

11 having first being duly sworn testified as
12 follows:

13 THE CLERK: State your name for the record
14 please.

15 THE WITNESS: John D. Owens.

16 THE CLERK: Thank you.

17 MR. LONG: I was told by the solicitor
18 that we may ask that the witnesses be
19 sequestered. And once the witnesses are finished
20 that they be instructed not to have conversation.

21 THE COURT: Any objection, Mr. Newkirk?

22 MR. NEWKIRK: No objection.

23 THE COURT: All right. Obviously, if you
24 can sequester -- I don't know if the other
25 officers are in the courtroom or not. You have

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1 already done that? And, of course, Trooper, I'm
2 going to tell you that at the end of this, when
3 you leave, not to go and talk to about your
4 testimony to anyone. All right, sir?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: All right. Thank you, sir.

7 DIRECT EXAMINATION

8 BY MR. NEWKIRK:

9 Q Where do you work?

10 A I am currently employed with the South
11 Carolina Department of Public Safety under the
12 direction of the South Carolina Highway Patrol.

13 Q How long have you worked for Highway Patrol?

14 A Going on 14 years.

15 Q And what is your current duty at the Highway
16 Patrol?

17 A Certified supervisor or corporal. I hold the
18 rank of a corporal. I supervise the upstate region of
19 the Aggressive Criminal Enforcement unit under the
20 direction of the Captain Lancaster.

21 Q Would you explain to the judge what the ACE
22 Team is?

23 A It is an aggressive criminal enforcement unit
24 where we target violent crimes, crimes of theft, drug
25 trafficking, stolen vehicles, fugitives, weapons,

1 transportation, illegal use of weapons and all types
2 of crimes transported through the State of south
3 Carolina on our roadways.

4 Q How long have you been assigned to the ACE
5 team?

6 A Since December of 1998.

7 Q Were you on unit on May 1st of 2002?

8 A Yes, I was.

9 Q On that date, did you come in contact with
10 this Defendant?

11 A Yes, I did.

12 Q Where did you come in contact with this
13 Defendant?

14 A It was on Interstate 85 after I noticed a
15 moving violation. He was driving the vehicle. He was
16 the sole occupant of the vehicle. I first noticed or
17 identified him after stopping his vehicle and walking
18 up on the passenger side and speaking with him.

19 Q What initially were you attempting to do with
20 this vehicle?

21 A At the time, the vehicle that he was
22 operating which was a 1997 Ford Expedition, I noticed
23 ~~that it was following another vehicle entirely to~~
24 ~~closely; less than two car lengths distance and~~
25 ~~operating with a defective tag light.~~

1 Q After making observations, what did you do?

2 A That is when I began to conduct my traffic
3 stop which was on I-85 northbound at around just north
4 of the Mauldin Road exit on Mauldin Road.

5 Q After stopping the vehicle, did you approach
6 the vehicle?

7 A Yes, I did on the passenger side.

8 Q Why did you approach on the passenger side?

9 A That is the way I am taught and that is the
10 way that I teach. Approaches on the vehicle, number
11 one, for officer safety. Number two, you can see a
12 lot of other things doing the type work that we do,
13 when you approach the vehicle. Our main goal right
14 here is officer safety.

15 When you approach on the side, you can see
16 more of the occupant in the vehicle. If it is the
17 driver, you can see his hands. More than likely, the
18 driver of the vehicle is also looking to the left
19 where most officers approach. We are getting away
20 from that tactic for the simple reason of officer
21 safety. This was on the passenger side for the main
22 reason of officer safety.

23 Q What did you observe inside the vehicle?

24 A At that time, I noticed there was one
25 occupant in the vehicle, the sole occupant which was

1 the driver, Mr. Provet. When he rolled down the
2 window and I began to talk with him, I noticed that
3 -- I actually told him the reason for the traffic
4 stop. I asked him for his drivers license and vehicle
5 registration.

6 He produced a vehicle registration belonging,
7 showing that the vehicle belonged to another person,
8 what we call a third-party vehicle. When he handed
9 the items over, I noticed that his hands were shaking
10 and he had accelerated breathing.

11 Q You said that he had a vehicle by a third
12 party?

13 A That is correct.

14 Q What is that indicative of to you?

15 A A lot of times in areas of drug trafficking
16 or drug transportation, it is very common that the
17 third-party vehicles are used for various reasons.
18 Those reasons being, one, the occupant in the vehicle,
19 the processor of the vehicle does not have any ties to
20 the vehicle. So, if he decides to flee or is not with
21 the vehicle, it is much harder for law enforcement to
22 track him down or to connect him to the vehicle.

23 Q Trooper Owens, you just testified that this
24 Defendant was shaking and appeared to be nervous,
25 accelerated breathing?

1 A Yes. The hand shaking and accelerated
2 breathing would indicate a point of nervousness. That
3 is correct.

4 Q When you normally stop a vehicle, are the
5 occupants of that vehicle nervous?

6 A Somewhat. Not to the extent that Mr. Provet
7 was. A lot of times, you will see accelerated
8 breathing. You don't necessarily see the shaking of
9 the hand, not to the extreme that Mr. Provet was.

10 Q Was Mr. Provet, was the Defendant more
11 nervous than the majority of people that you pull
12 over?

13 A I would say more than the majority of the
14 people pulled over for a simple traffic violation that
15 are not involved in other criminal activities, yes.

16 Q After obtaining the Defendant's driver's
17 license and registration of the vehicle, what did you
18 do?

19 A I asked him to step out of the vehicle and
20 step to the rear of the vehicle. That is when I was
21 going to issue him a warning citation for the moving
22 infraction.

23 Q Why did you ask him to get out of the
24 vehicle?

25 A We know through training and experience that

1 weapons of opportunity can be easily concealed in the
2 vehicle. It is better to get them out. Also if
3 you're going to have casual conversation with them,
4 it's easier to talk to them in person within six feet,
5 not having to talk through a vehicle where there is
6 traffic outside and you are having to talk through a
7 window and hear the other person's conversation
8 through the window. It's easier to get them out. Not
9 only are you looking for the answers that they give
10 you verbally, you are also looking for the answers
11 that they give you through body language.

12 Q What happened when the Defendant exited the
13 vehicle?

14 A He approached the rear of the vehicle. At
15 the time I've noticed that -- I asked him to pat him
16 down for weapons. He agreed to that. I then patted
17 him down to make sure he did not have any weapons. We
18 walked over to the passenger side of my patrol
19 vehicle. I opened the passenger door and began to
20 write the warning citation and briefly speak with Mr.
21 Provet.

22 Q Can you describe speaking with Mr. Provet?

23 A Just casual conversation, asking him general
24 questions like where are you coming from, where are
25 you going. Questions of that nature.

1 Q And can you briefly tell the Court the
2 substance of that conversation?

3 A Yes, sir. I asked him where he was coming
4 from. He said he was coming from Greenville where he
5 visited his girlfriend. I asked him where in
6 Greenville. He said from a motel. He stayed at the
7 Holiday Inn. This was kind of odd for me. I know he
8 did not come from the Holiday Inn right off of the
9 interstate. There is no other Holiday Inn from the
10 direction that he was traveling in Greenville.

11 Where I initially observed his first
12 infraction was prior to the Holiday Inn exit which was
13 Augusta Road. I knew he was not coming from the
14 Holiday Inn in Greenville. He could have been coming
15 from another Holiday Inn but it wasn't the one in
16 Greenville unless he made some other, went to another
17 destination after leaving the Holiday Inn.

18 But then I asked him, did he know what exit.
19 He did not know where the Holiday Inn was at but he
20 was coming from there right then. He confirmed that
21 that is where he was coming from right then. He was
22 kind of giving me clues that he was being deceptive in
23 his answer or wasn't being completely truthful or he
24 did not know where he was coming from.

25 He stated the car belonged to a different

1 girlfriend. It was not the girlfriend that was on the
2 registration. He stated he had never been in trouble
3 with the law. He stated that he didn't work. It was
4 kind of odd, which was another clue or indicator in
5 the business of drug trafficking.

6 This is a Wednesday evening roughly at
7 10:10 p.m. The gentleman does not work but he is
8 driving a nice large SUV that takes, requires a lot of
9 gas to drive. Also, he is staying in a motel but he
10 doesn't work. It makes you question what kind of
11 living he is doing to pay for the expenses he is
12 entailing. That was another indicator.

13 He stated that he finished tech school
14 approximately six months ago. He stated he been in
15 Greenville for two days. I noted at that time some
16 delaying tactics noted which I would be able to
17 describe on the video. I don't know what those were
18 right now. I just put in parentheses that there were
19 delaying tactics noted.

20 Stated there was no luggage in the trunk
21 which is another indicator. He stated he had been
22 staying for two days. I said trunk. It was actually
23 truck. He stated there was no luggage in the truck.
24 That was another indicator. He had been staying there
25 for two days and did not have any clothes, any change

1 of clothes. But, later on, I see there is a luggage
2 bag on the back seat but that comes later.

3 I asked him what was the reason for his trip.
4 He stated it was a spare of the moment thing. He
5 stated he did not have any weapons. There was no
6 alcohol and he didn't drink. There were no illegal
7 narcotics in the vehicle.

8 Q Were you directing questions to him one after
9 the other? Can you explain how --

10 A Basically casual conversation. I would ask
11 him a question. While I was writing, he would answer
12 it. When he would answer it, it would either pop
13 another question in my head as to what I would ask.
14 Depending on how broad his answer was to my question,
15 whether I would ask another question.

16 Just like, where are you coming from. Well,
17 Greenville from my girlfriend's. I would ask him to
18 narrow it down a little bit. It was not like bam,
19 bam, bam. It was like, so where are you coming from.
20 He would tell me. How long were you there? It was
21 just basic conversation, casual conversation. It was
22 not an interrogation or anything like that. It was
23 not something he had to. --

24 MR. LONG: Excuse me, Your Honor.

25 THE COURT: Hold on a second.

1 MR. LONG: It seems like to me that the
2 tape is going to be the evidence on this rather
3 than the officer giving a commentary on it. The
4 video would be as to the affect and the impact of
5 his questioning technique. He is giving his
6 summation of what the type questioning and what
7 the impact would be on someone. I think that is
8 your province based upon the best evidence. That
9 would be the video and not what this officer
10 thinks should be the interpretation given to the
11 video.

12 THE COURT: Mr. Long, this is actually
13 right now a hearing that is outside the province
14 of the jury. I can decide what the best evidence
15 is and make a determination. The State can go
16 ahead and proffer the testimony.

17 MR. LONG: Thank you, Your Honor.

18 THE COURT: Thank you.

19 BY MR. NEWKIRK:

20 Q Corporal Owens, after speaking with the
21 Defendant, what did you do?

22 A I went ahead and called for Trooper Aman to
23 start heading to the location. I felt at that point
24 that I had several concerns that the violator may be
25 involved in other criminal activity. I then called

1 dispatch and asked for a drivers license check status
2 and also a vehicle registration status. It was
3 registered to a third party that wasn't present. I
4 had those being checked.

5 While those were being checked by dispatch
6 and while Trooper Aman was en route to the scene, I
7 walked back up to the vehicle to confirm that the VIN
8 number matched with the registration and maybe even if
9 the VIN number matched with the -- the VIN plate on
10 the front window matched with the VIN plate on the
11 door.

12 Q Why did you check for VIN number?

13 A Because we know -- when we see or when the
14 violator gives us indicators of potential criminal
15 activities, we want to kind of dispel everything. A
16 lot of times when criminal activity indicators are
17 placed in to the trooper, it could be possible that it
18 is a stolen vehicle. You want to dispel everything.
19 Something that was easy to do was to walk up there,
20 examine the VIN number, make sure the VIN number on
21 the window at the front windshield confirmed or
22 matched the VIN number that was on the registration
23 and maybe in fact correlated with the VIN number that
24 was in the door.

25 Q Did you make any observations while you were

1 checking the VIN number?

2 A Yes, I did. I always note on the second
3 approach, if I go up on a second approach, the items
4 that are in the vehicle. On the first initial
5 approach, you don't always look at those things
6 because of officer safety. You want to maintain your
7 focus on the violator.

8 We know statistics have proven that when you
9 walk up on a vehicle, more times than not, if you are
10 going to get hurt, it is either, one, when the
11 additional approach is or, two, when you are arresting
12 the violator. More attention was taken at looking
13 inside the vehicle on the second approach.

14 At that time, what I noticed was fast food
15 bags, numerous fast food bags, air fresheners,
16 numerous air fresheners. No luggage. I did note
17 there was one bag on the rear seat. There was one
18 cell phone and several receipts in the center console.
19 All of these within totality of the circumstances also
20 with the questions or items that were related by the
21 defendant, all of these would indicate that there was
22 other criminal activity being afoot.

23 Q When you noticed these items, you observed
24 the items, did you observe the items by looking
25 through the windshield?

1 A That is correct. The windshield or one of
2 the windows.

3 Q Were some of the windows down at this point?

4 A I don't recall if they were down. I know the
5 passenger right side window was down. As far as the
6 driver, I don't know if the driver's window was down.

7 Q Why are fast food bags --

8 A In drug trafficking business, the best way to
9 explain it is kind of like a hot potato in more ways
10 than one. One way is the longer you have it, the more
11 likely you are that you will get caught with it either
12 by law enforcement or by other drug doers. The drug
13 business is a very violent crime. Also, it is a very
14 money profitable crime. You have got to worry about
15 that.

16 Also in the drug trafficking business, it is
17 known that when you have suppliers and people that are
18 on the demand side, they also don't want to be tipped
19 off to law enforcement or caught by law enforcement.
20 They are on a time schedule. The time schedule a lot
21 of times depends on minutes instead of hours or 30
22 minutes. When you are on that distinctive time line,
23 also just like a cell phone, you have got to have
24 those lines of communication where they're always
25 calling keeping in contact with the person

1 transporting the drugs whether it be the initial
2 supplier or whether it be just the person transporting
3 the drugs. Therefore, you are in constant contact.

4 When you get off their time schedule, they
5 become concerned. They may not even accept the
6 narcotics or the package when it gets to them if you
7 didn't meet the guidelines that they set forth as far
8 as the time line that they wanted it there. They are
9 suspicious that you may be involved or law enforcement
10 may be involved.

11 Q Why did the air fresheners grab your
12 attention?

13 A Like I said, maybe one air freshener
14 wouldn't. It is the numerous air fresheners. There
15 is no real reason for numerous air fresheners in a
16 vehicle other than to disguise an odor that is
17 unpleasant or an odor that you don't want law
18 enforcement to detect or maybe even a drug detection
19 canine to detect.

20 Q I want to clear up a point. Was there
21 luggage in this vehicle?

22 A I noticed that there was one bag on the rear
23 seat. That was it. One lone bag.

24 Q Do you remember if this bag was a luggage
25 bag?

1 A No, I don't recall.

2 Q Okay. After checking the VIN number and
3 making your observations, what did you do?

4 A It was about that time that Corporal Aman
5 arrived on the scene. I waited for the information
6 for the drivers license status to come back and the
7 vehicle license status to come back. It was at that
8 point that I finished the warning citation. I gave
9 Mr. Provet his belongings back and explained the
10 warnings to him. Mr. Provet stated that he understood
11 the warning.

12 I asked him point-blank can I search your
13 vehicle. It was at that point that Mr. Provet delayed
14 by asking Owens if I wanted to search the car. He
15 answered my question with a question basically which
16 was a delaying tactic that I noted. Then he told me
17 that I could search the vehicle.

18 Q Did the Defendant give you consent to search
19 the vehicle?

20 A Yes, he did.

21 Q When you asked him for consent to search, how
22 many officers were on the scene?

23 A At that time, it was just me and Trooper
24 Aman.

25 Q Did you have your blue lights on?

1 A Yes, I did.

2 Q Was there a drug dog on the scene?

3 A When Trooper Aman arrived, yes, there was.

4 There was one in the back of his vehicle which was

5 unmarked.

6 Q At the moment that you ask for consent was
7 that drug dog outside of the vehicle or inside of the
8 vehicle?

9 A He was inside his vehicle.

10 Q Did you threaten the Defendant in any manner
11 to obtain his consent?

12 A No, sir, I did not.

13 Q Did you make any promises in exchange for his
14 consent?

15 A No, sir, I did not.

16 Q Did you physically touch the Defendant?

17 A No, sir, I did not.

18 Q Did you point your pistol at the Defendant?

19 A No, sir, I did not.

20 Q Did you speak to the Defendant in a
21 threatening tone of voice?

22 A No, sir, I did not.

23 Q What happened after the Defendant gave you
24 consent to search?

25 A After the Defendant gave me consent, I then

1 advised Trooper Aman to go ahead and take his, run his
2 drug detection canine around the vehicle even though I
3 had consent. The canine is just another tool to use
4 and maybe even expedite the situation. I asked
5 Trooper Aman to go ahead and utilize his drug
6 detection canine. It was at that point --

7 Q Did you observe Trooper Aman run his drug dog
8 around the vehicle?

9 A Not at that time, he did not. He actually
10 went to do what we call a precursor scan of the
11 vehicle. What that is is basically when you walk them
12 around -- a canine handler, they are trained to walk
13 around the vehicle and observe things in the vehicle
14 that, one, may harm the dog whether it be a knife or
15 any type of substance that may harm the dog or any
16 type of substance or items in the vehicle that might
17 be contaminated by the dog either by stepping on it or
18 by his hair or spilling.

19 Like drinks, food, not that the dogs are
20 going to eat the food. We're more concerned that the
21 dogs may contaminate the food either by his feet
22 getting in it or his hair getting in it. They are
23 trained to remove that item and just place it on the
24 hood of the car just so that the dog can't contaminate
25 it.

1 Q What happened when Trooper Aman went to the
2 vehicle?

3 A The best that I can recall, he walked up on
4 the passenger side. He observed some fast food in the
5 passenger floor board or in the passenger area, front
6 area. It's at that point that he went to remove that
7 from the vehicle and place it on the top. That is
8 when Mr. Provet decided to flee the scene by running
9 across the three northbound lanes, jumping about a
10 five-foot concrete barrier wall in the center of the
11 interstate and then running across three southbound
12 lanes and then down an embankment, over a guard rail
13 and down to the interstate fence line.

14 Q Did you eventually catch him?

15 A Actually, Trooper Aman initially caught him.
16 By the time I got to the scene, we were able to subdue
17 him and place him in handcuffs.

18 Q Once you got back to the scene, what
19 happened?

20 A When we got back to the scene, there was a
21 deputy standing by the vehicle in his patrol car.
22 Another deputy had actually driven to the southbound
23 side and picked us up, after we got the Defendant back
24 to the top of the, to the top of the interstate. Back
25 up onto the interstate and actually drove us back

1 around to our vehicle.

2 Q Did Trooper Aman run his dog around the
3 vehicle?

4 A At that time, he did.

5 Q Are you aware if the dog alerted or not?

*6 A I believe he did. I'm almost positive he
7 did. I just don't recall 100 percent.

8 Q Did you then do a search of the vehicle?

9 A Yes, I did.

10 Q What did you find?

11 A We found a bag which was a plastic bag that
12 contained chicken and also contained an bag of white
13 powder substance that was consistent with cocaine. It
14 was in a clear Ziploc bag. It was field tested. It
15 had gave a positive result for cocaine. That is when
16 -- that was later taken to SLED and analyzed. It was
17 actually in a chicken box. I am sorry.

18 Q Trooper Owens, in 2002, was your car equipped
19 with an in-car video camera?

20 A Yes, sir, it was.

21 Q And what would trigger the in-car video
22 camera?

23 A Either one or two ways. Either activation of
24 the blue light or by just tripping the mike, the body
25 mike on my belt.

1 Q Was your video working at that time?

2 A Yes, it was.

3 (WHEREUPON, State's Exhibit 1 is marked for
4 identification purposes.)

5 BY MR. NEWKIRK:

6 Q Let me show you what has been marked as
7 State's Exhibit 1 for purpose of this hearing.

8 A That is a copy of this video.

9 Q Have you reviewed the video prior to trial?

10 A Yes, I have.

11 Q Does that accurately reflect the incident
12 that occurred on May 1, 2002?

13 A Yes, it does.

14 MR. LONG: Is this the complete video?

15 THE WITNESS: I assume that it is. When you
16 say complete video, do you mean -- ask him to
17 define "complete video".

18 MR. NEWKIRK: That's alright. He can ask that
19 question.

20 I would offer this as State's Exhibit 1.

21 THE COURT: Okay.

22 MR. LONG: Your Honor, can I ask him a
23 question before I know whether I object or not?

24 THE COURT: Sir?

25 MR. LONG: I have a question to ask about

1 the admissibility of that video before I consent.
2 I probably will consent to it. I just want to
3 ask if this is the complete video of Mr. Provett
4 from the beginning to the end when he was
5 arrested and taken off.

6 THE WITNESS: Yes, sir.

7 MR. LONG: Okay. I have no objection.

8 THE COURT: Okay. Thank you.

9 (WHEREUPON, State's Exhibit 1 is admitted into
10 the record.)

11 MR. NEWKIRK: Okay. Nothing further.

12 THE COURT: All right.

13 MR. NEWKIRK: From this witness.

14 THE COURT: Okay. From this witness. Tell
15 me your pleasure. I understand we have a plea we
16 can take up right now. Do you want to take a
quick break while I take up this plea?

17 (WHEREUPON, a short recess is taken at
18 approximately 4:06 PM.)

19 MR. LONG: How long do you go, Judge?

20 THE COURT: As long as it takes to do this
21 motion, to do all of the pretrial motions. We
22 are going to go ahead and view the video at this
23 time, Solicitor, is that what you want to do?
24

25 MR. NEWKIRK: I am going to put my next

1 witness up. It will be a brief witness.

2 THE COURT: That is fine.

3 MR. NEWKIRK: Are you going to cross-examine?

4 MR. LONG: Yes.

5 THE COURT: Absolutely. Corporal, come on
6 out.

7 Mr. Long, whenever you are ready.

8 CROSS-EXAMINATION

9 BY MR. LONG:

10 Q There were two officers involved, is that
11 correct? A third came up at the very end?

12 A That is correct.

13 Q The other officer's name is? The other
14 officer that pulled up with the dog.

15 A Trooper Aman.

16 Q How do you spell that?

17 A A-m-a-n.

18 Q Was there any involvement with this Defendant
19 before you observed him on the highway? Had officer
20 Aman seen him or did you see him?

21 A Not except for the moving infraction and the
22 traffic violation.

23 Q Were you following him or were you roadside
24 when you notice this?

25 A I was not roadside when I noticed the initial

1 infraction.

2 Q Then you fell in behind him?

3 A That is correct.

4 Q That was on I-85. He was headed to Anderson,
5 or Spartanburg. That direction or vice versa?

6 A That is correct.

7 Q What time of night was that?

8 *A I believe I testified 10:22 p.m.

9 Q At night?

10 A Yes.

11 Q It wasn't raining?

12 A No, sir, it was not.

13 Q You were stopped by the side of the highway?

14 A On the shoulder, the right shoulder.

15 Q On the shoulder?

16 A Right shoulder. That is correct.

17 Q The thing that caught your attention is what?

18 A The following to close. I could not tell if
19 he had a tag. The tag light was burned out.

20 Q Uh-huh.

21 A I couldn't tell if he had a tag. I
22 ultimately observed the tag afterwards. But it took
23 me getting up behind him and observing that. The tag
24 light was defective which was also a violation of law.

25 *Q It was just one tag light?

1 *A There was no tag light.

2 Q No tag light was showing?

3 A That is correct.

4 Q All right.

5 A I advised the Defendant during the traffic
6 stop that he also had defective tags on the vehicle as
7 well.

8 Q When you, when he passed you, he was
9 following too close to the vehicle at that time?

10 A Another vehicle. That is correct.

11 Q He was driving an SUV?

12 A That is correct. A Ford Expedition.

13 Q I am sorry.

14 A A Ford Expedition.

15 Q Your intention when you stopped him was to
16 issue a warning ticket. I think that is pretty clear,
17 is it not?

18 A That is correct.

19 Q But you did after you went to the passenger
20 side -- I presume that is when the window was rolled
21 down?

22 A That is correct.

23 Q Or let down. And that is the one that you
24 say was down when you came back to the vehicle the
25 second time?

1 A I believe that window was still down. I
2 don't know if any other windows were down or not.

3 Q So it is reasonable to say when he put that
4 window down to talk with you that it was left down.
5 It was a pretty compressed period of time, wasn't it?

6 A Yes, sir. I guess.

7 Q You looked in and you asked him to step out
8 which is the norm. Is that correct?

9 A Well, I asked him for his drivers license,
10 vehicle registration and then ultimately asked him to
11 step from the vehicle.

12 Q And to the rear of it?

13 A Yes, sir.

14 Q Which he did?

15 A Yes, sir.

16 Q There was never any hesitation on his part?

17 A No, sir.

18 Q Did you have at that time any information,
19 negative information about him personally?

20 A No, sir. I never knew the man. Never heard
21 of the man's name before.

22 Q No report about this particular vehicle
23 either?

24 A No, sir.

25 Q How long does it take to write a warning

1 citation?

2 A It depends. It depends on what is involved
3 in writing the citation.

4 Q I am sorry.

5 A It depends on what is involved in writing the
6 warning citation. You are doing a lot of other
7 functions while you are writing a warning citation.
8 Not only talking to the Defendant, but you are also
9 running drivers license checks. All of that other
10 information.

11 There are all kinds of things going on at the
12 one time. You also listening to the radio for any
13 other officers. Like I said, I am a supervisor. I
14 have to account for my men as well and other men on
15 the road. To say how long it takes, with each
16 incident?

17 Q While you are writing the warning ticket --
18 you did write one, did you not?

19 A I did.

20 Q And the warning was for two things, following
21 too close and for the lights?

22 A Yes, sir. I think I advised him during the
23 traffic stop about his tires as well.

24 Q It was not included on the warning?

25 A I don't know if it was or not.

1 Q After he stepped to the rear, you did begin
2 questioning?

3 A I asked him several questions.

4 Q We don't have to go back through them again.
5 That questioning was back at the rear of the car, was
6 it not?

7 A It was either right near the rear of his, or
8 the front of my patrol car or right there on the
9 passenger side of my patrol car.

10 Q It wasn't at his car or he was not seated?

11 A No, he was not. He was already asked to step
12 from his vehicle at that time.

13 Q At that time, you say that your suspicions
14 were that his hand was shaking and accelerated
15 breathing?

16 A At what time.

17 Q When you begin questioning, when he was at
18 the rear of the car?

19 A There were several things. There was also
20 third-party vehicle. While I was up at the vehicle, I
21 also noticed that there were fast food bags in there.

22 Q And the air fresheners?

23 A The odor would indicate that as well, yes,
24 sir.

25 Q Would indicate the air fresheners?

1 A Yes, sir.

2 Q Did you see them?

3 A Yes, sir.

4 Q Okay.

5 A I think I noted that I visually observed them
6 on my second pass of the vehicle when I went to
7 inspect the VIN number. I think that's what I
8 testified.

9 Q That was, was there anything else that was
10 suspicious about him?

11 A That was a lot. I had discussed them with
12 you in this conversation. I pointed out several
13 others before while I was giving my testimony. I
14 could go over those again if you would like.

15 Q No, sir. I think the judge -- unless the
16 judge wants it?

17 THE COURT: I heard him the first time.

18 BY MR. LONG:

19 Q Did you question him about where he came from
20 and where he was going?

21 A Yes, sir.

22 Q That wasn't related to the traffic stop, was
23 it?

24 A Yes, sir. I think any time a law enforcement
25 officer since 9/11, I think it is our duty, it is our

1 obligation not only to just look at the traffic stop
2 in general but look at the totality of the
3 circumstances involved to make sure that there is no
4 other criminal activity involved as well.

5 Q That is the point. At this point, these
6 things that you mentioned as having peaked your
7 suspicion, they had to do, not with the traffic stop,
8 but with looking for other criminal activities, did
9 they not?

10 *A Yes, sir. They did. These were all
11 discovered during the actual traffic stop.

12 Q After the -- I will submit after the traffic
13 stop?

14 A I will say all of that is during the traffic
15 stop. Not after. The traffic stop is not completed
16 until he is released.

17 Q Until you release him?

18 A That is correct.

19 Q During all of this time, he was, in effect,
20 his body was under seizure by you?

21 A Until he was handed his warning and explained
22 the warning and given it back, yes.

23 Q Until what? I am sorry, sir.

24 A Until he has given his documents back and
25 explained the warning and asked if he understood it.

1 At that point, I think that was the end of the traffic
2 stop when he is given the opportunity to leave.

3 Q Did you tell him he was free to go?

4 A No, sir, I did not.

5 Q In fact, 'slam, bam, after that, you started
6 -- you and the other officer started asking him about
7 the consent to search the vehicle, did you not?

8 A No, sir. I asked him one question, can I
9 search the vehicle. Just one question.

10 Q My description of that being slam, bam right
11 after he got the ticket would be true, wasn't it?

12 A Yes, sir.

13 Q According to your testimony in the very
14 beginning, if he was nervous and his hand was shaking,
15 I presume he was nervous now and his hand was shaking?

16 A I don't understand the question.

17 Q When you gave him the warning ticket back and
18 immediately asked him can I search your vehicle?

19 A Was his hand shaking then?

20 Q Yes, sir.

21 A I don't know that I observed his hand at that
22 point. I wasn't paying attention to his hand. I was
23 waiting for his answer.

24 Q When you handed him the ticket, you did not
25 notice his hand, whether it was shaking if it was such

1 a big thing?

2 A No, sir, I wasn't. I don't know why his hand
3 would be shaking at that point when he is getting a
4 warning. He might want to hug my neck.

5 Q Did you take the food bags into evidence? Do
6 you have the food bags to produce?

7 A No, sir. I did not take the food bags into
8 evidence.

9 Q Did you take the air fresheners into
10 evidence?

11 A No, sir, I did not.

12 Q One cell phone in a car and that triggered
13 your suspicion that it was something illegal going on?

14 A That alone did not. That alone did not. It
15 was the totality of the circumstances that involved
16 the whole traffic stop, the whole encounter.

17 Q Did you take the luggage bag into evidence?

18 A No, sir, I did not.

19 Q You don't remember what the dog did at the
20 car. You said you believe he sniffed but you weren't
21 sure?

22 A I know the dog sniffed. As to how he alerted
23 and what he did, I am not sure.

24 Q That was after we had gone through all of
25 this, can I searched it and the other officer came up?

1 A This was actually after your client decided
2 to flee. As to what actually the dog did, I assume
3 you would ask the K-9 handler that. I don't remember
4 exactly what the dog did. I think that is your
5 question.

6 Q So is your answer, when you asked him, where
7 were you standing when you asked him can I search your
8 vehicle?

9 A On the passenger side of my vehicle on the
10 outside of my vehicle.

11 Q Where was he?

12 A Approximately four to five feet from me, arms
13 reach distance after I gave him his license.

14 Q Y'all were standing right together?

15 A Correct.

16 Q If your voice was recorded on these tape
17 asking the questions, his response should be recorded
18 to, would it not?

19 A Provided he was loud enough, correct.

20 Q I am sorry?

21 A Provided he spoke loud enough, yes, it would
22 be.

23 Q What involvement then did Officer Aman have
24 after he allegedly gave this consent to search?

25 A Like I testified earlier, Trooper Aman was

1 Instructed to go ahead and use the K-9, drug detection
2 canine at that point. I believe he immediately went
3 to do a pre-scan of the vehicle, precursor scan of the
4 vehicle. That is when he observed the fast food bags.
5 He went to remove those, placed them on top of the
6 vehicle.

7 It was at that point your client decided to
8 go across the interstate, over the concrete wall,
9 over at the other side of the interstate, over the
10 guard rail, down the embankment and down to the
11 interstate fence. That is when Trooper Aman heard me
12 holler. He then began foot pursuit as well as I did.
13 During the time, we were telling the guy to stop. He
14 continued fleeing.

15 Q The fleeing began after the search of the
16 vehicle and after the only property seizure was made
17 from the vehicle?

18 A There wasn't a search of the vehicle. I
19 would not call that a search. All he did was remove a
20 food bag for basically the protection of the dog and
21 for the protection of his food items. I don't know
22 that I would consider that a search. It is what is
23 called in layman's terms a pre-scan.

24 Q Did he open the bag?

25 A I don't think he did.

1 Q When did he open the bag?

2 A After he came to the scene, he noticed what
3 was in the bag to my understanding. Not unless he saw
4 what was in the bag when he picked up the bag, I don't
5 think he would have went in there and open the bag.
6 That might be something you want to ask him.

7 Q Did you make certain that the Defendant
8 understood that when you were questioning him, most
9 particularly when you asked him for consent to search
10 his vehicle, did you let him know that you had
11 suspicion, suspicions that there illegal activity. I
12 think obviously that you suspected drug activity. Did
13 you let the Defendant know that you were suspicious?

14 A No, sir, I didn't. There were several
15 reasons for that.

16 Q I don't want to cut you off.

17 A No, sir, I did not. There are several
18 reasons. For one, it is the element of surprise. If
19 I tell him, sir, I believe you are involved in
20 criminal activity, a lot of times, it is my experience
21 and training that a lot of times when you do that,
22 they either, one, that's when they are going to start
23 fighting or, two, that is when they are going to flee
24 just like in the case with your client did.

25 When he saw the officer remove the bag that

1 he knew had the drugs in it, he fled. That is why we
2 don't do that. I don't tell them that I suspect them
3 involved in criminal activity in most cases. I won't
4 say that is in every case. If he had asked me, I
5 might have told him some things I had concerns with.
6 But as to say, sir, I believe you are involved in
7 criminal activity, I did not say that to him.

8 Q My question was very limited. Not before you
9 asked for consent to search?

10 A No, sir.

11 Q He was a very close. You were reaching out
12 to receive the warning ticket when he allegedly gave
13 consent to search?

14 A He had already had it.

15 Q But he was still in that position?

16 A He was in close proximity, yes, sir.

17 Q Trooper Aman was where the dogs are? Where
18 was he?

19 A He would have already exited his patrol
20 vehicle. And he would have been in close proximity to
21 us as well when I asked for consent.

22 Q The tape was running during all of that?

23 A That is correct.

24 Q If he said no, I don't consent with the dogs
25 there on the scene, would he have been free to go?

1 A No, sir, he would not have been free to go.
2 I believe with the reasonable suspicion that I had all
3 encompassed in the traffic stop, he would not have
4 been free to go.

5 Q He remained under seizure from the time that
6 he first stepped to the rear of the vehicle?

7 A I don't know how he felt. He should have
8 felt free to go. He had all of the items back. You
9 asked would I have let him go?

10 Q Yes, sir.

11 A No, sir, I would not have.

12 Q From the moment that he exited his car and
13 stepped to the rear of it or stepped over to your car,
14 whatever it was, until now, until he posted bond after
15 being formally charged in this case, he never was free
16 to go, was he?

17 A Actually, was I going to let him go.

18 * Q Yes, sir.

19 A At the point when I asked for consent, I was
20 not going to let him go. No, sir. You are asking me
21 from the time I stopped the vehicle, I did not know at
22 the time I stopped the vehicle that there was going to
23 be a criminal violations. At the point when I asked
24 for consent to search, was I going to let him go? No,
25 sir. I felt in my mind from my experience and my

1 training that he was involved in other criminal
2 activities.

3 Q From the point that you saw his allegedly
4 shaken hand and allegedly accelerated breathing and
5 you asked, as you had the right to do, to step out of
6 the vehicle and patted him for weapons, which you had
7 the right to do, from that point in time, would you
8 have let him go?

9 A Let him go for?

10 Q Just let him go. He said I'm leaving.

11 A If that was all I had?

12 Q Yes, sir.

13 A I probably would have let him go, sir.

14 Q Before he got his warning ticket or whatever?

15 A I mean, let's be realistic, I am going to
16 give him the warning ticket. If that is all of the
17 indications that I had, I don't believe that would be
18 sufficient. You are just trying to take three --

19 Q I am trying to take it sequentially.

20 A There was another in there that you missed,
21 third-party vehicle.

22 Q Okay. Third-party vehicle.

23 A There was a third-party vehicle.

24 Q You are right.

25 A Would I have let them go then?

1 Q Uh-huh.

2 A It is questionable. It depends on the
3 questions and the answers he is going to give me or
4 what other indicators I might visually observe. Like
5 I said, he also got numerous air freshness that would
6 have been smelled. The fast food bags, the cell
7 phones, the other things. It is a totality of
8 circumstances which led me to ask for consent to
9 search.

10 The only reason -- you ask whether he is free
11 to leave. The only reason he was given his
12 information back at the warning ticket was so that he
13 could give voluntary consent so that the consent could
14 be voluntary. That is the purpose of giving the items
15 back so that he can feel free.

16 Q Is it by stroke of magic that you handed it
17 back to him and then said can I search?

18 A Is it stroke of magic?

19 Q Never mind. All right. Please excuse me as
20 I ask my client if he has anything else that he wants
21 me to ask him.

22 THE COURT: Okay. (Pause).

23 BY MR. LONG:

24 Q You've never told him he could leave at any
25 point?

1 A No, sir, nor was I required to.

2 Q Did you feel like at any time during this
3 entire sequence of events that you're repeating
4 yourself as to the questions you asked? Asked it more
5 than once or several times? Do you have any gun or
6 that type of particular?

7 A I am not saying that I didn't. I don't
8 recall if I did or didn't.

9 Q The question is, did you ever do anything to
10 try to delay this process?

11 A Is that your question?

12 Q Yes, sir.

13 A No, sir, I did not.

14 Q So it would be your testimony that you wrote
15 the warning ticket as expeditiously as you could?

16 A Given the circumstances that were involved in
17 this traffic stop, yes, sir, I did.

18 Q At that moment, when you handed him the
19 warning ticket, he was not free to go I believe is
20 your testimony?

21 A I wasn't going to let him go.

22 Q Okay. Thank you, officer.

23 THE COURT: Okay.

24 MR. LONG: I would like to keep this
25 officer. Were there only two that were going to

1 testify?

2 THE COURT: All right. You are ready to
3 have him step down?

4 MR. NEWKIRK: Yes. Nothing further.

5 THE COURT: Corporal, again, I'm going to
6 remind you again don't discuss your testimony to
7 anyone outside. All right, sir?

8 THE WITNESS: Yes, sir.

9 MR. NEWKIRK: Your Honor, the State would
10 call Investigator Eddie Aman.

11 THE COURT: Okay.

12 EDDIE AMAN

13 having first being duly sworn testified as
14 follows:

15 THE CLERK: State your name for the record.

16 THE WITNESS: Eddie Aman.

17 THE CLERK: Thank you. Please be seated.

18 DIRECT EXAMINATION

19 BY MR. NEWKIRK:

20 Q Officer Aman, where do you currently work?

21 A Anderson Police Department.

22 Q Where did you work in May of 2002?

23 A South Carolina Highway Patrol.

24 Q On May 1, 2002, did you respond to a traffic
25 stop involving this Defendant?

1 A Yes, sir, I did.

2 Q Why did you respond?

3 A Corporal Owens had asked for my assistance.
4 I generally backed him up anyway. So I headed that
5 way.

6 Q When you first arrived, what was going on?

7 A When I first arrived, Corporal Owens already
8 had the operator of the vehicle. There was some
9 dialogue going on. I believe he was checking drivers
10 license status and warrants through out dispatch.

11 Q While Trooper Owens was speaking with the
12 Defendant this point, what did you do?

13 A As I arrived there, I actually exited my
14 vehicle and approached them. Stood by there for a
15 second. They were kind of coming to the conclusion of
16 that. Dispatch was calling back Corporal Owens giving
17 the status on the driver's license.

18 At that point in time, Corporal Owens asked
19 him if we can search the vehicle. He kind of stalled
20 a little bit and then gave consent. As canine
21 handler, I approached the vehicle prior to searching
22 it, inspecting the roadway for glass or any kinds of
23 hazards to the dog or that kind of thing. We already
24 had consent, but went to remove some open packages of
25 food in the floorboard of the passenger side. Removed

1 those for the dog.

2 As I remove those, it was a chicken box kind
3 of halfway, the top would not close. A bag was
4 sticking out. As I was removing this bag, you could
5 see a clear that plastic bag sticking out, protruding
6 kind of and consistent with the way I have seen
7 illegal contraband packaged many times. As I kind of
8 folded back the top to see what it was indeed, the
9 Defendant at that time fled from Corporal Owens.

10 Q I want to step back for a second.

11 A Okay.

12 Q Did you hear Corporal Owens ask --

13 MR. LONG: I object to any leading.

14 THE COURT: Just go ahead and ask the
15 question, Counselor.

16 BY MR. NEWKIRK:

17 Q Did you observe or hear Corporal Owens ask
18 the Defendant for consent to search the vehicle?

19 A Yes, I did.

20 Q Did you --

21 A The Defendant used what we call stalling
22 tactics, repeated the question or something to that
23 effect but did give consent, did give verbal consent.

24 Q After you found what you suspected to be
25 illegal narcotics in the chicken bag, what happened?

1 A The Defendant -- as I said, they were kind of
2 standing in between the two vehicles there. The
3 Defendant fled. Where we are talking about on the
4 interstate right below Mauldin Road, it is six lanes
5 there. You have three lanes, a concrete median, and
6 three more lanes. He went across three lanes, the
7 concrete median and three more lanes. Myself and
8 Corporal Owens both pursued him at that point in time.
9 Went down to the wooded areas where I apprehended him
10 in the woods.

11 Q Did you go back to the area of the traffic
12 stop?

13 A Yes, sir. We brought him back out to our
14 vehicles. Yes, sir.

15 Q Once you got back up to your vehicles, did
16 you run your canine around the vehicle?

17 A Yes, I did.

18 Q Did your canine alert on the vehicle?

19 A Yes, he did.

20 Q What happened after that?

21 A After he alerted to the vehicle, we got the
22 bag out of the chicken box there and field tested the
23 substance inside of the bag. And it field tested
24 positive as cocaine. I transported the Defendant to
25 the Greenville County Detention Center and placed the

1 stuff in evidence.

2 MR. NEWKIRK: Nothing further, Your Honor,
3 from this witness.

4 THE COURT: Okay. Mr. Long.

5 CROSS-EXAMINATION

6 BY MR. LONG:

7 Q Do you know how long after the stop it was
8 that you showed up?

9 A No, sir, I do not. Several minutes.

10 Q When you showed up, where was the Defendant
11 standing?

12 A To be honest with you, sir, I don't really
13 remember that. Normal procedure for us is somewhere
14 around the front tire on the passenger side of our
15 vehicle. At that particular, I could not say.

16 Q What was it you testified about routine
17 questions or questioning going on when you arrived?

18 A Just that they were in a consensual encounter
19 between the vehicles. Just normal. I don't think I
20 used the term as just normal. It's just the way we
21 generally have them exit the vehicle about whatever
22 his violation was as far as stopping them and
23 explaining court dates, warning citations or whatever.

24 Q Did you hear what was going on between the
25 officer and Mr. Provet?

1 A No, sir. Not prior to me getting there. No.
2 sir.

3 Q Of course not. I am talking about when you
4 got there.

5 A Yes, sir. As I walked up, yes, sir. He was
6 explaining or had finish explaining the warning
7 citations that he issued and asked for consent to
8 search.

9 Q He had issued it at that time?

10 A Yes, sir.

11 Q When you got there, he had already issued the
12 warning citation?

13 A He was explaining that, yes, sir.

14 Q Okay. He was explaining from a piece of
15 paper?

16 A Sir?

17 Q I don't understand what you said. That's the
18 point.

19 A It's kind of practice, sir. Any time you
20 issue a citation whether it is a warning citation or a
21 written citation, you're going to explain it to the
22 Defendant. A lot of times people are not from South
23 Carolina. They had never seen one. Maybe they are in
24 South Carolina but just never got a ticket.

25 It is common practice that we explain to them

1 what they have done and what our action that we have
2 taken is. He was in the process of making sure that
3 the operator of the vehicle understood what infraction
4 had occurred and what he was doing about.

5 Q So, the ticket was written at that stage?

6 A Yes, sir. It had been written.

7 Q Had it been handed to the Defendant at stage?

8 A I honestly do not remember that part, sir.

9 Q But it was completed at that point?

10 A Yes, sir. It was completed.

11 Q That was when you arrived on the scene?

12 A Yes, sir.

13 Q Did you hear anymore dialogue between Officer
14 Owens and the Defendant as you arrived after that?

15 A Not to my recollection, no, sir.

16 Q How much time passed between -- did you go
17 back to the dog or what did you?

18 A I left from where they were standing and
19 approached the vehicle area. Common practice for
20 myself to ensure there was no safety hazards for the
21 dog. Obviously on the side of the interstate and all
22 of that good stuff, so I want to make sure there
23 wasn't anything that was going to harm the dog or give
24 us any kind of trouble. It was just pretty much
25 common practice.

1 Q Did you see anything that would harm the dog
2 or anything of that sort?

3 A Sir?

4 Q Did you see anything that would harm the dog
5 or anything.

6 A No, sir, nothing that would harm the dog.
7 However, when we already had obtained verbal consent.
8 If there was any kind of open containers of food or
9 anything like that, it was common practice for us to
10 remove that, remove those items just so that it didn't
11 affect --

12 Q When did the --

13 THE COURT: I'm sorry. You cut him off,
14 Mr. Long. You said you removed the evidence so
15 that it doesn't --

16 THE WITNESS: It did not affect the search
17 pattern. It kind of goes back and forth as far
18 as the methodology of that. Certain people in
19 schools are taught -- teach to remove it.
20 Certain don't. We only did that when we've
21 already gained verbal consent. Obviously, if we
22 didn't have verbal consent, we would have ran the
23 canine at the exterior of the vehicle only before
24 we removed anything.

25 THE COURT: Thank you. You can continue,

1 Mr. Long.

2 MR. LONG: I'm sorry.

3 BY MR. LONG:

4 Q So you are saying when you remove the chicken
5 box from the car, he had given verbal consent?

6 A Yes, sir, he had.

7 Q Were you there to hear him give verbal
8 consent?

9 A Yes, sir, I was.

10 Q Did you leave the chicken box which I think
11 you said you left them and their dialogue continued --

12 A Yes.

13 Q -- and went over to the vehicle. And then
14 you came back and then hear the consent?

15 A No, sir. The consent -- he already granted
16 consent. Then I walked toward to check the vehicle
17 and the area around the vehicle for the dog. At that
18 time, I located at the chicken box, as I stated, when
19 I observed the Defendant fled on foot.

20 Q Okay. So, just go into a little more detail
21 about when he gave the consent in relation to your
22 getting there and when you got there, there was talk
23 about the warning ticket and the basis of it if I
24 remember correctly, if I may paraphrase. Then he gave
25 him the warning ticket at some point. When did he

1 ask for the consent?

2 A After he explained the warning citation and
3 the Defendant said he understood it. He then asked
4 for consent to search the vehicle.

5 Q You were there at that time?

6 A I had just gotten there. Yes, sir. But I
7 was there.

8 Q How close were you standing to him at that
9 time?

10 A Closer than you and I are now.

11 Q Okay, sir. How many feet apart would you
12 say?

13 A Probably four or five feet.

14 Q How close were Officer Owens and the
15 Defendant standing?

16 A Probably the same.

17 Q How close were you to Officer Owens?

18 A Probably if you were to draw it on a piece of
19 paper, it would look somewhat like a triangle.

20 Q Like a triangle?

21 A Yes, sir.

22 Q Did you speak? Did you say anything relative
23 to consent to search?

24 A No, sir. Not to my recollection

25 Q You heard the Defendant speak?

1 A Yes, sir.

2 Q Were you close to the patrol car at that
3 time?

4 A Probably close to Corporal Owens' patrol car
5 but not mine.

6 Q Corporal Owens?

7 A Uh-huh.

8 Q It would show all this on tape you would
9 think?

10 A To be honest with you, sir, I haven't
11 reviewed the tape. I don't know where his camera was
12 pointed. The angles of the cameras, sometimes some of
13 that stuff is on, sometimes it is not. Like I said, a
14 lot of times we did our business on the side, the
15 passenger side.

16 Q At any time, did you tell the Defendant that
17 he was free to go?

18 A Did I?

19 Q Uh-huh.

20 A No, sir.

21 Q At any time, did you inform the Defendant
22 that he was the suspect before getting the consent to
23 search?

24 A Did I? No, sir.

25 Q Did you write the report?

1 A This report here?

2 Q Yes, sir?

3 A Yes, sir, I did.

4 Q That is the incident report?

5 A Yes, sir.

6 Q May I look at it?

7 A Yes, sir.

8 Q I presume you had got a lot of this
9 information from Officer Owens?

10 A Yes, sir.

11 Q It is your testimony that the food bag was on
12 the front passenger seat?

13 A Yes.

14 Q Before you opened up that package, you said
15 that you were able to see the clear pouch sticking?

16 A A portion of the clear plastic pouch. None
17 of the fast food restaurants that I am familiar with
18 package anything in Ziploc bags.

19 Q All right. Why would you have the dog sniff
20 the vehicle after you found the bag?

21 A Well, it cost a tremendous amount of money to
22 train and equip a canine team. When you start going
23 into training methodologies and how you are going to
24 train the dog and the use of pseudo drugs and things
25 of that nature, any time a savvy canine handler has

1 the opportunity to run his dog around a known or
2 possibly known substance in a vehicle, you're going to
3 take that opportunity to run that dog and gauge his
4 performance. It is pretty much a common standard
5 practice any time you are engaged in anything like
6 that, you're going to run a dog if at all feasible.
7 There's no training like the real thing.

8 Q Is he a good dog?

9 A Yes, sir. He was.

10 Q You ever find any more drugs other than that
11 one bag?

12 A We didn't. All the dog can tell you is
13 whether or not the odor is there. We didn't locate
14 anything else in the vehicle.

15 Q What size man are you, sir?

16 A Me?

17 Q Uh-huh.

18 A I am 6'5, 210 pounds.

19 Q Roughly, what size is Officer Owens?

20 A 5'9, 5'10. 175 or 180. I am guessing.

21 Q Stand Mr. Provet.

22 He is very slight. You will agree with that?

23 A Yes, sir.

24 Q So, when the suspicion existed, I think
25 Officer Owens stated that he wouldn't tell people that

1 if they are under investigation because they might
2 fight or might run. I guess fighting wasn't exactly
3 in the cards at the time that you were getting ready
4 to ask for consent.

5 A There was no fight at that point. No, sir.

6 Q Was there an altercation once you caught him
7 on the other side of the road?

8 A Not anything beyond the parameters of a
9 normal physical act of resistance to being handcuffed?

10 Q Anybody injured?

11 A Not to my recollection.

12 MR. LONG: May I confer?

13 THE COURT: Yes, sir.

14 MR. LONG: That is all questions, Your
15 Honor.

16 THE COURT: All right.

17 MR. NEWKIRK: Nothing further, Your Honor.

18 THE COURT: All right. You may step down.
19 Thank you, Investigator.

20 MR. NEWKIRK: Your Honor, at this time, I
21 will show the video.

22 THE COURT: I'm going to step off the bench
23 for a few minutes and use the restroom. I invite
24 you want to do the same. Just be back in two
25 minutes if that is okay. If that is not quick

1 enough for you to find one that way, you can come
2 this way if you need to. I'm just going to get a
3 jury room.

4 (WHEREUPON, a short recess is taken.)

5 THE COURT: All right. Are you ready, sir?

6 MR. LONG: Yes, Your Honor.

7 THE COURT: If you need to come closer to
8 be able to see this, obviously, I need to see it.
9 If you and your client --

10 MR. LONG: May I bring my client?

11 THE COURT: Absolutely.

12 MR. LONG: Can he bring a chair around?

13 MR. LONG: Absolutely.

14 THE COURT: Officers, you are more than
15 welcome.

16 (WHEREUPON, the video is played.)

17 MR. NEWKIRK: That is all the State has, Your
18 Honor.

19 THE COURT: All right. You want to have
20 argument at this time?

21 MR. LONG: Let me confer with my client
22 and see if he wants to.

23 THE COURT: Yes, sir.

24 (WHEREUPON, there is a pause.)

25 MR. LONG: Judge, my client chooses not to

1 take the stand at this proceeding.

2 THE COURT: Okay. All right. Mr. Provett,
3 will you stand up, sir? Sir, you have the right
4 to testify for just the limited -- and correct me
5 if I am wrong, Solicitor -- just the limited
6 portion of this hearing.

7 MR. NEWKIRK: That is correct, Your Honor.

8 THE COURT: Okay. Do you understand that,
9 sir?

10 MR. PROVETT: Yes, ma'am.

11 THE COURT: In other words, you can testify
12 at this hearing for the suppression issue only.
13 You will be subject to cross-examination for this
14 hearing specifically but nothing that is said
15 will be used against you in the trial of this
16 case if you choose not to testify. Do you
17 understand that, sir?

18 MR. PROVETT: Yes, ma'am.

19 THE COURT: Solicitor, am I stating it
20 correctly?

21 MR. NEWKIRK: Yes, Your Honor.

22 THE COURT: I want you to know that. You
23 freely, sir, if you want to take the stand and
24 testify at this time, again, you will be subject
25 to cross-examination at this time. Of course,

1 the jury is not here. It would just be among us.
2 Anything you do say cannot be used against you in
3 the trial of this case. That is completely
4 within your choice and purview. Do you
5 understand that, sir?

6 MR. PROVET: Yes, ma'am.

7 THE COURT: I understand you have spoken
8 with your counsel about whether or not you want
9 to testify at this suppression hearing. Is that
10 correct, sir?

11 MR. PROVET: Yes, ma'am.

12 THE COURT: Would you like to testify or
13 not testify?

14 MR. PROVET: No, ma'am.

15 THE COURT: All right. I appreciate that,
16 sir. I want to be sure you fully understand.

17 Mr. Long, is there anything else that we
18 need to put on the record as far as inquiry of
19 your client regarding whether or not he should
20 testify here at the suppression hearing?

21 MR. LONG: Let me --

22 THE COURT: Okay.

23 MR. LONG: Okay. We are fine.

24 THE COURT: You are fine, Mr. Long?

25 MR. LONG: Yes.

1 THE COURT: Is there any inquiry, Mr. Long,
2 that you need the Court to do in regard to your
3 client testifying or not testifying at this
4 hearing?

5 MR. LONG: Your Honor, I think that you
6 touched it. It would be limited to the scope of
7 this hearing but it would be subject to cross-
8 examination in that it couldn't be placed in
9 evidence against him. Of course, he couldn't
10 change his testimony. It would be under oath
11 both times. And my questions would be very
12 limited. I explained to him that they would not
13 be prohibited from going outside of my testimony
14 if it related to this hearing.

15 THE COURT: The suppression issue, is that
16 correct?

17 MR. LONG: Yes.

18 THE COURT: All right.

19 MR. LONG: I think he understands.

20 THE COURT: Okay.

21 MR. LONG: All right.

22 THE COURT: Mr. Provett, is that correct,
23 you understand what your lawyer has explained to
24 you, sir?

25 MR. PROVETT: Yes, ma'am.

1 THE COURT: All right. Sir, you choose
2 again still not to testify, is that correct?

3 MR. PROVET: Yes, ma'am.

4 THE COURT: Solicitor, anything further we
5 need to put on the record?

6 MR. NEWKIRK: Nothing from the State, Your
7 Honor.

8 THE COURT: Okay. All right.

9 MR. LONG: Do you want to hear argument?

10 THE COURT: I do. Thank you, Mr. Long.

11 (WHEREUPON, there is a pause).

12 MR. LONG: Are you ready, Your Honor?

13 THE COURT: Yes, sir.

14 MR. LONG: To the point that he stepped
15 back from his car and was patted down, we
16 certainly would have no argument with any of
17 that. That happened somewhere around 21:03:00
18 plus/minus. As the officer candidly admitted, in
19 his mind -- I think it is pretty clear that in
20 the officer's mind that at no time was Mr. Provett
21 free to leave up until the moment he gave the
22 warning ticket. That happened about 21:12:30
23 plus/minus. (About 10 minutes have expired before
24 a warning ticket was ever issued.

25 During that time, numerous questions were

1 asked of Mr. Provet. Numerous observations were
2 made of the vehicle. The questions that were
3 asked got sort of personal. They were designed,
4 I guess, to see whether Mr. Provet was telling
5 the truth. He was under no compulsion to answer
6 those questions or answer them truthfully. They
7 were delivered almost in the form of jocular
8 conversation with the officer joking back and
9 forth about how many girlfriends you got.

10 The officer made huge emphasis on numerous
11 food bags. It is obvious that he scrutinized the
12 interior of the car when he first came up. From
13 the vantage point outside of the car, he had the
14 right to do that, what was in plain view.

15 It is interesting that the first officer that
16 came up at no time mentioned any partly opened
17 box of food or any protruding clear plastic where
18 no fast food is packed that way but drugs
19 certainly are, clear plastic envelope sticking up
20 from a chicken box or something, a box containing
21 chicken or some sort fast food. It is telling
22 that none of that, this multitude of fast food
23 boxes and bags, none of that was taken into
24 evidence, the packaging.

25 They make a point of numerous air fresheners.

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1 At no time were the air fresheners taken into
2 evidence if they existed or the food bag
3 containers if they existed. They made a point of
4 driving a car titled to somebody else indicating
5 drugs. To me, that shows how weak the
6 probability that this drug transaction is, those
7 three items. The alleged food containers and
8 alleged air fresheners and the fact that the car
9 was titled to someone else, the vehicle.

10 He asked if there was any, if he had any
11 baggage. Obviously, there was a misunderstanding
12 there. There was a luggage bag on the rear of
13 the seat. He did not have baggage but he had
14 things to travel with. That wasn't taken into
15 evidence.

16 These questions that he had, that Mr. Provet
17 had no reason to answer but did, he makes a big
18 point that there was confusion as to what motel
19 or where it was located. All of those -- to this
20 day, I cannot tell you any exit number off of
21 any, I-85 or I-90 or anywhere else. I just don't
22 think myself exit numbers. Most citizens don't.
23 Law enforcement, they drive up and down the road.

24 I submit, to this point, there was no real
25 reason to suspect that there were drugs involved

1 other than the fact that this young black male
2 with dread locks -- I guess he had dread locks at
3 this point -- was alone in a vehicle. Reason was
4 strained to establish some basis to go forward.
5 With this strange reasoning, they called the dog.
6 The dog man came up. It gets really bizarre, the
7 scenario with the dog there. All of this was
8 legitimate to this point, the dog had to sniff
9 around.

10 As if some magic cloud that descended when
11 the warning ticket was given and then this cloud
12 to a new universe opened. And Mr. Provet
13 supposedly knew he was free to go and was free to
14 go. The officer wouldn't stop him. In the next
15 instant, things proceeded further. He asked him
16 do I have your consent to search. They say, the
17 officer say that he consented to the search but
18 the tape does not seem to back that up. They
19 were all in close quarters. I did not hear a
20 consent given.

21 There was an unintelligible utterance that
22 they were asking the question for consent. Then
23 there was some unintelligible utterance after he
24 was asked that again. Then, the officer went
25 over and allegedly pulled out a chicken box, box

1 of chicken and a plastic bag with stuff that was
2 sticking out in clear view, part of it, clarify,
3 part of it. Then, Mr. Provet ran.

4 I submit to you that it all boils down to
5 whether or not a valid consent was asked and was
6 given. And it is clear that a strict test as to
7 giving consent when somebody is not free to
8 leave, the person is in de facto a trustee at
9 that time, temporary but that is the crux of the
10 case.

11 He has to clearly understand and realize that
12 he is a crime suspect, be aware that he is not
13 free to leave before the consent to search can be
14 valid. It cannot be based on coercion or
15 circumstances that are coercive. When you have
16 two officers the size of these and a slight man
17 the size of Mr. Provet detained for a normal
18 period of time during this entire process, it is
19 extremely difficult to imagine that the consent
20 to search could be voluntarily. I think that is
21 the issue in this case.

22 The dogs are inconsequential. As good a dog
23 as it is, it did not find anything more. There
24 is nothing. It narrows itself at that moment
25 whether he could give a voluntary consensual

1 search. He had been detained. There were two
2 officers. No semblance of a warning as to why he
3 was detained, what he was looking for, were you
4 willing to do this, do you understandingly do
5 this as far as a consent. This is certainly
6 exacerbated if the court should determine that
7 this detention was too long, too protracted.

8 Even at that, we are down to the fiction that
9 this magic moment between giving the warning
10 ticket when he was free to go and then suddenly
11 he's not free to go because he allegedly gave an
12 inaudible consent. I urge the Court to suppress.
13 It's tough to suppress these hearings but I urge
14 the Court to do it on this one please.

15 THE COURT: Thank you, Mr. Long.

16 Mr. Newkirk.

17 MR. NEWKIRK: May it please the Court. Your
18 Honor, I will submit the traffic stop is in three
19 different phases. The first phase is the initial
20 stop that Mr. Long has a problem with. There was
21 probable cause to stop this Defendant for two
22 traffic violations. The next stage of this
23 detention is when the officer is dealing with the
24 reason for the initial traffic stop which is the
25 traffic violations. In this case, it was not

1 unreasonably long. I would say the traffic stop,
2 the additional traffic violations starts when he
3 was pulled over and ends at the point when the
4 ticket is handed over, handed back to him. That
5 period was not unreasonably long. From the
6 video, it was approximately 10 minutes from the
7 time the stop began and when the ticket is handed
8 over.

9 The conversation during that time period was
10 conversation on his own. It was questions that a
11 police officer would ask during a typical traffic
12 stop. One of the cases I handed up to you, Your
13 Honor, is State v. Jones which is I believe a
14 2005 or early 2006 South Carolina case that deals
15 with these types of questions by an officer in
16 this type of scenario.

17 Your Honor, while all of this was going on,
18 the officer was checking the VIN number which is
19 appropriate during a traffic stop, was having
20 dispatch check the license and registration of
21 the Defendant, the license of the Defendant and
22 the registration of the vehicle. Once the
23 information is transmitted back to the officer at
24 dispatch, he explains the ticket and hands it
25 back to the Defendant.

1 Your Honor, any further detention after he
2 hands the ticket back, either is a consensual
3 encounter or the officer has had to have observed
4 enough factors to give him reasonable suspicion
5 to continue to detain that Defendant. The
6 reasonable suspicion to continue to detain the
7 Defendant would have to be separate from the
8 reason for the initial traffic stop.

9 Your Honor, the State is not arguing that
10 this is a consensual encounter. The State is
11 arguing that this officer had enough reasonable
12 suspension to detain this Defendant. I think
13 that the Court needs to look at the factors that
14 gave the officer a reasonable suspicion in light
15 of the officer's training and his experience. To
16 me, these things to a layperson don't necessarily
17 mean anything. But when they are put together
18 with an officer who is experienced in
19 interdiction, they mean something.

20 Your Honor, the factors that Trooper Owens
21 looked at in determining to continue to detain
22 this Defendant include third-party ownership of
23 the vehicle, the Defendant's hand shaking and
24 accelerated breathing, both nervousness that he
25 explained was greater nervousness than he

1 typically sees for someone who is stopped for a
2 traffic violation and is not in possession or
3 committing any other type of crime.

4 The Defendant gives some conflicting
5 explanations of where he is coming from. He says
6 the Holiday Inn. Trooper Owens testified he
7 observed the Defendant prior to the Holiday Inn
8 which is located off of 85 in the county of
9 Greenville. He gives different stories about I
10 was here visiting my girlfriend but this car
11 belongs to a different girlfriend. He has been
12 there for two days.

13 There is at least a bag in the car but there
14 is not necessarily luggage in the car that would
15 illustrate someone staying in a hotel for two
16 days or staying anywhere for two days. In
17 addition, there were fast food bags in the
18 vehicle. There are numerous air fresheners in
19 the vehicle.

20 Your Honor, Trooper Owens identified each one
21 of these particular factors and explained why
22 they were indicators to him that this Defendant
23 may be involved in possessing or trafficking
24 illegal narcotics. I think all of those factors
25 taken together with Corporal Owens' experience as

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1 a police officer and specifically an interdiction
2 officer lead to reasonable suspicion to continue
3 to detain him.

4 The case law that I passed up to you, the
5 majority of the case law in South Carolina that I
6 found only deals with instances where there is
7 not enough reasonable suspicion to continue to
8 detain someone. In the cases that I found, they
9 deal with overt nervousness alone is not enough.
10 The fact that a defendant's driving record shows
11 that his license has been suspended for a
12 narcotics charge, that alone is not reasonable
13 suspicion to continue to detain him. The cases
14 here at the bar are distinguished incredibly from
15 those cases. There are so many factors.

16 Your Honor, if the detention is supported by
17 reasonable suspicion which it is in this case,
18 then we determine whether or not consent is
19 voluntary. Both of these officers have testified
20 that this Defendant was asked, they asked for
21 consent to search and he granted them consent to
22 search his vehicle.

23 Some of the factors the court looks at in
24 determining the voluntariness of consent is the
25 number of officers on the scene, whether or not

1 the drug dog was out at the time consent was
2 asked for which is not the case in this
3 particular case. He was still in the car. There
4 are only two officers on the scene.

5 He was not threatened in any manner. He was
6 not spoken to at that point in any threatening
7 matter or assertive voice. He was not promised
8 anything. In return for his consent, there is no
9 physical pressure for anything to consent. There
10 is no violence.

11 Mr. Long has brought up the issue of the
12 Defendant being detained at that point and
13 somehow destroyed the voluntariness of the
14 consent. That is just one factor for you to
15 consider, Your Honor. The case law is clear that
16 custody, even if he was in full custody and
17 handcuffs, that in and of itself does not destroy
18 the voluntariness of consent. It is one factor
19 for the court to consider.

20 Your Honor, taking all of these things into
21 consideration, it was a valid traffic stop, the
22 officers did not elongate the initial traffic
23 stop in an unreasonable amount, there was
24 reasonable suspicion to support a continued
25 detention of this Defendant and the consent was

voluntary, Your Honor.

THE COURT: Okay. All right. What I am going to do --

Mr. Long, do you need to respond?

MR. LONG: Yes, briefly.

THE COURT: Yes, sir.

MR. LONG: I believe the US Supreme Court has in Robinette --

THE COURT: I am sorry, sir. What was that?

MR. LONG: Robinette, 519 US 33. And, the Williams case, one of the cases that were handed to you by the prosecution, go into the fact that as both of us has argued that probative factors come into play as to whether or not you can then enter into the second phase of the seizure of a person or the vehicle.

Uh, one of those would be the Williams case that you have got, would be whether or not he was aware that he was being investigated of a more serious circumstance than a traffic stop.

Another factor is whether he was told, whether he knew he was free to leave. He never was told.

And the testimony of Officer Owens was that for a split second he was free to leave and then

1 suddenly, the door slammed shut within that
2 second and he couldn't leave.

3 When you get down to, when you get into the
4 world of consent to search, it is a heavy burden
5 on the State to prove unless they have a written
6 document that goes into all the warnings that
7 would be encompassed in Miranda and so forth. It
8 is a most critical stage. There is no question
9 that he was, his body was seized at that time.
10 If that is not an arrest -- it is an arrest.

11 They did not do enough to obtain a consent if
12 they even had one. A trained police officer
13 would know something is going on by his
14 experience. Why wouldn't they allow us to see
15 those, the fast food containers, the air
16 fresheners, et cetera. If it just jumped out the
17 page at him, it seemed like we less informed
18 people would be allowed to see it to see what
19 triggered it. I just, I think what happened is a
20 sort of routine testimony in this type situation.
21 I think the ultimate fact is they did not meet
22 the test for obtaining a consent if ever there
23 was one. Thank you.

24 THE COURT: Anything further, Mr. Newkirk?

25 MR. NEWKIRK: Not from the State.

1 THE COURT: Are there any other pretrial
2 motions that we have before we do opening
3 arguments in the morning? Anything further?

4 Any further motions, Mr. Long?

5 (WHEREUPON, there is a pause.)

6 MR. LONG: I have conferred with my
7 client. I believe that those are the evidence of
8 the motions that we would have to address to the
9 Court at this stage, Your Honor.

10 THE COURT: I appreciate it. What I'm
11 going to do y'all -- I appreciate you handing up
12 some case law. Let me read it here tonight. I
13 propose that we get started, the attorneys be
14 back here tomorrow morning at about 8:45. I will
15 give you my decision on this issue.

16 I also want to be clear -- I heard one of the
17 bailiffs say -- how long do we think this case is
18 going to take to complete this case, Solicitor,
19 at least your case?

20 MR. NEWKIRK: Your Honor, my case, I would
21 say two, two and a half hours. I have got these
22 two witnesses and the evidence custodian.

23 THE COURT: Okay. I don't have a law clerk
24 this week. I just want to make sure I have my
25 charge prepared and ready to go if necessary.

1 Additionally, have you spoken with defense
2 counsel?

3 I have no idea, Mr. Long, if your client has
4 a prior record. I want to make sure that he
5 understands if he does choose to testify or not
6 testify that he has the fair information of what
7 can be used against him as far as any prior
8 convictions.

9 MR. NEWKIRK: Your Honor, his prior
10 convictions are from New York. I am not going to
11 be able to obtain certified convictions. I am
12 not going to use those to impeach.

13 MR. LONG: I am not sure that any one of
14 them could be used either.

15 THE COURT: He does not intend to use them.
16 I just want to make clear. Obviously, if he
17 chooses to testify or not testify, I am going to
18 ask him those questions. I just want to make
19 sure he has ample time to talk about it and have
20 the time. It seems that nothing is going to be
21 used. So that isn't an issue. We have no other
22 witnesses, correct me if I am wrong, that would
23 need RAP sheets. Is that correct?

24 MR. NEWKIRK: No, Your Honor.

25 THE COURT: Okay.

Thanks

1 MR. LONG: I apologize for my voice.

2 Everybody in town has been getting this.

3 THE COURT: You are fine. I want to ask
4 the solicitor to do one other thing for me. I do
5 not have a printer back there. Do you have
6 someone downstairs that can go and print me off
7 the Robinette case --

8 MR. NEWKIRK: Yes, Your Honor.

9 THE COURT: -- before I leave to night? Do
10 you mind? Do you need the cite again or do you
11 have it?

12 MR. NEWKIRK: I have this cite right here.

13 THE COURT: It is 519 US 33. If you don't
14 mind, I'm going to go back to chambers. I'm
15 going to grab my things and I am going to head
16 downstairs. Maybe, have someone bring it to me
17 or meet me over here. I don't know how long it
18 is going to take you. I don't have access to a
19 printer.

20 MR. NEWKIRK: It will take approximately ten
21 minutes.

22 THE COURT: Okay.

23 MR. NEWKIRK: Thank you, Your Honor.

24 THE COURT: Anything further? Mr. Long, I
25 only ask the solicitor to do it because I am

1 assuming he has an office in this building and I
2 am assuming you don't. I always have defense
3 attorneys say to me I can print it for you,
4 Judge. I don't have my computer. I figure we're
5 going to make them do the work for me.

6 MR. LONG: May I say on the Williams case,
7 the 350 --

8 What did you hand up, the South Carolina
9 citation?

10 351 S.C. 604, 571 S.E. 2nd, it goes into the
11 voluntariness of a consent. I have got other
12 cites here. If you are interested in them, I can
13 put them on the record.

14 THE COURT: As to what?

15 MR. LONG: State v. Harris, 277 S.E. 2nd.

16 THE COURT: Hold on a second. State v.
17 Harris. I'm sorry. Okay.

18 MR. LONG: 277 S.C. 274, 286 S.E. 2nd 137,
19 State v. Madison, 352 S.C. 577, 575 S.E. 2nd 852.
20 Those cases, uh, goes to the point that the
21 consent has to be voluntary.

22 THE COURT: Okay. Solicitor, if you don't
23 mind, will you pull those two as well? I will
24 appreciate it. Okay. All right, anything
25 further before I let everyone else go for the

1 day?

2 Solicitor, you have got that? The Robinette
3 case, the Harris case and the Madison case, if
4 you don't mind.

5 MR. NEWKIRK: Yes, Your Honor.

6 (WHEREUPON, the Court adjourns at approximately
7 6:00 p.m.)

8 (WHEREUPON, the Court resumes on August 8, 2007
9 at approximately 9:17 a.m.)

10 THE COURT: All right. If you all are
11 ready, I understand we are still possibly waiting
12 on one juror. Obviously, I need to rule on the
13 motions yesterday that I heard. Let's make sure
14 that we get Mr. Provet out here.

15 (WHEREUPON, the Defendant enters the courtroom.)

16 THE COURT: Mr. Long, do you need any time
17 to talk to your client this morning or are you
18 all right?

19 MR. LONG: We are prepared.

20 THE COURT: Okay. I appreciate it.

21 Solicitor, are we ready?

22 MR. NEWKIRK: We are ready.

23 THE COURT: All right, y'all. As far as
24 the Defendant's motion to suppress the evidence,
25 what they consider to be an illegal search and

1 seizure in violation of the Defendant's Fourth
2 Amendment rights, I went through an analysis
3 asking three questions as well as I want you all
4 to know to that I read all of the case law last
5 night. I went back and reread it on everything
6 that you offered, Mr. Long, as well as what the
7 State offered in detail.

8 The first question I came to was did the
9 officer have probable cause to stop the
10 Defendant's vehicle. Under Winn versus United
11 States, when probable cause exists to believe a
12 traffic violation, the decision to stop the
13 vehicle, of course, is reasonable per se.
14 Trooper Owens' testified the Defendant was
15 following the vehicle in front of him too closely
16 and therefore it was a valid stop. Once the
17 vehicle is detained lawfully for a traffic
18 violation, the police may order a driver to exit
19 the vehicle without violating the Fourth
20 Amendment on reasonable search of seizures
21 pursuant to Pennsylvania versus Mims.

22 The testimony by both officers in this case
23 and the video showed that at that point, the
24 driver's license and registration check had come
25 back and Trooper Owens issued the warning

1 citation and gave the Defendant back his driver's
2 license and registration. We know by the video
3 in looking at the time and as stated in his
4 argument by Mr. Long at the traffic stop lasted
5 about 10 minutes approximately. That was
6 reasonable. I can tell you that was reasonable
7 in my opinion for the traffic stop.

8 Once the purposes of that initial traffic
9 stop are completed, the officer can not detain
10 the vehicle or the Defendant unless something
11 occurred during the traffic stop generating a
12 necessary reasonable suspicion to justify another
13 or further detention. We all know this is
14 according to State v. Williams that is passed up
15 by the solicitor. So the question becomes was
16 the subsequent detention based on a reasonable
17 suspicion of a serious crime afoot.

18 In determining whether reasonable suspicion
19 existed to further detain, I looked at
20 specifically State v. Ricardo, State v. Williams
21 and US versus Newland for guidance. Of course,
22 as we all understand from all of these cases,
23 this is very fact driven on a case-by-case basis.
24 There is no specific bright lined rule. The
25 Supreme Court has declined issuing any bright

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1 lined rule.

2 We need to look at Trooper Owens and
3 Detective Aman's testimony. Trooper Owens
4 testified during the original traffic stop, he
5 considered the following factors in determining
6 how it came about with his reasonable suspicion
7 that criminal activity, specifically, somehow
8 some type of drug violations were occurring is
9 that first when he handed over the driver's
10 license and registration, when the Defendant
11 handed over his driver's license and
12 registration, his hand was shaking and his
13 breathing was accelerated. That indicated
14 nervousness for officer -- Trooper Owens.

15 Trooper Owens then asked him questions about
16 where the Defendant was coming from, where he was
17 going. His testimony was that the Defendant's
18 answers appeared not to be truthful. He stated
19 he was coming from the Holiday Inn in Greenville.
20 However, Trooper Owens had seen himself at the
21 Holiday Inn off-ramp heading north on I-85.

22 Trooper then asked him if he had gone
23 anywhere else between the time that he left the
24 Holiday Inn before he was pulled over to stop to
25 determine if there was a reason why he had been

1 south of that off-ramp. The Defendant stated no,
2 he had stayed there. He had not gone anywhere
3 else in-between.

4 Further, Trooper Owens testified that the car
5 registration showed that it was a third-party
6 owner which to this officer indicated that it was
7 a possibility that in third-party ownership of
8 the vehicles oftentimes could indicate that
9 possibly there might be some type of drug
10 activity going on. Possibly, the driver, if
11 apprehended, would not be tied specifically to a
12 car.

13 He also asked Mr. Provet how long he been in
14 Greenville. Mr. Provet answered he had been in
15 Greenville for two days. The trooper then asked
16 if he had luggage in the car. Mr. Provet told
17 him that he did not. Trooper Owens thought this
18 was strange considering he had been here for two
19 days and stayed at the Holiday Inn. However, as
20 we all know, there was a bag in the backseat.
21 However, at that time, the trooper was not aware
22 of that and was going on basically what Mr.
23 Provet had told him that there was no luggage.

24 Additionally, Trooper Owens said he noticed
25 numerous fast food bags to indicate, in his

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1 experience, that someone may have been working on
2 a tight schedule. He also stated that there were
3 numerous air fresheners in the vehicle. Again,
4 the trooper stated in his experience, that was
5 used or could be used to disguise an unpleasant
6 odor or be an attempt to avoid detection of the
7 smell of drugs by an officer or canine or
8 whatever. He also stated he saw several receipts
9 in the console.

10 The officer then upon handing back to Mr.
11 Provet the registration to the car, Mr. Provet's
12 driver's license and the warning citation, then
13 asked Mr. Provet and he consented to a search of
14 the vehicle. As you all know, we have to look at
15 the totality of the circumstances. That is what
16 all these cases tell us is that any one thing may
17 or may not be enough to rise to a level of
18 reasonable suspicion.

19 But looking at the totality of the
20 circumstances and based on Trooper Owens
21 experience that he did believe there was
22 reasonable suspicion to justify detaining Mr.
23 Provet either further or anew as a second
24 detention because he believed some criminal
25 activity was occurring. I can tell you that I

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1 looked real closely at State v. Williams. I've
2 found that this case before us differs again from
3 State v. Williams where the only indication of a
4 possible further crime had occurred according to
5 the officer's own testimony was for prior
6 suspension of that car's driver's license for a
7 drug-related offense which we all recognize
8 according to US v. Jones does not amount to
9 reasonable suspicion and cannot be a basis for a
10 detaining someone further.

11 Which leads me to the final question. I will
12 say that I do find based on the totality of the
13 circumstances all the things Trooper Owens
14 recited that he did have reasonable suspicion to
15 detain Mr. Provet and request a search which
16 leads me to the final question that Mr. Long
17 raises that again was consent giving to the
18 search. Mr. Long contends that that was an
19 issue. Again, if it was given, it wasn't
20 voluntary.

21 Addressing the first question, Trooper Owens
22 and Investigator Aman both testified that the
23 Defendant gave his consent to search the vehicle.
24 Defense counsel argues and of course no testimony
25 was put up. He argues that on the video, you

1 cannot clearly hear the Defendant's consent. I
2 will tell you that obviously I have thoroughly
3 watched the video with all of you present in the
4 courtroom.

5 I've found that throughout the video, it is
6 often difficult to hear Mr. Provet's responses to
7 the colloquy that was going on during the traffic
8 stop due to Mr. Provet's somewhat soft voice as
9 well as the traffic in the background on I-85
10 which can be loud at times. What I do find is it
11 is absolutely clear to me that not only did he
12 respond in the affirmative but also, he went on
13 further in response to Detective Aman's
14 questioning when asked whether or not he gave
15 consent, Detective Aman then went on to ask him
16 if there was any food in the car.

17 I clearly heard this Mr. Provet say to that
18 yes, that was. Officer Aman says I'm going to go
19 remove it. I'm going to take it out of the car
20 and I'm going to place it on the hood of the car
21 so as not to interfere with the canine drug
22 sniffing search. It was obviously a colloquy
23 that was ongoing. It was then at that point that
24 Detective Aman went to remove the chicken box
25 when he testified that he saw the partially

1 opened chicken box with a clear plastic bag with
2 white substance sticking out of the box. At
3 which time, the Defendant, Mr. Provet, did run
4 across the highway. So, based on whether consent
5 was given, I do find according to the testimony
6 given that there were, that the consent was
7 given.

8 Addressing the second question as to whether
9 or not it was voluntary, case law tells us that
10 the existence of consent is determined from the
11 totality of the circumstances again. The
12 Defendant had been given back his drivers license
13 and the car's registration. The warning citation
14 had being given to him. That was nothing
15 threatening or coercive in either of the
16 officers' behavior or voice that were shown on
17 the video tape or by their testimony such that it
18 does appear in my opinion, the consent was
19 voluntary.

20 As a result of that, I do find that the
21 cocaine that was found in the vehicle was
22 discovered through two illegal detentions
23 accompanied by valid consent to search and that
24 the evidence obtained is admissible as a result
25 of it. So, with that said, y'all, is there any

1 other outstanding motions we have this morning?

2 MR. NEWKIRK: None from the State, Your
3 Honor.

4 THE COURT: Any from the defense, Mr. Long?

5 MR. LONG: Just for the record, my client
6 as I mentioned at the outset, he has a motion in
7 limine that he filed pro se. It goes to the same
8 issues as the suppression. I am sure that you
9 considered both.

10 THE COURT: It is the same argument, is
11 that correct, sir?

12 MR. LONG: As it unfolds, the argument
13 would be the same in my judgment, yes, ma'am.

14 THE COURT: He filed that pro se. Is that
15 correct?

MR. LONG: Yes, ma'am.

16 THE COURT: Mr. Long, do you tell that you
17 have adequately made that argument as well in
18 addition to his pro se argument?

19 MR. LONG: I feel that I very adequately
20 made the argument that is germane to this case.
21 That is, as the facts unfolded, I think the whole
22 issue is whether or not consent to search was
23 voluntary, whether or not consent was given. So,
24 I have not heard the testimony of the officer
25

1 before, of course, neither had Mr. Provet. He
2 hadn't viewed the video until yesterday. I have.
3 I had it for a long time, as have friends and
4 family members of his. I made copies for them.
5 The content was discussed.

6 Until you get to court and hear the testimony
7 and have the opportunity to question officers,
8 the video by itself would not totally speak to
9 the issue. I agree that it is -- I guess this
10 shows what you said. The totality of the tape
11 and the testimony is what enters into it.
12 Naturally, I, with great respect, I do disagree
13 with the ruling on voluntariness which, I think,
14 is an issue, I think, is something more than that
15 to search under this factual setting. I would
16 respectfully preserve my objection to that.
17 Things change procedurally. But he will appeal
18 on that issue.

19 THE COURT: I understand that, Mr. Long.
20 Respectfully, as you know, when I go and look at
21 the voluntariness of any consent to search, as
22 you know, Robinet does not require that the
23 officers to say at this time you are free to
24 leave before they ask for consent to search.
25 Additionally, as we talked about it, the totality

1 of the circumstances. I saw absolutely nothing
2 in either the behavior of the troopers on the
3 tape and their demeanor and how they spoke to the
4 Defendant or any of their testimony that was
5 threatening or coercive in any way.

6 Obviously, you all read the case law.
7 Obviously, you know what the indicators are.
8 Again, I have to look at the totality of the
9 facts and circumstances in this incident, in this
10 instance. Based on that, I do find that based on
11 the totality of the circumstances, the consent
12 was voluntarily given. Respectfully for the
13 record, we have made your record, sir, for
14 appellate purposes.

15 With that said, my understanding is we do
16 have one juror -- she is here. All right.

17 I will just state for the record, Miss
18 Johnson, we had one juror this morning who
19 arrived just a little bit late. She is only
20 about 25 minutes late. She was involved in a
21 rear end accident right in front of the
22 courthouse. She is here. I am told by the
23 bailiffs that she is fine.

24 Do either one of you want me to require in
25 any way of her to make sure she is okay and that

1 she can focus on this case? Are there any
2 concerns you have whatsoever? Her name is Tammy
3 Jenkins. She is here. My understanding is, this
4 is just what has been related to me, it is a
5 relatively minor accident. If either one of you
6 would like any inquiry of her to make sure she is
7 fine and that she can focus and concentrate, I am
8 certainly offering to do that if y'all need to
9 and would like to.

10 **MR. NEWKIRK:** The State does not believe that
11 it is necessary.

12 **THE COURT:** Mr. Long?

13 **MR. LONG:** It crosses my mind as to
14 whether it is necessary or not. I think it would
15 be an appropriate inquiry from the point of view.
16 of perspective and procedure and everything else.

17 **THE COURT:** I would do that, Mr. Long.
18 What I intend to do is if for some reason I do
19 find as you do believe and think that possibly
20 there is a reason that maybe she shouldn't sit,
21 we will go ahead and sit the alternate juror. Is
22 that what you are seeking if there is some type
23 of problem, Mr. Long?

24 **MR. LONG:** I have no idea whether there
25 is. I just think it would be the polite thing,

1 process to notice it.

2 THE COURT: Beyond being the polite thing,
3 I want to know if there is a problem with what
4 the remedy would be and what it is that you're
5 going to be requesting of me. Would it be to sit
6 the alternate?

7 MR. LONG: If it requires that juror being
8 removed, certainly the alternate would sit. May
9 I ask one question?

10 THE COURT: Yes, sir.

11 MR. LONG: I inquired yesterday, I want to
12 make certain that tape was marked and put into
13 evidence.

14 THE COURT: Miss Johnson indicates to me
15 that it was.

16 MR. LONG: Plaintiff's 1?

17 COURT REPORTER: State's 1.

18 THE COURT: It is State's 1.

19 MR. LONG: State 1. I said Plaintiff. I
20 am sorry.

21 THE COURT: That is fine. Will you go
22 ahead and bring Mrs. Jenkins out just so that I
23 can inquire of her.

24 (WHEREUPON, Juror number 53, Tammy M. Jenkins,
25 enters the courtroom.)

1 THE COURT: Good morning.

2 THE JUROR: Good morning.

3 THE COURT: How are you doing?

4 THE JUROR: Okay.

5 THE COURT: You can stay right there. I
6 just want to make sure you are okay this morning.

7 THE JUROR: I am.

8 THE COURT: I understand you were in a
9 little rear-end accident in front of the
10 courthouse.

11 THE JUROR: Yeah.

12 THE COURT: Were you injured? Do you feel
13 all right?

14 THE JUROR: I feel fine. Just a little
15 bump. It didn't hurt nothing much.

16 THE COURT: You feel okay to sit on this
17 jury? I just want to make sure that you feel you
18 can focus on the evidence. Obviously, this is
19 very important. I want to make sure that you are
20 fine and you are here and you are all right to go
21 ahead and sit.

22 THE JUROR: Yeah. Everything is fine.

23 THE COURT: Miss Jenkins, I appreciate it.
24 Thank you. All right. We will be with y'all
25 shortly.

1 **THE JUROR:** Okay.

2 (WHEREUPON, the juror exits the courtroom.)

3 **THE COURT:** For the record, I made an
4 inquiry of Mrs. Tammy Jenkins, one of our jurors
5 who was in an accident. I do find that she
6 assured me she was fine. She looks fine and was
7 ready to go and wish to sit on this jury. I find
8 there are no problems with her sitting as a juror
9 in this case.

10 **MR. NEWKIRK:** Thank you.

11 **THE COURT:** All right. Gentlemen, are we
12 ready to go?

13 **MR. NEWKIRK:** The State is a ready.

14 **MR. LONG:** I put on the record I had
15 discussions with the solicitor. We are ready to
16 go.

17 **THE COURT:** Do you need any further time?
18 I can certainly -- if you need to talk, I can
19 certainly give you any time you need, Mr. Long.

20 **MR. LONG:** No, ma'am.

21 **THE COURT:** Bring them on in.

22 **MR. LONG:** One point.

23 **THE COURT:** Yes, sir.

24 **MR. LONG:** I advised my client that our
25 objection to the ruling has been preserved for

1 appeal on the suppression in limine hearing and
2 that I have confirmed with the Solicitor that he
3 is charged with statute that has a mandatory
4 minimum of 25 years and a max, statutory maximum
5 of 30 years, I believe.

6 THE COURT: Uh-huh

7 MR. LONG: If he pled guilty, he would be
8 pleading to a mandatory minimum of 25 years.
9 This is yet another conversation just moments ago
10 with the solicitor. I advised him that we had
11 noted our objection to the ruling and that going
12 through the jury trial that if we won, we win the
13 contest. If we lose, then the sentencing would
14 be the same, the same range as it would be if he
15 had pled guilty but we would have an appeal
16 available to us to appellant court on the issues
17 raised at the suppression hearing. I think he
18 understands that. So we are ready to go to
19 trial.

20 THE COURT: Okay. Thank you, Mr. Long.

21 MR. LONG: Thank you.

22 THE COURT: We are ready to bring the jury
23 in. Is the State ready?

24 MR. NEWKIRK: The State is ready, You Honor.

25 THE COURT: Is the defense ready to have

1 the jury come in, Mr. Long?

2 MR. LONG: I beg your pardon, Your Honor?

3 THE COURT: Are you ready to have the jury
4 come in.

5 MR. LONG: Yes, ma'am.

6 THE COURT: Thank you. Bring the jury in.

7 (WHEREUPON, the jury enter at approximately
8 9:42 AM.)

9 THE COURT: At this time, -- good morning,
10 Ladies and Gentlemen of the jury. At this time,
11 Mrs. Morris is going to go ahead and issue the
12 oath.

13 THE CLERK: Please stand and raise your right
14 hand for the oath in this case. The appropriate
15 response after the oath is "I will". You shall
16 well and truly try the case 2002-GS-23-4288, the
17 State versus Karriem Provet indicted for
18 Resisting Arrest and 2005-GS-23-3478 indicted for
19 Trafficking Cocaine and true verdicts render in
20 the accordance with the law and the evidence so
21 help you God?

22 (WHEREUPON, the jurors respond affirmatively.)

23 THE COURT: Thank you. Ladies and
24 Gentlemen of the jury, what I now say to you is
25 intended to serve as an introduction to the trial

1 of this case. These remarks are not a charge on
2 the law in this case. I am going to instruct you
3 on the applicable law to the case at the end of
4 the trial before you retire to consider your
5 verdict. This is merely an explanation of the
6 procedure that we are going to follow in the
7 trial of this case so that you may better
8 understand what may be happening. Ladies and
9 Gentlemen, I am going to instruct you at this
10 time I believe this case is going to be
11 relatively short. Because of that, I'm going to
12 ask that you do not take any notes.

13 With that said, Ladies and Gentlemen, the
14 Defendant, Mr. Provet, in this case is charged by
15 an indictments filed in this court with the
16 crimes of Resisting Arrest and Trafficking in
17 Cocaine. The elements of which will be explained
18 to you later. The indictments are simply the
19 charge by which the case is brought into court.
20 It is not in any sense evidence of the
21 allegations it contains.

22 The Defendant has pled not guilty to these
23 indictments. The State therefore has the burden
24 of proving each of the elements of the
25 indictments beyond a reasonable doubt. It will

1 be your duty, Ladies and Gentlemen of the jury to
2 decide whether the State has met that burden.

3 Your purpose as jurors is to find and
4 determine the facts. You are the sole judge of
5 the facts. If at any time I make any comment
6 regarding the facts, you must disregard it. You
7 are only to determine the facts from the
8 testimony of the witnesses that you are going to
9 hear and other evidence that is introduced in
10 support. It is up to you to determine the
11 inferences by which you feel may be properly
12 drawn from the evidence. It is especially
13 important that you perform your duty of
14 determining the facts diligently and
15 conscientiously as ordinarily there is already no
16 way to correct an erroneous determination of the
17 facts by a jury.

18 On the other hand and with equal emphasis,
19 the same law that makes you the judges of the
20 facts makes me the judge of the law. The law
21 that is given by the Court is the only law you
22 may consider. You must accept and follow it even
23 though you may disagree with it. I can't tell
24 you what the facts are. You can't disagree with
25 me about what the facts law is or should be.

1 Your job is to take the law as I give it to you
2 and apply it to the facts as you find them from
3 the testimony of the witnesses and any other
4 evidence that's introduced.

5 After doing that, you will render a verdict,
6 a true and just verdict under the solemn oath
7 that you have just took as jurors. Now, until I
8 advise you to begin your deliberations, you must
9 not discuss this case with anyone including your
10 federal fellow jurors, friends, family members or
11 anyone involved in the case. After the case is
12 submitted to you, you must discuss it only in the
13 jury room with your fellow jurors.

14 The attorneys and the parties in this case
15 have been advised that they are not to talk to
16 you at all. If you see anyone involved in this
17 case and they do not even say hello, they are not
18 being unfriendly. They are simply following my
19 instructions.

20 During the trial, I ask that you do not read,
21 listen to or watch any news reports about this
22 case. This includes anything that may be in the
23 newspapers, on the Internet, radio or television.
24 You must not consider anything that you read or
25 heard about this case outside the courtroom

1. whether before or during the trial.

2. It is important that you keep an open mind
3. and do not decide any issue in the case until all
4. the evidence has been presented, the parties have
5. made their closing arguments and I have
6. instructed you on the law in the case. It is
7. your solemn responsibility to determine the guilt
8. or innocence of the Defendant. Your verdict must
9. be based solely on the evidence as presented to
10. you in the trial and on the law as I instruct you
11. during the close of the trial.

12. In just a moment, the solicitor, Mr. Newkirk
13. is going to make what is called an opening
14. statement in which he will explain to you the
15. issues in the case or at least what he believes
16. the issues are in the case. The attorney for the
17. Defendant, Mr. Long, may also make an opening
18. statement although he is not required to do so.

19. What the attorneys tell you during their
20. opening statements is not evidence in this case.
21. It is only their contention as to what they
22. believe the issues are. The evidence in this
23. case will be presented to you by the testimony of
24. sworn witnesses from the witness stand and the
25. exhibits that may be introduced into evidence.

1 From time to time during the trial, you may
2 hear one of the lawyers say something like, Your
3 Honor, I believe we have a question of law or a
4 matter of law that we need to take up with you or
5 may we approach the bench. Or sometimes I myself
6 might find it necessary to excuse you from the
7 courtroom for a short while so the attorneys and
8 I can discuss a matter of law.

9 The reason for doing this is because you are
10 the judges of the facts in the case. Sometimes
11 when I am discussing a matter of law, it may be
12 necessary for me to make a comment as to the
13 facts in connection with my ruling whether or not
14 a particular wrong law applies. I am not
15 supposed to tell you what I think the facts are.
16 I will excuse you from the courtroom while these
17 discussions take place so that you will in no way
18 be influenced by anything I say that I may have
19 any belief or feelings about the facts. I
20 absolutely do not. That is for your province
21 only.

22 Ladies and Gentlemen of the jury, in
23 determining what the true facts are in this case,
24 you must decide whether the testimony of the
25 witnesses is believable. It is my responsibility

1 to rule as a matter of law as to whether certain
2 testimony is admissible at all. But once the
3 testimony is admitted whether or not you believe
4 it is a solely for you to determine.

5 In deciding whether to believe a witness, you
6 have the right to consider the interest of any
7 witness, the bias of any witness, the prejudice
8 of any witness, the opportunity for the witness
9 to have seen the matters and thing about which,
10 the witness may testify. The way the witness act
11 on the witness stand. You have the right to
12 consider anything that is in the record that will
13 help you to evaluate the testimony of the
14 witnesses. That means it is your duty to pay
15 close attention to the witnesses, to observe
16 them, to listen to them and to pay close
17 attention to the attorneys and to the court.

18 Again, as I told you, you will not be allowed
19 to take notes during this trial. I am going to
20 ask that you please focus on the testimony that
21 is given here. Ladies and Gentlemen, after all
22 of the arguments of counsel and your charge on
23 the law, you then will be in a position to
24 determine what the true facts of this case are
25 and to apply the law to those facts and thus

1 render a true and just verdict.

2 In order to preserve everyone's rights, --
3 you're going to hear me say this throughout the
4 trial -- I'm going to give each of the parties an
5 opportunity to object to anything I've said.

6 Any exceptions to anything I said to the jury
7 by the State?

8 MR. NEWKIRK: None, Your Honor.

9 THE COURT: The Defendant?

10 MR. LONG: No.

11 THE COURT: Thank you. All right. At this
12 time, Ladies and Gentlemen, we're going to begin
13 the trial.

14 Mr. Newkirk.

15 MR. NEWKIRK: May it please the Court?

16 Ladies and Gentlemen of the jury, my name is John
17 Newkirk. I am the prosecutor in this case. It
18 is my job to work with law enforcement, witnesses
19 and victims in order to prosecute individuals who
20 have been charged with violating South Carolina
21 state law. After I get a chance to speak with
22 you, you're going to get a chance to hear from
23 Mr. Long. It is Mr. Long's job to represent the
24 interest of his clients.

25 Before we get started this morning, there are

1 two things I want to ask of you. First, I want
2 to ask that you listen attentively throughout the
3 entire trial to all of the testimony that you
4 hear. Second, I ask that you treat this case
5 with the same importance that both the Defendant
6 treats this case and that the State treats this
7 case.

8 The first thing that I want to talk to you
9 about this morning is to briefly tell you about
10 the law that you all going to use in this case.
11 I want to do that so that you can use that as a
12 foundation with which to build upon as you hear
13 testimony and as you see the evidence. I want to
14 warn you though that at the end of the trial,
15 Judge Mullen is going to instruct you on the law
16 that you are to use to determine this Defendant's
17 guilt. If at any time during the trial I make a
18 comment on the law or Mr. Long makes a comment on
19 the law and it differs in any way from what the
20 judge instructs you, you must follow the judge's
21 instruction.

22 This Defendant has been charged with two
23 crimes. He has been charged with resisting
24 arrest and trafficking cocaine. Resisting arrest
25 is simply that the Defendant resisted a lawful

1 arrest being made by someone he knew or should
2 have known was a police officer.

3 Trafficking cocaine has got a number of
4 elements. The State must prove that the
5 Defendant either transported, brought in this
6 state, distributed, manufactured a quantity of
7 cocaine in excess of 100 grams or that the
8 Defendant aided, abetted or conspired to
9 manufacturer, deliver or bring into this state
10 more than 100 grams of cocaine or the State can
11 prove that the Defendant possessed greater than
12 100 grams of cocaine.

13 Ladies and Gentlemen, today, you're going to
14 hear from Trooper J.D. Owens of the South
15 Carolina Highway Patrol. You also going to hear
16 from Investigator Eddie Aman who at this time was
17 with the Highway Patrol but who is now with the
18 Anderson City Police Department. Trooper Owens
19 is going to explain to you that on May 1, 2002,
20 he observed a vehicle driving on I-85 at
21 Greenville County. He is going to tell you that
22 he observed this vehicle make various traffic
23 infractions. And for those infractions, he
24 pulled the vehicle over.

25 Trooper Owens is going to explain to you that

1 this Defendant was driving that vehicle and he is
2 going to explain to you the conversation he had
3 with this Defendant. He is going to explain to
4 you some of the things he observed inside the
5 Defendant's vehicle.

6 Trooper Owens is then going to explain to you
7 that Trooper Aman came on the scene. There was
8 consent to search from this Defendant to search
9 this Defendant's vehicle. They are going to
10 explain to you that as Trooper Aman was going up
11 to the vehicle, he pulled a chicken box out of
12 the vehicle. At that point, the Defendant fled
13 the scene. Ladies and Gentlemen, you are going
14 to hear what was in that chicken box today.

15 After you hear all of the evidence, you will
16 be convinced beyond a reasonable doubt that this
17 Defendant is guilty, guilty both of resisting
18 arrest and guilty of trafficking cocaine. Thank
19 you very much.

20 **THE COURT:** Thank you, Mr. Newkirk.
21 Mr. Long.

22 **MR. LONG:** Please the Court.

23 **THE COURT:** Yes, sir.

24 **MR. LONG:** Ladies and Gentlemen, my name
25 is Billy Long. I've lived here in Greenville

1 almost to say forever. I have unfortunately
2 becoming aware for the first time that I have
3 reached a maturity. The thing that I already
4 always been told that I wouldn't feel natural
5 without it.

6 My background is that I graduated from
7 college and South Carolina Law School. Pretty
8 lengthy military career, work with the Haynsworth
9 Firm here in town and was offered a job with the
10 US Attorney's office as a prosecutor. Did that
11 for three years. I have been a prosecutor. I
12 have great respect for the work that the
13 prosecutors do. I have great respect for the law
14 and the rule of the law.

15 After that, I came back out. I guess in a
16 town the size of Greenville even now that if you
17 attempt to practice general law, do general
18 practice or do a little of everything, you sort
19 of tend to, if you do anything that you have done
20 in a somewhat worthy fashion, your practice tends
21 to gravitate to it. Most of the work that I do
22 now and have done for a number of years has been
23 in the courtroom.

24 I will be quick to say that I could misstate
25 an argument. If I do, I apologize. I don't mean

1 to. I respect the system. I do want to argue to
2 you on behalf of my client very strongly.

3 With that, I will say that you fill the most
4 important role. That is you take what you hear
5 on the witness stand and what you observe with
6 your human experience. Then you will hear the
7 law from the judge. You accept that totally.
8 You correlate the two.

9 In doing so, you reach your verdict which I'm
10 told is a Latin word that derives from a Latin
11 word that means to tell the truth. Each of you
12 are independent jurors. You may or may not all
13 agree. But each of you should be true to their
14 own belief. You should try to reconcile with
15 other jurors. But if your belief is strong, I
16 will say reverse my opinion if one or two or
17 three people believe guilt and the other nine, 10
18 or 11 believe innocence, certainly, the
19 individual should hold to their conviction if
20 strong enough after discussion. Vice versa of
21 course if it is split numerically.

22 What we are dealing with here is a young
23 African American male from North Carolina who was
24 stopped on a highway at night. He was detained
25 for a lengthy period of time and was subjected to

1 questioning by two very large officers. I would
2 like to introduce my client.

3 Stand up please.

4 This is Mr. Provet from Charlotte. As you
5 can see, he is small and he's slight. He was
6 alone. As a result of a lengthy process out on
7 the highway at night where two very large
8 officers questioned him and entered into what I
9 think is, very constitutionally a questionable
10 round of activity allegedly found drugs in his
11 car. I will argue that more fully to you later.

12 The great thing that has happened in my
13 lifetime bigger than the World War II, bigger
14 than the atomic bomb, bigger than economic
15 prosperity, scientific events and everything
16 else, the biggest thing that has happened is the
17 country's final recognition that all people are
18 born with the same rights in this country. The
19 reason that I feel with absolute total conviction
20 that that is the most important one thing that
21 has happened is because it goes to the core of
22 this country. It really separates this country
23 from any other that is ever existed on the core
24 issue of human decency.

25 Please weigh this evidence here carefully.

1 Please determine whether or not the process that
2 will unfold with the evidence is consistent with
3 the higher calling of this country. Thank you.

4 **THE COURT:** Thank you, Mr. Long. The State
5 will call their first witness.

6 **MR. NEWKIRK:** May it please the Court. The
7 State will call Trooper Owens.

8 **THE COURT:** Trooper Owens, if you will,
9 come forward to be sworn please.

10 **JOHN OWENS**

11 having first being duly sworn testified as
12 follows:

13 **THE CLERK:** State your name for the record.

14 **THE WITNESS:** John D. Owens.

15 **THE CLERK:** Thank you. Please be seated.

16 **DIRECT EXAMINATION**

17 **BY MR. NEWKIRK:**

18 **Q** Trooper Owens, where do you work?

19 **A** I am employed with the South Carolina
20 Department of Public Safety under the direction of the
21 South Carolina Highway Patrol. I am the deputy
22 director Colonel Rourke.

23 **Q** How long have you worked with the Highway
24 Patrol?

25 **A** A little over 13 years, almost 14 years

1 actually with two years previous law enforcement in
2 Columbia.

3 Q What training did you complete to become a
4 police officer?

5 A Originally with the Columbia Police
6 Department under the direction of the airport, I
7 received eight weeks of basic law enforcement
8 training. I served two years under the Chief at that
9 time in Columbia. Then I went through the process of
10 being employed with the South Carolina Department of
11 Public Safety better known as the Highway Patrol.

12 At that time, I went through a 14-week training
13 again, law enforcement training. Then, an additional
14 two weeks of field training after completion of basic
15 trooper academy. After that, I've been through
16 probably in excess of 1000 hours advanced training in
17 criminal patrol interdiction and also concealment
18 methods of narcotics and illegal contraband.

19 Q What is your educational background?

20 A Graduated from Irmo High School. I went to
21 high school and went to Citadel. Graduated Citadel in
22 1991. Once completion of Citadel, I made it in
23 education. Got my degree in education. Came into law
24 enforcement in '92.

25 Q Were you on duty on May 1st of 2002?

1 A Yes, I was.

2 Q On that date, did you come into contact with
3 this Defendant?

4 A Yes, I did.

5 Q Where did you come into contact with this
6 Defendant.

7 A It was approximately 22:10 hours which would
8 have been 10 minutes after 10 p.m. on May the first on
9 Interstate 85 in Greenville County. Where I first
10 observed him would have been just north of right
11 around the White Horse Road exit but prior to a
12 Augusta Road northbound.

13 Q What drew your attention to the vehicle?

14 A My initial attention was caught by his
15 driving too closely and the way I gauged that is
16 generally if you are less than two car length
17 distance, you are entirely too close. I also observed
18 that that time, it appears at that time there was no
19 tag. Once I fell in behind the vehicle, had the
20 lights, the headlights of my vehicle on the rear of
21 his vehicle, I could see that there was a tag but
22 there was no illumination of a tag. The tag lights
23 had burned out and had become defected at some way,
24 shape or form.

25 Q What did you do after observing the traffic

1 violation?

2 A I initiated the traffic stop by activating my
3 blue lights which would have been just past Mauldin
4 Road at that time. The vehicle pulled over to the
5 right shoulder. It was a green Ford Expedition, year
6 model 1997. The time that it was pulled over, it
7 appeared it had one occupant which was the sole driver
8 of the vehicle. I've noticed it had a license plate,
9 a North Carolina license plate of NVC 8064 at that
10 time.

11 Q After you stopped the vehicle, what did you
12 do?

13 A Exited my patrol car which was an unmarked
14 Crown Victoria, silver in color. Exited my patrol
15 car. Then approached on the passenger side.

16 Q Why did you approach on the passenger side?

17 A One, motorists are used to us walking up on
18 the left-hand side. Number one, it is an element of
19 surprise. Main thing is officer safety issue. It is
20 an element of surprise. Also, you can see more of the
21 occupant. If it is a sole driver, you can see more of
22 his actions whether it be with his hands or whether it
23 be with his body. You can see more of the interior of
24 the vehicle. Also, it is a lot less likely that you
25 will get hit by other vehicles if you are on the

1 passenger side.

2 Q When you approached the vehicle, how many
3 people were in that vehicle?

4 A Just one occupant. The sole occupant Mr.
5 Provet who is seated to the right of me, the right of
6 his counsel.

7 Q Was he the driver of the vehicle?

8 A Yes, he was.

9 Q What did you do when you approached the
10 vehicle?

11 A Generally, when we approached the vehicle,
12 your main focus at that time on the initial approach
13 is the occupants in the vehicle. Watching for any
14 body gestures or inappropriate movements as to whether
15 to allude to a weapon or the concealment of any type
16 of contraband. Alcohol, drugs, anything. That is the
17 main focus and to observe the occupants in the
18 vehicle.

19 Q Did you see the Defendant?

20 A Yes, I did. Once I got to the passenger
21 front window, I instructed him to roll the window
22 down. At first, he rolled it down a portion. I asked
23 him to roll it on down so that I can continue to talk
24 to him. At that point, I asked him for his drivers
25 license and registration information.

1 At that point when I was asking for the
2 information, I observed he had accelerated breathing.
3 I noticed the odor of air freshener. Once he produced
4 the drivers license and registration of the vehicle, I
5 noticed in his hand was shaking tremendously. I even
6 asked him about it. It was that obvious.

7 Q Trooper Owens, based on your experience as a
8 police officer, are people generally nervous when you
9 stop them?

10 A To some extent, they are nervous. Not to the
11 extent that Mr. Provet was nervous. In my general
12 experience in the 15-plus years of law enforcement,
13 the nervousness that was displayed by Mr. Provet was
14 an extended or overwhelming amount more than a normal
15 person being stopped for just a traffic violation. It
16 would indicate to me that he may be involved or
17 possibly involved in other criminal activities.

18 Q You mentioned that you noticed the air
19 freshener?

20 A Yes, sir.

21 Q Why did that draw your attention?

22 A The odor that was displayed from the vehicle,
23 emanating from the vehicle was an overwhelming odor
24 that would come from more than just one air freshener.
25 In criminal patrol, we are always taught that odors

1 like air fresheners, Cologne, coffee grinds, those
2 type odors are what we call masking odors.

3 Those odors are for several reasons. One
4 could be to cover up an unpleasant odor. One that a
5 normal person, a person not involved in criminal
6 activity would have those air fresheners. We also
7 learned in criminal patrol that when those odors are
8 so overwhelming and those odors are strategically
9 placed in the vehicle, those odors also are used to
10 mask the odor of odors that may be the Defendant or
11 the person in the vehicle does not want either
12 detected by law enforcement, by just the normal sense
13 of smell by the law enforcement officer or even the
14 canine detection dog, drug detection dog.

15 Q Was the Defendant able to provide you with
16 his drivers license?

17 A Yes, he was.

18 Q Was the Defendant able to provide you with
19 the vehicle registration?

20 A Yes, he was. When he provided me with the
21 registration, I noticed that the registration was
22 actually to what we call a third-party owner which
23 would have been somebody that wasn't present in the
24 vehicle. It was actually arrested registered in a
25 female's name who was not present in the vehicle.

1 Q After obtaining the Defendant's drivers
2 license and the vehicle registration, what did you do?

3 A I asked him to exit the motor vehicle and
4 step to the rear of the vehicle that I was going to
5 issue him a warning for the moving infractions and the
6 infractions on the vehicle.

7 Q Why did you ask the Defendant to step out of
8 the vehicle?

9 A It is our practice so that we can carry on
10 casual conversation with them while we are writing the
11 warning. Also, we know in training and through our
12 experience is that weapons of opportunity can be
13 easily disguised inside of a vehicle and easily
14 accessible by the Defendant or Defendants in the
15 vehicle. We try to remove them from that actual
16 environment to get them back with us so that they
17 don't have that access to potential weapons.

18 Q What happened when you, when the Defendant
19 exited the vehicle?

20 A He exited the vehicle. He approached the
21 rear of the vehicle towards the front of my patrol
22 vehicle. It was at that point that I asked him if I
23 could pat him down to make sure he didn't have any
24 weapons. At that point, I made a brief pat down of
25 his person without going into his pockets and other

1 items on his person. After patting him down, we
2 stepped to the right front portion of my patrol
3 vehicle on the passenger side. At that point, that is
4 when I began to write the warning citation and carry
5 on a conversation with Mr. Provet.

6 Q Can you describe to the jury the substance of
7 the conversation.

8 A It was casual in nature. Just asking general
9 questions that normally do not incriminate a person
10 who is not involved in any type of criminal
11 activities. What Mr. Provet related to me is when I
12 asked him where he was coming from, he stated he was
13 coming from Greenville with a girlfriend. I knew
14 there was no girlfriend in the vehicle. It appeared
15 to be no girlfriend in the vehicle. I asked him from
16 one location in Greenville was he coming from, trying
17 to narrow his answer. His answer was so broad.

18 He stated he was coming from a motel. When I
19 asked him what hotel, he said Holiday Inn. That kind
20 of threw a loop in the curve to me. I noticed that he
21 was traveling north on I-85 prior to the Augusta Road
22 exit. I knew the Holiday Inn was at the Augusta Road
23 exit. So, I felt that he was being deceptive in his
24 answer or that he may have come from, he left the
25 hotel and went to another location and then was on his

1 way to wherever he was going at this time.

2 I asked him the question did he know what
3 exit the Holiday Inn was at. He stated he did not. I
4 asked him was he coming from the motel at that exact
5 point. He stated he was. I discovered he was not
6 coming from the Holiday Inn in Greenville. It was
7 deceptive in his answer.

8 I asked him if the car belonged to a
9 different girlfriend. He confirmed that it did belong
10 to a different girlfriend from the one that he was
11 visiting with. He stated he had never been in trouble
12 with the law before.

13 I asked him if he worked. He stated he
14 didn't work. This was odd to me. In criminal patrol,
15 this is one of the indicators that -- this was
16 actually on a Wednesday night. He was driving an SUV
17 that normally we all know drinks more than an
18 economy vehicle as far as gas. We know in business
19 and the common practice that vehicles take money to
20 drive especially SUVs take even more money to fill
21 them up with gas and provide a means of
22 transportation. That raised another suspicion that he
23 didn't work yet he was driving an SUV, also staying in
24 a motel. It made me question as to how was he paying
25 for this.

1 I asked him about work. I think he replied
2 to me that he had just finished tech school
3 approximately six months prior. I asked him how long
4 he stayed in Greenville. He stated he stayed two days
5 in Greenville. When he answered his questions, there
6 were actually some delaying tactics. I believe he
7 said uh, and he hesitated to answer the question which
8 in our training and our normal experience that is a
9 tactic of when you are actually making up a story.
10 The story is coming. It is not a rehearsed story but
11 it is a story when you are being deceptive.

12 I asked him about luggage in the truck. He
13 stated that was no luggage. That raised further
14 suspicion that if he stayed two days in Greenville,
15 why didn't he have luggage. Another common indicator
16 that we looked at in criminal patrol.

17 Q After speaking with this Defendant or having
18 conversation with him, what did you do?

19 A I went ahead and called Trooper Aman who was
20 under my command at the time. I called him to come
21 and assist at the location with the traffic stop. I
22 then proceeded to call dispatch for a drivers license
23 status check and a vehicle status check and for
24 possible stolen vehicle. It was registered in a
25 third-party. After doing that, I then left my patrol

1 car with Mr. Provet standing to side on the passenger
2 side. I went to confirm that the VIN number on the
3 front in the front windshield matched or correlated
4 with the VIN number that was on the registration card.

5 At that point, I took more time to examine or
6 to visually observe other things that were inside of
7 the vehicle. Like I said on the initial approach, my
8 main objective of the initial approach is to watch the
9 occupants in the vehicle for officer safety. The
10 second approach, I can do, take more time to walk up
11 there to see what was in the vehicle and see what's on
12 plain view and also to observe the VIN number.

13 Q Where was the VIN number?

14 A On an American-made vehicle, we all know,
15 everyone knows the VIN number or any vehicle
16 registered in the States, America has the VIN number
17 in the front windshield. On an American-made vehicle,
18 the average eight other places to confirm the VIN
19 number. Foreign-made vehicles, much higher. On this
20 vehicle, generally my practice and my training and the
21 way I teach others is to get two sources many times if
22 there is a suspicion of that. That is, in the
23 windshield and the front door, the actual rocker part
24 of the door, the door frame.

25 Q While you were checking the VIN number of

1 this vehicle, did you make any other observations
2 about the vehicle.

3 A I noted there was several other fast food
4 bags in the vehicle. I notice that I observed several
5 air fresheners in the vehicle. There was no luggage.
6 However, there was one bag on the rear seat which
7 raised my suspicion about that as well. He stated he
8 didn't have luggage but there was one bag on the rear
9 seat. I was not sure if it was his or if he was
10 dispelling that that was his.

11 I did note that there was one cell phone and
12 there was several receipts on the center console. All
13 of those being with the totality of the circumstances
14 potential indicators of criminal activity. No one in
15 themselves mean really anything. When you add them
16 all together along with the other indicators that we
17 previously gone over with third-party vehicles and
18 stuff, it was adding up that this Defendant could
19 potentially be involved in criminal activity through
20 my training and experience.

21 Q After you completed checking the VIN number,
22 what did you do?

23 A After checking the VIN number, when walking
24 back to my patrol vehicle, I actually stated on the
25 video camera some of the things that I saw. Then I

1 went back to the patrol car. While sitting at the
2 patrol car inside of the patrol car waiting for the
3 status of the license, the status of the registration
4 to come back, it was at that time, I believe, Trooper
5 Aman arrived on the scene.

6 I believe he exited his patrol vehicle and it
7 walked up beside me and Mr. Provet. It was at the
8 point while we were waiting for the license status to
9 come back from dispatch. As soon as it came back, I
10 handed Mr. Provet his license and registration. Then
11 I clearly explained the warning citation to him. At
12 the completion of the warning citation and handing
13 everything back to him, he then stated that he
14 understood the warning citation.

15 I then asked him could I search his vehicle.
16 He replied by asking me did I want to search the
17 vehicle basically answering my question with a
18 question, a delaying tactic that we well know in
19 criminal patrol. Then he stated could search his
20 vehicle. It was at that time that I instructed
21 Trooper Aman to utilize his drug detection canine.
22 Before he utilized the drug detection canine, I
23 believe he asked Mr. Provet if he had any food or
24 anything in the car.

25 Q Did the Defendant give you consent to search

1 the vehicle?

2 A Yes, he did.

3 Q Why did you instruct Trooper Aman to run the
4 drug detection dog around the vehicle?

5 A A drug detection dog, we paid a lot of money
6 for these dogs. It also boost the morale of the dog
7 and the dog handler to use this. They are a tool. It
8 is a lot of money that the taxpayers used to pay for
9 these tools. We feel it is necessary to utilize these
10 tools when possible. We do. That is our general
11 practice either with consent or without consent.

12 Q What did you observe Trooper Aman do after
13 receiving consent to search?

14 A He asked Mr. Provet the question about, Mr.
15 Provet did confirm that there was food in the vehicle.
16 It was at that time that Trooper Aman walked up to the
17 passenger side of the vehicle. He observed the food
18 in the front passenger area. He then went to remove
19 the food so that the dog could not potentially
20 contaminate it. When I say contaminate it, I don't
21 mean the dog is going to eat it. The dog has four
22 feet whereas we have two.

23 If he alerts to the exterior of the vehicle,
24 he is then allowed inside the vehicle. If he is
25 allowed inside the vehicle, it is highly probable that

1 his foot may go into the food or even his hair may go
2 into the food. Spill drinks. We all know we spill
3 drinks. Even us as humans spill drinks but imagine a
4 dog with four feet and a tail. So, it is our practice
5 when they give consent to remove those items just by
6 placing them on the hood of the car so that the dog
7 doesn't potentially contaminate them.

8 Q What happened when Trooper Aman did that?

9 A He went and removed a package from the
10 vehicle. It was at that point while he was removing
11 that Mr. Provet decided to flee the location by
12 running across the three lanes of traffic on the
13 northbound side and then over the concrete barrier
14 which is approximately five feet high. Then across
15 the three southbound lanes. Over the guard rail.
16 Down a ravine and then down to the eight-foot fence
17 line that secures the perimeter of the interstate.

18 It was at that point that me and actually
19 Trooper Aman initially caught Mr. Provet and we were
20 able to subdue him and place him into custody at
21 approximately 25 to 50 yards up the fence line from
22 where he crossed the interstate.

23 Q What were you wearing that day?

24 A This uniform.

25 Q After the Defendant was apprehended, was he

1 brought back to the scene?

2 A Yes, he was.

3 Q What happened after the Defendant was brought
4 back to the scene?

5 A While the Defendant was fleeing, actually a
6 Greenville Deputy pulled up on the scene and secured
7 the vehicle. It was at that point, I believe he
8 actually came and picked me up from the southbound
9 side. Another officer picked up and Mr. Provet and
10 Trooper Aman.

11 Q When Trooper Aman arrived back on the scene,
12 did you observe him run the drug dog around the
13 vehicle?

14 A Yes, I did.

15 Q After the drug dog was ran around the
16 vehicle, was the vehicle searched?

17 A Yes, it was.

18 Q What, if anything, was found in the vehicle?

19 A There was a package located in a bag with a
20 chicken box. The package was a clear plastic bag
21 containing a white powder substance at that time that
22 was consistent, that smelled like cocaine. It was
23 field tested positive for the presence of cocaine.

24 Q Trooper Owens, was your vehicle at the time
25 of this incident equipped with a in-car video camera?

1 A Yes, it was.

2 Q How is that a video camera, how is it turned
3 on?

4 A There is one of two ways. One, by the body
5 mike that's on my person, on my belt, on my utility
6 belt or either by activation of the blue light.
7 Either one can activate the camera system. More times
8 than not, it is just the flicking of the switch of the
9 blue lights. That is when it is activated.

10 Q Let me show you what has been marked as
11 State's Exhibit number 1. Do you recognize State's
12 Exhibit number 1?

13 A Yes. It is a copy of the video of the
14 traffic stop involving Mr. Provet.

15 Q Have you observed or watched the video prior
16 to trial?

17 A Yes, I have.

18 Q Is what is depicted on this video accurate of
19 the events as they occurred on May the 1st of 2002?

20 A Yes, it does.

21 Q Okay.

22 MR. NEWKIRK: Your Honor, at this time, the
23 State would offer State's Exhibit number 1 into
24 evidence.

25 MR. LONG: No objection.

1 **THE COURT:** It is in evidence without
2 objection.

3 **(WEHEREUPON,** State's Exhibit 1 is admitted into
4 the record.)

5 **MR. NEWKIRK:** Your Honor, I request
6 permission to publish it to the jury.

7 **THE COURT:** Yes, sir.

8 **(WHEREUPON,** State's Exhibit one is played at
9 approximately 10:29 a.m.)

10 **(WEHEREUPON,** State's Exhibit one is ends at
11 approximately 10:58 a.m.)

12 **BY MR. NEWKIRK:**

13 **Q** Trooper Owens, why does the audio fade in and
14 out?

15 **A** You go in and out of range. It could be the
16 strength of the battery. It is a nine volt battery
17 unit that is on your belt. As soon as you get -- I
18 don't know the exact range. There are numerous
19 factors as to what would limit the range. Anytime you
20 run out of the range or you step outside of the range
21 of the, from around the patrol vehicle, it just fades
22 out. It just goes away.

23 **MR. NEWKIRK:** No further questions for this
24 witness, Your Honor.

25 **THE COURT:** Mr. Long.

1 MR. LONG: Yes, Your Honor. Thank you.

2 CROSS-EXAMINATION

3 BY MR. LONG:

4 Q Trooper Owens, we didn't see the whole tape.
5 The portion we saw, the sound went off on two
6 occasions. The jury might wonder, I believe, the
7 sound device goes with you, doesn't it?

8 A Yes, sir. It is attached to my belt. There
9 is a sound device on my belt. There is also a sound
10 device inside the patrol vehicle.

11 Q Just out of curiosity, why did it become
12 totally silent twice on those two sound devices?

13 A I don't know if it ever went totally silent.
14 You always heard the scratching in it. I am not sure
15 that it went totally silent. As I explained to Mr.
16 Newkirk, when you go out of range, depending on the
17 range, the strength of the battery goes in and out.
18 We are instructed that we do not turn it off.

19 Q It played. We heard comments while you ran
20 down the field and so forth.

21 A I think that is when it cut out. After we
22 crossed the interstate, I heard the one word. You'll
23 be shot. Actually you didn't hear me say display your
24 hands, if you don't we don't see your hands, you will
25 be shot. That is an officer's first instinct is to

1 watch hands.

2 Q This has nothing to do with what I asked you?

3 A It is having to do with what you ask me.

4 When I was running down the hill --

5 MR. LONG: Your Honor, would you instruct
6 the witness not to give me can responses but
7 rather to answer my question please. He is not
8 clarifying.

9 THE COURT: All right. Respectfully,
10 Officer, if you will listen to Mr. Long's
11 question. Respond to it. As you know, you can
12 explain it any way you need to.

13 Mr. Long, will you go ahead and restate your
14 question, sir.

15 BY MR. LONG:

16 Q Twice, you testified that there were two
17 recording devices. One on the car and one on your
18 person. Twice, I submit to you on the tape,
19 everything was silent, no traffic noise, no anything.

20 A Correct.

21 Q Why is that? Did you turn off the tape?

22 A No, sir, I did not. If you turn the body
23 mike off, the audio inside the car automatically
24 overrides. There is no signal or any type of device
25 of recording. Had I turned the mike off on my body,

1 you would have actually heard the radio traffic inside
2 my patrol vehicle.

3 Q If you turn the body mike off of your person,
4 if you actually turn it off where there is no signal
5 whatsoever, the microphone inside of the car actually
6 activates at that point. All you hear is radio
7 traffic or if there was somebody in my patrol car
8 talking. Any noise that would have been transmitted
9 inside the vehicle would have been recorded at that
10 point if you turn the body mike off.

11 Q Were the windows to your vehicle rolled up
12 when it was turned off? I just wondered why it would
13 not pick up the road noise. Why the mike in the car
14 won't pick it up?

15 A It won't pick it up if this mike is on. If
16 this mike is on, whether it is able to give a good
17 signal or not, the inside car mike will not pick up.
18 I am trying to explain the best I can.

19 Q If your mike is on, your body mike, it picks
20 up noise and the car mike does not pick up noise?

21 A Correct.

22 Q Yours is dominant and it in effect cuts out
23 the car mike?

24 A Correct.

25 Q When your body mike is off, the car mike

1 actually goes into action?

2 A That is correct.

3 Q Why would it not pick up road noise and so
4 forth?

5 A This mike was the one that was activated. It
6 may not be giving a proper signal or a strong enough
7 signal to pick up the noise or the actual of me
8 talking. But as long as this mike is on, the inside
9 car mike does not come on unless I go and mash a
10 button that says inside mike. Do you understand what
11 I am saying? As long as this device is on, the
12 wireless system.

13 Q You are talking about the body mike?

14 A This is the wireless body mike. As long as
15 this device is on, the inside car mike will not pick
16 up any transmission unless I physically go inside the
17 car and mash the record by the record button again and
18 makes the interior mike the primary mike. If this
19 device is turned off, the inside mike will record. If
20 it is not turned off, if it is sending any signal
21 whatsoever, the inside mike is not going to activate.

22 Q I got you. Did you ever turn off your body
23 mike?

24 A No, sir, I do not. If I had, you would have
25 heard the interior noise from the car audio which

1 would have been radio traffic. You potentially could
2 have heard some of the traffic noise of vehicles going
3 by my patrol car. I hope I have explained it.

4 Q I think so. Your body mike stayed on the
5 entire time?

6 A It stayed on the entire time as to whether it
7 was sending a sufficient signal, it was not obviously.
8 It went in and out.

9 Q So lengthy periods of time, twice it was out,
10 was it not?

11 A It sounds like three or four times it went
12 out during the whole traffic stop.

13 Q It was out for a lengthy periods of time?

14 A Yes, sir, I guess. What you consider
15 lengthy, I...

16 Q One of those two, you were back up in the
17 area of the vehicle?

18 A Yes, sir. As to the immediate area, yes,
19 sir. I could have been several cars behind my patrol
20 car. I didn't notice I was several cars in front of
21 my patrol car at any time other than when I ran in
22 between my patrol car and the other one.

23 Q All right, sir. Now you sort of glossed
24 over the contents of the vehicle. Let me ask you,
25 when you came up to the passenger side which you came

1 up to first, for safety reasons, also, your testimony
2 just now was that you could see more of the interior
3 of the vehicle.

4 A That is correct.

5 Q And you had a flashlight, did you not?

6 A Yes, I did.

7 Q I submit to you the tape would show that you
8 were up there for a pretty long time before you went
9 around to the passenger side with your light shining
10 in?

11 A What is your question? I'm not sure what is
12 your question is.

13 Q You would agree with that, would you not?

14 A I am not sure what your question is.

15 Q You were standing there on the passenger side
16 with the window down for a lengthy period of time with
17 the flashlight so that you could see to your safety
18 which you would do with anybody. If you stop me, you
19 would do it?

20 A Right.

21 Q If you stopped these ladies, you would do the
22 same procedure?

23 A That is correct.

24 Q And also as you testified so you could see
25 more of the interior of the vehicle?

1 A Yes, sir. If you want to see the interior of
2 the vehicle, make sure there are no other occupants or
3 any types of weapons, any type of contraband, whether
4 it be bombs, drugs, alcohol, anything like that from
5 the passenger side. Your initial approach is
6 primarily to watch the violator or violators in the
7 car, subjects in the car. I am not really clear on
8 your question.

9 Q I think that is a very good answer. Thank
10 you. Uh, you just casually mention long after going
11 into the questions you were asked in your testimony
12 just now the fact that there were food bags in the
13 car?

14 A I can explain to you why we in criminal
15 patrol consider those --

16 Q That will be fine. Let me finish my part
17 of it. Did you observe the food bag when you searched
18 the car, when you were searching primarily for the
19 individuals?

20 A When I --

21 Q Did you observe food bags?

22 A I never searched for the -- I am not
23 understanding your question. You are talking about
24 when I initially walked up, did I see the food bags?

*25 A Yes, sir. I did not mean to mislead you by

1 using the word "search". I am not trying to do that.
2 When you viewed the interior of the vehicle for pretty
3 long periods of times using the flashlight, did you
4 observe at that time food bags?

5 A I probably observed them. Whether I paid
6 attention to them, no, I did not. As I said, with the
7 violator's in the vehicle, my main concern is watching
8 his hands, his body movement, his gestures, watching
9 for when he retrieve his license, vehicle
10 registration. As to whether I observed him, I
11 probably did. I didn't make a note of it. I did note
12 that there was a strong odor of air freshener coming
13 from the vehicle. I noted that the driver's hand was
14 shaking. With that being said, my main attention --

15 MR. LONG: Judge, again, he is veering off
16 into an argument rather than answering my
17 question.

18 THE COURT: Okay. Mr. Long, you need to
19 ask him a direct question.

20 MR. LONG: Be more direct precise. Okay.

21 THE COURT: You need to ask a more
22 directive question.

23 Trooper, I would ask that you respond
24 directly to the question. Again, you can this
25 may explain it. But respond to the question

1 asked by Mr. Long.

2 BY MR. LONG:

3 Q Officer, did you, when you were on the
4 passenger side, did you observe food bags, food items,
5 food boxes, food, fast food items?

6 A Potentially did, yes.

7 Q Did you observe as you on previous locations
8 under oath testified a large number of fast food
9 items?

* 10 A Yes, sir, I did. As I previously testified,
11 I noticed those from the driver's side when I did my
12 second approach and inspected the VIN number. That is
13 when I noticed, I actually made note of numerous fast
14 food bags.

15 Q They were all in the front seat front board
16 area or were they?

17 A Yes, sir. I believe they were. I just made
18 notes stating they were numerous. Where they were all
19 located, I assumed they were in the front.

20 Q There were numerous such items?

21 A Yes, sir.

22 Q I have got quotation marks. You testified
23 that when you went around the passenger side, you saw
24 more of the interior of the vehicle which was
25 consistent with what you just testified?

1 A Yes, sir.

2 Q Then, you said you -- with quotation marks,
3 observed that the Defendant was overwhelmingly
4 nervous. Overwhelmingly nervous?

5 A I don't know that I said he was
6 overwhelmingly nervous. He was more nervous than a
7 normal person stopped for a normal traffic violation.

8 Q The record of your testimony will say whether
9 you use the word "overwhelming"?

10 A I believe I used overwhelming with the odor
11 of the air fresheners.

12 Q You did indeed.

13 A Okay.

14 Q I've got quotes beside that too. Then, you
15 questioned him. The tape has a record of the
16 questions that you asked, the actual verbiage?

17 A That is correct.

18 Q You didn't mention just now in your testimony
19 that you run a records check on the Defendant? I
20 believe I heard that on the tape that you were seeing
21 if he had a criminal record.

22 A No, sir, I did not. All I did was check his
23 drivers license status. That is all I checked for to
24 make sure he wasn't wanted. A 10-code is 10-29, 10-28
25 which is a licensed check and the vehicle license.

1 10-27 would be a drivers license check. 10-29 is to
2 make sure he is just not wanted. We actually -- to
3 actually do a criminal record, you have to call them
4 by phone. You have to get another supervisor higher
5 than the rank of me to authorize it to get a criminal
6 record. They just generally don't do that over the
7 radio.

8 Q But, you did determine, you didn't seek to
9 find out if he had a criminal arrest, you did
10 determine that nobody was after him?

11 A Correct.

12 Q At the very beginning of the tape, you told
13 him that he was to receive a warning citation?

14 A Yes, sir. I believe when I asked him to exit
15 the vehicle, I believe I instructed him at that point
16 that he was going to be issued a warning citation.
17 That's correct.

18 Q Okay. Then, I believe you testified today
19 that when the second officer, the dog handling
20 officer, what is his name?

21 A Trooper Aman.

22 Q How do you spell his last name?

23 A A-a-n.

24 Q When Trooper Aman, the reason he went into
25 the vehicle to take that bag out was so the dog

1 wouldn't defile it in some fashion, so the dog
2 wouldn't step on it with his paws?

3 A Are you referring to the food bags?

4 Q That is right.

5 A Yes, sir. Once consent -- I believe I need
6 to answer your question with an explanation.

7 Q I don't believe so. I just ask if that was
8 taken out for that purpose.

9 A So the dogs wouldn't defile it?

10 Q Yes, so the dog wouldn't step on it or --

11 A Correct.

12 Q -- mess it up?

13 A That is correct.

14 Q Maybe eat it?

15 A The dog should not eat it.

16 Q He might have.

17 A I have never seen one of them eat it.

18 Anything is possible.

19 Q Don't they eat fried chicken?

20 A No, sir. They did not eat fried chicken.

21 Q I thought on the tape I finally heard, when
22 the dog finally got to the car, I thought I heard
23 voices hollering get it away from that, don't eat that
24 or so.

25 Q You don't want the dog to eat the cocaine.

1 It will kill the dog.

2 Q So the bag was put back in the car?

3 A Yes, sir. And as you -- yes, sir.

4 Q Was it? Was the bag put back in the car?

5 A I answered your question. Yes, sir. I was
6 going to further explain but yes, sir, it was.

7 Q Then the dog sniffed around the car?

8 A Yes, sir.

9 Q Put it in the interior of the car?

10 A I believe he was. I believe there was
11 another dog that did the same. If I am not mistaken.
12 I did not watch that far into the videotape.

13 Q Do you have the box? Not the content, not
14 the chicken or the hamburgers but the box that the
15 drugs were allegedly found in?

16 A No, sir. I had the plastic bag that the
17 drugs were in but no, sir, not the box.

18 Q Do you have the other fast food items that
19 were in and about the front seat to show to the jury?

20 A No, sir, I do not.

21 Q Surely you have the air fresheners that
22 exhibited the overwhelming odor to show to the jury?

23 A No, sir, I do not.

24 Q Do you have the drivers license of the VIN
25 number or the registration to show the jury with you?

1 A I believe I've produced a copy of it. I gave
2 it back to the Defendant.

3 Q Let me see. This copy is an accurate copy
4 and shows that he is a resident of Charlotte, North
5 Carolina, Mr. Provet?

6 A It shows that that is the address and
7 information that he gave to the DMV. As to whether or
8 not it is the true and accurate information, you will
9 have to ask your client.

10 Q Let me ask my client something if I may,
11 Judge.

12 **THE COURT:** Yes, sir. (Pause).

13 **BY MR. LONG:**

14 Q You viewed the tape, of course? You did view
15 the tape?

16 A Yes.

17 Q The reason I ask if you did, when you and
18 Officer Aman were across northbound traffic, go over
19 the rail, across the southbound traffic down the hill,
20 on the tape, another officer was there, who was that?

21 A Another officer was where?

22 Q Up in the car. I am sorry. I apologize for
23 being unclear. That was a poor question by me. Was
24 at the car, at Mr. Provet's car?

25 A That was actually a Greenville County deputy

1 that had pulled up on the scene during the time that I
2 think Trooper Aman was walking. As to the exact time
3 that he pulled up, I really didn't notice it. I know
4 when I began to run after Mr. Provet, I looked over my
5 left shoulder and I saw that he was there.

6 Q Okay.

7 A As to what time he actually pulled up, I
8 never knew he got out of his vehicle until you see it
9 on the videotape when he goes to secure Mr. Provet's
#10 vehicle. All he does is lock the doors.

11 Q Actually, on the tape, he goes into the
12 vehicle on the drivers side.

#13 A Maybe to secure the keys. I don't know what
14 he did.

15 Q You saw the tape?

#16 A I don't think it shows him doing anything.
17 You might listen. You don't see him ever actually go
18 into the vehicle.

19 Q It is all on the tape, sir.

20 A Okay.

21 Q Excuse me one more second please. Those are
22 my questions. Thank you, officer.

23 THE COURT: Any redirect, Mr. Newkirk?

24 MR. NEWKIRK: No, Your Honor.

25 THE COURT: All right. Officer, you may

1 step down. Ladies and Gentlemen of the jury, we
2 have been going for almost two hours now. I am
3 going to go ahead and give you all a very short
4 break. Why don't you go back. Refresh
5 ourselves. There should be Coke, coffee,
6 whatever you need. I intend on taking a lunch
7 break reasonably depending on how the testimony
8 of the other witnesses are. If you need to grab
9 a bite, please help yourself.

10 Again, I am going to instruct you just
11 like I'm going to every time you leave the
12 courtroom, you are not to begin discussing this
13 case. It wouldn't be appropriate to do so. You
14 have not heard all the evidence. You have not
15 heard the arguments of the lawyers. You have not
16 heard my charge on the law. With that said, I am
17 going to go ahead and excuse you for about ten
18 minutes. We will be back with you in about ten
19 minutes. Thank you, y'all.

20 (WHEREUPON, the jury exit at approximately
21 11:25 a.m.)

22) THE COURT: Solicitor, based in the number
23 of witnesses that you have, do you anticipate
24 trying to get all of your witnesses up before a
25 lunch. Of course, it is all subject to however

1 long the cross examination is. Completely
2 understanding that, how did you anticipate it?

3 MR. NEWKIRK: I would anticipate that we may
4 be able to call two witnesses prior to lunch and
5 the last witness after lunch.

6 THE COURT: That is perfectly fine.
7 Whatever your schedule is, I just need to know if
8 we are going to be arguing directed verdict
9 motions over lunch and how much time to give
10 these people so they are not waiting on us. That
11 is perfectly fine. We will go ahead and have a
12 ten minute break. I will be back. If there's
13 certainly anything else you need to bring up
14 before we bring the jury out, bring it up before
15 I bring the jury back in. Let me know.

16 MR. NEWKIRK: All right.

17 THE COURT: All right. Also too for the
18 record, Teresa, I apologize.

19 Trooper Owens, please do not discuss your
20 testimony obviously with anyone that has been
21 sequestered or anyone else. I appreciate it.
22 Thank you, sir.

23 (WHEREUPON, a short recess is taken at
24 approximately 11:25 a.m.)

25 (WHEREUPON, the Court resumes at approximately

1 11:52 a.m.)

2 **THE COURT:** All right. Gentlemen, are we
3 ready to proceed with the State?

4 **MR. NEWKIRK:** Yes, Your Honor.

5 **THE COURT:** The defense?

6 **MR. LONG:** Yes, ma'am.

7 **THE COURT:** All right. Let's bring the
8 jury in.

9 (WHEREUPON, the jury enter at approximately
10 11:53 a.m.)

11 **THE COURT:** Welcome back, Ladies and
12 Gentlemen of the jury. The State will call the
13 next witness.

14 **MR. NEWKIRK:** Your Honor, the State calls
15 Officer Eddie Aman.

16 **THE COURT:** Officer Aman, if you will
17 please come forward and be sworn, sir.

18 **EDDIE AMAN**
19 having first being duly sworn testified as
20 follows:

21 **THE CLERK:** Please state your full name for
22 the record.

23 **THE WITNESS:** Eddie Aman.

24 **DIRECT EXAMINATION**

25 **BY MR. NEWKIRK:**

- 1 Q Officer Aman, where do you work?
- 2 A I work for the Anderson Police Department.
- 3 Q Where did you work on May 1st, 2002?
- 4 A I work for the South Carolina Highway Patrol.
- 5 Q At that time, how long had you worked with
- 6 the Highway Patrol?
- 7 A A little over two years.
- 8 Q What were your duties with the Highway
- 9 Patrol?
- 10 A I was assigned to the canine unit.
- 11 Q Were you on duty May 1st, 2002?
- 12 A Yes, sir, I was.
- 13 Q On that date, did you come into contact with
- 14 this Defendant?
- 15 A Yes, sir, I did.
- 16 Q Where did you come into contact with this
- 17 Defendant?
- 18 A Interstate 85 just shy of the 46 mile marker.
- 19 Q Were you --
- 20 A In Greenville County.
- 21 Q Were you the first officer on the scene?
- 22 A No, sir, I was not.
- 23 Q Why did you respond to that traffic stop?
- 24 A I came to see if he needed the canine to do
- 25 an exterior search of the vehicle.

1 Q When you arrived on the scene, where was the
2 Defendant?

3 A The Defendant and Corporal Owens were both on
4 the outside of Corporal Owens vehicle on the passenger
5 side.

6 Q Did you approach the Defendant and Corporal
7 Owens?

8 A Yes, sir, I did.

9 Q When you approach them, what was Corporal
10 Owens doing?

* 11 A He was explaining the warning citation. As
12 he was explaining the warning citation, he gave that
13 to the Defendant and then asked for consent to search
14 the Defendant's vehicle.

15 Q Did you hear the response?

16 A I did.

17 Q What was the Defendant's response?

18 A His initial response was, I believe, he
19 asked, he repeated the question more or less. Then he
20 gave consent to search.

21 Q After the Defendant gave consent to search
22 the vehicle, what did you do?

23 A I approached the vehicle to check around the
24 vehicle, the roadway for any kind of hazards, glass or
25 anything like that that would harm the dog. As I

1 checked that part, I looked inside the vehicle to see
2 if there was anything inside of the vehicle to hurt
3 the dog or that kind of thing. I was going through a
4 pretty much safety check.

5 Q I'm going to take a step back.

6 A Okay,

7 Q Why were you going to run the dog around the
8 vehicle?

9 A Corporal Owens had asked me to run the
10 vehicle. The normal thing for us, we ran the dog all
11 the time. If we thought we were going to search the
12 car, we run the dog.

13 Q Why did you run the dog after the Defendant
14 already consented to the search?

15 A There is not really a right or wrong way.
16 You can do it. You don't have to. If you gain
17 consent, you don't have to run a canine. But it is
18 always a good idea if you have canine available. It
19 is just a good idea to run the dog to see what its
20 determination is. It could save you a lot of man
21 hours as far as searching.

22 Q What happened when you went to the vehicle?

23 A I opened the passenger door. It was a fast
24 food box and some bags on the floor board. As I
25 retrieved those items to remove them so the dog

1 wouldn't get into that, as I stepped back out with
2 those items, the Defendant fled. Corporal Owens
3 crossed the interstate. I dropped the items on the
4 seat and proceeded across the interstate.

5 Q Did you make any observations about the items
6 in the vehicle?

7 A Yes, sir. What it was, it was a chicken box
8 that could not close. It was a bag inside the chicken
9 box. Inside the bag, there was a Ziploc type package
10 that I could see the corner of, partially see. That
11 is consistent with packaging drugs that I've seen
12 throughout my career.

13 Q What did you do when the Defendant fled the
14 scene?

15 A When he starts to flee, I believe Corporal
16 Owens yelled or hollered for him to stop or something
17 of that nature. I dropped the stuff right where I was
18 and immediately went around the front of the vehicle
19 and pursued him as well.

20 Q Where did the Defendant go?

21 A He went across -- at that particular place on
22 I-85, you have a shoulder, you have three lanes, a
23 concrete median, three lanes and a shoulder. It goes
24 down the hill. It went across all three lanes, the
25 concrete median, the next three lanes and into the

1 woods where it went all the way down. There is a
2 fence that runs along that road. It goes underneath
3 I-95 near Mauldin Road. He actually got down to the
4 fence line probably 30 or 40 yards deep. Went down
5 the wood line and ran down the fence line.

6 Q Did you apprehend the Defendant?

7 A Yes, sir, I did.

8 Q Was the Defendant brought back to the scene of
9 the traffic stop?

10 A Yes, sir. I believe I walked him back out of
11 the woods. He stayed stationary. I believe a
12 Greenville County deputy vehicle came and picked us
13 up. We eventually did go back to the scene. Yes,
14 sir.

15 Q Once you got back to the scene, what did you
16 do?

17 A I ran the canine.

18 Q Did the canine alert on the Defendant's
19 vehicle?

20 A Yes, he did.

21 Q What did you do next?

22 A At that point, we field tested the substance
23 that was found inside the bags. It field tested
24 positive as cocaine. We arrested or transported the,
25 him to the Greenville County Detention Center

1 (WHEREUPON, State's Exhibit 2 is marked for
2 identification purposes.)

3 BY MR. NEWKIRK:

4 Q Officer Aman, let me show you what has been
5 -- Officer Aman, I am going to hand you what has been
6 marked as State's Exhibit 2. Could you please examine
7 State's Exhibit 2. Officer Aman, without telling me
8 what State's Exhibit 2 is, do you recognize State's
9 Exhibit number 2?

10 A Yes, I do.

11 Q What is State's Exhibit number 2?

12 A It is the Ziploc package and substance that
13 we removed from the brown paper bag which was in the
14 box.

15 Q Where did this come from?

16 A The front floorboard on the passenger side of
17 the vehicle.

* 18 Q Is State's Exhibit number 2 in the same or
19 substantially similar condition as when you found it
20 on May 1, 2002?

21 A Yes, sir.

22 Q What did you do with this after you found it?

* 23 A I placed it into evidence.

24 Q What does that mean?

25 A At the time, I believe it was Dale Blackmon,

1 the evidence custodian. We did all the required
2 paperwork. And, transferred chain of custody and the
3 item to it. They take it to SLED at the time.

4 Q On what day did you transfer that item?

5 A On 5/6/2002.

6 Q Where were the drugs at from 5/1 until 5/6?

7 A In the drug safe in the office.

8 Q Where is that located?

9 A Century Drive here in Greenville.

10 Q Who had access to that?

11 A Only the supervisors, highway patrol
12 supervisors.

13 Q What did you do with the evidence on May the
14 6th of '02?

15 A I took it to Mrs. Blackman who was at the
16 time at the ACE office in Columbia.

17 Q What would she do with evidence?

18 A She took it to SLED for analysis.

19 Q Is Mrs. Blackman still employed with the
20 Highway Patrol?

21 A No, sir, she is not.

22 MR. NEWKIRK: Nothing further, Your Honor.

23 THE COURT: Mr. Long.

24 CROSS-EXAMINATION

25 BY MR. LONG:

1 Q Officer, I apologize for my hoarseness. I
2 have got whatever is going around.

3 A I understand.

4 Q I will try to do better with my questioning.
5 I seem to be even fuzzier in my thought process than
6 usual. You were called there because you were in
7 partnership with the dog is, I think, the way you --

8 A Yes. We are the canine team.

9 Q When you got there, how many officers were
10 there?

11 A Just Corporal Owens.

12 Q And another officer came up, I believe?

13 A I believe at some point in time a Greenville
14 Deputy did arrive behind my vehicle. I don't know
15 specifically when he arrived.

16 Q As to that identification, I believe Exhibit
17 -- looking at the bag within a bag, can you positively
18 say that this is what you retrieved from the chicken
19 box?

20 A Yes, sir. That is my writing, that is my
21 handwriting on the evidence bag.

22 Q On the inside here?

23 A Yes, sir.

24 Q Okay. So, it wasn't in a sealed bag when it
25 left your possession. It was in a Ziploc bag, isn't

1 that correct?

2 A I'm sorry. I am not understanding. It was
3 originally packaged in a Euploc type package. It was
4 placed inside of our South Carolina Highway Patrol
5 evidence bag which was self-sealed.

6 Q Where is your signature affixed to it?

7 A On that package.

8 Q On which package?

9 A The South Carolina Highway Patrol evidence
10 bag.

11 Q When did you place it in that bag?

12 A When we came back to the scene and ran the
13 dog. I stepped out and put it into the evidence bag.

14 Q On the scene?

15 A I can't say right now if I did it right then
16 or if I did it at the office.

17 Q Was it in your possession when you ran down
18 the hill?

19 A No, sir, it was not.

20 Q Where was it then?

21 A Inside the vehicle.

22 Q You had put it in the vehicle?

23 A I dropped it when he took off, yes, sir.

24 Q Where did you drop it inside the vehicle?

25 A To be honest with you, I picked it up on the

1 floorboard. As I picked it up, I heard Corporal Owens
2 yelled. I saw the Defendant running. I just dropped
3 it right in that general vicinity. I cannot give you
4 a specific.

5 Q Were there other bags, boxes, containers,
6 fast food containers inside the vehicle when you first
7 looked?

8 A There a couple of different types of wrappers
9 and things of that nature. Yes, sir. I don't know
10 how many.

11 Q Would it surprise you if Trooper Owens
12 testified under oath that they were all over the
13 vehicle, a whole lot of fast food items or would that
14 be inconsistent with the truth?

15 A That would not surprise me at all. He had a
16 different vantage point than I did.

17 Q Your vantage point being the inside the
18 vehicle?

19 A Yes, sir. Corporal Owens obviously,
20 obviously had the privilege of the seeing the vehicle
21 before. I know Corporal Owens made a passenger side
22 approach on the initial stop. I know he made a
23 driver-side approach to check the vehicle
24 identification number. He had the opportunity to see
25 the different vantage points of the vehicle that I did

1 not experience on that particular occasion. As I
2 approached the vehicle, I only opened the passenger
3 side door out of safety. You rather stay off the
4 driver side if you can. I approached on the passenger
5 side. That is the door that I opened.

6 As I picked up the first package, the chicken
7 box, the Defendant fleas. He hollers. I dropped the
8 box. I did not actually get to a position where I
9 looked all over the vehicle at that time.

10 Q So does that mean that you -- my simple
11 question was regarding a number of other packages and
12 containers of fast food items, numerous other items
13 and you just testified that you did or did not see
14 those. I am unclear.

15 A Actually, sir, you asked me if I would be
16 surprised if Corporal Owens testified that there were
17 numerous wrappers in the vehicle. My response is I am
18 not surprised. You did not ask me directly if I saw
19 those or if I didn't.

20 Q Please --

21 A I am trying to do the best I can.

22 Q I am trying too. As you know, I am feeling
23 this -- I apologize.

24 A I understand.

25 Q I truly do.

1 A I am operating under the slightest
2 disadvantage and only slight for the record. Only
3 slight.

4 Q My voice is giving out.

5 A I understand.

6 Q Did you see numerous other items in the
7 vehicle?

8 A There were other wrappers and things of that
9 nature in the vehicle. How many? To what extent? I
10 really don't recollect. I just know that there are
11 were, yes, some more wrappers. I don't know how many.

12 Q Would numerous be a fair descriptive word?

13 A I would think so, yes, sir.

14 Q That being the case, you say wrappers. The
15 other fast food containers, you would not deny that?

16 A No, sir, I would not.

17 Q Some along the front seat?

18 A That is possible. I really do not remember
19 whether they were specifically on the front seat or
20 not?

21 Q Afterwards, you ran the dog around the
22 vehicle?

23 A Yes, sir.

24 Q Other than what was according to your
25 testimony in the chicken box, other than that, did you

1 find any other drugs?

2 A No, I did not. No, sir.

3 Q Or did you and the dog?

4 A The dog doesn't actually find drugs. They
5 only detect the odors that they have been trained to
6 detect. Humans have to actually go behind the dog and
7 physically search. I did not find any other drugs.

8 Q Did the dog sniff suggestively on any
9 portions of the car?

10 A His alert came to the front passenger side of
11 the vehicle. Generally, if you refer to whether or
12 not there were other vehicles in other places,
13 obviously, you are talking about odors, not physical
14 presence. I cannot testify to any of that.

15 Q Y'all did look inside of the numerous other
16 containers of fast food?

17 A Yes, sir.

18 Q And found no other drugs?

19 A Not to my knowledge, no, sir.

20 Q Not any down where you apprehended the two of
21 you apprehended Mr. Provet?

22 A No, sir. It was an extremely thick wooded
23 area. It would have been very hard to go back and
24 search that area like that.

25 Q Standard procedure, he had already been

1 patted down.

2 A I believe he had. Yes, sir.

3 Q Was there a scuffle down there at the fence?

4 A Nothing more than active resistance to being
5 handcuff.

6 Q I'm sorry?

7 A Nothing more than active resistance to being
8 handcuffed.

9 Q If there were any bruises about his body or
10 to his face, they didn't occur there?

11 A It is possible that they did. That doesn't
12 mean that it came from any altercation. We were in
13 thick woods. I am sure I probably had a bunch of
14 thick abrasions and cuts as well running through the
15 woods.

16 Q But not from Mr. Provet?

17 A No, sir. I don't think so.

18 Q During the split second between when he got
19 the warning ticket and was asked is it okay if we
20 search, were you there when he was asked that?

21 A Yes, sir, I was.

22 Q You testify that you heard a response?

23 A Yes, sir, I did.

24 Q Did he appear calm when he gave that
25 response?

1 A Yes, sir. He was a little bit nervous. But
2 most people are when they are stopped by a state
3 trooper.

4 Q Just a little bit nervous?

5 A Yes, sir.

6 Q Nothing extraordinary?

7 A No, sir.

8 Q During that entire time up until that point
9 in time that you were around, would that be a fair
10 statement of his demeanor?

11 A Yes, sir. A slight bit nervous.

12 Q A little bit nervous?

13 A (Nods Head).

14 Q When he was questioned in your presence about
15 the consent, did he hesitate to answer?

16 A No, sir. I believe his initial reply was
17 that he repeated the question back in some manner and
18 then was asked and he gave it an affirmative response?

19 Q Without hesitation is your testimony?

20 A I really don't recall whether he hesitated or
21 not.

22 Q If he did hesitate, would it have been a
23 noticeable undue hesitation?

24 A Couldn't say. I don't recall whether he
25 hesitated.

1 Q There is nothing you remember?

* 2 A No, sir.

3 Q On the videotape, the dog was given his
4 practice run after all of this happened, I believe
5 would be a fair statement? A training run.

6 A I would not characterize it as training. As
7 I explained yesterday, this is an opportunity to run
8 the dog. You can look at it in that light. There is
9 nothing wrong with looking at it that way. It can
10 also reaffirm your assumptions. Which at that time,
11 would probably be a more accurate description.

12 Q If I remember correctly on the tape, the dog,
13 after running across the highway and everything, that
14 was the first time the dog went to the car?

15 A Yes, sir.

16 Q The first thing that the dog did was circle
17 the vehicle once or twice I believe.

18 A Yes, sir

19 Q Is that the normal procedure?

20 A Yes, sir.

21 Q Then you opened the door and the dog went
22 right in?

23 A Yes, sir.

* 24 Q You put the fast food container back in
25 there?

1 A At that point?

2 Q Yes.

3 A I really do not recall. I don't know if it
4 was there or not at that time.

5 Q Where would it be?

6 A I don't recall whether or not the evidence
7 was already removed or not prior to that. I am not
8 sure. Obviously, when the Defendant fled, it changed
9 the parameters of the stop more or less from a normal
10 procedure to a somewhat abnormal procedure.

11 Q And at that time you just tossed this back
12 into the car? This, marked for identification as
13 number 2, you tossed it back into the car. Then, when
14 you came back, what did you do with it?

15 A We obviously secured, made sure the vehicle
16 was secured. We retrieved the evidence. I don't know
17 if we retrieved the evidence before we ran the dog or
18 after. I don't recall that.

19 Q Officer, thank you. I appreciate it.

20 THE COURT: Any redirect, Mr. Newkirk?

21 MR. NEWKIRK: No, Your Honor.

22 THE COURT: You may step down, officer.

23 Thank you.

24 The State can call the next witness.

25 MR. NEWKIRK: The State calls Corporal John

1 Price.

2 JOHN PRICE

3 having first being duly sworn testified as
4 follows:

5 THE CLERK: State your name for the record.

6 THE WITNESS: Corporal John Price.

7 DIRECT EXAMINATION

8 BY MR. NEWKIRK:

9 Q Where do you work?

10 A I am an Evidence Technician, Asset Forfeiture
11 Officer for the Highway Patrol stationed in Columbia.

12 Q How long have you been in that position?

13 A In that capacity, I have been there five
14 years.

15 Q Can you explain to the jury what happens when
16 drug evidence is brought to Columbia.

17 A The Central Evidence Facility, if we receive
18 evidence from the trooper himself or the district he
19 is assigned to, it is brought into us with a Department
20 of Public Safety Chain of Custody. On that chain of
21 custody, it shows the process, who is received from,
22 the date that they receive it and who has it next.

23 Q What is done with the evidence once it is
24 turned over to the evidence facility?

25 A Once we receive it, we process it. If it is

1 marijuana or dangerous drugs or weapons or whatever,
2 it has a certain area. Dangerous drugs, how it is
3 packaged, we process it and package it and place it in
4 the respective district location.

5 Q Are the drugs placed in a secure facility?

6 A Absolutely. To get to the drugs, we have
7 five levels of security that we go through.

8 Q Can you explain that to the jury.

9 A Absolutely. When you come into the front
10 door, we have a card reader. Access to the building
11 is limited to five people. Once you get into the
12 building, you go to another facility. If you are not
13 assigned there, you have to be escorted through once
14 you get to the main door.

15 The next door, you have another door that you
16 key into with the card, the card reader. You go into
17 the next door. At that point, you have another door that has
18 a card reader. You go into the facility. There is a
19 gated area that has a card reader and a key. The
20 final level of security, you have to utilize your
21 thumb print to enter the facility.

22 Q How are, how is drug evidence transferred
23 from your storage facility to a lab? For instance,
24 SLED or a county lab?

25 A Are you talking about the time of arrest or

1 from the facility?

2 Q From the facility.

3 A From the facility, it is under security.
4 Once it leaves the facility, we sign for it on the
5 Department of Public Safety Chain of Custody. I would
6 put it in my vehicle. In my vehicle, I have two
7 levels of security. I have a box that I lock it into
8 plus my camper has a locker system on it. I
9 transported and once I get to SLED. I enter it; you
10 know, get into it and take it to SLED and process it.

11 Q Was this the procedure in 2002?

12 A Some of it, yes, sir. The higher level of
13 security has changed. At that time, there was only
14 three levels of security to get into the evidence
15 facility.

16 Q It was still a secure level facility.

17 A Absolutely.

18 Q Are you familiar with Dale Blackmon?

19 A Yes. I took over her position when she left
20 the Department of Public Safety.

21 Q What was her duties?

22 A Asset Forfeiture Officer and Evidence
23 Custodian for the ACE team.

24 Q Is she still with the Highway Patrol?

25 A No, sir, she is not.

1 Q Do you recognize this form?

2 A Yes, sir, I do.

3 Q What is that?

4 A This is the subsequent chain of custody
5 provided to us by SLED to a best packet kit.

6 Q Do you recognize the signature on the form?

7 A Yes, Dale Blackmon.

8 Q Does that form indicates whether this
9 evidence was taken to SLED?

10 A Yes

11 Q When was that?

12 A 5/7 of 2002.

13 Q Thank you, sir. Does this form indicate who
14 took the evidence to SLED?

15 A Yes, sir, at the bottom. It basically just
16 says that she received it from Eddie Aman and what she
17 did then on 5/7, she took it to SLED. By
18 her signature and acknowledgment of notary of SLED, it
19 is the best indication that it was safely delivered,
20 or they received it.

21 Q I'm going to show you what has been marked as
22 a State's Exhibit 2 for identification?

23 A Yes, sir.

24 Q Do you recognize that?

25 A Yes, sir, I do. Based upon the fact that on

1 the front, it is an envelope of how we store some
2 items of evidence into the facility.

3 Q Did I ask you to bring any evidence with you
4 to court today?

5 A Yes, sir, you did.

6 Q Where did you find State's Exhibit number
7 two?

8 A Being that it was a case assigned to Eddie
9 Aman when he was on the ACE team, he was employed with
10 Highway Patrol, it was located now in Troop 8 which
11 is, Troop 8 is the ACE team location within my drug
12 locker.

13 Q You got out of your drug locker?

14 A Under the fifth level of security.

15 Q Thank you, sir.

16 MR. NEWKIRK: No further questions, Your
17 Honor.

18 THE COURT: Mr. Long.

19 CROSS-EXAMINATION

20 BY MR. LONG:

21 Q You say that back then, there were only three
22 security measures?

23 A Yes, sir. We have added to one or two.

24 Q In your current position back then when this
25 was collected?

1 A What was the date on that?

2 Q (No response).

3 A Was it 5.7 I said?

4 Q May I see the indictment? The indictment
5 alleges May 1, '02.

6 A I began my current capacity June 15th 2002.
7 I had a different job at that point prior.

8 Q What was your job before?

9 A I was the Supervisor of the Drug Interdiction
10 Team on I-95.

11 Q That was in the Columbia area?

12 A No, sir. It was on I-95. Anywhere from
13 coming in from Savanna as far as you go up 95 into
14 South Carolina.

15 Q That is the road that sort of leaves to all
16 of the North Carolina line, all of the billboards, is
17 that correct?

18 A Yes, sir, if you enjoy that.

19 Q On the date of this alleged offense, you were
20 stationed, did you live down there as well?

21 A Sure did.

22 Q When did you move or did you move in the
23 Columbia area.

24 A June 15th, 2002. I was asked to assume this
25 position. About three days later, I happily moved

1 from the Low State back to the Upstate where I am
2 originally from.

3 Q Where are you originally from?

4 A I am from Union.

5 Q Union. Did you immediately assume your job
6 duties in June?

7 A Effective right away.

8 Q Was it at that time in June that you learned
9 what the security measures were in June..

10 A Yes, sir.

11 Q What the other three security measures that
12 were effective in June?

13 A The card readers.

14 Q June of whatever it was?

15 A The card readers and access ability to the
16 lockers.

17 Q The other measures added when, security
18 measures?

19 A About three years ago, we became more
20 statewide. We went to handling more evidence on a
21 statewide basis. Therefore, more dope, more security.

22 Q When did this woman that you mention her name
23 a few minutes ago that is no longer with there, when
24 did she leave the Highway Department?

25 A In June of that year, possibly June the

1 eleventh. Unfortunately, we lose a trooper. He was
2 killed on I-95. It affected her dearly. So she left
3 the Department.

4 Q About the same time that you came up there?

5 A We buried him on Sunday. I was invited up on
6 Tuesday for an interview because I was told she put in
7 her resignation.

8 Q What was her job at the Highway Department?

9 A My job now. Asset Forfeiture Officer,
10 Evidence Custodian.

11 Q You never worked with her?

12 A Alongside with her but not in her capacity.

13 Q Not in the drug storage capacity?

14 A Absolutely. At that point, I had no
15 accessibility to the drugs. She was the custodian.

16 Q Did you ever correspond with her or anything?

17 A Sure.

18 Q The point I'm getting to, you recognize that
19 as being her signature?

20 A Yes, sir, I sure do. The job I took over is
21 a lot of evidence. Her -- prior to me, her name was
22 there for seven or eight years. It is fluent. On the
23 asset forfeiture side, alongside the forms that I do
24 on a daily basis, I have to back track and investigate
25 some cases. There her signature is. I recognize that

1 signature. I have seen it more than once on a daily
2 basis.

3 Q Okay. Do you know who allegedly transmitted
4 the contents of this to the SLED lab?

5 A If I followed the initial chain of custody or
6 the subsequent chain of custody, I can read it and
7 just present it to you based upon the facts perceived
8 by SLED. My name is not on it. I did not touch it.

9 Q That all took place --

10 A Prior to me.

11 Q Prior to you. I believe -- let me check.
12 Those are my questions.

13 MR. LONG: Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Long.

15 Any redirect, Mr. Newkirk?

16 MR. NEWKIRK: No, Your Honor..

17 THE COURT: You can step down, sir.

18 THE WITNESS: Okay.

19 THE COURT: Gentlemen, do you want to
20 approach for scheduling purposes?

21 (WHEREUPON, a bench conference is held.)

22 MR. NEWKIRK: The State calls Investigator
23 Quincy Ford.

24 QUINCY FORD

25 having first being duly sworn testified as

1 follows:

2 THE CLERK: State your name for the record.

3 THE WITNESS: Quincy Ford.

4 DIRECT EXAMINATION

5 BY MR. NEWKIRK:

6 Q Agent Ford, where are you employed?

7 A I am employed at the South Carolina Law
8 Enforcement Division, commonly known as SLED.

9 Q How long have you worked for SLED?

10 A I have been at SLED now for approximately six
11 and a half years.

12 Q What position do you currently hold with
13 SLED?

14 A My current position is in the, uh, Special
15 Agent in Device and Narcotics.

16 Q And what position did you hold in May of
17 2002

18 A Yes, sir, my position in May of 2002, I was a
19 Forensic Chemist in the Department of Drug Analysis.

20 Q How long had you been a forensic chemist?

21 A I've been a forensic chemist for five years.

22 Q What training and education did you receive
23 on your way to becoming a forensic chemist?

24 A Yes, sir, I started my education experience
25 at South Carolina State University where I have

1 obtained a Bachelor of Science degree in Chemistry. I
2 went to the University of South Carolina where I
3 obtained a Bachelor of Science degree in Analytical
4 Chemistry. I graduated from the South Carolina
5 Criminal Justice Academy.

6 I had additional training within SLED by the
7 Department of Forensic Science Scientists. I attended
8 forensic science in the analysis and detection of
9 controlled substances. I have also had additional
10 training by the Drug Enforcement Administration in the
11 investigation and safety of clandestine laboratories.
12 Upon completion of the training, you have to go
13 through a comprehensive testing that is given by SLED.

14 Q While you were a forensic chemist, did you
15 receive ongoing training?

16 A Yes, sir. I received the Southern
17 Association of Forensic Science. There were seminars
18 on the other bases. I had the opportunity to attend
19 some of the seminars and training.

20 Q What task did you perform as a chemical
21 analyst for SLED?

22 A Yes, sir. As a chemical analyst for SLED, we
23 have multiple task. Our primary duty is to analyze
24 any submitted evidence whether federal, state, county
25 or municipalities. We analyze the evidence that is

1 submitted to police agencies throughout the State and
2 country...

3 Q In the years have you been a chemical analyst
4 with SLED, how many cases have you been asked to
5 analyze chemical substances?

6 A I have been asked to analyze hundreds of
7 cases throughout my forensic career.

8 Q How many cases have you analyzed chemical
9 substances that have turned out to be cocaine?

10 A It has been hundreds of cases to actually
11 turn out to be cocaine.

12 Q How many times have you testified in court
13 about the results of chemical analysis?

14 A Yes, sir. I have testified a minimum of 41
15 times. That is federal and state court.

16 Q Have you been qualified by a Court as an
17 expert in the field of chemical analysis?

18 A Yes, sir, I have.

19 Q Approximately how many times?

20 A 41.

21 Q Have you ever not been qualified as an
22 expert?

23 A No, sir.

24 MR. NEWKIRK: Your Honor, at this time, the
25 State moves to have Mr. Ford qualified as an

1 expert in the field of chemical analysis.

2 THE COURT: Mr. Long, would you like to do
3 any cross-examination, sir?

4 MR. LONG: Your Honor, I don't have any
5 questions as to his expertise. I am not in a
6 position to stipulate it. I would have nothing
7 to question and add for the record. So the court
8 can determine that on the record.

9 THE COURT: Ladies and Gentlemen of the
10 jury, normally a person cannot give an opinion
11 testimony. Normally, when a person testifies,
12 they must testify to what they either saw, heard,
13 sensed by smell or something of that nature.
14 However, there is an exception when someone is
15 qualified because of education and experience,
16 they are permitted to give their opinion in
17 certain areas if the court qualifies them that
18 way.

19 This witness will be qualified in the area of
20 chemical analysis to give opinion testimony in
21 that area. That doesn't mean that you must
22 accept this opinion. But, it is evidence for you
23 to use in any way you see fit.

24 You may continue, Mr. Solicitor.

25 BY MR. NEWKIRK:

1 Q Mr. Ford, were you asked to analyze a
2 chemical substance in this case?

3 A Yes, sir, I was.

4 Q How did you obtain this chemical substance?

5 A I obtained the evidence that was submitted
6 from the location we call the SLED drop box.

7 Q Is the SLED drop box a secure location?

8 A Yes, sir. It is a secure location.

9 Q When did you receive the chemical substance?

10 A I received the evidence on May the 2nd of
11 2002. I am sorry. Correction, May the 8th of 2002.
12 I apologize. May the 8th.

13 Q Thank you. And you got that out of the SLED
14 drop box?

15 A Yes, sir, I got it out of the drop box. I
16 apologize. Yes, sir. May 8, 2002.

17 Q I want to show you what has been marked as
18 State's Exhibit number 2. Can you please examine
19 State's Exhibit number 2?

20 A (Reviewing).

21 Q Is State's Exhibit number two what you got
22 out of the SLED drop box?

23 A Yes, sir, it is. This is the evidence that I
24 received. You can verify that by the case number and
25 what we call the SLED control number.

1 Q Was this bag sealed when you picked it up?

2 A Yes, sir, it was sealed. To verify that it
3 was sealed, I also made a notation which was the date
4 I actually received it out of the box to let me know
5 that it was sealed when I received it from the drop
6 box.

7 Q What do you do with drug evidence that is not
8 properly sealed?

9 A If we do receive evidence that is not
10 properly sealed, if the evidence then tampered, cut,
11 torn, we would give the evidence back to the
12 submitting agency. If the submitting agency has
13 already left, then we'll call to actually reseal the
14 evidence.

15 Q You will not test evidence if it was not
16 properly sealed?

17 A No, sir, I would not even accept the
18 evidence.

19 Q After you analyze the substance, what do you
20 do with it?

21 A After I analyze the evidence, we would put it
22 back in the drug vault. It will stay in the vault
23 until the analyst will take the evidence downstairs to
24 submitted back to the submitting agency?

25 Q What date did you return this evidence to the

1 drug vault?

2 A I returned the evidence back to the drug
3 vault on October 21st of 2002..

4 Q What day did you test the substance?

* 5 A I test the evidence on October 21st, 2002.

6 MR. NEWKIRK: Your Honor, at this time, the
7 State moves as State's Exhibit number 2 into
8 evidence.

9 THE COURT: Okay. Mr. Long, any objection?

10 MR. LONG: Yes, ma'am. Chain of custody.
11 I have a matter to need to be heard outside the
12 jury.

13 THE COURT: Yes, sir. Ladies and
14 Gentlemen, at this time, there is a matter of law
15 that I need to take up with the attorneys. We
16 will be with you shortly. We will bring you back
17 to finish the testimony of this witness and
18 probably send you off to lunch.

19 With that said, do not begin discussing this
20 case. It is not appropriate to do so until you
21 have heard all of the evidence, the arguments
22 from the attorneys and my charge on the law. Go
23 back, refresh yourselves. We will be back with
24 you shortly.

25 (WHEREUPON, the jury exit at approximately

1 12:51 p.m.)

2 THE COURT: All right, yes, Mr. Long.

3 MR. LONG: Your Honor, the first point is
4 that our objection is preserved, I understand
5 that at side bar, it is my understanding that my
6 objection is to the total admissibility of
7 evidence raises the suppression hearing is
8 reserved.

9 THE COURT: Yes, sir.

10 MR. LONG: On the issue of chain of
11 custody, I think that the problem that I would
12 have for purposes of the, if you will, for
13 purposes of this hearing and not jury evidence, I
14 would like to enter his arrest warrant that
15 showed him possessing more than 28 grams which
16 would be, which would be a much lesser amount
17 than this.

18 THE COURT: That's what he is charged with.

19 MR. LONG: Beg your pardon.

20 THE COURT: That what he is charged with in
21 the indictment?

22 MR. LONG: That is correct. Then, there
23 is an earlier indictment. I would like to place
24 a copy of the earlier indictment that was
25 replaced. I don't have one but I am aware of its

1 existence.

2 THE COURT: Obviously, I don't have it.

3 MR. LONG: Do you have a copy of the
4 indictment that was suppressed?

5 MR. NEWKIRK: It wasn't suppressed.

6 MR. LONG: I mean that was superseded.

7 Excuse me. Thank you. For the same reason, not
* 8 for the jury but for purposes of this objection.
9 I would like to have it marked for, if I may get
10 the clerk at the break to make a copy of this
11 since it is the solicitor's copy and have it
12 marked rather than this, I would appreciate it.

13 THE COURT: We can probably do it right
14 now. If you go ahead and give it to her. Let's
15 go ahead and mark it.

16 Teresa, if you don't mind, let hand me both
17 of the documents.

18 (WHEREUPON, Defendant's Exhibit 1 is marked for
19 identification purpose.)

20 (WHEREUPON, Defendant's Exhibit 2 is marked for
21 identification purposes.)

22 MR. NEWKIRK: Your Honor, I thought that this
23 objection had to do with chain of custody. The
24 issue of whether or not I directly presented the
25 indictment for an increase sentencing has

1 absolutely nothing to do with it --

2 THE COURT: Chain of custody.

3 MR. NEWKIRK: -- chain of custody.

4 THE COURT: I am assuming Mr. Long is
5 getting to the chain of custody. Mr. Long.

6 MR. LONG: My client very strongly wants
7 me to ask these questions related to the chain of
8 custody. It appears to be a good time to do it
9 with the jury out.

10 THE COURT: Absolutely. We are fine.

11 Go ahead, Teresa, and mark the copy of the
12 previous indictment. May I see it? Thank you.

13 BY MR. LONG:

14 Q Officer, what is the date of your drug
15 analysis?

16 A The date of the drug analysis, October 21st,
17 2002.

18 Q 2000 what, sir?

19 A 2. 2002.

20 Q What date was that returned to the
21 Solicitor's Office?

22 A I am not sure.

23 Q What when did it make it back to law
24 enforcement?

25 A I am not sure. I don't have that information

1 in front of me. I have the information when I
2 received it, the date I did my analysis. As soon as
3 I complete the analysis, we put the evidence back in
4 the drug box.

5 Q For the record, the arrest warrant which I
6 believe for purpose of this hearing is Defendant's 1
7 is stated May the 1st 2002 and the first indictment is
8 dated May 24th, 2005. Again, the date that it was
9 returned that you completed your examination and it
10 was transmitted back from your office, I would
11 presume.

12 A After I completed the analysis, you are
13 asking me what date it was sent back.

14 Q Uh-huh?

15 A I'm not sure. I don't know the date it was
16 sent back to the Highway Patrol. I don't have that
17 information in front of me.

18 Q Is it policy for it to stay around SLED or
19 for it to immediately be transmitting back.

20 Q Yes, sir, the evidence is to be transmitted
21 back to the submitting the agency.

22 Q Shortly after the completion of the --
23 It depends on when the agency comes and picks
24 up the evidence.

25 Q I may have asked you this for the third time.

1 Bear with me. I am sorry. Your examination was
2 completed when?

3 A Yes, sir. I conducted the analysis on October
4 21st, 2002.

5 MR. NEWKIRK: Your Honor, I have a copy of
6 the indictment that I believe Mr. Long was
7 requesting.

8 THE COURT: Thank you. Let's make a copy
9 of it for Caroline.

10 MR. LONG: Is it an extra copy?

11 MR. NEWKIRK: You can have that copy.

12 MR. LONG: I think that he gave me that.
13 I am in no way making any allegation that they
14 are other than what they are.

15 THE COURT: Let me see what it is. Was
16 there an earlier indictment presented, Solicitor?

17 MR. NEWKIRK: Yes, there was.

18 THE COURT: The only one I have got is the
19 '05 indictment. That is the second one, is that
20 correct?

21 MR. NEWKIRK: Yes.

22 MR. LONG: The copy should come from --

23 THE COURT: Thank you. I think what you
24 are trying to do, Mr. Long, is you want to go
25 ahead and mark this as an exhibit as well is what

1 you are trying to do.

2 MR. LONG: That is what I was trying to
3 do.

4 THE COURT: All right. Go ahead and make a
5 copy of that for me. Let's go ahead and mark
6 that as Defendant's Exhibit 3 for the Court's
7 purposes only, not to be given to the jury.

8 Teresa, if you mark that, let me take a look
9 at it.

10 (WHEREUPON, Defendant's Exhibit 3 is marked for
11 identification purposes.)

12 MR. LONG: Judge, I will make it very
13 clear that I was totally unaware of what this
14 evidence was. My client, in fact, Mister -- the
15 prosecutor and I had several discussions where he
16 explained to me the reason for the indictment. I
17 am trying to clear this up at my client's
18 insistence in the event there is an issue that I
don't perceive quite frankly.

19 THE COURT: All right. Solicitor, help me
20 out. Is it fair to say -- go ahead and just tell
21 me.

22 MR. NEWKIRK: Your Honor, first of all, I
24 think any issue as to the indictment has been
25 waived once the jury is sworn. If the defense

1 counsel has any issue with the indictment, it has
2 not been preserved at this point. We have
3 already started the trial. I will explain to you
4 exactly. Initially, in 2002, this case was
5 submitted to the Grand Jury. It was submitted,
6 the indictment was incorrect as to the weight of
7 the drugs.

8 THE COURT: Okay.

9 MR. NEWKIRK: At that point, another
10 indictment was submitted to the Grand Jury, it
11 was directly presented.

12 THE COURT: Uh-huh.

13 MR. NEWKIRK: It was for over 100 grams of
14 cocaine. At that point, the Defendant was bench
15 warranted, failed to appear. The bench warrant
16 order only had the original indictment number on
17 it and the resisting arrest indictment number.
18 At that point, I nol prosed the direct
19 presentments. When he was picked back up on the
20 bench warrant, instead of going through the
21 normal course of reactivating a nol pros
22 indictment, the case law had changed. Supreme
23 Court said we had to reindict. I just sent
24 another indictment to the Grand Jury in 2005.

25 THE COURT: Okay. Okay.

1 **MR. LONG:** Judge, that's the explanation I
2 received on two occasions and conveyed to Mr.
3 Provet. My understanding is that before action
4 was taken on the indictment, it can be superseded
5 100 times or 1000 times.

6 **THE COURT:** The indictment is valid. The
7 current indictment that you are proceeding under
8 is valid regardless of whether or not he waived
9 any issues as to the indictment with having the
10 jury being sworn in, is that correct, solicitor?

11 **MR. NEWKIRK:** That is correct. It was
12 submitted to the Grand Jury. It was true billed.
13 A copy of that true bill indictment was applied
14 to Mr. Provet previous counsel with the
15 understanding that I directly presented this to
16 the Grand Jury. If he wanted to be arraigned and
17 re-booked on that, that was fine. I believe he
18 can accept service on behalf of his client. That
19 was fine.

20 **THE COURT:** All right. Thank you. All
21 right.

22 Let's get now to the chain of custody issue,
23 Mr. Long, that you had raised, sir.

24 **MR. LONG:** Well, I think I raised the
25 point that it be necessary to have the lady who

1 preceded the officer from Union County present to
2 verify the fact that it was taken in by her. And
3 I think that we have to have proof about how it
4 was returned to the officer and when. Nobody
5 said anything about that. This gentleman who is
6 on the witness stand now doesn't know.

7 **THE COURT:** Mr. Newkirk?

8 **MR. NEWKIRK:** Your Honor, the State has
9 presented a full chain of custody as mandated by
10 South Carolina case law. Two similar cases are
11 the State v. Carla Taylor and South Carolina DSS
12 versus Cochran. I have two copies for Your
13 Honor. In those cases, the Court of Appeals has
14 consistently held complete chain of evidence must
15 be established as far as practicable trace
16 possession from the time the specimen is taken
17 from the human body to the custodian by whom it
18 is analyzed by. In these cases, the Court has
19 mandated the State prove who is in chain of
20 custody but not necessarily call the persons who
21 are in chain of custody.

22 **THE COURT:** Mrs. Blackmon is no longer
23 with --

24 **MR. NEWKIRK:** She is no longer with -- in
25 this case, we have some presented evidence from--

1 **THE COURT:** Corporal Price stating that he
2 recognizes her signature and that he was followed
3 up with her. He assumed her duties, is that
4 correct?

5 **MR. NEWKIRK:** That is correct. As far as the
6 case law reads, the State has to prove the chain
7 of custody to the point evidence is taken from
8 the Defendant until such time as is testified.
9 We have traced that.

10 **THE COURT:** Okay. Any response, Mr. Long?

11 **MR. LONG:** Well, my main concern is we
12 haven't gotten it back to the possession of the
13 State. We've left it with this witness who is on
14 the stand now.

15 **MR. NEWKIRK:** I can ask this witness -- the
16 State law says we prove chain of custody from the
17 starting point of the Defendant, when it was
18 taken into possession by the police until such
19 time as testified against. We have, the State
20 has satisfied that chain of custody. We have
21 also, in fact, I called the witness who testified
22 he, in fact, pulled the drugs out of the South
23 Carolina Highway Patrol evidence locker, to bring
24 to court today.

25 **MR. LONG:** It would be a legal question.

1 But there is no evidence of when it left SLED and
2 when it got to the Highway Department. In light
3 of the fact that she had got an arrest warrant
4 and a prior indictment and a present indictment,
5 all of which, and for that matter, the SLED
6 report which I am certainly not stipulating. But
7 there is a difference in weight on those, on each
8 of those.

9 MR. NEWKIRK: Your Honor, as to the
10 difference in weight, that was a mistake on the
11 warrant. That was a mistake on my indictment
12 that I sent to the Grand Jury.

13 THE COURT: The case law in State v. Taylor
14 and the South Carolina Department of Social
15 Services versus Cochran clearly states that
16 obviously, as far as the drugs are concerned, the
17 chain of custody must be established as far as
18 part of a practicable. Of course, Mrs. Blackmon
19 is no longer with SLED. Her successor actually
20 came up and testified, testified as to her
21 signature and testified that he had seen it
22 numerous times as he had assumed her cases.

23 As such, I do think the chain of custody was
24 established. Additionally, the requirement is
25 that the chain of custody is established from the

1 time it is actually seized at the site until the
2 person or the analyst actually test it as such.
3 I do find there is a good chain. Additionally,
4 as we heard, Corporal Price, I believe Mr.
5 Newkirk asked him, did I asked you to bring it
6 here today. He said yes he did, he pulled it
7 from the evidence locker.

8 Is that correct, Mr. Newkirk?

9 **MR. NEWKIRK:** That is correct, Your Honor.

10 **THE COURT:** I do think the chain was
11 established sufficiently. We will go ahead and
12 -- we are going to allow it, okay?

13 Anything further, Mr. Long? Anything
14 further?

15 **MR. LONG:** Judge, of course, I
16 respectfully object to that ruling.

17 **THE COURT:** Noted for the record, Mr. Long.

18 **MR. LONG:** I note for the record, I did
19 not mean to do any surprise on the prosecutor.
20 We have had this conversation two prior times. I
21 am raising points in the course of the trial --

22 **THE COURT:** As is necessary. I understand
23 that. Don't you worry about that, Mr. Long. We
24 need you to make your complete record in this
25 case. Please don't worry about that in any way,

1 okay?

2 MR. LONG: Thank you, Your Honor.

3 THE COURT: Absolutely. Anything further,
4 y'all? I need to step down for one minute. I
5 will be right back up. Y'all are welcome to do
6 the same. When I say one minute, it will
7 probably two minutes. We'll will be right back.
8 Let's go ahead and finish with this witness so I
9 can send this jury to lunch. All right? Okay.

10 (WHEREUPON, a short recess is taken.)

11 THE COURT: Are we ready to proceed? The
12 State?

13 MR. NEWKIRK: We are, Your Honor.

14 THE COURT: Mr.. Long, are you ready to have
15 the jury come back in, sir?

16 MR. LONG: Yes, Your Honor.

17 THE COURT: All right. Let's bring them
18 in.

19 MR. LONG: May I ask one question of this
20 witness?

21 THE COURT: Hold them up.

22 MR. LONG: To clarify.

23 BY MR. LONG:

24 Q For the record, the arrest warrant listed 28
25 grams, more than 28 grams. The first indictment that

1 was superseded list more than 28 grams. The third and
2 present indictment listed more than 100 grams. If I
3 may ask this witness a question, --

4 **MR. NEWKIRK:** I would ask that the question
5 has to deal with him being a chemist and not the
6 arrest warrants or indictments.

7 **MR. LONG:** It does.

8 **THE COURT:** Absolutely.

9 **BY MR. LONG:**

10 **Q** The lab report shows 220 grams as being the
11 weight, is that correct?

12 **A** Yes, sir.

13 **Q** The two questions, would that weight, 220 as
14 opposed to the drug weight presently charged which I
15 believe would be up to 200, would that drug weight
16 carry any impurities or anything else? Is there a
17 factoring down to ensure an accurate weight?

18 **A** Yes, sir. It is a possibility that this
19 evidence which is cocaine to carry impurities or
20 adulterants are what they are normally called?

21 **Q** Do you know whether it does or not?

22 **A** No, sir. I am not sure. We just test to see
23 if it is a controlled substance or not.

24 **Q** The second is a request of my client. He
25 would like to know what it weighs today --

1 **THE COURT:** You can ask the officer if he
2 knows. I am going to assume that he hasn't
3 weighed that today. Is that correct?

4 **THE WITNESS:** No, ma'am, I have not weighed
5 it today.

6 **THE COURT:** Okay.

7 **BY MR. LONG:**

8 **Q** If there are impurities, you wouldn't know
9 the weight of the impurities?

10 **A** No, sir, I would not.

11 **Q** One other thing. Everything refers to white
12 powder. That powder does not appear white. It
13 appears sort of beige colored. Any explanation for
14 that?

15 **A** Yes, sir. At the time, it was an off-white
16 powder. The way they generally make a cocaine, they
17 generally use hydrogen chloride, HCL, that is a
18 possibility. That could discolor the evidence. For a
19 precise exact explanation of why it changed colors, I
20 cannot answer that. I am not sure.

21 **MR. LONG:** I believe you ruled that it is
22 irrelevant what it weighs today.

23 **MR. NEWKIRK:** It is clearly irrelevant.

24 **THE COURT:** It is, sir. You have asked
25 him. I allowed you to ask him questions

1 obviously outside the province of the jury. Just
2 out of abundance of caution to make sure nothing
3 that you ask will end up being objectionable, or
4 that you're going to object to it in any way.
5 Obviously, you will have a full opportunity to
6 examine this officer as to his analysis.

7 But the actual weight of it today is not
8 relevant at this time. He stated that he did his
9 analysis on October 21st of '02. At that time,
10 he did his weights and did the verification that
11 it was in fact cocaine.

12 MR. LONG: So you just disallow that
13 request?

14 THE COURT: I'm going to ask him. Do you
15 have any way or ability right here in Greenville
16 County to actually weigh this evidence in any
17 kind of fair manner? I am assuming you do it
18 back at your SLED lab where you have actual
19 balanced scales that are calibrated and specific
20 and are nontransferable and removable to make
21 sure you have an absolute accurate weight.

22 When we field test drugs as to weight of
23 substances, it is just that, a field test. We
24 send it back to the laboratory later to make sure
25 that it is properly done and it is often why

1 sometimes the field weight comes back different
2 than the actual weight of the drugs. Is that
3 correct, sir?

4 **THE WITNESS:** Yes, ma'am. That is correct.

5 **THE COURT:** All right. Also, correct me if
6 I am wrong, Solicitor, as far as the elements of
7 proving that it was a specific amount of cocaine,
8 it involves not only the specific amount of
9 cocaine or any mixture that actually contains
10 cocaine, is that correct?

11 **MR. NEWKIRK:** That is correct.

12 **THE COURT:** Okay. At this time, we are
13 ready to bring the jury back in, Mr. Long? You
14 have sufficiently made your record, sir. All
15 right. Yes, sir?

16 **MR. LONG:** Judge, I note the objections
17 and whatever ruling you made in that last
18 exchange.

19 **THE COURT:** Absolutely. You are noting
20 your objection?

21 **MR. LONG:** Yes, ma'am.

22 **THE COURT:** Absolutely. As I said before,
23 I want you to fully make a record, sir.
24 Absolutely always. So there is no problem.

25 **MR. LONG:** For Mr. Provet.

1 **THE COURT:** All right, sir. You can go
2 ahead and bring the jury in. It is noted for the
3 record.

4 **(WHEREUPON, the jury enter at approximately.**
5 **1:21 p.m.)**

6 **THE COURT:** We will continue at this time.

7 **MR. NEWKIRK:** Your Honor, at this time, the
8 State would offer State's Exhibit number 1 as
9 evidence.

10 **THE COURT:** I have entered it into
11 evidence.

12 **BY MR. NEWKIRK:**

13 **Q** Can you tell the jury how you analyze
14 evidence?

15 **A** I perform two analysis, a preliminary
16 analysis and an instrumental analysis.

17 **Q** Can you tell the jury what the results of
18 your analysis where?

19 **A** Yes, sir. The result of my analysis was
20 cocaine found, 220 grams, and it is a Schedule 2
21 Controlled Substance.

22 **MR. NEWKIRK:** Nothing further, Your Honor.

23 **THE COURT:** Mr. Long, your witness, sir.

24 **CROSS-EXAMINATION**

25 **BY MR. LONG:**

1 Q Officer, the indictment --

2 MR. NEWKIRK: Objection, Your Honor.

3 THE COURT: You may approach.

4 (WHEREUPON, a bench conference is held.).

5 THE COURT: Mr. Long, you can continue,
6 sir. The objection is overruled.

7 MR. LONG: I think I said two words.

8 THE COURT: That's all right. I overruled
9 his objection. You may go ahead and continue.
10 Thank you, sir.

11 BY MR. LONG:

12 Q The indictment that charges this offense says
13 more than 100 grams. Your report says 220 grams.

14 A Yes, sir, my report says 220 grams.

15 Q There has been testimony that the powder
16 found and the powder transmitted is white.

17 A Yes, sir. When the evidence was submitted,
18 the evidence was white, off-white in color.

19 Q But viewing it now, it would appear not to be
20 an off-white but rather a beige, would you agree?

21 A Yes, sir. There was some discoloration to
22 the evidence that was initially submitted.

23 Q So it has changed in color?

24 A Yes, sir.

25 Q Is there an explanation for why it would

1 change in the color?

2 A I am not 100 percent sure why it would change
3 in color. The only thing that I can think of is when
4 they initially make cocaine out in the field, they use
5 a compound called Hydrochloric Acid. That has a way
6 of discoloring things. Acid has a way of taking color
7 out of objects.

8 Q When is Hydrochloric Acid use?

9 A It is used in preparation whenever they
10 abstract the cocaine from the cocaine base.

11 Q When "they"?

12 A Whoever "they" may be. I don't know who is
13 "they". The processor.

14 Q Whoever processed it?

15 A Yes, sir.

16 Q But it showed up white?

17 A Yes, sir. Initially, it showed up white. I
18 don't have the precise or exact explanation for the
19 discoloration.

20 Q Is it anything that y'all did to cause
21 discoloration?

22 A No, sir. I just take a small sample of the
23 evidence. I color test it. Put it on the instrument.
24 Once I get the results, seal it back up. Put it in
25 the drug vault. I sent it backstairs who sent it back

1 to the police agencies, whoever submitted evidence.

2 Q In performing the test, you took a small
3 portion from what was submitted?

4 A Yes, sir.

5 Q Roughly how much?

6 A Approximately 0.01 grams

7 Q Just a tiny portion?

8 A Yes, sir. A very small amount.

9 Q After you get that small amount for testing,
10 you close the bag back up and put it back in the vault
11 or wherever it is stored, is that correct?

12 A Yes, sir.

13 Q So the color would have changed after it left
14 your hands if it was white, off-white when you took
15 the small sample?

16 A When I completed my analysis of the evidence,
17 the coloration was still the white, off-white color.

18 Q And it is not that now?

19 A No, sir. It is not that.

20 Q You have no explanation scientifically for
21 that?

22 A I can only speculate on that point.

23 Q I won't ask you to speculate. Scientifically?

24 A Yes, sir.

25 Q I asked you, I believe, I would like to ask

1 you when the exhibit left you specifically when and to
2 specifically to whom it was given, do you know that?

3 A No, sir. I don't know that information. Once
4 I do my analysis, I place it back in the drug vault.
5 Then, from the drug vault, I transfer the evidence
6 back to our log in. That is where officers come and
7 they will pick up the evidence. I don't know who came
8 to pick this evidence up.

9 Q Or from whom? Who picked it up or from whom?

10 A Or from whom meaning who initially submitted
11 it?

12 Q Who in your office from SLED had last
13 possession of it, you really don't engage it back to
14 someone else. You really don't know, do you?

15 A No. I don't know who the last person SLED
16 had evidence, I don't know.

17 Q You don't know who received it or got it from
18 SLED, do you?

19 A No, sir, I don't.

20 Q Or when that occurred?

21 A No, sir. I don't have that information in
22 front of me.

23 Q How many people does it take to handle the
24 bag of drugs and the steps to take the sample of drugs
25 that was analyzed, how many hands would that have gone

1 through while at SLED?

2 A I can only testify to the fact that I
3 received the evidence from the SLED drop box. Once I
4 receive this evidence, it was in my custody until I
5 placed it back into the drug vault. Then from the
6 drug vault, I took it downstairs to the evidence log
7 in. I would not know how many hands from the initial
8 seizure up until the officer or whoever came to pick
9 up the evidence.

10 Q Did your examination determine whether or not
11 it was pure cocaine?

12 A No, sir. My examination would not have
13 determined whether it was pure cocaine. Cocaine was
14 in the evidence that I tested.

15 Q Do you know whether or not there was
16 additives in this, uh, cocaine when it was submitted
17 to you?

18 A When it was submitted to me, I don't know. I
19 tested it. I didn't see any adulterants or additives
20 within it. I can't say that it did not have any
21 adulterants or any cutting agent.

22 Q Normally, there would be cutting agents
23 involved, would they not?

24 A It depends on where the evidence comes from.
25 And it depends on who is distributing evidence. Some

1 people like to put certain evidence in their cocaine
2 or drug of choice. Some do not. It depends on the
3 individual and depends on the person that is selling
4 the evidence or selling the drugs. It is personal
5 preference.

6 Q I think that -- let me check. I believe that
7 those are the questions that I would ask.

8 THE COURT: Thank you, Mr. Long.

9 Mr. Newkirk, any redirect?

10 MR. NEWKIRK: Very briefly.

11 REDIRECT EXAMINATION

12 BY MR. NEWKIRK:

13 Q Mr. Ford, when did you test these drugs?

14 A I tested the evidence on October 21, 2002.

15 Q What is today's date?

16 A Today's date is August 8th, 2007.

17 Q In your opinion, could the time lapse from
18 the time you tested the drugs til today's date have
19 any affect on the discoloration?

20 A Yes, sir. That is a very highly possibility.

21 Q Thank you.

22 THE COURT: Mr. Long?

23 REDIRECT EXAMINATION

24 BY MR. LONG:

25 Q I don't he asked did you have an explanation

1 as to why the discoloration?

2 A Yes, sir. He did. I said it was a highly
3 possibility that it could have discoloration.

4 Q With passage of time? I understood you to say
5 that you didn't --

6 A What I am saying is that initially, when they
7 go through the procedure of making the cocaine, they
8 do put in Hydrochloride Acid. There is a strong acid
9 that can cause discoloration in different things. The
10 possibility that the time lapse could cause a
11 discoloration.

12 Q A possibility?

13 A A possibility, yes, sir.

14 Q I presume that this Hydrochloric Acid would
15 be used where it is grown rather than on the streets?

16 A That is a possibility. People use
17 Hydrochloric Acid all the time. Hydrochloric Acid is
18 nothing more than acid use when cleaning swimming
19 pools with, sir. The same ingredients.

20 Q You and I really don't know what -- you got
21 that the lab?

22 A Yes, sir. Once I received the evidence, it
23 was off-white in color.

24 Q I appreciate, sir. Thank you.

25 THE COURT: Mr. Newkirk?

1 MR. NEWKIRK: Nothing further, Your Honor.

2 THE COURT: All right, you may be excused,

3 sir.

4 THE WITNESS: Thank you.

5 THE COURT: You may step down.

6 Any objection to him being excused?

7 MR. NEWKIRK: Can he be excused?

8 MR. LONG: Sure. I was waiting on you
9 first.

10 MR. NEWKIRK: Your Honor, the State rest.

11 THE COURT: Okay. Ladies and Gentlemen, at
12 this time, it is a very good time for your lunch
13 break. I know we pushed to you a little bit
14 today. Let me tell you, it is about 1:38
15 according to the clock at the back of the
16 courtroom. If I tell you to be back at 2:45, do
17 you think that is doable? Is that okay? All
18 right. You are saying to me yes. I believe it is
19 okay.

20 What I am going to ask that you do is go
21 ahead and take a lunch break at this time. You
22 are free to go about your business. Just be back
23 in the jury room at 2:45. Don't rush too much.
24 2:45 is fine. You don't need to be here too much
25 earlier than that.

1 Again, I am instructing you not to begin
2 discussing this case. You have not received all
3 of the evidence or heard all the evidence
4 arguments from these lawyers or heard my charge
5 on the law. Again, if you run into someone out
6 on the street, you're not to discuss it with them
7 or with each other.

8 I also have one thing I need for you to do
9 for me on your way back. When you meet back in
10 your jury room at 2:45, I need you to elect a
11 foreperson. A foreperson has no greater say than
12 anyone else. They are the person that
13 facilitates the conversation. When you render a
14 verdict in this case, it must be the unanimous
15 consent of the entire 12 people on the jury. The
16 foreperson is the person whom I can communicate
17 with.

18 If you would, when you go back, among
19 yourselves, elect a foreperson. I am going to
20 ask that person to take this very front seat on
21 the front row here. All right. That way, I'll
22 know who it is. You don't mind giving that
23 foreperson's name to the jury foreperson name to
24 the bailiff, Mr. Morris, so he can tell me who it
25 is. I will appreciate that. With that said,

1 have a wonderful lunch. We will see you back
2 here at 2:45. Thank you.

3 (RECESSION, the jury exit at approximately
4 1:37 p.m.)

5 THE COURT: All right, are there any
6 motions?

7 MR. NEWKIRK: None from the State, Your
8 Honor.

9 THE COURT: Obviously not. Anything from
10 the Defendant?

11 MR. LONG: I have nothing to put on
12 record.

13 THE COURT: Okay. At this time, we are
14 going to go ahead and break for lunch. And what
15 I want to do and I have no idea, Mr. Long if you
16 do or do not intend to put up, I can tell you and
17 you need to tell me your pleasure, I don't like
18 to push the jury too late obviously. If this
19 doesn't go on then by a certain time, I typically
20 will probably wait until the morning to argue and
21 charge. I believe, Mr. Long, at a bench
22 conference, you requested of me that we keep
23 these two together, that you are able to argue
24 and charge on the same day, is that correct?

25 MR. LONG: That is correct. I did make

1 that request.

2 **THE COURT:** I will try to adhere to it as
3 best I can. We shoot for that. With that said,
4 if we end up with no testimony after lunch, we
5 may end up arguing and charging today. I want to
6 make sure you understand that. I don't want this
7 jury being sent out all afternoon and go home and
8 come back in the morning if it is absolutely not
9 necessary. Additionally, gentlemen, I don't know
10 exactly what is going to come up with potentially
11 the Defendant's case, I do want to go over my
12 charge which is the standard charge in this case,
13 obviously.

14 What I propose, go to lunch. If you will be
15 back, go ahead and be back at maybe just about
16 2:40, about five minutes. Then, we can discuss
17 briefly what my charge will be if that becomes
18 necessary today or not. Then, of course anything
19 we need to add additionally, Mr. Long, we'd
20 certainly will. I just want you to have an idea.
21 As you know, I haven't had a law clerk this week.
22 I am doing it myself. So, I just wanted to make
23 sure that you had a chance to look at the verdict
24 form and all of that if we end up going to the
25 jury today. All right?

1 **MR. LONG:** I just wondered between now and
2 the time that -- would you have one argument?

3 **MR. NEWKIRK:** Yes.

4 **THE COURT:** Okay. Just one argument, is
5 that correct?

6 **MR. NEWKIRK:** Yes.

7 **MR. LONG:** May I have five minutes with my
8 client?

9 **THE COURT:** Absolutely. I just want to be
10 very clear for the record, the last sidebar that
11 we had, you wanted to make sure that we put on
12 the record --

13 Teresa, did you get it or not?

14 **COURT REPORTER:** No, ma'am.

15 **THE COURT:** Would you remind me someone the
16 last bar that we had?

17 **MR. NEWKIRK:** The last sidebar, I showed Mr.
18 Long the indictment. He asked a question about
19 the indictment.

20 **THE COURT:** You were concerned that he was
21 going to offer the first indictment which was the
22 one that alleged 28 grams. I understand the
23 basis. If he were going to introduce that, I
24 think you were heading him off. Of course, I
25 told Mr. Long, we brought him forward just to make

1 sure that didn't come out in front of the jury.
2 He instructed Mr. Newkirk that you and I did not
3 know what his question was. He was going to ask
4 if it was more than 100 grams which was of course
5 a perfectly fine and fair question. I overruled
6 your objection. He proceeded and was able to ask
7 his question. I wanted to make sure there was
8 nothing further that I needed to put on the
9 record as far as that sidebar was concerned.

10 **MR. NEWKIRK:** I think that was it.

11 **THE COURT:** Anything that you can think of,
12 Mr. Long?

13 **MR. LONG:** I raised the question of
14 weighing it today's weight and that that be put
15 on.

16 **THE COURT:** That was fully on the record.
17 The jury was not present during any of that. I
18 also allowed you to ask questions of this
19 witness. Of course, the Solicitor did it without
20 objecting to it. It was outside the scope of his
21 qualifications as an expert. We did it out of
22 abundance of caution to make sure that whatever
23 questions were asked weren't in front of the jury
24 that were improper. We allowed you to do that.
25 You were able to do that.

1 The investigator, I'm sorry, the analyst
2 stated he doesn't have whatever materials he need
3 to actually be able to weigh the evidence today
4 and I also don't think it is relevant. Based on
5 that, your objection is noted for the record.

*6 I wanted to just last put on the record. You
7 have twice now -- I believe you cleared it up. I
8 just want to be absolutely clear for this record.
9 Mr. Long, you stated that you seemed to be
10 fuzzier in your thought process even more than
11 usual. I know you made light of it a little bit
12 in front of the jury. I appreciate that.

13 Actually, I asked the clerk here, I wanted to
14 give you some lozenges to make sure that you are
15 okay. You said you were feeling a bug a little
16 bit. I want to make certain. You said for the
17 record, I'm fine. I just have a throat problem.
18 I just want to make sure we don't have any type
19 of PCR issue. I just want to know for the record
20 now that you are feeling all right and that you
21 are defending your client zealously and very
22 expertly. I don't see any problem with it. I
23 just want to make sure that you feel comfortable
24 in going forward and that you do feel alright, is
25 that right, sir?

1 **MR. LONG:** I only have, the only problem I
2 experienced now or experienced at anytime during
3 the course of this trial or the couple of months
4 leading up to it is that I have a very
5 intelligent, intelligible hoarseness. That is
6 what I'm, I was making a joke about the fuzziness
7 or the thought process. I think that the
8 hoarseness can make me a little bit less, a
9 little more groggy. That is all. I don't think
10 there is anything that I have said that I would
11 not have said or anything that I should have said
12 or asked or argued during this thing. I don't
13 feel impaired at all.

14 **THE COURT:** I appreciate that. I just want
15 to make sure that we are not creating a PCR issue
16 down the line. As I said, you are a very able
17 counsel. I have never met either one of you
18 before this week. This happens to be my first
19 week ever holding court in Greenville. Again, I
20 find you incredibly able experienced lawyer. I
21 don't see any problem whatsoever. I just want to
22 be clear for the record. With that said, let's
23 go to lunch. I will see you back in a little
24 under an hour.

25 **MR. LONG:** Judge, I'm going to ask, I'm

1 going to ask in light of the evidence of
2 discoloration and uncertainty as to impurities,
3 the different drug weight charges be given that
4 the jury is aware that they could find a lesser
5 drug weight and that it would have an impact.

6 **THE COURT:** What is in the evidence that
7 would show that it is a lesser drug weight? I
8 understand you talked about the discoloration.
9 We also talked about the chain of custody. I
10 don't see any evidence of any tampering as far as
11 chain of custody is concerned that would account
12 for differing drug weights. What evidence is in
13 the record that there is a different drug weight
14 other than as you stated there was an arrest
15 warrant and a previous indictment stating it was
16 28 grams in which the solicitor explained that it
17 was just a mistake. Is that correct, solicitor?

18 **MR. LONG:** Which wasn't in front of the
19 jury. I can't use it in front of the jury.

20 **THE COURT:** Exactly. I guess, Mr. Long,
21 unless there is something in evidence that would
22 indicate that these drugs are less than the 200
23 gram. For instance, if you have an expert
24 witness that says in their experienced less than
25 or their belief is less than, I don't see any

1 evidence in unless you can point any out to me.

2 **MR. LONG:** There is no evidence as to how
3 much. There is evidence whereby the jury could
4 include that weight would be an issue.

5 **THE COURT:** What evidence is that?

6 **MR. LONG:** The testimony of this witness.

7 **THE COURT:** He testified that it was
8 discolored, that it was the beige as opposed to
9 white or off-white when it was first presented.
10 I did not see any dispute as to the weight --

11 **MR. LONG:** No.

12 **THE COURT:** -- in the analyst testimony.

13 **MR. LONG:** There wasn't. He testified as
14 I recall correctly that he brought up the
15 subject, not me, on additives.

16 **THE COURT:** How is that an issue? As we
17 stated before, the weight is derived, as long as
18 it has elements of cocaine in it, it is the total
19 weight of whatever is presented. It isn't minus
20 any adulterers or any additives that were put in
21 there. Correct me if I am wrong. It still goes
22 to the total weight of it. I still don't see any
23 evidence.

24 I can tell you part of the standard charge on
25 cocaine and explaining the weight as far as

1 cocaine is that the State must prove beyond a
2 reasonable doubt that the amount of the cocaine
3 or any mixture containing cocaine was and
4 whatever the certain weight is. It specifies it
5 actually when you call up the elements and the
6 charge on it. I don't see how that could be a
7 factor. If it is, Mr. Long, certainly you can
8 point it out to me.

9 MR. LONG: Well, I don't guess I would be
10 prohibited from arguing the uncertainty as to the
11 weight.

12 MR. NEWKIRK: I don't think there is no
13 evidence in the record. I would object to him
14 arguing about the question of the weight.

15 THE COURT: Of course, it would depend on
16 how he argued it. Obviously, an argument is an
17 argument. I don't see any evidence right now in
18 the record. Maybe there will be after lunch. I
19 don't know. I don't see anything that states
20 that this weight was anything other than 220
21 grams. There has been no testimony other than
22 that.

23 MR. LONG: All right.

24 THE COURT: If anything else does come up,
25 you certainly can make the argument. I don't see

1 at this time there has been any evidence
2 introduced that the weight is less than it is.
3 Thank you, y'all, have a nice lunch.

4 (WHEREUPON, a lunch recess is taken.)

5 THE COURT: Mr. Long, sir, do you intend on
6 putting up evidence? Do you need a moment to
7 talk with your client?

8 (WHEREUPON, there is a pause.)

9 MR. LONG: Your Honor, my client has
10 informed me that he will not offer evidence.

11 THE COURT: Okay. He does not wish to
12 testify, is that correct?

13 MR. LONG: Yes, ma'am.

14 THE COURT: Okay. I'm going to go through
15 his rights.

16 MR. LONG: Yes, ma'am.

17 THE COURT: Mr. Provet, sir, if you will
18 stand for me. Sir, I am now going to advise you
19 that you have the right to invoke the protections
20 given to you by the Fifth Amendment to the
21 Constitution of the United States and a similar
22 counterpart provision of the South Carolina
23 Constitution. The Fifth Amendment to the
24 Constitution of the United States provides that
25 no person shall be compelled in any criminal case

1 to be a witness against himself.

2 This provision of constitutional law means
3 that you cannot be compelled are required to
4 testify in this case. This is a right and
5 privilege that the law extends to you, Mr.
6 Provett. This is a personal privilege. No one
7 can waive this right except you. You have the
8 right not to testify, sir. You also have the
9 right to testify. The Court will grant you a
10 right to consult your lawyer even further even
11 though I know you have with Mr. Long somewhat to
12 this point. Before you make this decision again,
13 I will ask you again at the end of my questions
14 if you still continue to not want to testify.

15 Sir, if you elect not to testify, your
16 failure to testify can not be used by the State
17 as an inference of guilt. Your failure to
18 testify can not be considered by the jury in its
19 deliberation. I am going to tell the jury that.
20 I am going to tell them that they cannot hold it
21 against you that you haven't testified. I am
22 going to explain to them that the burden of proof
23 in this case is on the State. You don't have any
24 burden to prove. All right, sir?

25 MR. PROVETT: Yes, ma'am.

1 **THE COURT:** If you elect to testify and you
2 waive the privilege extended to you by the Fifth
3 Amendment to the Constitution of the United
4 States, I advise you now that you would then
5 assume the role of a witness in this case. You
6 will waive or give up your constitutional
7 privilege against self-incrimination. This means
8 that you voluntarily take the stand and testify,
9 you will then subject yourself to the same rules
10 that govern other witnesses. You may be examined
11 and cross-examined on any relevant issues in this
12 case. You may be impeached to the same extent as
13 any other witnesses.

14 Sir, I further advise you to that if you
15 elect to take the witness stand and testify, this
16 decision in your part must be made freely,
17 voluntarily, intelligently and with the knowledge
18 of the protections that are given to you by the
19 Fifth Amendment of the United States and with
20 knowledge of the consequences of your election to
21 testify. Sir, at this time, would you like to
22 consult your attorney, Mr. Long, and ask him any
23 further questions about whether or not you want
24 to testify, sir, and anything having to do with
25 your constitutional rights?

1 MR. PROVET: No, ma'am.

2 THE COURT: You feel comfortable going
3 forward at this time?

4 MR. PROVET: Yes, ma'am.

5 THE COURT: Have you understood what I have
6 explained to you Mr. Provett?

7 MR. PROVET: Yes, ma'am.

8 THE COURT: It is my understanding from
9 your lawyer and I just need to hear it from you
10 is that you do not wish to testify, is that
11 correct, sir?

12 MR. PROVET: Correct.

13 THE COURT: Thank you, Mr. Provett. I
14 appreciate it, sir. You may be seated.

15 All right. So I am clear, uh, for the
16 record, it is my understanding, Mr. Long, that
17 you do not intend to put up any other evidence,
18 is that correct, sir?

19 MR. LONG: That is correct.

20 THE COURT: You can tell me. Obviously, we
21 can go ahead and hear motions right now. I am
22 assuming you want to rest for the record in front
23 of the jury, is that correct, sir?

24 MR. LONG: Yes, ma'am. And I will do my
25 motions if I may.

1 **THE COURT:** Would you like to do them at
2 this time before you go ahead and rest for the
3 record? I just do that so I won't have to bring
4 them back out again. Have you rest and send them
5 back in.

6 **MR. LONG:** If something change, I know
7 that I would be allowed to amend it.

8 **THE COURT:** Yes, sir.

9 **MR. LONG:** As it stands at this moment, I
10 feel certain it will be after the jury came back
11 in and I told them that I rested, I would like to
12 renew the motions that I have made throughout the
13 trial and the objections that I raised including
14 the motions to suppression including the matters
15 concerning the drug weight and any other. There
16 really have been no significant evidentiary
17 rulings other than drug weight and suppression
18 that I can recall. If you would allow me to
19 state that I renew all motions at this time and
20 all objections to rulings at this time, please.

21 **THE COURT:** They are noted for the record,
22 sir.

23 **MR. LONG:** In addition, I would move for a
24 directed verdict at the close of the evidence
25 case and for directed verdict based upon the fact

1 that the evidence is insufficient to connect the
2 drugs allegedly in the car with this Defendant.
3 The evidence is insufficient as to chain of
4 custody that these were the same drugs, that a
5 consent to search was ever given. Of course, I
6 renew my motion as to the Court's ruling on that
7 point, the valid consent. Even if given, it
8 would not have been valid. It would not have
9 been a voluntary act.

10 Uh, the evidence from the lab expert was
11 insufficient as to, it did not go into the purity
12 of the drugs sampled. The charge that you
13 mentioned that you give about the pure drugs
14 being cut often and the weight, surely that
15 applies for the primary item in this case,
16 cocaine rather than the cutting agent. There is
17 no evidence showing that this was essentially
18 cocaine as opposed to a cutting agent or some
19 other material out to the side. I believe that
20 -- those, I believe, are the grounds.

21 **THE COURT:** Okay. Thank you, Mr. Long.

22 Mr. Newkirk, would you like to respond before
23 I rule?

24 **MR. NEWKIRK:** If I need to respond.

25 **THE COURT:** Why don't you for completion of

1 the record?

2 MR. NEWKIRK: Your Honor, the trial court is,
3 when ruling on a directed verdict motion, is
4 concerned with the existence or nonexistence of
5 evidence and not on its weight. It is the
6 State's contention that there has been evidence
7 presented that shows that.

8 THE COURT: Solicitor, I do agree with you.
9 Of course, you are correct in stating that the
10 Court's concerned with the existence or
11 nonexistence of evidence and not it's weight.
12 Typically, the Court can't refuse to grant a
13 motion where the evidence merely raises the
14 suspicion that the accused is guilty but it is my
15 duty to submit the case to the jury if there is
16 any substantial evidence that reasonably tends to
17 prove the guilt of Mr. Provet from which his
18 guilt can be fairly and logically deduced. I do
19 find that there is adequate evidence that would
20 show or could lead the jury to believe Mr. Provet
21 is guilty of the charges. As such, I'm going to
22 deny the directed verdict motion. Yes sir?

23 THE COURT: Now I put one more thing on the
24 record, Your Honor?

25 THE COURT: Yes, sir.

1 **MR. LONG:** This I think goes to every
2 other, just a factual additive to every other
3 motion. My client wants to call to the Court's
4 attention the fact that on a tape when he was
5 being pursued by two officers, there was a third
6 officer there. That is in the testimony. In
7 addition to that, on the tape, that third officer
8 who secured Mr. Provet's vehicle actually entered
9 the vehicle and went inside of the vehicle for a
10 short period of time on the driver's side. That
11 is shown on the tape.

12 **THE COURT:** Actually, we never saw the
13 driver's side of the vehicle on the tape. It
14 only showed the passenger side of Mr. Provet's
15 vehicle on the tape. It didn't show it. It may
16 have been testified to it. But it didn't show it
17 on the tape. You couldn't see the left side of
18 Mr. Provet's vehicle anywhere on that videotape
19 anyway. Correct me if I am wrong anyone. But I
20 never saw the left side of the vehicle on that
21 tape

22 **MR. NEWKIRK:** That is correct.

23 **THE COURT:** Isn't that correct, Mr.
24 Newkirk? I know my officers will tell me the
25 same thing.

1 I guess, Mr. Long, what does that go towards?

2 MR. LONG: Well, I guess, it can go to the
3 existence of drugs or anything less. It is a
4 factual issue that my client has brought up that
5 I would like to put in.

6 THE COURT: Okay. This is the Greenville
7 County sheriff's deputy. He then -- that was on
8 the tape. The testimony on the videotape was
9 that he had made some type of stop. He saw
10 something was going on. He left that person and
11 came to up assist. That is why he ended up on
12 the scene. At that time, both Trooper Owens and
13 Detective Aman had gone after Mr. Provet at that
14 point. They already crossed the center line. My
15 understanding was he said was securing the car
16 was the testimony I had heard. Anyway, anything
17 further we need to put on the record, Mr. Long?

18 MR. LONG: Not that I know of.

19 THE COURT: Okay. Respectfully, again, I
20 deny your motion for directed verdict.

21 Gentlemen, I guess we need to talk about
22 obviously the charge. It is about 3:15. I will
23 tell you that I let lawyers argue as much as they
24 want and as long as they need to. You all have
25 been obviously quite brief in your openings. Can

1 you get some kind of anticipation of how long
2 you're going to argue?

3 **MR. NEWKIRK:** Your Honor, my argument should
4 be approximately 15 minutes.

5 **THE COURT:** Mr. Long, again, not limiting
6 you in any way. Just to gauge for me.

7 **MR. LONG:** This is a difficult case for me
8 to approximate. The different avenues of attack
9 don't necessarily correlate with one another. It
10 is just a bunch of different, uh, -- I would say
11 max, an hour, probably less than that.

12 **THE COURT:** Okay.

13 **MR. LONG:** If the Court wants to know when
14 we prefer to do it, I will be glad to address
15 that.

16 **THE COURT:** Okay. Right now, it is about
17 3:15. I am inclined to go ahead and charge today
18 and get this over to the jury unless y'all have a
19 compelling reason not to. I don't know
20 scheduling-wise. Gentlemen, do you have any
21 proposed request for charge for me?

22 **MR. NEWKIRK:** None from the State, Your
23 Honor.

24 **THE COURT:** Any from you, Mr. Long?

25 **MR. LONG:** Well, --

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1 **THE COURT:** I can go first through what I
2 am going to charge. Typically, I do this back in
3 chambers. We can do it right here. We probably
4 need to do it right here on the record.

5 **MR. LONG:** I imagine I don't think on the
6 record but from the sidebar with Mr. Newkirk that
7 I would like for there to be a charge to the
8 effect that there are lesser included charges --

9 **THE COURT:** As to weight. .

10 **MR. LONG:** Yes, ma'am. And the testimony
11 as to impurity without going into what degree or
12 level of impurity. I would suggest if it is one
13 percent cocaine and 99 percent impurity, I would
14 feel certain that any appellate court would say
15 that I am entitled to a charge.

16 **THE COURT:** What is your proposed charge
17 for that? Do you have one?

18 **MR. LONG:** The statutory language of --

19 **THE COURT:** And purity?

20 **MR. LONG:** Of the lesser drug amount.

21 **THE COURT:** I understand that you are
22 asking for that. You also started asking for
23 something else as to the impurity of the drugs
24 and one percent. You are missing mixing two
25 issues.

1 MR. LONG: That would be the factual
2 argument that I would make.

3 THE COURT: You are saying the weight is
4 less because the percentage of the actual total
5 drug weight is less. Is that what you are
6 saying?

7 MR. LONG: I am saying that the definition
8 that the total weight is an insufficient test. I
9 am --

10 THE COURT: Do you have any case law to
11 back that up, Mr. Long?

12 MR. LONG: No. I think that I have no
13 authority. That language would be a little bit
14 unfortunate. If it is a various sparse amount, a
15 slight amount of cocaine, it would qualify under
16 that definition, under that charge.

17 THE COURT: Solicitor, do you know of any
18 case law or anything as far as stating -- my
19 understanding clearly is whether or not it is,
20 the proof is that there is cocaine in what is
21 there, is that correct?

22 MR. NEWKIRK: That is the case law.

23 MR. LONG: That is what I believe is the
24 case law is thus far.

25 THE COURT: You want me to break new

1 ground. Is that what you are saying, Mr. Long?

2 MR. LONG: Yes, ma'am. I think to be fair
3 which we all try to do --

4 THE COURT: Absolutely.

5 MR. LONG: The lab report should include
6 that. It should include absolute unfairness.

7 THE COURT: I can tell you on the Circuit
8 Court bench it is rare that we get to make new
9 case law and make new law. I think I actually
10 have on one case so far. Of course, it will be
11 up on appeal. We will see how that turns out.
12 It happens to be on a civil case. With that
13 said, the Court isn't prepared to go there today
14 as far as making any new law on that.

15 MR. LONG: Of course, I would make that
16 exception with the hopes that in the record if
17 we will make new law at some point.

18 THE COURT: I appreciate that. I guess you
19 also, Mr. Long, just in thinking out what your
20 thought process is, you could have cross-examined
21 the SLED chemist. I know to asked him what
22 percentage. He said he couldn't tell you. You
23 could have gone into more detail on your cross-
24 examination and specifically asked him is there
25 some point where it becomes negligible. I don't

1 know if that will get you to where you are going.
2 I think it might be a better argument as to where
3 you are going.

4 With that said and understanding your
5 request, let me go through right now what I
6 propose to charge you all so that we are clear on
7 the record. I start out with my general
8 introduction. I will tell you this, I use mostly
9 standard judges charges for circuit courts. So,
10 the truth is, when we actually come on the bench,
11 they hand us a big fat book. They say try as
12 hard as you can to charge from this. I tend to
13 do for the most part unless I clearly think it
14 need to be reworded.

15 Anyway, I will go through, I will read the
16 indictments. I will tell them of course the
17 indictment is not evidence. I will go through
18 and explain that. The Defendant has entered a
19 plea of not guilty. Then, I will talk about the
20 presumption of innocence and that he is presumed
21 innocent to the jury in fact. If they do find
22 him guilty, additionally, I have a rather lengthy
23 reasonable doubt charge obviously that goes to
24 both sides. It states it fairly. Also the
25 duties of the judges and jury. Obviously, they

1 are the judges of the facts. I'm the judge of the
2 law. They have to take it as I give it to them.
3 They have to determine the facts as they see fit.

4 The charge on both direct and circumstantial
5 evidence which I think applies in this case. I
6 will apply that. I also go again the
7 believability of the witnesses on the stand
8 whether or not they are biased or prejudiced in
9 looking at them in that way. Additionally, I
10 will charge expert witnesses. Of course, we had
11 the SLED analysis testify who qualified and
12 testified as an expert witness. Please, jump in
13 to any of these you are opposed to. Okay?

14 Basically, I will tell them that he has been
15 charged with two obvious offenses, resisting
16 arrest and trafficking cocaine and each of the
17 charges are a distinct and separate offense and
18 that they have to consider both of these. They
19 have to consider them separately. I will charge
20 the offense of trafficking which again he is
21 charged with trafficking in cocaine.

22 Again, the State must prove beyond a
23 reasonable doubt that he sold, manufactured,
24 cultivated, delivered, purchased or brought into
25 the State, provided financial assistance or

1 otherwise aided and abetted and attempted to
2 conspire, attempt to conspire to sell,
3 manufacture, cultivate deliver, purchase or bring
4 into this state or was knowingly in actual or
5 constructive possession and knowingly attempted
6 to become in actual or knowingly and
7 intentionally -- I'm sorry or knowingly and
8 attempted to become in actual or constructive
9 position of the cocaine. The State must also
10 prove beyond a reasonable doubt that the amount
11 of the cocaine or any mixture containing the
12 cocaine was 100 grams or more. That is a
13 requirement.

14 I will also charge as to the resisting arrest
15 it is Statute 69-320 that the Defendant is also
16 charged with resisting arrest and the State must
17 prove beyond a reasonable doubt that the
18 Defendant knowingly and willfully assisted a
19 lawful arrest by a person the Defendant knew or
20 reasonably should have known was a law
21 enforcement officer. "Knowingly" means with
22 knowledge, consciously done. "Willfully" means
23 intentionally and not done by accident. "Resist"
24 means to oppose, strike against or obstruct.
25 "Obstruct" means to impede, hinder or interfere

1 with.

2 Even peaceful nonviolent indirect obstruction
3 of arrest or service of process is considered
4 resisting arrest. If the means used are
5 sufficient to prevent the officer from making a
6 arrest, the Defendant could be found guilty of
7 resisting arrests. Okay. Is that fine with
8 y'all?

9 MR. NEWKIRK: That is fine with the State.

10 THE COURT: Mr. Long?

11 MR. LONG: I have one more thing.

12 THE COURT: The Defendant not testifying, I
13 hate how they say a failure to testify. It
14 certainly is no failure. So one needs to reword
15 that. I guess that will be me. It does not in
16 any way on this charge say failure. Basically
17 says the fact that the Defendant did not testify
18 is not a factor to be considered by the jury.
19 They are not even to discuss it back in the jury
20 room. Okay? Lastly, I tell --

21 MR. LONG: Excuse me.

22 THE COURT: Yes, sir.

23 MR. LONG: In direct conjunction with
24 that, could you say, I'm going to the federal
25 charge as I remember it that he has a right not

1 to testify and he has a right to rely on the
2 government's failing to meet the burden of proof
3 beyond a reasonable.

4 **THE COURT:** I can read the entire thing for
5 you if you want it.

6 **MR. LONG:** It is all in there.

7 **THE COURT:** It is all in there. It says I
8 instruct you and emphasize the fact that if the
9 Defendant did not testify is not a factor to be
10 considered by you in any way in your deliberation
11 and in your consideration of the question of
12 guilt or innocence on the Defendant. It must not
13 be considered by you in any manner whatsoever.

14 The Defendant has the constitutional right to
15 remain silent. The assertion of this right must
16 not be considered by you in your deliberations.
17 I will repeat under your oath, you are to draw no
18 conclusion whatsoever from the fact that the
19 Defendant in this case do not testify. The fact
20 that the Defendant did not testify should not
21 even be discussed in the jury room.

22 The burden of proof as I have stated to you
23 is on the State. The Defendant is not required
24 to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a

1 reasonable doubt.

2 MR. LONG: That is good. The other thing
3 that crossed my mind is that I do equate consent
4 to the search with custodial interrogation. I
5 think it is pretty clear that this fellow from
6 the evidence that this man was in custody. He
7 couldn't leave. He certainly was a prime
8 suspect. I think that not only does a judge have
9 to determine voluntariness but also that the jury
10 should have to find that the consent was
11 voluntary rendered. If they find there was
12 consent, they have to find that it was
13 voluntarily rendered before they can consider any
14 thing that was derived from it.

15 THE COURT: Mr. Newkirk?

16 MR. NEWKIRK: Your Honor, that is not the law
17 of the state. There is a big difference in the
18 case law between the voluntariness of consent and
19 whether or not the Statement was taken per
20 Miranda. There are two very different things.
21 The question of voluntariness of consent is a
22 legal question to be determined by the judge.
23 That is far, that is beyond the scope of the
24 jury's fact finding purpose.

25 MR. LONG: If you rule against, I would

1 preserve the objection.

2 **THE COURT:** Respectfully, I agree with the
3 Solicitor. I don't have a law clerk. I don't
4 have a verdict form yet. Let me run back and see
5 if I can find Amber and see if she is here and
6 quickly do a verdict form. What I will do is
7 have her bring it up to me why we are charging.
8 I am sure that it will be fine. It is going to
9 be pretty simple. Give me about two minutes. Go
10 ahead and prepare your closing arguments. It
11 might be a little longer. It might be five
12 minutes. Hopefully I can find someone to type it
13 for me.

14 **MR. LONG:** Will there be two separate
15 verdict forms?

16 **THE COURT:** No, sir. There should just be
17 one verdict form. It will be as to each charge.
18 As to the charge of Resisting Arrest, uh, we find
19 the Defendant not guilty or guilty. On the
20 charge of Trafficking in Cocaine greater than a
21 hundred grams, we found the Defendant not guilty
22 or guilty. Either one.

23 **MR. LONG:** Of the resisting?

24 **THE COURT:** I just do the cocaine one. The
25 first one, it will say one or two. It will say

1 answer both questions. The other thing I can do,
2 I could have them write guilty or not guilty on
3 each of the indictments which is the good old-
4 fashioned way before we had law clerks. I think
5 we will go ahead and do a quick verdict form.
6 You all go ahead and prepare your closing
7 arguments. I will be right back.

8 (WHEREUPON, there is a short recess.)

9 THE COURT: All right. Is the State ready?

10 MR. NEWKIRK: The State is ready, Your Honor

11 THE COURT: Mr. Long, is the defense ready?

12 MR. LONG: Yes, ma'am.

13 THE COURT: Sir, I will go ahead and bring
14 the jury out. You can go ahead and rest on the
15 record for them.

16 MR. LONG: Yes, ma'am.

17 THE COURT: At that time, I will explain to
18 the jury that you are going to go ahead and begin
19 your opening statements. Again, -- thank you.

20 (Pause). The only thing I proposed to add is on
21 the top please answer both questions although it
22 might be explanatory, self-explanatory.

23 MR. NEWKIRK: Looks great to me.

24 THE COURT: I'm going to make sure Mr. Long
25 has read it. I am going to go ahead and ask her

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1 to make that one change, if you don't mind. All
2 right?

3 MR. LONG: Of course, I will argue that
4 they can find him guilty of one.

5 THE COURT: Of course.

6 MR. LONG: Thank you.

7 THE COURT: All right. If we are ready,
8 let's go ahead and bring the jury in.

9 (WHEREUPON, the jury enter at approximately
10 3:39 p.m.)

11 THE COURT: Welcome back, Ladies and
12 Gentlemen of the jury.

13 At this time, Mr. Long.

14 MR. LONG: Yes, ma'am. The defense rest,
15 please.

16 THE COURT: Thank you, Mr. Long.

17 Ladies and Gentlemen, at this time, the
18 defense has now also rested. At this time, the
19 attorneys are going to go into there closing
20 arguments. After which, I will give you my
21 charge on the law. Then, we will go ahead and
22 submit this case to you for your deliberation.
23 With that said, I'm going to go ahead and turn
24 this over to the attorneys for closing arguments.
25 I would respectfully ask that you pay close

1 of this trial, the judge is going to charge you
2 on the law. If anything I say differs from what
3 she says, you must follow her instruction.

4 Resisting arrest, the State must prove beyond
5 a reasonable doubt that the Defendant resisted a
6 lawful arrest and that he knew or should have
7 known that the person who was affecting the
8 arrest was a police officer. As to trafficking
9 cocaine, this Defendant has been charged with
10 trafficking in excess of 100 grams of cocaine.
11 The State must prove that the Defendant either
12 distributed, delivered, manufactured or bought
13 into this state greater than 100 grams of cocaine
14 or, he aided, abetted, conspired to manufacture,
15 deliver, distribute or bring into this state
16 greater than 100 grams of cocaine or the State
17 must prove that this Defendant possessed greater
18 than 100 grams of cocaine.

19 Ladies and Gentlemen, there are two different
20 types of possession. One is not stronger than
21 the other. They are just two different types.
22 The first is actual possession. That occurs when
23 the drugs are actually found on the Defendant's
24 person, in his pocket. He physically is an
25 actual possession of the drugs.

1 attention. Thank y'all.

2 MR. NEWKIRK: May it please the court.

3 THE COURT: Yes, sir.

4 MR. NEWKIRK: Ladies and Gentlemen, good
5 afternoon. I want to tell you that there are two
6 really important parts to the trial. One of
7 those parts are over. It is such an important
8 part of trial. It is you, the jury, getting a
9 chance to hear the testimony and see the
10 evidence. That is so vitally important. It is
11 that and only that that you the jury can use to
12 determine this Defendant's guilt.

13 I am saying it is one of the most important
14 parts of the trial. The most important part of
15 the trial has not began yet. That is you, the
16 jury taking the testimony that you heard back to
17 your jury deliberation room and making a
18 determination of this Defendant's guilt.

19 Ladies and Gentlemen, as you know, this
20 Defendant is charged with Trafficking Cocaine and
21 resisting arrest. Like I did in my opening
22 statement, I want to tell you a little bit about
23 the law. Maybe go in to it in a little more
24 detail in my closing argument. With that said,
25 I'm going to remind you again at the conclusion

1 The second type of possession, that is what
2 we have in this case is constructive possession.
3 In constructive possession, the State must prove
4 that the Defendant had dominion and control over
5 either the drugs or the area where the drugs were
6 found or the Defendant had the ability to control
7 the dominion and control over the drugs or the
8 location where the drugs were found. The State
9 must prove also that the Defendant had knowledge
10 of the drugs.

11 Ladies and Gentlemen, I told you the elements
12 the State must prove. What I want to show it and
13 illustrate to you is how the State has satisfied
14 each and every one of those elements and have
15 proven each and every one of those elements
16 beyond a reasonable doubt. I want to start out
17 first with resisting arrest. I don't think there
18 is any contention as to the resisting arrest
19 charge.

20 Both Trooper Owens and Trooper Aman testified
21 that as Trooper Aman began his precursor search
22 of the vehicle before he ran the drug dog around
23 the vehicle, he went and picked up a chicken box
24 or some sort of fast food box. At that instant,
25 the Defendant fled and ran from the scene. He

1 ran from the side across three lanes of traffic
2 across I-85, over a concrete median, across
3 another three lanes of I-85 down the embankment,
4 into the woods along I-85.

5 Trooper Aman and Trooper Owens testified that
6 they chased the Defendant and that they had to,
7 they had to chase him through the woods. They
8 finally caught him. They also testified what
9 they were wearing on that day. They were wearing
10 uniforms as Trooper Owens testified, the same
11 uniform that he is wearing today. Ladies and
12 Gentlemen, this Defendant knew he resisted
13 arrest. He continued to flee after they chased
14 him. Indeed, it was a lawful arrest. He knew or
15 should have known that the people who were trying
16 to arrest him were in fact police officers. They
17 were both in uniform. He had just been stopped
18 by a police vehicle with the blue lights on.

19 As to trafficking cocaine, one other thing
20 the State must prove is the substance he
21 possessed is actually cocaine. Excuse me. In
22 this case, you heard testimony from a SLED
23 analyst, a chemical analyst who this Court deemed
24 an expert witness in the field of chemical
25 analysis. He testified that he received this

1 substance from the Highway Patrol and this
2 substance tested positive as powder cocaine. He
3 further testified that it weighed 220 grams which
4 is well above the 100 gram threshold that the
5 State must meet in this case.

6 Ladies and Gentlemen, there has been lots of
7 contention or questions about the color of this
8 material. As the chemist testified, when he got
9 the material, it was white. Cocaine is normally
10 white. Because of the chemical that is used to
11 process cocaine from the cocoa leaves, over time,
12 that may be white. The cocaine now is brown.
13 Please remember, Ladies and Gentlemen, it has
14 been five years since this cocaine was seized
15 from the Defendant.

16 Later and gentlemen, the Defendant had the
17 ability to control the vehicle. He had dominion
18 and control over the vehicle where the drugs were
19 found. Officer testified he stop this Defendant,
20 received consent to search the vehicle and
21 eventually found these drugs in the vehicle after
22 searching.

23 Ladies and Gentlemen, this is a vehicle that
24 the Defendant in his own words stating he had
25 been driving at least two days from Charlotte to

1 Greenville. There were no other occupants inside
2 the vehicle. It is important to remember where
3 the drugs were found. They were right next to
4 him. Ladies and Gentlemen, the State must also
5 prove that the Defendant knew these drugs were in
6 his car.

7 Ladies and Gentlemen, first of all, common
8 sense tells you that if you had this amount of
9 powder cocaine in your car, you would know it.
10 This is not a small amount of cocaine. This is
11 not an instance where someone would go in your
12 car and drop a little bit of cocaine and you
13 would not know it is there. Likewise, this
14 cocaine was not found in a hidden compartment in
15 the car where someone wouldn't know it was there.
16 It was found in a fast food bag right next to
17 where the Defendant was sitting.

18 Ladies and Gentlemen, I also want you to
19 think about the Defendant's behavior when he was
20 stopped. Trooper Owens testified that the
21 Defendant hand was shaking, his arm was shaking
22 and he had accelerated breathing. Trooper Owens
23 testified when people are stopped by the police,
24 they generally are nervous. This Defendant's
25 nervousness was accelerated. It's greater than

1 what a normal person acts like when they are
2 stopped by the police. Ladies and Gentlemen, he
3 exhibited no signs of nervousness because he had
4 220 grams of cocaine in his car. He was afraid
5 the State trooper who just stopped him was going
6 to find what was in his car.

7 Ladies and Gentlemen, I also want you to
8 remember, think about the story and listen to it
9 on the video that he gives Trooper Owens. He
10 talks about that he was down here for two days
11 and that he was staying at the Holiday Inn. He
12 was just leaving from the Holiday Inn. Trooper
13 Owens testified that he seen this Defendant's
14 vehicle prior to the Holiday Inn exit in
15 Greenville.

16 Why is the Defendant being deceptive to
17 Trooper Owens? He has got 220 grams of cocaine
18 in his car. He can't tell the trooper actually,
19 I have been running cocaine between Charlotte and
20 Greenville or Charlotte and Atlanta. That is why
21 I am doing here. He has got to come up with a
22 story. He has got to come up with it quickly.
23 That is what he did. It didn't make sense.

24 Ladies and Gentlemen, also think about air
25 fresheners. Again, why did this Defendant have

1 so many air fresheners in his car? To the point
2 that the officers noticed them noticed this the
3 overwhelming odor of air fresheners. He knew he
4 had 220 grams of cocaine in his car. He did not
5 want that to be detected. He does not want that
6 to be detected by the police officer and
7 especially a drug detection dog.

8 Also remember the Defendant vehicle did not
9 belong to this Defendant. Why is that important?
10 If you are carrying 220 grams of cocaine in your
11 car and you have got to get away from the police
12 and hopefully they don't get your name before you
13 get away and they have a car that was not
14 registered to you, it is registered to someone in
15 some other state, again, this Defendant does not
16 want to get caught. He does not want people to
17 know that he is trafficking 220 grams of cocaine
18 that he has in his car.

19 Lastly, Ladies and Gentlemen, I want you to
20 think about what happened when Trooper Aman
21 picked up the bag, the chicken box that had this
22 cocaine in it. I want you to think about what
23 the Defendant did. The Defendant fled the scene.
24 He ran across six lanes of traffic. He went over
25 a concrete barrier dividing the interstate on I-

1 85 and fled. Why did he do that? He did that
2 because he knew there was 220 grams of cocaine in
3 his car. He simply did not want to get caught.

4 Ladies and Gentlemen, the evidence presented
5 today illustrates to you that this Defendant had
6 control of his drugs, he knew about these drugs
7 and they were his drugs. The judge is going to
8 tell you that the State must prove these elements
9 beyond a reasonable doubt. When you think about
10 reasonable doubt, I want you to think about that
11 the State does not have to prove its case beyond
12 all doubt. There are a few things in life that
13 we know for certain. Certainty is not what the
14 State, the burden that the State bears. Ladies
15 and Gentlemen, if you were firmly convinced of
16 this Defendant's guilt, you need to find him
17 guilty.

18 A trial is like a puzzle. The prosecutions,
19 I have provided you with pieces of that puzzle
20 through evidence and the testimony. When you go
21 back to your jury deliberation room, take all the
22 pieces and put the puzzle together. I submit to
23 you when you do put that puzzle together, it will
24 be that this Defendant is guilty beyond a
25 reasonable doubt of trafficking in greater than

1 100 grams of cocaine and resisting arrest. Thank
2 you very much.

3 **THE COURT:** Thank you, Mr. Newkirk.
4 Mr. Long.

5 **MR. LONG:** May it please the Court.

6 **THE COURT:** Yes, sir.

7 **MR. LONG:** Ladies and Gentlemen of the
8 jury, I apologize again for my voice and
9 certainly would assure every one of you that I
10 feel fine. I hear some of y'all coughing. Seems
11 like half of Greenville have got this sustenance
12 in that voice. I have been told that it has to
13 do with the heat and dry weather. That may very
14 well be the case. I don't think I have ever been
15 impacted by hot weather as much as the last
16 couple of weeks. It just seems to be
17 devastating.

18 The indictment, I should say indictments,
19 plural, charge two separate offenses. One
20 offense is resisting arrest. And you would have
21 to determine at Mr. Provet either did not know
22 that the law enforcement officers were such or
23 perhaps determined that they were acting
24 unlawfully to such a degree as to jeopardize his
25 health, safety and well-being. I have two admit

1 to you that you are supposed to obey law
2 enforcement officers if they are acting within
3 the boundary of reason.

4 The question of guilt or innocence to that
5 charge is certainly totally separate from the
6 guilt or innocence of the drug charge. Two
7 separate charges. He can be found guilty of that
8 and not guilty of the drugs and vice versa. One
9 thing I would like to say so I don't forget it,
10 at the beginning, this evidence that has been
11 left up here on display by prosecutor. You will
12 have it in the evidence room with you to look at.
13 You might as well look at it now.

14 The thing I would like to say it is correct.
15 Each of you individually who are sworn to recall
16 the evidence, you are under oath to recall it as
17 you recall it and to make your factual
18 determination based upon what you observed, what
19 you heard and also what you reasonably infer from
20 what happened. In other words, you are thinking
21 people. You are asked to use your rational mind
22 to reach the truth based upon what has transpired
23 in this courtroom.

24 If any of you have a question about any part
25 of the testimony, this lady has been taking it

1 down. She is taking down these arguments as I
2 speak. The judge would have that played back to
3 you. Likewise, there is a lot of what amounts to
4 testimony on this tape a very important piece of
5 evidence, a hugely important piece of evidence.
6 If there is anything that you want to see or hear
7 on this tape, it is your right to request that,
8 to make sure that you have got the facts
9 straight.

10 Now, the prosecutor talked about the
11 Defendant being charged with possessing these
12 drugs, whatever these drugs are. And as anyone
13 will say, there are two types of possession,
14 actual possession. I was holding it in my hand
15 or in the pocket of a person or whatever. Or
16 there is also constructive possession which is
17 being in the car when somebody is, have drugs and
18 know about it or reasonably know about it.

19 That is not what this man is charged with.
20 Mr. Provet is not charged with that. He is
21 charged with the most serious drug offense,
22 trafficking cocaine. This is the indictment. I
23 have written on it. He is charged five years ago
24 with trafficking in cocaine. Now, certainly
25 trafficking by definition of the word would

1 denote to anyone that he, number one, possessed
2 these drugs but the purpose for possessing these
3 drugs were to disperse them to other people
4 within the community.

5 So, we go back to May 1st, 2002. We have a
6 young man driving up I-85. The young man is from
7 Charlotte, North Carolina. He stopped just for
8 coming up from the direction of Anderson, coming
9 up from the White Horse Road exit on I-85. He is
10 pulled over due to the light that illuminates his
11 tag is out and following too closely. Those are
12 legitimate reasons for him to be pulled over.
13 There is no question about that.

14 And he is pulled over to the side of the road
15 and the officer with the flashlight goes up to
16 him on the passenger side. We've heard a lot of
17 testimony about that. The essential reason was
18 to make sure that there was a safe approach.
19 That is a very legitimate concern out there. I
20 honor what the highway patrolmen do out there. I
21 respect it. It is a dangerous factor. Secondly,
22 to look and determine particularly from the
23 safety point of view but also, he said and he
24 testified to see if there is anything that
25 suggests contraband. That is the legality,

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1 illegal cargo.

2 He testified that he, using his word, I would
3 suggest you can play it back in your head these
4 very words that he was overwhelmed by the odor
5 emanating from air fresheners. Later, he
6 testified that there were multiple air fresheners
7 in the car, the SUV. Then, he testified that he
8 went around to the passenger side with a
9 flashlight to look at the VIN and to get the
10 drivers license and the vehicle registration both
11 of which were produced and both of which were
12 called in and were legitimate as was the VIN, the
13 vehicle identification number.

14 He said that the Defendant was overwhelmingly
15 nervous. This is the word, you can listen to the
16 word "overwhelming" again if you choose to on the
17 tape itself. He said that this overwhelming
18 nervousness and the overwhelming odor of this
19 huge number of air fresheners together with the
20 vehicle being registered in someone's name other
21 than the drivers is what peaked his interest.

22 So he had Mr. Provet get out of the car. He
23 patted him down as he has a right to do. Then,
24 he began asking questions, some of which were
25 very personal. He asked him about where he is

1 coming from, why he is here, if he ever been in
2 any trouble with the law, what do you do for a
3 living do you have any luggage. All along from
4 the beginning and repeatedly throughout, he said
5 I'm just going to give you a warning ticket.

6 Well, on the tape, I don't think that you did
7 or if you listen again that you will detect any
8 overwhelming nervousness. I think that you will
9 find that Mr. Provet politely answered every
10 question and answered it in a calm and reasonable
11 tone of voice, cooperative tone of voice. He
12 never said that he was coming from a Holiday Inn
13 in Greenville. It could have been Anderson.
14 That was not pursued. Lord knows, that is no
15 basis if it were a Quality Inn or a Ramada Inn
16 and he said how Holiday Inn erroneously, how
17 would that point to any kind of the guilt of
18 anything?

19 Of course, I understand about you have got
20 one girl that said you could use the car and
21 another girl that you met down here. That is
22 pretty personal. I am not here to judge morals
23 or ways of life. But it certainly has nothing to
24 do with drugs. It certainly wasn't answered in
25 any evasive tone.

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1 Luggage to me means luggage. It means
2 suitcases and stuff. When I travel for a couple
3 of days somewhere, I'd use a hand-held carry
4 duffel bag. You try to travel light. That was
5 in the back of the car. I personally don't call
6 that luggage. If I was to catch an airplane, I
7 guess, I would call it a carry-on. I would call
8 it a duffel bag, overnight bag or something else.
9 Not luggage. To me, that denotes something
10 large.

11 I ask you it is not reasonable to think that
12 this little overnight bag that was on plain view
13 in the back seat behind the driver wasn't it a
14 reasonable answer to say I have no luggage?
15 Couldn't you pursue that the officer with the
16 flashlight meant other than this? The officer
17 attached nefarious meaning to this and repeat
18 again I'm going to give you a warning citation.

19 When I cross-examined the officer, there was
20 a little bit of hesitance and argumentation.
21 Finally, that was admission that Mr. Provet was
22 not free to leave. He would have been stopped up
23 until the time he was handed a warning ticket.
24 Well, that absorbs everything, he is free to
25 leave.

1 Then, immediately, that freedom claims shut.
2 He begins to be questioned again by the officer.
3 Will you consent to us searching your vehicle?
4 Mr. Provet asked, you want to search my vehicle?
5 Listen to it. An incredulous tone. After all of
6 this and everything checked out, then it was
7 repeated, words to the effect will you consent to
8 us searching your vehicle.

9 The two officers, by the way, there was a
10 third officer there by the way at that time.
11 Three officers. It was dark at night. If ever
12 someone who had a suspicious character based upon
13 the little information that I passed on to you or
14 that is on the tape or this tape. Mr. Provet
15 said something that was inaudible.

16 They went to the car, or instead, there was a
17 dog there too. The tall officer, Alan, that now
18 works with Anderson had a dog there and asked for
19 his consent to search. It was only after all of
20 this that Mr. Provet ran. He did a run until he
21 ran out of space to run. He was trying to get
22 away. But from what?

23 Consider yourself to be Mr. Provet. In the
24 dark of night, to be questioned in this fashion
25 by an ever increasing number of police officers

1 with a dog. Perhaps he ran in fear rather than
2 to hide anything. That is a rational conclusion.

3 I left out one other item to which great
4 guilt was attached. First officer, Trooper Owens
5 testified. The words on the tape will be to the
6 effect that they were such a large amount of fast
7 food items in the car. That indicated to me that
8 something suspicious was going on. He emphasized
9 a large number of items that he saw with his
10 light when he went up on both sides of the
11 vehicle. He went to both sides, to the passenger
12 and the drivers side. They were on the front
13 seat and on the floor he said.

14 Well, this supposed consent to search which I
15 submit to you never happened, the consent was
16 never given and if it was given, if it had been
17 given, which it wasn't, it was under the worse
18 sort of harassment and duress with three
19 policemen with a dog. This young man on the edge
20 of the highway at night. I think I would have
21 reacted differently. I don't think I would have
22 run. I don't know if I could have run but if I
23 could, I don't think I would have. But I am not
24 Mr. Provet.

25 Trooper Owens, the first witness said that

1 Officer Aman reached in. He was quick to point
2 out that the dogs have four feet and we have only
3 two. Meaning, a dog is more apt to step on the
4 food with four feet than we would be with our two
5 feet if we were in the vehicle rather than the
6 dog. They wanted not to keep the dog from
7 slurping on the food or from -- well, not
8 slurping. I would take that back. The main
9 purpose was to protect the food so the dog
10 wouldn't mess it up in some fashion.

11 With the dog there, the dog was designed and
12 they have a purpose for it, if they had a
13 reasonable suspicion, have the dog go around the
14 vehicle. They chose instead, rather than doing
15 that, to go immediately to a bag containing a box
16 allegedly containing a plastic baggie containing
17 all of this. I submit to you that with Officers
18 Owens having scanned the vehicle for one of his
19 two stated reasons to see if there was anything
20 wrong going on that he would have spotted a box
21 sticking up from a bag with this plastic bag
22 sticking up.

23 Both of them testified that they would have
24 then known that there was something amiss. You
25 don't get plastic bags in Kentucky fried chicken

1 boxes. More than that, you don't -- more than
2 that, there is a particular way that drugs are
3 packaged in plastic baggies. Rather than Trooper
4 Owens at that time asking what was in the bag
5 which obviously was in somewhat plain view,
6 because the officer who was then a trooper went
7 immediately to it. Just immediately to it.

8 Watch the tape. See how the second or maybe
9 two passes before he finds it. I say finds it,
10 before he reappeared with it. The patrol
11 officer, I questioned him. He played down
12 tremendously the fact that this vast amount of
13 other fast food paraphernalia, bags, boxes, cups
14 and what have you which would indicate drug
15 activity, that he played down entirely the fact
16 that they were there. He might have seen some.
17 It seemed that he could remember some. But it
18 did not seem that it was overwhelming the way
19 Officer Owens stated.

20 Moreover, the second deputy danced lightly
21 over the air freshener saying he thought he
22 remembered some. If he is going to go in there
23 and make the, for the sole purpose of making the
24 car presentable for the dog, wouldn't he have
25 removed these air fresheners which would be an

1 obstacle, I guess, to a dog sniffing out what was
2 in the box, in the plastic bag within the box
3 within the paper bag which allegedly was found in
4 plain view?

5 That is the evidence as to this bag being in
6 the vehicle. That is the evidence as to Mr.
7 Provet involvement. If all of it is true, it
8 does not show whether or not there was another
9 passenger, when he had gotten in the car, whether
10 this material that is alleged to be cocaine was
11 his or if he knew it was there or if he should
12 know it was there.

13 Certainly, if you believe the second officer,
14 it is just in plain view. Plain as the nose on
15 the front of your face. Whereas, if you were the
16 first officer, you didn't even notice it. Had a
17 flashlight from two angles. The first officer,
18 it was one fast food item among many. If it was
19 the action of the second one, he honed in on this
20 particular thing. It is just extremely
21 suspicious and strange.

22 Then alleged that they weren't exactly sure
23 of the details or when he got it back. It was
24 supposed to have been within deputy, former
25 trooper now Deputy Aman possession from the time.

1 he got it. By his own admission, he didn't take
2 it off with him when he chased after Mr. Provet.
3 He doesn't really remember where he put it or
4 when he got it back.

5 The tape shows that while two officers were
6 chasing Mr. Provet that the third officer
7 actually entered the vehicle. Watch the tape
8 again if you want to, if you don't recall this or
9 recall it differently. If I am mistaken about
10 anything, I apologize. Obviously, I don't think
11 I am, I wouldn't be arguing. You see him
12 entering the vehicle. He was not in this
13 process, at least not on the tape when this
14 alleged consent to search was given.

15 So, for a period of time and afterwards on
16 the tape, there is a lot of joking around that
17 these mysterious dead spaces when the tape is cut
18 off and can't be heard. The explanation for that
19 was I can't explain it really. It was confusing.

20 I think we ultimately found out that trooper
21 Owens controlled both microphones and that
22 sometime, there would be dead spaces. They are
23 two lengthy dead spaces where I would like to
24 have heard what were go on. There were a lot of
25 joking around carrying on between the offices

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1 that did occurred after all of this unwound. The
2 last we heard about from Mr. Provet, he was told
3 to get your "blank" down. When I say get on your
4 knees, I mean get your "blank" down by one of the
5 three officers.

6 We have got this story which was supposed to
7 be this which was supposed to be found in a box
8 which was supposed to have been found in the bag
9 which is supposed to be either, A, not in plain
10 view or, B, in plain view according to the
11 officers, either A, amidst a bunch of fast food
12 paraphernalia or, B, I remember it some but I
13 didn't pay close attention. And, A, among the
14 overwhelming pungent odor of air fresheners or,
15 B, I remember air fresheners but I don't remember
16 that much.

17 All of a sudden, we had Corporal Price, the
18 Evidence Technician that show the dates they were
19 received and the date that they were transmitted
20 down to SLED. They were talking about five
21 levels of security. We found out there were
22 really back then there were only three levels and
23 that Corporal Price wasn't the person involved at
24 all. Rather, it was a lady, Dale Blackmon who
25 left the day he started working but he knew her

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1 signature well.

2 It was received a SLED on May the 7th 2002.
3 Then, we had finally Special Agent Ford who most
4 impressive man, six and a half years with a SLED.
5 Got his BS in chemistry. Got his Masters of
6 Science and Chemistry at the University of South
7 Carolina. A BS at South Carolina State. Went
8 immediately to take graduate courses in forensics
9 and application of his knowledge and skills as
10 chemist to the courtroom and to evidence and
11 particularly to law enforcement which I respect a
12 great deal.

13 He answered very candidly. He said when he
14 received the packet from Highway Patrol, it was
15 white or maybe shades of tan. He got it from the
16 evidence vault at SLED. Then, he took a tiny
17 amount of 0.02 or something of that nature of a
18 gram upon which they were to perform there
19 experiment and put the rest back into the plastic
20 baggie and sealed it up in this outer bag.

21 He doesn't know when but at some point in
22 time, he guessed that it was returned to
23 Greenville because of the fact that it showed up
24 here in the hands of Greenville in the courtroom.
25 He testified that what he saw and what he

1 performed the test on was white maybe with a hint
2 of tan somewhere. He said clearly and I respect
3 him so much that he did not look like this. This
4 looks like tuna fish salad I submit with pickles
5 and maybe some pimento, maybe some celery was
6 added.

7 So, he tried to say what might have caused
8 it. Neither he nor I knew what we were talking
9 about when he said that sometimes they, meaning
10 people involved in illegal drugs use Hydrochloric
11 Acid to prepare it. I guess what I got from it
12 was he meant when the plans, cocoa plants are
13 processed to get, in some way to get the cocaine
14 that they use Hydrochloric Acid which I inferred
15 would eat up impurities but would leave the
16 cocaine alone. He said perhaps, possibly, that
17 would explain the color.

18 That was five years ago. I guess the cocaine
19 was made, I'm sure it was before then. It would
20 have been for some period of time working on the
21 cocaine, if it is cocaine for a period of time
22 before it ever showed up on I-85 however it did.
23 Five years passed after that. If it was
24 Hydrochloric Acid which is the only possible
25 explanation, the only speculative explanation,

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1 that would have occurred by definition at a place
2 other than I-85 in Greenville earlier on in time.

3 I am really disturbed by the fact that all he
4 finds from this little sample is there is cocaine
5 present. He does not find the percentage of
6 cocaine, pure cocaine, a trace of cocaine. There
7 is no inquiry as to if there are additives and
8 what the attitudes are. He testified additives
9 are regularly put with cocaine by drug dealers, I
10 suppose.

11 In the movie -- I saw some movie Velnecio Del
12 Toro was in it. I can't remember the name. They
13 were putting some kind of white powder into the
14 cocaine. You will be charged by the judge that
15 if there is cocaine present, that means cocaine.
16 I submit to you in all fairness that you have got
17 to know more than what you know to look at
18 something that looks like this knowing from the
19 testimony that cocaine is a white powder and not
20 knowing what they change to show the change of
21 brown, red, green and bronze and an overall tan
22 hue and determine that that is all cocaine.

23 That is what the trafficking is. It is based
24 upon the weight of cocaine. Otherwise, it is a
25 possession offense. The indictment reads -- and

1 you will have it -- more than 100 grams of
2 cocaine. More than 100 grams, trafficking. And
3 that is the atomic bomb of charges.

4 MR. NEWKIRK: Objection, Your Honor.

5 MR. LONG: I don't find that
6 objectionable, Your Honor.

7 THE COURT: Base, solicitor?

8 MR. NEWKIRK: Your Honor, he is going into
9 possibilities.

10 THE COURT: All right. Gentlemen, approach
11 for just a minute please.

12 (WHEREUPON, a bench conference is held.)

13 THE COURT: The objection is overruled.

14 MR. LONG: It is my argument that the
15 charge is an overkill. A lots of times, it is up
16 to a jury to bring things into perspective. A
17 lot of times, police work which I respect greatly
18 when properly done, can be done in too zealous a
19 fashion. I recognize the terrible seriousness of
20 the problem of illegal drugs. I think that a
21 surer approach would be a campaign of education
22 and a campaign of treatment for those who become
23 addicts rather than our present approach.

24 I recognize that it is absolutely unclear
25 that what is in this stack represents more than

1 100 grams of cocaine. Y'all are going to have to
2 find that. The consequences are gravely serious
3 to Mr. Provet. Also, they are gravely serious as
4 to what I believe is common justice, fairness,
5 and decency.

6 How those drugs and to whatever extent they
7 are drugs, how they wound up in the hands of
8 Officer Aman when he went to clean up the car for
9 the dog so the dog could circle it without
10 thought to the overwhelming odor of the air
11 fresheners, we just don't know. We don't know
12 how they got there. We don't know whether or not
13 they were in plain view. We don't know whose
14 they were. We don't know if Mr. Provet knew they
15 were there or should have known that they were
16 there. The testimony of the two officers are in
17 conflict.

18 This is a tough case from a jury's point of
19 view, I would think, I don't suspect that any of
20 us condone criminal activity much less criminal
21 activity involving illegal drugs. But we have
22 got to find -- to effectuate justice, we have got
23 to find that there is evidence beyond a
24 reasonable doubt where there is no doubt to which
25 a reason can be attached that Mr. Provet, they

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1 were either his drugs or he knew that they were
2 or that they were there. Or that these were the
3 same drugs.

4 Lord knows, the drugs are sent from all the
5 different counties let alone the evidence rooms
6 in each county, even different batches of drugs,
7 can be a pretty serious. I submit to you than to
8 find this young man on this evidence guilty of
9 the horrible offense of trafficking on this
10 evidence, where is the evidence of trafficking?

11 I really hope that this -- I know you will
12 weigh it heavily, all the facts. In other
13 example of guilt, I forgot this one, was the fact
14 that there was a cell phone in the car. Please,
15 please when you weigh it, the evidence here, as I
16 know you will, please draw up the very deepest
17 innermost courage of your individual convictions.
18 Please do justice with your verdict. Thank you.

19 THE COURT: Thank you, Mr. Long.

20 Madam Foreperson, Ladies and Gentlemen of the
21 jury, you followed very patiently and listened
22 very attentively to the presentation of evidence
23 in this case. I want to thank you for that and
24 also the arguments made by Mr. Newkirk on part of
25 the State and Mr. Long on behalf of the

1 Defendant.

2 It now becomes the duty of the trial judge
3 under the Constitution of the State to charge and
4 instruct you under the law applicable to this
5 case. It is your jury duty as jurors to accept
6 and apply the law as the Court will now state it
7 to you. As jurors, it is your exclusive duty to
8 decide all the issues of fact in this case. You
9 must determine the effect, value, weight and
10 truth of the evidence. The State and the
11 Defendant have the right to expect that you will
12 carefully consider and evaluate the evidence and
13 apply the law of the case to the evidence. By
14 doing so, both the State and the Defendant will
15 receive an obtain a fair and impartial trial in
16 this case.

17 The State of South Carolina by the bills of
18 indictment in this case, charged the Defendant,
19 Mr. Karriem Provet with two offenses. The first
20 of which is known as Trafficking Cocaine. This
21 indictment states in part that Mr. Provet did in
22 Greenville County on or about the 1st day of May
23 2002 knowingly sell, manufacture or deliver or
24 bring into the State of South Carolina or did
25 knowingly provide financial assistance or

1 otherwise aid, abet, conspire to sell
2 manufacture, deliver or bring into this state or
3 was knowingly in actual or constructive position
4 of more than 100 grams of cocaine.

5 He was also charged in the second indictment
6 with Resisting Arrest. This indictment states
7 that Mr. Provet did in Greenville County on or
8 about the 1st day of May 2002 knowingly,
9 willfully and lawfully oppose a resisting arrest
10 being made by Edward J. Aman with the South
11 Carolina Highway Patrol whom he knew or
12 reasonably should have known was a law
13 enforcement officer.

14 Ladies and Gentlemen of the jury, I instruct
15 you that the indictments in this case are not
16 evidence and cannot be considered by the jury as
17 evidence in this case. The indictments are
18 simply the formal written instrument which
19 contains the charges written against the
20 Defendant and serves as a formal document by
21 which the case is processed into this court.

22 To this charge and to these indictments, the
23 Defendant has entered a plea of not guilty. This
24 plea of not guilty by the Defendant places the
25 burden of proof on the State to prove evidence

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1 the guilt of the Defendant beyond a reasonable
2 doubt, beyond a reasonable doubt before you, the
3 jury, can find the Defendant guilty.

4 The Defendant, Mr. Karriem Provet is presumed
5 in law innocent of the charge contained in this
6 indictment. It is a fundamental rule of law that
7 the Defendant, irrespective of the seriousness of
8 the charge against him will always be presumed
9 innocent for the crimes for which he is indicted
10 until the guilt of the Defendant has been proven
11 by evidence that satisfies you of his guilt
12 beyond a reasonable doubt.

13 The presumption of innocence is like a robe
14 of righteousness placed about the shoulders of
15 this Defendant. It remains with him and assigns
16 to him that class, the innocent. Until the
17 presumptive robe of innocence righteousness has
18 been stripped from his person by evidence
19 satisfying you, the jury, of the guilt of the
20 Defendant beyond a reasonable doubt. The
21 presumption of innocence accompanies the
22 Defendant from the time of his arraignment and
23 appearance in this court and continues with the
24 Defendant after you retire to the jury room to
25 deliberate your verdict. The presumption of

1 innocence continues in existence for the benefit
2 of the Defendant until you, the jury, reached the
3 conclusion that the State has proven the guilt of
4 the Defendant beyond a reasonable doubt.

5 Ladies and Gentlemen of the jury, I charge
6 you that a reasonable doubt is a doubt that will
7 cause a reasonable person to hesitate to act.
8 Some of you may have served as jurors in civil
9 cases where you were told that it is only
10 necessary to prove that a fact is more likely
11 true than not true. In criminal cases, the
12 State's proof must be more powerful than that.
13 It must be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's
16 guilt. There are very few things in this world
17 that we know with absolute certainty. In
18 criminal cases, the law does not require proof
19 that overcomes every possible doubt. If, based
20 on your consideration of the evidence, you are
21 firmly convinced that the Defendant is guilty of
22 the crimes charged, you must find him guilty. If
23 on the other hand you think there is a real
24 possibility that he is not guilty, you must give
25 him the benefit of the doubt and find him not

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1 guilty.

2 Reasonable doubt may arise from evidence
3 which is in the case or from the lack of evidence
4 in the case. The jury must determine whether or
5 not reasonable doubt exist as to the guilt of
6 this Defendant. I charge you that the Defendant
7 is entitled to every reasonable doubt arising in
8 the whole case. If upon any issue of fact
9 essential to the conviction and verdict of
10 guilty, you have a reasonable doubt as to how the
11 issue should be resolved, it will be your duty to
12 resolve that reasonable doubt in favor of the
13 Defendant.

14 A Defendant, Ladies and Gentlemen, is not
15 required to prove his innocence. The State is
16 required in law to prove every essential element
17 of the offense charged against the Defendant by
18 evidence that satisfies you, the jury, of the
19 guilt of the Defendant beyond a reasonable doubt
20 before you can convict the Defendant and find him
21 guilty.

22 If then after the whole case, you have a
23 reasonable doubt as to the guilt or innocence of
24 the Defendant, he is entitled to that reasonable
25 doubt and would be entitled to an acquittal and a

1 verdict of not guilty. But on the other hand, if
2 upon the whole case, you find the State has
3 proven by evidence that satisfies you, the jury,
4 of the guilt of the Defendant beyond reasonable
5 doubt, it would equally be your duty to convict
6 the Defendant and find him guilty.

7 During this trial, each of us have certain
8 duties to perform. As the trial judge, it is my
9 responsibility to preside over the trial of this
10 case and to rule or pass up on the admissibility
11 of evidence offered during the trial. You are to
12 consider only the evidence before you. You are
13 to disregard any testimony that is stricken from
14 the record of the case during the progress of the
15 trial. You are to consider only the testimony
16 which has been presented from the witness stand
17 together with any exhibits admitted into record
18 of this case.

19 I have the additional duty to charge you
20 applicable law of this case. As the presiding
21 judge, I am the sole judge of the law in the
22 case. It is your duty to accept and apply the
23 law as I have now stated it to you. If you had a
24 preconceived idea as to what the law is or what
25 the law ought to be in this case and it should

1 not agree with what I tell you the law is, you
2 are obligated under your oath to abandon this
3 preconception on your part because you are sworn
4 to accept the law precisely as I now state it to
5 you.

6 In every case tried in this court before a
7 jury, the jury becomes the sole and exclusive
8 judge of the facts of the case. You, the jury,
9 are the judge of the facts in this case. The
10 Court is the judge of the law in the case. The
11 Constitution of State has declared that the trial
12 judge may not intimate, state comment upon or
13 make any statement to the trial jury about the
14 facts in the case. You are not to infer from
15 anything that I have said during the progress of
16 this trial in ruling up on admissibility of
17 evidence or otherwise or anything that I now say
18 during the course of this charge to you that I
19 have an opinion about the facts of this case.
20 That is a matter solely for you, the jury, to
21 determine. As jurors then, it is your duty to
22 determine as I have stated to you the affect, the
23 value, the weight and nature of the evidence
24 presented during the course of this trial.

25 Ladies and Gentlemen of the jury, they are

1 two types of evidence which are generally
2 presented during a trial, direct evidence and
3 circumstantial evidence. Direct evidence is the
4 testimony of the person who claims to have actual
5 knowledge of a fact such as an eyewitness. It is
6 evidence which immediately establishes the main
7 fact to be proved.

8 Circumstantial evidence is proof of a chain
9 of facts and circumstances indicating the
10 existence of a fact. It is evidence which
11 immediately establishes collateral facts from
12 which the main fact can be inferred.

13 Circumstantial evidence is based upon inference
14 and not on personal knowledge or observation.
15 The law makes absolutely no distinction between
16 the weight or value to be given to either direct
17 or circumstantial evidence, nor is a greater
18 degree of certainty required of circumstantial
19 evidence than of direct evidence. You should
20 weigh all the evidence in the case. After
21 weighing all the evidence, if you are not
22 convinced of the guilt of this Defendant beyond a
23 reasonable doubt, you must find the Defendant not
24 guilty.

25 In determining what the facts in this case

1 are, you must necessarily pass upon the
2 credibility, which simply means the believability
3 of the witnesses and the value or weight to be
4 given their testimony. You alone must decide the
5 force and effect and the truth in the testimony.

6 In the making this decision, there are many
7 things you may take into consideration such as
8 the appearance and manner of the witness on the
9 stand; was the witness forthright or hesitant;
10 was the witness's testimony consistent or did it
11 contain discrepancies; what was the ability of
12 the witness to know the facts about which they
13 testified; did the witness have reason to be
14 biased or prejudiced in favor of the testimony
15 they gave; was the testimony of the witness
16 corroborated or made stronger by other testimony
17 and evidence or was it made weaker or impeached.
18 by other testimony and evidence.

19 As jurors, you have a right to believe a
20 small portion of the witness's testimony and
21 discard the large or vice versa. You may believe
22 all of the witness's testimony or none. You may
23 believe the testament of a single witness against
24 that of many witnesses or the other way around.
25 Your decision should be based upon the quality of

1 the testimony, not the number of witnesses or
2 number of pieces of evidence unless they are
3 persuasive of guilt beyond a reasonable doubt.

4 Ladies and Gentlemen of the jury, the rules
5 of evidence ordinarily do not permit witnesses to
6 testify to opinions or conclusions, and
7 conclusions. An exception to this rule exist
8 with witnesses we call expert witnesses, a
9 witness who by education or experience has become
10 an expert in some art, science, profession or
11 calling may state an opinion as to relevant and
12 material matters in which the witness claims to
13 be an expert. They may also state the reasons
14 for the opinion.

15 You should continue any expert opinion
16 received in evidence in this case and like any
17 other evidence, give it the weight you think it
18 did deserves. If you decide the opinion of an
19 expert witness is not based on sufficient
20 evidence or education and experience or if you
21 conclude the reasons given in support of the
22 opinion are not sound or the opinion is
23 outweighed by other evidence you may disregard
24 the opinion entirely. An expert witness' opinion
25 or testimony is to be given no greater weight

1 than that of other witnesses simply because the
2 witness is an expert. Further, you are not
3 required to accept expert testimony even though
4 it is not contradicted.

5 The indictments in this case alleged two
6 different offenses against the Defendant. Each
7 indictment charges a separate and distinctive
8 offense. You must decide each indictment
9 separately on the evidence and the law applicable
10 to it uninfluenced by your decision as to the
11 other indictment. The Defendant may be convicted
12 or acquitted on any or all of the offenses
13 charged. You will be asked to write a separate
14 verdict of guilty or not guilty for each
15 indictment. Again, the offenses that are charged
16 are Resisting Arrest and Trafficking Cocaine over
17 100 grams.

18 At this time, Ladies and Gentlemen, I'm going
19 to explain to you or define for you now the
20 offenses of Trafficking Cocaine more than 100
21 grams. To prove this charge, the State must show
22 beyond a reasonable doubt that the Defendant
23 knowingly sold, manufactured, cultivated,
24 delivered, purchased, bought into this state,
25 provided financial assistance or otherwise aided,

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1 abetted, attempted or conspired to sell,
2 manufacture, cultivate, deliver, purchase or
3 bring it to this state or was knowingly in actual
4 or constructive possession, knowingly attempted
5 to become in active or constructive possession of
6 cocaine. The State must also prove beyond a
7 reasonable doubt that the amount of the cocaine
8 or any mixture containing cocaine was 100 grams
9 or more.

10 Ladies and Gentlemen of the jury, actual
11 possession is when a person is charged with
12 possession and he has actual, physical custody of
13 the thing. Constructive possession is when a
14 person has dominion or control either over the
15 object or the premises where it is located.

16 Possession may be inferred from
17 circumstances. In other words, possession of an
18 object or control premises gives rise to an
19 inference that the person charged has both the
20 power and intent to control the use and
21 disposition of the object. The law says
22 constructive control exist when the accused has
23 the right to exercise dominion and control over
24 the object. Constructive control may be
25 established by circumstantial evidence as well as

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1 direct evidence.

2 Actual knowledge of the presence of the
3 object is evidence of intent to control its
4 disposition. Actual knowledge of the presence of
5 the object is not the only circumstance by which
6 intent may be inferred. The mere presence of a
7 person in an area where an object may be found is
8 not enough in and of itself to give rise to the
9 necessary inference.

10 The word "dominion" means supremacy in
11 determining and directing the actions or
12 governing the particular place and location.
13 Dominion has an overriding implements. Dominion
14 is a perfect and complete ownership in a thing
15 and exercise or control over an object. Control
16 means to subject to authority, to regulate, to
17 govern and direct, to exercise restraining or
18 directing influence over the object.

19 Now, the Defendant is also charged with
20 Resisting Arrest. To prove this charge, the
21 State must show beyond a reasonable doubt that
22 the Defendant knowingly and willfully resisted a
23 lawful arrest being made by a person or the
24 Defendant knew or should have known was a law
25 enforcement officer. "Knowingly" means with

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1 knowledge, unconsciously done. "Willfully" means
2 intentionally, not done by accident. "Resist"
3 means to oppose, strive against or obstruct.
4 "Obstruct" means to be impede, hinder or
5 interfere with.

6 Even peaceful nonviolent undirected
7 obstruction of arrest or service of execution of
8 process is considered resisting arrest. If the
9 means are sufficient to prevent the officer from
10 making an arrest, the Defendant would be guilty
11 of resisting arrest.

12 Ladies and Gentlemen of the jury, I instruct
13 you and emphasized that the fact that the
14 Defendant did not testify is not a factor to be
15 considered by you in any way of your deliberation
16 and in your consideration of the guilt or
17 innocence of the Defendant. It must not be
18 considered by you in any manner whatsoever. The
19 Defendant has the constitutional right to remain
20 silent. The assertion of this right must not be
21 considered by you in your deliberations.

22 repeat in your oath you are too draw no
23 conclusion whatsoever from the fact the Defendant
24 in this case did not testify. The fact the
25 Defendant did not testify should not even be

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1 discussed in the jury room. The burden of proof
2 as I have stated to you is on the State to prove
3 the Defendant's guilt beyond a reasonable doubt.
4 The Defendant is not required to prove his
5 innocence. Again, the burden of proof remains on
6 the State to prove guilt beyond a reasonable
7 doubt.

8 Ladies and Gentlemen of the jury, you are not
9 partisans or advocates for the State of South
10 Carolina or this Defendant. You do not serve as
11 jurors to reward your friends or punish your
12 enemies. Obviously, such a tainted system of
13 justice would be an intolerable. You have been
14 selected as fair, impartial jurors by both the
15 State and this Defendant.

16 It is then your duty by your joint
17 deliberations to determine the truth in this case
18 giving to this Defendant the benefit of every
19 reasonable doubt on each and every issue. Then
20 to the facts that you determine to be true, take
21 and apply the law which has be given to you by
22 this Court and thus arrive at a verdict which
23 speaks the truth to this case. For the word
24 "verdict" which has a Latin derivative means "a
25 true saying". When you have accomplished these

1 responsibilities, you have satisfied your oath as
2 jurors. You will have discharged your duty to
3 this Court.

4 I will now instruct you as to the forms of
5 verdict in this case. If the State has failed to
6 prove the guilt of this Defendant beyond a
7 reasonable doubt, your verdict will be not
8 guilty. If the State has proven the Defendant
9 guilty beyond a reasonable doubt as to both of
10 these charges or considered separately, your
11 verdict will be guilty.

12 To that end, Ladies and Gentlemen, I have
13 provided for you a verdict form. It basically
14 has the case caption at the top. It state please
15 answer both questions. Number one, Trafficking
16 Cocaine greater than 100 grams. We, the jury,
17 unanimously find the Defendant and it says guilty
18 or not guilty. You are to check the line.
19 Number two, Resisting Arrest, we, the jury,
20 unanimously find the Defendant, again, there is a
21 proper space for guilty or not guilty. Then,
22 there is a line for your foreperson and a space
23 for the date rendered.

24 The order in which the verdict form, the
25 forms of verdict appear on the verdict form are

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1 not suggestive of any verdict on the part of this
2 Court. Obviously, I must put them in order.
3 They are chosen randomly. The verdict in this
4 case is to be determined by the jury, not by this
5 Court.

6 Ladies and Gentlemen, I will give you the
7 verdict form and give it directly to your
8 foreperson. It is not her verdict alone. It
9 must be the unanimous verdict of all 12 of you.
10 Ladies and Gentlemen of the jury, at this time,
11 I'm going to ask you to retire back to the jury
12 room. One last time, going to ask you not yet to
13 begin your deliberations. To preserve everyone's
14 rights, once you leave, I'm going to ask the
15 attorneys if there was anything they would like
16 me to add to the charge. If there is nothing we
17 need to add and I don't have to bring you back
18 out here, what we would do is I will send the
19 verdict form as well as the evidence in this
20 case. That will be your signal to begin your
21 deliberation.

22 When you have reached a verdict in this case,
23 I simply ask you to knock on the door, the
24 bailiff will come and get me. We will receive
25 you back in the courtroom to announce the

1 verdict. To that said, I'm going to excuse you
2 one last time. Do not discuss do not begin
3 discussing this case again until you receive the
4 verdict form, Madam Foreperson and the rest of
5 the jurors, as well as all of the evidence.

6 Again, I will tell you if you need to have
7 the video and the jury, TV, of course, it is at
8 your disposal. Additionally, if you would like
9 any of the testimony played back of any of the
10 witnesses, that is available as well. You simply
11 need to write in there and ask for that if you
12 find it necessary. With that said, I'm going to
13 excuse you at this time. Do not begin your
14 deliberations until you have received the verdict
15 form and all the evidence. Thank you, y'all.

16 (WHENUPON, the jury exit at approximately
17 5:01 p.m.)

18 **THE COURT:** All right, any exceptions or
19 additions to the charge from the State?

20 **MR. NEWKIRK:** None from the State, Your
21 Honor.

22 **THE COURT:** From the defense?

23 **MR. LONG:** No, m'am. Excellent charge.
24 Thank you.

25 **THE COURT:** All right. Once again, I'm

4/16

1 going to let you look at the verdict form. I
2 will tell you I saw one typo. It says please
3 answer both question. I put an "S" on it. I
4 have a Masters degree in English. My mother is
5 an English teacher. She would have my head if I
6 send this back to the jury like this. Anyway,
7 that is my writing on here. I want you to
8 understand that. If you will make sure and look
9 at whatever evidence is being introduced and make
10 sure the proper evidence is going back there, we
11 will go a head and send it to the jury. All
12 right.

13 MR. NEWKIRK: Your Honor, this is my fault
14 for putting this particular videotape into
15 evidence. It has got other traffic stops on it.
16 I would just request that they if they want to
17 watch it, they watch it in here.

18 THE COURT: Okay. Mr. Long, what is your
19 position on that?

20 MR. LONG: I would send in the box just so
21 they know it is there.

22 MR. NEWKIRK: I will send it in.

23 THE COURT: That is fine. I don't want
24 them inquiring as to why it is not there.

25 MR. NEWKIRK: Yes.

1 **MR. LONG:** I am inform that -- we haven't
2 had a chance to look at it.

3 **MR. NEWKIRK:** That is the complete copy. If
4 you want to substitute that one.

5 **THE COURT:** Do you have a copy you feel
6 comfortable to substitute that you are okay with?

7 **MR. NEWKIRK:** I'm telling Mr. Long it is
8 exact same thing that is on here.

9 **MR. LONG:** This is the first opportunity
10 he has seen it. Since that is the one that he
11 saw, it is probably better for him just to do
12 that. I think viewing it in the courtroom would
13 be the proper solution.

14 **THE COURT:** Okay. All right. If you don't
15 mind, we may have the bailiffs just instruct the
16 jury that if they want to view the videotape, we
17 will bring them back here to look at it. If you
18 would do that. They are more than free to view
19 it if they need it. All right? Why don't we go
20 ahead and put the case back there so that they
21 understand that they've got it. Okay. I would
22 like to see State's Exhibit 2 if I could.

23 **MR. NEWKIRK:** Okay.

24 **THE COURT:** Thank you. Is there anything
25 further. I think that is it, isn't it?

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1 **MR. NEWKIRK:** That is it.

2 **THE COURT:** Gentlemen, would you be about
3 the courthouse. Do I need cell phone numbers?
4 How will Caroline be able to get in touch with
5 you if we have a question or a verdict?

6 **MR. NEWKIRK:** I will be at my office in the
7 courthouse.

8 **THE COURT:** Caroline's got the number? We
9 are not going to let her leave.

10 (WHEREUPON, deliberation begins at approximately
11 5:09 p.m.)

12 (WHEREUPON, the alternate is released.)

13 (WHEREUPON, the Court resumes at approximately
14 5:41 p.m.)

15 (WHEREUPON, the jury enter at approximately
16 5:45 p.m.)

17 **THE COURT:** Welcome back, Ladies and
18 Gentlemen of the jury. Madam foreperson, I
19 understand you reached a verdict. If you would,
20 please hand it to Mr. Morris. He will pass it up
21 to me, ma'am. (Pause).

22 Okay. Caroline, if you would publish the
23 verdict please.

24 **THE CLERK:** Your Honor, cases number 2005 -
25 GS-23-3478 and 2002-GS-23-4288, the State of

1 South Carolina versus Karriem Provet, Defendant,
2 Trafficking Cocaine greater than 100 grams, we,
3 the jury, unanimously find the Defendant guilty.
4 Of Resisting Arrest, we, the jury, unanimously
5 find the Defendant guilty. Sign Natalie Riles,
6 foreperson.

7 If this is your verdict, please raise your
8 right hand.

9 (WHEREUPON, each juror raised his right hand.)

10 THE COURT: Thank you, Ladies and
11 Gentlemen, is there any request for individual
12 polling, Mr. Long?

13 MR. LONG: If you would, yes please.

14 THE COURT: If you will, Mrs. Morris, go
15 ahead and individually pull them.

16 THE CLERK: Ladies and Gentlemen, the verdict
17 that I have just published, was the verdict that
18 you reached in the jury room. I ask you were they
19 your verdicts then and are they your verdict now.
20 As I call your name, please answer yes or no.

21 Natalie Riles.

22 THE JUROR: Yes.

23 THE CLERK: Samuel Youngblood.

24 THE JUROR: Yes

25 THE CLERK: Leigh Ann Zikus.

1 THE JUROR: Yes.
2 THE CLERK: Angelique Harris.
3 THE JUROR: Yes.
4 THE CLERK: Christopher Mazur.
5 THE JUROR: Yes.
6 THE CLERK: Joseph Schmidt.
7 THE JUROR: Yes.
8 THE CLERK: Linda Mattern.
9 THE JUROR: Yes.
10 THE CLERK: Pamela Fulton.
11 THE JUROR: Yes.
12 THE CLERK: Luther Tatum.
13 THE JUROR: Yes.
14 THE CLERK: Patricia Hall.
15 THE JUROR: Yes.
16 THE CLERK: Tammy Jenkins.
17 THE JUROR: Yes.
18 THE CLERK: Emily Patrick.
19 THE JUROR: Yes.
20 THE COURT: Thank you. Anything further
21 this jury before I discharge them from the State?
22 MR. NEWKIRK: Nothing from the State, Your
23 Honor.
24 THE COURT: From the defense?
25 MR. LONG: No, ma'am.

1 **THE COURT:** Ladies and Gentlemen, I want
2 you to thank you for your service here this week.
3 I know it is often very difficult to sit in
4 judgment of fellow citizens. You have -- and I
5 have observed it -- worked very hard and paid
6 careful attention diligently in this case. I
7 want you to know on behalf of the State and the
8 Defendant that we do appreciate and we are
9 grateful.

10 I want to tell you that the good news is I
11 can go ahead and discharge you for the remainder
12 of the week which means you are free to go. You
13 have now earned your jury exception for the next
14 three years. I always tell people that
15 proverbial check is in the mail. Unfortunately,
16 I don't get too set. Here in Greenville, it is
17 \$10 a day. It is set by County Council. We
18 don't get to set it. It is nothing more than a
19 token of our appreciation for your being here.
20 It is probably just a way to keep track that you
21 were here.

22 With that said, I will thank you. I will
23 tell you at this time, you are free to leave. I
24 will go ahead and sentence the Defendant directly
25 after this. You are welcome to stay for that if

1 you choose to. I would just respectfully ask
2 that you go and sit in the gallery when I do
3 that. It is completely up to you. You are free
4 to go.

5 Additionally, I will instruct you that now,
6 at this time, you are free to discuss or not
7 discuss this case with any one. You can go home
8 and tell your friends and families obviously that
9 you been on this case. You may or may not get a
10 phone call from lawyers or someone else regarding
11 this case. I want you to understand it is
12 completely up to you whether you want to discuss
13 this case. If you don't want to discuss this
14 case, I want you to simply say, I appreciate the
15 call, I do not wish to discuss this case and hang
16 up the phone.

17 If, for any reason, someone presses and is
18 difficult in any way or form, I want you to call
19 it to the clerk's office. Tell them who you are,
20 that you just sat on one of my juries. I will
21 assure you that I will take care of it and find
22 out exactly who called you and who said it to
23 you. With that said, it is completely up to you
24 whether or not you want to speak to anyone
25 regarding this case. All right. With that said,

1 thank you very much. You are discharged for the
2 remainder of the week. All right.

3 (WHILE THE JURY, the jury exit at approximately
4 5:47 p.m.)

5 THE COURT: All right. If Mr. Provet will
6 come forward for sentencing.

7 Mr. Long, is there anything you would like to
8 put on the record? Mr. Provet, you are free to
9 say anything you want to or if you would like to
10 address me in any manner, sir.

11 MR. PROVET: I think it was unfair. They
12 did not weigh the evidence. There was more that
13 went on.

14 THE COURT: Mr. Provet, what I am talking
15 about is is there anything you would like to
16 address me with regard to sentencing?

17 MR. PROVET: No, ma'am.

18 THE COURT: Obviously, you have all the
19 appeals rights that are offered to you. I expect
20 you to speak to your attorney Mr Long to discuss
21 whether or not he is going to do anything in
22 regards to appeals or another attorney.

23 I trust Mr. Long, you are going to speak to
24 your client in regards to his appeal rights.

25 MR. LONG: Judge, can we have a second

1 after sentencing so I can inquire of the Court.
2 I would appreciate it.

3 **THE COURT:** Absolutely.

4 **MR. LONG:** Standing before you as a young
5 man. He is extremely intelligent. He has been a
6 person who in many ways I enjoyed being around
7 quite frankly. He has a sense of humor. It just
8 seems like a tragedy that he faces the mandatory
9 minimum sentencing such as he does today.

10 All I can do is suggest that the mandatory
11 minimum is constitutionally volatile. It's cruel
12 and unusual. That is all I can think of to
13 possibly say relative to the mandatory minimum.
14 I do think it is unfortunate. There is nothing
15 that you can do. I do think that is a horribly
16 excessive thing that the Legislature brought.
17 The State and federal intrusion of the other two
18 branches in the judicial process. It is just
19 overwhelming the thing that is being doing to the
20 system by that. That is my ventilating but I do
21 raise that one point.

22 **THE COURT:** Thank you, sir. Thank you.
23 Solicitor.

24 **MR. NEWKIRK:** Your Honor, I just want to make
25 clear of the sentences on the crimes that we have

1 spoken prior to the trial starting on the cocaine
2 charge is mandatory of 25 years. The top end is
3 not 30 years. Thank you.

4 THE COURT: So it is 25.

5 MR. NEWKIRK: It is 25.

6 THE COURT: To anything specifically?

7 MR. NEWKIRK: No.

8 THE COURT: Obviously, Resisting Arrest is
9 a year, is that correct, sir?

10 MR. NEWKIRK: Yes.

11 THE COURT: Anything further, anyone? (No
12 Response).

13 All right. As you heard the mandatory
14 minimum on this is 25-year sentence. So, within
15 my power, that is the minimum that I can give
16 you. Mr. Provett, you are 32 years of age now, is
17 that correct, sir?

18 MR. PROVETT: Yes, ma'am.

19 THE COURT: Are you currently married? Do
20 you have any children?

21 MR. PROVETT: I have children.

22 THE COURT: How many children do you have?

23 MR. PROVETT: Five.

24 THE COURT: What are their ages?

25 MR. PROVETT: 17, two eight-year-olds, two

1 five-year olds and, uh, ...

2 **THE COURT:** All right, thank you. Sir, are
3 you from the Charlotte area, Were you born and
4 raised there?

5 **MR. PROVET:** No.

6 **THE COURT:** All right. On indictment 2002-
7 GS-23-4288, it is for Resisting Arrest, the
8 sentence of this Court is you be committed to the
9 Department of Corrections for a period of one
10 year. Indictment 2005-GS-23-3478, it is for
11 Trafficking Cocaine 100 grams or more, the
12 sentence of this Court as you be committed to the
13 Department of Corrections for a period of 28
14 years. Those are to run concurrent to each
15 other. Mr. Provet, I wish you the very best of
16 luck, sir.

17 **MR. NEWKIRK:** Your Honor, if I may, it is a
18 straight 25-year sentence.

19 **THE COURT:** It is a straight 25-year
20 sentence? Okay. Obviously, I am was not clear on
21 that. All right. I apologize, sir. Indictment
22 number 2005-GS-23-3478, again for Trafficking
23 Cocaine, 100 grams or more, the sentence of the
24 Court is you be sentenced to the Department of
25 Corrections for a period of 25 years. Again,

1 that is to run concurrent with the Resisting
2 Arrest charge. All right? Anything further.

3 MR. NEWKIRK: Nothing from the State, Your
4 Honor.

5 THE COURT: Anything further, Mr. Long?
6 Lousy.

7 MR. NEWKIRK: Anything to run -- can you put
8 current next to each one of them?

9 THE COURT: We are going to put concurrent
10 on both of them. There is no reason why they
11 shouldn't run them concurrent. All right. Thank
12 you, Mr. Long.

13 MR. LONG: The question I wanted to
14 address the Court, I realize it is my duty, I am
15 retained. Mr. Provst has been in jail a long
16 time. And I know it is my responsibility to file
17 a notice of intention to appeal, I would like for
18 the court to direct the State appellate body to
19 handle the appeal if possible.

20 Mr. Provst has paid me a portion, a nice
21 portion of our agreed fee but had been unable to
22 pay the balance of it. I think that it would
23 turn out although I will gladly assist him in any
24 way and will, I think having access to a free
25 attorney would probably be the case, would be

1 necessary in this.

2 **THE COURT:** Correct me if I'm wrong. I
3 don't think I can directly appoint them unless it
4 is requested or required by him. He has an
5 absolute right to appeal this case. As long as
6 he does it in a timely fashion, he can apply to
7 appellant defense. They will step in and defend
8 him. He just needs to make sure he exercises
9 those rights in the proper amount of time.
10 Correct me if I am wrong, any one.

11 **MR. NEWKIRK:** I think that is correct.

12 **THE COURT:** Certainly, if they have any
13 issues or any concerns about whether or not they
14 can be appointed or need to be appointed, they
15 can certainly apply to me. I will do that
16 freely.

17 **MR. LONG:** I am not backing from him in
st felt that that was something
explained and should be addressed.

Absolutely. There are trial
are are appellate lawyers.

attorneys crossover and sometimes
bviously, it is wise to get an
er at any decision.

, you will hear from your lawyer,

putting

would also advise

480

1 Mr. Long, telling you that you need to go a head
2 and get and file for a lawyer, a free lawyer.
3 All right.

4 MR. LONG: Whether or not someone comes to
5 his financial issue.

6 THE COURT: Just to preserve your appeal
7 rights, Mr. Provet, even if they file it and
8 someone takes over the case and you do hire
9 counsel, you do need to file your appeal timely.

10 MR. LONG: I will advise Mr. Provet that
11 if he hires another lawyer, that it be my advice
12 and it is always my advice -- I've handled
13 numerous appeals. But I always advise people it
14 is better to have a different lawyer handle the
15 appeal with the full operation of the trial of
16 lawyer. If I made a mistake, I would be for less
17 apt to catch it than someone else.

18 THE COURT: It is a fresh set of eyes.
19 Another head is always beneficial certainly in
20 reviewing the case and reviewing a matter.

21 MR. LONG: Again, he and I will get
22 together. And it will be his decision.

23 THE COURT: I do appreciate you p
24 that on the record, Mr. Long.

25 MR. NEWKIRK: Your Honor, I v

1 the Court that he has 10 days to file his notice
2 of appeal..

3 THE COURT: Exactly. You must do that
4 timely. And possibly if counsel isn't able to be
5 obtained for him, I'm assuming, Mr. Long, you
6 will assist him in filing a notice of appeal. Is
7 that correct, sir?

8 MR. LONG: I am going to do that.

9 THE COURT: I appreciate that. We know his
10 rights to appeal are preserved. Anything
11 further?

12 MR. NEWKIRK: Nothing from the State, Your
13 Honor.

14 THE COURT: Anything from the defense?

15 MR. LONG: No, thank you very much.

16 MR. NEWKIRK: Okay.

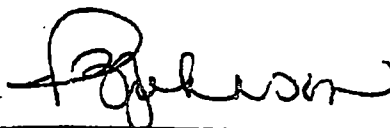
17 THE COURT: Thank you very much, gentlemen.
18 I appreciate it.

19 (END OF PROCEEDING)
20
21

1 I, the undersigned, Teresa B. Johnson, Official Court
2 Reporter for the Thirteenth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete Transcript of Record of all
5 the proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Greenville, South Carolina, on the 7th
8 and 8th days of August, 2007.

9 I do further certify that I am neither of kin, counsel
10 nor interest to any party hereto.

11
12 March 26, 2008

13
14 
15

16 Teresa B. Johnson

17 Official Court Reporter
18
19